

FORM VAT 305

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

ORDERS OF ASSESSMENT OF VALUE ADDED TAX

See Rule 25 (5)

Present: M.Karamchand

A.O.No.47012.

TIN No 36547131584/VAT/Audit

Dated 05-12-2019

Sub : T VAT Act '05 – M/s Paramount Builders, M.G.Road, Secunderabad - Audit conducted for the period April 2015 to June 2017 - Show Cause Notice issued – Reply called for – Revised show cause notice issued – Reply filed - Personal Hearing availed – Orders passed - Regarding.

- Ref : 1. Notification for Scrutiny of Accounts of VAT in Form VAT 304, dated 14-12-2018
2. Authorization for assessment issued in Admn 1C, dated 03-10-2019 by Deputy Commissioner (CT), Hyderabad.
 3. Show cause notice in Form VAT 305A, dated 03-10-2019 issued by the undersigned.
 4. Revised Show cause notice, dated 02-11-2019.
 5. Reply filed by the dealer dated 04-11-2019.
 5. Personal hearing opportunity availed by the dealer dated 14-11-2019.

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M/s Paramount Builders, M G. Road, Secunderabad are the registered dealer on the rolls of CTO M.G.Road-S.D.Road Circle with TIN No 36547131584 and are engaged in the business of Construction and Selling of Apartments in the name & style of Paramount Residency at Nagaram Village, Keesara Mandal, R.R. Dist. They have opted for composition scheme under section 4(7)(d) of T VAT Act by filing Form VAT 250, dated 20-03-2013 and paying taxes at the rate of 5% on 25% of the total consideration received.

Upon authorization of Deputy Commissioner (CT) Begumpet Division they were served with Form-VAT-304 to produce the books of accounts. Accordingly the assessee has filed the books of accounts and connected records for the period April 2015 to June 2017 for audit verification as under.

- 1) Reported Statement as per VAT-200
- 2) Sales Accounts and Statement
- 3) Sample Sale deed copies
- 4) P&L Accounts.

On verification of books of account submitted by the dealer with reference to the monthly VAT-200 Returns filed during the period from 01-04-2015 to 30-06-2017 the following turnovers are revealed which are proposed to be assessed as per the authorization issued in Admn 1C dated 03-10-2019 in the reference 2nd cited.

Turnovers as per VAT 200 returns.

S.No.	Description	2015-16	2016-17	2017-18 (up to June 2017)
Purchase Account:				
1.	Exempted Purchases	—	—	—
Sales Account:				
1.	Exempt Sales	11550780	5836500	2814750
2.	5% Sales	3850260	1945500	938250
3.	Tax @ 5%	192513	97275	46913
4.	Total Sales	15401040	7782000	3753000
5.	Output tax	192513	97275	46913
6.	VAT Due	192513	97275	46913
7.	VAT Paid	190514	27500	46913
8.	Balance	1999	69775	0

- Short payment of Rs. 71774/- is noticed.

Turnover variation as per P&L Account (SALE OF FLATS)

Sl.No.	Period	Construction account receipts as per P&L	turnover liable to tax @ 5% as per P&L	Turnover liable to tax @ 5% as per VAT returns	Differential turnover arrived	Tax @ 5%
1.	2016-17	12352500	3088125	1945500	1142625	57131
Total differential tax		12352500	3088125	1945500	1142625	57131

During the course of audit, the correctness and completeness of the returns filed along with payments paid by the dealer are verified with reference to the turnovers recorded in the books of account maintained by the dealer.

On verification of records such as agreement of Sales, Sale deed and Construction agreement it is noticed that they followed a modus operandi that they first entering into agreement of sale with customers for construction and selling of flats. After entering the agreement of sale, they have executed the sale deed of semi finished flat in favour of customer for certain amount and for completion of remaining works they have entered agreement for construction and received remaining amount as per the initial or mother agreement. They have paid tax @ 5% on the 25% of total consideration received under Section 4(7)(d) of VAT Act.

In the light of the judgment in the case of M/s Omega Shelters Limited, Secunderabad in WP No 11528 dt 24-04-2015 rendered by Hon'ble High Court of AP, the method of tax payment under section 4(7)(d) of the Act is agreed for the post construction after executing sale deed also. The gist of the judgment is as under :

"If dealers engaged in the construction and sale of residential apartments, houses, buildings or commercial complexes exercise the option, and comply with the conditions stipulated in Section 4(7)(d) and Rule 17(4), they cannot be denied the benefit of composition there under for the construction made by them for the very same person, after execution of a registered deed for the sale of a semi finished structure. Denial of the benefits of the composition scheme under Section 4(7)(d) to such dealers, for the post-sale construction made in terms of the initial agreement is illegal and is contrary to the provisions of the Vat Act and the rules made there under.

