

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 Modi & Modi Constructions- Show Cause Notice issued for the period from January, 2014 to June, 2017-Objections called for-Written objections filed-Reg.

Reference: Your notice dated 03-10-2019 bearing no. TIN No. 36894097186/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. 8,37,552 for the period from January, 2014 to June, 2017. We request you to kindly consider our objections on the following grounds:

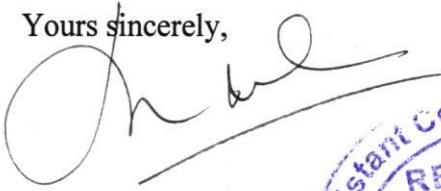
1. M/s. Modi & Modi Constructions has developed only one housing project on land admeasuring Ac. 6-28 Gts., forming a part of Sy. Nos. 128,129,133 and 136, Ramplaly Village, Keesara Mandal, R.R, District. The building permit for construction of villas/townhouses in the project known as Nilgiri Homes was obtained in 2007 from HMDA. The project consisted of 95 villas/townhouses.
2. The construction of the housing project was fully completed in phases from 2010 to 2013. Chartered Engineer certificate was obtained at the time of completion of each villa/townhouse. A summary of date of completion as per chartered engineer certificate is attached herein. 10 sample certificates are enclosed herein.
3. 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 05-11-2014 (copy enclosed). After considerable 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).
4. VAT was paid under composition scheme (@ 1% or 1.25% on the value of sale deed + agr. of construction, if any) for the 94 of the 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 been paid on the said sale (sale deed copy enclosed).
5. We submit that to avoid unnecessary and protracted litigation VAT has been paid for all the villas/townhouses (except no. 13). The details of payment of VAT for 94 villas are attached herein.
6. In some cases sale deed has been executed for the entire sale consideration and in some cases the sale consideration has been divided into sale 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 at the applicable rate of 1% or 1.25%.
7. 5 Sample copies of agreement of sale + sale deed + agreement of construction for the notice period are enclosed herein.

8. 5 Sample copies of agreement of sale + sale deed wherein no agreement of construction has been executed for the notice period are enclosed herein.
9. 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. VAT returns were filed based on VAT paid from time to time.
10. The details of receipts during the notice period, villa wise, are attached herein. The total receipts towards sale consideration for the period was Rs. 9,58,97,605/- and towards 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 and service tax. These amounts collected were remitted to the appropriate authority, electricity board, owners association, etc.
11. The method adopted by you for computing shortfall in payment is not correct. During the year 2016-17 we have paid VAT @1.25% on a turnover of Rs. 3,80,67,000 which works out to Rs. 4,75,838. The details of month wise payment of VAT during the year 2016-17 is enclosed herewith. In view of payment of total tax due of Rs. 4,75,838 as per returns the proposed short payment of Rs. 3,33,024 may please be dropped.
12. The method of adopting turnover from VAT returns and P&L account is not correct. The 5% sales during the years 2014-15 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 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. 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.
13. 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.
14. 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 construction has been executed for such sales.

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.

