

Notice Id: 230007VAT3050131524

VAT305

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

ASSESSMENT OF VALUE ADDED TAX

[See Rule 25(5)]

Date: ~~02-08-2007~~ 12-08-2007

01. Tax Office Address

6-3-789, 6th Floor, Pavani Prestige
Ameerpet, Hyderabad
500016

02. Dealer Info.

TIN : 28840298894
Circle : M.G.Road
Division : Begumpet

03. Firm Address

Name MEHTA AND MODI HOMES
Door No 5-4-187/3 AND 4 Street M G ROAD
Locality Town/City SECUNDRABAD
District Hyderabad Pin 500003

Upon examination of your records on 15-MAR-07 the correct amount of VAT under the provisions of AP VAT Act 2005 has been established as follows.

*This has resulted from :-

Your agreement at the time of visit 15-MAR-07

The total amount payable by you is explained below:

Tax Period	Particulars(input tax/output tax)	Tax declared /net credit /Or Refund Claimed	Tax Found to be due /net credit / Or Refund due	Tax declared Due to dealer	Tax under declared Due to Tax Department	Total Due to Tax Department
01-SEP-06 -to- 30-SEP-06	Output Tax	171136	786363	0	615227	615227
01-OCT-06 -to- 31-OCT-06	Output Tax	151413	605652	0	454239	454239
01-NOV-06 -to- 30-NOV-06	Output Tax	179178	716712	0	537534	537534
01-DEC-06 -to- 31-DEC-	Output Tax	190937	824392	0	633460	633460

06						
01-JAN-07 -to- 31-JAN-07	Output Tax	216773	867092	0	650319	650319
01-FEB-07 -to- 28-FEB-07	Output Tax	239983	959932	0	719949	719949
3610728						

* Delete as appropriate

Explanation to above proposals :

The tax payer is a contractor and has opted to pay tax under composition as per Sec.4(7)(d) @ 1%. However, the tax payer has sold the plots and entering into agreement for construction of houses liable to tax as per Sec.4(7)(c) @ 4%. Further, the tax payer has also omitted to include the turnover relating to service tax while declaring output tax. On pointing out the tax payer has agreed the omissions and signed the agreement in Form 301A. Hence Orders passed in from VAT 305.

*A The amount of Rs.3610728 /- shall be paid within 30 days of receipt of this order. Failure to make the payment will result in recovery proceedings under the AP VAT Act 2005.

*B Your refund claim is reduced to _____ and this amount will be refunded to you.

THE PAYMENT OF THE AMOUNT SPECIFIED AT 'A' ABOVE MUST BE MADE TOGETHER WITH DUPLICATE COPY OF THIS ORDER AND PAYMENT BOXES ON THAT COPY COMPLETED.

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

Commercial Tax Officer(AUDIT),
Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Bengalpet Division, Hyderabad.

NOV-06						
01-DEC-06 -to- 31- DEC-06	Output Tax	190932	824392	0	633460	633460
01-JAN-07 - to- 31-JAN- 07	Output Tax	216773	867092	0	650319	650319
01-FEB-07 - to- 28-FEB- 07	Output Tax	239983	959932	0	719949	719949
3610728						

Explanation to the above proposal:

As per the authorization given by the Deputy Commissioner (CT) Begumpet Divn., on Form VAT 304 dated: 6/3/2007 conducted audit of accounts. The tax payer is contractor and opted to pay tax @ 1% on the receivables as per Section 4(7)(d) and filed Form 250 for the entire project. On verification of books of accounts, at the time of audit and as per the sales details furnished by the dealer, the dealer has sold vacant plots by executing sale deed before the Sub-Registrar and paid the Stamp duty accordingly. Consequent on sale of plot the dealers are entering into separate agreement for construction and the dealer has paid the tax @ 1% on the contractual receipts by excluding cost of land which was sold separately by sale deed.

