PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT), PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SMT. Y. SUNITHA,

ADC Order No.416 Date of hearing:15-06-2020
Appeal No.BV/63/2019-20 Date of order :27-02-2021

1. Name and address of the Appellant.		M/s Vista Homes, Hyderabad.
2. Name & designation of the Assessing Authority.	:	Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.
3. No.,Year & Date of order	:	TIN No.36292192903,dt.24-07-19, (2017-18 / Entry Tax)
4. Date of service of order	:	30-07-2019
5. Date of filing of appeal	:	27-08-2019
6. Turnover determined by The Assessing Authority	:	-
7. If turnover is disputed:		
(a) Disputed turnover	:	-
(b) Tax on disputed turnover	:	-
8. If rate of tax disputed:		
(a) Turnover involved	:	-
(b) Amount of tax disputed	:	-
9. Amount of relief claimed	:	₹2,27,750/-
10. Amount of relief granted	:	REMANDED
11. Represented by	:	Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Telangana VAT Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Vista Homes, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36292192903 and an assessee

on the rolls of the Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the assessment orders dated 24-07-2019 (A.O.No.39153) passed by the Assessing Authority for the tax periods falling under the year 2017-18 (upto June, 2017) under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for short – Entry Tax on Goods Act), disputing the levy of tax amounting to ₹2,27,750/-.

The grounds of appeal filed by the appellant are extracted hereunder:

"The impugned order is ex-facie illegal, arbitrary, improper and unjustifiable.

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).

It is submitted that the appellant has executed the project of constructing flats in Hyderabad. Appellant has purchased cement and parts and accessories of liftsfrom 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.

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.

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.

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 :"

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.

CEMENT, LIFTS, ELEVATORS, ACEESSORIES AND PARTS THEREOF AND SANITARYWARE—Appellant submits thatif 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.

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.

It is therefore submitted that the impugned levy of entry tax is illegal and improper.

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."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case and pleaded for setting-aside of the impugned order.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant is engaged in construction of Residential Apartments. The Assessing Authority on examination of data and records available in the VATIS system has observed that the appellant has imported notified goods into

the State of Telangana by issuing Statutory forms. Further observing that the exemption from liability of Entry Tax is available only when the notified goods are re-sold or used as inputs in manufacture, the Assessing Authority opined that as per the nature of business of the appellant, the commodities imported by the appellant are consumed by them and are liable to pay tax under Entry Tax as per Section 3 of the said Act. Thus observing, the Assessing Authority proposed to levy entry tax on the commodities imported by the appellant and issued a show cause notice. On an observation that the appellant had not filed any objections, the Assessing Authority passed orders confirming the levy of tax as was proposed in the show cause notice.

Such order is assailed by the appellant stating that since the goods purchased from outside the State were incorporate into the execution of works contract i.e., construction of residential apartments and the appellant had already discharged the VAT liability on the consideration received on account of execution of such work, the question of levying entry tax does not arise in as much as works contract is a deemed sale which is to be treated on par with a normal sale as held by Courts of Law. In support of such claim, the appellant filed a copy of assessment order passed under the TVAT Act for the tax periods 2013-14 to 2017-18 (upto June, 2017).

Thus, the only point that needs to be answered is as to whether the Assessing Authority is justified in brining the disputed turnover herein to tax under the Entry of Goods into Local Areas Act on the value of goods purchased and incorporated by the appellant in the construction of residential apartments / Flats.

Before proceeding any further, it is necessary here to take note of the definition of 'works contract' as contained in Section 2 (45) of the TVAT Act which reads as under:

*2(45)'**Works Contract**' includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;*

As seen from the above, works contract includes any agreements for carrying out for cash or deferred payment or for any other valuable consideration, the building construction, processing, fabrication, erection etc., of any movable or immovable property. In order to satisfy this definition, it is not just enough if there is an agreement to carry out any of the works mentioned in the said definition, but also such carrying out of the work should be for a cash or deferred payment or for any other valuable consideration. Thus, assuming that in the disputed transaction undertaken by the appellant even if they had undertaken any execution of works in favour of the land owner, unless the same is for cash or deferred payment or for any other valuable consideration, the same does not satisfy the definition of works contract. There was no monetary consideration flowing from the land owner to the appellant towards execution of works contract. Even if the word "other valuable consideration" as occurring in the definition of "works contract" has to be in monetary form only and not in any other form.

It is settled law that the works contract is a deemed sale and the same is to be treated as on par with a normal sale and consequently the benefits extended to such normal sale is also to be extended to a deemed sale. The Entry Tax on Goods Act provides exemption to the notified goods purchased from inter-state when used for the purpose of re-sale or manufacturing for sale. Similarly, the notified inter- state purchases are used in the deemed sale, the benefit of exemption is also applicable to the deemed sale under Entry Tax on Goods Act. However, this is only applicable to those goods which are transferable in the deemed sale to the

extent of builder share, but not on the share which was transferred to the land Owner under the development agreement entered into by the appellant with such land Owner.

Here, it is also to be observed that the goods purchased by the appellant from outside the State against statutory forms and utilized the same in such houses / flats relating to Land Owner share amounts to consumption of such goods by them. Since the houses / flats constructed in the Land Owner share amounts to immovable property owned by the Land Owner and the same neither amounts to works contract nor construction and selling of such houses / flats so as to fall under Section 4(7)(d) of the TVAT Act and even if such houses / flats were sold by the land owner after completion of the same, the same does not amount to goods being immovable property. This view further gain support from the decision rendered by the Honourable Supreme Court in the case of M/s Raheja Development Corporation Vs State of Karnataka (41 STC 298).

As already discussed above, it is a fact that since no sale had taken place between the appellant and the landowner subsequent to the incorporation of the notified goods into this portion and in fact it actually amounts to consumption at the hands of the appellant and is liable for levy of Entry Tax on land owner share. Thus the contention of the appellant that the property so transferred to Land Owner is nothing but a deemed sale and the imported goods used for the purpose of re-sale falls under the ambit of Section 3(2) of the Entry Tax on Goods Act is devoid of merits.

However, as already observed above, since the Assessing Authority has passed the impugned order only in the absence of the appellant filing the objections to the show cause notice issued, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall provide an opportunity to the appellant to file their objections along with

documentary evidence if any, consider the same and then pass orders afresh in accordance with the provisions of law, duly bearing in mind my observations made above. With this direction, the impugned order is set-aside in so far as it relates to the disputed tax amounting to ₹2,27,750/- and the appeal thereon remanded.

In the end, the appeal is **REMANDED**.

APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To
The Appellants.
Copy to the Commeercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.
Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.
Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.