

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE ADDITIONAL COMMISSIONER (ST)
(CCW) (FAC)**

**OFFICE OF THE COMMISSIONER OF STATE TAX,
TELANGANA STATE, HYDERABAD**

PRESENT: SMT. K. HARITHA.M.A (Eng)

ACO No.313/2020

CCT's Ref No. LIII(1)/232 /2020

Date:-26-11-2020

Sub:-**STAY PETITION** – TVAT Act, 2005 – M/s Green Wood Estates, Hyderabad – For the tax period 2013-14 to 2014-15 (upto to June 2014)- Stay petition filed for stay of collection of tax – Personal Hearing allowed – Dealer availed personal hearing – Orders issued – Regarding.

- Ref:-
1. DCTO-II Marredpally Circle, VAT assessment order AAO.No.56483, dated: 31.03.2020.
 2. AJC (ST) Punjagutta Division in Order No 1776 in Appeal No.BV/38/2020-21, dated 25.09.2020.
 3. Stay Application in Form APP 406, dated 08.10.2020 filed by the dealer.
 4. Hearing Notice in CCT's Ref T.S L.III(1)/232/2020, dt. 11.11.2020.

ORDER:

M/s Green Wood Estates, Hyderabad, are registered dealers and assessee on the rolls of Assistant Commissioner (ST) M.G. Road-S.D. Road Circle ('AC' for short). Vide reference 1st cited, the Deputy Commercial Tax Officer-II Marredpally Circle has passed order for the tax period 2013-14 to 2014-15 (upto to June 2014) under the VAT Act and confirmed penalty with of Rs. 2,19,626/-

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. 1776 in Appeal No.BV/38/2020-21, dated 25.09.2020. Aggrieved by the order passed by the AJC the dealer now filed stay petition before undersigned seeking stay of collection of penalty tax.

Accordingly, personal hearing was allowed to represent the case. M/s Sri M. Ramachandra Murthy, Chartered Account and Authorized Representative ('AR' for short) of the dealer availed personal hearing on 11.11.2020 and argued the case on the following grounds which reproduced below:

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 imposed unless the party obliged, either acted deliberately in defiance of not ordinarily be 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 and on a consideration of all the relevant circumstances". be exercised judicially
- 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 (1) 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) O. 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 Kumawat Udhyog (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 assessee 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 furnishing 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, leaving 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 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.

Thus, the appellant has requested to grant stay of collection of penalty tax.

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 penalty tax out of the total penalty tax of **Rs. 2,19,626/-** on a condition that the appellant petitioner shall pay **50%** of the penalty tax

i.e. **Rs. 1,09,813/-** within two 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) - (CCW) (FAC)

To

M/s Green Wood Estates, Hyderabad.

✓ Through the Assistant Commissioner (ST) M.G. Road-S.D. Road Circle,
 (Induplicate) for service and return of served copy immediately.

Copy to the Assistant Commissioner (ST) M.G. Road-S.D. Road Circle.

Copy to the Joint Commissioner (ST), Begumpet Division.