

M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

Flat No.303, 'ASHOKA SCINTILLA
H.No.3-6-520, Opp. To Malabar Gold,
Himayathnagar Main Road,
Hyderabad -500 029
Tel.:040-40248935 / 36

To
The Appellate Dy. Commissioner (CT),
Punjagutta Division,
Hyderabad, Telangana.

Dated: /8/2019

Sir,

Sub: Filing of appeal in the case of M/s Vista Homes, M.G.Road, Secunderabad
Hyderabad, Telangana – For the years 2017-18 (Upto 06/2017)/Entry Tax –
Regarding.

Please find enclosed herewith the following appeal papers:

1. Form –APP 400 2 copies.
2. Statement of facts and grounds of appeal 2 copies.
3. e-payment Challan bearing No.1900588046, dated 26-8-2019 for Rs.1000/- towards appeal fees.
4. Assessment order under Entry Tax passed by the Asst.Commissioner(ST) MG Road, SD Road Circle, Begumpet Division, Hyderabad in A.O.No.39153, dated 24-7-2019, (Original along with xerox copies).
5. Form APP 400 A – 1 copy.
6. e-payment challan No.1900588023, dt.26-8-2019 of 12.5% of disputed Tax of Rs.28,469/-
7. Form APP 406 for stay of collection of Disputed Tax. (two copies)
8. Form 565 (Authorization).

Kindly acknowledge receipt of the above documents and post the appeal for hearing.

Thanking you,

Yours faithfully

M.Ramachandra Murthy
Chartered Accountant



Not sent on 28-8-19



Your Tax Payment has been done successfully.

Payment ID for future communication: 12505211 (Confirmation has been mailed you.)

**E-Receipt for
Tax Payment**

Remitter's Name	VISTA HOMES
Customer Account Number	CYBER_TG
Department Code	2303
Challan Number	1900588046
Departmental Transid	36190826918094
DDO Code	25002303017
Head of Account	0042001060001000000NVN
Amount	1,000.00
Transaction Date & Time	26-08-2019 13:50:39
Debit Account Number	919020031272204
Transaction Status	SUC
Remarks	Vista 17-18 AAO no.39153 (Appeal before ADC)

FORM APP 400
FORM OF APPEAL UNDER SECTION 31
[See Rule 38(2)(a)]

1. Appeal Office Address : The Appellate Dy. Commissioner (CT)
Punjagutta Division, Hyderabad
 2. TIN/GRN : 36292192903
 3. Name & Address : M/s. Vista Homes,
5-4-187, 3&4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.
 4. I wish to appeal the following decision /
assessment received from the tax office on : 30/07/2019
 5. Date of filing of appeal : 27/08/2019
 6. Reasons for delay (if applicable enclose a
separate sheet : Not Applicable
 7. Tax Period / Tax Periods : 2017-18(upto June'2017)/Entry Tax
 8. Tax Office decision / assessment Order No. : Assessment order No.39153 dt.24/07/2019
Date. : passed by Assistant Commissioner (ST)
M.G. Road – S.D. Road Circle,
Begumpet Division, Hyderabad
 9. Grounds of the appeal (use separate sheet
if space is insufficient : Separately Enclosed
 10. If turnover is disputed
 - a) Disputed turnover : NIL
 - b) Tax on the disputed turnover : Rs.2,27,750/-

If rate of tax is disputed

 - a) Turnover involved : NIL
 - b) Amount of tax disputed : NIL
 11. 12.5% of the above disputed tax paid : Rs.28,469/-
- Note:** Any other relief claimed : Other grounds that may be urged at the
time of hearing.

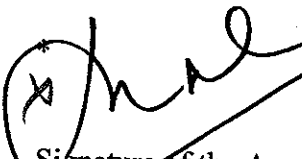
(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

a) Challan / Instrument No.	:	
b) Date	:	
c) Bank / Treasury	:	-----
d) Branch Code	:	-----
e) Amount	:	-----
TOTAL	:	-----

Declaration:

I, Mr. Soham Modi, Director hereby declare that the information provided on this form to the best of my knowledge is true and accurate.

