

Advance Ruling No : PMT/P&L/A.R.Com/ 80/ 2006
 Date : 30/07/2006
 Subject : Execution of sale deed
 Council for the Petitioner / Appellant : M/s Maytas Hill Country Pvt.Ltd., Amogh Plaza, Begumpet, Hyderabad.

Ref:- CCT's Ref.No: PMT/P&L/A.R.Com/2005 , Dated 13-04-2005.

ORDER:

M/s Maytas Hill Country Pvt.Ltd. , 6-3-1186/5/A , III Floor , Amogh Plaza , Begumpet , Hyderabad (TIN 28690270478) have filed an application Dated 26-7-2006 and sought clarification and advance ruling on the following items under Section 67 of APVAT Act , 2005 read with Rule 66(2)(i) of APVAT Rules , 2005 along with the application fee of Rs.1 , 000/-

The applicant has submitted the following documents :

- a) Note on the nature of transactions for issuing Advance Ruling.
- b) Development Agreement-cum-General Power of Attorney.
- c) Sale Deed and
- d) Agreement of Sale.

Sri M.Ramachandra Murthy , Authorised Representative appeared for hearing on 28-7-2006 and explained the case.

They sought clarification on the following:

The applicant has sought clarification as to whether the following two categories of transactions fall under the ambit of Section 4(7)(d) of the AP VAT Act , 2005.

The applicant is engaged in the business of constructing and selling houses/flats. As explained by the applicant their business transactions are of two categories..

- 1) *On the land owned by the applicant , house is constructed and then land along with the house is sold to the customer. In such a situation , there would be only one sale deed.*
- 2) *In the second category 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.*
- 3) *The applicant has further stated that , in both the situations , (where the land and house constructed thereon are sold through a single deed or where the land is first sold and a construction agreement is then entered into) the consideration received/receivable would be the same and this is clearly laid down in the initial agreement of sale.*

The issue is examined with reference to the provisions of the AP VAT Act and Rules and in particular with reference to sub-section (7) of Section 4 of the Act.

The tripartite agreements of sale entered into by the applicant with the buyers have been examined. It is found that land owners , the applicant as developer and buyers of individual units (houses) are parties to the agreement. In clause 2(a) , it is specified that developer and the landowner have agreed to sell the property consisting of a finished house for a total price specified in Schedule 2 of the agreement. The specified price is found to be the total price for the land and construction cost. In clause 6 , it is specified that landowner and developer shall construct in accordance with the specifications mentioned in Schedule IV

and they shall maintain common areas of township without any additional charges till 31st December 2010. In Clause 9, it is mentioned that purchaser can terminate the agreement only when developer fails to construct the property within the period stipulated and the given grace period and additional 8 months penalty period.

All the terms and conditions in the agreement of sale clearly prove that the transaction is for the complete execution for the total price agreed upon.

Taking this into consideration, the ruling is given that ;

✓ 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 AP.VAT Rules, 2005.