FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

	Date	Month	Year
	08	01	2015

01. Appeal Office Address:
To,
The Joint Commissioner (CT)-I
O/o the Commissioner of Commercial Taxes,
Nampally, Hyderabad

02	TIN	28894097186

03. Name M/s. Modi & Modi Constructions
Address: No.5-4-187/3 & 4, IInd Floor, Soham Mansion
M.G.Road, Secunderabad - 500 003.

04.	Tax period	February'2011 to December'2013/VAT
05.	Authority passing the order or proceeding disputed.	Stay rejection order dated 19/12/2014 passed by Appellate Dy. Commissioner(CT), Punjagutta Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	30/12/2014
07.	(1) (a) Tax assessed	Rs.35,26,335/-
	(b) Tax disputed	Rs.35,26,335/-
	(2) Penalty / ~~Interest~~ disputed	NIL
08	Amount for which stay is being sought	Rs.35,26,335/-
09.	Address to which the communications may be sent to the applicant.	M.Ramachandra Murthy Chartered Accountant Partner , N. Saibaba & Company H.No.3-6-520. Opp.: to KFC, Himayathnagar Main Road, Hyderabad Tel.:40248935/36 Email:mrc_murthy@yahoo.com

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

M/s. Modi & Modi Costurctions
Modi Complex, Ranigunj, Secunderabad.

Assessment year: April'2010 to December'2013/VAT

Statement of Facts:

1) The appellant is a registered VAT dealer engaged in the business of construction and selling of Villas / Apartments in the name style of NILGIRI HOMES at Rampally, village, Keesara Mandal, RR District and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad (for short CTO), with TIN No 28894097186. The appellant opted to pay tax @ 1% or 1.25% under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.

2) In the course of business the appellant enters into agreement with their prospective buyers for sale of Villas / Apartments along with certain amenities. The agreement of sale which is the mother or initial agreement consists of the consideration received through sale of land, development charges of land and cost of construction of the entire bungalow. The appellant has paid VAT @ 1% or 1.25%on the total consideration received from these three components of the agreement.

3) Claiming authorization of assessment from DC(CT) Begumpet Division the CTO M.G.Road Circle conducted audit under the provisions of AP VAT Act,2005 for the period April'2010 to December'2013 and issued show cause notice in Form VAT 305A dated 18/03/2014 proposing tax of Rs. 87,70,117/- on the contractual receipts of Rs.2,78,24,000/- for the year 2010-11, 1,62,37,627/- for the year 2011-12 Rs.14,14,09,612/- for the year 2012-13 and Rs,4,32,41,000/- for the year 2013-14 (up to Dec'2013) under Section 4 (b) of the said Act.

4) The appellant has filed detailed objections before CTO against the proposed levy of tax through letter requesting the CTO to drop the proposal of levy of tax under Section 4 (7) (b), but to levy tax under Section 4 (7) (d) of the Act as they are engaged in the business of construction and selling of Villas / Apartments and opted for payment of tax under composition.

5) During the time of personnel hearing, the appellant has filed further objections through letters dated 17/06/2014 and reiterated its earlier request to adopt the contractual receipts as Rs. 3,50,89,600 for the year 2010-11,

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% or 1.25% 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.

d) Appellant submits that 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% or 1.25% of total consideration received or receivable as per the initial agreement of sale. Appellant submits that it entered into agreement of sale with its 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 it entered into agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements has already been shown in the original agreement of sale and it has paid VAT @ 1% or 1.25%on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% or 1.25% is as per the provisions of Section 4(7) (d).

e) Appellant submits that in spite of the submissions made as above in the earlier replies it is stated in the assessment order that the fact of registration of the bungalow in favour of the prospective buyer also is not substantiated by adducing the necessary documents. It was also stated that in Maytas case there existed a tripartite agreement, in that, land owner, developer, and the buyer of the land in the first instance, and subsequently for construction of a bungalow by the developer and that in the case on hand there is no such tripartite agreement. It is stated that the clarification sought for in M/s. Maytas case is not akin to the facts of the case on hand.

