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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.47202.

TIN No: 36894097186/VAT/Audit

Dated 09-12-2019

Sub : T VAT Act '05 – M/s Modi & Modi Constructions, M.G.Road - Secunderabad - Audit conducted for the period January 2014 to June 2017 – Certain variations noticed - Show Cause Notice issued – Dealer has failed to file certain documentary evidence – Revised show cause notice issued – Dealer has filed reply – Availd personal hearing – 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 issued in Form VAT 305A, dated 03-10-2019 by the undersigned.
4. Revised show cause notice issued dated 02-11-2019 by the undersigned.
4. Objections filed by the dealer vide letter dated 04-11-2019
5. Personal hearing opportunity provided on dt. 14-11-2019.

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M/s Modi & Modi Constructions, M.G.Road, Secunderabad are the registered dealer on the rolls of CTO M.G.Road-S.D.Road Circle with TIN No 36894097186 and are engaged in the business of Construction of Independent Houses/ Row Houses in the name and style of Nilgiri Homes at Rampally village, Keesara Mandal, Ranga Reddy District. 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.

On authorization of Deputy Commissioner (CT) Bégumpet Division, the assessee was served Form-VAT-304 to produce the books of accounts. Accordingly they have filed their books of accounts and connected records for the period January 2014 to June 2017 for audit verification as under.

- 1) Copy of Form VAT 250
- 2) Sales Statement
- 3) Sample Sale deed copies
- 4) P&L Accounts.

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On verification of books of account submitted by the dealer with reference to the monthly VAT-200 Returns filed during the period from January 2014 to June 2017 the following turnovers are arrived which have been 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	2013-14 (01/2014 to 03/2014)	2014-2015	2015-16	2016-17	2017-18 (up to June 2017)
Purchase Account:						
1.	Exempted Purchases	0	0	0	0	0
Sales Account:						
1.	Exempt Sales	0	15121763	14340000	28550250	8606250
2.	5% Sales	0	3840588	6620250	9516750	2868750
3.	Tax @ 5%	0	192029	331013	475838	143438
4.	Total Sales	0	18962351	20960250	38067000	11475000
5.	Output tax	0	192029	331013	475838	143438
6.	VAT Due	0	192029	331013	475838	143438
7.	VAT Paid	0	192029	331013	142814	143438
8.	Balance	0	0	0	333024	0

- Short payment of Rs. 333024/- is noticed.

Turnover as per P&L Accounts (SALE OF FLATS)

Sl.No.	Period	Constructi on 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	2013-14 (01/2014- 03/2014)	0	0	0	0	0
	2014-15	26007241	6501810	3840588	2661222	133061
1.	2015-16	36823350	9205838	6620250	2585588	129279
2.	2016-17	49492000	12373000	9516750	2856250	142813
3.	2017-18 (Apr'17 to Jun'17)	19425000	4856250	2868750	1987500	99375
Total differential tax		131747591	32936898	22846338	10090560	504528

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

On verification of sample records produced, 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 January 2014 to June 2017 as under :

1. Short payment of Tax of	: Rs. 333024-00
2. Tax on under declared Turnover	: Rs. 504528-00
Total	: Rs. 837552-00

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 Nilgiri Homes (independent Houses) at Rampally Village, Keesara Mandal, Ranga Reddy District. 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% on 25% difference turnover
1	01/2014 to 03/2014	25811540	33555002	7743462	96793
2	2014-15	26007241	33809413	7802172	97527
1	2015-16	36823350	47870355	11047005	138088
2	2016-17	49492000	64339600	14847600	185595
3	2017-18 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	157559131	204826870	47267739	590846

Further, while issuing show cause notice a turnover of Rs. 2,58,11,540/- is not proposed by oversight which is now being proposed as under.

Turnover as per P&L Accounts (SALE OF FLATS)

Sl.No.	Period	Constructi on 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	2013-14 (01/2014-03/2014)	25811540	6452885	0	6452885	322645
Total	differential tax	25811540	6452885	0	6452885	322645

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

1. Short payment of Tax : Rs. 333024-00
2. Tax on under declared turnover : Rs. 827173-00 (Rs.504528+Rs.322645)
3. Tax on differential turnover arrived w.r.t Agreement of sale turnover: Rs.590846-00
- Total : Rs. 17,51,043-00**

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

made in the show cause notice and as well as to the revised show cause notice they have reiterated the contentions filed in the letter dated 04-11-2019.

The objections filed by the dealer are summarised, verified and considered as under.

They submitted that M/s. Modi & Modi Constructions has developed only one housing project on land admeasuring Ac. 6-28 Gts., forming a part of Sy. Nos. 128,129,133 and 136, Ramplaly Village, Keesara Mandal, R.R, District. The building permit for construction of villa/townhouses in the project known as Nilgiris Homes was obtained in 2007 from HMDA. The project consisted of 95 villas/townhouses and the construction of the housing project was fully completed in phases from 2010 to 2013. Chartered Engineer certificate was obtained at time of completion of each villa/townhouse. A summary of date of completion as per chartered engineer certificate is attach herein. 10 samples certificates are enclosed herein.

The completion certificate issued by the Chartered Engineer is verified 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 / units or area within a complex which have fulfilled all the requirements in addition to basic facilities like lifts water supply, sanitation, drainage, roads, common lighting etc. However, in 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 villas in the project was obtained from HMDA in 2007 as submitted by the dealer. Hence the Occupancy Certificates issued by "Chartered Engineer" are treated as invalid.

