

MEHTA & MODI HOMES

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

Phone : +91-40-66335551, Fax :

To,
Dy. Commissioner (CT),
Begumpet Division,
Hyderabad.

Date: 27th March 2012

Sir,

Sub: APVAT Act'2005 - M/s. Mehta & Modi Homes, Secunderabad - Revision of Assessment for the tax period 01/09/2006 to 28/02/2007 - Show cause notice issued - Objections filed - Personal hearing notice issued - Reply submitted - Reg.

- Ref: 1) CTO (Audit), Begumpet Division Form VAT 305 dated 29/04/2008 for the tax period 01/09/2006 to 28/02/2007.
2) DC (CT), Begumpet Division, revision show cause notice in RC.No.E3/R/219/2011 dated 24/01/2012.
3) Our reply dated 02/03/2012.
4) Notice for personal hearing dated 03/03/2012.

We submit that we are in receipt of the revision show cause notice dated 24/01/2012 proposing to revise the assessment order passed by CTO, (Audit), Begumpet Division for the tax period 01/09/2006 to 28/02/2007 under Sec.32 (2) of the APVAT Act, 2005. We have submitted our written objections to the said revision show cause notice through our letter dated 02/03/2012 with a request you to drop the revision proposal.

We are given the notice of personal hearing dated 03/03/2012 requesting us to appear on 09/03/2012 to which we have requested time up to 22/03/2012. As our GM-HR & Admin who is in charge of the accounts and finance has recently resigned our organization and a new person has recently joined to look after the accounts and finance, we have requested time for verification of the records and the accounts by the new person upto 28/03/2012 in our letter dated 22/03/2012. We request to kindly consider our further objections on the following grounds:-

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%. The CTO, Audit, Begumpet Division has passed assessment order dt.29/04/2008 for the tax period 01/09/2006 to 28/02/2007 proposing tax @ 4% on the receipts / receivables under Sec.4(7)© of the APVAT Act. On the consideration of the objections filed by us and based on the clarification given by the

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Advance Ruling Committee in the case of M/s. Maytas Hills Country Pvt. Ltd., vide CCT Ref. No. PMT/P&L/A.R.Com 180/2006 dated 30/07/2006 the CTO passed the order stating that the payment of tax by us @ 1% under Sec. 4 (7)(d) is in order.

In the revision notice 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. Ltd., Begumpet dated 30/07/2006 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 dated 30/07/2006 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 3 of the present notice the following para is included as part of the above Advance Ruling:

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"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 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) which is also accepted by the assessing authority.

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 revision 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 revision show cause 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

