

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

Date: 04-11-2019

Sir/Madam,

Subject: TVAT Act, 2005-M/s Paramount Builders- Show Cause Notice issued for the period from April, 2015 to June, 2017-Objections called for-Written objections filed-Reg.

Reference: Your notice dated 03-10-2019 bearing no. TIN No. 36547131584/VAT /Audit.

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:

1. M/s. Paramount Builders has developed only one housing project on land admeasuring Ac. 3-04 Gts., forming a part of Sy. No. 176, Nagaram 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.
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.
3. VAT was paid under composition scheme for all flats sold prior to obtaining occupancy certificate.
4. Our understanding of applicability of VAT to sale of flats is as under and VAT was accordingly paid.
 - a. Sale 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).
 - b. The said VAT was payable at the time of registration of sale deed.
 - 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. Please note that all sales made after receiving OC, sale deed was executed for entire consideration and no agreement for construction were made.
 - d. However, on several occasions the SRO refused to register the sale deeds for sales made after obtaining OC without payment of VAT. To avoid unnecessary litigation, VAT was paid at the time of registration for some sale deeds, even though they were not liable for such a payment.
5. The turnover declared in the books 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 course 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 based on VAT paid from time to time.

6. The details of receipts and summary of receipts, during the notice period, flat 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 charges, electricity bills, corpus fund and in some cases VAT and service tax. These amounts collected were remitted to the 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 payment is not correct. During the year 2015-16 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 of Rs. 97,275 @1.25% on a turnover of Rs.77,82,000 against which an amount of Rs. 27,500 was only shown as paid. The details of monthwise payment of VAT during the years 2015-16 and 2016-17 are enclosed. In view of payment 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 method 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 books and reported in the VAT returns. The difference in the turnover of Rs.11,42,625 is due to the different methods adopted for calculating turnover for the purposes of VAT and for the purposes of IT. Thus this difference in turnover of Rs. 11,42,625 as worked by you does not form turnover and the proposed levy of tax of Rs. 5,04,528 may please be dropped.
10. During the notice 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 sale 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 receipt of OC, there cannot be any tax liability on such sales under VAT, as there is no element of works contract in such a 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 payment of shortfall in VAT. We are willing to provide any further documents that you may require. Please give us an opportunity for a personal hearing.

Thank You.

Yours sincerely,

Soham Modi.

Encl: As above.

