

**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.257/2019

CCT's Ref No. LIII(1)/124/2019

Date:16-03-2019

Sub: Stay Petition - TVAT Act, 2005 - Stay Petition filed by M/s. Serene Constructions LLP, Secunderabad - For the tax period 2015-16 and 2016-17 - Stay petition filed for stay of collection of disputed tax - Personal Hearing allowed - Dealer availed personal hearing - Orders issued - Regarding.

- Ref:- 1. DCTO, Bowenpally Circle VAT assessment order in AAO No.27156, dt:08-05-2018.
2. AJC (ST), Punjagutta Division in Order No.280 in Appeal No. BV/86/2018-19, dated 14-02-2019.
3. Stay Application in Form APP 406, dated 08-03-2019 filed by the dealer.
4. Hearing Notice in CCT's Ref T.S L.III(1)/124/2019, dt.11-03-2019.

ORDER:

M/s. Serene Constructions LLP, Secunderabad are registered dealers and assessee on the rolls of Assistant Commissioner (ST), M.G. Road Circle, Begumpet Division ('AC' for short). Vide reference 1st cited, the Deputy Commercial Tax Officer, Bowenpally Circle ('DCTO' for short) has passed order for the tax period 2015-16 and 2016-17 and confirmed disputed tax of Rs.5,08,808/-.

Aggrieved by the orders passed by the DCTO 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.280 in Appeal No. BV/86/2018-19, dated:14.02.2019. Aggrieved by the order passed by the AJC the dealer now filed stay petition before undersigned seeking stay of collection of disputed tax i.e., Rs.5,08,808/-.

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 12-03-2019 and argued the case on the following grounds which reproduced below:

Appellant submits that the appellant as developer entered into a Memorandum of Understanding (MoU) with Modi Farm House (Hyderabad) LLP (for short MFHLLP) on 31-05-2015 as vendor or owner of land for the construction of the cottage/villa on the farm land admeasuring about 1000 Sq. ft. as per the specifications of Annexure-C to the MOU. Coy of MoU is filed as Annexure-1. The appellant has declared a turnover of Rs. 7,20,000 and 2,88,000/- towards 5% turnover in Form VAT 200 returns filed by the appellant during the years 2015-16 and 2016-17 respectively.

agreement the appellant is the developer of the project and sellers of the villas/flats to the purchasers.

In pursuance of this MOU appellant has received advances of Rs. 7,20,000/- and Rs. 47,85,500/- including Rs. 7,20,00 of 2015-16 and Rs. 2,88,000 of 2016-17 from MFHLLP during the years 2015-16 and 2016-17 respectively and recorded the same in the P & L Account of the appellant for the said two years. In the notice the advance amount received during the year was proposed to be assessed under Section 4 (7) (a) of the VAT act after allowing standard deduction of 30% read with Rule 17 (h) of the Act and levying tax @14.5% on the balance amount as taxable turnover as the appellant not file Form VAT 250. Appellant has completed only one villa and sold the same for Rs. 7,99,920/- vide invoice no. SCLLP/1/2015-16 dated 19-02-2016 including VAT of Rs. 36,000/- @ 5% to M/s Dr. Tejal Modi & Mr. Soham Modi, Jubilee Hills, Hyderabad as purchaser which is collected and paid along with returns.

Appellant submits that it is the subcontractor to the main contractor i.e. MFHLLP and intended to opt to pay tax under Section 4 (7) (b) of the Act by way of composition @5% on the total amount received or receivable towards the execution of works contract. In view of payment of tax under this sub-section appellant has charged VAT 5% only on the invoice and paid the same. Appellant has recorded all the purchases and paid tax @5% only on the invoice raised on the sale of villa as intended to pay tax under Section 4 (7) (b) only.

In the assessment order the assessing authority confirmed the proposal of levy of tax on the receipts as per P & L account for the years 2015-16 and 2016-17 after deducting 30% towards standard deduction under Section 4 (7) (a) read with Rule 17 (h) of the Act as the appellant could not file Form VAT 250 for levy of tax under Section 4 (7) (b). Appellant submits that it has maintained all books of account and the turnovers were extracted by the learned DCTO from the P & L account of the appellant. This proves that the appellant has maintained all books of account in which case the learned DCTO ought to have assessed the turnover under Section 4 (7) (a) of the Act by levying tax on the value of goods at the time of incorporation at the rates applicable to the goods under the Act by allowing eligible input tax credit to the extent of 75% of the tax paid on the goods purchased as per Rule 17 (1) (b). Appellant submits that the assessment order passed by the DCTO on standard method under Rule 17 (1) (g) is highly illegal and is therefore liable to be set aside.

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

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 **70%** of the disputed tax out of the total disputed tax of Rs.5,58,808/- on a condition that the appellant petitioner shall pay **30%** of the disputed tax i.e. Rs.1,67,642/- within (10) days 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.

5,58,808 - 30% = 1,67,642-00

Less: payments:
predeposit - 63,601-00

1,04,041-00
50,000-00

Less: paid through vat-200

payable .

54,041-00