

FORM APP 400
FORM OF APPEAL UNDER SECTION 31
[See Rule 38(2)(a)]

1. Appeal Office Address : The Appellate Dy. Commissioner (CT)
Punjagutta Division, Hyderabad
 2. TIN/GRN : 36389317452
 3. Name & Address : M/s. Green Wood Estates,
5/4/187/344, 2nd Floor, M.G. Road,
Secunderabad – 500 003.
 4. I wish to appeal the following decision /
assessment received from the tax office on : 25/06/2020
 5. Date of filing of appeal : /07/2020
 6. Reasons for delay (if applicable enclose a
separate sheet : Not Applicable
 7. Tax Period / Tax Periods : 2013-14 & 2014-15(upto May'2014)/VAT/Penalty
 8. Tax Office decision / assessment Order No. : Penalty order No.56483 (Form VAT 203)
dt.31/03/2020 passed by
by Deputy Commercial Tax Officer-II,
Maredpally Circle, Begumpet Division,
Hyderabad.
 9. Grounds of the appeal (use separate sheet
if space is insufficient : Separately Enclosed
 10. If turnover is disputed
 - a) Disputed turnover : NIL
 - b) Tax on the disputed turnover : NIL

If rate of tax is disputed

 - a) Turnover involved : NIL
 - b) Amount of tax disputed : NIL
 11. 12.5% of the above disputed penalty paid : Rs.27,453/-
- Note:** Any other relief claimed : 1) To set aside the demand raised on
account of Penalty of Rs.2,19,626/-
- 2) Other grounds that may be urged at
the time of hearing.

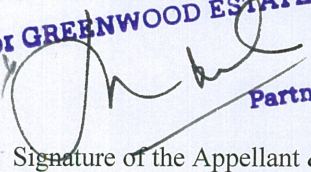
(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

a)Challan / Instrument No.	: 2000438610
b)Date	: 24-07-2020
c)Bank / Treasury	: AXIS BANK
d)Branch Code	: -----
e)Amount	: 27,453/-
 TOTAL	 : Rs. 27,453/-

Declaration:

I, Soham Modi hereby declare that the information provided on this form to the best of my knowledge is true and accurate.

*
FOR GREENWOOD ESTATES

Partner

Signature of the Appellant & Stamp

Date of declaration

Name : Soham Modi
Designation : Managing Director

Please Note: A false declaration is an offence.

**GREEN WOOD ESTATES,
MG Road, Secunderabad.**

Statement of facts:-

2013-14 & 14-15/VAT/Penalty

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short Act) on the rolls of the Commercial Tax Officer, MG Road – SD Road Circle, Hyderabad and is engaged in the business of constructing and selling the residential flats. Appellant has opted to pay tax under composition scheme under Section 4 (7) (d) of the Act.
2. In accordance with the said provision, appellant has filed the monthly turnover returns and paid the applicable taxes on 25% of the gross consideration.
3. Claiming authorization from the DC (CT), Begumpet Division, the learned Deputy Commercial Tax Officer-II, Maredpally Circle, Hyderabad (for short DCTO) conducted audit of the books of account of the appellant, issued show cause notice proposing to raise certain demand and thereafter passed the assessment order dated **29.2.2020** levying the following tax:-

2013-14	Rs.6,61,180
2014-15 (upto 5/2014)	2,17,325
Total	8,78,505

4. Aggrieved by such assessment order, appellant preferred appeal before this Hohourable Authority which is pending disposal.
5. Appellant submits that the DCTO issued a notice dated 29/02/2020 in Form VAT 203A proposing to levy penalty of Rs.2,19,626/-under Section 53(1) (ii) of the Act which is equal to 25% of the alleged under declared tax of Rs.8,78,505 as per the assessment order dated 29/02/2020.

6. Appellant submits that the learned DCTO passed the penalty order no.56483 dated 31-03-2020 in Form VAT 203 confirming the proposed penalty of Rs.2,19,626.
7. Aggrieved by the impugned penalty order appellant files the present appeal on the following grounds, amongst others:-

Grounds of appeal:-

- a. It is submitted that the impugned order is unjustifiable, arbitrary and illegal.
- b. Aggrieved by the assessment order appellant has filed appeal before this Hon'ble Authority which is pending disposal. The grounds of tax appeal are filed herewith which may kindly be read as part and parcel of the penalty grounds.
- c. Appellant has reported actual sale considerations in the returns filed and paid tax on 25% of such gross consideration, but the learned DCTO took the gross figures from the P&L Account, compared and levied tax on 25% of such figures. It is submitted that no such tax on the so called differential amount is leviable. Receipts in P&L account are posted as per the Accounting Standards of ICAI based on WIP (work in progress) method and whereas the turnovers reported in the VAT 200 returns are the actual sale amounts, as per the registration of property made with the Sub Registrar. As and when the property is registered, tax is paid under Section 4 (7) (d) of the VAT Act, read with Rule 17 (4) of the VAT Rules.
- d. It is therefore submitted that the entire demand is in the nature of double levy of tax and resultantly it is illegal and arbitrary.
- e. Even otherwise appellant submits that as per the following settled law, there cannot be any levy of penalty.

