PROCEEDINGS OF THE APPELLATE DY. COMMISSIONER(CT), PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SRI U. SREENIVASULU, M.Sc(Ag).,

ADC Order No.370 Date of hearing:16-03-2015
Appeal No.BV/76/2014-15 Date of order :20-03-2015

1. Name and address of the Appellant.	:	M/s Modi & Modi Constructions, Hyderabad.
2. Name & designation of the Assessing Authority.	:	Commercial Tax Officer, M.G.Road Circle, Hyd.
3. No.,Year & Date of order	:	TIN No.36894097186,dt.31-07-14, (Feb'2011 to Dec'2013 / Tax)
4. Date of service of order	:	31-07-2014
5. Date of filing of appeal	:	01-09-2014
6. Turnover determined by The Assessing Authority	:	-
7. If turnover is disputed:		
(a) Disputed turnover	:	-
(b) Tax on disputed turnover	:	₹35,26,335/-
8. If rate of tax disputed:		
(a) Turnover involved	:	-
(b) Amount of tax disputed	:	-
9. Amount of relief claimed	:	₹35,26,335/-
10. Amount of relief granted	:	DISMISSED
11. Represented by	:	Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Sales Tax Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Modi & Modi Constructions, Hyderabad, the appellant herein, is a registered dealer under the APVAT Act with TIN 36894097186 and

an assessee on the rolls of Commercial Tax Officer, M.G.Rod Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the orders of assessment dated 31-07-2014 passed by the Assessing Authority for the tax periods February, 2011 to December, 2013 under the APVAT Act, disputing the levy of tax amounting to ₹35,26,335/-.

The statement of facts and grounds of appeal are extracted as under:

"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 Feb'2011 to March'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, 3,56,86,894 for the year 2011-12 Rs.2,96,52,080/- for the year 2012-13 and Rs,93,09,604 for the year 2013-14 (up to Dec'2013) and to levy tax under Section 4 (7) (d) of the Act only.

6) However, the learned CTO has not accepted the request to adopt the receipts as reported in the reply to the Show Cause Notice.

7) Aggrieved by the said assessment order the appellant prefers this appeal on the following grounds, amongst others:-

Grounds of Appeal:

a) The impugned order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.

b) Appellant submits that it is engaged in the business of construction and selling of Villas / Apartments at in the name style of NILGIRI HOMES at Rampally, village, Keesara Mandal, RR District and opted for payment of tax @ 1% or 1.25% under composition under Sec. 4(7) (d) of the APVAT Act. It has 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% or 1.25%.

c) Appellant submits that in the course of business it has in the first instance entered into agreement with its 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 Villas / Apartments. It has paid VAT @ 1% or 1.25% on the total consideration received from these three components of the agreement. In the Advance Ruling in the case of Maytas 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% 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. <u>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.</u>

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.

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."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case reiterating the contentions as set-forth in the ground of appeal and pleaded for setting-aside of the impugned orders.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant is doing business in execution of works contract and opted for payment of tax under composition. During the disputed tax periods, apart from entering into agreements for sale of plot / development of land, the appellant also entered into agreements for construction of residential houses / villas subsequent to selling of plots. As to the amounts received by the appellant on account of execution of works which were undertaken as per the construction agreements entered into subsequently i.e., after sale of Plots, the Assessing Authority observed that since the subsequent agreements were entered for execution of works contract and since the agreements entered into for sale of Plots / development of land were exhausted after sale of such plots, the amounts received on account of

works execution as per the subsequent agreements does not falls under Section 4(7)(d) of the APVAT Act. Accordingly, the Assessing Authority issued a show cause notice. In response to the said show cause notice, the appellant filed their objections, which are similar to the ones that are now raised in the grounds of appeal. Considering the objections filed by the appellant, the Assessing Authority observed as under:

