



**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

PROCEEDINGS OF THE JOINT COMMISSIONER (CT)-I,
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
TELANGANA STATE, HYDERABAD

PRESENT: SRI K. CHANDRASEKHAR REDDY, M.A.,

JC ORDER No. 21/2014

Date: 18-07-2014

CCT's Ref. No.LIII(2)/43/2014

Sub:- **STAY PETITION** - APVAT Act, 2005 - M/s. Mehta & Modi Homes, M.G. Road, Secunderabad - Tax periods from April 2007 to March 2008 - Stay petition filed - Orders issued - Regarding.

- Ref:-
1. Proceedings of the CTO., M.G. Road Circle, Order in AO 49257, dt. 06-09-2013.
 2. Proceedings of the ADC (CT), Punjagutta Division Order No.58 in Appeal No.BV/93/2013-14, dated 15-01-2014.
 3. Application in Form APP 406, dated 28-01-2014 filed by M/s. Mehta & Modi Homes, M.G. Road, Secunderabad.
 4. Hearing Notice in CCT's Ref. No.L III(2)/43/2014, dated 21-02-2014 and 07-07-2014.

ORDER:

M/s. Mehta & Modi Homes, M.G. Road, Secunderabad, preferred this stay petition against the stay dismissal orders of the Appellate Deputy Commissioner (CT), Punjagutta bearing Order No.58 in Appeal No.BV/93/2013-14, dated 15-01-2014. Personal hearing was allowed vide the reference 4th cited, to represent their case. Sri M. Ramachandra Murthy, Chartered Accountant and authorized representative of the dealer appeared and argued on on 11-07-2014.

The appellant is a registered dealer on the rolls of Commercial Tax Officer, M.G. Road Circle, Begumpet Division, Hyderabad. The appellant is engaged in the business of construction and selling of independent residential villas. In the course of business the appellant enters into three separate agreements, one with respect to the sale of land, second with respect to development of land by laying of roads, drains, parks and the third with respect to the construction of the villa. The dealer has collected separate amounts for sale of land, for development of plot and for construction of building under the APVAT Act, 2005. The sale of plot is being immovable and is not liable to tax and the transactions of development of plot and construction of villa fall under works contract and liable to tax under Section 4(7)(c) of the APVAT Act, 2005.

The appellant in their grounds of appeal contends that the Appellate Deputy Commissioner has not properly considered all the grounds of the appeal and arbitrarily dismissed the stay petition filed before him. The main appeal is pending for disposal. He further submit that the grounds that are stated in the main appeal may kindly be read as grounds of this stay application.

As seen from the grounds that are stated in the main appeal, the appellant contended that they have opted for payment of tax @1% under composition under Section 4(7)(d) of the APVAT Act, 2005. They have declared the turnover relating to construction and sale of Flats in the monthly VAT returns and paid the tax on the amounts received from the customers @1%. In the course of their business it has in the first instance entered into agreements with its prospective buyers for sale of independent bungalows of similar size, similar elevation along with certain amenities. The agreement of sale consists of the consideration received through sale of land, development charges of land and cost of construction of the bungalow. It has paid VAT @1% on the total consideration from these three components of the agreement. The appellant has also placed reliance on the Advance Ruling in the case of M/s. Maytas in support of their contentions 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 appellant shall ensure payment of 1% of total consideration received or receivable as per initial agreement of sale. Appellant further submits that it entered into agreement of sale with its prospective buyers where in the sale value of land, development of land charges for laying of roads, drains, parks etc. and cost of construction are mentioned in this single document of sale agreement. Even though it entered into agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements as already been shown in the original agreement of sale and he has paid VAT @1% on the total consideration received as per the original agreement of sale. Thus, the payment of tax @1% is as per the provisions of the Section 4(7)(d).

It is further submitted by the appellant that the Advance Ruling given in the case of M/s. Nobel Properties, Banjara Hills, dated 15-09-2012 is not applicable to their case as it was clarified in that ruling that agreement for construction of villa and the land sold by the builder to the buyer will fall under Section 4(7)(b) of the APVAT Act, 2005 taxable @4% on the total consideration received. In this case the appellant enters into initial agreement for sale of villa/apartment along with land for specific amount where as in the above Advance Ruling there is no initial agreement as in this case.

As seen from the assessment order passed by the assessing authority vide order dated 06-09-2013 vide the reference 1st cited, it is observed by the assessing authority that they have purchased sand, metal, bricks and hardware material from unregistered dealers which are liable to tax under Section 4(7)(e) of the APVAT Act, 2005 but they have not declared the above purchases and not paid to tax to the department accordingly. It is further, observed by him that the dealer has entered into three separate agreements one with respect to the sale of land, second with respect to development of land by laying of roads, drains, parks and the third with respect to the construction of the bungalow. The dealer has collected separate amounts for sale of land, for development of plot and construction of building. Under the VAT Act the sale of plot being immovable is not liable to tax and the transactions of development of plot and construction of bungalow fall under works contract and liable to VAT under Section 4(7)(c) of the APVAT Act, 2005.

The assessing authority distinguished the facts of the Advance Ruling in the case of M/s. Maytas Hill County Private Limited, dated 30-07-2006 with reference to the appellants case wherein a piece of land belonging to the applicant is sold to the customer through a sale deed for sale of land and then through a separate construction agreement the applicant takes up constructions of a house on such land purchased by the customer, there is a sale deed for the sale of land and also construction agreement between the applicant and the customer which is also registered with the sub-Registrar, the applicant is not eligible to opt to pay tax @4% of 25% consideration received towards constructions cost by excluding cost of land though it could be registered separately at any stage. Herein the present case the dealer sold plots and executed sale deed and later entered into two contracts, one for the development of the plots and the other constructions of the bungalow. The dealer has collected separate amounts for sale of land, for development of plot and for construction of building. Though a single document is executed as agreement of sale, the actual transaction cannot be combined and they are separate. Of these transactions, transaction of sale of plot being immovable property, not liable to VAT but the transactions of the development and the constructions of bungalow fall under category of execution of civil works contract and liable to VAT @4% on receipts under Section 4(7)(c) of the APVAT Act, 2005. The assessing authority further observed that transactions of the contractor are similar to second category of situations mentioned in the Advance Ruling in the case of M/s. Maytas Hill County Private Limited. Furthermore, in M/s. Maytas case there existed a tripartite agreement, in that, land owner, developer and the buyer of land in the first instance, in subsequently for construction of the bungalow by the developer. In the case on hand there is no such tripartite agreement. The clarification sought for in M/s. Maytas case is not akin to the facts of the case on hand. The assessing authority relied on a clarification issued by the authority for clarification and Advance Ruling, in the case of M/s. Noble Properties, Hyderabad in No.A.R.Com/48/2012, dated 15-09-2012.

In the light of the above facts, I do not find any kind of valid reason in the arguments of the appellant-petitioner for stay of collection of disputed tax of **Rs.13,86,669/-**. Therefore, I have not seen any merits in the present case and the stay petition filed by the appellant is accordingly **dismissed**.

[Signature]
JOINT COMMISSIONER (CT)-1

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

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

Copy to M/s. Mehta & Modi Homes, No.5-4-187/3 & 4,
II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.