The tax paid by the dealer @ 1% on the contractual receipts as per Sec. 4(7)(d) of A.P.VAT Act, 2005 is not in Order. Section 4(7)(d) clearly indicates that only a contractor who involve in construction and selling of residential buildings/apartments etc., may opt for composition in terms of Sec. 4(7)(d). The transaction goes out of purview of Section 4(7)(d) soon after sale deed is completed. Any works done after sale is to be considered as out of purview of Section 4(7)(d) any construction work undertaken after sale of plot would fall under the provisions of Section 4(7) (c) and the Contractor is liable to tax @ 4% on the receipts/receivables.

The dealer has paid service tax on his services provided as a contractor, the service tax component is also added to the turnover and liable for tax @ 4%.

Total VAT Due to the Tax Dept., is Rs. 36,10,728/-

The proposal was explained to the dealers and the dealers have filed agreement in Form VAT 301A dated: 20/6/2007 and that orders were passed in Form VAT 305 dated: 2/8/2007. However the dealers have at this stage filed a writ petition before the Hon'ble High Court vide W.P.No. 19602/2007. The Hon'ble High Court pleased to issue Orders directing that the assessing authority shall be at liberty to issue notice to the petitioners and to pass appropriate orders after hearing the dealers in accordance with the law. Accordingly with due respects to the orders of Hon'ble High Court the present Show-Cause notice is issued and requested them to file their objections alongwith documentary evidence, if any, within (7) days from date of receipt of this notice.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	
Case No. 05-CV-00001	Page 1
Plaintiff: [Name]	Defendant: [Name]
Filed: [Date]	By: [Signature]
Attorney: [Name]	Address: [Address]
City: [City]	State: [State]
Zip: [Zip]	Phone: [Phone]
Fax: [Fax]	E-Mail: [Email]

The undersigned, [Name], being duly sworn, deposes and says that the foregoing is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

Subscribed and sworn to before me on this [Date] day of [Month], 2005.

Notary Public in and for the State of New York

The foregoing is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

The undersigned further deposes and says that the [document] was prepared by [Name] and is a true and correct copy of the [document] as the same appears in the files of the [agency].

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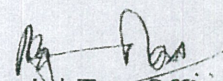
Accordingly, a Show-Cause notice in Form VAT 305A was issued and served on the dealers on 13/12/2007. The dealers have filed a reply on 19/12/2007. On the request of the dealer a notice was issued on 20/12/2007 requested them to file copies of initial agreements with the buyers and details of VAT payments. In reply to the notice, the dealers have personally appeared and filed the required details alongwith their reply on 18/1/2008.

The reply filed by the dealer, has been examined with reference to the provisions of AP VAT Act. The dealer has contended that their transaction shall fall under Sec. 4(7)(d) and liable to tax @ 1% and they have paid the same. Authority for clarification and advance ruling committee in the case of M/s. Mytas Hill County Pvt. Ltd., vide CCT's ref. No. PMT/P&L/A.R.Com180/2006 dated: 30/7/2006 has clarified the issue which fall under 4(7)(d). The issue is similar to the above case and argued that they are liable for tax @ 1% which they have paid alongwith the VAT monthly returns and requested to drop the proposal to levy tax @ 4%. The reply filed by the dealer has been examined and verified with the initial agreements. The payment of tax by the dealer is in Order. However the dealers have paid service tax to the Central Excise department and not paid the tax on the service tax component. The same is added to the taxable turnover and levied tax on a turnover of Rs. 51,64,974/- @ 1% as per Sec. 4(7)(d) of APVAT Act.

The total tax due to the Tax Department: Rs. 51,650-00

A The amount of Rs.51,650/- shall be paid within 30 days of receipt of this order. Failure to make the payment will result in recovery proceedings under the AP VAT Act 2005.

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


Commercial Tax Officer (Audit)

Begumpet Divn. Hyderabad.

Commercial Tax Officer (Audit)
O/o. The Dy. Commissioner (CT)
Begumpet Divn. Hyderabad-16.

