

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

Office of the
Deputy Commissioner(CT),
Begumpet Division, Hyderabad.

Rc.No.E3/R/219/2011 Dt.02-03-2012.

**NOTICE FOR PERSONAL HEARING UNDER APVAT ACT FOR THE TAX
PERIOD 01-09-2006 to 28-02-2007.**

Sub:- AP VAT Act, 2005 - M/s.Mehta & Modi Homes, Sec'bad
- Assessment for the tax period 01-09-2006 to 28-02-2007
under AP VAT Act - Completed by the Commercial Tax
Officer(Audit), Begumpet Division - Certain discrepancies
noticed - Revision of Assessment under Section 32(2) of
AP VAT Act, 2005 proposed - Show Cause Notice issued
- Objections called for - Filed - Personal hearing notice
issued - Regarding.

Ref:- 1).CTO (Audit), Begumpet Division Form VAT 305
Dt.29-04-2008 for the tax period 01-09-06 to 28-02-07.
2).DC(CT), Begumpet Revision Show Cause Notice in
Rc.No.E3/R/219/2011 Dt.24-01-2012.
3).Dealers reply Dt.02-03-2012.

M/s.Mehta & Modi Homes, H.No.5-4-187, M.G.Road,
Secunderabad are registered dealers under the AP VAT Act with TIN
28840298894 and assessee on the rolls of Commercial Tax Officer, M.G.Road
Circle and engaged in execution of works contract under APVAT Act 2005.

The Firm was audited and assessed by the Commercial Tax
Officer (Audit), Begumpet Division for the period 01-09-2006 to 28-02-2007
in Form VAT 305 Dt.29-04-2008 in the reference 1st cited accepting the tax
paid by the dealer @ 1% on the contractual receipts as per Section 4(7)(d) of
AP VAT Act, 2005.

On perusal of the Assessment Record with reference to
Assessment Order revealed the following which is found to be prejudicial to
the interest of State Revenue.

M/s.Mehta & Modi Homes, Secunderabad are constructing
Independent Bungalows at Charlapalli, Ghatkesar Mandal, Ranga Reddy
District. The Vigilance & Enforcement Officials visited the said work site on
10-12-2008 and obtained details of the entire construction work of the dealer
and sent the record to the Commercial Tax Officer, M.G.Road.

On examination of the record it is noticed that the Company is registered under AP VAT Act Bearing TIN No.28840298894 and have opted to pay tax under Composition Scheme @ 4% on 25% of receipts under Section 4(7)(d) of AP VAT Act, 2005.

It is noticed that they have purchased Sand, Metal, Bricks and hardware material from unregistered dealers which are liable to tax under Section 4(7)(e) of AP VAT Act 2005 but, they have not declared and paid tax to the Department accordingly.

Further it is noticed that as per the agreement of sale, they have entered into contract with the prospective buyers, initially executing sale deed for sale of land later the contractor is entering into two separate contracts for development of plot and for construction of bungalow (building).

The question arose in this case is whether the dealer is liable to tax @ 4% on 25% on receipts under Section 4(7)(d) or liable to tax @ 4% on all receipts under Section 4(7)(c) of AP VAT Act, 2005.

In this connection, the Advance Ruling issued by Authority for clarification and Advance Ruling of the Commercial Taxes Department in the case of M/s.Maytas Hill Country Pvt Ltd., Begumpet, Hyderabad Dt.30-07-2006 has been perused. As per this Advance Ruling in the event a piece of land belonging to the applicant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also registered with the Sub-Registrar, 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. This clarification matches with the transactions of the Company, as the Company sold plots and executed sale deed and later entered into two contracts, one for development of the plot and the other for construction of bungalow (building). Of these transactions, transaction of sale of plot being immovable property, not liable to VAT but the transactions of development and construction of bungalow fall under category of execution of civil works contract and are liable to VAT @ 4% on receipts under Section 4(7)(c) of AP VAT Act, 2005.