> "They have stated that they are engaged in the business of construction and selling of 94 Independent Villas and opted for payment of tax under composition under section 4(7)(d) of APVAT Act and paid tax on the amounts received from the customers @ 1% / 1.25%.
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> They stated that in the first instance they enter into agreement for sale of independent villa and the agreement of sale consists of the consideration received through sale of land, development charges of land and cost of construction of villa and paid tax 1% / 1.25% on total consideration received from the above (3) components of the opponents.
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> They stated that the ref. of advance ruling in the case of M/s Noble Properties is not applicable to their case as they entered into initial agreement for sale of Villa alongwith Land and they relied on the advance ruling of Mytas Hill Country Pvt Ltd. They stated they are paying @ 1% / 1.25% of total amount received or receivable as per initial agreement of sale as per ruling in Mytas Hill Country Pvt Ltd.
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> The provisions of Section 4(7)(d) reads as under :
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> "Any dealer engaged in the construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty five percent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;"
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> From the above provision of law, it is not only the dealer engaged in the construction, but also such dealer must also sell such constructed building or the like, in order to fit in within the scope of Sec. 4 (7) (d) of the Act. This is the reason why the Committee for Advance Ruling observed that the applicant shall be eligible for composition under

Sec.4 (7) (d), whether it received consideration in composite manner or in separate portions towards land cost and construction cost; and that the applicant is not eligible to opt for composition, if it had received the consideration by excluding the cost of the land though it could be registered separately at any stage.

In the case on hand, it is only an averment of the assessee that it has been paying tax at 1% on the aggregate value of the cost of the land; cost of the development of the land; and the cost of construction of the bungalow, as against the findings of the undersigned to the effect that the assessee had sold the land in favour of the prospective buyer in the first instance, and subsequently entered into an agreement for the development of the land, and construction of bungalow. The fact of registration of the bungalow in favour of the prospective buyer also is not substantiated by adducing the necessary documentary evidence.

Furthermore, in M/s 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. In the case on hand there is no such tripartite agreement. In the revision order by CCT in the case of M/s Ambience Properties Limited observed the importance of Tripartite Agreement. The clarification sought for in M/s Mytas case is not akin to the facts of the case on hand. On verification of agreements filed by them it is noticed that they have entered into (3) separate agreements with the buyer for (i) sale of Plot (ii) Development Charges on land and (iii) for construction of House on the Plot (as per the clause (e) of agreement of sale. The assessee has collected separate amounts for sale of land and for development / construction of house.

The assessee is the absolute owner of the land and effected sale of plot in favour of buyer in the first instant (clause 1 & 4 of sale deed) and subsequently entered into agreement with the buyer for construction of house on the plot (clause 1 & 2 of the agreement for construction).

The provision of Section 4(7)(d) of the Act applies where the dealer engaged in construct and selling of apartments, houses, buildings and commercial complexes and received the amounts towards the composite value of the both the land & building. Here in this case the assessee sold open

plot to the customer through a sale deed and then through a separate construction agreement with the customer the assessee took up the construction of a house on such plot.

Therefore the construction of house on the plot sold to the customer does not fall under section 4(7)(d) and its falls under Works Contract liable to tax under Section 4(7)b/c of the APVAT Act were the dealer opts for composition.
It is felt appropriate to advert attention to a recent clarification issued by the Authority for Clarification and Advance Ruling, in the case of M/s Noble Properties, Hyd., in No.A.R.Com./48/2012, dated 15-09-2012, the following issues were raised for clarification.

1. Construction and selling of Villas along with land in a single deed.

2. Sale of land and construction of residential houses on the same land with two agreements one for sale of land and another for construction of villas. It is mandatory for the buyer to get the villa constructed by them only.

Having regard to the above nature of the transactions, the applicant posed the following questions.

