PARAMOUNT BUILDERS_

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

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.**

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.

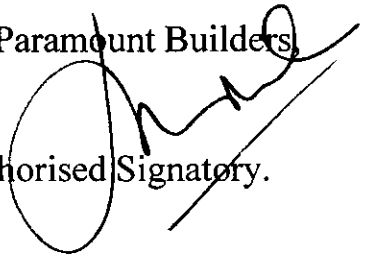
In the case of **Assistant Commercial Tax Officer V KumawatUdhyog (97 STC 238), the Rajasthan High Court held** as follows:-

"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

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Statement of facts:- April, 2015 to June 2017

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short Act) on the rolls of the Commercial Tax Officer, MG Road-SD Road Circle, Hyderabad and is engaged in the business of constructing and selling independent houses, flats, etc.

2. Claiming authorization from the DC, CT, Begumpet Division, the learned State Tax Officer-1, MG Road-SD Road Circle, Hyderabad (for short STO) conducted audit of the books of account of the appellant for the period from April, 2015 to June, 2017 and issued show cause notice dated 3.10.2019, followed by revised show cause notice dated 2.11.2019, proposing to levy certain tax under the Act.

3. Pursuant to such notice, appellant filed detailed objections through letter dated 4.11.2019. Relevant documents have also been produced before the STO.

4. However without properly considering the objections and documents, the learned STO passed the assessment order dated **5.12.2019** levying tax of **Rs.2,10,008.**

5. Aggrieved by such assessment proceedings, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:-

a. The impugned assessment order is ex-facie illegal, unjustifiable and contrary to facts.

b. The learned STO ought to have properly considered the objections, documents and facts.

c. **Short payment of tax of Rs. 71,774:** Tax of Rs. 71,774 is shown in the notice as short paid for the periods 2015-16 and 2016-17 as per the returns. In the reply dated 04-11-2019 the appellant has already

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stated that it has paid tax of Rs. 1,92,513 on a turnover of Rs. 1,54,01,040 during the year 2015-16. Similarly the learned STO has shown tax amount of Rs. 27,500 as paid against the actual payment of Rs. 97,275. The appellant has also filed the details of month wise payments of VAT during the years 2015-16 and 2016-17 along with the reply. However without verifying the payments made, the learned STO has confirmed the proposed tax of Rs. 71,774 as short paid. Appellant files herewith the month wise payment details for both the years as **Annexurre-1**. In view of the details now filed the demand of short payment of tax of Rs. 71,774 may kindly be set aside.

d. **Turnover variation with P&L account - Rs.11,42,625 Tax Rs. 57,131 @5%:-** The following taxes have been levied:-

		Construction account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differential turnover arrived	Tax @ 5%
1	Sl.No.	Period	30,88,125	19,45,500	11,42,625	57,131
Total Differential Tax		1,23,52,500	30,88,125	19,45,500	11,42,625	57,131

It has been observed in the impugned assessment order that tax has been levied on the differential amount between 'turnover liable to tax @5% as per P&L' and the turnover reported in the 'VAT returns'.

e. It is submitted that no such tax on the so called differential amount is leviable. Receipts in P&L account are posted as per the Accounting Standards of ICAI based on WIP method and whereas the turnovers reported in the VAT 200 returns are the actual sale amounts. 'Turnover' for the purposes of the VAT Act is different from 'income' declared in the P&L account. The learned STO ought to have understood this concept. As and when the property is registered, tax is paid under Section 4 (7) (d) of the VAT Act.

f. It is submitted that the appellant has also explained in the reply dated 04-11-2019 that the 5% sales during the year 2016-17 have been correctly adopted in both the tables of the notice and tax was paid @5% along with the returns. The tax of Rs. 57,131 is the tax amount on the alleged differential turnover of Rs. 11,42,625 between the P&L account and the VAT returns which cannot be taken as

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taxable turnover as explained supra. Appellant has paid tax at the applicable rate on the entire sale consideration received during the period of assessment. This is verifiable from the registration records also. Appellant **files herewith** the reconciliation statement for the turnover of Rs. 19,45,500 and explanation of differential turnover of Rs. 11,42,625 item wise which does not form turnover as **Annexure-2**. It is therefore submitted that such levy of tax of Rs.57,131 on the differential turnover of Rs. 11,42,625 is not correct. It is therefore prayed to set aside such levy.

g. **Differential turnover wrt sale agreements - Rs.81,103:-** This tax has been levied by stating as follows:-
"The assessee neither submitted any documentary evidence as required in the show cause notice nor attended for personal hearing opportunity. Hence, in the circumstances, the under signed has left with no other except estimate the difference sale deed turnover with reference to Agreement sale turnover on best of judgment basis which is done as under."

