D/c

FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

	Date	Month	Year
	27	05	2013

01. Appeal Office Address:
To,
The Addl. Commissioner (CT) Legal
O/o the Commissioner of Commercial Taxes,
Nampally, Hyderabad

02	TIN	28790571789

03. Name M/s. Summit Builders,
Address: D.No.5-4-187/3&4, Soham Mansion,
M.G. Road, Secunderabad.

04.	Tax period	November'2006 to March'2007 /VAT
05.	Authority passing the order or proceeding disputed.	Stay rejection order dated 18/05/2013 passed by the Appellate Dy. Commissioner (CT), Punjagutta Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	20/05/2013
07.	(1) (a) Tax assessed (b) Tax disputed (2) Penalty / ~~Interest~~ disputed	Rs.1,33,422/- Rs.1,33,422/- NIL
08	Amount for which stay is being sought	Rs.1,16,744/-
09.	Address to which the communications may be sent to the applicant.	M.Ramachandra Murthy Chartered Accountant Partner , N. Saibaba & Company Flat No.303, Ashok Scitinlla, Himayathnagar Main Road, Hyderabad Tel.:040-30878935/36 Email.:mrc_murthy@yahoo.com

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Signature of the Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF REVISION

1.) The appellant submits that substantial question of facts and law arise in the appeal.

2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.

3.) The Appellate Dy. Commissioner (CT), has not properly considered all the grounds of appeal and arbitrarily dismissed the stay petition filed before him. The main appeal is pending for disposal.

4.) The grounds that are stated in the main appeal may kindly be read as grounds of this application.

Hence it is just and necessary that the Addl. Commissioner (CT) Legal may be pleased to grant stay of collection of the balance disputed tax of Rs.1,16,744/- pending disposal of the appeal.

VERIFICATION

I, Soham Modi applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the 27 day of May'2013

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

SUMMIT BUILDERS,
M.G. ROAD, SECUNDERABAD.

Statement of facts:- **11/06 to 03/07/VAT**

1. Appellant is a dealer engaged in the business of execution of works contracts and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad, with TIN No 28790571789. Appellant is in the business of constructing and selling independent houses, apartments etc., paying tax under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.

2. The Commercial Tax Officer, M.G.Road Circle, Begumpet Division (herein after called as CTO) has issued Show Cause Notice dated 16-12-2010 which was served on appellant, dated 21-02-2012 proposing output tax of Rs. 1,33,422/- for the period November 2006 to March 2007.

3. The CTO has issued a personal hearing notice, dated 19.03.2012 to the appellant asking to appear before him or file written objections with documentary evidences on or before 22-03-2012. The above said personal hearing notice was received by the appellant on 22-03-2012.

4. Appellant has filed a letter to CTO, requesting 30 days time to file written objections, as the person who is incharge of finance department has resigned from the organization. The Learned CTO in the assessment order has stated that 3 days time was given to file the documentary evidence. But Learned CTO has not provided any letter granting 3 days time nor made any endorsement to that effect. The CTO has also not provided any opportunity of personal hearing even though the same was requested in the letter submitted.

5. Without providing an opportunity of personal hearing to the appellant learned CTO has issued FORM VAT 305 (Assessment of Value Added Tax) dated 31-03-2012.

6. Aggrieved by such order, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:

a. The impugned assessment order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.

b. Learned CTO in the assessment order mentioned that **"as per information received from other State Government Departments of Andhra Pradesh"** appellant has received amounts on account of execution of works contracts to

a tune of Rs.4,06,13,611/- and on account of car parking and service tax payments Rs.48,47,751/- totaling to Rs.4,54,61,366/-. The average works contract receipts turnover is worked out to Rs.37,88,447/- per month and the works contract receipts for the five months i.e, from Novemner'2006 to March'2007 is shown as Rs.1,89,42,235/. It is also stated that appellant have reported a turnover Rs.1,66,70,300/- only from November'2006 to March'2007. Thus it is alleged that appellant has short reported works contract receipts turnover of Rs.22,71,935/- and on that Learned CTO has levied tax @ 1% Rs. 22,719/-.

c. Appellant submits that Learned CTO grossly failed to provide the details on which he relied upon for passing such an order.

d. Learned CTO has passed the order without providing personal hearing opportunity to the appellant. Further the learned CTO has not provided any information to the appellant with regard to the information he received from other State Government Departments with respect to the works contracts receipts to the extent of Rs. 4,54,61,362/-

e. Appellant submits that learned CTO has failed to follow the principles of natural justice. Appellant in his letter dated _____ requested the CTO to grant time of 30 days to file the objections stating that the person incharge of finance department has resigned from the organization. Learned CTO has granted only three days of time and passed this order without any further notice and without giving any opportunity for personal hearing.

f. Further the appellant submits that they are engaged in the business of execution of works contracts i.e., sale of independent houses and apartments and opted to pay tax @ 1% under composition under Sec.4 (7) (d) of APVAT Act'2005.