A. Whether the above two transactions fall under Sec.4 (7) (d) of the APVAT Act 2005,

B. If not, then what is the rate of tax for the above two transactions as per APVAT Act,2005 (with and without composition)

C. Are there any other taxes to be paid?

Having regard to the above nature of the transactions and the questions posed before it, the Committee rendered its clarification as under:

"Only first type of transaction, i.e., construction and selling of villas along with land in a single deed will fall under Sec.4 (7) (d) of the APVAT Act 2005, 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 Sec.4 (7) (d) of the APVAT Act, if not, the transaction will fall under Sec.4 (7) (a) of the APVAT Act.

Regarding the second type of transaction, the clarification is as under.

"(i) The sale of land and construction of villas/residential houses are two separate transactions, for which the land lord has entered into two separate agreements with the buyers.

(ii) The sale of land, which is an immovable property, is not taxable under the provisions of the APVAT Act, since the land is not a property in goods.

(iii) The agreement for construction of villas on the land sold by the applicant to the buyer will fall under Sec. 4 (7) (a) of APVAT Act.

In the present case the dealer sold the plot which is registered through sale deed and constructed bungalow on the same plot entering into construction agreement

Therefore the facts of the case are squarely fit into the fact of case in M/s Noble Properties. In view of the above Modus Operandi of the transactions of the assessee, and the evidence available on record, the assessee is not eligible to opt for composition under Sec.4 (7) (d) of the Act, but is assessable under Sec. 4 (7) (b/c) of the Act.

From the above, it is seen that while rejecting the claim of the appellant that the agreements entered into by them i.e., for selling of plots / development of land and the subsequent agreements entered into for execution of works cannot be bifurcated for the purpose of levy of tax under Section 4(7)(d) of the APVAT Act; however, conceded to the plea of the appellant that since they are under compositon, their case is to be treated as falling under Section 4(7)(c) of the said Act. The Assessing Authority, accordingly, subjected the amounts received by the appellant on account of works executed as per the agreements entered into subsequently for construction of residential houses / villas. To support their findings, the Assessing Authority not only distinguished the Advance Ruling given in the case of M/s Maytas Country Private Limited, but also took support of the Ruling given by the Authority for Clarification and Advance Ruling in the case of M/s Noble Properties, Hyd., in No.A.R.Com./48/2012, dated 15-09-2012.

In the present appeal also, the claim of the appellant is that since they have opted for payment of tax under composition, the amounts received on account of agreements entered into towards construction and sale of flats and on account of execution of works as per the agreements

entered into subsequently i.e., after sale of plot / land cannot be bifurcated and as such the levy made by the Audit Officer on the disptued turnovers which were received on account of works executed as per the subsequent agreements under the provisions contained other than under Section 4(7)(d) of the APVAT Act is incorrect. In order to verify the claim of the appellant, in this regard, it is necessry to go through the provisions contained under Section 4(7) of the APVAT Act, which reads as under:

"(7) Notwithstanding anything contained in the Act;-

a) Every dealer executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act:

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealer shall pay tax at the rate [1][specified in Schedule V] on the total consideration received or receivable subject to such deductions as may be prescribed;

1. Subs. by Act No. 9 of 2010 with effect from. 26.4.2010. Earlier it was 'of 12.5%'.

[1]b) Every dealer executing works contract may in lieu of the amount of tax payable by him under clause (a) opt to pay by way of composition at the rate of [2]5% of the total amount received or receivable by himself towards execution of the works contract either by himself or through sub-contractor subject to such conditions as may be prescribed:

Provided that the sub-contractor, executing works contract on behalf of the contractor, who opts to pay tax under this clause, shall be exempted from levy of tax.

1. Subs by Act No. 21 of 2011 dated 29-12-2011 with effect from 15-09-2011. Earlier entry was (Any dealer executing any works contracts for the Government or local authority may opt to pay tax by way of composition at the rate of 4% on the total value of the contract executed for the Government or local authority.

