

MEHTA & MODI HOMES

5-4-187/3 & 4, IInd Floor, Soham Mansion, M.G. Road, Secunderabad – 500003
Phone: +91-40-66335551, Fax: 040-27544058

To,
The Deputy Commissioner (CT),
Begumpet Division,
Hyderabad.

Date: 02.03.2012

Dear Sir,

Sub: Written objections against revised show cause notice issued to us
Dtd. 24.01.2012 – Reg.

Ref: 1. your show cause notice no: Rc.No.E3/R/219/2011 dated 24.01.2012
2. CTO (Audit), Begumpet Division Form VAT 305 dtd. 29-04-2008 for the tax
Period 01-09-06 to 28-02-2007.

We, M/s. Mehta & Modi Homes, H.No. 5-4-187/3 & 4, IInd floor, M.G. Road, Secunderbad are registered dealer of works contract under APVAT act with TIN No. 28840298894 and opted for composition as per section 4(7) (d) of APVAT Act 2005.

With reference to the above, notice issued by you is invalid and injustice as you charged tax amount of Rs. 27, 46,805 U/s. 4(7) (c).

We would like bring your notice that we have registered U/s. 4(7) (d) and we have been paying the VAT under composition @1%; hence your notice is invalid.

The vigilance & enforcement officials visited our site (office) on 10.12.2008 and verified all records and we have cooperated fully for their verification.

On examination they made an objection that sand, metal, bricks and hardware material purchased from unregistered dealers which are liable to tax under section 4(7)(e) of APVAT Act 2005 and we have not declared and not paid tax to the department accordingly. For the above objection to kindly consider on the following grounds.

DCTO (Audit) of Begumpet division audited our records and accordingly CTO of (Audit), Begumpet had passed an order to pay Rs.41, 000/- on unregistered purchases and we paid it off.

Further we submit that sec-4(7) (d) of the APVAT Act reads as under.

“Any dealer engaged in construction and selling of residential apartments, houses or commercial complexes may opt to pay tax by way of composition at the rate 4% of twenty five percent (25%) of the consideration received or receivable on the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed.....”



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As per the above clause, a dealer engaged in construction and sale of apartment, houses etc. is liable to pay tax@4% of 25% of the consideration received or receivable on the market value fixed for the purpose of stamp duty whichever is higher

We submit that every hardware material was purchased from VAT Dealers on which we already paid tax. Infact there is no purchase tax that has been provided in the Act. Further we submit that sand, stone, metal and bricks were purchased from non VAT dealers and all these non VAT purchases or used in the constructions of houses on which we have opted for composition and paid tax@1% under composition scheme of APVAT Act 2005. As the goods are used in the constructions the property in these goods is already included in the value of houses and hence the levy of tax on these non VAT purchases is also not correct.

You have raised a question that whether the dealer is liable to tax 4% on 25% on receipts under section 4(7)(d) or liable to tax 4% on all receipts under section 4(7)(c) of APVAT Act-2005. In this connection the Advance Ruling issued by the authority and Advance Ruling of the commercial tax department in the case of M/s. Maytas hill country Pvt. Ltd., Begumpet, Hyderabad to be persuaded

Here we submit that the department clarified that "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 in stages.

In our case initially we enter into an agreement of sale with the prospective customer and this is legal document which consists full total sale consideration of the villa and we have been paying 4% of 25% of total consideration basing on this agreement of sale. We neither excluding the land value nor paying 4% of 25% towards construction cost as per construction agreement.

In the same M/s. Maytas hill country Pvt. Ltd., Begumpet, Hyderabad case the department clearly said that "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 at the time of execution of sale deed before sub-registrar as prescribed in clause (1) of sub rule (4) of Rule 17 of APVAT rules 2005".

The above clarification from the department clearly says that the initial agreement of sale which discloses total sale consideration and on this the applicant can pay 1% of tax of total sale consideration to CTO/Asst. Commissioner and we have been doing the same for all the time.



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If any builder or developer completed as house/houses in all aspects and they were ready to occupy by the prospective customer by executing a single sale deed with registration here no tax payable as sale of house is being immovable property.

In M/s. Kashi Kanchan, Tirumalgiri case the department has given one more clarification that the provisions of composition under clause (d) of sub section (7) of section 4 of APVAT Act 2005 are applicable only in respect of builders and developers who have right to sell such constructed apartments, houses, buildings or commercial complexes. 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.

Therefore, this provision is not applicable in respect of contractors who execute work for construction of building but do not have any right to sell such property. This category of contractors can opt for composition under clause (b) or clause (c) of sub section (7) of section 4 as the case may be.

In the above clarification it clearly applicable for us that we are very much builders and developers and have a right to sell the property and we very much deserved to opt composition under clause (d) of sub section(7) of section 4 of APVAT Act. 2005

For your kind information, I want to remind you one clarification that previous Deputy Commissioner, Begumpet wrote a letter to the Commissioner of Commercial Taxes in this regard but the clarification is still pending with the Commissioner.

We therefore request you to drop show cause notice issued to us as matter has been discussed in length and clarified as above.

Thanking you,

Yours truly,

For MEHTA & MODI HOMES

Authorised Signatory

- CC to: 1. CTO (Audit), Begumpet.
2. Additional Commissioner (CT)
3. Commissioner (CT)

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