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

PRESENT: SMT. Y. SUNITHA,

**ADC Order No.645**
Stay Application R.No.81/2018-19
in Appeal No.BV/129/2018-19

Date of hearing:12-03-2019
Date of order :25-03-2019

Sub:- APPEALS – TVAT Act – M/s Summit Builders, Hyderabad – Appeal filed against the orders of the Commercial Tax Officer, M.G.Road Circle, Hyderabad – Penalty for the tax periods 2013-14 to 2017-18 – Stay petition heard - Stay rejected – Orders issued – Regarding.

* * *

M/s Summit Builders, Hyderabad (TIN: 36790571789), the appellant herein, filed an appeal against the penalty orders dated 03-01-2019 (AAO No.93) passed by the Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the Assessing Authority) for the tax periods falling under the years 2013-14 to 2017-18 (upto June, 2017) under the TVAT Act. The appellant also filed a petition in Form APP 406 seeking stay of collection of the disputed penalty of ₹1,70,293/-.

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for stay of collection of the disputed tax.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The dispute involved in the present appeal is as to the levy of penalty made by the Audit Officer under Section 53(1)(ii) of the Act at 25% of the under-declared tax determined consequent on passing the assessment orders dated 17-12-2018.

Though the appellant raised certain contentions with regard to the levy of penalty made by placing reliance in certain case law, it is to be observed that as per the provisions contained under Section 53(1)(i) & (ii) of the Act, even where fraud or willful neglect has not been established, penalty is to be levied under the above clauses of Section 53(1) of the Act and this view has been upheld by the Honourable Sales Tax Appellate Tribunal in the case of M/s Zuari Cements Limited Vs State of Andhra Pradesh (49 APSTJ 246).

As to the reliance placed by the appellant, I have to observe that except the decision rendered by the Honourable Andhra Pradesh Sales Tax Appellate Tribunal in the case of M/s Salzigitter Hydraulics Private Limited Vs State of Andhra Pradesh (48 APSTJ 276) (APSTAT), all the case law relied upon are with reference to the provisions contained under the Sales Tax Laws of different States, whereas the impugned penalty is levied under the provisions contained under the TVAT Act. Even in the case of M/s M/s Salzigitter Hydraulics Private Limited Vs State of

Andhra Pradesh (48 APSTJ 276), the issue of levy of penalty that was came up for consideration before the Honourable Andhra Pradesh Sales Tax Appellate Tribunal was with reference to the provisions contained under sub-section (3) of Section 53 of the Act, whereas the penalty levied in the present dispute was with reference to the provisions contained under sub-section (1) of Section 53 of the TVAT Act, where penalty is to be levied even fraud or willful neglect has not been established, as discussed above. Thus, the case law relied upon by the appellant are not applicable to the case on hand.

For the reasons discussed above, I do not find any case to grant stay of collection of the disputed penalty of ₹1,70,293/- and accordingly the stay petition is rejected.

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

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

**NOTE**: A Revision Petition against this order lies to the Joint Commissioner(CT) Legal, Telangana, Hyderabad within (30 Thirty days) from the date of receipt of this order.