

MODI & MODI CONSTRUCTIONS

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Date : 2nd January 2020

To
The State Tax Officer-I, (I/c),
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad.

Sir,

Sub: TVAT Act, 2005- M/s. Modi & Modi Constructions, M.G. Road,
Secunderabad-

Assessment order passed for the tax periods January, 2014 to June, 2017 –
Penalty notice issued-objections filed-Reg.

Ref: M.G. Road-S.D. Road Circle, Hyderabad notice in Form VAT 203A
dated 10-12-2019.

We submit that we are in receipt of the notice of penalty in Form VAT 203A dated 10/12/2019 for the tax periods January, 2014 to June, 2017 issued under the TVAT Act, 2005 proposing levy of penalty of Rs. 3,54,505/- under Sec. 53 (1) (ii) which is equal to 25% of the tax levied of Rs. 14,18,019 in the assessment order dated 09/12/2019. We request you to kindly consider our objections on the following grounds:-

We submit that aggrieved by the said assessment order we have filed appeal before the learned Appellate Deputy Commissioner (CT), Secunderabad Division which is pending disposal. The grounds of tax appeal are filed herewith which may kindly be read as part and parcel of these objections as **Annexure-1**.

We therefore submit that there are practically no circumstances warranting levy of any penalty in view of the said grounds.

Without prejudice to the above it is submitted that in the case of **Hindustan Steel Ltd., Vs, State of Orissa (1970) (25 STC 211)** the Hon'ble Supreme Court held that "an order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and, therefore, penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. The court further observed that penalty will not be imposed merely because it is lawful to do so and whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of authority to be exercised judicially and on a consideration of all the relevant circumstances".

In the case of **CTO Vs Rajdhani Wines (87 STC 362)**, the Rajasthan High Court held that there may be instances where because of ignorance of law or on improper understanding of law or on wrong interpretation of law, the assessee may not consider that part of the turnover as taxable and that the assessee may take a bonafide legal plea that a particular transaction is not liable to tax or it may happen that the taxability of the item is not shown based on a bonafide mistake as in the present case. This decision also squarely applies to the present case.



In the case of **Modi Threads, Hyderabad Vs The State of Andhra Pradesh (16 APSTJ 277)**, the Honourable STAT held as follows:-Simply on account of the fact that such a provision is there in section 15(4) relating to levy of penalty, it cannot be said that such penalty should follow automatically irrespective of the circumstances of the case and the reasons due to which the tax could not be paid by the assessee."

In the case of **Salzigitter Hydraulics Pvt. Ltd., Hyderabad Vs. State of Andhra Pradesh (48 APSTJ 276)** the Honourable Tribunal held that where non-payment of the tax is due to a genuine interpretation of issue, where no contumaciousness or unreasonable or mala fide intention can be attributed to the dealer, penalty under Section 53 read with Rule 25 (8) of the APVAT Act and Rules cannot be levied.

In the case of **Assistant Commercial Tax Officer V Kumawat Udhyog (97 STC 238)**, the Rajasthan High Court held as follows:-

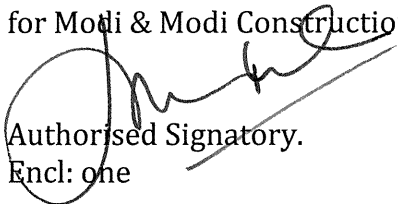
"If an entry exists in the books of account and the matter relates only to an interpretation of the nature of the transaction and the law relating to its taxability, the authorities would not be justified in levying penalty."

Prima facie an entry in the books of account disclosing the correct nature of the transaction is sufficient to come to the conclusion that no offence has been committed unless the assessing authority proves by some other evidence, apart from the finding given in the assessment order that the non-disclosure in the return is because of the deliberate action on the part of the assessee to evade the tax."

In view of the above we request you to kindly drop the proposal to levy penalty. In case you want to proceed further we request you to kindly provide us an opportunity of personal hearing to explain the case in detail.

Yours truly,

for Modi & Modi Constructions,



Authorised Signatory.

