

Notice Id: 230611VAT30410684480

VAT304



**GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT**

NOTIFICATION OF ADVISORY/AUDIT VISIT TO A VAT DEALER

Date: 14/04/2011

01. Tax Office Address
6-3-789, 3rd Floor, Pavani Prestige
Ameerpet, Hyderabad
500016

02. Dealer Info.
TIN : 28894097186
Circle : M.G.Road
Division : Begumpet

03. Firm Address
Name M/S MODI AND MODI CONSTRUCTIONS
Door No 5-4-187/344, 2nd FLOOR, **Street** SOHAM MANSION,
Locality M.G.ROAD **Town/City** SECUNDERABAD
District Hyderabad **Pin** 500003

This is to notify that an advisory / audit will be held on 15 April 2011 12:04:00 AM .

You should produce all your VAT records and business accounts on that date.

If the date prescribed in this notification is not convenient, you should contact this office without delay, with your convenient appointment date and it should not be beyond 7 days to the date fixed above.

03. Firm Address

15/4/11
Asst. Commercial Tax Officer
M.G. ROAD OFFICER
Hyderabad

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT



Office of the
Commercial Tax Officer
MG Road Circle, 3rd Floor
Pavani Prestige, Ameerpet

Tin No : 28894097186 /12-13

Dated : 09-07-2012

NOTICE

Sub : APVAT ACT 2005 -- M/s MODI & MODI CONSTRUCTIONS -- Cheque
Bounced -- Rs 1,41,430/- -- Request -- Regarding.

Ref : Chq No 454650 dt 19-10-2011

xxx

As per this office record, it is noticed that Cheque No 454650 dated 19-10-2011 for Rs 1,41,430/- is returned by BANK with a remark of "Effects not Yet Cleared", and same amount was not collected. Therefore I request you to kindly pay within (3) days from the date of receipt of this notice, failing which the action will be initiated as per the provisions of APVAT Act 2005.


COMMERCIAL TAX OFFICER
MG ROAD CIRCLE

To

Modi & Modi Constructions
Secunderabad

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

FORM VAT 202

DEMAND FOR UNPAID VALUE ADDED TAX

[See Rule 24(4)]

01. Tax Office Address:
COMMERCIAL TAX OFFICE
MG ROAD CIRCLE
3rd FLOOR, PAVANI PRESTIGE
AMEERPET, HYDERABAD

Date Month Year

10 12 2012

02 TIN 28894097186

03. Name M/s MODI AND MODI CONSTRUCTIONS

Tax Office record indicates that VAT which was due on the following dates remain unpaid.

Month	Due Date	Return	Amount Outstanding
07/2012	20-08-2012	VAT	146771
08/2012	20-09-2012	VAT	95904
09/2012	20-09-2012	VAT	164750
10/2012	20-10-2012	VAT	209100
			616525

You are requested to pay the above amount outstanding within (7) days from the date of this notification.

You are reminded that any amounts of tax outstanding after the due date for payment shall be liable to a penalty of 10% percent of the amount and interest will also be charged at the rate of 1% per month for each day the payment is delayed.

YOU ARE REMINDED THAT THE APVAT ACT'05 EMPOWERS THE TAX DEPARTMENT AND SELL YOUR GOODS TO RECOVER UNPAID TAX.


COMMERCIAL TAX OFFICER,
MG ROAD CIRCLE
Commercial Tax Office
MG ROAD Hyderabad



**GOVERNMENT OF ANDHRAPRADESH
COMMERCIAL TAXES DEPARTMENT**

FORM ADM 1C

ADM 1C No: 20140315017195

ADM 1C Date : 15-03-2014

Print Date : 15-03-2014

AUTHORISATION FOR ASSESSMENT

1. Name and designation of the Audit Officer authorised : CTO M.G.ROAD
2. The Audit Officer is hereby authorized to conduct Assessment of Tax in the case of the following dealers.

S. No.	TIN/GRN	ENTERPRISE	CIRCLE
1	28894097186	M/S MODI AND MODI CONSTRUCTIONS	M.G.ROAD

The audit officer is instructed to follow the guidelines issued in audit manual as modified by Commissioner, CT from time to time for conducting assessment.

To,
The Audit Officer,
CTO M.G.ROAD

hyata Khan
DEPUTY COMMISSIONER,
BEGUMPET Division

18/3/14
(or ass)

AO 3954

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

FORM VAT 305

PROCEEDINGS OF THE COMMERCIAL TAX OFFICER, MG ROAD CIRCLE, HYD'BAD
PRESENT : SRI H ARJUN RAO, CTO

Tin No : 28894097186 / Audit

Dated : 31-07-2014

New Tin No 36894097186 / Audit**ASSESSMENT OF VALUE ADDED TAX**

[See Rule 25 (5)]

Sub : APVAT Act '05 - M/s MODI & MODI CONSTRUCTIONS, modi Complex,
Ranigunj, Secunderabad, VAT-304 dt 04-02-2013- Show Cause
Notice issued - Reg

- Ref : 1. VAT-304 dt 04-02-2013
2. Note submitted on 17-02-2014 to DC(CT) BGT Divn
3. DC(CT) B'pet Division Authorisation of Assessment 15-03-2014
4. VAT-305A dt 18-03-2014
5. Dealer reply dt 21-04-2014, 17-06-2014
6. Personal hearing dt 04-07-2014

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M/s MODI & MODI CONSTRUCTIONS, Modi Complex, Ranigunj, Secunderabad are the registered dealer vide TIN No 28894097186 wef 01-02-2011 on the rolls of CTO MG Road Circle and engaged in construction of Independent Houses / Row Houses in the name style of NILGIRI HOMES at Rampally village, Keesara Mandal, RR Dist.

On authorization of Deputy Commissioner(CT) Begumpet Division they were served Form-VAT-304 to produce the books of accounts. The assessee has filed their books of accounts from 01-02-2011 to 31-12-2013 for audit verification on 29-01-2014.

1. Reported Statement as per VAT-200
2. VAT-200 Returns file
3. P & L A/c
4. Purchase Register
5. Work Receipts

The undersigned has verified the records on 29-01-2014.

