

Date: 20th April 2014

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

Sir,

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.

- 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 Development charges dt.29/03/2008	Rs.17,15,000
Agreement for construction dt.29/03/2008	Rs.20,93,000

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

Agreement of Sale dated 16/09/2010 (Mother Agreement) Rs.39,78,000 wherein the value of land of Rs.1,79,000/-, the development charges of Rs.14,21,000/- and the cost of construction of Rs.24,00,000/- totaling to Rs. 40,00,000/- was mentioned. Thus 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 Development charges dt.03/11/2010	Rs.14,21,000
Agreement for construction dt.03/11/2010	Rs.24,00,000

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

Agreement of Sale dated 09/08/2012 (Mother Agreement) Rs.44,00,000/- wherein the value of land 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.

Thanking you,

Yours faithfully,

For **MODI & MODI CONSTRUCTIONS.**

(SOHAM MODI)

Managing Partner

Enclosures: As above