GOVERNMENT OF TELANGANA

COMMERCIAL TAXES DEPARTMENT

Letter of Acceptance of Application for OTS

FORM 4

Basic Details					
UID	:	36790571789/LOA/22	Legal Name	:	SUMMIT BUILDERS
Trade Name	:	SUMMIT BUILDERS	TIN	:	36790571789
APGST	:	36AAYFS2757C1ZR	Email	:	jayaprakash@modiproperties.com
Mobile	:	9502288200	Division	:	BEGUMPET
Circle	:	M.G.ROAD-S.D.ROAD	Address	:	5-4-187/3 and 4, soham mansion, mg road, secunderabad, Ranga Reddy, 36, 500013

Ref :

1. G.O. Ms no.	45 Rev.(CT.II) Dept	dt. 9.5.2022
2. G.O. Ms no.	61 Rev.(CT.II) Dept	dt. 25.6.2022
3. G.O. Ms no.	67 Rev.(CT.II) Dept	dt. 4.7.2022
4. Intimation letter No.:	36790571789/OTS/22	Date : 17-05-2022
5. Application No.:	36790571789/SDA/22	Date : 20-06-2022

You have filed for 'One Time Settlement of Outstanding' arrears in your application in reference 5th cited above:

S.No	Act	Period	AO No.	Balance Tax	% of Balance tax to be paid	Settlement amount
1	2	3	4	5	6	7
1	VAT	Pre 2005	26704	273950	100	273950.00
2	VAT	Pre 2005	26667	133422	100	133422.00
	TOTAL					**407372.00**

1. Your application is accepted as under :

S.No	Act	Period	AO No.	Balance Tax	% of Balance tax to be paid	Settlement amount
1	2	3	4	5	6	7
1	VAT	Pre 2005	26704	273950	100	273950.00
2	VAT	Pre 2005	26667	133422	100	133422.00
	Final payable amount					**407372.00**

2. Pay the above amount in lumpsum as it is below Rs 25 lacs/ as you have ~~opted to pay~~ in lumpsum by 31.08.2022

To be pay of Rs. 1,26,860

Payments can be made through the VATIS portal.

For any assistance, contact the jurisdictional officer ac_mgsd@tgct.gov.in

Letter of Acceptance of Application for OTS

FORM 4

COMMERCIAL TAX OFFICER

Circle : M.G.ROAD-S.D.ROAD
Division : BEGUMPET

AO22461

FORM VAT 305

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

ASSESSMENT OF VALUE ADDED TAX

[See Rule 25 (5)]

01. Tax Office Address:
CTO MG ROAD CIRCLE
3rd FLOOR, PAVANI
PRESTIGE AMEERPET,
HYDERABAD

Date	Month	Year
31	03	2012

02 TIN 28790571789

03. Name M/s SUMMIT BUILDERS
Soham Mansion, MG Road,
Secunderabad

Upon examination of your records and the issue of VAT-305A on 16-12-2010 and served on 21-02-2011. The correct amount of VAT under the provisions of APVAT Act 2005 has been determined as follows :

*This is resulted from :

1. Your agreement at the time of visit on 22-03-2012
2. After consideration of your reply received in this office on 22-03-2012
3. You failure to respond to the notice issued on 26-03-2012

Tax Perid	Particulars Turnover	Tax found to be due	Tax declared	Under decl-ared tax	Over declare d Tax	Pen alty	Inter est @ 1%	Total Due to Tax Depart ment
11/06 To 03/07	Output Tax	133422/-	--	133422/-	--	--	--	133422
Total amount due to Tax Department								133422/-

Explanation for the above proposal

They are dealers in execution of Civil Works Contracts i.e. sales of Independent Houses and Apartments. They opted to pay tax @ 1% under composition under Section 4 (7) (d) of AP VAT Act, 2005. On verification of the monthly returns filed by the dealer in Form VAT 200 for the tax periods November, 2006 to March, 2007 with reference to the information received by the undersigned from other State Government Department of Andhra Pradesh it is noticed that the dealer has failed to pay VAT Output Tax @ 4% & 12.5% on purchase of VAT goods from unregistered sources and TOT dealers. The dealer also failed to disclose certain VAT Output Turnovers and failed to pay VAT Output Tax which is legitimately due to the State.

