MODI PROPERTIES PVT. LTD.
INWARD
No. 222
Date 22/7/19
Sign
SEC'BAD

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. 392/2019

CCT's Ref No. LIII(1)/229/2019 **Date: 06-07-2019**

Sub: Stay Petition – TVAT Act, 2005 – Stay Petition filed by M/s. Summit Builders, Secunderabad – For the tax period 2013-14 to 2017-18 (upto June2017) Penalty - Stay petition filed for stay of collection of disputed Penalty – Personal Hearing allowed – Dealer availed personal hearing – Orders issued – Regarding.

Ref:-
1. AC(ST), M.G. Road and S.D. Road Circle, Assessment Order in AAO No. 93, dated: 03.01.2019
2. AJC (ST), Punjagutta Division in Order No.645 in Appeal No.BV/129/2018-19 2018-19, dated 25.03.2019.
3. Stay Application in Form APP 406, dated 09.04.2019 filed by the dealer.
4. Hearing Notice in CCT's Ref T.S L.III(1)/229/2019, dt.03.07.2019.

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ORDER:

M/s. Summit Builders, Secunderabad, are registered dealers and assessee on the rolls of Asst. Commissioner (ST), M.G. Road and S.D. Road Circle. Vide reference 1st cited, the Asst. Commissioner (ST), M.G. Road and S.D. Road Circle ('AC' for short) has passed order for the tax period 2013-14 to 2017-18 (upto June2017) and confirmed disputed Penalty of Rs. 1,70,293.

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 in Order No.645 in Appeal No. BV/129/2018-19, dated 25.03.2019. Aggrieved by the order passed by the AJC the dealer now filed stay petition before undersigned seeking stay of collection of disputed penalty.

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 03.07.2019 and argued the case on the following grounds which reproduced below:

a. Appellant submits that it is engaged in the business of constructing and selling independent houses, apartments etc., paying tax under Section 4 (7) (a) of the APVAT Act, 2005.
b. Appellant submits that the learned CTO passed the order in haste without waiting for the reply from the appellant and without giving an opportunity of personal hearing. The order passed by the learned CTO is illegal and is not according to the provisions of the Act and Rules without following the principles of natural justice. The penalty order is therefore liable to be set aside.
c. Even otherwise appellant submits that as per the following settled law, there cannot be any levy of penalty.
d. 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".
e. 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.

f. 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."

g. In the case of BrugumallaVenkatappaiah Sons & Co. Vs. CTO (1973) 32 STC 34 the Hon'ble High Court of A.P. held that before levy of penalty there must be a clear finding by the authority that an offence had been committed by the dealer as the jurisdiction of that authority arises only when the dealer is found guilty of the offence. The onus is on the authorities to prove that not only has the offence been committed but the person accused of it has committed it consciously.

h. 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**.

i. The Hon'ble Supreme Court in the case of EID Parry (I) Ltd. Vs. Asst. Commissioner of Commercial Taxes & Another Batch (117 STC 457) held that when the dealer is under a bonafide belief that his transactions are exempted/taxable at a lower rate and when the legal position is not clear the levy of penalty is not justified. When there is a reasonable cause for the failure to pay tax, the imposition of penalty is not correct.

j. In the case of Kamal Auto Finance Ltd. (8 VST 274) the CESTAT, New Delhi has held that **short payment of tax for bonafide reasons does not attract penalty**.

k. In the case of Uniflex Cables Limited Vs Commissioner, Central Excise (2011—40 PHT 28) (AIFTP October, 2011 Journal) the Honourable Supreme Court held that the imposition of penalty was not justified where the **issue under dispute in relation to the liability of tax was of interpretational nature.**

l. Proviso under Section 53 of the Act mandates grant of personal hearing. This shows that levy of penalty is not automatic and that the authority must consider the objections advanced by the dealer. If it is automatic, there is no necessity to grant personal hearing. On such consideration of the objections and grounds, even levy can be wholly dropped. Appellant submits that if provisions of Section 53 are mandatory, then the proviso to Section 53 will became mere formality.

m. Appellant submits that the Proviso under Section 53 of the Act lays down categorically that the competent authority prescribed shall give a reasonable opportunity of being heard. The expression 'reasonable opportunity of being heard' occurring in the Proviso denotes that the prescribed authority shall examine the causes. The principles of natural justice come into play and demand, the authority prescribed to examine the willfulness or otherwise and exercise jurisdiction to either proceed to levy the Penalty or to desist from doing so, for reasons to be recorded. The Proviso thus cannot be deemed to authorize the authority to invoke and levy penalty as an 'automatic provision', bestowing no jurisdiction whatsoever to drop the proposal.

As the Proviso under Section 53 of TVAT Act, 2005 is also to the same effect of giving reasonable opportunity, the above decisions squarely applies to the facts of the case. The assessing authority will be well within his limits in refusing to levy penalty, for the reasons explained herein above. It appears penalty has been proposed to be levied as a matter of routine instead of strictly in accordance with the statutory provisions.

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

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 penalty out of the total disputed penalty of Rs. 1,70,293/- on a condition that the appellant petitioner shall pay **50%** of the disputed Penalty i.e. Rs.84,147/- within four weeks from the 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 AJC Punjagutta Division, Hyderabad.

6/7/19

ADDITIONAL COMMISSIONER (ST)

To
M/s. Summit Builders, Secunderabad,
through the Asst. Commissioner (ST), M.G. Road and S.D. Road Circle,
(induplicate) for service and return of served copy immediately.

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