f) It is again submitted that appellant has initially entered into agreement of sale with the prospective buyers where in the sale value of land,

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% or 1.25% 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.

d) Appellant submits that 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% or 1.25% of total consideration received or receivable as per the initial agreement of sale. Appellant submits that it entered into agreement of sale with its 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 it entered into agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements has already been shown in the original agreement of sale and it has paid VAT @ 1% or 1.25%on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% or 1.25% is as per the provisions of Section 4(7) (d).

e) Appellant submits that in spite of the submissions made as above in the earlier replies it is stated in the assessment order that the fact of registration of the bungalow in favour of the prospective buyer also is not substantiated by adducing the necessary documents. It was also stated that in Maytas case there existed a tripartite agreement, in that, land owner, developer, and the buyer of the land in the first instance, and subsequently for construction of a bungalow by the developer and that in the case on hand there is no such tripartite agreement. It is stated that the clarification sought for in M/s. Maytas case is not akin to the facts of the case on hand.

f) It is again submitted that appellant has initially entered into agreement of sale with the 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. This initial agreement of sale is the legal document which speaks about full and total consideration receivable for the sale of bungalows on which appellant has paid tax @ 4% on 25% of total consideration based on this agreement of sale, which is the 'mother agreement'. Even though appellant entered into agreement for construction and agreement for development charges subsequently the amounts mentioned in these two agreements have already been shown in the original agreement of sale (mother or initial agreement) and appellant has paid VAT @ 1% or 1.25% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% or 1.25% by the appellant is strictly as per the provisions of Section 4(7) (d).

g) Appellant submits that in the case of Maytas is that in both the situations, there is 'initial agreement of sale', which is generally called 'mother agreement'. In that agreement the entire price for the sale of land as well as construction cost is mentioned. This fact has been affirmed by the authority itself in the said Ruling as follows:-

"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."**

h) Thus the case of Maytas is that whatever be the situation, the prospective buyer enters into an agreement for the purchase of a flat/bungalow/villa for a specified price, which includes both the value of land and construction cost. In this mother or initial agreement the full price is mentioned. As a consequence thereof, there is a sale deed for the sale of land/semi finished structure and then a construction agreement. The ACAR (Authority for Clarification and Advance Ruling) held that in a situation where the entire price is mentioned in the initial agreement, tax is payable only @ 1% or 1.25% under Section 4 (7) (d) of the Act.

i) In support of appellant's argument the dates of mother agreement and the subsequent agreements in one case are detailed as under:-

To substantiate the fact that appellant has entered into agreement of sale with the prospective buyer in the first instance showing the total value of

the sale of land, construction charges and development charges the following is the dates of agreement and the amounts shown:

Agreement of sale dated 25/02/2008 in favour of Mrs. U. K. Padma Latha, Plot No.73, admeasuring 170 s. yds. with built up area of 1694 sq.ft.

Agreement of Sale dated 25/02/2008 (Mother Agreement) Rs.39,78,000 wherein the value of land of Rs. 1,70,000/-, the development charges of Rs.17,15,000/- and the cost of construction of Rs.20,93,000/- totaling to Rs. 39,78,000/- was mentioned. Thus appellant has already sold this villa for a total consideration of Rs.39,78,000/- on 25-02-2008. Subsequently, the following agreements are made.

Sale deed for sale of land dt.29/03/2008	Rs. 1,70,000
Agreement for Development charges dt.29/03/2008	Rs.17,15,000
Agreement for construction dt.29/03/2008	Rs.20,93,000

The copies of the above documents are enclosed as **Annexure-I** for the year 2010-11. Similarly for the years 2011-12, 2012-13 and 2013-14 the following are the sample documents.