- f. 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".
- g. 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.
- h. 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."
- i. 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.
- j. 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 malafide 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.**

- k. 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.
- l. 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.**
- m. 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.**
- n. 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.
- o. The Honourable Apex Court in Commissioner of Income Tax V Reliance Petro products P Limited (2010—322 ITR 158), while dealing with similar issue held as follows:-

“We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was upto the authorities to accept its claim in the

return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271 (1) ©. If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty under Section 271 (1) ©. That is clearly not the intendment of the Legislature.”

- p. In the case of Assistant Commercial Tax Officer V KumawatUdhyog (97 STC 238), the Rajasthan High Court held as follows:-

“If an entry exists in the books of account and the matter relates only to an interpretation of the nature of the transaction and the law relating to its taxability, the authorities would not be justified in levying penalty.”

Prima facie an entry in the books of account disclosing the correct nature of the transaction is sufficient to come to the conclusion that no offence has been committed unless the assessing authority proves by some other evidence, apart from the finding given in the assessment order that the non-disclosure in the return is because of the deliberate action on the part of the assess to evade the tax.”

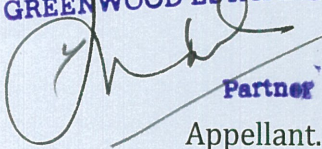
- q. The Honourable STAT in the case of Karnataka Silk Marketing Board Limited, Janagam VS State of AP (57 APSTJ 125) held as follows:-

“Proviso to sub Section (1-B) of Section 14 of the APGST Act, 1957 mandates the assessing authority to give the dealer a reasonable opportunity of being heard before levying such a penalty for non-furnishng of a certificate of audit and other statements attested by a Chartered Accountant within the time stipulated by Rule 17 (5-A) of the APGST Rules, **which is not automatic**, as the dealer availing of a reasonable opportunity of being heard, could assign valid and genuine reasons for such a delay, leaing an in-built discretion to the assessing authority to waive penalty for such a delayed furnishing of the certificate of audit and other statements.”

- r. 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.

- s. 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.
- t. In view of the above grounds and the other grounds that may be urged at the time of hearing the appellant prays the Honourable Appellate Deputy Commissioner to set aside the impugned penalty order and allow the appeal.

For GREENWOOD ESTATES

Partner
Appellant.

FORM OF AUTHORISATION

FORM 565

[See Rule 65(7)]

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

To,

**The Appellate Dy. Commissioner (CT)
Punjagutta Division,
Nampally, Hyderabad**

Date Month Year

	07	2020
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TIN / GRN	36389317452
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I, Sohay Modi 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 Appellate Dy. Commissioner(CT), Punjagutta Division, Hyderabad (State the Tax Authority) the proceedings (describe the proceedings) _____/VAT before the said (State the Tax Authority) the Appellate Dy. Commissioner (CT), Punjagutta Division, 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 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

For GREENWOOD ESTATES
*
Partner
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, Shaik Yasin Ch.Vamsi Krishna
Chartered Accountant, Chartered Accountant Chartered Accountant
Flat No.303, 'ASHOKA SCINTILLA'
H.No.3-6-520, Opp.: to KFC
Himayathnagar Main Road,
Hyderabad -500 029

DECLARATION

FORM APP 400A

[See under Section 31(1)] [Rule38 (2)(d)]

	Date	Month	Year5
TIN / GRN 36389317452		07	2020

From, M/s. Green Wood Estates, 5/4/187/344, 2 nd Floor, M.G. Road, Secunderabad – 500 003.	To The Appellate Dy. Commissioner (CT) Punjugutta Division, Nampally, Hyderabad
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I Soham Modi s/o, Satish Modi appellant named in the appeal preferred herein as M/s. Green Wood Estates, Secunderabad (Dealer/Firm Name) with TIN/GRN: 36389317452 hereby declare that

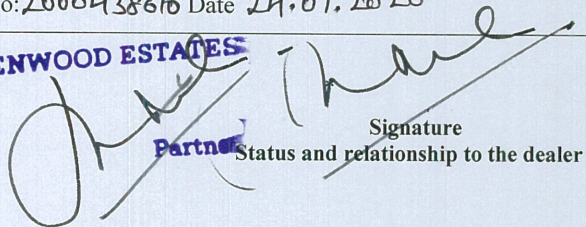
* the tax admitted to be due, or of such instalments as have been granted and the payment of 12.5% of the difference of tax assessed by the authority have been paid, for the relevant tax period in respect of which the appeal is preferred, the details of which are given below.

