

A.P. HIGH COURT CASE STATUS INFORMATION SYSTEM

PENDING

STATUS OF : WP 19602 of 2007

STAGE : FOR ADMISSION

M/S. MEHTA & MODI HOMES, R/O. HYD. V/S THE OMMERCIAL TAX OFFICER
(AUDIT) & ANOTHER

PET. Advocate : BHASKAR REDDY VEMIREDDY

RES. Advocate : GP FOR COMMERCIAL TAX

SR-Number: /

District: HYDERABAD

Lower Court Number :

Subject : COMMERCIAL TAXES (MISC.MATTERS)

Last Time Listed On : 22-Oct-2007

Next Date Of Listing : 29-Oct-2007

Misc. Petitions filed :

WPMP 25241/2007

Connected Matters :

[Click Here to see the Order](#)

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Ap High Court - order

[Signature]
31/10/07

Land Line : 04423771022

**IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)**

THURSDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND SEVEN

:PRESENT:

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 19602 of 2007

Between:

M/s. Mehta & Modi Homes 5-4-187/3&4, 2nd Floor, M.G. Road, Secunderabad,
Rep. by its Partner Sri Soham Modi S/o. Satish Modi R/o. Hyderabad.

..... Petitioner

AND

- 1 The Commercial Tax Officer (Audit) Begumpet Division, Hyderabad.
- 2 The Commercial Tax Officer, M.G. Road Circle, Secunderabad.

.....Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an order or direction, more in the nature of Writ of Mandamus declaring the action of the 1st Respondent in passing the impugned Assessment order in Form VAT 305 dt.12-8-2007 as illegal, arbitrary high handed, without authority of law and jurisdiction and in violation of principles of natural justice and set aside the same and declare that the petitioner is liable to pay tax at the rate of 1% only on the value of the property under section 4 (7)(d) R/w Rule 17(4)(i) of A.P. VAT Act and the rules framed there under.

The petition coming on for hearing, upon perusing the petition and the affidavit filed in W.P., and the order of the High Court dated: 27-9-2007 made herein and upon hearing the arguments of Sri Bhaskar Reddy Vemireddy, Advocate for the Petitioner and of G.P. for Commercial Taxes, for the Respondents, the Court made the following

ORDER

**“List after two weeks.
Interim stay extended till next date.”**

// TRUE COPY //

ASSISTANT REGISTRAR

for ASSISTANT REGISTRAR

To

- 1 The Commercial Tax Officer (Audit) Begumpet Division, Hyderabad.
- 2 The Commercial Tax Officer, M.G. Road Circle, Secunderabad.
3. Two CCS to G.P.for Commercial Taxes, High Court of A.P.Hyderabad (OUT)
4. One CC to Sri Bhaskar Reddy Vemireddy, Advocate (OPUC)
5. one spare copy

HIGH COURT

AB
DRAFTED ON 11-10-2007

BNJ
&
RRJ

DATE: 04-10-2007

ORDER

WP. NO. 19602 OF 2007

INTERIM STAY EXTENDED



, petitioner.

On this ground alone, we allow the Writ Petition and quash the impugned assessment order dated 12-08-2007. However, the respondents-authorities shall be at liberty to issue notice to the petitioner and pass appropriate orders after hearing him in accordance with law. No costs.

(Bilal Nazki, J)

Dated 29th October, 2007

(Ramesh Ranganathan, J)

lur

[1] (2005) 142 STC 551

Notice Id: 23XG05VAT101/05/05/09

VAT101

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

NOTIFICATION OF VAT REGISTRATION

01. Tax Office Address.

M.G. Road Circle,
6-3-789, 3rd Floor, Pavani Prasad
Ameerpet Hyderabad
500016

DATE: 21/07/2005

02. TIN: 28840298894

03. Firm Address

Name	MEHTA AND MODI FRAMES		
Door No	5-4-187/3 AND 4	Street	M G ROAD
Locality	Town/City	SECUNDRABAD
District	Hyderabad	Pin	500003

Receipt of your application for registration dated 16-JUL-05 is acknowledged.

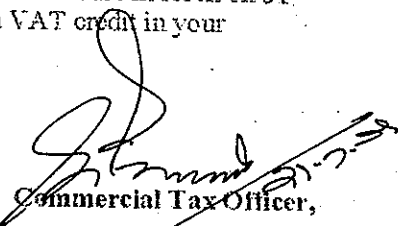
I am to notify you that your VAT TIN No. is
28840298894.

You must use this number when you issue VAT invoices, on all documents related to VAT and in all correspondence with the Commercial Taxes Department.

Your application has been accepted. Please find enclosed your VAT Certificate of Registration.

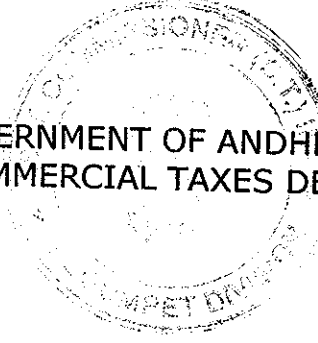
You should know that your registration under VAT is effective from **01-APR-05**. From that date you must charge VAT on all your taxable sales, and provide a VAT tax invoice to those of your customers who are registered VAT taxable persons.

If you have been charged VAT on goods and tangible capital goods and assets which are in stock on **31-MAR-05** you should apply to tax credit department so that you can claim a VAT credit in your returns.


Commercial Tax Officer,
VAT Registering Authority,
M.G. Road Circle,
Begumpet Division.

Encl: 1. FORM VAT105
2. Leaflets 01, 02 & 03

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT



Office of the
Deputy Commissioner(CT)
Begumpet Division, Hyd.

R.C.No.AVR/CTO-A/29/2006-07

Date:20.12.2007.

Sub:- APVAT Act'2005 – M/s.Mehta & Modi Houses – Issue of
Form VAT 305A – Reply filed – Reg.

Ref:- 1) Notice in form VAT 305-A dt.06.12.2007.
2) M/s.Mehta & Modi reply dated 19.12.2007.

* * * *

With reference to your reply 2nd cited you are here by requested to present in person/authorized representative and represent your case on 27.12.2007 at 11.00 A.M. in the office of the Deputy Commissioner(CT) Begumpet Division, 6th Floor, Pavani Prestige, Above R.S.Brothers, Ameerpet, Hyderabad – 500 016. This personal hearing is accorded to you as per your request as per your reference 2nd cited. In this connection you are requested to bring the following records for perusal by the undersigned.

- 1) Copies of all agreements entered with the prospective buyers at all stages.
- 2) The record relating to computation of turnovers in form VAT-200 for the months April'2005 to February'2007.

Commercial Tax Officer(Audit)
Begumpet Division, Hyd.

To
M/s.Mehta & Modi Homes
5-4-187/3 & A,
M.G.Road, Secunderabad.

Mehta & Modi Homes

5-4-187/3&4, III Floor, M.G. Road, Secunderabad - 500 003

Ph : 66335551

To,
The Commercial Tax Officer,
(Audit), O/o. The Deputy Commissioner,
Commercial Taxes, Begumpet Division,
Hyderabad.

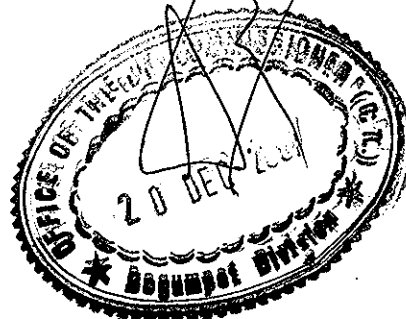
Date:19.12.2007

Sir,

Ref.: Your notice in form VAT 305A dated 6.12.2006.