Agreement of Sale dated 16/09/2010 (Mother Agreement) Rs.39,78,000 wherein the value of land of Rs.1,79,000/-, the development charges of Rs.14,21,000/- and the cost of construction of Rs.24,00,000/- totaling to Rs. 40,00,000/- was mentioned. Thus appellant has already sold this villa for a total consideration of Rs.40,00,000/- on 16-10-2010. Subsequently, the following agreements are made.

Sale deed for sale of land dt.03/11/2010	Rs. 1,79,000
Agreement for Development charges dt.03/11/2010	Rs.14,21,000
Agreement for construction dt.03/11/2010	Rs.24,00,000

The copies of the above documents are enclosed as **Annexure-II** for the year 2011-12.

Agreement of Sale dated 09/08/2012 (Mother Agreement) Rs.44,00,000/- wherein the value of land of Rs.17,60,000/- and the cost of construction of Rs.26,40,000/- totaling to Rs.44,00,000/- was mentioned. Thus appellant has already sold this villa for a

total consideration of Rs.44,00,000/- on 16-10-2010. Subsequently, the following agreements are made.

Sale deed for sale of land dt.21/03/2014
With semi construction — Rs.17,60,000

Agreement for construction dt.21/03/2014 — Rs.26,40,000

The copies of the above documents are enclosed as **Annexure-III** for the year 2012-13.

Agreement of Sale dated 04-06-2013 (Mother Agreement) Rs.46,75,000/-wherein the value of land with semi construction of Rs.35,10,000/-and the cost of construction of Rs.11,65,000/- totaling to Rs.46,75,000/- was mentioned. Thus appellant has already sold this villa for a total consideration of Rs.46,75,000 on 04-06-2013. Subsequently, the following agreements are made.

Sale deed for sale of land with
semi construction dt.28/09/2013 — Rs.35,10,000

Agreement for construction dt.28/09/2013 — Rs.11,65,000

The copies of the above documents are enclosed as **Annexure-IV** for the year 2013-14.

j) Appellant submits that in the Revision order No.LV (1)/464/2009 dated 29.6.2011 passed by the Honourable Commissioner in the case of Ambience Properties Limited, Hyderabad, it has been observed as follows:-

"One more crucial factor that clinches the status of the dealer company as nothing more than the contractor for the construction of the house, **is that in the original tripartite agreement the value of the house is not mentioned**. It is only the value of the land that finds place in that agreement. The deed for the sale of land subsequently registered also conforms to that value. The value of the house is mentioned only in the construction agreement between the dealer company and the purchaser of the plot. In the construction agreement the name of the original land owner does not appear. It is therefore unambiguously proved that the legal status of the dealer company is that of a contractor only for

construction but not that of a contractor for construction and sale of apartments or residential houses specified under section 4(7)(d) of the APVAT Act. There is no element of sale in the house. There is no sale deed for the house and in the sale deed for the house site the value of the house is not included for payment of stamp duty. **It should be noted at this juncture that the Advance Ruling in Maytas case cited by the dealer company is based on the fact that in the tripartite agreement itself the value of the land, the value of the house are clearly mentioned either jointly or separately.** But in the present case the value of the house is not mentioned at all in the original tripartite agreement. The agreement only says that the dealer company who is a developer should be necessarily appointed as contractor. No further additional status is conferred on the dealer company. The house is constructed as per a works contract agreement the purchaser of the plot as contractee entered into with the dealer company as contractor. The dealer company is therefore assessable under 4(7) (c) of the APVAT Act, but not 4(7)(d) of the said Act."

k) Appellant next submits that, The Commissioner has categorically observed that if in the agreement for sale, the value of house is also mentioned as ruled in Maytas case, then tax can be paid under clause (d). In the case before the Commissioner, the value of house is not mentioned in the initial agreement. Hence tax has been levied under clause (c) of the Act. But in this case the total value of the house is mentioned in the mother agreement which includes the land value, construction value and the development charges. Thus the facts in this case differ from the observation made.

