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

Sir,

Sub:- Filing the appeal in the case of M/s. **Serene Constructions LLP., M.G.Road, Secunderabad.** For the Period 2015-16 and 2016-17/VAT – reg.

Please find enclosed herewith the following appeal papers:

1. Form –APP 400 2 copies.
2. Grounds of Appeal 2 copies.
3. Challan No. 6201644579 for Rs.1000/- towards appeal fee.
4. A.O.No.17545 dt.13/7/2022 passed by Assistant Commissioner (ST) (FAC), M.G.Road – S D Road Begumpet Division, Hyderabad Telangana.
5. Form APP 400A
6. Letter relating to the proof of payment 12.5% disputed tax challan enclosed.
7. Vakalatnama

Thanking you
Yours sincerely

M.Ramachandra Murthy
Advocate & Tax Consultant



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 : 36570317033
 3. Name & Address : M/s. Serene Constructions LLP
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 : 23/07/2022
 5. Date of filing of appeal : /07/2022
 6. Reasons for delay (if applicable enclose a
separate sheet : Not Applicable
 7. Tax Period / Tax Periods : 2015-16 and 2016-2017/VAT
 8. Tax Office decision / assessment Order No. : Consequential order no.17545
Date. dt.13/07/2022 passed by
Assistant Commissioner (ST) (FAC)
M.G. Road -S.D. Road Circle,
Begumpet Division, Hyderabad
 9. Grounds of the appeal (use separate sheet : Separately Enclosed
if space is insufficient
 10. If turnover is disputed
 - a) Disputed turnover : NIL
 - b) Tax on the disputed turnover : Rs.5,58,808/-

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.63,601/- (Letter enclosed)
- 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, _____ 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.

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

01. Appeal Office Address:
To,
The Appellate Deputy Commissioner (CT)
Punjagutta Division, Hyderabad

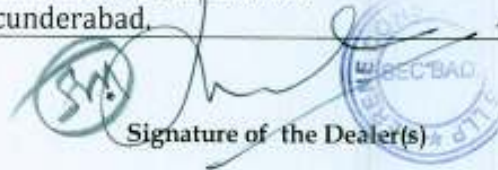
Date Month Year

	08	2022
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02	TIN	36570317033
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03. Name : M/s. Serene Constructions LLP
Address : 5-4-187, 3&4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.

04.	Tax period	2015-16 and 2016-17/VAT
05.	Authority passing the order or proceeding disputed.	Consequential order no.17545 dt.13/07/2022 passed by Assistant Commissioner(ST)(FAC) M.G. Road- S.D. Road Circle, Begumpet Divison, Hyderabad.
06	Date on which the order or proceeding was Communicated.	23/07/2022
07.	(1) (a) Tax assessed	Rs.5,58,808/-
	(b) Tax disputed	Rs.5,58,808/-
	(2) Penalty / Interest disputed	NIL
08	Amount for which stay is being sought	Rs.5,08,808/-
09.	Address to which the communications may be sent to the applicant.	M/s. Serene Constructions LLP 5-4-187, 3&4, 2 nd Floor, Soham Mansion, M.G. Road, Secunderabad.



Signature of the Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF STAY

- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.
- 4.) The appellant has already paid 12.5% of disputed tax for the purpose of admission of the appeal and hence it is requested grant stay on the balance disputed tax till the disposal of the appeal.
- 5.) In this regard the appellant relied on the latest decision of the Hon'ble Supreme Court in a case wherein the Hon'ble Court dismissed the SLP filed against the order of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada Vs. Sri Dedeepriya Paints in Diary No.11711 of 2019 dt.22/04/2019.

The Honourable High Court of Andhra Pradesh & Telangana in its decision in WP No.20922 of 2018 dated 22.06.2018 in the case of Sri Dedeepriya Paints Vs Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada held as follows:-

“When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal”.

- 1.) The appellant relied on the latest decision of the Honourable High Court of Telangana in the case of M/s. Capart Industries, Hyderabad in WP Nos.3954,3976,4089,4115,4518,4556 and 4577 of 2020, wherein it is held as follows:-

“ 4. Counsel for the petitioner relies upon the order of the Division Bench of this court in Sri Dedeepriya Pains Vs. Deputy Commercial Tax Officer - I wherein a similar action on the part of the Department in proposing to collect the balance disputed tax through 12.5% of the disputed tax amount was already deposited with the Department pending appeal before the Appellate Deputy Commissioner fell for consideration. In that case, this court held that once the assessee had already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of appeal.

