

MEHTA & MODI HOMES

5-4-187/3 & 4, IInd Floor, Soham Mansion, M.G. Road, Secunderabad – 500003

Phone: +91-40-66335551, Fax: 040-27544058

Date: 12th November 2012

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

Dear Sir,

Sub: APVAT Act'2005 - M/s. Mehta & Modi Homes, Secunderabad –
Notice of Assessment of Value Added Tax in Form VAT 305A –
Assessment year 2008-09 – Objections called for – Additional
Reply submitted – Reg.

Ref: 1) Notice of Assessment in form VAT 305A dated 24th August 2012.
2) Our reply dated 13th September 2012

We submit that we were issued notice of assessment dated 24-08-2012 for the year 2008-09 proposing levy of VAT @ 4% on the alleged receipts of Rs.12,77,49,990/- to which we have already filed reply through our letter dated 13-09-2012. We have verified our records and submit herewith the additional reply in continuation of the said reply. We request to kindly consider the same on the following grounds.

We submit that we have declared a turnover of Rs. 11,34,93,227/- for the year 2006-07, Rs. 5,26,32,200/- for the year 2007-08 and Rs. 5,70,57,600/- for the year 2008-09 and paid VAT @1% under composition under Sec. 4 (7) (d) of the APVAT Act, 2005 based on the registrations of villas done during the respective periods. In the notice of assessment for the year 2008-09, you have adopted a turnover of Rs.12,77,49,990/- as our receipts during the year 2008-09 and proposed levy of tax @ 4%. In fact we have declared this entire turnover as in come in the Profit and Loss Account and Balance Sheet for the year 2007-08 and also to the Income Tax Department. We submit that we are recognized the amounts received from the customers as income based on the following criteria.

- Construction must be completed in all respects
- purchaser should have paid entire consideration
- Sale deed should have been executed in favour of the purchaser.

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Following the above said criteria we have declared the income in the Profit and Loss Account and Balance Sheet, where as for the purpose of paying VAT, we have adopted the following criteria:

- a. VAT is paid after execution of sale deed and the constructions reaches an advanced stage (like completion of all civil works). It is before completing the final works and handing over the possession.
- b. In some cases where the buyer has requested to differ execution of sale deed, VAT has been paid when civil work was completed.
- c. In a couple of cases payment of VAT was differed as dispute arouse with the purchaser and there was a likelihood of cancellation. However, VAT was paid once the dispute was resolved.

We therefore submit that we have declared the amounts received from the customers as taxable turnover prior to recognizing the said amount as income in the Balance Sheet. As we have declared turnover of RS.11,34,93,227/- as taxable turnover out of the total income of Rs. 16,61,25,381/- in the year 2006-07 itself, adopting Rs.16,61,25,381/- again as taxable turnover in the year 2007-08 amounts to levy of tax double time on the same turnover which is illegal and against the provisions of the APVAT Act. Hence this turnover cannot be adopted for the assessment under the VAT Act.

We request to kindly adopt the turnover of Rs.5,70,57,600/- for the year 2007-08 in the notice of assessment. The objections filed by us in our letter dated 13.09.2012 disputing the levy @4 % remain the same. We are also submitting herewith the statements showing the receipts for Rs.5,70,57,600/-

We request to kindly adopt the above turnover and levy VAT @1% only. In case you proceed further we request you to kindly provide us as opportunity of personal hearing to explain our case in detail with statements of turnovers.

Thanking you,

Yours faithfully

For MEHTA & MODI HOMES,



(SOHAM MODI)
Managing Partner

o/c

MEHTA & MODI HOMES

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Date: 12th September 2012

To,
Commerical Tax Officer,
MG Road Circle,
Hyderabad.

Sir,

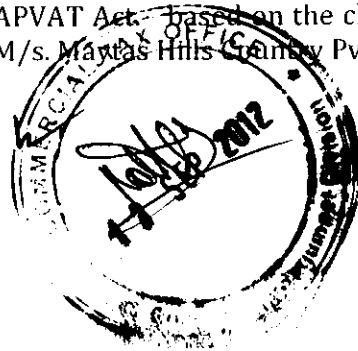
Sub: APVAT Act'2005 - M/s. Mehta & Modi Homes, Secunderabad - Notice of
Assessment of Value Added Tax in Form VAT 305A - Assessment year 2008-
09 - Objections called for - Reply submitted - Reg.

