

0/c

Summit Builders

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

To,
The Commercial Tax Officer,
M.G. Road – S.D. Road Circle,
Hyderabad.

Sir,

Sub: Stay Petition filed for the collected of disputed penalty – For the years 2013-14 to 2017-18 (upto June'2017) - Reg.

Ref: Proceedings No. CCT. Ref. L.III(1)/229/2019 dated 06/07/2019 from the Addl. Commissioner (ST), Hyderabad.

As per the directions of the Additional Commissioner (ST) , in his proceedings cited above, we are enclosing Challan/D.D.No. 1900032530, 1900032567 dated 16/01/2019 for Rs. 85,147/- (Rupees. Eighty Five Thousand One Hundred Forty Seven only) as per the details furnished below.

Disputed penalty	:Rs.1,70,293-00
Stay granted for 50% of the Disputed penalty	:Rs. 85,147-00
Balance payable	:Rs.85,147-00
Less:	
Amount already paid at the time of admission of appeal before ADC(CT), Punjagutta Division vide Challan .No. <u>1900052607</u> dt. <u>25.01.2019</u> <u>1900052636</u>	:Rs.21,287-00
Balance, Now Paid	:Rs. 63,860-00

Receipt of the Same.

Thanking you,

Yours faithfully,

for Summit Builders

Authorised signatory
Encl.As Above Challans

1. CHALLAN. NO. - 1900573988 dt. - 19.08.2019





Your Tax Payment has been done successfully.

Payment ID for future communication: 12429539 (Confirmation has been mailed you.)

E-Receipt for

Tax Payment

Remitter's Name	SUMMIT BUILDERS
Customer Account Number	CYBER_TG
Department Code	2303
Challan Number	1900573988
Departmental Transid	36190819631744
DDO Code	25002303017
Head of Account	0040001020005000000NVN
Amount	63,860.00
Transaction Date & Time	19-08-2019 14:18:39
Debit Account Number	919020031272204
Transaction Status	SUC
Remarks	Disputed penalty for the period apr 2013 to june 2017 ACO No 392 2019

0/c

From
M/s. Summit Builders,
C.No.5-4-187/3&4,
Sohan Mansion, M.G. Road,
Secunderabad – 500 003.

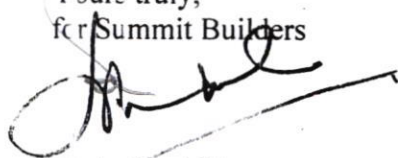
To,
The Commercial Tax Officer,
M.G. Road – S.D. Road Circle,
Hyderabad.

Date: 29.01.2019

Sir,

Aggrieved by the penalty order in Form VAT 203 dated 03/01/2019 passed by the Assistant Commissioner (ST), M.G. Road- S.D. Road Circle, Hyderabad for the years 2013-14 to 2017-18 (upto June'2017) under the provisions of TVAT Act, 2005, we are filing appeal before the Appellate Dy. Commissioner (CT), Punjagutta Division, Hyderabad. As required by the second Proviso under Section 31(1) of the said Act, we are issuing crossed Demand Draft/e-Payment Challan for Rs.21,287/- towards 12.5% of the disputed penalty. Please acknowledge receipt of the same.

Yours truly,
for Summit Builders



Authorized Signatory

Enclosed:

1. e-Payment Challan No. 1900052672 Amount Rs.1,000/- dated 25.01.2019
2. e-Payment Challan No. 1900052607 Amount Rs.10,064/- dated 25.01.2019
3. e-Payment Challan No.1900052636 Amount Rs.11,223/-dated 25.01.2019



E-Receipt**TG Cyber Treasury-epayment of Taxes**

Bank Reference No	CK13866467
Transaction date & time	25/01/2019 05:24:22 PM
challanno	1900052672
deptcode	2303
depttransid	36190125851669
Head of Account	0040001020005000000NVN
Amount	Rs.1000.00 /-
Transaction Status	Success

E-Receipt**TG Cyber Treasury-epayment of Taxes**

Bank Reference No	CK13860316
Transaction date & time	25/01/2019 05:24:23 PM
challanno	1900052607
deptcode	2303
depttransid	190125760749
Head of Account	0040001020005000000NVN
Amount	Rs.10064.00 /-
Transaction Status	Success

E-Receipt	
TG Cyber Treasury-epayment of Taxes	
Bank Reference No	CK13863190
Transaction date & time	25/01/2019 05:24:22 PM
challanno	1900052636
deptcode	2303
depttransid	36190125755238
Head of Account	0040001020005000000NVN
Amount	Rs.11223.00 /-
Transaction Status	Success

o/c

From
M/s. Summit Builders,
D.No.5-4-187/3&4,
Soham Mansion, M.G. Road,
Secunderabad - 500 003.