On verification of books of account of the dealer, purchases and Sales submitted by the dealers verified with reference to the monthly VAT-200 Returns filed during the period from 01-02-2011 to 31-12-2013. The following turnovers are disclosed :

REPORTED TURNOVER

SNo	Description	2010-2011	2011-2012	2012-13	2013-14 (Upto 01/14)
	INPUT TAX	--	--	--	
	Exempted Sales	--	--	106057209	32430750
	1% Sales	27824000	14143000	--	--
	Tax @ 1%	278240	141430	--	--
	5% Sales	--	2350000	35352403	10810250
	Tax @ 5%	--	117500	1767620	540512
	TOTAL-SALES	27824000	16493000	141409612	43241000
	OUTPUT TAX	278240	258930	1767620	540512
	VAT DUE	278240	258930	1767620	540513
	VAT PAID	278240	258930	1544042	330514
	EXCESS / BALANCE	--	--	223578	209999

On verification of records it is noticed that they are constructing row/independent by the name & style of Neelagiri Homes. They have opted for composition paying tax @ 4% / 5% on the 25% of the receipts under section 4(7)(d) of the APVAT Act.

They have effected purchases like Sand, Brick, Metal, Electrical items, Hardware, Sanitary items etc., both from local registered dealers and unregistered dealers.

There are no inter-State sales and they have not obtained 'C' Forms.

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).

Section 4(7)(d) reads as:

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

The provision of the above section 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. Hear 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 takes up the construction of a house on such plot.

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 6(7)© of the APVAT Act with the dealer opts for composition. In this case the assessee opted for composition, hence they are liable to tax @ 4 / 5% under Sec. 4(7)© of APVAT Act.

As per the advance ruling by the authority for clarification and advance ruling in the case of M/s Noble Properties, Hyderabad vide No. A.R. Com. / 48/2012 dt 15-9-2012 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.
- a) Whether above two transactions fall under section 4(7)(d) of the APVAT Act
 - b) If not, then what is the rate of tax for the above two transactions as per APVAT Act, 2005, (with composition and without composition)
 - c) Are there any other taxes to be paid ?

Regarding the above nature of the transactions and the questions posed before it. The committee clarified as under:

- A. (I) 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 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 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.

Regarding the second type of transaction the clarification issued 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 2005, 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 the section 4 (7) (a) of APVAT Act 2005.

In the present case the dealer sold the plot which is registered through sale deed and constructed a house on the same plot entering into separate agreement for construction. Therefore, the facts of the case are squarely fit into the facts of the case in M/s Noble Properties.

In view of the above modus operandi of the transactions of the assessee, the assessee is not eligible to opt under Sec.4(7)(d) of PVAT VAT Act but they are assessable under Sec. 4(7)(c) / 4(7)(b) of APVAT Act.

Further, it is noticed that they have purchased certain items Sand, Hardware and PVC Items etc worth of Rs 24085/- taxable @ 5% and Electrical items, Sanitary items worth of Rs.2,31,292/- taxable @ 14.5% respectively during the period April, 2011 to 13-09-2011 from unregistered dealers and incorporated in the construction. But they have not reported the above turnovers and not paid the tax on the same. Such purchase are liable to levy tax under Sec.4(7)(e) under composition scheme up to 13-09-2011.

In view of the above facts the assessment for the year 2010-2011, 2011-12, 2012-13 & 2013-14 (upto Dec.,2013) is proposed to assess as under.

2010-2011

Total Contractual Receipts	→	Rs	2,78,24,000/-
Taxable Turnover U/Sec-4(7)(b)	→	Rs	2,78,24,000/-
Tax due @ 4%	---	Rs	11,12,960/-
TOTAL TAX PAID	---	Rs	2,78,240/-
BALANCE TAX DUE		Rs	8,34,720/-
			=====

2011-2012

Total Contractual Receipts	→	Rs	1,64,93,000/-
Less : Non VAT purchase at 4% -- Rs 24,085/-			
-do- at 14.5% -- Rs 2,31,292/-			
		Rs	2,55,377/-
Taxable Turnover U/Sec-4(7)b	→	Rs	1,62,37,623/-
Tax Liability @ 5%	---	Rs	8,11,882/-
Tax on Un-regd @ 4%	---	Rs	963/-
Tax on Un-regd @ 14.5%	---	Rs	33,537/-
TOTAL TAX DUE		Rs	8,46,352/-
TOTAL TAX PAID		Rs	2,58,930/-
BALANCE TAX DUE		Rs	5,87,422/-
			=====

2012-2013

Total Contractual Receipts	→	Rs	14,14,09,612/-
Tax U/Sec-4(7)(b) @ 5%	→	Rs	70,70,481/-
Tax Paid as per VAT-200	→	Rs	15,54,042/-
BALANCE	→	Rs	55,16,439/-

2013-2014 (Upto December 2013)

Total Contractual Receipts	→	Rs	4,32,41,000/-
Tax U/Sec-4(7)(b) @ 5%	→	Rs	21,62,050/-
Tax Paid as per VAT-200	→	Rs	3,30,514/-
BALANCE	→	Rs	18,31,536/-

A detailed note submitted to the Deputy Commissioner (CT) Begumpet Division, vide ref 2nd cited, and obtained permission for assessment of the dealers under the provisions of APVAT ACT 2005

As per the authorization of Assessment by the Deputy Commissioner (CT) Begumpet Division vide **ADM 1C No 20140315017195 Dt 15-03-2014** proposed to assess the dealer for the period 2011-12 to 2013-2014 (Upto December 2013) as under :

TAX LIABILITY

2010-2011	→	Rs	8,34,720/-
2011-2012	→	Rs	5,87,422/-
2012-2013	→	Rs	55,16,439/-
2013-2014	→	Rs	18,31,536/-

		Rs	87,70,117/-
=====			

A Penal proceedings will be followed separately as per provisions of APVAT Act.

