

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

VAT 203

NOTIFICATION AND DEMAND FOR PENALTY TO A VAT DEALER

AAO No: 56483

Dated:31-03-2020

01.Tax Office Address

Deputy Commercial Tax Officer-II
O/c Commercial Tax Officer,
Marredpally Circle, Begumpet Division,
6th Floor, Pavani Prestige Building,
Ameerpet, Hyderabad.

TIN: 36389317452

03. Name: M/s. GREEN WOOD ESTATES

**Address : 5/4/187/344,2ND FLOOR, M G ROAD,
SECUNDERABAD - 500003**

Tax office records indicate that the dealers have committed the following irregularity which is penalized under the provisions APVAT Act.

As per the A.O.No.18268, Dated:29-02-2020, the dealers have under declared a tax of Rs. **8,78,505-00** for the period from April'2013 to May'2014 which is to be categorized as an offence under Sec.53(1)(ii) of APVAT Act'2005 as such they are liable to pay a penalty @25% of the tax which amounts to **Rs. 2,19,626-00**.

Sec. 53 (1)(ii) of TVAT Act,2005 reads:

53.(1) Where any dealer has under declared tax, and where it has not been established that fraud or willful neglect has been committed and where under declared tax is:-

ii) more than ten percent of the tax due; a penalty shall be imposed at twenty five percent of such under-declared tax.

Accordingly the dealers are liable to pay the penalty of **Rs.2,19,626-00**

Accordingly a notice in Form 203A dated: 29-02-2020 was issued calling for their objection in writing if any on the proposed penalty. Having received the

show cause notice, the dealers have submitted their reply vide reference cited. The objections of the dealers have been examined and discussed as below:

They contended that, they are preferring an appeal disputing the tax before the Appellate Deputy Commissioner (CT) against the assessment order in FORM VAT 305 Dt: 29-02-2020. Hence, requested to defer the penalty proceedings till the disposal of their appeal on tax.

But, the contention of the dealers cannot be accepted as penalty proceedings and assessment proceedings are distinct from each other. As such pending appeal on tax proceedings can not deter the assessing authority in initiating penalty proceedings.

With regard to levy of tax on receipts / consideration as per P & L account, they contended that, receipts in P & L account are posted as per accounting standards of ICAI based on work in progress and where as the turnovers reported in the VAT 200 return are the actual sale amount as the registration of property made with the Sub Register . In this regard, the dealers are informed that, the total receipts/ sale consideration as per P& L account statement has been adopted for the assessment years right from 2013-14 to 2014-15 (Upto May,2014). When compared to reported turnover in monthly VAT 200 returns, the amounts reported in IT returns is more and which can be seen as below:

Year	As per Monthly VAT 200 Returns	As per P & L accounts
2013-14	112769000	146898863
2014-15	104886000	118375000
2015-16	71475011	53430000
2016-17	47717153	50057000

But, the dealers failed to substantiate the reasons as to know, whether the total turnover reported in P & L accts includes other extra works done or not.

Therefore, the total consideration received by the assessee has been considered for levy of tax U/s 4(7)(d) of the Act.

Further, the entries 'e' and (i) to sub rule 4 of Rule 17 of the act was deleted.
Thus, the contention of the dealers can not be accepted.

Further, the dealers have referred the following case laws and requested to withdraw the proposed penalty.

1. M/s.Hindustan Steel Ltd V/s State of Orissa (1970)(25 STC 211) SC.
2. CTO V/s Rajdhani Wines (87 STC362)Rajasthan HC.
3. M/s. Modi Threeds Hyd V/s AP (16APSTJ 277)STAT,Hyderabad.
4. Bengumalla Venkatappaiah Sons & Co V/s CTO (1973) 32 STC 34 HC AP.
5. Sallzigitter hyde (48 APSTJ 276) STAT, Hyd and other 3 cases.

But, the levy of penalty U/s 53 (1)(ii) of VAT Act,2005 is obligatory on the part of the assessing authority. The above sec is mandatory and not discretionary

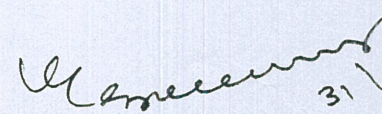
Therefore, their plea to drop the proposed penalty is hereby rejected.

Further, the assesses have also been heard personally on 17-03-2020 in the matter, Sri. K.Satyanarayana. Manager (Accounts) and Sri A. Sambashiva Rao, Sr. Manager (Accounts) have appeared for personal hearing and reiterated their objections as in their reply dated:16-03-2020.

Thus, the penalty as proposed in the Show cause notice U/s 53(1)(ii) of VAT Act is here by confirmed as below:

On Rs.8,78,505-00 penalty @25% Rs.2,19,626-00.

An appeal against these orders can be filed before ADC (CT), Punjagutta, Office of the Commissioner of Commercial Taxes, Opp: Gandhi Bhavan, Nampally, Hyderabad within (30) days.


31/03/2020
Deputy Commercial Tax Officer-II,
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ON IGS ONLY



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