Received on
12/4/12

As per Section 4 (7) (e) of AP VAT Act, 2005 any dealer having opted for composition under Section 4 (7) (b) (c) & (d) of AP VAT Act, 2005 purchases or receives any goods from outside the State or India or from any dealer other than a Value Added Tax dealer in the State and uses such goods in the execution of the Works Contracts, such dealer shall pay tax on such goods at the rates applicable to them under the Act and the value of such goods shall be excluded for the purpose of computation of turnover on which tax by way of composition at the rate of 4% is payable.

Verified the information received from other State Government Department of Andhra Pradesh with reference to the monthly returns filed by the dealer in Form VAT 200 for the tax periods November, 2006 to March, 2007 revealed that the assessee suppressed VAT Output Turnovers and failed to pay VAT Tax on purchase of 4% & 12.5% VAT goods purchased by them from unregistered sources and TOT dealers. Which were used by them in execution on civil works contract.

The details of suppressed VAT Output Turnovers and purchase of 4% & 12.5% VAT goods from unregistered sources and TOT dealers are as under.

As per the information received from other State Government Department of Andhra Pradesh it is noticed that during the tax periods April, 2006 to March, 2007 the assessee has received Works Contracts Receipts Consideration of Rs.4,06,13,611-00 and charges towards extra Civil Works executed by them, amounts received towards Car Parking and Service Tax Payments of Rs.48,47,751-00 i.e., total Rs.4,54,61,362-00. Hence, the average Works Contract Receipts Turnover of Rs.37,88,447-00 per month is taken into consideration and arrived total Works Contracts Receipts Turnover as Rs.1,89,42,235-00 **(Rs.4,54,61,362-00X5/12)** for the tax periods November, 2006 to March, 2007.

As against this Output Turnover of Rs.1,89,42,235-00 on filing of monthly returns in Form VAT 200 the assessee has reported only a turnover of Rs.1,66,70,300-00 from November, 2006 March, 2007. Thus, they short reported Works Contracts Receipts Turnover of Rs.22,71,935-00 on filing of monthly VAT returns and suppressed VAT Output Tax @ 1% Rs.22,719-00.

Hence, it is proposed to levy VAT Output Tax @ 1% Rs.22,719-00 on the short reported works contracts receipts consideration of Rs.22,71,935-00.

As per the information received in this office from other State Government Department of Andhra Pradesh it is noticed that during the year 2006-07 the assessee has made purchase of 4% & 12.5% VAT goods from unregistered sources for Rs.36,78,199-00. After considering the turnover proposed by the Deputy Commissioner(CT), Begumpet Division, Hyderabad on Revision for Rs.16,81,389-00 still there is purchase of VAT goods from unregistered sources for Rs.19,96,810-00. As against the same the dealer has furnished the bill wise purchase details of 4% & 12.5% VAT goods having purchased from unregistered sources only for Rs.6,51,903-00. Thus, they short disclosed unregistered purchases turnover for Rs.13,44,907-00. Hence, difference VAT Output Tax @ 3% Rs.40,347-00 is now proposed on this short reported purchase turnover of Rs: 13,44,907/- of 4% VAT goods treating the same as purchased from unregistered sources.

As per the purchase details furnished by the dealer for the tax periods November, 2006 to March, 2007 it is noticed that during this tax periods the assessee has purchased Tools, Bamboos, Iron & Steel, Consumables, Hardware and Coal valued Rs.54,269-00 and Doors, Windows, Water Proofing Chemical, Electrical Goods, Sanitary Goods valued Rs.5,97,634-00 on which the dealer failed to pay VAT Tax @ 4% & 12.5% as required under Section 4 (7) (e) of AP VAT Act, 2005.

Hence, it is proposed to levy Difference VAT Tax @ 3% & 11.5% on the purchase value of 4% & 12.5% VAT goods purchased from unregistered sources for the tax periods November, 2006 to March, 2007 as under.