5. This above order was later confirmed by the Supreme Court in SLP (CIVIL)Diary No.11711 of 2019 on 22.04.2019.

6. The special Government Pleader for Commercial Taxes appearing for respondents does not dispute the principle laid down in these cases.

7. Since the petitioner had already paid 12.5% or more of the disputed tax pending appeals before the Appellate Deputy Commissioner and the

Telangana VAT Appellate Tribunal, we are of the considered opinion that the respondents are not justified in refusing to grant the petitioner stay of collection of the balance disputed tax and issuing Garnishee orders to the Petitioner's banker for recover of the balance disputed tax".

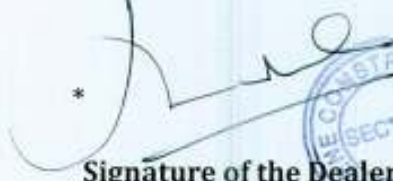
Copy of the High Court order mentioned above is attached herewith

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed tax of Rs.5,08,808/- pending disposal of the appeal.

VERIFICATION

I, _____ applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the _____ day of August'2022


*
Signature of the Dealer(s)

Signature of the Authorised Representatives if any

M/s. SERENE CONSTRUCTIONS LLP

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.

Tax Period: 2015-16 and 2016-17 /VAT

Statement of Facts: -

- 1) The appellant is a registered VAT dealer engaged in the business of construction and selling of flats and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad, with TIN 36570317033. The appellant opted to pay tax @ 1.25% under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.
- 2) In the course of business appellant entered into a Memorandum of Understanding (MOU) with Modi Farm House (Hyderabad) LLP (for short MFHLLP) on 31-05-2015 as vendor or owner of land for the construction of the cottage/villa on the farm land. The appellant has paid VAT @ 5% on the only one villa sold for Rs. 7,99,926/-.
- 3) Upon authorization given by the Deputy Commissioner (CT), Begumpet Division, the Deputy Commercial Tax Officer, Bowenpally Circle, Begumpet Division (for short DCTO) has conducted VAT audit of the appellant for the tax periods from 2015-16 and 2016-17 and issued Notice of Assessment of VAT in Form VAT 305A dated 16/02/2018 proposing levy of tax of Rs. 5,58,808/- under Section 4 (7) (a) of the Act read with Rule 17 (h) on the total receipts as per P & L account after allowing 30% towards standard deduction.
- 4) The appellant has filed detailed objections before DCTO against the proposed levy of tax by letter dated 22/02/2018 and reiterated the same in personal hearing on 27/03/2018. Without properly considering the objections raised by the appellant, the learned DCTO has completed the assessment proceedings in Form VAT 305 dated 08/05/2018 confirming the proposed levy of tax of Rs. 5,58,808/-.
- 5) Aggrieved by such assessment order, appellant preferred appeal before this Honourable Authority. On a consideration of the grounds and the documents, this Honourable authority has set aside the said assessment order and remanded the matter with

specific directions to the assessing authority vide order No.2412 dated 28/12/2020.

- 6) On such remand, the jurisdictional authority ie., the Assistant Commissioner(ST)(FAC), M.G.Road-S.D.Road Circle (for short AC) issued Show cause notice dated 30/04/2022 to produce books of account to pass consequential orders . Pursuant to that notice, the appellant has filed letter on 09/05/2022 requesting time for submission of objections and documentary evidence. However without giving sufficient time, the learned AC passed the consequential order No.17545 dated 13/07/2022 raising the very same demand of **Rs.5,58,808/-**.
- 7) Aggrieved by such consequential order, 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 and is passed against the principles of natural justice and hence the same is liable to be set aside.
- b. It is submitted that the learned AC is not justified in passing the impugned order in haste without providing sufficient opportunity. It is submitted that the learned ADC has set aside the first assessment order and has remanded the issue back to the assessing authority to pass consequential orders.
- c. It is submitted that as per Section 37 of the TVAT Act, the assessing authority is having time of 3 years to pass the consequential orders in order to give effect to the order passed by the learned Appellate Deputy Commissioner. It is submitted that the learned ADC has passed the appeal order on 28.12.2020 and the assessing authority is having time up to 27.12.2023 to pass the consequential orders. It is true that the learned AC has issued notice for production of documents, however, due to illness of the concerned accounts head who is looking about the

VAT issues, the appellant is not able to provide the relevant data to the learned AC. However, the learned AC without giving sufficient further time to the appellant has passed the impugned order with the very same demand.