l) Appellant is squarely covered by the Ruling in Maytas case. The agreement of sale entered into with the prospective buyer clearly shows that what is agreed to be sold is only the 'bungalow with land' for a specified price. This fact cannot be brushed aside. Appellant is squarely covered by the Mayatas Ruling and the Revision order of the Honourable Commissioner. In all cases, appellant has entered into Mother or Initial agreement, which clearly mentions the total price including the value of land and constructed bungalow. Hence, payment of tax under clause (d) is correct and such payment cannot be faulted with. With regard to Tripartite agreement appellant submits that in Maytas case, the land is not owned by the builder and hence the owner of the land is made as a party to the construction and selling of apartments agreement, where as in this case appellant is the owner of the

land and hence it has directly entered into an agreement with the prospective buyers of the bunglow without a third person. In view of the above appellant submits that the ruling given in the case of Maytas is squarely applicable to this case and appellant is liable to pay composition tax of 1% or 1.25% only on the total value of the agreement which includes the value of land transferred. It is reiterated that appellant has in the business of construction and selling of apartments/buildings, the class of VAT dealer to which the benefit of composition of tax under Section 4 (7) (d) of the Act.

m) Appellant submits that in the assessment order it was stated that as per the Advance Ruling given in the case of M/s.Nobel Properties, Banjara Hills dated 15/09/2012, it was clarified that agreement for construction of villa on the land sold by the builder to the buyer will fall under Sec. 4(7)(b) of APVAT Act taxable @ 4% on the total consideration received. Appellant submits that this part of advance ruling is not applicable to this case as appellant enters into initial agreement for sale of villa/apartment along with land for a specific amount where as in the above advance ruling there is no initial agreement as in this case.

n) Appellant submits that, In the said Advance Ruling, the clarification sought was whether 'construction and selling of villa along with land in a single deed' will fall under Sec. 4(7) (d) of the APVAT Act. At Para A it was clarified that ' *only first type of transaction, i.e. construction and selling of villas along with land in a single deed will fall under section 4(7)(d) of the APVAT Act, 205, if the dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes opts to pay tax by way of composition under section 4(7)(d) of the APVAT Act, 2005 if not, the transaction will fall under section 4(7) (a) of the APVAT Act, 2005*'. Appellant submits that as per clarification given in the second para **B** above appellant is rightly eligible for payment of tax @ 1% or 1.25% on the total consideration under section 4(7) (d) of the Act as it has entered into one single agreement for the sale of Villa along with land.

o) Appellant submits that as per Rule 17 (4) (i) of the APVAT Rules, the VAT dealer executing the construction and selling of residential apartment, houses, buildings or commercial complexes and opts to pay tax by way of composition shall pay an amount equivalent to 1% or 1.25% of the total consideration received or receivable or the market value fixed for the purpose of stamp duty, whichever is higher. Appellant submits that they have opted for payment of tax under Section 4 (7) (d) of the Act and filed the VAT 200 returns by disclosing the

turnovers of registration values of the villas and paid the tax @1%/ 1.25% as applicable in the respective years. The appellant has declared the following Turnovers after discounts and land value.

Year	**Turnover**
2010-11	Rs. 3,50,89,600/-
2011-12	Rs. 3,56,86,894/-
2012-13	Rs. 2,96,52,080/-
2013-14 (upto 12/13)	Rs. 93,09,604/-

A statement showing the month wise turnovers disclosed in the VAT returns along with the payment particulars for the above four years is enclosed as **Annexure-IX** which may kindly verified and adopted the same at the time of passing the order.

p) Appellant also submits that against the VAT payments of Rs.2,78,000/-, Rs.3,17,313/- ,Rs. 17,26,198/- and 5,74,264/- for the years2010-11, 2011-12, 2012-13 and 2013-14(upto December) they are given tax credit of Rs. 2,58,930/-,Rs. 15,54,042/- and Rs. 3,30,514/- respectively. The tax payment details are also given in the Annexure which may please be verified and credit to our total payment may be given.

q) In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Appellate Authority to set aside the assessment order as illegal and allow the appeal.

(APPELLANT)