However the dealer is requested to produce all Original agreements of sale, Original Sale deeds and Original construction agreements for further verification which were produced on sample basis at the time of audit.

In view of the above it is proposed to assess on the following under declared tax for the period April 2015 to June 2017 as under :

1. Short payment of Tax : Rs. 71774-00
2. Tax on under declared turnover. Rs. 57131-00
- Total : Rs. 128905-00

Accordingly a show cause notice in form VAT 305A, dated 03-10-2019 was issued to the dealers calling their written objections if any against the proposed tax and requested to produce documentary evidence such as all Original agreements of sale, Original Sale deeds and Original construction agreements with respect to Paramount Residency at Nagaram Village, Keesara Mandal, R.R. Dist. Meanwhile as per the request of the dealer (10) days extension of time i.e. up to 21-10-2019 was also granted to the assessee and also provided a personal hearing opportunity on 21-10-2019, 11-00 A.M. But, so far, the assessee neither submitted any documentary evidence as requested in the show cause notice nor attended for personal hearing opportunity. Hence, in the said circumstances, the undersigned has left with no other option except estimate the difference sale deed turnover with reference to Agreement of sale turnover on best of judgment basis which is done as under.

Sl.No.	Period	Sale deed value	Estimated Agreement of sale value (Adding 30% value on Sale deed value)	Difference turnover arrived	Proposed to tax @ 5% difference on 25% turnover
1	2015-16	9275000	12057500	2782500	34781
2	2016-17	12352500	16058250	3705750	46322
3	2017-18 (Apr'17 to June'17)	0	0	0	0
	Total	21627500	28115750	6488250	81103

Total under declared tax proposed in the revised show cause notice.

1. Short payment of Tax : Rs. 71774-00
2. Tax on under declared turnover. Rs. 57131-00
3. Tax on differential turnover arrived w.r.t Agreement of sale turnover. Rs.81103
- Total : Rs. 210008-00

d. However, on several occasions the SRO refused to register the sale deeds for sales made after obtaining OC without payments of VAT. To avoid unnecessary litigation, VAT paid at the time of registration for some sales deeds, even though they were not liable for such a payment.

c. Post obtaining OC, there is neither an element of works contract or of service and therefore in the present case there is no liability under VAT for sales made after receiving OC. Sales deed was executed for entire consideration and no agreement for construction were made.

b. The said VAT was payable at the time of registration of sale deed.

a. Sales of flats prior to obtaining OC-VAT is payable under composition scheme @ 1% or 1.25% on value of sale deed + value of agreement of construction (if any).

4. Our understanding of applicability of VAT to sale of flats is as under and VAT was accordingly paid.

3. VAT was paid under composition scheme for all flats sold prior to obtaining certificate.

2. The construction of the housing project was fully completed by 2009 and occupancy certificate for all 6 blocks was obtained. The copy of the occupancy certificate is attached herein.

1. M/s. Paramount Builders has developed only one housing project on land admeasuring AC. 3-04 Gt. forming a part of Sy. No. 176, Nagaraj village, Keesara Mandal, R.R. District. The building permit for construction of flats in the project known as Paramount Residency was obtained in 2006 from HMDA.

"We submit that we are in receipt of the notice for assessment of VAT in form VAT 305A dated 03-10-2019 proposing to demand a tax of Rs. 1,28,905/- for the period from April, 2015 to June, 2017. We request you to kindly consider our objections on the following grounds:

under.

The objections filed by the dealer vide letter dated 04-11-2019 are reproduced as

04-11-2019.

the revised show cause notice they have reiterated the contentions filed in the letter dated 14-11-2019 while referring to the proposals made in the show cause notice and as well as to objections in their letter dated 04-11-2019. And at the time of personal hearing availed on 02-11-2019 wherein the dealer has stated that they have already filed detailed written filed another letter dated 08-11-2019 referring to revised show cause notice issued dated 02-11-2019 and a letter dated 04-11-2019 referring to show cause notice issued dated 03-10-2019 and calling their written objections if any against the proposed turnovers. In reply the dealer has Accordingly a revised show cause notice dated 02-11-2019 was issued to the dealers

