HIGH COURT

RR,J
&
MSM,J

DATED: 06/08/2014

ORDER

WP.No.22358 of 2014

DISPOSING OF THE WRIT PETITION

WITHOUT COSTS

AJM (8)
1/9/14

appropriate to dispose of the Writ Petition granting stay of collection of the disputed tax on condition that the petitioner deposits 50% of the disputed tax, after giving credit to the amount already paid by them towards pre-deposit, within six weeks from today.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

SD/-KODALI SREENIVASA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Commercial Tax Officer, M.G.Road Circle, Hyderabad.
2. The Appellate Deputy Commissioner(CT),. Punjagutta Division, Hyderabad.
3. The Joint Commissioner(CT),Legal, Office of the Commissioner of Commercial Taxes, Government of Telangana, Hyderabad.
4. The Principal Secretary, State of Telangana, Revenue (CT) Department, Telangana Secretariat, Hyderabad.
5. One CC to Sri Bhaskar Reddy Vemireddy, Advocate(OPUC)
6. One CC to Sri P. Balaji Varma, Spl. Standing Counsel for Commercial Taxes (TG)(OPUC)
7. Two CD Copies

MBC

towards construction cost excluding the cost of land, though it could be registered separately at any stage; in the present case, the petitioner is paying 1% on the entire cost of land, building development charges, etc; and their case is, in fact, covered by the ruling of the Advance Ruling Authority on the application filed by **M/s Sai Sree Developers (P) Limited, Hyderabad** (order of the authority dated 23.01.2007) wherein it was held that the words " whichever is higher" in Section 4 (7) (d) of the Act is significant; if the developer is taking the total consideration received, he was eligible to pay tax at 4% of 25% of the consideration; he is not entitled to claim any deduction whatsoever either representing cost of proportionate title of the land or any other charges incurred upto the stage of registration and handing over the property in the name of the buyer; and it shall also include the cost of finishing work taken up by a separate agreement as claimed by the applicant.

While the submission urged before us, by Sri V.Bhaskar Reddy, learned counsel for the petitioner, cannot be said to be without merit, it would be wholly inappropriate for us, at this stage, to express any opinion as the petitioner's appeal is still pending adjudication before the second respondent. As the scope of Section 4 (7) (d) of the Act is required to be examined by the Appellate Authority, bearing in mind the aforesaid rulings of the Advance Ruling Authority, we consider it application for grant of stay being rejected by the second respondent, they invoked the jurisdiction of the third respondent who, by his order dated 18.07.2013, rejected the petitioner's request for grant of stay.

The third respondent-Joint Commissioner relied on the ruling of the Advance Ruling Authority, in the case of **Maytas Hill County Private Limited** dated 30.07.2006, to hold that, though a single document was executed as an agreement of sale, the actual transaction could not be combined and they were separate; of these transactions, the transaction of sale of plot, being immovable property, was not liable to VAT; and the transactions of development and construction of a bungalow fell under the category of execution of a civil works contract and was liable to VAT @ 4% of the receipts under Section 4 (7) (c) of the Act.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that the ruling in **Maytas Hill County Private Limited** supports the case of the petitioner, and not the revenue; the question which arose for consideration in **Maytas Hill County Private Limited** was whether the applicant could opt for composition under Section 4 (7) (d) of the Act only for the consideration received towards construction costs excluding the cost of land; the Advance Ruling Authority had held that the applicant was not eligible to opt for 4% of 25% only on the consideration received

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.22358 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed against the order passed by the third respondent rejecting the petitioner's request for grant of stay of collection of the disputed tax, pending adjudication of their appeal before the second respondent.

The petitioner is a private limited company carrying on business of development in immovable property. It opted for composition under Section 4 (7) (d) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act'). On the ground that, in addition to a composite agreement for sale of land and buildings, the petitioner had also entered into three separate agreements for sale of land, land development and construction of buildings, they were held disentitled to composition, under Section 4 (7) (d) of the Act, by the assessing authority and, accordingly, tax of Rs.16,01,701/- was levied on them.

Aggrieved thereby, the petitioner preferred an appeal before the Appellate Deputy Commissioner and paid 12.5 % of the disputed tax i.e. Rs.1,98,096/-. The petitioner claims to have paid additional amounts and the balance tax payable, in accordance with the order of the assessing authority, is said to be Rs.13,86,669/- as on date. On the petitioner's

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND FOURTEEN

PRESENT

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO: 22358 OF 2014

Between:

M/s.Mehta & Modi Homes, 5-4-187/3&4, II Floor, Soham Mansion, M.G.Road, Secunderabad. Rep.by its Managing Partner, Mr.Soham Satish Modi.

.....PETITIONER

AND

1. The Commercial Tax Officer, M.G.Road Circle, Hyderabad.
2. The Appellate Deputy Commissioner(CT),. Punjagutta Division, Hyderabad.
3. The Joint Commissioner(CT),Legal, Office of the Commissioner of Commercial Taxes, Government of Telangana, Hyderabad.
4. The State of Telangana, Rep. by its Principal Secretary, Revenue (CT) Department, Telangana Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 3rd respondent in rejecting the revision petition filed by the petitioner seeking stay of recovery of the balance disputed tax of Rs.13,86,669 /- from out of the total disputed tax of Rs.16,01,701/- for the tax periods 2007-08 under the Provisions of AP VAT Act, 2005 through the impugned proceedings in CCT's Ref.No.LIII(2)/43/2014 dated 18.07.2014 as illegal, arbitrary, high handed and set aside the same and restrain the 1st respondent from taking any coercive steps for recovery of the balance disputed tax pending appeal before the 2nd respondent

WPMP NO. 28044 OF 2014: Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to grant stay of recovery of the balance disputed tax Rs.13,86,669/- from out of the total disputed tax of Rs.16,01,701/- for the tax periods 2007-08 under the AP VAT Act, 2005,pending disposal of the writ petition.

Counsel for the Petitioner: SRI BHASKAR REDDY VEMIREDDY

**Counsel for Respondents: SRI P. BALAJI VARMA,
SPL. SC FOR COMMERCIAL TAX (TG)**

The Court made the following: ORDER