Accordingly a VAT-305A issued and served to them calling for their objections if any. In response to the notice, the assessee filed a letter on 27-03-2014 requesting a time of 25 days and they were granted time accordingly. On 21-04-2014 they have filed their objections along with documentary evidences like (1) Agreement for Construction, Agreement of Sale and Sale Deed of certain Villas 2) Amounts received from cancelled Villas 3) Amounts received from un-registered villas 4) Non-taxable receipts and 5) Details of VAT Payments as under

- 1) We submit that we are issued show cause notice of assessment dated 18/03/2014 for the years 2010-11, 2011-12, 2012-13 and 2013-14 (upto December, 2013) proposing levy of VAT @ 4% / 5% on the total contractual receipts of the said years under Section 4(7) (b) of the Act against our payment of tax @ 1%/ 1.25% under Sec. 4(7) (d) of the Act. We request to kindly consider our objections on the following grounds:-
- 2) We submit that we are engaged in the business of construction and selling of (94) independent villas by name 'Nilgiri Homes' in Survey Nos. 128,129,132 to136 situated at Rampally village, Rangareddy District and opted for payment of tax @ 1% under composition under Sec. 4(7) (d) of the APVAT Act by filing Form Vat 250. We have 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%/1.25%.

- 3) We submit that in the course of our business we in the first instance enter into agreement with our prospective buyers for sale of independent villas 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 villa. We have paid VAT @ 1%/ 1.25% during the above said years on the total consideration received from these three components of the agreement.
- 4) In the notice it was stated that we have sold the plot which is registered through sale deed and constructed a house on the same plot by entering into a separate agreement for construction. As such as per the Advance Ruling given in the case of M/s. Nobel Properties, Banjara Hills dated 15/09/2012, we are assessable under Sec. 4(7) (b) / 4 (7) (c) of APVAT Act taxable @ 4% / 5% on the total consideration received.
- 5) We submit that this part of advance ruling is not applicable to our case as we enter 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 our case.

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, 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 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'. We submit that as per clarification given in the second para B above we are rightly eligible for payment of tax @ 1% / 1.25% on the total consideration under Section 4(7) (d) of the Act as we have entered into one single agreement for the sale of Villa along with land.

We submit that in the Advance Ruling in CCT's Ref. No: PMT/ P&L/ A.R. Com/80/2006 Dated 30-07-2006 in the case of Maytas Hill Country Pvt. Ltd., Begumpet, Hyderabad, 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% 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.

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% of total consideration received or receivable as per the initial agreement of sale. We submit that we enter into agreement of sale with our prospective buyers wherein 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 we enter into agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements are already shown in the original agreement of sale and we have paid VAT @ 1%/ 1.25% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1%/ 1.25% by us is as per the provisions of Section 4(7) (d).

- 6) It is again submitted that we have 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 we have paid tax @ 4% on 25% of total consideration based on this agreement of sale, which is the 'mother agreement'. Even though we enter 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 agreement) and we have paid VAT @ 1%/ 1.25% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% / 1.25% by the appellant is strictly as per the provisions of Section 4(7) (d).

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."

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% under Section 4 (7) (d) of the Act.

In support of our argument the dates of mother agreement and the subsequent agreements in one case are detailed as under:-

To substantiate the fact that we have 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 we have 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 Devpmt 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 we have 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 Dvlpmt 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 with semi-finished construction of Rs.17,60,000/- and the cost of construction of Rs.26,40,000/- totaling to Rs.44,00,000/- was mentioned. Thus we have 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-finished 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 we have 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.

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."

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 © of the Act. But in our 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 our case differ from the observation made.

We are squarely covered by the Ruling in Maytas case. The agreement of sale entered into by us 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. We are squarely covered by the Mayatas Ruling and the Revision order of the Honourable Commissioner. In all cases, we have 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.

We further submit that in the notice, the total contractual receipts for the years 2010-11, 2011-12, 2012-13 and 2013-14 (upto December,2013) were taken as Rs. 2,78,24,000/-, Rs. 1,64,93,000/-, Rs. 14,14,09,612/- and Rs. 4,32,41,000/- respectively and were proposed to tax @ 4% or 5 % under Section 4 (7) (b) after deducting the non VAT purchases for the year 2011-12. In the said receipts the following amounts were not considered for deduction.

- 7) AMOUNTS RECEIVED FROM CANCELLED VILLAS: Out of these receipts, some of our customers have cancelled booking of some villas to an extent of Rs. 1,32,30,000/- during the year 2010-11 to whom we have refunded / liable to refund the advance amounts paid by them. We enclose herewith the request letters received from such customers requesting us the cancellation of the booked villas along with our ledger copy and the bank statement showing the refund of the advances paid to each customer is enclosed as Annexure-VI. As this amount is refunded to the cancelled customers we request you to kindly this amount of Rs. 1,32,30,000/- from the total receipts of Rs. 4,16,01,753/- for the year 2010-11.
- 8) AMOUNTS RECEIVED FROM UNREGISTERED VILLAS: We next submit that during the have received amounts of Rs.9,24,000/-, Rs. 41,50,000/-, 9,25,000/- and Rs. 22,65,000/- towards unregistered villas for which sale deeds are not done. The VAT on these amounts will be paid by us at the time of registration of the villas even though the amounts are received in advance. The customer wise and flat wise advances received are enclosed as Annexure-VII. As these amounts are advances only and as the advance amounts are not taxable, we request you to kindly delete the amounts from the above respective tax periods. After deleting the amounts received from cancelled villas and the unregistered villas, the net receipts during the above tax periods are Rs. 2,74,47,753/-, Rs.6,38,12,000/-, Rs. 5,79,77,615/- and Rs. 2,52,01,017/- respectively.
- 9) NONTAXABLE RECEIPTS: During the course of sale of the villas we collect certain amounts from our prospective buyers which are not retained by us. Such amounts include VAT which is paid to the Commercial Taxes Department at the time of registration of villas, service tax which is paid to the Customs Department, registration charges paid to the Registration Department, corpus fund paid to the association of the flats, electricity deposit paid to the Electricity Department etc. Such non taxable amounts collected and not retained with us by paying to the respective departments/ association are Rs. 56,80,756/-, Rs. 3,26,08,612/-, Rs. 5,79,77,615/- and Rs. 2,52,01,017/- respectively. The details of the said amounts received and paid to the respective Departments/association are enclosed as Annexure-VIII.

We submit 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. We submit that we 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. As per our returns the following are the turnovers disclosed by us in the respective years and paid the taxes @1% or 1.25% as per the above Rule.