5. The turnover declared in the book of accounts/ IT returns does not match with turnover declared in VAT returns. The method adopted for IT returns is as per rules under the IT Act, wherein profit was estimated for each financial year during the courses of the project and turnover was based on installments due during the year. In most cases sale deed was executed after receipt of most installments, that too in different financial years. In some cases registration of sale deed is not yet done. VAT returns were filed bases on VAT paid from time to time.
6. The details of receipt and summary of receipts, during in notice period, Flats wise, is attached herein. The total receipts towards sale consideration for the period was Rs.1,65,48,130/- and towards other non-taxable receipts was Rs.24,79,885/-. Such non-taxable receipts were towards registration charge, electricity bills, corpus fund and in appropriate authority, electricity board, owners association, etc.
7. Receipts from 15 flats was received during the notice period. Copies of sale deeds of 9 flats is attached herein. The other sale deeds are misplaced and we are trying to obtain certified copies from the SRO.
8. The method adopted by you for computing shortfall in payments is not correct. During the year 2015-2016 we have paid VAT@ 1.25% on a turnover of Rs. 1,54,01,040 which works out to Rs. 1,92,513 against which an of Rs.1,90,514 was only shown as paid similarly we have VAT Rs. 27,500 was only shown as paid. The details of month wise payments of VAT during the year 2015-16 and 2016-17 are enclosed. In view of payments of total tax due of Rs. 1,90,514 for the year 2015-16 and RS 97,275 for the year 2016-17 the proposed short payment of RS. 71,774 may please be dropped.
9. The methods of adopting turnover from VAT returns and P&L account is not correct. The 5% sales during the years 2016-17 has been correctly adopted in both tables of the notice. We have also paid VAT as per turnovers in book and reported in the VAT returns. The difference in the turnover of Rs. 11,42,625 as worked by you does not form turnover band the proposed levy of tax of RS. 5,04,528 may please be dropped.
10. During the noticed period the majority of the receipts received by Paramount Builders (for 8 flats) were for sale of fully completed flats to M/s. Modi Properties Pvt Ltd. However, the proposed sales was subsequently cancelled and the amount was refunded to Modi Properties Pvt. Ltd. 7 of the 8 flats were later sold by Paramount Builders to third parties. Copies of such sale deeds are attached.
11. Since all the sales during the notice period pertain to sales made after receipts of OC, there cannot be any tax liability on such sales under VAT, as there is no elements of worked contract in such sale. The sale is purely of immovable property. No agreement of construction has been executed for sales during the notice period

In light of the above we request you to drop the demand for payments of shortfall in VAT. We are willing to provide any further documents that you may require. Please give us an opportunity for personal hearing.

The above objections of the dealer are verified in the light of the provisions of T VAT Act, 2005 and considered as under.

The dealer, in his letter, has stated that the building permit for construction of flats in the project known as "Paramount Residency" was obtained in 2006 from HMDA and was fully completed by 2009 and occupancy certificate for all 6 blocks was obtained. This part of contention of the dealer is verified with submitted copies of (5) Occupancy Certificates obtained from "Panchayat Secretary, Grama Panchayathi, Nagaram Village, Mdl. Keesara, Ranga Reddy District" and observed that the same were issued in contravene to the rules provided in Andhra Pradesh Building Rules, 2012 issued in G.O.Ms No.168, dated 07-04-2012 by Municipal Administration and Urban Development (M) Department, Government of Andhra Pradesh. As per the Rule 26 (a) of the said rules, Occupancy Certificate shall be issued by Sanctioning Authority only. The Rule 26 (a) of Andhra Pradesh Building Rules, 2012 is extracted as under for ready reference.

" 26. OCCUPANCY CERTIFICATE

(a) Occupancy Certificate shall be mandatory for all buildings. No person shall occupy or allow any other person to occupy any building or part of a building for any purpose unless such building has been granted and Occupancy Certificate by the Sanctioning Authority. Partial Occupancy Certificate may be considered by the Sanctioning authority on merits i.e. flats / ur its or area within a complex which have fulfilled all the requirements in addition to basic facilities like lifts water supply, sanitor., drainage, roads, common lighting etc. However, it respect of individual buildings in plots up to 100sq. m with height up to 7m obtaining Occupancy Certificate is optional".

