

PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G.ROAD-S.D.ROAD CIRCLE
 CONSEQUENTIAL REMAND OF APPEAL
 Present: G. Vijaya Lakshmi

A.O No:17544

TIN No. 36790571789/2013-14 TO 2017-18/VAT

Dated: 13-07-2022.

Sub: VAT Act 2005 - M/s Summit Builders, Secunderabad. - Assessment completed for the period 2013-14 to 2017-18 (Upto June-2017) - Penalty orders passed consequently- Dealer preferred appeal before the ADC(CT) Punjagutta Division - Appeal Remanded - notices issued for production of books - not responded - show cause notice issued - Objections called for - sought extension of time - time granted - Final notice issued - personal hearing opportunity provided - not responded - orders passed - Regarding.

Ref: 1) Assessment order for the period 2013-17 (Upto June -2017) passed by CTO, M.G.Road Circle, Order No.48418, Dt: 17.12.2018.

2) Penalty Order passed by CTO, M.G. Road - S.D. Road Circle, Order No.93, Dt: 03.01.2019.

3) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.2425, Dt. 28-12- 2020.

4) Notice dt.22.01.2021 issued by the undersigned.

5) Notice dt.16.09.2021 issued by the undersigned.

6) Show cause Notice Dt.11.05.2022 issued by the undersigned.

7) Letter Dt.18.05.2022 filed by the dealer.

8) Final notice Dt.24.06.2022 issued by the undersigned.

9) Notice for personal hearing Dt.05.07.2022 issued by the under signed.

M/s. Summit Builders, Secunderabad, are registered dealers and assesses on the rolls of the Assistant Commissioner (ST), M.G. Road - S.D. Road Circle, Hyderabad with TIN. 36790571789 and the dealer is carrying on business in works contract. In the reference 1st cited their assessment under VAT Act, 2005 for the period 2013-14 to 2017-18 (Upto June-2017) was completed on the following under declared tax:

Particulars	2013-14	2014-15	2015-16
Contractal Receipts	11162500.00	6539336.00	582989.00
Standard Deductions @ 30%	3348750.00	1961801.00	174897.00
Net Taxable Turnover	7813750.00	4577535.00	408092.00
Tax levied @ 14.5%	1132994.00	663742.00	59173.00
Tax Paid	810960.00	363778.00	0.00
VAT payable	322034.00	299964.00	59173.00

<u>Year</u>	<u>Tax Payable</u>
2013-14	Rs. 3,22,034.00
2014-15	Rs. 2,99,964.00
2015-16	Rs. 59,173.00
Total	Rs. 6,81,171.00

Subsequent to the order passed above, penalty proceedings have also been issued vide reference 2nd cited by levying a penalty of **Rs. 1,70,293/-**

Aggrieved by the orders, the dealer has preferred an appeal before the ADC (CT) Punjagutta disputing the above levy of tax. The ADC (CT) Punjagutta has remanded the appeal vide orders passed in the reference 3rd cited.

In the light of the Hon'ble ADC orders, vide references 4th and 5th cited above two notices were issued to the dealer for production of books of account if any as per the instructions issued by the Hon'ble ADC. But the dealer has not responded to the notices so issued. Hence in the absence of dealer's response, the undersigned vide reference 6th cited while extracting the contents of Hon'ble ADC orders, has issued a show cause notice as under:

“I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant, in the grounds of appeal, and his Authorised Representative, raised certain contentions with regard to the merits of the case placing reliance in certain case law. Without going into the admissibility or otherwise of the same, I have to observe that since the appeal filed by the appellant against the assessment to tax based on which the impugned penalty was levied, is disposed off by me as ‘remanded’ in Appeal No.BV/69/2019-20, dated 28-12-2020, the levy of penalty made by the Assessing Authority also needs re-consideration. In 11-SCC-101 in the case of Pratibha Processors Vs Union of India (SC), their Lordships of the Apex Court observed that “in a fiscal statute, penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of a particular statute”. Moreover, the penalty is an appendage of the original orders and its survival depends on the main order that acts as a prop. If the prop is set-aside, the appendage’s survival is in question and falls flat. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall pass such orders of penalty as deemed fit and warranted consequent on making of assessment to tax in pursuance of the appeal order as discussed above. With this direction, the impugned orders of penalty are set-aside on a penalty amount of Rs.1,70,293/- and the appeal thereon remanded.

*In the end, the appeal is **REMANDED**”.*

In order to pass the consequential order, in the light of instructions issued by the Hon'ble ADC, the dealer has to submit documentary evidence to substantiate their claim. However, so far,

they have not submitted any documentary evidence. Hence it is proposed to issue Show cause Notice by confirming the penalty orders as under:

Penalty proposed for the period 2013-14 to 2017-18 (Upto June-2017), Rs. 1,70,293-00."

In response to the above show cause notice, vide reference 7th cited the dealer has filed a letter Dt.18-05-2022 requesting to grant of 30 days additional time for submitting their reply. The same was granted to the dealer as per his request. But the dealer has neither submitted any objections nor filed any documentary evidence. However, under the principles of natural justice vide references 8th and 9th cited two more opportunities are provided to the dealer for filing of objections/documentary evidence and to avail personal hearing opportunities before the undersigned on dates 01.07.2022 and 11.07.2022. But so far the dealers have neither filed any objections/documentary evidence nor availed personal hearing opportunity. Hence it is construed that the dealer is not having any valid objections against the proposed consequential orders. Therefore the consequential orders are hereby passed by confirming the show cause notice as under:

Penalty proposed for the period 2013-14 to 2017-18 (Upto June-2017), Rs. 1,70,293-00

The dealer has to pay the demand of **Rs.1,70,293-00** within 15 days of receipt of this order failing which recovery proceedings will be initiated.

The dealer can file an appeal against this order before the appropriate Appellate authority within the prescribed time.

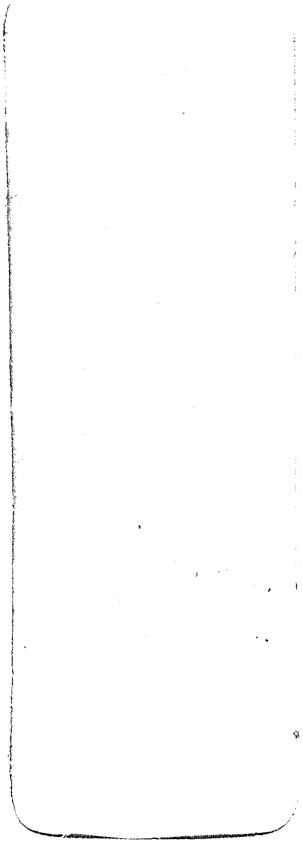
G. Vijaya Lakshmi
13/7/22
Assistant Commissioner(ST)(FAC)
Assistant Commissioner (ST) (FAC)
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad.

To,
M/s. Summit Builders,
Address : 5/4/187/3 and 4, M.G.Road,
Soham Mansion, Secunderabad - 500 003.
gst@modiproperties.com

BY. REGD. POST AIR MAIL ON IGS ONLY



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Office of the
Commercial Tax Officer
S.D. Road Circle, 4th Floor,
6-3-789, Pavan Prestige,
R.S. Bro's Complex, Ameerpet,
Hyderabad-500 016.

Secunderabad H.D.500003

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Vijaya

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