M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

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

Date: August'22, 2014

To,

The Joint Commissioner (CT) -I,
O/o. the Commissioner of Commercial Taxes,
Nampally, Hyderabad.

Sir,

Sub:- Filing of Stay petition in the case of M/s.Mehta & Modi Homes, M.G.Road, Hyderabad, - For the assessment years 2009-10, 10-11, 11-12 & 12-13(upto Jan`13)/Penalty - reg.

*****

Please find enclosed herewith the following appeal papers:

1. Form – APP 406 2 copies.
2. Grounds of Appeal 2 copies.
3. Stay rejection order passed Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad, dated. 30.07.2014 (in Original) along with Xerox copy.
4. Two copies of Penalty in Form VAT 203 order dated 29/04/2013 passed by the Commercial Tax Officer (INT), Begumpet Division, Hyderabad.
5. Form –565 (Authorization).

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

Thanking you,

Yours sincerely,

M.Ramachandra Murthy,
Chartered Accountant.

J.C. (CT) (I) (LEGAL) PESHI
O/O. CCT. HYDERABAD.
GOVT OF TELANGANA
RECEIVED

FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED PENALTY

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

Date	Month	Year
10	05	2013

01. Appeal Office Address:
To
The Appellate Dy. Commissioner (CT)
Punjagutta Division, Hyderabad

02	TIN	28842098894

03. Name M/s. Mehta & Modi Homes
Address: No.5-4-187/3 & 4, IInd Floor, Soham Mansion
M.G.Road, Secunderabad - 500 003.

04.	Tax period	2009-10, 2010-11, 2011-12 and 2012-13 (upto January'2013)/Penalty
05.	Authority passing the order or proceeding disputed.	Penalty order in Form VAT 203 dated 29/04/2013 passed by Commercial Tax Officer (INT), Begumpet Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	29/04/2013
07.	(1) (a) Tax assessed	Rs.4,48,500/- (Penalty)
	(b) Tax disputed	NIL
	(2) Penalty / ~~Interest~~ disputed	Rs.4,48,500/-
08	Amount for which stay is being sought	Rs.3,92,437/-
09.	Address to which the communications may be sent to the applicant.	M.Ramachandra Murthy Chartered Accountant Partner , N. Saibaba & Company H.No.3-6-520. Opp.: to KFC, Himayathnagar Main Road, Hyderabad Tel.:30878935/36 Email.mrc_murthy@yahoo.com

Signature of ~~the~~ Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF STAY

1.) Substantial question of facts and law that may arise in the appeal.

2.) The appellant will be hard hit if it is called upon to pay this heavy amount of penalty pending disposal of the appeal.

3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.

Hence it is just and necessary that the Appellate Dy. Commissioner(CT) may be pleased to grant stay of collection of the balance disputed penalty of Rs.3,92,437/- pending disposal of the appeal.

VERIFICATION

I Soham Modi applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the 10 day of May'2013

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

M/s. Mehta & Modi Homes

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad – 500 003.

Tax Period: 2009-10 to 2012-13 (upto September'2012)/VAT

Statement of Facts:

1) The appellant is a registered VAT dealer engaged in the business of construction and selling of independent residential villas in fully developed/ operational gated housing complex at Charlapally, Ghatkesar Mandal, R.R. District and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad, with TIN No 28840298894. The appellant opted to pay tax @ 1% under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.

2) The appellant has opted for payment of tax under composition under section 4 (7) (d) of the said Act. In the course of the business the appellant enters into agreement with their prospective buyers for sale of independent Bungalows of similar size, similar elevation, same colour scheme etc., along with certain amenities. The agreement of sale which is the mother agreement consists of the consideration received through sale of land, development charges of land and cost of construction of the bungalow. The appellant has paid VAT @ 1% on the total consideration received from these three components of the agreement.

3) Upon authorization given by the Deputy Commissioner (CT), Begumpet Division, the Commercial Tax Officer (Int.), Begumpet Division (for short CTO) has conducted VAT audit of the appellant for the tax periods from 2009-10 to 2012-13 (upto September'2012). The CTO (Int.) has issued Notice of Assessment of VAT in Form VAT 305A dated 23/02/2013 proposing levy of tax of Rs. 44.85 lakhs under Section 4 (7) (b) on the estimated turnover of construction @4% for the years 2009-10,2010-11and 2011-12(upto 15th September and @5% for the years 2011-12 (after 15th September) and 2012-13 after deducting the tax paid by the appellant under Section 4 (7) (d).

4) The appellant has filed detailed objections before CTO against the proposed levy of tax of Rs.44,85,000/- by letter dated 12/03/2013 and reiterated the same in personal hearing on 16/03/2013. Without properly considering the objections raised by the appellant, the learned CTO has completed the assessment proceedings in Form VAT 305 dated 19/03/2013 confirming the proposed levy of tax of Rs. 44.85 lakhs.