Ref: Notice of Assessment in form VAT 305A dated 24th August 2012.

We submit that we are in receipt of notice of Assessment notice dated 24/08/2012 proposing to levy tax @ 4% on all the receipts under section 4(7)(c) of APVAT Act 2005, instead of section 4(7) (d) of APVAT Act, 2005 which the company has opted to pay under Composition Scheme. We request to kindly consider our further objections on the following grounds:-

At the outset, it is submitted that the Assessment for the period July 2008 ought to have been completed on or before August 2012. We submit that the Notice of Assessment in Form 305A for the assessment year 2008-09 was served on us 24th August 2012 which is barred by limitation. Section 21(3) of APVAT Act 2005 reads as follows "Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within four years of the due date of the return or within four years of the date of filing of the return whichever is later" Thus the above mentioned period is barred by limitation. For this ground alone, the proposed levy of tax under section 4(7)(C) may be dropped. Without prejudice to this we submit our objections as follow:.

We submit that we are engaged in the business of construction and selling of independent Bungalows at Charlapalli, Ghatkesar Mandal, R.R. District and opted for payment of tax @ 1% under composition under Sec. 4(7) (d) of the APVAT Act. We 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%. Your goodself has proposed to levy tax @ 4% on the receipts / receivables under Sec.4(7)© of the APVAT Act. based on the clarification given by the Advance Ruling Committee in the case of M/s. Maytas Hills Country Pvt. Ltd.



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In the proposed notice of assessment it is alleged that we execute a sale deed for sale of land and later we enter into two separate contracts for development of plot and for construction of bungalow. Based on the Advance Ruling issued in the case of Maytas Hill Company Pvt. it was stated that we are not eligible to opt to pay tax @ 4% of 25% consideration received towards construction cost by excluding cost of land though it could be registered separately at any stage. It is further stated that this clarification matches with the transactions of our company and hence the transactions of development and construction of bungalow fall under category of execution of civil works contract and proposed to tax @ 4% on receipts under Sec.4 (7) © of the APVAT Act.

We submit that our transactions are totally misconceived and misunderstood by your good self. We submit that in the course of our business we in the first instance enter into agreement with our prospective buyers for sale of independent Bungalows of similar size, similar elevation, same colour scheme etc., 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. We have paid VAT @ 1% on the total consideration received from these three components of the agreement. In the Advance Ruling in the case of Maytas the ruling is given as under:-

- 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 APVAT Rules,2005.

At page 2 of the present notice the following para is included as part of the above Advance Ruling:

"The applicant shall not be eligible for composition under Sec. 4(7)(d) to pay tax @ 4% on 25% on the total consideration."

In fact this sentence does not form part of the above Advance Ruling.

From the above Ruling 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

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the applicant shall ensure payment of 1% of total consideration received or receivable as per the initial agreement of sale. We submit that we enter into agreement of sale with our prospective buyers where in the sale value of land, development charges of land for laying of roads, drains, parks etc., and cost of construction are mentioned in this single document of sale agreement. Even though we enter into agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements are already shown in the original agreement of sale and we have paid VAT @ 1% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% by us is as per the provisions of Section 4(7) (d).

We submit that the Advance Ruling Authority in the above ruling 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 construction cost.

We submit that the said ruling is binding on all the officers under Section 67 (4) (iii) of the Act. We are therefore eligible for payment of tax @ 1% on the total consideration as per the mother agreement.

The observation made in the notice that the clarification given in the Advance Ruling cited above that in the event a piece of land belonging to the applicant is sold to the customer through a sale deed and then through a separate construction agreement matches with our transactions is not at all correct. It is a factual error. Hence the proposal made in the notice that our turnover is liable to tax @ 4% on all the receipts under Sec. 4 (7) © of the said Act may kindly be dropped.

We therefore request you to kindly drop the proposal to levy tax under Section 4 (7) (c) of the Act and on the part of the total consideration agreed. We also request to provide us an opportunity of personal hearing to substantiate our contentions.