- d. It is submitted that the appellant is having all the information that is required to complete the assessment and this information is already produced before this Honourable ADC.
- e. The appellant submits that the learned AC ought to have issued one more notice to the appellant instead of passing the impugned order in haste. The appellant therefore submits that the impugned order is liable to be set aside on the principles of natural justice. In any case appellant submits that they are having strong case on merits.
- f. Without prejudice to the above submissions the appellant submits as under.
- g. It is submitted that the impugned order is highhanded and non-speaking beyond a point. It has been passed in clear violation of principles of natural justice, in as much as the learned authority has refused to look into the letter of objections as nothing has been discussed by him.
- h. It is sad that the learned authority has not at all considered single objection. The impugned order has been passed only for the purpose of harassing a genuine dealer and nothing else, in the humble submission of the appellant.
- i. Appellant submits that the appellant as developer entered into a Memorandum of Understanding (MoU) with Modi Farm House (Hyderabad) LLP (for short MFHLLP) on 31-05-2015 as vendor or owner of land for the construction of the cottage/villa on the farm land admeasuring about 1000 Sq. ft. as per the specifications of Annexure-C to the MOU. Coy of MoU is filed as **Annexure-1**. The appellant has declared a turnover of Rs. 7,20,000 and 2,88,000/-

towards 5% turnover in Form VAT 200 returns filed by the appellant during the years 2015-16 and 2016-17 respectively.

- j. The appellant has also Joint Development Agreement cum General Power of Attorney dated 23-12-2016 with the owners of land to develop the housing project on the Scheduled project and agreement of sale with the owners of land dated 01-02-2017 for sale of the to the prospective purchasers. Xerox copies of the Joint Development agreement dated 23-12-2016 and agreement of sale of flats dated 01-02-2017 are filed as Annexures-3 and 4 respectively. From this tripartite agreement the appellant is the developer of the project and sellers of the villas/flats to the purchasers.
- k. In pursuance of this MOU appellant has received advances of Rs. 7,20,000/- and Rs. 47,85,500/-including Rs. 7,20,00 of 2015-16 and Rs. 2,88,000 of 2016-17 from MFHLLP during the years 2015-16 and 2016-17 respectively and recorded the same in the P & L Account of the appellant for the said two years. In the notice the advance amount received during the year was proposed to be assessed under Section 4 (7) (a) of the VAT act after allowing standard deduction of 30% read with Rule 17 (h) of the Act and levying tax @14.5% on the balance amount as taxable turnover as the appellant not file Form VAT 250. Appellant has completed only one villa and sold the same for Rs. 7,99,920/-vide invoice no. SCLLP/1/2015-16 dated 19-02-2016 including VAT of Rs. 36,000/- @ 5% to M/s Dr. Tejal Modi & Mr. Soham Modi, Jubilee Hills, Hyderabad as purchaser which is collected and paid along with returns.
- l. Appellant submits that it is the subcontractor to the main contractor i.e. MFHLLP and intended to opt to pay tax under Section 4 (7) (b) of the Act by way of composition @5% on the total amount received or receivable towards the execution of works contract. In view of payment of tax under this sub-section appellant has charged VAT 5% only on the invoice and paid the same. Appellant has recorded all

the purchases and paid tax @5% only on the invoice raised on the sale of villa as intended to pay tax under Section 4 (7) (b) only.

