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PARAMOUNT BUILDERS_

From
M/s. Paramount Builders,
M.G. Road,
Secunderabad.

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. Paramount Builders, M.G. Road, Secunderabad-Assessment order passed for the tax periods April, 2015 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.

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We submit that we are in receipt of the notice of penalty in Form VAT 203A dated 10/12/2019 for the tax periods April, 2015 to June, 2017 under the TVAT Act, 2005 proposing levy of penalty of Rs. 52,502/- under Sec. 53 (1) (ii) which is equal to 25% of the tax levied of Rs. 2,10,008 in the assessment order dated 05/12/2019. 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 **Annexxure-1.**

Assistant Commissioner (ST)
RECEIVED
Sig.
M.G. Road-S.D. Road Circle

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

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)theHonourable Tribunal held that** where non-payment of the tax is due to a genuine interpretation of issue, where no contumaciousness or unreasonable or malafide 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 KumawatUdhyog (97 STC 238), the Rajasthan High Court held** as follows:-

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> "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 assess 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 Paramount Builders,

Authorised Signatory.

Encl: one