B & C ESTATES

5-4-187/3 & 4, IInd Floor
Soham Mansion, M.G. Road, Secunderabad – 500003
Phone: +91-40-6633555 1, Fax: 040-27544058

From
M/s. B & C Estates,
5-4-187/3 and 4,
2nd Floor, Soham Mansion,
M G Road, Secunderabad.

To
The Assistant Commissioner (CT), LTU,
Begumpet Division,
Hyderabad.

Sir,

Sub:-TVAT Act, 2005-M/s B & C Estates, M G Road, Secunderabad-Notice for penalty in Form VAT 203 A –Reply filed- Reg.

Ref:- 1) AC (CT) LTU, Begumpet Division notice in Form 203A dated 06-09- 2018.
2) Our letter dated ..... requesting time.

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We submit that we are in receipt of the notice for penalty in Form VAT 203A dated 06-09-2018 proposing to levy penalty of Rs. 11,28,027/- for the period from September, 2013 to June,2017 on the amount of Ra.45,12,109/-under Section 53(1) (ii) of the TVAT Act, 2005. We request you to kindly consider our objections on the following grounds:

We submit that we are engaged in the execution of works contract in construction and selling of residential apartments and opted to pay tax @1.25% on the total consideration received under Section 4 (7) (d) of TVAT Act, 2005. We submit that our assessment for the period from September, 2013 to June, 2017 was completed in VAT 305 dated 06-09-2018 as per our books of account and we have also paid the balance tax of Rs. 45,12,109/-as per the assessment order vide cheque no..... As such there is balance as per the assessment order. We therefore request your goodself to kindly drop the proposed levy of penalty.

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Without prejudice to the above we submit that we understand from the notice that penalty of Rs.11,28,027/- @ 25% of tax levied through the assessment order has been proposed under Section 53(1)(ii) of the APVAT Act. We submit that there are no circumstances warranting levy of such penalty. It appears as a matter of routine penalty notice has been issued. The assessment order passed does not mention any such fraud or willful neglect.

As per the following settled law, there cannot be any levy of penalty.

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**

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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)the Honourable 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."

Therefore kindly drop the proposal to levy penalty in the interest of natural justice.

for B & C Estates,

B & C ESTATES

Authorized Signatory.

GOVERNMENT OF TELANGANA

26 SEP 2018

O/o. Joint Commissioner (S.T.)
Begumpet Circle, Hyderabad.