

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

PRESENT: SRI D. RAMACHANDRA REDDY, B.Sc, B.L., CAIIB, M.B.A.,
Office of the Commissioner CT, Hyderabad.

A.C. Orders : 133

CCT.Ref.No.L.III (2)/ 136/2013

Dated 18-07-2013

Sub:- **Stay Petitions** - M/s. Mehta & Modi Homes, M.G.Road, Secudnerabad -
for the tax period 2009-2010 to 2012-2013 - under APVAT Act'2005 -
Heard the case - Orders - passed.

- Ref:-1) CTO (INT), O/o DC(CT), Begumpet Division, Hyderabad Form VAT 305,
in TIN.No.28842098894, Dated 19-03-2013.
2) Proceedings of the ADC(CT), Punjagutta Division, Hyderabad ADC
Order No.1030 Stay Application R.No.20/2013-14 in Appeal
No.BV/35/2013-14 Dated 19-06-2013.
3) Application in Form 406, dated. 01-07-2013 filed by the dealer
(received in this office of date 01-07-2013).

ORDER:

M/s. Mehta & Modi Homes, M.G.Road, Secunderabad have filed a stay petition (reference 3rd cited) seeking stay of collection of balance of disputed tax of Rs.39,24,375/- out of total disputed tax of Rs.44,85,000/- levied under Section 4(7)(b) of APVAT Act'2005 for the tax period 2009-2010 to 2012-2013 against the stay rejection orders of Appellate Deputy Commissioner (CT), Punjagutta pending their appeal before the Appellate Deputy Commissioner (CT), Punjagutta. The case is posted for 16-07-2013 and Sri. D.S. Ram Kumar, Chartered Accountant and Authorised Representative appeared and argued the case on behalf of appellant. Heard the case.

The Authorised Representative submitted that the appellant is engaged in the business of construction and selling of independent bungalows / Villas at Charlapally and has opted for payment of tax @ 4% on 25% of the consideration received or receivable (1%) under composition scheme under Section 4(7) (d) of the Act). The appellant has declared the turnover relating to the constructions and sale of bungalows in the monthly VAT returns and paid tax on the amounts received from the customers @ 1%. Even though the appellant enters into agreement for construction and agreement for development charges subsequently the amounts mentioned in these two agreements have already been shown in the original agreement of sale (mother agreement) and the appellant has paid VAT @ 1% on the total consideration received as per the original agreement of sale. Thus the payment of Tax @ 1% by the appellant is strictly as per the provisions of Section 4(7) (d) which is also accepted by the assessing authority. In the assessment order it is alleged that the appellant executes a sale deed for sale of land and later enters into two separate contracts for development of plot and for constructions of bungalow.

The Authorised Representative then submitted that it is quite clear that if the property is registered only as a land through a sale deed 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 the initial agreement of sale. The appellant reiterates that in the course of business the appellant enters into agreement with the prospective buyers for sale of independent bungalows of similar size, similar elevation, same colour, scheme etc along with certain amenities.

It was further submitted that the Advance Ruling Authority in the ruling M/s. Maytas Hills County (P) Ltd - vide CCT's Ref.No.PMT/P&L/AR com-180/2006 dt.30-07-2006 without any ambiguity has clearly given the ruling that VAT has to be paid @ 1% on the total consideration received as per initial agreement of sale originally agreed upon whether in separate portions for land and constructions cost the above clarification is clearly applicable to the appellant's case as the appellant is very much a builder and developer and has exclusive right to sell the property and very much entitled to opt for composition under clause (d) of sub section (7) of Section of the said Act.

During the personal hearing the Authorised Representative relied upon the following advance ruling.

- (i) CCT's Ref.No.PMT/P&L/A.R..Com 180/2006, Dt.30-7-2006 (M/s.Maytas).
- (ii) CCT's Ref.No.PMT/ P&L/A.R.Com 566/2005, dt./18-5-2006 in the case of M/s. Kashi Kanchan, Tirumalghery.
- (iii) CCT's Ref PMT/AR.Com/165/2006 Dt.01-02-2007 - M/s.VPL Projects (P) Ltd.

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

The main issue involved in this case is whether the assessing authority is correct in adopting section 4(7) (b) of VAT Act 2005 or the contention of the Appellant that he comes under Section 4(7)(d) of VAT Act ? I have carefully gone through the contentions of the appellant. There are two agreements - one for sale of land, and later on for construction of independent villas, because of which the assessing authority (Commercial Tax Officer-Int-Begumpet) treated the later transaction as without composition and levied tax under - 4(7) (b) of APVAT Act'2005.

As per Section-4(7)(d) of APVAT Act'2005, read with Rule-17(4)(d) & (e) VAT on composition rate (4% or 5%) as the case may be during the relevant tax period, is applicable on the 25% of total consideration received or receivable towards cost of land as well as construction or the market value fixed for the purpose of stamp duty, which ever is higher. Thus any consideration received beyond the date / stage of registration (at lesser price for stamp duty) will not qualify for composition under section 4(7)(d) of APVAT Act'2005. In the present case, the assessee did not disclose all consideration for registration / stamp duty, but argues that on all consideration entitled to composition tax, which is not permitted as per Section - 4(7)(d) & (e) of APVAT Act and rules made there under. Hence, there is no irregularity in the assessment of tax as in reference 1st cited.

Therefore there are no valid grounds to order stay of collection of balance tax of Rs.39,24,375/- and accordingly the stay petition in reference 3rd cited is dismissed.



18/7/13
ADDITIONAL COMMISSIONER (CT) (LEGAL)

To

M/s. Mehta & Modi Homes, M.G.Road, Secunderabad,
through the Commercial Tax Officer, M.G.Road Circle, Hyderabad,
(in duplicate) for service and return of served copy immediately.

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



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