* no arrears are due from me for the relevant tax period for which appeal is preferred due to the reasons:

12.5% Disputed Penalty Rs.27,453/-

Total Penalty Paid:	
a) Cheque/DD particulars	Number _____ Date _____ Bank _____ Branch: _____
b) Cash Particulars:	Receipt No: _____ Date: _____
c) Challan particulars:	E- receipt Challan No: <u>2000438610</u> Date <u>24.07.2020</u>

For GREENWOOD ESTATES


Signature
Partner
Status and relationship to the dealer

(* Strike off which is not applicable)

APPLICATION FOR STAY OF COLLECTION OF DISPUTED PENALTY

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

01. Appeal Office Address:

To,
The Appellate Deputy Commissioner (CT)
Punjagutta Division,
Hyderabad

Date Month Year

	07	2020
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02	TIN	36389317452
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03. Name : M/s. Green Wood Estates,
Address : 5/4/187/344, 2nd Floor, M.G. Road,
Secunderabad – 500 003.

04.	Tax period	2013-14 & 2014-15(upto May'2014)/VAT/Penalty
05.	Authority passing the order or proceeding disputed.	Penalty order no.56483 dt.31/03/2020 passed by Deputy Commercial Tax Officer-II Maredpally Circle, Begumpet Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	25/06/2020
07.	(1) (a) Tax assessed	Rs.2,19,626/-
	(b) Tax disputed	NIL
	(2) Penalty / Interest disputed	Rs.2,19,626/-
08	Amount for which stay is being sought	Rs.2,19,626/-
09.	Address to which the communications may be sent to the applicant.	M/s. Green Wood Estates, 5/4/187/344, 2 nd Floor, M.G. Road, Secunderabad – 500 003.

For GREENWOOD ESTATES

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF STAY

- 1.) Substantial question of facts and law that may 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 grounds that are stated in the main appeal may kindly be read as grounds of this appeal.
- 4.) The appellant has already paid 12.5% of disputed penalty for the purpose of admission of the appeal and hence it is requested grant stay on the balance disputed penalty till the disposal of the appeal.
- 5.) In this regard the appellant relied on the latest decision of the Hon'ble Supreme Court in a case wherein the Hon'ble Court dismissed the SLP filed against the order of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada Vs. Sri Dedeepriya Paints in Diary No.11711 of 2019 dt.22/04/2019.

The Honourable High Court of Andhra Pradesh & Telangana in its decision in WP No.20922 of 2018 dated 22.06.2018 in the case of Sri Dedeepriya Paints Vs Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada held as follows:-

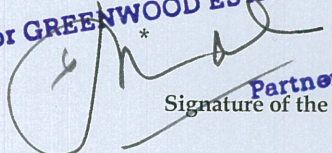
"When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal".

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed penalty of Rs.2,19,626/- pending disposal of the appeal.

VERIFICATION

I, Sohay 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 24 day of July'2020

For GREENWOOD ESTATES

Partner
Signature of the Dealer(s)

Signature of the Authorised Representatives if any

(U)

Sir,

I enclose herewith attachment folder containing Form APP-400, Grounds of Appeal and Authorization for the year 2013-14 & 2014-15/VAT/Penalty

Please take print outs on plain white paper duly sign and stamp in appropriate places (i.e, * mark place).

- 1) Form APP 400 4 sets – Plain white paper
- 2) Grounds of Appeal 4 sets - Plain white paper
- 3) Authorization (Form-565) 3 sets Plain white paper
- 4) Form APP 400A 3 sets - Plain white paper
- 5) Form APP 406 4 sets – Plain white paper
- 6) 12.5% disputed penalty 2- sets – Plain white paper/letter head – Pay online only
then submit to concerned assessing authority and send
to xerox copy for submission before ADC.
- 7) Pay Rs.1,000/- towards challan amount before ADC.
- 8) Send original order dt.31/03/2020 passed by DCTO-II, Maredpally Circle,
Hyderabad.

From 01/03/2020 onwards ADC appeals are filed online and manual:-

Please send you VAT login Id i.e TIN and password.

After signature Scan the following documents and send to our office:-

- a) Signed copies of the Statement of facts and grounds of appeal.
- b) order dt.31/03/2020
- c) 12.5% disputed PENALTY challan copy.

Madhavi

O/o.M.Ramachandra Murthy, FCA

Tel.:040-40248935/36