5) Aggrieved by the said assessment order the appellant prefers this appeal on the following grounds, amongst others:-

Grounds of Appeal:

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

b) In the notice the learned CTO stated that the appellant is selling land/plot separately and entering into separate agreement for construction of villa and paying tax under section 4(7) (d) and their payment under Section 4 (7) (d) is against the clarification issued in the below mentioned Advance Rulings.

c) In the notice the learned CTO stated that as per the Advance Ruling given in the case of M/s. Nobel Properties, Banjara Hills dated 15/09/2012, it was clarified that agreement for construction villa and the land sold by the builder to the buyer will fall under Sec. 4(7) (b) of APVAT Act taxable @ 4% on the total consideration received. The learned CTO has also relied on the advance ruling given in the case of VPL Projects (P) Ltd dated 01-02-2007 wherein it was clarified that on the land already owned by the customer and the applicant has no rights to sell or to register the housing unit, such transactions does not come under the purview of construction and selling of residential houses. The learned CTO has also referred to the advance ruling given in the case of M/s Kashi Kanchan, Tirmulgherry where in it was clarified that the tax rate of 4% on 25 % of the consideration received or receivable or market value fixed for the purpose of stamp duty. Referring to these three advance rulings the learned CTO has proposed levy of tax under Section 4 (7) (b) of the APVAT Act rejecting the payment by the appellant under Section 4 (7) (d).

d) The appellant submits that the advance ruling given in the case of Nobel Properties dated 15-09-2012 is not applicable to appellant's case as the appellant enters into an initial agreement for sale of villa/apartment along with land for a specific amount which is the mother agreement. In this mother agreement which is a single deed the cost of the land, cost of construction of the villa and the development charges are all mentioned. This is the sale consideration received from their prospective buyers on which the appellant has paid tax under Section 4 (7) (d) of the Act. In the last para of the assessment order the learned CTO has also admitted that as per ruling, only construction and selling of villas along with land **in a single deed** will fall under Section 4 (7) (d). The learned CTO in the same para has again stated that there is no single deed of land and buildings and hence the appellant does not fall under Section 4 (7) (d). The appellant submits that in the advance ruling there is no initial agreement as in the appellant's case. The appellant submits that as per clarification given in the second para **B** above the appellant are rightly eligible for payment of tax @ 1% on the total consideration under section 4(7) (d) of the Act as they have entered into one single agreement for the sale of Villa along with land.

e) In the case of VPL Projects P Limited in Advance Ruling No.165/2006 dated 1.2.2007, it has been clarified as follows:-

"3. Whether the houses either in semi finished condition or finished condition are sold by an initial agreement of sale and subsequently by a sale deed wherein the applicant is having right to sell and receive the consideration from the prospective buyer, such arrangement becomes a tripartite agreement (owner of land, developer and prospective buyer of housing unit) and the total consideration received from the prospective buyer will have to be taken into consideration and in case composition under clause (d) of sub section (7) of Section 4 is already opted by the applicant, the tax at 1% of the total consideration received needs to be paid either directly by the developer or the way of collection of tax at the time of registration before the Sub Registrar. The total consideration agreed upon or market value for registration whichever is higher must be taken into consideration by payment of 1% tax if the developer opted for composition."

f) In the above advance ruling it was clearly stated when the houses either in the semi finished condition or finished condition are sold by an initial agreement of sale and subsequently by a sale deed it becomes a tripartite agreement and in the case of option under composition under Sec 4(7)(d) the payment of tax @ 1% on the total consideration received is to be paid. The appellant also opted for composition under Sec 4(7)(d) and the ruling given in the second part of the advance ruling is directly applicable to appellant. Hence the payment of tax @ 1% / 1.25% on the total consideration is in order.

g) In the notice the assessing authority further relied on the Advance Ruling in CCT's Ref. No. PMT/P&L/A.R. Com/566/2005 dated 18-05-2006 in the case of M/s Kashi Kanchan, Tirumalghery. In this case the Department has given a clarification that the provisions of composition under clause (d) sub section (7) of Section 4 of APVAT Act, 2005 are applicable only in respect of land developers who have right to sell such constructed apartments, houses, buildings or commercial complexes. It was also clarified that the tax rate of 4% of 25% of the consideration received is specifically linked to consideration or market value fixed for the purpose of stamp duty. In the appellant case they have sold the villas along with the land as per the initial agreement i.e, mother agreement and they have every right to sell such property. Thus the above advance ruling is not applicable to appellant's case.

h) The appellant submits that transactions are totally misconceived and misunderstood by the assessing authority. In the course of business the appellant is in the first instance enters into agreement with their 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. The appellant has paid VAT @ 1% on the total consideration received from these three components of the agreement by following the advance ruling given in the case of M/s. Maytas. In the said Advance Ruling dated 30/07/2006 the ruling is given as under:-

> "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.

The applicant is not eligible to opt to pay 4% of 25% consideration received towards construction cast by excluding cost of land though it could be registered separately at any stage.

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."

i) Copy of the said Advance Ruling is here with enclosed for ready reference. From the above Ruling the assessing authority 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 they shall ensure payment of 1% of total consideration received or receivable as per the initial agreement of sale. The appellant submits that they enter into agreement of sale with the appellant 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 the appellant enters into agreement for construction and agreement for development charges subsequently the amount mentioned in the subsequent agreements are already shown in the original agreement of sale 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 as per the provisions of Section 4(7) (d).

j) The appellant submits 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. The appellant submits that

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

k) In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Appellate Authority to set aside the assessment order as illegal and allow the appeal.

*

(APPELLANT)