Year	Sale consideration	VAT paid At the time of registration
2010-11	Rs. 2,77,00,000	Rs. 2,78,000
2011-12	Rs. 2,47,93,947	Rs. 3,17,313
2012-13	Rs. 4,41,55,151	Rs. 17,26,198
2013-14 (upto 12/13)	Rs. 4,59,41,000	Rs. 5,74,264

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.

- 10) We also submit that against the VAT payments of Rs.3,17,313/-, Rs.17,26,198/- and Rs. 5,74,264/- for the years 2011-12, 2012-13 and 2013-14 we 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.
- 11) In view of the above submissions we request you to kindly drop the proposal to levy tax at the rate of 4%/5% under Sec. 4(7) (b) of the Act on the contractual receipts in each year.
- 12) It is therefore submitted that the purported demand is not sustainable under law. As the notice is patently erroneous on facts and in law, we request to kindly withdraw the same. We also pray to grant personal hearing before conclusion of the proceedings. We also reserve the right to submit additional submissions at the time of personal hearing.

Subsequently on 17-06-2014 they have filed further objections stating as under alongwith documentary evidences of Land Values of the Villas, Discounts issued to the customers, copies of sale deeds of Land and Provisional Balance sheet for the year 2013-14. They also requested for personal hearing to explain their case. As per the request of the dealer, personal hearing was granted on 04-07-2014 and Sri M. Jaya Prakash, Manager (Accounts) appeared before the undersigned and reiterated the same objections filed in reply. The contentions of the reply filed on 17-06-2014 as under :

a) We submit that we are issued show cause notice of assessment dated 18/03/2014 for the years 2010-11, 2011-12, 2012-13 and 2013-14 (upto December, 2013) proposing levy of VAT @ 4% / 5% on the total contractual receipts of the said years under Section 4(7) (b) of the Act against our payment of tax @ 1%/ 1.25% under Sec. 4(7) (d) of the Act. We request to kindly consider our objections on the following grounds:-

b) You have adopted a Gross Turnover Inclusive of land value Rs.22,89,67,612/- as our receipts during the year 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13), and proposed levy of tax @ 4%. We submit that we have declared after discount and less Land Value is a turnover of Rs.3,50,89,600 for the year 2010-11, Rs. 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),paid VAT @1% under composition under Sec. 4 (7) (d) of the APVAT Act, 2005 based on the declared in Income Tax Returns done during the respective periods. In the notice of assessment for the year 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13),

c) We have computed tax liability for the period 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13) under works contract services, composition scheme. Details of receipts during said period and computation of tax liability is attached herein. Receipts were first appropriated towards

- a. Sale deed.
- b. Then towards the agreement of construction.
- c. Towards additions and alternations and
- d. Finally towards VAT, Service tax, stamp duty, registration charges, excess consideration received etc.

The receipts under the following heads were excluded for computation of taxable amount under work contract services:

- a. Receipts towards value of sale deed.
- b. Receipts towards payment of VAT, service tax, stamp duty and registration charges that were remitted to the government wither in advance or on a later date.
- c. Receipts that are in excess of the agreed sale consideration which were refunded or liable to refunded to the purchaser.
- d. Receipts towards the other charges like corpus fund, maintenance charges, electricity charges, etc received on behalf of the Owners Association or the electricity department which were paid to them in advance or on a later date.

Turnover declared in IT Returns at the time of position given to customer as per IT Act. Accordingly, the taxable amount under works contract services with composition was computed statement enclosed.

We request to kindly adopt the above turnover and levy VAT @1% only. In case you proceed further we request you to kindly provide us as opportunity of personal hearing to explain our case in detail with statements of turnovers are below :

Description	10 - 11	11 - 12 (Apr-Aug)	11 - 12 (Sep-Mar)	2012 - 13	2013 -14 (Upto Dec'13)	Total
IT Returns Declared						
Sales	39621300	38731000	12450000	80048000	36742915	207593215
LESS:						
Discount given to Customer	2323700	3407053	150000	2243470	1218625	9342848
Land Value	2208000	9197053	2740000	0	0	14145053
Land Value	4531700	12604106	2890000	48152450	26214686	94392942
	6855400	16011159	3040000	50395920	27433311	103735790
Net Receipts	32765900	22719841	9410000	29652080	9309604	103857425

Flat No	Land Value	Semi Finished Vila	Construction Agreement Value	Discount given to Customer	Net Receipts	Tax Liability @ Sec 4(7)d	Tax Liability @ Sec 4(7)b
11	179000	0	3621000	200000	3421000	0	136840
12	179000	0	3821000	300000	3521000	0	140840
28	240000	0	2560000	200000	2360000	0	94400
31	240000	0	3056300	146700	2909600	0	116384
50	240000	0	4585000	75000	4510000	0	180400
53	240000	0	4260000	672000	3588000	0	143520
58	240000	0	4160000	145000	4015000	0	160600
60	240000	0	4510000	73000	4437000	0	177480
67	170000	0	4080000	112000	3968000	0	158720
87	240000	0	2760000	400000	2360000	0	94400
Total of 2010-11	2208000		37413300	2323700	35089600	0	1403584

1st Apr'11 to 30th Aug'11

14	179000	0	3715394	77053	3638341	0	148616
16	179000	0	3521000	0	3521000	0	140840
29	239278	0	2360000	200000	2160000	0	94400
30	0	1320000	1680000	0	1680000	13200	67200
36	122000		2678000	200000	2478000	0	107120
56	230000		4305000	0	4305000	0	172200
94	0	1327775	875000	1000000	-125000	13278	35000
83	0	1400000	807500	730000	77500	14000	32300
86	0	1400000	1400000	200000	1200000	14000	56000
93	0	1400000	1600000	1000000	600000	14000	64000
49	0	1400000	3185000	0	3185000	14000	127400
Total of 2011-12	949278	8247775	26126894	3407053	22719841	82478	1045076

1st Sep'11 to 31st Mar'12

81	0	2100000	810000	0	810000	26250	40500
57	400000		4440000	150000	4290000	0	214500
59	240000		4460000	0	4460000	0	223000
Total of 2011-12	640000	2100000	9710000	150000	9560000	26250	478000