In view of the above Rule, the Occupancy Certificate shall be issued by the sanctioning authority and in the present case the sanctioning authority is "The Metropolitan Commissioner, Hyderabad Metropolitan Development authority" since the building permit for construction of flats in the project was obtained from HMDA in 2006 as submitted by the dealer. Hence the Occupancy Certificate issued by "Panchayat Secretary, Grama Panchayathi, Nagaram Village, Mdl. Keesara, Ranga Reddy District" is treated as invalid. Further, the dealer has stated that all the sales made after receiving OC, sale deed was executed for entire consideration and no agreement for construction were made. But in support, even though they were requested, the dealer has failed to submit the Agreement of sale (mother document) from which it can be ascertained that whether the sale deed turnover is showcasing the entire turnover or not and as mentioned in para the dealer has not yet received a valid Occupancy Certificate to claim exemption under the provisions of T VAT Act, 2005. Hence the proposed tax of Rs. 81103/- in the revised show cause notice by estimating differential Sale deed turnover by adding 30% value on Sale deed value stands correct.

Further the dealer has stated that the turnover declared in the book of accounts/ IT returns does not match with turnover declared in VAT returns and the method adopted for IT returns is as per rules under the IT Act, wherein profit was estimated for each financial year during the courses of the project and turnover was based on installments due during the year and in most cases sale deed was executed after receipt of most installments, that too in different financial years.

Even though the dealer has explained the possible reason behind the turnover difference between IT returns and VAT returns, failed to submit supporting documents such as reconciliation statement supported by related ledgers showing installments amounts which were formed as sale deed amount and which were formed as advance amount, the proposed tax of Rs. 57,131/- for the period 2016-17 is hereby confirmed.

The dealer has further submitted that the details of receipts and summary of receipts, during the notice period, Flats wise, is attached and the total receipts towards sale consideration for the period was Rs.1,65,48,130/- and towards other non-taxable receipts was Rs.24,79,885/- and such non-taxable receipts were towards registration charge, electricity bills, corpus fund and in appropriate authority, electricity board, owners association, etc. The dealer has submitted that the method adopted for computing shortfall in payments was not correct. They stated that during the year 2015-2016 they have paid VAT@ 1.25% on a turnover of Rs. 1,54,01,040 which works out to Rs. 1,92,513 against which an amount of Rs.1,90,514 was only shown as paid similarly for the period 2016-17 they have paid VAT Rs. 27,500 was only shown as paid. They stated that the details of month wise payments of VAT during the year 2015-16 and 2016-17 were enclosed which stated to show the total tax due of Rs. 1,90,514 for the year 2015-16 and Rs. 97,275 for the year 2016-17 were paid.

The above contention of the dealer is verified with submitted statement of "CATEGORY NO.01-VAT DETAILS SALE AND REGISTRATION BEFORE 30-06-2017" and as per this statement during the audit period i.e. April 2015 to June 2017 the dealer has paid only Rs. 1,21,925/- against VAT due whereas it was Rs. 2,64,927/- according to proposed assessment which was taken from the Axis Bank Challan Posting register And the turnover arrived from this statement for the audit period is Rs. 73,54,000/- only not Rs. 1,65,48,130/- as stated by the dealer. Hence, treating the statement of "CATEGORY NO.01-VAT DETAILS SALE AND REGISTRATION BEFORE 30-06-2017" as not reliable, the short payment proposed for the audit period of Rs. 71,774/- basing on the turnovers reported in the VAT returns is hereby confirmed.

The dealer has further submitted that they received receipts from 15 flats during the notice period. Copies of sale deeds of 9 flats were attached therein. The other sale deeds are misplaced and they are trying to obtain certified copies from the SFO. During the noticed period, the majority of the receipts received by Paramount Builders (for 8 flats) were for sale of fully completed flats to M/s. Modi Properties Pvt Ltd. However, the proposed sales was subsequently cancelled and the amount was refunded to Modi Properties Pvt. Ltd. 7 of the 8 flats were later sold by Paramount Builders to third parties. Copies of such sale deeds are attached. Since all the sales during the notice period pertain to sales made after receipts of OC, there cannot be any tax liability on such sales under VAT, as there is no

As per the above table it is evident that the dealer has produced various turnovers in various statements. Hence it is not possible to rely upon the books of accounts produced by the dealer. Therefore, with regard to turnover variation, the dealer contention is not acceptable and proposal made in the notice are hereby confirmed. Further as observed in the pre para, the Occupancy Certificate issued by "Panchayat Secretary, Grama Panchayathi, Nagaram Village, Mdl. Keesara, Ranga Reddy District" is not valid for the reason that the sanctioning authority of the occupancy Certificate shall be the "The Metropolitan Commissioner, Hyderabad Metropolitan Development authority" since the building permit for construction of flats in the project was obtained from HMDA in 2006 as said by the dealer.