Thanking you,

Yours faithfully

For MEHTA & MODI HOMES,



Authorised Signatory

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT



O/o Commercial Tax Officer
MG Road Circle
3rd Floor, Pavani Prestige
Ameerpet, Hyd'bad

TIN No 28840298894 / 08-09

Dated : 24-08-2012

NOTICE OF ASSESSMENT OF VALUE ADDED TAX

Sub : APVAT Act 2005 – M/s MEHTA & MODI HOMES, Secunderabad –VAT-305A –
Assessment year 2008-2009 – Show Cause Notice issued – Regarding.

Ref : Vig. & Enfft Dept, Hyd'bad Rural Rc.No : 4/12/RV&ECHR/Rev.Wing/08
dated 21-01-2009.

M/s Mehta & Modi Homes, HNO 5-4-187, MG Road Secunderabad are registered dealers under the APVAT Act with TIN No 28840298894 and engaged in execution of works contract under APVAT Act 2005. M/s Mehta & Modi Homes, Secunderabad are constructing Independent Bungalows at Cherlapally, Ghatkesar Mandal, Ranga Reddy District. The Vigilance & Enforcement Officials visited the said work site on 10-12-2008 and obtained details of the entire construction work of the dealer and sent the record to the Commercial Tax Officer, MG Road.

On examination of the record it is noticed that the Company opted for composition scheme and paying their taxes due thereon @ 4% on 25% of receipts under Section 4(7)(d) of APVAT Act 2005. It is noticed that they have purchased Sand, Metal, Bricks and Hardware Material from unregistered dealer which are liable to tax under Section 4(7)(e) of APVAT Act 2005 but they have not declared the above purchases and paid tax to the department accordingly. Further as per the documents furnished by the contract, it is noticed that the company 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 company has collected separate amounts for sale of land, for development of plot & for 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 sec.4(7) © of APVAT ACT'05.

As per the Advance ruling issued by the authority for clarification and Advance Ruling of the CT Dept in the case of MAYTAS HILL COUNTY PVT LTD Begumpet Hyderabad Dated 30-07-2006 in the event 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 construction of a house on such land purchased by the customer, there is a sale deed for the sale of land and also a construction agreement between the applicant and customer which is also registered with the Sub-Registrar, the applicant is not eligible to opt @ 4% of 25% consideration received towards construction cost by excluding cost of land through it could be registered separately at any stage. Here in the present case the company sold plots and executed sale deed and later entered into two contracts, one for development of the plot and the other for construction of bungalow (building).

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The contractor has entered into an agreement of sale with the customers for sale of plot, execution of works contract for developing the plot by laying roads, drainage lines, parks etc., and for construction of bungalow. The contractor 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 transactions 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 development and construction of bungalow fall under category of execution of civil works contract and are liable to VAT @ 4% on receipts under Section 4(7)© of APVAT Act 2005.

The transactions of the contractor are similar to second category of situations mentioned in the Advance Ruling in the case of M/s Maytas Hill Country Pvt Ltd.

Second Category reads as under :

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.

The applicant shall not eligible for composition under section 4(7)(d) to pay tax @ 4% on 25% on the total consideration"

Similarly in this case, the contractor also sold plot to the customers and entered into two separate covenants, one for development of plot and the other for construction of building, the contractor is not eligible to opt to pay tax @ 4% of 25% on the total consideration.

Further it is revealed that the contractor has purchased Sand, metal, Granites and Bricks from un registered dealer and they have not paid tax under Section 4(7)(e) of APVAT Act 2005. Since the contractor opted for composition and proposed to levy tax @ 4% on the total consideration (after deduction the Plot Value) tax is not levied on the above un-registered purchase under Section 4(7)© of APVAT Act.

In view of the above, the turnover of the contractor is liable to tax @ 4% on all the receipts under Section 4(7)© of APVAT Act 2005. As per the information available, the contractor has received consideration from customers from 01-04-2008 to 31-03-2009.

2008-09 → Rs 12,77,49,990/-

Computation of taxable turnover and tax

Receipts	Rs	12,77,49,990/-
VAT @ 4%	Rs	51,09,996/-
Less VAT paid	Rs	3,18,600/-
Diff. VAT	Rs	47,41,396/-

M/s MEHTA & MODI HOMES, Secunderabad are hereby requested to file their written objections if any alongwith the documentary evidence within (7) days from the date of receipt of this notice, failing which the orders will be confirmed without any further notice / time.


COMMERCIAL TAX OFFICER
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M.G. Road, Circle Hyd.