Sec. 4 (7) (d) of the APVAT Act reads as under:-

"Any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty five percent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;..."

As per the above clause a dealer engaged in the construction and sale of apartments, houses etc., is liable to pay tax @ 4% of 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher.

Hence the consideration received or receivable which relates to the sale of apartments, houses etc., is only taxable, but not other amounts like car parking and service tax payments received during that period. During the period November'2006 to March'2007 appellant have sold the independent houses and registered the same with the sub-registrar's office and paid VAT @ 1% on the registration value which is the sale consideration received by the appellant from prospective purchasers. They have declared the said turnover in monthly returns for the said periods. It is not clear from the assessment order as well as from the show cause notice where from the works contracts receipts turnover of Rs.4,06,13,611/- for the period from April'2006 to March'2007 is extracted by learned CTO. Appellant now submits to kindly consider the turnover of Rs.1, 66, 70,300/- for the period from November'2006 to March'2007.

g. The Learned CTO in his order levied tax of Rs.40, 347/-@ 3% on the 4% purchase turnover of Rs.13, 44,907/- from unregistered sources and as per the information received from other State Government Department of Andhra Pradesh. Further it was also stated in the order that appellant have purchased 4% goods like tools, bamboos, iron steel, coal and other consumables for Rs.54,269/- and 12.5% VAT goods like doors, windows, electrical goods, sanitary goods and water proofing material for Rs.5,97,634/- from other than registered VAT dealers of A.P., on which he has levied tax at differential tax of 3% and 11.5% respectively on these turnovers, which comes to the tune of Rs. 70,356/- stating as required under section 4(7)(e) of APVAT Act 2005.

h. Appellant submits that even if for any reason the said clause (e) is made applicable, no tax need be paid at the higher rates because clause (e) is very clear in saying that under clause (e) tax is payable only at the rates applicable to those goods under the Act. In the present case appellant have opted for composition under Section 4 (7) (d) of the Act. In respect of the goods used by them in the execution of works contract, the rate of tax is 4% of 25% of the consideration received or receivable. Clause (e) says THE RATE APPLICABLE **UNDER THE ACT**. The rate applicable under the Act is 4% of 25%. Clause (e) does not authorize collection of tax at the full rate of 4% or 12.5%, as **there is no mention of 'Schedules to the Act' in that clause.** For example in respect of 'lease tax', in Section 4 (8) of the Act, it is specifically mentioned 'at the rates specified in the Schedules'. As, such words do not find place in Section 4 (7) (e), it cannot be assumed that the rates in the Schedules have to be applied. It is settled law that there cannot be any presumption with reference to the charge to tax. Any ambiguity in the provision shall be interpreted in favour of the tax payer. It is also settled law that when there is possibility to apply two rates of tax on the same commodity, the least of the two has to be applied. The appellant therefore humbly submits that on mere presumption, higher rates of tax cannot be applied. There is no

authorization in clause (e) to collect tax at the rates of 4% or 12.5% as the case may be. Further appellant have paid tax at the rate of 4% only under clause (d) and not at 1%. The appellant has already paid tax 4% on the same goods, the question of paying tax once again @ 4% does not arise. What has been reduced under clause (d) is only the quantum of turnover to 25% but the rate of tax of 4% has been retained. In the result no tax becomes payable either @ 4% or @ 12.5%.

i. It is therefore submitted that levy of tax under clause (e) is neither correct nor legal.

j. The Learned CTO has failed to provide the information from where he has extracted the details of purchases from un registered dealers in his order. Further the appellant submits that the learned CTO has not issued any letter granting 3 dyas time as mentioned in the assessment order nor provided an opportunity of personal hearing to substantiate appellant's contentions. As the CTO failed to furnish the required information, the impugned levy is illegal and therefore the assessment order is liable to be set aside.

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

APPELLANT