 
Signature of the Appellant & Stamp

Date of declaration :

Name :
Designation :

Please Note: A false declaration is an offence.

DECLARATION

[See under Section 31(1)] [Rule38 (2)(d)]

FORM APP 400A

TIN / GRN	Date	Month	Year
36292192903	27	08	2019

From M/s. Vista Homes, 5-4-187, 3&4, 2 nd Floor, Soham Mansion, M.G. Road, Secunderabad.	To The Appellate Deputy Commissioner (CT) Punjagutta Division, Nampally, Hyderabad
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I SOHAM MODI s/o, SATISH MODI appellant named in the appeal preferred herein as **M/s. Vista Homes**, Secunderabad (Dealer/Firm Name) with TIN/GRN: 36292192903 hereby declare that

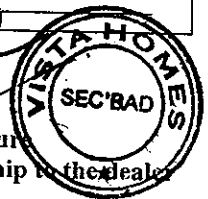
* the tax admitted to be due, or of such instalments as have been granted and the payment of 12.5% of the difference of tax assessed by the authority have been paid, for the relevant tax period in respect of which the appeal is preferred, the details of which are given below.

* no arrears are due from me for the relevant tax period for which appeal is preferred due to the reasons:

12.5% Disputed Tax: 28,469/-

Total Tax Paid:	
a) Cheque/DD particulars	Number _____ Date _____ Bank _____ Branch: _____
b) Cash Particulars:	Receipt No: _____ Date: _____
c) Challan particulars:	Challan No: <u>1900 588023</u> Date: <u>26/8/19</u> Name of the Treasury _____

Signature _____
Status and relationship to the dealer



(* Strike off which is not applicable)



Your Tax Payment has been done successfully.

Payment ID for future communication: 12505094 (Confirmation has been mailed you.)

E-Receipt for

Tax Payment

Remitter's Name	VISTA HOMES
Customer Account Number	CYBER_TG
Department Code	2303
Challan Number	1900588023
Departmental Transid	36190826811812
DDO Code	25002303017
Head of Account	0042001060001000000NVN
Amount	28,469.00
Transaction Date & Time	26-08-2019 13:44:53
Debit Account Number	919020031272204
Transaction Status	SUC
Remarks	Vista-Entry of Goods 17-18(Accounts)

**VISTA HOMES,
M.G. Road, Secunderabad.**

Statement of facts:-

Entry Tax/2017-18 (upto June, 2017)

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short VAT Act) on the rolls of the Commercial Tax Officer, M.G. Road, Secunderabad (for short CTO). Appellant is also registered under the CST Act, 1956 (for short CST Act). Appellant is engaged in the business of execution of works contracts in the nature of constructing and selling flats, etc.
2. It is submitted that the learned Assistant Commissioner of State Tax, M.G. Road-S.D. Road Circle, Begumpet Division, Hyderabad (formerly CTO) (hereinafter referred to as AC) issued pre-assessment notice dated 29.06.2019 under the provisions of the Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for short Entry Tax Act) proposing to demand tax of Rs.2,27,750.
3. Subsequently, the learned AC passed the assessment order dated 24.07.2019 raising entry tax demand of **Rs.2,27,750** for the period **2017-18 (upto June, 2017)**.
4. Aggrieved by such assessment proceedings, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:-

- a. The impugned order is ex-facie illegal, arbitrary, improper and unjustifiable.
- b. It is submitted that the learned AC has issued a very brief proforma show cause notice stating that examination of data and records available in the VATIS system of Commercial Taxes Department revealed that appellant has imported notified goods into the State of Telangana by issuing statutory forms and that exemption from liability of Entry Tax is available only when the notified goods are resold or used as inputs in manufacture. Accordingly it has been proposed to demand tax of **Rs.2,27,750/-** on the purchase of notified goods during the period **2017-18 (upto June, 2017)**.
- c. It is submitted that the appellant has executed the project of constructing flats in Hyderabad. Appellant has purchased cement and parts and accessories of lifts from out of State and used the goods purchased within the State and from outside the State in the

construction of flats and thereafter effected deemed sale of those goods in the nature of works contract along with the constructed flat. All the goods purchased by the appellant from other States are deemed to have been sold in the execution of works contracts.