1. We submit that we are in receipt of the above mentioned notice issued for the months from September, 2006 to February, 2007 stating that there is under declared tax to a tune of Rs. 36,10,728. We request to kindly consider our objections on the following grounds, as the proposal is not correct.
2. We submit that we are engaged in the construction and selling of apartments/buildings, bungalows etc., and we are covered by Section 4(7) (d) of the APVAT Act, 2005, liable to pay tax in respect of the execution of works contracts under composition scheme. Accordingly we are opted for composition scheme under the said clause. Two issues are raised in the notice. Firstly it is stated that we have not paid tax on the cost of land sold. Secondly it is stated that we have to pay tax under Section 4 (7) (C) of the Act and not under clause (d), as we have first sold the land to the customer and then did the works. We submit that this proposition is not correct.
3. We submit that we are in the business of selling bungalows to prospective customers along with several amenities. Accordingly, we have entered into agreement of sale with the prospective buyers for the sale of flat/bungalow by mentioning all the costs including land. Pursuant to the said agreement, we have registered the sale deed and entered into construction agreement. As per the terms of the agreement of sale, we have sold the land along with building to the buyers. We invite kind attention to the Advance Ruling given in the case of Mytas Hill County Private Limited in No. AR.Com/80/2006 dated 30.7.2006 wherein point 2 is similar to our case. It read as follows:

“In the second category, a piece of land belonging to the appellant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. In this situation there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also registered with the sub registrar”.



Mehta & Modi Homes

5-4-187/3&4, III Floor, M.G. Road, Secunderabad - 500 003

Ph : 66335551

4. On a consideration of this case, it is clarified that the dealer is entitled to pay tax on the entire consideration including the cost of the land at the rate of 1% only. Our case is similar to that of Maytas Hill County. We are liable to pay tax on the entire consideration received from the customer including the cost of the land @ 1%. As the Specified authority for Advance Ruling has already decided the issue, it cannot be said that we are liable to pay tax under Section 4 (7) (C). The Ruling given by the authority is binding on all the authorities in the State. The transaction mentioned in your notice has already been interpreted by the said authority. Our transaction therefore fall under Section 4 (7) (d) only. We are entitled to pay tax a the rate of 1% only. Accordingly we have paid tax on the entire sale consideration including land value @ 1%. Please find enclosed the details of VAT paid upto date. In view of the above we request to kindly drop the proposal. We are herewith enclosing one set of agreement and sale deed for record. We also request to afford us an opportunity of personal hearing before conclusion of the proceedings.

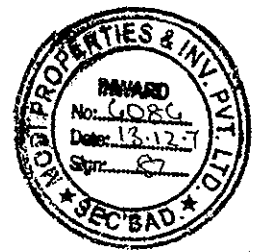
Thank You.

Yours sincerely,
For MEHTA & MODI HOMES,

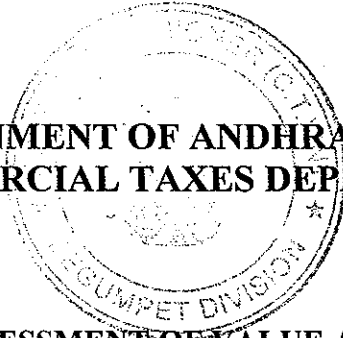


Soham Modi,

Encl.: as above.



GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT



FORM VAT 305A

NOTICE OF ASSESSMENT OF VALUE ADDED TAX

[See Rule 25 (5)]

Date Month Year
06 12 2007

01. Tax Office Address:
Asst Commissioner(CT)-I
Begumpet Division,
Ameerpet, Hyderabad.

02. TIN 2 8 8 4 0 2 9 8 8 9 4

03. Name: M/s. Mehta & Modi Homes
Address: 5-4-187/3 and 4
M.G. Road, Secunderabad.

Examination of your records on 15-03-2007 has shown that correct amounts of Value Added Tax have not been declared in the VAT returns listed below. Under the provisions of APVAT Act 2005 the following tax amounts are proposed to be assessed for the tax periods at shown below

Tax Period	Particulars Input tax/ Out put tax)	Tax Declared/ net credit/ or Refund Claimed	Tax Found To be due/ net credit/ net credit/	Tax Over declared Due to Dealer	Tax under Declared Due to tax Department	Penalty At 100%	Interest @ 1% of month(s)	Tax Due to Tax Department
1	2	3	4	5	6	7	8	9
Sep'06		171136	786363		615227			615227
Oct'06		151413	605652		454239			454239
Nov'06		179178	716712		537534			537534
Dec'06		190932	824392		633460			633460
Jan'07		216773	867092		650319			650319
Feb'07		239983	959932		719949			719949
					3610728			3610728

Total amount due to Tax Department: Rs.36,10,728-00

Explanation for the above proposals:

As per the authorization given by the Deputy Commissioner(CT) Begumpet Division in Form VAT 304 dt: 6-3-2007 conducted audit of accounts. The tax payer is a contractor and opted to pay tax @ 1% on the receivables as per section 4 (7) (d) and filed Form 250 for the entire project, On verification of books of accounts at the time of

audit and as per the sale details furnished by the dealer, the dealer sold vacant Plots by executing sale deed before the sub-registrar and paid the stamp duty accordingly. Consequent on sale of plot the dealers are entering into a separate agreement for construction and the dealer has paid the tax @ 1% on the contractual receipts by excluding the cost of land which was sold separately by sale deed.

The tax paid by the dealer @1% on the contractual receipts as per section 4 7(d) of APVAT Act is not in order. Section 4 (7) (d) clearly indicates that only a contractor who involved in construction and selling of residential buildings apartment, etc, may opt for composition in terms of section 4(7)(d). The transaction goes out of preview of section 4(7)(d) soon after sale deed is completed. Any works done after sale is to be considered as out of purview of section 4(7)(d). Any construction work under taken after sale of plot would fall under the provisions of section 4(7)(c) and the contractor is liable to tax @ 4% on the receipts/receivables.

The dealer has paid service tax on his services provided as a contractor. The service tax component is also added to the turnover and liable for tax @ 4%.

Total VAT Due to the Tax Department is Rs.36,10,728.

The proposal was explained to the dealers and the dealers have filed agreement in VAT Form 301A, dt:20-6-2007 and that orders were also passed in Form VAT 305, dt:02-8-2007. However, the dealers have at this stage filed appeal before the Hon'ble High Court vide W.P..No.19602/2007. The Hon'ble High Court was pleased to issue orders directing that the assessing authority shall be at liberty to issue notice to the petitioners and pass appropriate orders after hearing the dealers in accordance with law. Accordingly, with due respects to the orders of Hon'ble High Court the present show cause notice is issued.

Hence, M/s. Mehta & Modi Homes, are requested to file their objections and documentary evidence if any, within (10) days from date of receipt of this notice. Failing which orders will be passed as proposed without further notice.

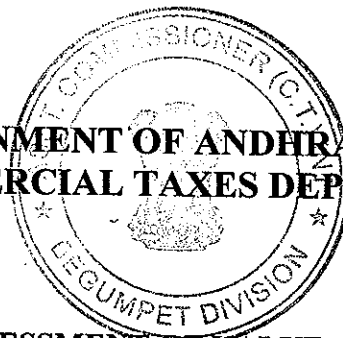


Commercial Tax Officer(Audit)
O/o.the Deputy Commissioner(CT)
Begumpet Division: Hyd.

Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Division, Hyd-16.



**GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT**



FORM VAT 305A

NOTICE OF ASSESSMENT OF VALUE ADDED TAX

[See Rule 25 (5)]

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01. Tax Office Address:
Asst Commissioner(CT)-I
Begumpet Division,
Ameerpet, Hyderabad.

02. TIN	2	8	8	4	0	2	9	8	8	9	4
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The tax paid by the dealer @1% on the contractual receipts as per section 4 7(d) of APVAT Act is not in order. Section 4 (7) (d) clearly indicates that only a contractor who involved in construction and selling of residential buildings apartment, etc, may opt for composition in terms of section 4(7)(d). The transaction goes out of preview of section 4(7)(d) soon after sale deed is completed. Any works done after sale is to be considered as out of purview of section 4(7)(d). Any construction work under taken after sale of plot would fall under the provisions of section 4(7)(c) and the contractor is liable to tax @ 4% on the receipts/receivables.

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Hence, M/s. Mehta & Modi Homes, are requested to file their objections and documentary evidence if any, within (10) days from date of receipt of this notice. Failing which orders will be passed as proposed without further notice.



Commercial Tax Officer(Audit)
O/o.the Deputy Commissioner(CT)
Begumpet Division: Hyd.

Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Division, Hyd-16.

*To. Mr. Devendar Reddy
DCTO*

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.19602 of 2007

Dated: 29-10-2007

Between:

M/s.Mehta & Modi Homes,
Hyderabad.

...Petitioner

and

1.The Commercial Tax Officer (Audit),
Hyderabad and another.

...Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.19602 of 2007

Dated: 29-10-2007

Order: (Per The Hon'ble Sri Justice Bilal Nazki)

Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents. With their consent, the Writ Petition is being disposed of at this stage.

The assessment order dated 12-08-2007 passed by the first respondent-Commercial Tax Officer (Audit) has been challenged in this Writ Petition mainly on the ground that the said order was passed behind the back of the petitioner without giving him even a notice.

Respondents-authorities have filed their Counter in which it is not disputed that no notice of show cause was given to the petitioner before the impugned assessment order was passed. But it is stated that during the inspection, when certain discrepancies were found, the petitioner had agreed for passing of the assessment order by signing an agreement contained in Form VAT-301A, accepting the amount under declaration.

Such questions have already been considered by a Full Bench of this Court in a judgment reported in **Ambica Lamp House vs. Commercial Tax Officer (INT)-I Enforcement, Hyderabad and another**^[1].

In view of the same, we are convinced that the impugned assessment order dated 12-08-2007 was passed without giving an opportunity of hearing to the

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

W.P.No. 19602 of 2007

Between:-

M/s.Mehta & Modi Homes,
M.G. Road, Secunderabad.

... Petitioner

AND

1. The Commercial Tax Officer (Audit),
Begumpet Division, Hyderabad.

2. The Commercial Tax Officer,
M.G.Road Circle, Secunderabad.

.... Respondents

COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

I, A.B. Prasada Rao, S/o. Ramalingaiah, aged 57 years, resident of Hyderabad, do hereby solemnly and sincerely affirm and state as under:

1. I am the Commercial Tax Officer (Audit), Begumpet Division, Hyderabad, the 1st respondent herein. As such I am well acquainted with the facts of the case as per records. I have read the affidavit of the petitioner filed in support of the writ petition and submit that it does not disclose any valid or substantial grounds for the grant of any relief as prayed for. The petitioner is put to strict proof of all the material allegations made therein except those that are specifically traversed hereunder.

2. It is submitted that the petitioner is a registered dealer under the provisions of A.P.VAT Act, 2005 and is an assessee on the rolls of 2nd respondent. It has filed an application in Form VAT-250 and opted to pay tax by way of composition in terms of Sec.4(7) read with Rule 17.

3. It is humbly submitted that a close reading of Section 4(7) clearly indicates that a dealer who is exclusively engaged in the Construction and Selling of residential apartments, houses, buildings or commercial complex may opt to pay tax by way of composition at the rate of 4% of 25% (i.e., 1%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty, whichever is higher


Attestor.

DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)
BEGUMPET DIVISION, HYDERABAD


Deponent.

Commercial Tax Officer (Audit)
Off. The Dy. Commissioner (CT)
Begumpet Division, Hyd-16.

subject to such conditions as may be prescribed. The statute clearly indicates that only a dealer engaged in construction and selling of residential apartments etc., may opt for composition in terms of section 4(7) (d). The transaction goes out of the purview of Sec.4 (7) (d) soon after sale is completed. Any work done after sale is to be considered as out of the purview of Section 4(7) (d). Any construction work undertaken after sale of apartment/plot would fall under the provisions of Sec.4 (7) (c) and the contractor/dealer has to pay tax under Sec.4 (7) (c) at the rate of 4% on the entire turnover if the dealer has opted to pay tax by way of composition.

4. It is submitted that in the instant case, the dealer has first sold the plot and registered the same in the name of the buyer and then undertook construction by entering into another contract. The dealer has entered into the two agreements separately, one for sale of plot and the other for construction of the apartments. The provisions of section 4(7) (d) contemplate construction and sale of houses as a combined transaction and composition at a lower rate is provided. But where there is a separate transaction of construction after the sale of plot it would be a different activity and the dealer would be a works contractor who may opt for composition under Sec. 4(7) (c). Accordingly, after inspection it was noticed that the dealer was a works contractor and can not opt for composition u/sec. 4 (7) (c) since he undertook construction of houses separately. This is also evident from the fact that the dealer also has shown the turnover of construction only leaving the turnover of plot which was already sold under a separate agreement.

5. It is submitted that the dealer had filed Form VAT-250 opting to pay tax by way of Composition. It is a common form for opting to pay tax by way of composition. It may be fact that the dealer had filed returns in Form VAT-200 and remitted the tax @ 1% as shown by him. But, the turnovers reported in the returns are subject to verification and the turnovers and the rate of tax admitted by the dealer can be considered as correct and complete only after verification and audit of books of accounts of the dealer. Since, the turnovers reported and rate of tax adopted were found not in conformity with the

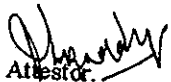
[Signature]
Attestor.
DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)
BEGUMPET DIVISION, HYDERABAD

[Signature]
Deponent
Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Division, Hyd-48.

provisions of VAT Act and the Rules, the present assessment was made rectifying the turnovers and the rate of tax shown in VAT-200 returns. Normally a dealer who opts for composition u/sec. 4(7)(d) computes the total turnover of sale of plot and cost of construction while in the present case the dealer has shown only the cost of construction. After the sale of plot, the construction made by the dealer would only be execution of a works contract and he is liable to pay tax by way of composition at the rate of 4%. As such the construction made by the dealer was treated as execution of works contract liable to tax by way of composition in terms of the provisions of Sec.4(7)(c) as the dealer has filed Form-250.

6. It is submitted that audit of the dealer was undertaken by the 1st respondent after issue of a notice in Form VAT-304 dated 06.03.2007. The said notice was served on the dealer on 14.03.2007. The audit was proposed on 15.03.2007 and on the same day the 1st respondent, Commercial Tax Officer (Audit), along with his staff had visited the business premises and requested the dealer to furnish the necessary information. Sri A. Shanker Reddy, Manager (Admn.) has given a statement stating that they were busy in finalisation of accounts and requested time up to 25.03.2007 to furnish the information. The dealer took further time up to 20-06-2007 to furnish the information. On 20.06.2007, after inspection, the agreement in Form 301A was signed by Sri A. Shanker Reddy, the manager of the dealer in which it was clearly agreed that as the tax payer has entered into a separate agreement with the plot owner for construction, the amounts received are liable to tax @ 4% which works out to Rs.50,80,246/- for the period September, 2006 to March, 2007.