Tax period	4% VAT goods	Purchase Turnover	12.5% VAT goods	Purchase Turnover
Nov, 06	Tools, Bamboos and Iron & Steel.	36901	Doors, Windows.	14423
Dec, 06	Hardware.	1980	Water Proofing Chemical, Electrical Goods.	332204
Jan, 07	Consumables, Coal.	10323	Sanitary Goods, Electrical Goods..	163507
Feb, 07	Consumables.	1200	-----	
Mar, 07	Tools and Consumables.	3865	Water Proofing Chemical.	87500
Total Rs.		**54269**		**597634**

As the dealer failed to pay VAT Tax on purchase value of above 4% & 12.5% VAT goods purchased from other than registered VAT dealers of A.P. it is proposed to levy difference VAT Tax @ 3% Rs.1,628-00 on the purchase value of 4% VAT goods of Rs.54,269-00 and difference VAT Tax @ 11.5% Rs.68,728-00 on the purchase value of 12.5% VAT goods of Rs.5,97,634-00.

Thus, the dealer under declared VAT Output Tax of Rs.70,356-00 on purchase of above 4% & 12.5% VAT goods from unregistered sources.

Hence, VAT Output Tax of Rs.1,10,703-00 (Rs.40,347-00+ Rs.70,356-00=Rs.1,10,703-00) is now proposed.

Thus, the dealers filed incorrect monthly returns in Form VAT 200 for the tax periods November, 2006 to March, 2007 and suppressed the VAT Output Turnovers of works contracts receipts consideration and resultant VAT Output Tax on works contracts receipts and also suppressed VAT Output Tax on purchase of goods from unregistered sources.

As such the monthly VAT returns filed by the dealer are incorrect. Hence, they are rejected and VAT Tax is proposed as under.

(I).Under declaration of VAT Output Tax of Rs.1,33,422-00 for the Tax Periods November, 2006 to March, 2007:

As per the information received from other State Government Department of Andhra Pradesh it is noticed that during the tax periods April, 2006 to March, 2007 the assessee has received Works Contracts Receipts Consideration of Rs.4,54,61,362-00 including charges for extra Civil Works, charges for Car Parking and Service Tax Payments and the details are as under. Hence, the average Works Contracts Receipts Consideration per month is arrived as Rs.37,88,447-00 **(Rs.4,06,13,611-00+Rs.48,47,751-00=Rs.4,54,61,362-00 x 5/12)** and the total turnover for the tax periods November, 2006 to March, 2007 is proposed as Rs.1,89,42,235-00.

A).Total works Contracts Receipts on sale of Flats / Independent Houses during April 2006 to March, 07	Rs.4,06,13,611-00
B).Add receipts for extra works rendered / Service Tax Payments / Amount Received For Car Parking during April 2006 to March, 07	Rs. 48,47,751-00
C).Total Receipts during the Year 2006 - 07	Rs. 4,54,61,362-00
D) Less Works Contracts Receipts Turnover disclosed in monthly VAT 200 Returns for April, 06 to October, 06 Rs.2,10,19,500-00 And Rs.1,66,70,300-00 for November 06 to March 07	Rs. 2,10,19,500-00
E) Works contract consideration not reported	Rs: 77,71,562-00
F) Works contracts consideration already Proposed by DC(CT), Begumpet on revision	Rs. 54,99,627-00
G) .Average turnover per month proposed (Rs.4,54,61,362-00x5/12)	Rs. 37,88,447-00
H).Works contract receipt turnover proposed For Nov 06 to Mar 07	Rs: 1,89,42,235-00
I). Works Contracts Receipts Turnover short reported on which tax is now proposed	Rs. 22,71,935-00
J).VAT Tax proposed @ 1% on the above turnover	Rs. 22,719-00
K).Difference VAT Tax @ 3% & 11.5% proposed On purchase of VAT goods from unregistered Sources.	Rs. 1,10,703-00
Total VAT Output Tax Now proposed	**Rs. 1,33,422-00**

Thus, the dealer has under declared VAT Output Tax of Rs.1,33,422-00. Hence, now the same is proposed.

From the foregoing it indicates that the dealer has committed an offence under the provisions of AP VAT Act, 2005 and the penalty proceedings and interest @ 1% pm as per the provisions of AP VAT Act, 2005 will be issued separately.