- d. As per the annexure enclosed to the notice the learned AC proposed to levy entry tax on cement; lifts, elevators, accessories & parts thereof. It shall be pertinent to submit that except stating that they are 'notified' goods, there is practically no clue in the notice or in the impugned order as to in which Notification, these goods have been notified. The show cause notice as well the order are therefore non-speaking. The learned CTO failed to discharge the burden cast upon him. Under Article 265 of the Constitution of India, no tax shall be levied except by an authority of law. There is nothing to show in the impugned order as to under which law (Notification), tax has been levied. For this ground only the impugned order is liable to be set aside.
- e. Appellant contended that sub Section (28) under Section 2 of TVAT Act, 2005, inter alia defines 'sale' as follows:-
"Section 2 (28) '**Sale**' with all its grammatical variations and cognate expressions means every transfer of the property in goods (whether as such goods or in any other form in pursuance of a contract or otherwise) by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration or in the supply or distribution of goods by a society (including a co-operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on goods.

Explanation VI :- Whenever any goods are supplied or used in the **execution of a works contract**, there shall be deemed to be a transfer of property in such goods, whether or not the value of the goods so supplied or used in the course of execution of such works contract is shown separately and whether or not the value of such goods or material can be separated from the contract for the service and the work done."

In view of the above, appellant submitted that there is no difference between a deemed sale and a simple sale. Both constitute one and the same for the purpose of sales taxation. A simple sale and deemed sale shall therefore stand on the same footing and are to be given the same

status and legal validations. There cannot be any differentiation and discrimination between normal sale and a deemed sale. Therefore there shall be deemed sale of goods, when the goods are used and transferred in the execution of works contracts. Hence appellant has resold all those goods.

- f. It is next submitted that under Section 3 (1) of the Entry Tax Act, only entry of the notified goods into any local area is liable to tax at the rates notified by the Government. Further Section 3 (2) of the Act reads as follows:-

"(2) Notwithstanding anything contained in sub-section (1), no tax shall be levied on the notified goods imported by a dealer registered under the Andhra Pradesh Value Added Tax Act, 2005 who brings such goods into any local area **for the purpose of resale or using them as inputs for manufacture of other goods** in the State of Andhra Pradesh or during the course of inter-State trade or commerce :"

- g. Thus if any notified goods are brought into the local area by a registered dealer for the purpose of resale in the State, no entry tax need be paid. In this connection appellant submits that in his circular No.A1(3)/2089/2002 dated 17.8.2002, the Honourable Commissioner of CT, AP, Hyderabad has clarified that if Bitumen brought is sold or used in Works Contract, no tax is payable. It is settled law that for the purposes of sales taxation, there is practically no difference between an ordinary sale and a deemed sale of goods. Goods incorporated in the works are deemed to have been sold. The above clarification of the Commissioner of CT holds good in respect of this case also. Appellant therefore submits that it is eligible for exemption from payment of tax in respect of the entire turnover mentioned in the notice in terms of Section 3 (2) of the Act.

- h. **CEMENT, LIFTS, ELEVATORS, ACCESSORIES AND PARTS THEREOF AND SANITARYWARE**—Appellant submits that if any notified goods are brought into the local area by a registered dealer for the purpose of resale in the State, no entry tax need be paid. In this connection appellant submits that it has used these goods in the construction of flats, etc., which are sold subsequently. As the appellant has resold all these goods purchased from other States, the same are exempt from levy of entry tax in terms of Section 3 (2) of the Entry Tax Act.

- i. Without prejudice to all the above, it is submitted that under the Proviso to Section 3 of the Entry Tax Act, 2001, VAT or CST paid to the other State seller has to be deducted from out of the entry tax leviable. Hence such deduction has to be given, if at all entry tax is leviable. This is without prejudice to the appellant's main contention that the appellant is not liable to pay any entry tax for the reasons already explained supra.
- j. It is therefore submitted that the impugned levy of entry tax is illegal and improper.
- k. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order and allow the appeal.


VISTA HOMES
SEC' BAD
APPELLANT