7. It is respectfully submitted that Form VAT-301A contains an Agreement to be furnished by the dealer after verification of records by the department. The dealer has the option to sign the agreement if he accepts the under declaration. The agreement was signed by the dealer voluntarily on 20.06.2007 whereas the assessment order was passed on 02.08.2007 and was served on 08.08.2007. Under the circumstances, VAT 301A form could be construed as a notice of assessment. The dealer has kept quiet for all these days


Attestor.

"DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)"
BEGUMPET DIVISION, HYDERABAD



Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begurpet Division, Hyd-16.

and after the time for appeal has lapsed and is now coming forward with a plea that form VAT-301A was obtained by the inspecting authority by coercion. This averment is untrue and is clearly an after thought. It is submitted that payment of tax has to be made as per the provisions of the Act and would not depend on the fact of collection of tax at the point of incidence.

8. I humbly submit that it is not true say that assessment order was passed in utter violation of principles of natural justice relying on Form 301A obtained from the petitioner under threat and coercion. As submitted above Form-301A contains an agreement filed by the dealer. There was ample time for protest by the petitioner between the date of furnishing of Form-301-A and date of service of assessment order in Form VAT-305 and as such there was no violation of principles of natural justice. The assessment order dated 02.08.2007 was served on the dealer on 08.08.2007 and the time for payment of demand has arisen on 08.09.2007. The petitioner has chosen to invoke the jurisdiction of this Hon'ble Court after the time for appeal u/sec. 31 of the AP VAT Act, 2005 has lapsed and when the demand for payment of tax is made.

9. In view of the above, it is submitted that there are no merits in the writ petition. It is therefore prayed that the Hon'ble court be pleased to dismiss the same in the interests of justice.

Solemnly and sincerely affirmed on this the 3rd day of October, 2007 and signed his name in my presence at Hyderabad.


 DEPONENT
 Commercial Tax Officer (Audit)
 C/o. The Dy. Commissioner (CT)
 Begumpet Division, Hydr-48.


 ATTESTOR

"DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)"
 BEGUMPET DIVISION, HYDERABAD

Copy to
Sri V. Bhaskar Reddy
AN

DISTRICT: *Hyderabad*
IN THE HIGH COURT OF JUDICATURE
OF ANDHRA PRADESH: AT HYDERABAD

WP.No. *19602* of *2007*

COUNTER AFFIDAVIT

MS 67
4/11/07

Filed by:

SPL. STANDING COUNSEL FOR
COMMERCIAL TAXES
C.No. 9459/9460

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

W.P.No. 19602 of 2007

Between:-

M/s.Mehta & Modi Homes,
M.G. Road, Secunderabad.

... Petitioner

AND

1. The Commercial Tax Officer (Audit),
Begumpet Division, Hyderabad.

2. The Commercial Tax Officer,
M.G.Road Circle, Secunderabad.

.... Respondents

COUNTER AFFIDAVIT FILED BY THE 1ST RESPONDENT

I, A.B. Prasada Rao, S/o. Ramalingaiah, aged 57 years, resident of Hyderabad, do hereby solemnly and sincerely affirm and state as under:

1. I am the Commercial Tax Officer (Audit), Begumpet Division, Hyderabad, the 1st respondent herein. As such I am well acquainted with the facts of the case as per records. I have read the affidavit of the petitioner filed in support of the writ petition and submit that it does not disclose any valid or substantial grounds for the grant of any relief as prayed for. The petitioner is put to strict proof of all the material allegations made therein except those that are specifically traversed hereunder.

2. It is submitted that the petitioner is a registered dealer under the provisions of A.P.VAT Act, 2005 and is an assessee on the rolls of 2nd respondent. It has filed an application in Form VAT-250 and opted to pay tax by way of composition in terms of Sec.4(7) read with Rule 17.

3. It is humbly submitted that a close reading of Section 4(7) clearly indicates that a dealer who is exclusively engaged in the Construction and Selling of residential apartments, houses, buildings or commercial complex may opt to pay tax by way of composition at the rate of 4% of 25% (i.e., 1%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty, whichever is higher

Attestor:

DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)
BEGUMPET DIVISION, HYDERABAD

Dependent.

Commercial Tax Officer (Audit)
O/a. The Dy. Commissioner (CT)
Begumpet Division, Hyd-16.

subject to such conditions as may be prescribed. The statute clearly indicates that only a dealer engaged in construction and selling of residential apartments etc., may opt for composition in terms of section 4(7) (d). The transaction goes out of the purview of Sec.4 (7) (d) soon after sale is completed. Any work done after sale is to be considered as out of the purview of Section 4(7) (d). Any construction work undertaken after sale of apartment/plot would fall under the provisions of Sec.4 (7) (c) and the contractor/dealer has to pay tax under Sec.4 (7) (c) at the rate of 4% on the entire turnover if the dealer has opted to pay tax by way of composition.

4. It is submitted that in the instant case, the dealer has first sold the plot and registered the same in the name of the buyer and then undertook construction by entering into another contract. The dealer has entered into the two agreements separately, one for sale of plot and the other for construction of the apartments. The provisions of section 4(7) (d) contemplate construction and sale of houses as a combined transaction and composition at a lower rate is provided. But where there is a separate transaction of construction after the sale of plot it would be a different activity and the dealer would be a works contractor who may opt for composition under Sec. 4(7) (c). Accordingly, after inspection it was noticed that the dealer was a works contractor and can not opt for composition u/sec. 4 (7) (c) since he undertook construction of houses separately. This is also evident from the fact that the dealer also has shown the turnover of construction only leaving the turnover of plot which was already sold under a separate agreement.

5. It is submitted that the dealer had filed Form VAT-250 opting to pay tax by way of Composition. It is a common form for opting to pay tax by way of composition. It may be fact that the dealer had filed returns in Form VAT-200 and remitted the tax @ 1% as shown by him. But, the turnovers reported in the returns are subject to verification and the turnovers and the rate of tax admitted by the dealer can be considered as correct and complete only after verification and audit of books of accounts of the dealer. Since, the turnovers reported and rate of tax adopted were found not in conformity with the

[Signature]
Attestor,
DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)
BEGUMPET DIVISION, HYDERABAD

[Signature]
Deponent,
Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (GT)
Begumpet Division, Hy-42.

provisions of VAT Act and the Rules, the present assessment was made rectifying the turnovers and the rate of tax shown in VAT-200 returns. Normally a dealer who opts for composition u/sec. 4(7)(d) computes the total turnover of sale of plot and cost of construction while in the present case the dealer has shown only the cost of construction. After the sale of plot, the construction made by the dealer would only be execution of a works contract and he is liable to pay tax by way of composition at the rate of 4%. As such the construction made by the dealer was treated as execution of works contract liable to tax by way of composition in terms of the provisions of Sec.4(7)(c) as the dealer has filed Form-250.

6. It is submitted that audit of the dealer was undertaken by the 1st respondent after issue of a notice in Form VAT-304 dated 06.03.2007. The said notice was served on the dealer on 14.03.2007. The audit was proposed on 15.03.2007 and on the same day the 1st respondent, Commercial Tax Officer (Audit), along with his staff had visited the business premises and requested the dealer to furnish the necessary information. Sri A. Shanker Reddy, Manager (Admn.) has given a statement stating that they were busy in finalisation of accounts and requested time up to 25.03.2007 to furnish the information. The dealer took further time up to 20-06-2007 to furnish the information. On 20.06.2007, after inspection, the agreement in Form 301A was signed by Sri A. Shanker Reddy, the manager of the dealer in which it was clearly agreed that as the tax payer has entered into a separate agreement with the plot owner for construction, the amounts received are liable to tax @ 4% which works out to Rs.50,80,246/- for the period September, 2006 to March, 2007.