Whereas, the Commercial Tax Officer (Audit), Begumpet Division assessed the dealer under Rule 25(5) of AP VAT Act, 2005 Dt.29-04-2008 for the period from 01-09-2006 to 28-02-2007 treating the transactions of the dealer attract tax @ 4% on 25% receipts under Section 4(7)(d) of AP VAT Act, 2005, keeping in view the case of M/s.Maytas Hill Country (P) Ltd. (CCT's PMT P&L/AR/Com/80/2006, Dt.30-07-2006) without his findings as to how he came to conclusion that the transactions of the Company attracts tax under Section 4(7)(d) of AP VAT Act, 2005. The issue is discussed in length as under.

As per the documents furnished by the contractor, the contractor has entered into an agreement of sale with the customers for sale of plot, execution of works contract for developing the plot by laying roads, drainage lines, park etc., and for construction of bungalow. The contractor has collected separate amounts for sale of land, for development of plot and for construction of building. Though a single document is executed as agreement of sale, the actual transactions cannot be combined and are separate.

For the purpose of VAT, the sale of plot being immovable is not liable to tax and the transactions of development of plot and construction of building fall under works contract and liable to VAT under Section 4(7) of AP VAT Act, 2005. The transactions of the contractor are similar to second category of situations mentioned in the Advance Ruling in the case of M/s.Maytas Hill Country (P) Ltd.

Second category reads as under:

“A piece of land belonging to the applicant is sold to the customer through a sale deed for the sale of land and then through a separate construction agreement the applicant takes up construction of a house on such land purchased by the customer. In this situation there is a sale deed for the sale of land and also a construction agreement between the applicant and the customer which is also registered with the Sub-Registrar.

The applicant shall not be eligible for composition under Section 4(7)(d) to pay tax @ 4% on 25% on the total consideration”.

Similarly in this case of the contractor also sold plots to the customers and entered into two separate covenants, one for development of plot and the other for construction of building, the contractor is not eligible to opt to pay tax @ 4% of 25% receipts.

In view of the above, the turnover of the contractor is liable to tax @ 4% on all the receipts under Section 4(7)(c) of AP VAT Act, 2005. As per the information available, the contractor has received consideration from customers from September, 2005 to September, 2008 amounting to Rs.33,39,68,836-00 (inclusive of plots sale).

Further it is revealed that the contractor has purchased Sand, Metal, Granites and Bricks from unregistered dealers and they have not paid tax under Section 4(7)(e) of AP VAT Act, 2005.

In view of the above the Assessment Order under AP VAT Act for the period 01-09-2006 to 28-02-2007 passed by the Commercial Tax Officer (Audit) is set a side and it is proposed to revise the Assessment of the contractor.

For the above facts and reasons, in exercise of the powers conferred under Section 32(2) of the AP VAT Act, 2005 the Assessment of the dealers for the tax period 01-09-2006 to 28-02-2007 under AP VAT Act is proposed to be revised as detailed hereunder.

Year wise breakup of turnovers:

<u>Year</u>	<u>Amount</u>
2005-06	Rs. 5,43,50,247-00
2006-07	Rs. 4,26,93,214-00

Computation of taxable turnovers and taxes:

2005-06:

Receipts	Rs.5,42,50,247-00
VAT @ 4%	Rs. 21,74,009-00
Less VAT Paid	NIL
Diff VAT	Rs. 21,74,009-00

2006-07:

Receipts	Rs.4,26,93,219-00
VAT @ 4%	Rs. 17,07,728-00
Less VAT Paid	Rs. 11,34,932-00
Diff VAT	Rs. 5,72,796-00

Total Tax Payable Rs. 27,46,805-00

Accordingly a Show Cause Notice to revise the Assessment was issued on 24-01-2012 and the dealer filed his reply on 02-03-2012

Therefore, M/s.Mehta & Modi Homes, Secunderabad are hereby informed that they should attend for personal hearing to represent their case either in person or through their authorized representative at 11.30 A.M. on 09-03-2012 along with the relevant record and documentary evidence if any.

Deputy Commissioner(CT),
Begumpet Division, Hyderabad.

To

M/s.Mehta & Modi Homes, H.No.5-4-187, M.G.Road, Secunderabad (Through the Commercial Tax Officer, M.G.Road Circle for service).

3/3/2012