Accordingly a VAT-305A is issued and served to them for calling their objections. In response to the notice, the assessee has neither filed nor appeared before the undersigned against the proposed turnovers. The undersigned given an opportunity for personal hearing on or before 22-03-2012, in response to the hearing notice, the assessee appeared and requested further 30 days time to file documentary evidences as their authorized person has resigned. Again the undersigned has given time only (3) days i.e. 26-03-2012 but they have failed to produce the evidences. Under these circumstances, the assessing authority has no other alternate option except to pass the order in VAT-305. Hence order passed.

Tax Perid	Particulars Turnover	Tax found to be due	Tax declared	Under decl-ared tax	Over declare d Tax	Pen alty	Inter est @ 1%	Total Due to Tax Depart ment
11/06 To 03/07	Output Tax	133422/-	--	133422/-	--	--	--	133422

a) The amount of Rs 1,33,422/- shall be paid within (30) days of receipt of this order. Failure to make the payment will result in recovery proceedings under the APVAT Act 2005.

b) Your refund claim is reduced to Rs NIL and this amount will be refunded to you.

THE PROOF OF PAYMENT OF THE AMOUNT SPECIFIED AT 'A' ABOVE TOGETHER WITH DUPLICATE COPY OF THIS ORDER AND PAYMENT BOXES COMPLETED SHALL BE SUBMITTED WITHIN THE SPECIFIED TIME LIMIT.

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

COMMERCIAL TAX OFFICER,
MG ROAD CIRCLE
COMMERCIAL TAX OFFICER
M.G. ROAD CIRCLE,SEC,BAD

ON DUPLICATE COPY OF THE ORDER
PAYMENT DETAILS

Challan / Inst. No	Date	Bank / Treasury Bank Code	Amount

Scan ID: 71285

SUMMIT BUILDERS

Shop no1,2,3 Ground Floor, Hariganga Complex RaniGunj Sec-Bad-500003

COMMERCIAL TAX OFFICE
- 2 MAY 2012
M.G. Road Circle, Begumpet Division

Date: 2nd May 2012

To

The Commercial Tax Officer
MG Road Circle
Hyderabad

Dear Sir,

Sub: Payment of Disputed Tax

Ref:
1. Your Order dated 31.03.2012
2. VAT 305A on 16.12.2010 and served on 21.02.2011 for the period Nov'06 to Mar'07

Please find enclosed a cheque of Rs. 16,678/- (cheque no. 076296 dated 25th April, 2012, drawn on HDFC Bank) towards disputed tax for the period November 2006 to March 2007 as per the above Order.

Thanking You.

Yours truly,
For SUMMIT BUILDERS

M. [signature]
Authorised Signatory

From
M/s.Summit Builders
Secunderabad

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

COMMERCIAL TAX OFFICE
M.G. Road Circle, Begumpet Division
Recd, 4 AUG 2012

Sir,

Aggrieved by the assessment order (Form VAT 305) dated 28/06/2012 passed by Commercial Tax Officer, M.G. Road Circle, Secunderabad for the period from 04/07 to 03/08 under APVAT Act'2005, we are filing appeal before ADC(CT), Punjagutta Division. As required by the second Provisio under Section 31(1) of the said Act, we are issuing crossed cheque for Rs.34,244/- towards 12.5% of the disputed tax. Please acknowledge receipt of the same.

Encl.: Crossed Bankers Cheque No.76201 dt.03/08/2012 Rs. 34,244/-

Yours truly

for Summit Builders

GOVERNMENT OF ANDHRA PRADESH
DEPARTMENT OF COMMERCIAL TAXES

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER PUNJAGUTTA, HYDERABAD

PRESENT: SRI B.VISHNU SWARUP, M.Sc., M.Phil.

Stay Application R.No.16/2013-14
in Appeal No.BV/30/2013-14

Date of order:18-05-2013

Sub:- APPEALS – APVAT Act, 2005 - M/s Summit Builders, M.G.Road, Secunderabad – Appeal filed against the orders of the Commercial Tax Officer, M.G.Road Circle, Hyderabad – Assessment for the tax periods 2006-07 – Stay petition filed – Stay rejected – Orders issued – Regarding.

* * *

M/s Summit Builders, M.G.Road, Secunderabad, the appellant herein, filed an appeal against the Assessment of Value Added Tax made by the Commercial Tax Officer, M.G.Road Circle Hyderabad (hereinafter referred to as the Assessing Authority) for the tax periods falling under the year 2006-07. Along with the appeal petition, the appellant also filed petition in Form APP 406 seeking stay of collection of the balance disputed tax of ₹1,16,744/-.