7. It is respectfully submitted that Form VAT-301A contains an Agreement to be furnished by the dealer after verification of records by the department. The dealer has the option to sign the agreement if he accepts the under declaration. The agreement was signed by the dealer voluntarily on 20.06.2007 whereas the assessment order was passed on 02.08.2007 and was served on 08.08.2007. Under the circumstances, VAT 301A form could be construed as a notice of assessment. The dealer has kept quiet for all these days

[Signature]
Attest
DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)
BEGUMPET DIVISION, HYDERABAD

[Signature]
Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Division, Hyd-16.

and after the time for appeal has lapsed and is now coming forward with a plea that form VAT-301A was obtained by the inspecting authority by coercion. This averment is untrue and is clearly an after thought. It is submitted that payment of tax has to be made as per the provisions of the Act and would not depend on the fact of collection of tax at the point of incidence.

8. I humbly submit that it is not true say that assessment order was passed in utter violation of principles of natural justice relying on Form 301A obtained from the petitioner under threat and coercion. As submitted above Form-301A contains an agreement filed by the dealer. There was ample time for protest by the petitioner between the date of furnishing of Form-301-A and date of service of assessment order in Form VAT-305 and as such there was no violation of principles of natural justice. The assessment order dated 02.08.2007 was served on the dealer on 08.08.2007 and the time for payment of demand has arisen on 08.09.2007. The petitioner has chosen to invoke the jurisdiction of this Hon'ble Court after the time for appeal u/sec. 31 of the AP VAT Act, 2005 has lapsed and when the demand for payment of tax is made.

9. In view of the above, it is submitted that there are no merits in the writ petition. It is therefore prayed that the Hon'ble court be pleased to dismiss the same in the interests of justice.

Solemnly and sincerely affirmed on this the 3rd day of October, 2007 and signed his name in my presence at Hyderabad.

[Signature]
DEPONENT

Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Division, Hyd-06.

[Signature]
ATTESTOR

"DEPUTY COMMERCIAL TAX OFFICER (REVISIONS)"
BEGUMPET DIVISION, HYDERABAD

Copy to

Sri V. Bhaskar Reddy
AN

DISTRICT: *Hydrabad*
IN THE HIGH COURT OF JUDICATURE
OF ANDHRA PRADESH: AT HYDERABAD

WP.No. *19602* of *2007*

COUNTER AFFIDAVIT

Mid copy
[Signature]
21/10/07

Filed by:

SPL. STANDING COUNSEL FOR
COMMERCIAL TAXES
C.No. 9459/9460

WIRE AT PARTY'S COSTS

TO

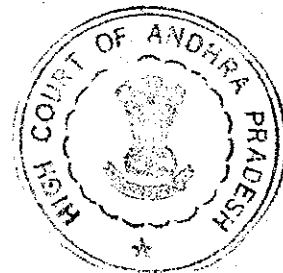
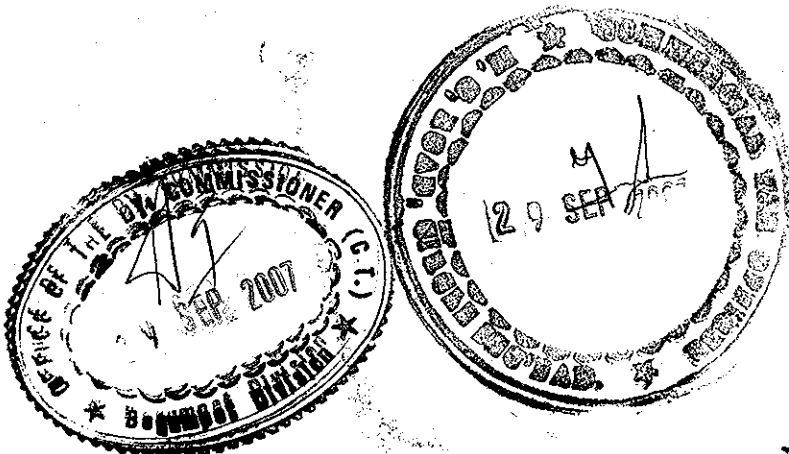
1. THE COMMERCIAL TAX OFFICER (AUDIT), BEGUMPET DIVISION, HYDERABAD
2. THE COMMERCIAL TAX OFFICER, M.G. ROAD CIRCLE, SECUNDEBARAD.

BY ORDER OF HIGH COURT DATED 27-9-2007 IN W.P.NO.19602 OF 2007 FILED BY THE PETITIONER VIZ M/S. MEHTA & MODI HOMES, 5-4-187/3&4, 2ND FLOOR, M.G. ROAD, SECUNDERABAD, REP. BY ITS PARTNER SRI SOHAM MODI - THIS COURT WHILE DIRECTING THE REGISTRY TO LIST THIS PETITION ON 4-10-2007 STAYED ALL FURTHER PROCEEDINGS PURSUANT TO THE IMPUGNED ASSESSMENT ORDER PASSED BY THE 1ST ADDRESSEE VIZ THE COMMERCIAL TAX OFFICER (AUDIT), BEGUMPET DIVISION, HYDERABAD IN FORM VAT 305 DATED 12-8-2007 TILL 4-10-2007 - ORDER FOLLOWS

HIGH COURT

W.P.NO.19602 OF 2007


For ASSISTANT REGISTRAR





M. Ramachandra Murthy, FCA.,
Chartered Accountant,
SD Road, Secunderabad.

Ph: 040-27718935 (Off)
M-09391032848
Dt. 4.10.2007.

Sir,

Sub: APVAT Act, 2005 – certain changes in the works contracts
Provisions – intimated.

--00--

Please find herewith enclosed a copy of A.P. Ordinance No.10 of 2007 published in AP Gazette No.40 dated 22.9.2007, through which certain amendments were made to Section 4 (7) of the APVAT Act, 20045, relating to works contracts.

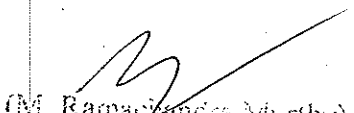
Section 4 (7) (d) relates to payment of tax by the dealers engaged in construction and selling of residential apartments, houses, buildings or commercial complexes under composition scheme at the effective rate of 1% on the total consideration received or receivable, including on land value. Upto 31.8.2006, the main contractors used to pay tax @ 1% and the sub contractors were exempt, subject to other conditions. However, by Act No.5 of 2007, effective from 1.9.2006 certain amendments were made to this sub Section. As per the said amendments, already communicated to you, the main contractors were exempt and the sub contractors became liable to pay tax. Consequent on such amendments, an issue had arisen whether the sub contractor has to pay tax under Section 4 (7) © at the rate of 4%, as he is only constructing but not selling the property.

To resolve this dispute, perhaps, the present Ordinance No.10/2007 has been issued. As per this Ordinance, status quo ante has been restored with effect from 1.9.2006. This means, the dealers falling under Section 4 (7) (d) can continue to pay tax @ 1% as main contractors and sub contractors are exempt subject to other conditions. In short, the position prevailing as on 31.8.2006 has been restored. If any main contractor has not paid tax wef 1.9.2006 due to changes made by Act No.5 of 2007, he can now file revised returns and pay tax and to that extent, the sub contractor can claim exemption by filing revised returns in view of the present Ordinance.