2012-13

1	0	1625000	1000000	0	1000000	20313	50000
3	0	1650000	1100000	0	1100000	20625	55000
7	0	1740000	1160000	100000	1060000	21750	53000
8	0	2925000	975000	100000	875000	36563	43750
10	0	1600000	2400000	0	2400000	20000	120000
18	0	1740000	1100000	200000	900000	21750	45000
23	0	1560000	1040000	200000	840000	19500	42000
24	0	1160000	1040000	200000	840000	14500	42000
25	0	1560000	1740000	0	1740000	19500	87000
26	0	1560000	1040000	200000	840000	19500	42000
27	0	1560000	1040000	100000	940000	19500	47000
32	0	1560000	1040000	200000	840000	19500	42000
33	0	1560000	1040000	100000	940000	19500	47000
34	0	1560000	1040000	100000	940000	19500	47000
42	0	1680000	1120000	200000	920000	21000	46000
43	0	1740000	1160000	100000	1060000	21750	53000
45	0	1680000	1120000	200000	920000	21000	46000
47	0	1740000	1160000	100000	1060000	21750	53000
51		2140000	3210000		3210000	26750	
61	0	2342400	1561600	43470	1518130	29280	75907
68	0	2299800	1533200	0	1533200	28748	76660
71	0	3150000	1050000	100000	950000	39375	47500
72	0	3150000	1050000	0	1050000	39375	52500
73	0	2356500	994500	0	994500	29456	49725
49		2513750	1181250		1181250	31422	
Total of 2012-13	0	48152450	31895550	2243470	29652080	601906	1263042

2013-14 (Upto Dec'13)

2	0	2850000	950000	0	950000	35625	47500
9	0	3375000	1125000	0	1125000	42188	56250
15	0	3375000	1125000	0	1125000	42188	56250
39	0	1680000	920000	200000	720000	21000	36000
52	0	4350000	1450000	0	1450000	54375	72500
69	0	3369686	1123229	260625	862604	42121	43130
70	0	2610000	1740000	0	1740000	32625	87000
77	0	2925000	975000	0	975000	36563	48750

'66	0	1680000	1120000	758000	362000	21000	18100
2013-14 (Upto Dec'13)	0	26214686	10528229	1218625	9309604	327684	465480
	3797278	84714911	115673973	9342848	106331125	1038317	4655181

The contentions of the assessee are carefully examined and discussed 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%.

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.

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.

The provisions of Section 4(7)(d) reads as under :

"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;"

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.

They raised an objection regarding the turnovers taken for assessment and stated that the said receipts includes not taxable receipts as under

1. Amount received for cancelled Villas : Some of customers cancelled bookings some villas to an extent of Rs 13230000/- during the year 2010-11 whom they have refunded / liable to refund the advance amount. In support of their claim they have filed request of the letter from the customers for cancellation, ledger copies and bank statements showing the refund of the advances paid to each customers. The same are verified and found that they have refunded of Rs 13230000/-.
2. Amount received from Un-regd Villas : They have received advance of Rs 924000/-, Rs 4150000/-, Rs 9,25,000/- and Rs 22,65,000/- towards the sale of some Villas during the year 2010-11, 2011-12, 2012-13 and 2013-14 respectively for which Sale Deeds are not done. The VAT will be paid by them at the time of registration of Villas. The customer wise and plot wise advances received are submitted which are verified and found the Villas are not registered upto December 2013.
3. Non Taxable Receipts : They stated that they collected certain Amounts which is paid to the CT Department towards VAT, Service Tax paid to Central Excise, Registration Charges paid to Registration Department, Corpus Fund

paid to the Association of the Plots, Electricity charges paid to electricity Department etc. The details of the said amounts are submitted by the dealer are verified and found in order.

They further stated that they have paid tax under section 4(7)(d) on the disclosed turnovers and filed the details of turnovers as per returns as under :

<u>Year</u>	<u>Sale Consideration</u>	<u>VAT Paid</u> <u>At the time of regn.</u>
2010-11	Rs 2,77,00,000/-	Rs 2,78,000/-
2011-12	Rs 2,47,93,947/-	Rs 3,17,313/-
2012-13	Rs 4,41,55,151/-	Rs 17,26,198/-
2013-14 (Upto 12/13)	Rs 4,59,41,000/-	Rs 5,74,264/-

But on verification of turnovers with ref. to the VAT-200 Returns it is not tallied. Hence the objection of the dealer is not teenable. They also raised objection against the credits of Vat payments stating as above but they have not produced correct details of payments. Hence the contention of the dealer is not considered and the payments shown in the show cause notice is taken into account.

They finally requested to withdraw the proposal of tax levying tax @ 4% / 5% and to levy @ 1% / 1.25% under Section 4(7)(d) of APVAT Act. But in this case as discussed above they first sold open plot and constructed villas as per construction agreement. Hence the facts of case in M/s Noble Properties are squarely attracts in this case were the amounts received towards construction agreement are liable to under section 4(7)(b/c). Therefore their request is not considered.

Subsequently on 17-06-2014 they filed another reply requesting to consider their objections on the following issues :

- a) Gross Turnovers : They stated that the turnovers proposed in the show cause notice is inclusive of land value and discounts. Hence they requested to deduct the Discounts and Land Values. Further they stated that they have declared the turnovers in IT Returns at the time of possession given to customers as per IT Act. They have declared the turnovers for the years 2010-11 to 2013-14(Upto 12/2013) as Rs 3,96,21,300, Rs 5,11,81,000/-, Rs 8,00,48,000/- and Rs 3,67,42,915/- In support of their claim they have submitted the copies of balance sheets, the details of land values and the total value alongwith Sale Deed Copies and Ledger account of discounts given to customers.

The documents submitted by the assessee are examined and discussed as under:

- 1) The contention of the assessee to consider the turnovers as per balance sheet is examined and discussed as under :

They have filed copies of balance sheets for 2010-11, 2011-12, 2012-13 and provisional balance sheet of 2013-14(Upto 12/2013). On examination of the balance sheets, the amounts received is Rs 39621300/-, Rs 51181000/-, Rs 8,00,48,000 and Rs 36742915/- during the period 2010-11, 2011-12, 2012-13 and 2013-14 (Upto December 2013) respectively.