Sl.No	Period	Block & Flat	No.	Sale deed value as per	Sale deed Category	deeds No.01-VAT	submitted details sale and registration before 30-06-2017	Paramount Builders VAT paid Statement	Paramount 2015-16, 2016-04-11-2019 (contractual receipts)	As per the objections filed in the letter dt. Financial year in the letter dt. 2015-16, 2016-04-11-2019 (contractual receipts)	total receipts towards sale consideration
1	2015-16	2C - 509	1100000	-	-	-	-	-	-	-	-
2	2015-16	A - 501	2310000	-	-	-	-	-	-	-	-
3	2015-16	3C - 505	1025000	-	-	-	-	-	-	-	-
4	2015-16	A - 304	2000000	-	-	-	-	-	-	-	-
5	2015-16	3C - 206	1000000	-	-	-	-	-	-	-	-
6		A-502	-	3000000	-	-	-	-	-	-	-
7		A-104	-	1900000	-	-	-	-	-	-	-
8		D-304	-	1450000	-	-	-	-	-	-	-
9		3C-508	-	1000000	-	-	-	-	-	-	-
10		A-304	-	2000000	-	-	-	-	-	-	-
		Total	7435000	9350000	-	-	-	-	-	-	-
11	2016-17	2C - 308	1100000	-	-	-	-	-	-	-	-
12	2016-17	B-407	-	1004000	-	-	-	-	-	-	-
13	2016-17	2C-503	-	-	-	-	-	-	-	-	-
14	2016-17	3C-503	-	-	-	-	-	-	-	-	-
15	2016-17	A-505	-	-	-	-	-	-	-	-	-
16	2016-17	A-508	-	-	-	-	-	-	-	-	-
17	2016-17	B-502	-	-	-	-	-	-	-	-	-
18	2016-17	B-509	-	-	-	-	-	-	-	-	-
19	2016-17	D-307	-	-	-	-	-	-	-	-	-
20	2016-17	D-506	-	-	-	-	-	-	-	-	-
		Total	1100000	1004000	-	-	-	-	-	-	-
21	04/2017 to 06/2017	D - 307	1070000	-	-	-	-	-	-	-	-
		Total	1070000	-	-	-	-	-	-	-	-
		Grand Total	9605000	10354000	-	-	-	-	-	-	-
				9239000	-	-	-	-	-	-	-
					21627500	-	-	-	-	-	-
						-	-	-	-	-	-

The above contention of the dealer is verified with submitted 15 copies of sale deeds and noticed that wherein 1 sale deed pertains to 2014-15, 3 sale deeds pertains to 2015-16, 4 sale deeds pertains to 2019-20 and only 7 sale deeds pertains to the audit period April 2015 to June 2017. As per the submitted copies of the sale deeds it is not possible to arrive total value of taxable turnover for the audit period. During the course of audit, as per the books of accounts, the dealer has produced various statements reporting various values which are tabulated as under.

elements of works contract in such sale. The sale is purely of immovable property. No agreement of construction has been executed for sales during the notice period

In view of the above reasons, the tax proposed for the audit period i.e. April 2015 to June 2017 is hereby confirmed as under.

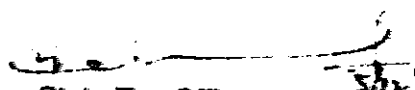
Total under declared tax determined:

1. Short payment of Tax : Rs. 71774-00
2. Tax on under declared turnover: Rs. 57131-00
3. Tax on differential turnover arrived w.r.t Agreement of sale turnover: Rs.81103
- Total : Rs. 2,10,008-00**

In view of the above, the assessment for the period April 2015 to June 2017 is hereby completed on an under declared tax of Rs. 2,10,008/-. The dealer has to pay the demand of Rs. 2,10,008/- within (10) days from receipt of this order. Failure to make payment will lead to recovery proceedings under T VAT Act, 2005.

From the forgoing it is indicated that the dealer has committed an offence under the provisions of T VAT Act, 2005 for which penalty proceedings will be issued separately.

The dealer can file an appeal before Appellate Deputy Commissioner (CT) Panjagutta Division within (30) days of receipt of this order.


State Tax Officer -1 (I/c),
M.G. Road – S.D. Road Circle,
Hyderabad
State Tax Officer-I
M.G. Road-S.D. Road Circle,
Hyderabad

MEMO

APPROVED BY
- 6 JAN 2020
SOHAM MODI
MANAGING DIRECTOR