F4 - 07/08

PROCEEDINGS OF THE ADDITIONAL COMMISSIONER(CT) (LEGAL), OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH, HYDERABAD.

PRESENT: SRI D. RAMACHANDRA REDDY, B.Sc, B.L., CAIIB, M.B.A.,

Addl. CCT Order No. 2

CCT.Ref.No.L.III (2)/ 202/2012 Dated.03-01-2013

Sub:-Stay Petitions – M/s. Summit Builders, M.G.Road, Secunderabad - for the tax period 04/07 To 03/08/VAT - under APVAT Act'2005 – Heard the case – Orders – passed.

Ref:-1) CTO, M.G.Road Circle, Hyderabad Form VAT 305 TIN No:28790571789 A.O.33647/30-06-2012 dated.28-06-2012.
2) ADC (CT). Punjagutta, ADC order No.2338 stay Application R.No.53/2012-13 in Appeal No.BV/84/2012-13, Dated.07-12-2012.
3) Application in Form App 406, dt.19-12-2012 TIN No.28790571789 filed by the dealer ( received on 20-12-2012).
4) Personal Hearing on 28-12-2012.

◇◇◇

ORDER:

M/s. Summit Builders, M.G.Road, Secunderabad have filed a stay petition seeking stay of collection of disputed tax of Rs.2,39,706/- out of total disputed tax of Rs.2,73,950/- against the stay rejection orders of Appellate Deputy Commissioner (CT), Punjagutta vide reference 2nd cited. The case is posted for 29-12-2012 and Sri.M.Ramachandra Murthy, Chartered Accountant appeared and argued the case on 28-12-2012. Heared the case.

The issue involved in this case is the Assessing authority has determined under declared VAT out put tax to a tune of Rs.2,73,950/- basing on some information received from other State Government department and hence proposed under Rule 21(5) of APVAT Rules 2005.

The Authorised Representative submitted that the Commercial Tax Officer has passed the order without providing personal hearing opportunity to the appellant. Further the leaned Commercial Tax Officer has not provided any information to the appellant with regard to the information he received from other State Government Departments with respect to the works contracts receipts to the extent of Rs.2,87,29,625/-. The appellant submits that the assessment order passed is liable to be set aside on this ground alone. The Authorised Representative submits that the appellants are engaged in the business of execution of works contracts i.e., sale of independent houses and apartments and opted to pay tax @ 1% under composition under Section 4(7)(d) of APVAT Act'2005. During the period November'2006 to March'2007 appellant have sold the independent houses and registered the same with the sub-registrar's office and paid VAT @ 1% on the registration value which is the sale consideration received by the appellant from prospective purchasers. They have declared the said turnover in monthly returns for the said periods. It is not clear from the assessment order as well as from the show cause notice where from the works contracts receipts turnover of Rs.2,87,29,625/- for the period from April'2007 to March'2008 are extracted.

Submitting the above, the Authorised Representative requested to grant stay of collection of taxes.

I have carefully gone through the grounds of appeal filed by the Authorised Representative at the time of personal hearing. The Assessing Authority noticed that the dealers filed incorrect monthly returns in Form VAT-200 and suppressed the VAT output turnover of works contracts receipts consideration and resultant output tax on works contracts receipts and also suppressed VAT output Tax on purchases of goods from unregistered dealer. It is argued that the assessee is liable to pay 1% tax on the consideration received on sale of apartments etc on the value at the time of registration, but not on the value of packing place / finishing works under Section – 4(7)(d) of APVAT Act'2005, which appears to be incorrect. The extra consideration received, after registration of apartments, if it was not, part of sale as per registration, shall be treated as 'works-contract receipts' exigible to tax under section 4(7)(a) non-composition (or) under section 4(7)(b) "if assessee opts for composition. However the appellant preferred an appeal before the Appellate Deputy Commissioner (CT), Punjagutta which is pending now.

In view of the above, without expressing any opinion on the merits of the case, I feel it just and proper to grant stay of collection of **50%** of disputed tax of Rs.2,39,706/- out of total disputed tax of Rs.2,73,950/- for the tax period from 04/07 To 03/08 under APVAT Act'2005, subject to payment of **50%** of the total of disputed tax on or before **19-01-2013.** Further if any amount paid by the appellant at the time of / or after admission of this appeal shall be given credit. The stay will be in force, till disposal of appeal by the Appellate Deputy Commissioner (CT), Punjagutta. If the assessee fails to pay the amount as above, the assessing authority / competent authority is at liberty to enforce collection of entire disputed tax.

Additional Commissioner (CT) Legal, Government of Andhra Pradesh, Office of the Commissioner CT, Hyderabad

Reddy

ADDITIONAL COMMISSIONER (CT) (LEGAL)

3/1/13

To
M/s. Summit Builders, M.G.Road, Secunderabad
through the Commercial Tax Officer, M.G.Road Circle, Hyderabad
(in duplicate) for service and return of served copy immediately.

Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad
Copy to the Deputy Commissioner (CT), Begumpet Division, Hyderabad

From
M/s. Summit Builders
Soham Mansion, M.G. Road
Secunderabad.

To,
The Commercial Tax Officer,
M.G. Road Circle, Hyderabad.

Sir,

Sub: Stay Petition filed for the collected of disputed Tax – For the period from 04/07 to 03/08 /VAT - Reg.

Ref: Proceedings No. CCT. Ref. L.III(2)/202/2012 dated 03/01/2013 from the Addl. Commissioner (CT) Legal, Hyderabad.

******

As per the directions of the Additional Commissioner (CT) Legal, in his proceedings cited above, we are enclosing D.D./Cheque/Challan No.________________ dated __________ for Rs.1,02,731/- (Rupees. One Lakh Two Thousand Seven Hundred Thirty One only) as per the details furnished below.

| | |
|---|---|
| Disputed Tax | :Rs.2,73,950-00 |
| Stay granted for 50% of the Disputed Tax | :Rs.1,36,975-00 |
| Balance payable | :Rs.1,36,975-00 |
| Amount already paid at the time of admission of appeal before ADC(CT), Punjagutta Division vide Cheque .No.76201 dt.03/08/2012) | :Rs. 34,244-00 |
| | ---------------------- |
| Balance, Now Paid | :Rs. 1,02,731-00 |
| | ---------------------- |

Kindly acknowledge

Thanking you,

Yours faithfully
for **SUMMIT BUILDER**

Authorised Signatory
Encl.: As Above