- 2) The assessee has claimed exemption of Rs 23,23,700/-, Rs 3567053/-, Rs 2243470/- and Rs 1218625/- towards DISCOUNTS given to the customers during the year 2010-11, 2011-12, 2012-13 and 2013-14(upto 12/2013) respectively. In support of their claim, they have filed Ledger Accounts of discounts which are verified and found that they have given discounts to various parties as mentioned above. Hence exemption is allowed on the above turnovers.
- 3) The assessee has claimed exemption of Rs 22,08,000/-, Rs 1,19,37,053/-, Rs 4,81,52,450/- and Rs 2,62,14,686/- towards Land Value during the period 2010-11, 2011-12, 2012-13 and 2013-14 (Upto December 2013) respectively. In support of their claim they have filed Sale Deed copies, Executed for Registration of Land along with the details of sale deed value and Construction Agreement Value. On verification of Sale Deed copies, it is found that in certain bungalows detailed as below they have executed Sale Deed for semi finished house and it is not for Open Plot.

Year	Flat No	Semi Finished Value
2011-12	30	1320000
	94	1327775
	83	1400000
	86	1400000
	93	1400000
	49	1400000
		8247775
15-09-2011 to 31-03-12	81	2100000

Year	Flat No	SemiFinished Value
2012-13	1	1625000
	3	1650000
	7	1740000
	8	2925000
	10	1600000
	18	1740000
	23	1560000
	24	1160000
	25	1560000
	26	1560000
	27	1560000
	32	1560000
	33	1560000
	34	1560000
	42	1680000
	43	1740000
	45	1680000
	47	1740000
	51	2140000
	61	2342400
	68	2299800
	71	3150000
	72	3150000
	73	2356500
	49	2513750
		48152450

Year	Flat No	Semi Finished Value
2013-14 (Upto 12/2013)	2	2850000
	9	3375000
	15	3375000
	39	1680000
	52	4350000
	69	3369686
	70	2610000
	77	2925000
	82	1680000
		26214686

Hence the amounts received towards registration of semi finished bungalows are not eligible for exemption. They are liable to tax @ 1.25% under section 4(7)(d) of APVAT Act and the remaining amounts received towards construction agreement value are liable to tax @ 5% under section 4(7)(b/c) of APVAT Act.

Since the turnovers of balance sheets is taken into consideration as per their reply dt 17-06-2014 the exemptions claimed by them towards cancelled villas, unregistered villas, and non taxable receipts as per reply dated 21-04-2014 are not allowed.

The details of net taxable turnovers are arrived as under :

2010-11

Total Amount Received →	Rs	3,96,21,300/-
(-) Land Value	Rs	22,08,000/-
(-) Discounts given to cust	Rs	23,23,700/-

Net Receipts	Rs	3,50,89,600/-

2011-2012

Total Amount Received →	Rs	5,11,81,000/-
(-) Land Value	Rs	15,89,278/-
(-) Discounts given to Cust	Rs	35,57,053/-

Net Receipts	Rs	4,60,34,669/-

- a) Semi-finished house Rs 82,47,775/-
From 01-04-2011 to 14-09-2011
- b) Semi-finished house Rs 21,00,000/-
From 15-09-2011 to 31-03-2012
- c) Cons Agreement Va Rs 2,61,26,894/-
From 01-04-2011 to 14-09-2011
Less :

- a) Non-Vat Purchases @ 4% 24,087/-
 b) Non-Vat Purchases @ 14.5% 231,292/-

Net Taxable Cons. Agreement Va Rs 2,58,71,515/-

- d) Cons, Agreement Va Rs 95,60,000/-
 From 15-09-2011 to 31-03-2012-

2012-13

Total Receipts	Rs	8,00,48,000/-
(-) land Value	Rs	--
(-) discounts	Rs	22,43,470/-
Net Receipts	Rs	7,78,04,530/-

- a) Semi finished house Rs 4,81,52,450/-
 b) Construction Agreement Value Rs 2,96,52,080/-

2013-2014 (upto December 2013)

Total Receipts	Rs	3,67,42,915/-
(-) land Value	Rs	N I L
(-) discounts	Rs	12,18,625/-
Net Receipts	Rs	3,55,24,290/-

- a) Semi finished house Rs 2,62,14,686/-
 b) Construction Agreement Value Rs 93,09,604/-

In view of the above facts, the assessment for the period 2010-11 to 13-14 (December 2013) is finalized as under :

2010-11

Total Amount Received →	Rs	3,96,21,300/-
(-) Land Value	Rs	22,08,000/-
(-) Discounts given to cust	Rs	23,23,700/-
Net Receipts	Rs	3,50,89,600/-
Tax U/Sec-4(7)(b/c) @ 4%	Rs	14,03,584/-
TAX PAID	Rs	2,78,240/-
BALANCE	Rs	11,25,344/-

2011-2012

Total Amount Received →	Rs	5,11,81,000/-
(-) Land Value	Rs	15,89,278/-
(-) Discounts given to Cust	Rs	35,57,053/-
Net Receipts	Rs	4,60,34,669/-

- e) Semi-finished house Rs 82,47,775/-
 From 01-04-2011 to 14-09-2011
 f) Semi-finished house Rs 21,00,000/-
 From 15-09-2011 to 31-03-2012

g) Cons Agreement Va Rs 2,61,26,894/-
From 01-04-2011 to 14-09-2011

Less :

c) Non-Vat Purchases @ 4% 24,087/-

d) Non-Vat Purchases @ 14.5% 231,292/-

Net Taxable Cons. Agreement Va Rs 2,58,71,515/-

h) Cons, Agreement Va Rs 95,60,000/-
From 15-09-2011 to 31-03-2012-

Tax on Semi finished house Rs 82,47,775/- @ 1% Tax Rs 82,478/-
From 01-04-2011 to 14-09-2011 U/Sec-4(7)(d)

Tax on Semi finished house Rs 21,00,000/- @ 1.25% Tax Rs 26,250/-
From 15-04-2011 to 31-03-2012 U/Sec-4(7)(d)

i) Tax on Cons Agreement Va Rs 2,61,26,894/- @ 4% Tax Rs 10,45,076/-
From 01-04-2011 to 14-09-2011 U/Sec-4(7)(b/c)

j) Cons, Agreement Va Rs 95,60,000/- @ 5% Tax Rs 4,78,500/-
From 15-09-2011 to 31-03-2012 U/Sec-4(7)(b/c)

U/Sec-4(7)(e)