- m. In the assessment order the assessing authority confirmed the proposal of levy of tax on the receipts as per P & L account for the years 2015-16 and 2016-17 after deducting 30% towards standard deduction under Section 4 (7) (a) read with Rule 17 (h) of the Act as the appellant could not file Form VAT 250 for levy of tax under Section 4 (7) (b). Appellant submits that it has maintained all books of account and the turnovers were extracted by the learned DCTO from the P & L account of the appellant. This proves that the appellant has maintained all books of account in which case the learned DCTO ought to have assessed the turnover under Section 4 (7) (a) of the Act by levying tax on the value of goods at the time of incorporation at the rates applicable to the goods under the Act by allowing eligible input tax credit to the extent of 75% of the tax paid on the goods purchased as per Rule 17 (1) (b). Appellant submits that the assessment order passed by the DCTO on standard method under Rule 17 (1) (g) is highly illegal and is therefore liable to be set aside.
- n. In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Appellate Authority to set aside the assessment order as illegal and allow the appeal.


(APPELLANT)

SERENE CONSTRUCTIONS LLP

5-4-187/3&4, 11 floor, MG Road,
Secunderabad - 500 003.
Phone: +91-40-66335551

Date: 08-08-2022

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

Sir,

Sub: TVAT Act, 2005 - Appeal filed in the case of M/s. Serene Constructions LLP
Secunderabad - For the years 2015-16 to 2016-17 - Proof of
payment 12.5% disputed tax paid - Reg.

Ref: Consequential order no.17545 dt.13/07/2022 passed by
Assistant Commissioner (ST)(FAC), M.G. Road- S.D. Road Circle, Hyderabad.

We submit that aggrieved by the consequential order no.17545 dt.13/07/2022 passed by the Assistant Commissioner (ST)(FAC), M.G. Road- S.D. Road Circle, Hyderabad for the years 2015-16 and 2016-17 under the TVAT Act, 2005, we are filing appeal before your Hon'ble Authority. For admission of appeal, we have to pay 12.5% of the disputed tax as under:-

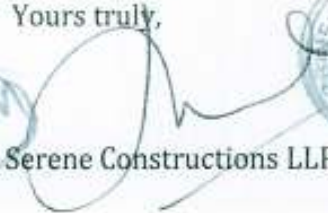
Tax disputed in the appeal	Rs.5,58,808/-
12.5% disputed tax	Rs.69,851/-

We submit that aggrieved by the assessment order in Form VAT 305 dt.08/05/2018 passed by the Deputy Commercial Tax Officer, Bowenpally Circle, Hyderabad for the years 2015-16 and 2016-17 we have filed first round of appeal before this Hon'ble ADC (CT), Punjagutta Division, Hyderabad by paying Rs.63,601/- towards 12.5% of the disputed tax on the balance tax payable Rs.5,08,808 (copy is enclosed). This Honourable ADC remanded the appeal vide order No.2412 dated 28/12/2020.

We submit that consequent on the remand the Assistant Commissioner(ST) (FAC) passed the present consequential order dated 13/07/2022 levying same tax of Rs.5,08,808/-. Against the said order we are filing the appeal. As such we have paid 12.5% of the disputed tax and we need not pay anything now.

In view of the above submissions we request to kindly admit the appeal.

Yours truly,


Serene Constructions LLP





Government of Telangana



Remitters Name	SERENE CONSTRUCTIONS LLP
Challan No.	6201644579
Challan Amount	1000/- (One Thousand Rupees and Zero Paise)
Internet Banking Transaction Reference Number.	1868980687
Transaction Date and Time	11/08/2022 1:04:44 PM
(Note : This is a computer generated receipt and does not require any signature/stamp Please enclose this e-Receipt with e-Challan at the time of challan submission to the department)	



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Government of Telangana

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Print e- Receipt for e-PAYMENT

ACT : VAT

CTD Transaction ID :

(OR)

Challan Number :

[Get e-Receipt](#)

CTD Transaction ID : 36180615632788

Type of TAX : VAT

TIN : 36570317033

Name of the Firm : SERENE CONSTRUCTIONS LLP

Tax Purpose : Disputed Tax Demand Paid before ADC (Admission)

Tax Period : Apr,2015-Mar,2017

Amount : 63601

Head of Account : 0040001020005000000NVN

Bank Name : SBI

Bank Acknowledgement Number : CKG2023614

Challan Number : 1800395406

Bank Status : SUCCESS

Date Of Payment :- 15-06-2018