

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

PROCEEDINGS OF THE ADDITIONAL COMMISSIONER (ST)
OFFICE OF THE COMMISSIONER OF STATE TAX,
TELANGANA STATE, HYDERABAD

PRESENT: SRI U. SREENIVASULU, M.SC (Ag)

ACO No. 182/2020

CCT's Ref No. LIII(1)/75/2020

Date: 12-03-2020

Sub: Stay Petition – TVAT Act, 2005 – Stay Petition filed by M/s. Modi & Modi Constructions, Secunderabad – For the tax period January '2014 to June 2017 – Stay petition filed for stay of collection of disputed Tax – Personal Hearing allowed – Dealer availed personal hearing – Orders issued – Regarding

- Ref:- 1. DCTO, M.G. Road –S.D. Road, Circle Assessment Order in AO No. 47202, Dated 05.12.2019
2. AJC (ST) Punjagutta Division in Order No.324 in Appeal No. BV/102/2019-20, Dated:20.02.2020
3. Stay Application in Form APP 406, dated 28.02.2020 filed by the dealer.
4. Hearing Notice in CCT's Ref T.S L.III(1)/75/2020, dt: 11.03.2020

ORDER:

M/s. Modi & Modi Constructions, Secunderabad are registered dealers and assessee on the rolls of Assistant Commissioner (ST), M.G. Road –S.D. Road, Circle ('AC' for short). Vide reference 1st cited, the Deputy Commercial Tax Officer, M.G. Road –S.D. Road, Circle ('DCTO' for Short) has passed order for the tax period January '2014 to June 2017 and confirmed disputed tax of Rs.14,18,019/-.

Aggrieved by the orders passed by the AC the dealer preferred an appeal before the Appellate Joint Commissioner (ST), Punjagutta Division ('AJC' for short) contesting the order. Vide the reference 2nd cited the AJC has rejected the Stay Petition. Aggrieved by the order passed by the AJC, now filed stay petition before undersigned seeking stay of collection of disputed tax i.e., Rs.14,18,019/-.

Accordingly, personal hearing was allowed to represent the case. Sri M. Ramachandra Murthy, Chartered Accountant, and Authorized Representative ('AR' for short) of the dealer availed personal hearing on 11.03.2020 and argued the case on the following grounds which reproduced below:

- The impugned assessment order is ex-facie illegal, unjustifiable and contrary to facts.
- The learned STO ought to have properly considered the objections, documents and facts.
- 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	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)	25811540	6452885	0	6452885	322645
Total tax	differential	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	Tax @ 5%
1	2013-14 (01/2014-03/2014)	0	0	0	0	0
2	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	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 value	Estimated value	Agreement of sale value (Adding 30% value on Sale deed value)	Difference arrived	25% difference tax @ 5% on Proposed to 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 (Apr'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.

Thus, the appellant has requested to grant stay of collection of disputed tax.

I have examined the impugned orders and the contentions of the appellant put forth in the grounds of appeal. Without expressing any opinion on the merits of the case, I feel it just and proper to grant stay of collection of **50%** of the disputed tax out of the total disputed tax of **Rs.14,18,019/-** on a condition that the appellant petitioner shall pay **50%** of the disputed tax i.e **Rs. 7,09,010/-** within two weeks from date of receipt of this order with a direction that the assessee will be given credit of amounts, if any, already paid by them at the time of filing of appeal. The stay will be in force till disposal of the appeal by the Appellate Joint Commissioner (ST), Punjagutta Division.


ADDITIONAL COMMISSIONER (ST)

To

M/s. Modi & Modi Constructions, Secunderabad
 through the Assistant Commissioner (ST), M.G. Road -S.D. Road, Circle,
 (induplicate) for service and return of served copy immediately.

Copy to the Assistant Commissioner (ST), M.G. Road -S.D. Road, Circle
 Copy to the Joint Commissioner (ST), Begumpet Division.