Tax on NON Vat Purchases value Rs 24085/- @ 4% Tax Rs 963/-
Tax on NON Vat Purchases value Rs 2,31,292/- @ 14.5% Tax Rs 33,537/-

TOTAL TAX DUE U/Sec-4(7)(b/c)	Rs 16,66,804/-
TOTAL TAX PAID	Rs 2,58,930/-
BALANCE	Rs 14,07,874/-

'2012-13

Total Receipts	Rs	8,00,48,000/-
(-) land Value	Rs	--
(-) discounts	Rs	22,43,470/-
Net Receipts	Rs	7,78,04,530/-

c) Semi finished house Rs 4,81,52,450/-
d) Construction Agreement Value Rs 2,96,52,080/-

Tax on Semi finished house
Under section 4(7)(d) Rs 4,81,52,450/- @ 1.25% Tax 601905/-

Tax on Cons.Agrmt Value Rs 2,96,52,080/- @ 5% Tax 1482604/-
Under section 4(7)(b/c)

Total Tax due	Rs 20,84,509/-
Total Tax Paid	Rs 15,54,042/-
BALANCE	Rs 5,30,467/-

2013-2014 (upto December 2013)

Total Receipts	Rs	3,67,42,915/-
(-) land Value	Rs	N I L
(-) discounts	Rs	12,18,625/-
Net Receipts	Rs	3,55,24,290/-

c) Semi finished house Rs 2,62,14,686/-

d) Construction Agreement Value Rs 93,09,604/-

Tax on Semi finished house

Under section 4(7)(d) Rs 2,62,14,686/- @ 1.25% Tax 3,27,684/-

Tax on Const Agrmnt Va Rs 93,09,604/- @ 5% Tax 4,65,480/-
Under section 4(7)(b/c)

Total Tax due	Rs	7,93,164/-
Total Tax Paid	Rs	3,30,514/-
Balance	Rs	4,62,650/-

TAX LIABILITY

2010-11	→	Rs	11,25,344/-
2011-12	→	Rs	14,07,874/-
2012-13	→	Rs	5,30,467/-
2013-14	→	Rs	4,62,650/-

		Rs	35,26,335/-
=====			

- a) The amount of **Rs 35,26,335/-** towards DEMANDs raised from 2010-11 to 13-14 (Upto December 2013) Failure to make the payment will result in recovery proceedings under the APVAT Act 2005.

THE PROOF OF PAYMENT OF THE AMOUNT SPECIFIED AT 'A' ABOVE TOGETHER WITH DUPLICATE COPY OF THIS ORDER AND PAYMENT BOXES COMPLETED SHALL BE SUBMITTED WITHIN THE SPECIFIED TIME LIMIT.

An appeal order against this order can be filed before the Appellate Deputy Commissioner within 30 days of receipt of this order.

[Signature]
COMMERCIAL TAX OFFICER,
MG ROAD CIRCLE
3/15

To

M/s Modi & Modi Constructions
Secunderabad

To,
The Commercial Tax Officer,
M.G. Road Circle,
Ameerpet, Hyderabad.

Sir,

Date: 5th June 2014



Sub: APVAT Act'2005 - M/s.Modi & Modi Constructions, Ranigunj, Secunderabad – Notice of Assessment of Value Added Tax in Form VAT 305A for the assessment years 2010-11, 2011-12, 2012-13 and 2013-14 (upto December, 2013) - Objections called for-Replies filed Reg.

Ref: 1) Notice of Assessment in form VAT 305A dated 18-03-2014.
2) Our letter dated 27/03/2014 requesting time.
3) Our letter dated 20th April 2014 – SCN Reply.

In continuation of the same, we make the following further objections:-

- 1) We submit that we are issued show cause notice of assessment dated 18/03/2014 for the years 2010-11, 2011-12, 2012-13 and 2013-14 (upto December, 2013) proposing levy of VAT @ 4% / 5% on the total contractual receipts of the said years under Section 4(7) (b) of the Act against our payment of tax @ 1%/ 1.25% under Sec. 4(7) (d) of the Act. We request to kindly consider our objections on the following grounds:-
- 2) You have adopted a Gross Turnover Inclusive of land value Rs.22,89,67,612/- as our receipts during the year 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13), and proposed levy of tax @ 4%. We submit that we have declared after discount and less Land Value is a turnover of Rs.3,50,89,600 for the year 2010-11, Rs. 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), paid VAT @1% under composition under Sec. 4 (7) (d) of the APVAT Act, 2005 based on the declared in Income Tax Returns done during the respective periods. In the notice of assessment for the year 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13),
- 3) We have computed tax liability for the period 2010-11, 2011-12, 2012-13 & 2013-14(Up to Dec'13) under works contract services, composition scheme. Details of receipts during the said period and computation of tax liability is attached herein. Receipts were first appropriated towards
 - a. Sale deed.
 - b. Then towards the agreement of construction.
 - c. Towards additions and alternations and
 - d. Finally towards VAT, Service tax, stamp duty, registration charges, excess consideration received etc.



The receipts under the following heads were excluded for computation of taxable amount under work contract services:

- e. Receipts towards value of sale deed.
- f. Receipts towards payment of VAT, service tax, stamp duty and registration charges that were remitted to the government wither in advance or on a later date.
- g. Receipts that are in excess of the agreed sale consideration which were refunded or liable to refunded to the purchaser.
- h. Receipts towards the other charges like corpus fund, maintenance charges, electricity charges, etc received on behalf of the Owners Association or the electricity department which were paid to them in advance or on a later date.

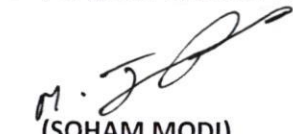
Turnover declared in IT Returns at the time of position given to customer as per IT Act. Accordingly, the taxable amount under works contract services with composition was computed statement enclosed.

