

**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. 311/2020

CCT's Ref No. LIII(1)/231 /2020

Date:- 26-11-2020

Sub:-**STAY PETITION** – TVAT Act, 2005 – M/s. Alpine Estates Secunderabad, - For the tax period 2013-14 - Stay petition filed for stay of collection of disputed Tax – Personal Hearing allowed – Dealer availed personal hearing – Orders issued – Regarding.

- Ref:-
1. AC(ST) M.G. Road-S.D Road Circle, VAT assessment order AO.No.52195, Dated 31.03.2020.
 2. AJC (ST) Punjagutta Division in Order No 1774 in Appeal No.BV/32/2020-21, 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)/231/2020, dt. 11.11.2020.

ORDER:

M/s. Alpine Estates Secunderabad, 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 Asst. Commissioner (ST) M.G. Road-S.D Road Circle has passed order for the tax period 2013-14 under the VAT Act and confirmed disputed tax with of Rs. 14,67,376/-

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. 1774 in Appeal No.BV/32/2020-21, dated 12-03-2020. Aggrieved by the order passed by the AJC the dealer now filed stay petition before undersigned seeking stay of collection of disputed 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:

1. At the outset it is submitted that the impugned assessment order is highly illegal, arbitrary and is passed against the principles of natural Justice.
2. It is submitted that the appellant has produced all the relevant records, books of account in connection with the audit notice issued by the learned Ac within the time allowed by him. However, the learned AC without properly understanding the nature of business conducted by the appellant and without proper appreciation of the provisions of the TVAT Act relating to the liability of the builders under the TVAT has issued a show cause notice proposing to levy huge amount of tax of Rs.14,67,376.
3. It is submitted that the appellant is in the business of constructing and selling apartments, villas etc and has opted for composition scheme under Section 4 (7) (d) of the Act for making payment of tax on the turnover relating selling of apratments/villas. It is submitted that as per Section 4 (7) (d) of the Act, the VAT dealer is liable to pay tax only on 25% of the gross amount received or receivable at the rate of 5% and the balance 75% of the gross consideration received is not liable to tax.

4. It is submitted that during the year the appellant has received total consideration of Rs.14,51,91,248/- towards constructing selling apartments/villas and accordingly paid tax of 5% on 25% of Rs.14,51,91,243/- ie. on Rs.3,62,97,812/- amounting to Rs.18,14,891/- and claimed exemption on the 75% of the turnover of Rs.10,90,93,431/- . However, the learned AC in the show cause notice proposed to levy tax even on this exempted turnover of Rs.10,90,93,431/- by allowing 75% exemption under Section 4 (7) @ of the Act which is highly illegal. The appellant therefore submits that learned AC has not properly considered the turnovers while issuing show cause notice and the same amount is confirmed without properly rechecking before levying tax. Hence the appellant submits that as the learned AC wrongly proposed to tax on exempted turnover under Section 4 (7) (d) of the Act, the same is liable to be set aside.

5. Rs.82,96,6237 The appellant submits that the learned AC in the impugned order has levied tax on the above alleged turnover by claiming that there is difference between the turnover reported in monthly VAT returns and the P & L account for the year. The appellant submits that the learned AC is not justified in levying tax on this turnover without allowing sufficient time to the appellant to verify the records and make a reply. It is submitted that this turnover is not liable to tax at all as this income is not relating to sale of apartments/villas during the year and the appellant will produce the relevant information at the time of personal hearing.

6. It is also submitted the learned AC is also grossly failed to give sufficient opportunity to the appellant to represent its case. It is submitted that during the period the entire city of Hyderabad is under lockdown and nobody in the private employment is allowed to open the offices. The appellant is not able to file effective reply for these reasons and expecting one more notice from the learned AC for submitting the objections. However, the learned AC without even giving the opportunity of personal hearing concluded in the assessment proceedings in hasty manner and on this ground also the impugned order is liable to be set aside.

Thus, the appellant has requested to grant stay of collection of disputed 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 disputed tax out of the total disputed tax of **Rs. 14,67,376/-** on a condition that the appellant petitioner shall pay **50%** of the disputed tax i.e. **Rs.7,33,688/-** 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. Alpine Estates Secunderabad.
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.