M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

Flat No.303, ASHOKA SCINTILLA
H.No.3-6-520, Opp. To Malbar Gold Show Room
Himayathnagar Main Road,
Hyderabad -500 029
Tel.:040-40248935 / 36

To,
The Addl. Commissioner (CT) Legal,
O/o. the Commissioner of Commercial Taxes,
Nampally, Hyderabad

09/04/2019

Sir,

Sub: Filing the Stay petition in the case of **M/s. Summit Builders, M.G. Road, Secunderabad** - For the tax period from 2013-14 to 2017-18 (upto June'2017)/ Penalty - Reg.

*****

Please find enclosed herewith the following appeal papers:

1. Form – APP 406 2 copies.
2. Grounds of Appeal 2 copies.
3. Stay rejection order passed by the Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad dated.25/03/2019 (in Original) along with Xerox copy.
4. Two copies of the penalty order in Form VAT 203 dated 03/01/2019 passed by the Assistant Commissioner (ST), Begumpet Division, Hyderabad.
5. Form 565 (Authorisation).

Kindly acknowledge receipt of the above documents and post the appeal for hearing.

Thanking you,

Yours sincerely,

M.Ramachandra Murthy,
Chartered Accountant.

9 APR 2019
HYDERABAD

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT), PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SMT. Y. SUNITHA,

ADC Order No.645
Stay Application R.No.81/2018-19
in Appeal No.BV/129/2018-19

Date of hearing: 12-03-2019
Date of order : 25-03-2019

Sub:- APPEALS – TVAT Act – M/s Summit Builders, Hyderabad – Appeal filed against the orders of the Commercial Tax Officer, M.G.Road Circle, Hyderabad – Penalty for the tax periods 2013-14 to 2017-18 – Stay petition heard - Stay rejected – Orders issued – Regarding.

* * *

M/s Summit Builders, Hyderabad (TIN: 36790571789), the appellant herein, filed an appeal against the penalty orders dated 03-01-2019 (AAO No.93) passed by the Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the Assessing Authority) for the tax periods falling under the years 2013-14 to 2017-18 (upto June, 2017) under the TVAT Act. The appellant also filed a petition in Form APP 406 seeking stay of collection of the disputed penalty of ₹1,70,293/-.

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for stay of collection of the disputed tax.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The dispute involved in the present appeal is as to the levy of penalty made by the Audit Officer under Section 53(1)(ii) of the Act at 25% of the under-declared tax determined consequent on passing the assessment orders dated 17-12-2018.

Though the appellant raised certain contentions with regard to the levy of penalty made by placing reliance in certain case law, it is to be observed that as per the provisions contained under Section 53(1)(i) & (ii) of the Act, even where fraud or willful neglect has not been established, penalty is to be levied under the above clauses of Section 53(1) of the Act and this view has been upheld by the Honourable Sales Tax Appellate Tribunal in the case of M/s Zuari Cements Limited Vs State of Andhra Pradesh (49 APSTJ 246).

As to the reliance placed by the appellant, I have to observe that except the decision rendered by the Honourable Andhra Pradesh Sales Tax Appellate Tribunal in the case of M/s Salzigitter Hydraulics Private Limited Vs State of Andhra Pradesh (48 APSTJ 276) (APSTAT), all the case law relied upon are with reference to the provisions contained under the Sales Tax Laws of different States, whereas the impugned penalty is levied under the provisions contained under the TVAT Act. Even in the case of M/s M/s Salzigitter Hydraulics Private Limited Vs State of

Andhra Pradesh (48 APSTJ 276), the issue of levy of penalty that was came up for consideration before the Honourable Andhra Pradesh Sales Tax Appellate Tribunal was with reference to the provisions contained under sub-section (3) of Section 53 of the Act, whereas the penalty levied in the present dispute was with reference to the provisions contained under sub-section (1) of Section 53 of the TVAT Act, where penalty is to be levied even fraud or willful neglect has not been established, as discussed above. Thus, the case law relied upon by the appellant are not applicable to the case on hand.

For the reasons discussed above, I do not find any case to grant stay of collection of the disputed penalty of ₹1,70,293/- and accordingly the stay petition is rejected.

APPELLATE DY.COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To
The Appellants.
Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad.
Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.
Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.

NOTE: A Revision Petition against this order lies to the Joint Commissioner(CT) Legal, Telangana, Hyderabad within (30 Thirty days) from the date of receipt of this order.

FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED PENALTY

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

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

Date	Month	Year
	04	2019

02	TIN	36790571789

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

04.	Tax period	2013-14 to 2017-18 (upto June'2017)/Penalty
05.	Authority passing the order or proceeding disputed.	Stay rejection order dt.25/03/2019 passed by Appellate Dy. Commissioner (CT) Punjagutta Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	26/03/2019
07.	(1) (a) Tax assessed	Rs.1,70,293/-
	(b) Tax disputed	NIL
	(2) Penalty / ~~Interest~~ disputed	Rs.1,70,293/-
08	Amount for which stay is being sought	Rs.1,70,293/-
09.	Address to which the communications may be sent to the applicant.	M/s. Summit Builders, D.No.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad.

* 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 penalty 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 disputed penalty of Rs.1,70,293/- pending disposal of the appeal.

VERIFICATION

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

Verified today the ________ day of April'2019

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

FORM OF AUTHORISATION

[See Rule 65(7)]

FORM 565

Authorisation to be filed by a person appearing before any authority on behalf of a dealer under Section 66 of the Telangana Value Added Tax Act '2005

To,

The Additional Commissioner (CT) Legal,
O/o. the Commissioner of Commercial Taxes,
Nampally, Hyderabad
Telangana State.

Date	Month	Year
		2019

TIN / GRN	36790571789

I ____

hereby appoint Sri.M.Ramachandra Murthy who is a Chartered Accountant, Shaik Yasin, Chartered Accountant and Ch. Vamsi Krishna, Chartered Accountant to attend on my behalf/behalf of the said Company before the Addl. Commissioner (CT) Legal , O/o the Commissioner of Commercial Taxes, Nampally, Hyderabad (State the Tax Authority) the proceedings (describe the proceedings) ____________________ before the said (State the Tax Authority) the Addl. Commissioner (CT) Legal, O/o the Commissioner of Commercial Taxes, Nampally, Hyderabad and to produce accounts and documents / statements and to receive on my behalf/behalf of the said Company any notice or documents / statements issued in connection with the said proceedings Sri.M.Ramachandra Murthy, Chartered Accountant, Shaik Yasin, Chartered Accountant and Ch.Vamsi Krishna, Chartered Accountant are hereby authorised to act on my behalf/behalf of the said Company in the said proceedings.

We agree/ the said Company agrees to ratify all acts done by the said Sri.M.Ramachandra Murthy, Shaik Yasin and Ch. Vamsi Krishna in pursuance of this authorisation.

*

Signature(s) of the Authorizing person(s)

We, Sri.M.Ramachandra Murthy, Shaik Yasin and Ch.Vamsi Krishna accept the above responsibility.

Signature(s) of Authorised person(s)

M.Rama Chandra Murthy,
Chartered Accountant,
Flat No.303, 'ASHOKA SCINTILLA'
H.No.3-6-520, Opp.: to Malbar Gold Show Room
Himayathnagar Main Road,
Hyderabad -500 029

Shaik Yasin
Chartered Accountant

Ch. Vamsi Krishna
Chartered Accountant