Sl.No.	Period	Sale deed value	Estimated Agreement of sale value (Adding 30% value on Sale deed value)	Difference turnover arrived	Proposed to tax @ 5% on 25% difference turnover
1	2015-16	92,75,000	1,20,57,500	27,82,500	34,781
2	2016-17	1,23,52,500	1,60,58,250	37,05,750	46,322
3	2017-18 (April'17 to June'17)	0	0	0	0
	Total	**2,16,27,500**	**2,81,15,750**	**64,88,250**	**81,103**

h. It is submitted that the STO has seen all the documents including the agreements at the time of audit. In the event of conduct of such field audit of all the books of account and the documents, there is no basis for making any estimate. Further it amounted to double levy in as much as the learned STO levied tax on the differential amount between P&L figure and the VAT 200 declared figure and has also levied tax on the estimated receipts.

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i. Appellant submits that in the reply to the revised notice the appellant has clearly stated that during the notice period the majority of the receipts received by the appellant were for sale of fully completed flats to M/s Paramount Properties Pvt. Ltd. It was also replied that since all the sales during the notice period pertain to sales made after receipt of the OC, there cannot be any liability on such sales under VA, as there is no element of works contract in such sale as the sale is purely of immovable property. It was also replied that no agreement of construction has been executed for sales during the notice period and requested to drop the proposal.

j. It is submitted that the building permit for construction of flats in the project known as Paramount Residency was obtained in 2006 from HMDA and was fully completed by 2009 and occupancy certificate for all the 6 blocks was obtained. The appellant has obtained occupancy certificates from Panchayat Secretary, Garama Panchayathi, Nagaram Village, Keesara Mandal, Ranga Reddy District as the project falls in Gram Panchayat. The learned STO has not accepted the occupancy certificate issued by Gram Panchayat on the ground that the occupancy certificate shall be issued by the sanctioning authority only who is the Metropolitan Commissioner, HMDA. Thus the learned DCTO treated these certificates as invalid in view of Rule 26 (a) of A.P. Building Rules, 2012.

k. Appellant submits that all the sales were made after receiving the OC, sale deed was executed for the entire consideration and no agreement for construction was made. The OC was issued by the Panchayat Secretary of the Gram Panchayat which is local body of the State Government. Thus the OC issued by the Panchayat Secretary is a valid certificate on par with the certificate issued by HMDA which is also a local body. Further the learned STO has also verified all the records such as agreement of sales, Sale deed and construction agreement during the course of audit which also recorded by the STO at page 2 of the assessment order. It is also submitted by the appellant that the total receipts towards sale consideration for the audit period is Rs. 1,65,48,130 and towards non-taxable receipts is Rs. 24,79,885. Inspite of submission of all records as stated supra it is not justified for the learned STO to confirm the proposed levy of Tax of Rs. 81,103 on the estimated sale value based on the OCs produced which are treated as not valid and the non submission of agreements

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of sale (mother document). Appellant files herewith sample copies of mother agreements in (5) case and the OCs as Annexure-3. In view of the documents now filed it is prayed that the levy of tax of RS. 81,103 on the estimated sale value may be set aside.

l. It is submitted that if the certificate given by the Panchayat Secretary is not acceptable to the learned STO, he ought to have conducted enquiry with the Gram Panchayat and ascertained the fact. The basic burden has been discharged by the appellant and the burden shifts to the learned STO to disprove the claim of the appellant. There is neither reason nor ground to reject the certificate issued a Government Officer ie., Panchayat Secretary. The impugned levy is arbitrary and unjustifiable.

m. It is reiterated that the appellant has paid tax on the entire consideration received for the sale of all villas etc. There is no basis for such estimate. No tax shall be levied on mere presumptions and surmises.

n. It is therefore submitted that even this levy of tax is not correct.

o. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order and allow the appeal.

APPELLANT.