2. By Act No. 12 of 2012 dated 20-04-2012 rate changed from 4% to 5% with effect from 14-09-2011.

[1]c) (Omited)

1. Omitted by Act No. 21 of 2011 dated 29-12-2011 with effect from 15-09-2011. Earlier entry was (Any dealer executing works contracts other than for Government and local authority may opt to pay tax by way of composition at the rate of 4% *{...} of the total consideration received or receivable for any specific contract subject to such conditions as may be prescribed;

(*[the words *"of fifty percent (50%)"]* omitted by the Act No 23 of 2005 dated 26th Oct 2005 with effect from 29-08-2005)

[1]d) Every dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may, in lieu of amount of tax payable by him under clause (a) opt to pay tax by way of composition at the rate of [2]5% of twenty five percent (25%) of the amount, received or receivable towards the composite value of both the land and building or the market value fixed therefor for the purpose of stamp duty, whichever is higher, subject to such conditions as may be prescribed;

Provided that no tax shall be payable by the sub-contractor of a works contractor, who opts to pay and paid tax under the clause on the turnover relating to the amount received as a sub-contractor from such main contractor towards the execution of works contract, whether wholly or partly, subject to production of evidence to prove that such main contractor has exercised such option in respect of the specific work and subject to such other conditions as may be prescribed.

1. Subs by Act No. 21 of 2011 dated 29-12-2011 with effect from 15-09-2011. Earlier entry was (Any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty five percent (25%) of the consideration received

or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;)

2. Rate changed from 4% to 5% by Act No. 12 of 2012 dated 20-04-2012 with effect from 14-09-2011."

From the above, while clause (a) applies to the works contractors who have not opted for payment under composition, clauses (b), (c) which is omitted with effect from 15-09-2011 and applies to the works contractors who opted for payment of tax under composition. Further, while clause (b) and (c) applies to the works contractors who executed the works either to the Government Departments or otherwise, clause (d) applies to the dealers who are engaged in construction and selling of apartments / houses etc., as mentioned thereat.

In the case on hand, there is no dispute in the fact that the appellant was entered into an agreements with the prospective buyers towards sale of plots / land, besides entering into construction agreements subsequently i.e., after construction and sale of such plots / land, for execution of works as per the said agreements entered into subsequently. Here, it is to be observed that the agreements entered into by the appellant for sale of plots / land and for execution of works on the basis of subsequent agreements entered into are both different and distinct from each other. While, the agreements entered into for sale of plots / development of such land were get exhausted as and when such plots / land were sold, duly discharging the tax liability as prescribed under Section 4(7)(d) of the APVAT Act; as to the agreements entered into subsequent of sale of plots, since as per the said agreements the appellant had undertaken the construction works upon entering into agreements subsequent to sale of plots, their case does not fall under clause (d) of sub-section (7) of Section 4 which applies only to the dealers who are engaged in construction and selling of residential houses on their own, but, however, the case of the appellant falls under clause (c) of sub-section (7) of Section 4 of the APVAT Act according to which, the appellant has to pay tax at 4% or 5%, as the case may be, on the total consideration received on account of execution of works contract as was done by the Assessing Authority while passing the impugned orders. When the action of the Assessing Authority in assessing the turnovers of the appellant under Section 4(7)(c) of the APVAT Act, which were received on account of execution of works basing on the agreements entered into subsequently i.e., construction work and not on account of sale of plots / development of land; is viewed in the light of the provisions contained under the APVAT Act, the same is well within the

provisions of the said Act and cannot be found fault with warranting any interference.

As to the reliance placed by the appellant on the ruling given by the Authority for Clarification and Advance Ruing in CCT's Ref.No.PMT/P&L/A.R.Com/80/2006, dated 30-07-2006 in the case of M/s Maytas Hill County Private Limited, it is seen that on examination of the tripartite agreements of sale entered into by the applicant with the buyers have been examined wherein it was found that land owners, the applicant as developer and buyers of individual units (houses) are parties to the agreement, a ruling was given thereat. Whereas, the facts of the case involved in the present appeal are different and as such the Advance Ruling relied upon by the appellant is not applicable to the case on hand as was concluded by the Assessing Authority.