We request to kindly adopt the above turnover and levy VAT @1% only. In case you proceed further we request you to kindly provide us as opportunity of personal hearing to explain our case in detail with statements of turnovers

Thanking you,

Yours faithfully,

For **MODI & MODI CONSTRUCTIONS.**


(**SOHAM MODI**)
Managing Partner

Enclosures: As above

30/12
PROCEEDINGS OF THE APPELLATE DY. COMMISSIONER(CT),
PUNJAGUTTA DIVISION HYDERABAD

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

ADC Order No.847

Stay Application R.No.52/2014-15
in Appeal No.BV/76/2014-15

Date of hearing:11-12-2014

Date of order :19-12-2014

Sub:- APPEALS – APVAT Act, 2005 – M/s Modi &
Modi Constructions, Hyderabad – Appeal filed
against the orders of the Commercial Tax
Officer, M.G.Road Circle, Hyderabad –
Assessment for the tax periods February, 2011
to December, 2013 – Stay petition heard – Stay
rejected – Orders issued – Regarding.

* * *

M/s Modi & Modi Constructions, Hyderabad (TIN: 36894097186),
the appellant herein, filed an appeal against the assessment orders passed
by the Commercial Tax Officer, M.G.Road Circle, Hyderabad
(hereinafter referred to as the Assessing Authority) for the tax periods
February, 2011 to December, 2013 under the APVAT Act. The
appellant also filed a petition in Form APP 406 seeking stay of collection
of the disputed tax of ₹35,26,335/-.

Sri M. Ramachandra Murthy, Chartered Accountant and
Authorised Representative of the appellant appeared and argued the case
on stay issue reiterating the contentions as set-forth in the grounds of
appeal.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the grounds of appeal, the appellant mainly contended as under:

“Appellant submits that it is engaged in the business of construction and selling of Villas in the name and style of NILGIRI HOMES at Rampally village, Keesara Mandal, R.R. District consist of 95 Villas and town houses on 6.5 acres of land. The sanction for development of land along with construction of the Villas and town houses has been obtained under the group housing scheme. Developer can only sell fully completed villas / town houses. Developer has to comply with terms of sanction and has mortgaged 5% of the villas to HMDA. Developer is not authorized to sell plots of land without construction. In the present case, the Developer is the seller of the land, developer of the layout and developer of the construction. It opted for payment of tax @ % or 1.25% under composition under Section 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 @ % or 1.25%.

Appellant submits that in the course of business it has in the first instance entered into agreement with the prospective buyers for sale of

independent Bungalows of similar size, similar elevation, same colour scheme etc., along with certain amenities. The agreement of sale consist of the consideration received through sale of land, development charges of land and cost of construction of the Villas / Apartments. It has paid VAT @ % or .25% on the total consideration received from these three components of the agreements.

The appellant relies on the Advance Ruling given in the case of M/s Maytas.

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 wherein 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 separately the amount mentioned in these two agreements has already been shown in the original agreement of sale and it has paid VAT @ 1% or .25% on the

total consideration received as per the original agreement of sale. Thus, the payment of tax at % or .25% is as per the provisions of Section 4(7)(d).”

In the impugned orders, while considering the objections of the appellant, which are similar to the contentions that are now raised in the grounds of appeal, the Assessing Authority, however, rejected such objections observing 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%.

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.

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.

The provisions of Section 4(7)(d) reads as under :

“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;"

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.

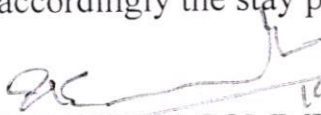
(iii) The agreement for construction of villas on the land sold by the applicant to the buyer will fall under Sec. 4 (7) (a) of APVAT Act.

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.”

Though the appellant in the grounds of appeal raised certain contentions and their reiteration by the Authorised Representative during the course of personal hearing, they failed to furnish any sort of documentary evidence to contradict the findings of the Assessing Authority which are based on the Advance Ruling as extracted above. For these reasons, I do not find any case to grant stay of collection of the disputed tax of ₹35,26,335/- and accordingly the stay petition is rejected.


19/12/14
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), Begumpet Division, Hyderabad.

Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

O/o Commercial Tax Officer,
M.G.Road Circle,
3rd Floor, Pavani Prestige,
Ameerpet, Hyderabad.

Ref No : Appeals / Dismissed / 1 /2014

Date: 22-12-2014

URGENT ARREAR NOTICE

Sub : APVAT Act 1957 – M/s Modi & Modi Constructions, Sec'bad – Feb 2011-
to Dec 2013 / Tax – Stay petition dismissed by Appellate Dy Commnr(CT)
Punjagutta Division, Hyderabad -- Arrears Notice - Regarding.

Ref : 1. ADC Order No 847 dated 19-12-2014 of ADC(CT) P'gutta Divn. Hyd

■ Xxx ---

M/s Modi & Modi Constructions, Secunderabad are informed that their stay
petition is dismissed for Rs 35,26,335/- by Appellate Dy.Commissioner(CT) Punjagutta
Division, Hyderabad vide Order No 847 / 19-12-2014.

Therefore they are requested to pay the above disputed amount within (3) days
from the date of receipt of this notice, failing which the action will be initiated under the
provisions of TGVAT & RR ACTS.


COMMERCIAL TAX OFFICER
M.G.Road Circle

Modi & Modi Constructions

Office: 5-4-187/3 & 4, II floor, Soham Mansion, M G Road,
Secunderabad – 500 003. Ph: +91 40 66335551

Date: 28th August 2014

To,
The Commercial Tax Officer,
M.G. Road Circle,
Secunderabad

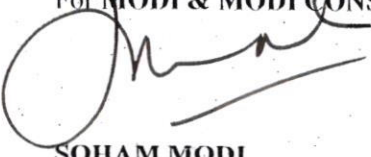
Dear Sir,

Aggrieved by the assessment order in Form VAT 305 dated 31/07/2014 passed by the Commercial Tax Officer, M.G. Road Circle for the tax period from April 2010 to December 2013 under the provisions of APVAT Act, 2005, we are filing appeal before the ADC(CT), Punjagutta Division, Hyderabad. As required by the second Proviso under Section 31(1) of the APVAT Act, we are issuing crossed Demand Draft/Banker's Cheque for Rs.4,40,792/- (Four Lakh Forty Thousand Seven Hundred and Ninety Two Only) towards 12.5% of the disputed tax.

Please acknowledge receipt of the same.

Thank You

Yours faithfully
For **MODI & MODI CONSTRUCTIONS,**


SOHAM MODI
(Managing Partner)

Encl.: Cheque No. 001955 Date. 27.08.2014

Rs.4,40,792/-

