

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.,
Member of the Commission

A.C. Orders : 100

CCT.Ref.No.L.III (2)/ 113/2013

Dated.20-06-2013

Sub:- Stay Petition – M/s. Summit Builders, M.G.Road, Secunderabad - filed stay petition seeking stay of collection of disputed tax of Rs.1,33,422/- for the Asst. year November'2006 to March'2007 / VAT under APVAT Act'2005 against the stay rejection orders passed by the ADC(CT), Punjagutta Division – Heard the case – Orders – passed.

- Ref:- 1) CTO, M.G.Road Circle Form VAT 305 CTD order NO. AO22461
TIN No.28790571789 dated 31-03-2012.
2) ADC(CT),Punjagutta, Stay Application R.No.16/2013-14 in Appeal
No.BV/30/2013-14 dated 18-05-2013.
3) Application in Form 406, dated.27-05-2013 filed by the dealer
(received in this office dt.31-05-2013).

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ORDER:

M/s. Summit Builders, M.G.Road, Secunderabad have filed stay petition seeking stay on collection of balance of disputed tax of Rs.1,16,744/- out of total disputed tax of Rs.1,33,422/- against the stay rejection orders passed by the Appellate Deputy Commissioner (CT), Punjagutta vide reference 2nd cited for the tax period November'2006 to March'2007 / VAT under APVAT Act'2005, pending their appeal before the Appellate Deputy Commissioner (CT), Punjagutta. The case is posted for 18-06-2013 Sri M.Ramachandra Murthy, Chartered Accountant has attended for personal hearing on 18-06-2013 and argued case. Heard the Case.

The main issue involved in this case is determination of under declared tax by Assessing Authority on account of non declaration of output turnover in the returns filed by the appellant.

The Authorised Representative submitted that the Commercial Tax Officer has passed the order without providing personal hearing opportunity to the appellant. Further the 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.4,54,61,362/-. Further the appellant submits that they 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. Further it was also stated in the order that appellant have purchased 4% goods like tools, bamboos, iron steel, coal and other consumables for Rs.54,269/- and 12.5% VAT goods like doors, windows, electrical goods, sanitary goods and water proofing material for Rs.5,97,634/- from other than registered VAT dealers of A.P., on which he has levied tax at differential tax of 3% and 11.5% respectively on these turnovers, which comes to the tune of Rs.70,356/- stating as required under section 4(7)(e) of APVAT Act'2005.

Further the Authorised Representative submitted that, even if for any reason the said clause (e) is made applicable, no tax need be paid at the higher rates because clause (e) is very clear in saying that under clause (e) tax is payable only at the rates applicable to those goods under the Act. In the present case appellant have opted for composition under Section 4(7)(d) of the Act. In respect of the goods used in the execution of works contract, the rate of tax is 4% of 25% of the consideration received or receivable. The rate applicable under the Act is 4% of 25%. Clause (e) does not authorize collection of tax at the full rate of 4% or 12.5%, as there is no mention of 'Schedules to the Act' in that clause. For example in respect of 'lease tax', in Section 4(8) of the Act it is specifically mentioned 'at the rates specified in the schedules'. As, such words do not find place in Section 4(7)(e), it cannot be assumed that the rates in the Schedules have to be applied. Further appellant have paid tax at the rate of 4% only under clause (d) and not at 1%. The appellant has

already paid tax 4% on the same goods the question of paying tax once again @ 4% does not arise. What has been reduced under clause (d) is only the quantum of turnover to 25% but the rate of tax of 4% has been retained. In the result no tax becomes payable either @ 4% or @ 12.5%.

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

I have carefully gone through the contentions of the appellant / Authorised Representative. The Assessing Authority has levied tax as per information received from other state Government departments and it was noticed that during 2006-07 the assessee received works contracts receipts considerations of Rs.4,54,61,362 including charges for extra civil works, charges for case passing and service tax payments etc., and hence proposed to levy tax and also the appellant has purchased materials from un-registered dealers and hence levied tax as applicable to such goods. However an appeal to this extent is pending before the Appellate Deputy Commissioner(CT), Punjagutta.

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 total disputed tax of Rs.1,33,422/- (out of which stay sought on Rs.1,16,744/-) under APVAT Act'2005, subject to payment of **50%** of the total disputed tax on or before **29-06-2013** and any amount paid at the time of / or after admission of appeal shall be given credit to the assessee. 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.



[Signature]
ADDITIONAL COMMISSIONER (CT)(LEGAL)

To

M/s. Summit Builders, M.G.Road, Secunderabad,
through the Commercial Tax Officer, M.G.Road Circle,
(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.