The stay petition was posted for hearing on 16-05-2013 and the notice was sent by Speed Post to the appellant as well as to their Authorised Representative on 10-05-2013. However, the Authorised Representative of the appellant filed a letter seeking adjournment. As the

0/C

10/11/2007

APPLICATION FOR WITHDRAWAL FOR PAYMENT OF TAX BY WAY OF COMPOSITION

[Rules 17(3)(c),17(4)(c) & 19(5)]

FORM VAT 250A

Date	Month	Year
17	04	2013

01.Tax Office Address:
M.G. Road circle
Begumpet div.
Hyd

02.TIN 2 8 7 9 0 5 7 1 7 8 9

03.Name : SUMMIT BUILDERS
Address: 5-4-187/3 & 4, IInd Floor,
Soham Mansion, M.G. Road,
SECUNDERABAD-500 003, A.P.

I / We carrying on business as works contractor * involving contract to other than Government and local authorities / construction and selling of residential apartments, houses, buildings or commercial complexes etc., / hotelier, have opted for composition scheme for payment of tax vide my application in Form VAT 250 Dated ____________ and am/are accordingly paying the taxes regularly.

I / we intend to withdraw the option of composition with effect from 1-12-12 (last day of the month) which may please be accepted.

From 1-12-12 (First day of the month) onwards I / we shall be accounting the VAT taxes due under the provisions of Section 4(7)a of APVAT Act 2005.

Signature of the Dealer,
Stamp and Seal

(* Strike off whichever is not applicable)

20/4/13

FORM 565

FORM OF AUTHORISATION

[See Rule 65(7)]

Authorisation to be filed by a person appearing before any authority on behalf of a dealer under Section 66 of the Andhra Pradesh Value Added Tax Act '2005

To,

Name The Dy. Commissioner(CT)
Address: Begumpet Division
Hyderabad.

Date	Month	Year
28	01	2011.

TIN / GRN	

I SOHAM MODI, PARTNER hereby appoint U.V.Pavan Kumar, Advocate to attend on my behalf/behalf of the said FIRM before The Dy. Commissioner(CT); Begumpet Division; Hyderabad (State the Tax Authority) the proceedings (describe the proceedings) December 2005 to October 2006 before the said (State the Tax Authority) the Dy. Commissioner(CT); Begumpet Division; Hyderabad and to produce accounts and documents / statements and to receive on my behalf/behalf of the said Firm any notice or documents / statements issued in connection with the said proceedings and U.V. Pavan Kumar are hereby authorised to act on my behalf/behalf of the said Firm in the said proceedings.

We agree/ the said Firm agrees to ratify all acts done by the said Sri.M.Ramachandra Murthy and U.V.Pavan Kumar in pursuance of this authorisation.

For SUMMIT BUILERS

Partner

Signature(s) of the Authorizing person(s)

We, Sri.M.Ramachandra Murthy and U.V.Pavan Kumar accept the above responsibility.

U V Pavan

Signature(s) of Authorised person(s)
U.V.Pavan Kumar
Advocate
Flat No.303,
'ASHOKA SCINTILLA
H.No.3-6-520, Opp.: to KFC
Himayathnagar Main Road,
Hyderabad -500 029

FORM 565

FORM OF AUTHORISATION
[See Rule 65(7)]

Authorisation to be filed by a person appearing before any authority on behalf of a dealer under Section 66 of the Andhra Pradesh Value Added Tax Act '2005

To,

Name: The Dy. Commissioner(CT)
Address: Begumpet Division
Hyderabad.

Date	Month	Year
28	01	2011.

TIN / GRN: 28790571789

I SOHAM MODI, PARTNER hereby appoint U.V.Pavan Kumar, Advocate to attend on my behalf/behalf of the said FIRM before The Dy. Commissioner (CT); Begumpet Division; Hyderabad (State the Tax Authority) the proceedings (describe the proceedings) December 2005 to October 2006 before the said (State the Tax Authority) The Dy. Commissioner (CT); Begumpet Division; Hyderabad and to produce accounts and documents / statements and to receive on my behalf/behalf of the said Firm any notice or documents / statements issued in connection with the said proceedings and U.V. Pavan Kumar are hereby authorised to act on my behalf/behalf of the said Firm in the said proceedings.