They further submitted that at the time of obtaining building permit HMDA had mortgaged 5 plots / villas/townhouses to ensure compliance of the development of the housing project. Application for release of mortgage was made to HMDA on 05-11-2017 (copy enclosed). After considered able delay, due to the shifting of HMDA office, the mortgage was released by HMDA by

way of registered deed bearing document no. 5972/15 dated 30-09-15 registered at SRO Keesara (copy enclosed). They stated that Vat was paid under composition scheme @ 1% or 1.25% in the value of sale deed + age of construction, if any) for the 94 if to 95 villas /townhouses irrespective of whether the sale was made before or after completion. Villa no. 13 was sold after July, 2017 and therefore no VAT has deed paid on the said sale (sale deed copy enclosed). They submitted that to avoid unnecessary and protracted litigation VAT has been paid for all the villas/townhouses (except no.13) the details of payments of VAT for 94 villas are attached herein.

The payment particulars and copies of Challans submitted by the dealer are verified with "Monthly DDO Reconciliation List" and found payments of Rs. 3,33,024/- for which credit was not given while issuing Show cause notice an Revised show cause notice. Hence the credit of Rs. 3,33,024/- is hereby accepted and accordingly the short payment proposed of Rs. 3,33,024/- is hereby dropped.

They submitted that in some cases sale deed has been executed for the entire sale consideration and in some cases the sale consideration has been divided into sales deed for semi-finished construction and agreement of construction. In either case the sale has been covered by a mother agreement for the entire consideration i.e., the agreement of sale. Vat has been paid on the entire consideration under composition scheme. 5 samples copies of agreement of sale + sale deed whereon no agreement of construction has been executed for the notice period are enclosed herein.

While issuing the show cause notice dt. 03-10-2019 the dealer was requested to produce all original Agreements of sale for verification for the audit period since the same were produced in sample basis at the time of audit. But as the dealer was failed to produce the same a revised show cause notice dt. 02-11-2019 was issued estimating the difference turnover between Agreement of sale and Sale deed turnovers adding 30% value on Sale deed value 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% on 25% difference turnover
1	01/2014 to 03/2014	25811540	33555002	7743462	96793
2	2014-15	26007241	33809413	7802172	97527
1	2015-16	36823350	47870355	11047005	138088
2	2016-17	49492000	64339600	14847600	185595
3	2017-18 (April'17 to June'17)	19425000	25252500	5827500	72843
	Total	157559131	204826870	47267739	590846

After receiving the revised show cause notice the dealer has filed a letter dated 08-11-2019 and availed a personal hearing opportunity on dt.14-11-2019 but not

produced the Original Agreement of Sale for verification as requested. Hence in the absence of the same the proposal of estimation of tax of Rs. 5,90,846/- on the difference turnover between Agreement of sale and Sale deed turnovers is hereby confirmed.

They further submitted that 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, that too in different financial years. VAT return were filed based on VAT paid from time to time. They stated to the details of receipts during the notice periods, villa wise, are attached therein. The total receipts towards sale consideration for the period was Rs. 9,58,97,605/- and toward other non-taxable receipts was Rs. 1,14,38,146/- Such non-taxable receipts were towards registration charges, electricity bills, corpus fund and in some cases VAT an services tax. These amounts collected wee remitted to the appropriate authority, electricity board, owners associations, etc.

The explanation given above by the assessee is not correct since the construction account receipts as per P&L accounts submitted at the time of audit for the period April 2014 to June 2017 were Rs. 13,17,47,591/- and not Rs. 10,73,35,751/- (Sale consideration Rs. 9,58,97,605/- + other non-taxable receipts - Rs. 1,14,38,146/-) as said by the assessee. Further the dealer has failed to submit supporting documents such as reconciliation statement supported by relevant ledgers towards the installments, registration charges, electricity bills, corpus fund and in some cases VAT and services tax amounts. Hence in the absence of the same the proposed tax of **Rs. 8,27,173/-** (proposed tax for April 2014 to June 2017 for Rs. 5,04,528/-; and January 2014 to March 2014 for Rs. 3,22,645/-) is hereby confirmed.

The assessee further submitted that the method adopted turnover from VAT returns and P & L account is not correct. The 5% sales during the years 2014-2015 to June, 2017 have 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. 1,00,90,560 as worked by you does not form turnover and the proposed levy of tax of Rs. 5,04,528 may please be dropped.

As explained in the pre para, since the contention of the dealer is not supported by the substantial documentary evidence the proposed levy of tax on difference turnover between Construction receipts of P&L account and VAT returns cannot be dropped.

Furthermore the dealer has submitted that in some cases, customers have requested for considerable alterations in the villas/townhouses, after completion of the housing project. Only in such select cases the sale consideration was split into sale deed for semi finished construction + agreement of construction. Since most of the sales during the notice period

pertain to sales made after completion of housing project, 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 constructions has been executed for such sales

The contention of the dealer above is not tenable as said in the pre paras that they have not produced original Agreement of sale for verification and the completion certificates submitted by the dealer is not valid since the certificates were not issued by the sanctioning authority.

In view of the above the assessment for the period January 2014 to June 2017 is hereby completed on the following under declared tax.

1. Tax on turnover variation with P&L account : Rs. 827173-00
2. Tax on differential turnover arrived w.r.t Agreement of sale turnover: Rs.590846-00
- Total : Rs. 14,18,019-00

The dealer has to pay the demand of Rs. 14,18,019/- 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), 9/12/19
M.G. Road - S.D. Road Circle,
Hyderabad
State Tax Officer-I
M.G. Road-S.D. Road Circle,
Hyderabad