Please feel free to contact for any further clarification.

Encl: one

Yours truly,


(M. Ramachandra Murthy).

27700186

Registered No. HSE/49

[Price : Rs. 0-60 Paise.



G. HANSHYAM UPADHYAY
(S.P.)

ఆంధ్రప్రదేశ్ రాజపత్రము
THE ANDHRA PRADESH GAZETTE
PART IV-B EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 40] HYDERABAD, SATURDAY, SEPTEMBER 27, 2007

**ANDHRA PRADESH ACTS, ORDINANCES AND
REGULATIONS Etc.**

The following is the authoritative text in English Language of the Ordinance promulgated by the Governor on the 18th September, 2007 is being published under article 348 (3) of the Constitution of India for general information:-

ANDHRA PRADESH ORDINANCE No. 10 OF 2007

Promulgated by the Governor in the Fifty-eighth Year of the Republic of India.

AN ORDINANCE FURTHER TO AMEND THE ANDHRA PRADESH VALUE ADDED TAX ACT, 2005.

[1]

O-224-1

2 ANDHRA PRADESH GAZETTE EXTRAORDINARY [Part IV-B

Whereas, the Legislature of the State is not now in session and the Governor of Andhra Pradesh is satisfied that the circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor hereby promulgates the following Ordinance:-

Short
title,
extent
and
commence-
ment.

1. (1) This Ordinance may be called the Andhra Pradesh Value Added Tax (Amendment) Ordinance, 2007;

(2) it extends to the whole of the State of Andhra Pradesh;

(3) it shall be deemed to have come into force on the 1st September, 2006.

Amend-
ment of
section 4,
Act 5 of
2005.

2. In the Andhra Pradesh Value Added Tax Act, 2005, in section 4, in sub-section (7),-

(i) in clause (h), after the words "No tax shall be payable under" the words "clauses (a) or (b) or (c) of" shall be inserted;

(ii) after clause (h), the following clause shall be added, namely,-

"(i) no tax shall be payable under clause (d) of this sub-section on the turnover relating to the consideration received as a sub-contractor if the main contractor opted to pay tax by way of composition subject to the condition that the sub-contractor shall pay tax in respect of any goods purchased or received from outside the State of Andhra

September 22, 2007) ANDHRA PRADESH GAZETTE EXTRAORDINARY 3

Pradesh or from any person other than a Value Added Tax dealer in the State on the Value of such goods at the rates applicable to them under the Act".

NARAYAN DATT TIWARI,
Governor of Andhra Pradesh.

T. MADAN MOHAN REDDY,
Secretary to Government,
Legislative Affairs & Justice,
Law Department.

BHASKAR REDDY VEMIREDDY
Advocate

Phones: 23374330, 3060 4330
Mobile : 9246504330

Office:
Flat No.11, D. No. 6-2-918/3/11,
'Siva Sai Nilayam',
Opp. S.B.I, Khairatabad,
Hyderabad – 500 004.

Dt. 18-9-07

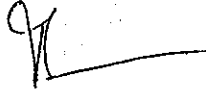
To,
The Commercial Tax Officer (Audit),
Begumpet Division. Hyderabad.

Sir,

Sub:- W.P.No. 19602/07 filed by M/s/ Mehta & Modi Homes –Reg.

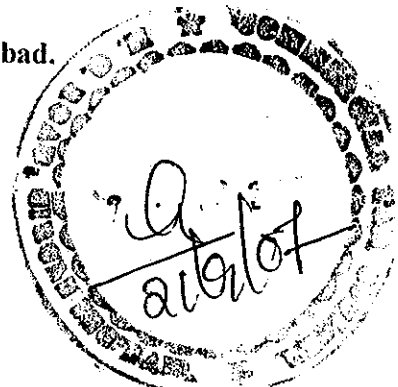
The above Writ Petition filed by M/s. Mehta & Modi Homes challenging your assessment order dt. 12-8-07 has come up for hearing before the Hon'ble High Court today . The Hon'ble Court after hearing the matter at length has adjourned the matter to 25-9-2007 for instructions at the request ^{of} ~~and~~ the learned Special Standing Counsel for the department.

Hence I request you to not to take any coercive steps for recovery of the disputed demands.


V. Bhaskar Reddy

Counsel for the petitioner

Copy to
Commercial Tax Officer, M.G.Road Circle Hyderabad.



BHASKAR REDDY VEMIREDDY
Advocate

Phones: 23374330, 3060 4330
Mobile : 9246504330

Office:
Flat No.11, D. No. 6-2-918/3/11,
'Siva Sai Nilayam',
Opp. S.B.I, Khairatabad,
Hyderabad – 500 004.

Dt. 18-9-07

To,
The Commercial Tax Officer (Audit),
Begumpet Division. Hyderabad.

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Sub:- W.P.No. 19602/07 filed by M/s/ Mehta & Modi Homes –Reg.

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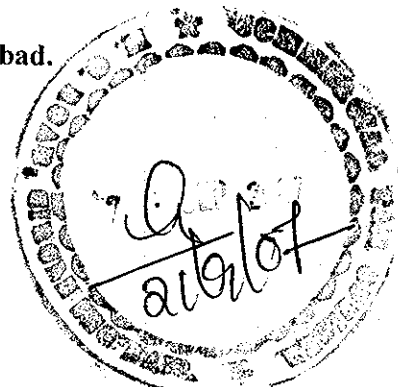
Hence I request you to not to take any coercive steps for recovery of the disputed demands.


V. Bhaskar Reddy

Counsel for the petitioner

Copy to

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



BHASKAR REDDY VEMIREDDY
Advocate

Phones: 23374330, 3060 4330
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Office:
Flat No.11, D. No. 6-2-918/3/11,
'Siva Sai Nilayam',
Opp. S.B.I, Khairatabad,
Hyderabad – 500 004.

Dt. 18-9-07

To,
The Commercial Tax Officer (Audit),
Begumpet Division. Hyderabad.

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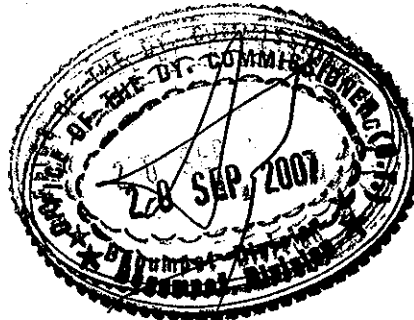
Hence I request you to not to take any coercive steps for recovery of the disputed demands.


V. Bhaskar Reddy

Counsel for the petitioner

Copy to

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



Notice Id: 230007VAT30503481524

VAT305

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

ASSESSMENT OF VALUE ADDED TAX

[See Rule 25(5)]

Date: ~~2007-08-02~~ 12-08-2007

01. Tax Office Address

6-3-789, 6th Floor, Pavani Prestige
Ameerpet, Hyderabad
500016

TIN : 28840298894
Circle : M.G.Road
Division : Begumpet

02. Dealer Info.

03. Firm Address

Name MEHTA AND MODI HOMES
Door No 5-4-187/3 AND 4 Street M G ROAD
Locality Town/City SECUNDRABAD
District Hyderabad Pin 500003

Upon examination of your records on 15-MAR-07 the correct amount of VAT under the provisions of AP VAT Act 2005 has been established as follows.