To,
The Commercial Tax Officer,
M.G. Road - S.D. Road Circle,
Hyderabad.

Sir,

Aggrieved by the assessment order in Form VAT 305 dated 17/12/2018 passed by the Commercial Tax Officer, M.G. Road- S.D. Road Circle for the years 2013-14 to 2017-18 (upto June'2017) under the provisions of TVAT Act, 2005, we are filing appeal before the Appellate Dy. Commissioner (CT), Punjagutta Division, Hyderabad. As required by the second Proviso under Section 31(1) of the said Act, we are issuing crossed Demand Draft/e-Payment Challan for Rs.85,147/- towards 12.5% of the disputed tax. Please acknowledge receipt of the same.

Yours truly

for Summit Builders

Encl.: e-Payment Challan No. 1900032530
1900032567
1900032548 dated 16/01/2019.



E-Receipt**TG Cyber Treasury-epayment of Taxes**

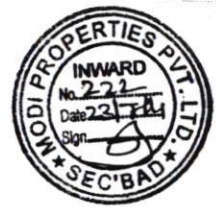
Bank Reference No	CKI2875244
Transaction date & time	16/01/2019 01:36:03 PM
challanno	1900032530
deptcode	2303
depttransid	190116246768
Head of Account	0040001020005000000NVN
Amount	Rs.40255.00 /-
Transaction Status	Success

E-Receipt**TG Cyber Treasury-epayment of Taxes**

Bank Reference No	CKI2877193
Transaction date & time	16/01/2019 01:36:03 PM
challanno	1900032567
deptcode	2303
depttransid	36190116337729
Head of Account	0040001020005000000NVN
Amount	Rs.44892.00 /-
Transaction Status	Success

E-Receipt**TG Cyber Treasury-epayment of Taxes**

Eank Reference No	CKI2876404
Transaction date & time	16/01/2019 01:36:03 PM
challanno	1900032548
deptcode	2303
depttransid	36190116722778
Head of Account	0040001020005000000NVN
A.mount	Rs.1000.00 /-
Transaction Status	Success



**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. 392/2019

CCT's Ref No. LIII(1)/229/2019

Date: 06-07-2019

Sub: Stay Petition – TVAT Act, 2005 – Stay Petition filed by M/s. Summit Builders, Secunderabad – For the tax period 2013-14 to 2017-18 (upto June 2017) Penalty – Stay petition filed for stay of collection of disputed Penalty – Personal Hearing allowed – Dealer availed personal hearing – Orders issued – Regarding.

- Ref:- 1 AC(ST), M.G. Road and S.D. Road Circle, Assessment Order in AAO No. 93, dated: 03.01.2019
2. AJC (ST), Punjagutta Division in Order No.645 in Appeal No.BV/129/2018-19 2018-19, dated 25.03.2019.
3. Stay Application in Form APP 406, dated 09.04.2019 filed by the dealer.
4. Hearing Notice in CCT's Ref T.S L.III(1)/229/2019, dt.03.07.2019.

ORDER:

M/s. Summit Builders, Secunderabad, are registered dealers and assessee on the rolls of Asst. Commissioner (ST), M.G. Road and S.D. Road Circle. Vide reference 1st cited, the Asst. Commissioner (ST), M.G. Road and S.D. Road Circle ('AC' for short) has passed order for the tax period 2013-14 to 2017-18 (upto June 2017) and confirmed disputed Penalty of Rs. 1,70,293.

Aggrieved by the orders passed by the AC 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.645 in Appeal No. BV/129/2018-19, dated 25.03.2019. Aggrieved by the order passed by the AJC the dealer now filed stay petition before undersigned seeking stay of collection of disputed penalty.