We agree/ the said Firm agrees to ratify all acts done by the said Sri.M.Ramachandra Murthy and U.V.Pavan Kumar in pursuance of this authorisation.

For SUMMIT BUILERS

Partner

Signature(s) of the Authorizing person(s)

We, Sri.M.Ramachandra Murthy and U.V.Pavan Kumar accept the above responsibility.

UV Pavan

Signature(s) of Authorised person(s)
U.V.Pavan Kumar
Advocate
Flat No.303,
'ASHOKA SCINTILLA
H.No.3-6-520, Opp.: to KFC
Himayathnagar Main Road,
Hyderabad -500 029

2006-07

M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

Flat No.303, ASHOKA SCINTILLA
H.No.3-6-520, Opp. To KFC,
Himayathnagar Main Road,
Hyderabad -500 029
Tel.:040-30878935 / 36

To,
The Appellate Dy. Commissioner (CT)
Punjagutta Division
Hyderabad.

Date: May 11,2012

Sir,

Sub:- Filing the appeal in the case of M/s. **Summit Builders, M.G.Road, Secunderabad** - For the period Nov'06 to March'07/VAT – reg.

*****

Please find enclosed herewith the following appeal papers:

1. Form –APP 400 2 copies.
2. Grounds of Appeal 2 copies.
3. Challan bearing No. 120449 dt.**11/05/2012** for Rs.**1,000/-** towards appeal fees.
4. Assessment of Value of Added Tax (VAT 305) order passed by the Commercial Tax Officer, MG Road Circle, Hyderabad dated 31/03/2012 (in original) along with Xerox copy.
5. Copy of Acknowledgment letter relating to proof of payment of 12.5% disputed tax.
6. Form –APP 400A
7. Form –APP 406 2 copies.
8. Form –565 (Authorization

Kindly acknowledge receipt of the above documents and post the appeal for hearing.

Thanking you,

Yours sincerely,

for

M.Ramachandra Murthy,
Chartered Accountant.

11/05

FORM APP 400

FORM OF APPEAL UNDER SECTION 31

[See Rule 38(2)(a)]

1.	Appeal Office Address	:The Appellate Dy. Commissioner(CT) Punjagutta Division, Hyderabad
2.	TIN/GRN	:28790571789
3.	Name & Address	:M/s.Summit Builders, D.No.5-4-187/3&4, Soham Mansion, M.G. Road, Secunderabad.
4.	I wish to appeal the following decision / assessment received from the tax office on	:12/04/2012
5.	Date of filing of appeal	: /05/2012
6.	Reasons for delay (if applicable enclose a separate sheet	:Not Applicable
7.	Tax Period / Tax Periods	:11/06 to 03/07/VAT
8.	Tax Office decision / assessment Order No.	:Assessment of Value Added Tax (Form VAT 305) order dt.31/03/2012 passed by CTO, M.G. Road Circle, Secunderabad.
9.	Grounds of the appeal (use separate sheet if space is insufficient	: Separately Enclosed
10.	If turnover is disputed	
	a) Disputed turnover	: NIL
	b) Tax on the disputed turnover	: Rs.1,33,422/-
	If rate of tax is disputed	
	a) Turnover involved	: NIL
	b) Amount of tax disputed	: NIL
11.	12.5% of the above disputed tax paid	: Rs.16,678/-

Note: Any other relief claimed : Other grounds that may be urged at the time of hearing.

SUMMIT BUILDERS,
M.G. ROAD, SECUNDERABAD.

Statement of facts:- **11/06 to 03/07/VAT**

1. Appellant is a dealer engaged in the business of execution of works contracts and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad, with TIN No 28790571789. Appellant is in the business of constructing and selling independent houses, apartments etc., paying tax under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.

2. The Commercial Tax Officer, M.G.Road Circle, Begumpet Division (herein after called as CTO) has issued Show Cause Notice dated 16-12-2010 which was served on appellant, dated 21-02-2012 proposing output tax of Rs. 1,33,422/- for the period November 2006 to March 2007.