*This has resulted from :-

1. Your agreement at the time of visit 15-MAR-07

The total amount payable by you is explained below:

Tax Period	Particulars(input tax/output tax)	Tax declared /net credit /Or Refund Claimed	Tax Found to be due /net credit / Or Refund due	Tax declared Due to dealer	Tax under declared Due to Tax Department	Total Due to Tax Department
01-SEP-06 -to- 30-SEP-06	Output Tax	171136	786363	0	615227	615227
01-OCT-06 -to- 31-OCT-06	Output Tax	151413	605652	0	454239	454239
01-NOV-06 -to- 30-NOV-06	Output Tax	179178	716712	0	537534	537534
01-DEC-06 -to- 31-DEC-	Output Tax	190932	824392	0	633460	633460

06						
01-JAN-07 -to- 31-JAN-07	Output Tax	216773	867092	0	650319	650319
01-FEB-07 -to- 28-FEB-07	Output Tax	239983	959932	0	719949	719949
3610728						

* Delete as appropriate

Explanation to above proposals :

The tax payer is a contractor and has opted to pay tax under composition as per Sec.4(7)(d) @ 1%. However, the tax payer has sold the plots and entering into agreement for construction of houses liable to tax as per Sec.4(7)(c) @ 4%. Further, the tax payer has also omitted to include the turnover relating to service tax while declaring output tax. On pointing out the tax payer has agreed the omissions and signed the agreement in Form 301A.Hence Orders passed in from VAT 305.

*A The amount of Rs.3610728 /- shall be paid within 30 days of receipt of this order. Failure to make the payment will result in recovery proceedings under the AP VAT Act 2005.

*B Your refund claim is reduced to _____ and this amount will be refunded to you.

THE PAYMENT OF THE AMOUNT SPECIFIED AT 'A' ABOVE MUST BE MADE TOGETHER WITH DUPLICATE COPY OF THIS ORDER AND PAYMENT BOXES ON THAT COPY COMPLETED.

An Appeal against this order can be filed before the Appellate Deputy Commissioner within 30 days of receipt of this order.

[Signature]
Commercial Tax Officer(AUDIT),
Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begunpur Division, Hyderabad 16.

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

PROCEEDINGS OF THE
AUTHORITY FOR CLARIFICATION AND ADVANCE RULING
(Under Section 67 of APVAT Act, 2005)

Present: Sri T. Yugandhar Reddy, Addl. Commissioner(VAT)
Dr. K. Raghavaiah, Jt. Commissioner(Audit)
Sri P. Satyanarayana Reddy, Jt. Commissioner (Enft.)

CCT's Ref.No: PMT/P&L/A.R.Com/ 80/ 2006.

Dated 30-7-2006.

Ref:- CCT's.Ref.No: PMT/P&L/A.R.Com/2005, Dated 13-04-2005.

ORDER:

M/s Maytas Hill Country Pvt.Ltd., 6-3-1186/5/A,III Floor, Amogh Plaza, Begumpet, Hyderabad (TIN 28690270478) have filed an application Dated 26-7-2006 and sought clarification and advance ruling on the following items under Section 67 of APVAT Act, 2005 read with Rule 66(2)(i) of APVAT Rules, 2005 along with the application fee of Rs.1,000/-

The applicant has submitted the following documents :

- a) Note on the nature of transactions for issuing Advance Ruling.
- b) Development Agreement-cum-General Power of Attorney.
- c) Sale Deed and
- d) Agreement of Sale.

Sri M.Ramachandra Murthy, Authorised Representative appeared for hearing on 28-7-2006 and explained the case.

They sought clarification on the following:

The applicant has sought clarification as to whether the following two categories of transactions fall under the ambit of Section 4(7)(d) of the AP VAT Act, 2005.

The applicant is engaged in the business of constructing and selling houses/flats. As explained by the applicant their business transactions are of two categories..

- 1) *On the land owned by the applicant, house is constructed and then land along with the house is sold to the customer. In such a situation, there would be only one sale deed.*
- 2) *In the second category a piece of land belonging to the applicant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. In this situation there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also Registered with the Sub-Registrar.*
- 3) *The applicant has further stated that, in both the situations, (where the land and house constructed thereon are sold through a single deed or where the land is first sold and a construction agreement is then entered into) the consideration received/receivable would be the same and this is clearly laid down in the initial agreement of sale.*

The issue is examined with reference to the provisions of the AP VAT Act and Rules and in particular with reference to sub-section (7) of Section 4 of the Act.

The tripartite agreements of sale entered into by the applicant with the buyers have been examined. It is found that land owners, the applicant as developer and buyers of individual units (houses) are parties to the agreement. In clause 2(a), it is specified that developer and the landowner have agreed to sell the property consisting of a finished house for a total price specified in Schedule 2 of the agreement. The specified price is found to be the total price for the land and construction cost. In clause 6, it is specified that landowner and developer shall construct in accordance with the specifications mentioned in Schedule IV and they shall maintain common areas of township without any additional charges till 31st December 2010. In Clause 9, it is mentioned that purchaser can terminate the agreement only when developer

fails to construct the property within the period stipulated and the given grace period and additional 8 months penalty period.

All the terms and conditions in the agreement of sale clearly prove that the transaction is for the complete execution for the total price agreed upon.

Taking this into consideration, the ruling is given that :

1) the applicant shall be eligible for composition under Section 4(7)(d) to pay tax @ 4% on 25% of the total consideration originally agreed upon whether received in composite manner or in separate portions towards land cost and construction cost.

2) the applicant is not eligible to opt to pay 4% of 25% consideration received towards construction cost by excluding cost of land though it could be registered separately at any stage.

3) if the property is registered only as a land through a sale deed in the second category of transactions explained by the applicant and there is no subsequent registration after completion of construction, the applicant shall ensure payment of 1% of total consideration received or receivable (as per initial agreement of sale) by way of demand draft in favour of CTO/Asst. Commissioner concerned at the time of execution of sale deed before Sub-Registrar as prescribed in clause (i) of sub rule (4) of Rule 17 of AP.VAT Rules, 2005.

Addl. Commissioner

Jt. Commissioner

Jt. Commissioner.

NOTE:- An appeal against this proceedings can be filed before the Sales Tax Appellate Tribunal, A.P. Hyderabad within 30 days of this ruling.

To
M/s Maytas Hill Country Pvt.Ltd.,
6-3-1186/5/A, III Floor, Amogh Plaza, Begunpet, Hyderabad.

Copy submitted to the Commissioner of Commercial Taxes, A.P. Hyderabad
Copy to the Deputy Commissioner (CT) Abids Division.
Copy to the Commercial Tax Officer, Basheer Bagh Circle.

**GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDING OF THE
AUTHORITY FOR CLARIFICATION AND ADVANCE RULING
(Under Section 67 of APVAT Act, 2005)**

**Present : Sri T.Yugandhar Reddy, Additional Commissioner (VAT)
Dr. Sri K.Raghavaiah, Joint Commissioner (Audit)
Sri P. Satyanarayana Reddy, Joint Commissioner (Enft)**

CCT's Ref.No.PMT/P&L/A.R.Com/566/2005

Dt:18-05-2006

Ref: CCT'S Ref.No.PMT/P&L/A.R.COM/2005, Dt:13-4-2005.

ORDER:

M/s. Kashi Kanchan, Tirumalgherry (TIN No.28560155020), Hyderabad have filed an application and sought clarification and Advance Ruling on the following items under Section 67 of the APVAT Act, 2005 read with Rule 66(2)(i) of APVAT Rules,2005 along with the application fee of Rs.1000/-. The application is examined and found in order. Hence admitted.