On the other hand, it is relevant and important here to take note of the ruling given by the Authority for Clarification and Advance Ruling in the case of M/s Madhu Collections (Ref.No.A.R.Com/66/2011, dated 16-10-2012). In the said case, the applicant dealing in construction and sale of residential apartments in the State of Andhra Pradesh and accordingly they have entered into tripartite agreements with the land owners and purchaser of land to construct and sell semi-finished apartments / flats. During the construction period, after registering the semi-finished apartment in customer's name, the customer may opt for modification / customization to the apartment / flat for which they have entered into a separate agreement with customer for such modification or for finished works. The applicant therein, accordingly, sought clarification, as to –

a) Whether the main contractor is eligible to opt for payment of tax as per Section 4(7)(d) of the APVAT Act;

b) Whether they have to pay tax as per Section 4(7)(c) of the APVAT Act or under Section 4(7)(d) of the said Act for the finished work undertaken by them after selling the semi-finished apartment / flat, as per the separate agreement entered into by them with their customer.

Considering the issues involved therein with reference to the relevant provisions contained under the APVAT Act, the Authority for Clarification and Advance Ruling given the ruling to the following effect:

> "In the given circumstances, when the main contractor enters into tripartite agreement with the land owner and the

prospective buyer (or customer) for construction of residential apartment and registers the semi furnished apartment in the name of the customer, the main contractor is eligible to opt for composition under section 4(7)(d) of APVAT Act2005. The main contractor is required to pay tax at the rate of 5% on twenty five percent (25%) of the amount, received or receivable towards the composite value of both the land and building or the market value fixed therefor for the purpose of stamp duty, whichever is higher. In such case, the subcontractor is not liable to tax as mentioned in the clause (d) of Section 4(7).

However, any works contract executed after the registration of the semi constructed apartment in the name of the customer, is a fresh works contract. Therefore the main contractor is liable to tax on the value of the goods at the time of incorporation of such goods in the course of execution of works contract at the rates applicable to the goods under the Act under section 4(7)(a) but not under section 4(7)(d). The main contractor is eligible for exemption on the turnover relating to the amounts paid to the subcontractor as prescribed under section 4(7)(h). If the main contractor opts for composition under clause (b) of section 4(7) and pays tax at the rate of 5% of the total amount received or receivable, the subcontractor can claim exemption on the amount received or receivable from the main contractor duly following the procedure prescribed.

Therefore, it is clarified that the main contractor is eligible to opt for payment of tax @ 5% of the 25% of the total consideration, as per section 4 (7) (d) of the Act, if he is engaged in the construction and selling of the Apartments, Residential complexes etc. and opts for payment of tax by way of composition. Further, it is also clarified that the transaction of the incorporation of goods in the course of execution of the contract, subsequent to the registration of the immovable property in the form of Apartments, Residential complexes etc., is taxable under either Sec. 4(7) (a) or Sec. 4(7)(b) of the APVAT Act, depending upon the fact as to whether the contractor has opted for composition or not.

What follows from the above ruling is that while a dealer engaged in construction and selling of apartments / flats is liable to pay tax under Section 4(7)(d) of the APVAT Act having opted for payment of tax under composition, such dealer, if undertakes any further work / modification

work on the basis of the separate agreement entered into with the customer after selling the apartment / flat so constructed, has to pay tax under the relevant provisions other than the ones as contained under Section 4(7)(d) of the APVAT Act.

For the facts and reasons discussed above with reference to the provisions contained under the APVAT Act and the Ruling given by the Authority for Clarification and Advance Ruling, as discussed above, the claims made by the appellant, in this regard, fails as unsustainable. Consequently, the appeal fails on the disputed tax amount of ₹35,26,335/- and is accordingly dismissed.

In the end, the appeal is dismissed.

APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To
The Appellants.
Copy to the Commercial Tax Officer, M.G.Road Circle Hyderabad.
Copy to the Deputy Commissioner(CT), Begumprt Division, Hyderabad.
Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.