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

GREEN WOOD ESTATES

Date : 9th March 2020

To,
The Deputy Commercial Tax Officer-II,
Maredpally Circle,
Begumpet Division,
Hyderabad.

Sir,

Sub: TVAT Act, 2005 – M/s. Greenwood Estates, M. G. Road, Secunderabad--Notice of penalty in form VAT 203A dated 29/02/2020- Objections called for – Reply filed – Reg.

Ref:1) DCTO-II, Maredpally Circle penalty notice in Form VAT 203A dated 29.02.2020.

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We submit that we are in receipt of the notice of penalty in Form VAT 203A dated 29/02/2020 under the TVAT Act, 2005 (for short Act) proposing levy of penalty of Rs. 96,819/- under Sec. 53 (1)(ii) which is equal to 25% of the alleged under declared tax of Res. 3,87,278 as per the assessment order dated 29-02-2020. We request you to kindly consider our objections on the following grounds:-

We submit that aggrieved by the assessment order in Form VAT 305 dated 29/02/2020, we are in the process of fining appeal before the Appellate Deputy Commissioner (CT), Punjagutta Division. We request you to kindly defer the penalty proceedings till the disposal of our appeal on tax by the said Appellate Authority.

We submit that we have reported actual sale considerations in the returns filed and paid tax on 25% of such gross consideration, but the assessing authority has taken the gross figures from the P&L Account, compared and levied tax on 25% of such figures. 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. The levy of tax of Rs.3,87,278 is not correct in the assessment order. Hence the proposal to levy penalty @25% on this disputed tax is not correct and is therefore to be withdrawn.

Endorsement Dated 16.03.2020

The dealers are here by granted personal Hearing on 17-03-2020 at 11.00 AM

[illegible]
16/03/2020.
DCTO II
Maredpally circle

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Even otherwise we submit that as per the following settled law, there cannot be any levy of penalty. It is the legal plea entertained by us.

Without prejudice to the above 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".

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.

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."

In the case of **BrugumallaVenkatappaiah Sons & Co. Vs. CTO (1973) 32 STC 34 theHon'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.

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

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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.

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. We particularly place reliance on this binding decision. .

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.

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.

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.

Levy of penalty cannot be a matter of routine. The assessing authority is not duty bound to levy such penalty unless the facts coerce him to do so. Issue of show cause notice cannot be a mere formality.

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

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(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."

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."

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."

As the Proviso under Section 53 of APVAT Act, 2005 is also to the same effect of giving reasonable opportunity, the above decision 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. We therefore request to kindly follow this binding decision and drop the proposal.

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GREEN WOOD ESTATES

In view of the above we request you to kindly drop the proposal to levy penalty. In case you want to proceed further we request you to kindly provide opportunity of personal hearing to explain the case in detail.

Thanking you,

Yours faithfully

For M/s Green Wood Estates

Authorized Signatory.

Encl: As above.

Received copy
16/03/2020
DCTO

OFFICE OF THE
ASST. COMMISSIONER (ST)
16 MAR 2020
MARREDPALLI CIRCLE,
BEGUMPET DIVISION.

st02-mply@tgct.gov.in