Encl: one

ANNEXURE-1**Jan.14 to Jun. 2017/VAT****Statement of facts:-**

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short Act) on the rolls of the Commercial Tax Officer, MG Road-SD Road Circle, Hyderabad and is engaged in the business of constructing and selling independent houses, flats, etc.
2. Claiming authorization from the DC, CT, Begumpet Division, the learned State Tax Officer-1, MG Road-SD Road Circle, Hyderabad (for short STO) conducted audit of the books of account of the appellant for the period from January, 2014 to June, 2017 and issued show cause notice dated 3.10.2019, followed by revised show cause notice dated 2.11.2019, proposing to levy certain tax under the Act.
3. Pursuant to such notice, appellant filed detailed objections through letter dated 4.11.2019. Relevant documents have also been produced before the STO.
4. However without properly considering the objections and documents, the learned STO passed the assessment order dated **9.12.2019** levying tax of **Rs.14,18,019**.
5. Aggrieved by such assessment proceedings, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:-

- a. The impugned assessment order is ex-facie illegal, unjustifiable and contrary to facts.
- b. The learned STO ought to have properly considered the objections, documents and facts.
- c. **Turnover variation with P&L account - Rs. Rs.3,22,645 and 5,04,528 = Rs.8,27,173 :-** The following taxes have been levied :-

Sl. No.	Period	Constructi on account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differentia l turnover arrived	Tax @ 5%
1	2013-14 (01/2014-03/2014)	25811540	6452885	0	6452885	322645
Total differential tax		25811540	6452885	0	6452885	322645

Sl No.	Period	Construction account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differential turnover arrived	Tax @ 5%
1	2013-14 (01/2014-03/2014)	0	0	0	0	0
	2014-15	26007241	6501810	3840588	2661222	133061
1.	2015-16	36823350	9205838	6620250	2585588	129279
2.	2016-17	49492000	12373000	9516750	2856250	142813
3.	2017-18 (Apr'17 to Jun'17)	19425000	4856250	2868750	1987500	99375
Total differential tax		131747591	32936898	22846338	10090560	504528

It has been observed in the impugned assessment order that tax has been levied on the differential amount between 'construction account receipts as per P&L' and the turnover reported in the 'VAT returns'.

- d. It is submitted that no such tax on the so called differential amount is leviable. Receipts in P&L account are posted as per the Accounting Standards of ICAI based on WIP method and whereas the turnovers reported in the VAT 200 returns are the actual sale amounts. 'Turnover' for the purposes of the VAT Act is different from 'income' declared in the P&L account. The learned STO ought to have understood this concept. As and when the property is registered, tax is paid under Section 4 (7) (d) of the VAT Act.
- e. Though this status has been explained, the learned STO has not properly looked into the documents and statements. It is submitted that there is no such difference. Appellant has paid tax at the applicable rate on the entire sale consideration received during the period of assessment. This is verifiable from the registration records also.
- f. It is therefore submitted that such levy of tax of Rs.8,27,173 is not correct. It is therefore prayed to set aside such levy.

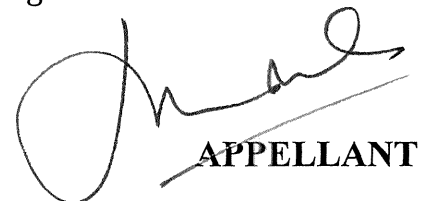
- g. **Differential turnover wrt sale agreements - Rs.5,90,846:-** This tax has been levied by stating as follows:-

Sl. No	Period	Sale deed value	Estimated Agreement of sale value (Adding 30% value on Sale deed value)	Difference turnover arrived	Proposed to tax @ 5% on 25% difference turnover
1	01/2014 to 03/2014	25811540	33555002	7743462	96793
2	2014-15	26007241	33809413	7802172	97527
1	2015-16	36823350	47870355	11047005	138088
2	2016-17	49492000	64339600	14847600	185595
3	2017-18 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	157559131	204826870	47267739	590846

The learned STO observed as follows in relation to the above levy of tax:-

“While issuing the show cause notice dt. 03-10-2019 the dealer was requested to produce all original Agreements of sale for verification for the audit period since the same were produced in sample basis at the time of audit. But as the dealer was failed to produce the same a revised show cause notice dt. 02-11-2019 was issued estimating the difference turnover between Agreement of sale and Sale deed turnovers adding 30% value on Sale deed value as under.”

- h. It is submitted that the STO has seen all the documents including the agreements at the time of audit. In the event of conduct of such field audit of all the books of account and the documents, there is no basis for making any estimate. Further it amounted to double levy in as much as the learned STO levied tax on the differential amount between P&L figure and the VAT 200 declared figure and has also levied tax on the estimated receipts.
- i. It is reiterated that the appellant has paid tax on the entire consideration received for the sale of all villas etc. There is no basis for such estimate. No tax shall be levied on mere presumptions and surmises.
- j. It is therefore submitted that even this levy of tax is not correct.
- 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.



APPELLANT