According to the applicant he is executing works contract for Defence Department by construction of buildings and civil works. He is seeking to know whether he is eligible for composition under sub section (7)(d) of Section 4 of A.P.VAT Act, 2005. He is also seeking clarification regarding goods purchased from outside A.P. by issuing Form-C and tax implications for such goods used in the execution of works contract.

The case was posted for hearing on 16-5-2006. Sri Abhimanyu Padhi, Managing Director appeared and explained the case.

After examining the provisions of sub section (7) of Section 4 including amendment made w.e.f. 29.8.2005, it is clarified as under :

The provisions for composition under clause (d) of sub section (7) of Section 4 of A.P.VAT Act, 2005 are applicable only in respect of builders and developers who have a right to sell such constructed apartments, houses, buildings or commercial complexes. The tax rate of 4% on 25% of the consideration received is specifically linked to consideration received or receivable or market value fixed for the purpose of stamp duty. Therefore, this provision is not applicable in respect of contractors who execute work for construction of buildings but do not have any right to sell such property. This category of contractors can opt for composition under clause (b) or clause (c) of sub section (7) of Section 4 as the case may be.

With regard to the goods purchased from outside A.P. by issuing Form-C, the applicant is liable to pay tax applicable to such goods purchased from outside A.P. and he can deduct such value from the total taxable turnover and on the remaining taxable turnover he can

either pay by way of composition or pay tax according to the rates applicable to the goods used if the transaction is outside composition.

ADDL.COMMISSIONER JT.COMMISSIONER JT.COMMISSIONER

Note: An appeal against this proceedings can be filed before the Sales Tax Appellate Tribunal, A.P., Hyderabad within 30 days of this ruling.

To

M/s. Kashi Kanchan,
Behind Hanuman Temple,
DAD Quarters,
H.No.14, Opp.RTA Office,
Tirumalgherry, Secunderabad – 15.

Copy submitted to the Commissioner of Commercial Taxes, A.P., Hyderabad.

Copy to the Deputy Commissioner (CT), Begumpet Division.

Copy to the Commercial Tax Officer, Maredapally Circle.

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

PROCEEDINGS OF THE
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(Under Section 67 of APVAT Act, 2005)

Present: Sri T. Yugandhar Reddy, Addl. Commissioner(VAT)
Dr. K. Raghavaiah, Jt. Commissioner(Audit)
Sri P. Satyanarayana Reddy, Jt. Commissioner (Enft.)

CCT's Ref.No: PMT/P&L/A.R.Com/ 80/ 2006.

Dated 30-7-2006.

Ref:- CCT's.Ref.No: PMT/P&L/A.R.Com/2005, Dated 13-04-2005.

ORDER:

M/s Maytas Hill Country Pvt.Ltd., 6-3-1186/5/A,III Floor, Amogh Plaza, Begumpet, Hyderabad (TIN 28690270478) have filed an application Dated 26-7-2006 and sought clarification and advance ruling on the following items under Section 67 of APVAT Act, 2005 read with Rule 66(2)(i) of APVAT Rules, 2005 along with the application fee of Rs.1,000/-

The applicant has submitted the following documents :

- a) Note on the nature of transactions for issuing Advance Ruling.
- b) Development Agreement-cum-General Power of Attorney.
- c) Sale Deed and
- d) Agreement of Sale.

Sri M.Ramachandra Murthy, Authorised Representative appeared for hearing on 28-7-2006 and explained the case.

They sought clarification on the following:

The applicant has sought clarification as to whether the following two categories of transactions fall under the ambit of Section 4(7)(d) of the AP VAT Act, 2005.

The applicant is engaged in the business of constructing and selling houses/flats.

As explained by the applicant their business transactions are of two categories..

- 1) *On the land owned by the applicant, house is constructed and then land along with the house is sold to the customer. In such a situation, there would be only one sale deed.*
- 2) *In the second category a piece of land belonging to the applicant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. In this situation there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also Registered with the Sub-Registrar.*
- 3) *The applicant has further stated that, in both the situations, (where the land and house constructed thereon are sold through a single deed or where the land is first sold and a construction agreement is then entered into) the consideration received/receivable would be the same and this is clearly laid down in the initial agreement of sale.*

The issue is examined with reference to the provisions of the AP VAT Act and Rules and in particular with reference to sub-section (7) of Section 4 of the Act.

The tripartite agreements of sale entered into by the applicant with the buyers have been examined. It is found that land owners, the applicant as developer and buyers of individual units (houses) are parties to the agreement. In clause 2(a), it is specified that developer and the landowner have agreed to sell the property consisting of a finished house for a total price specified in Schedule 2 of the agreement. The specified price is found to be the total price for the land and construction cost. In clause 6, it is specified that landowner and developer shall construct in accordance with the specifications mentioned in Schedule IV and they shall maintain common areas of township without any additional charges till 31st December 2010. In Clause 9, it is mentioned that purchaser can terminate the agreement only when developer

fails to construct the property within the period stipulated and the given grace period and additional 8 months penalty period.

All the terms and conditions in the agreement of sale clearly prove that the transaction is for the complete execution for the total price agreed upon.

Taking this into consideration, the ruling is given that ;

- 1) the applicant shall be eligible for composition under Section 4(7)(d) to pay tax @ 4% on 25% of the total consideration originally agreed upon whether received in composite manner or in separate portions towards land cost and construction cost.
- 2) the applicant is not eligible to opt to pay 4% of 25% consideration received towards construction cost by excluding cost of land though it could be registered separately at any stage.
- 3) if the property is registered only as a land through a sale deed in the second category of transactions explained by the applicant and there is no subsequent registration after completion of construction, the applicant shall ensure payment of 1% of total consideration received or receivable (as per initial agreement of sale) by way of demand draft in favour of CTO/Asst.Commissioner concerned at the time of execution of sale deed before Sub-Registrar as prescribed in clause (i) of sub rule (4) of Rule 17 of AP.VAT Rules, 2005.

Addl.Commissioner

Jt.Commissioner

Jt. Commissioner.

NOTE:- An appeal against this proceedings can be filed before the Sales Tax Appellate Tribunal, A.P. Hyderabad within 30 days of this ruling.

To
M/s Maytas Hill Country Pvt.Ltd.,
6-3-1186/5/A,III Floor, Amogh Plaza, Begumpet, Hyderabad.

Copy submitted to the Commissioner of Commercial Taxes, A.P. Hyderabad
Copy to the Deputy Commissioner (CT) Abids Division.
Copy to the Commercial Tax Officer, Basheer Bagh Circle.

**GOVERNMENT OF ANDHRA PRADESH
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Tirumalgherry, Secunderabad – 15.

Copy submitted to the Commissioner of Commercial Taxes, A.P., Hyderabad.

Copy to the Deputy Commissioner (CT), Begumpet Division.

Copy to the Commercial Tax Officer, Maredapally Circle.

Mehta & Modi Homes

5-4-187/3 & 4, III Floor, M.G. Road, Secunderabad - 500 003.
Phone : 55335551

6th April, 2005.

To,
Mr. Srinivas Reddy, Advocate
Banjara Hills,
Hyderabad.

Dear Sir,

Sub: Seeking legal opinion on VAT of our work contract – reg.

With the subject cited above, we requesting you to give a legal opinion of our works contract and also clarify follows:

1. Whether we are converted under VAT or not?
2. At what rate we have to pay the tax?
3. Any service tax implications are there or not?
4. Any other effects on VAT.

Please let us know the legal opinion at the earliest.

Thank You.

Yours truly,



Administrative Officer.

NOTE