3. The CTO has issued a personal hearing notice, dated 19.03.2012 to the appellant asking to appear before him or file written objections with documentary evidences on or before 22-03-2012. The above said personal hearing notice was received by the appellant on 22-03-2012.

4. Appellant has filed a letter to CTO, requesting 30 days time to file written objections, as the person who is incharge of finance department has resigned from the organization. The Learned CTO in the assessment order has stated that 3 days time was given to file the documentary evidence. But Learned CTO has not provided any letter granting 3 days time nor made any endorsement to that effect. The CTO has also not provided any opportunity of personal hearing even though the same was requested in the letter submitted.

5. Without providing an opportunity of personal hearing to the appellant learned CTO has issued FORM VAT 305 (Assessment of Value Added Tax) dated 31-03-2012.

6. Aggrieved by such order, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:

a. The impugned assessment order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.

b. Learned CTO in the assessment order mentioned that **"as per information received from other State Government Departments of Andhra Pradesh"** appellant has received amounts on account of execution of works contracts to a tune of Rs.4,06,13,611/- and on account of car parking and service tax payments Rs.48,47,751/- totaling to Rs.4,54,61,366/-. The average works contract receipts turnover is worked out to Rs.37,88,447/- per month and the works contract receipts for the five months i.e, from Novemner'2006 to March'2007 is shown as Rs.1,89,42,235/. It is also stated that appellant have reported a turnover Rs.1,66,70,300/- only from November'2006 to March'2007. Thus it is alleged that appellant has short reported works contract receipts turnover of Rs.22,71,935/- and on that Learned CTO has levied tax @ 1% Rs. 22,719/-.

c. Appellant submits that Learned CTO grossly failed to provide the details on which he relied upon for passing such an order.

d. Learned CTO has passed the order without providing personal hearing opportunity to the appellant. Further the learned CTO 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/-

e. Appellant submits that learned CTO has failed to follow the principles of natural justice. Appellant in his letter dated _______ requested the CTO to grant time of 30 days to file the objections stating that the person incharge of finance department has resigned from the organization. Learned CTO has granted only three days of time and passed this order without any further notice and without giving any opportunity for personal hearing.

f. 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 Sec.4 (7) (d) of APVAT Act'2005.

Sec. 4 (7) (d) of the APVAT Act reads as under:-

"Any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty five percent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;..."

As per the above clause a dealer engaged in the construction and sale of apartments, houses etc., is liable to pay tax @ 4% of 25% of the <u>consideration received or receivable</u> or the market value fixed for the purpose of stamp duty whichever is higher.

Hence the consideration received or receivable which relates to the sale of apartments, houses etc., is only taxable, but not other amounts like car parking and service tax payments received during that period. 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.4,06,13,611/- for the period from April'2006 to March'2007 is extracted by learned CTO. Appellant now submits to kindly consider the turnover of Rs.1, 66, 70,300/- for the period from November'2006 to March'2007.

g. The Learned CTO in his order levied tax of Rs.40, 347/-@ 3% on the 4% purchase turnover of Rs.13, 44,907/- from unregistered sources and as per the information received from other State Government Department of Andhra Pradesh. 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.

h. Appellant submits 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 by them in the execution of works contract, the rate of tax is 4% of 25% of the consideration received or receivable. Clause (e) says THE RATE APPLICABLE **UNDER THE ACT**. 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. It is settled law that there cannot be any presumption with reference to the charge to tax. Any ambiguity in the provision shall be interpreted in favour of the tax payer. It is also settled law that when there is possibility to apply two rates of tax on the same commodity, the least of the two has to be applied. The appellant therefore humbly submits that on mere presumption, higher rates of tax cannot be applied. There is no authorization in clause (e) to collect tax at the rates of 4% or 12.5% as the case may be. 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%.

i. It is therefore submitted that levy of tax under clause (e) is neither correct nor legal.

j. The Learned CTO has failed to provide the information from where he has extracted the details of purchases from un registered dealers in his order. Further the appellant submits that the learned CTO has not issued any letter granting 3 dyas time as mentioned in the assessment order nor provided an opportunity of personal hearing to substantiate appellant's contentions. As the CTO failed to furnish the required information, the impugned levy is illegal and therefore the assessment order is liable to be set aside.

k. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order as illegal and to allow the appeal.

M. J

APPELLANT