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 03.07.2019 and argued the case on the following grounds which reproduced below:

- a. Appellant submits that it is engaged in the business of constructing and selling independent houses, apartments etc., paying tax under Section 4 (7) (a) of the APVAT Act, 2005.
- b. Appellant submits that the learned CTO passed the order in haste without waiting for the reply from the appellant and without giving an opportunity of personal hearing. The order passed by the learned CTO is illegal and is not according to the provisions of the Act and Rules without following the principles of natural justice. The penalty order is therefore liable to be set aside.
- c. Even otherwise appellant submits that as per the following settled law, there cannot be any levy of penalty.
- d. 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".
- e. 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

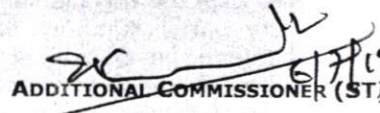
of the item is not shown based on a bonafide mistake as in the present case. This decision also squarely applies to the present case.

- f. 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."
- g. In the case of Brugumalla Venkatappaiah Sons & Co. Vs. CTO (1973) 32 STC 34 the Hon'ble High Court of A.P. held that before levy of penalty there must be a clear finding by the authority that an offence had been committed by the dealer as the jurisdiction of that authority arises only when the dealer is found guilty of the offence. The onus is on the authorities to prove that not only has the offence been committed but the person accused of it has committed it consciously.
- h. 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 mala fide 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.**
- i. The Hon'ble Supreme Court in the case of EID Parry (I) Ltd. Vs. Asst. Commissioner of Commercial Taxes & Another Batch (117 STC 457) held that when the dealer is under a bonafide belief that his transactions are exempted/taxable at a lower rate and when the legal position is not clear the levy of penalty is not justified. When there is a reasonable cause for the failure to pay tax, the imposition of penalty is not correct.
- j. In the case of Kamal Auto Finance Ltd. (8 VST 274) the CESTAT, New Delhi has held that **short payment of tax for bonafide reasons does not attract penalty.**
- k. In the case of Uniflex Cables Limited Vs Commissioner, Central Excise (2011—40 PHT 28) (AIFTP October, 2011 Journal) the Honourable Supreme Court held that the imposition of penalty was not justified where the **issue under dispute in relation to the liability of tax was of interpretational nature.**
- l. Proviso under Section 53 of the Act mandates grant of personal hearing. This shows that levy of penalty is not automatic and that the authority must consider the objections advanced by the dealer. If it is automatic, there is no necessity to grant personal hearing. On such consideration of the objections and grounds, even levy can be wholly dropped. Appellant submits that if provisions of Section 53 are mandatory, then the proviso to Section 53 will become mere formality.
- m. Appellant submits that the Proviso under Section 53 of the Act lays down categorically that the competent authority prescribed shall give a reasonable opportunity of being heard. The expression 'reasonable opportunity of being heard' occurring in the Proviso denotes that the prescribed authority shall examine the causes. The principles of natural justice come into play and demand, the authority prescribed to examine the willfulness or otherwise and exercise jurisdiction to either proceed to levy the Penalty or to desist from doing so, for reasons to be recorded. The Proviso thus cannot be deemed to authorize the authority to invoke and levy penalty as an 'automatic provision', bestowing no jurisdiction whatsoever to drop the proposal.

As the Proviso under Section 53 of TVAT Act, 2005 is also to the same effect of giving reasonable opportunity, the above decisions squarely applies to the facts of the case. The assessing authority will be well within his limits in refusing to levy penalty, for the reasons explained herein above. It appears penalty has been proposed to be levied as a matter of routine instead of strictly in accordance with the statutory provisions.

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

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 **50%** of the disputed penalty out of the total disputed penalty of Rs. 1,70,293/- on a condition that the appellant petitioner shall pay **50%** of the disputed Penalty i.e. Rs.84,147/- within four weeks 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.


ADDITIONAL COMMISSIONER (ST)

To
M/s. Summit Builders, Secunderabad,
through the Asst. Commissioner (ST), M.G. Road and S.D. Road Circle,
(induplicate) for service and return of served copy immediately.

Copy to the Asst. Commissioner (ST), M.G. Road and S.D. Road Circle
Copy to the Joint Commissioner (ST), Begumpet Division.