

GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT
Proceedings of the Deputy Commissioner (C.T.), Begumpet Division, Hyd.

Present Sri.S.Eswaraiah, B.Com.(C.A).M.A.,B.L.

DC Order No. 162

Rc.No.E3/R/219/2011 Dt.23-04-2012.

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 - Attended - final reply filed - orders passed -
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 letter ~~dt~~ ; nil but received on.10-02-2012.
4).Dealers letter Dt.10-02-2012.,5-3-2012,22-3-2012
Requesting time
5).Dealers objections Dt.02-03-2012,27-3-2012 and
11-4-2012
6).personal hearing notice Dt.03-03-2012.
7).personal hearing on 28-03-2012.

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

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).

Issue of notices and granting of personal hearing:-

Accordingly a Show Cause Notice to revise the Assessment was issued on 24-1-2012 and was served on the same day . The dealer filed a letter on 10-2-2012 requesting appointment for personal hearing on 14-2-2012 but neither the dealer nor his representative attended for personal hearing and he has not requested further time also. Again a letter was filed by the dealer on 2-3-2012 with some objections basing on the letter a notice for personal hearing was issued on 03-03-2012 requesting the dealer to attend on 9-3-2012 but the dealer filed a letter on 5-3-2012 requesting to grant time upto 22-3-2012 and again on 22-3-2012 the dealer filed another letter requesting to grant time upto 28-03-2012 for personal hearing and for filing further reply and the dealer filed a reply with some objections on 27-3-2012 and also Sri .MCR Murthy Chartered Accountant attended for personal hearing on 28-03-2012. Again on 11-4-2012 the dealer filed another reply with some more objections

Objections of the dealer

Objections as per letters dtd. 2-3-2012 & 27-03-2012:

1).The dealer stated that in the course of their business in the first instance they enter into agreement with prospective buyers for sale of independent Bungalows 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 bungalow. They have paid VAT @1% on the total consideration received from these three components of the agreement.

Further the dealer stated that they enter into agreement of sale with 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. Even though they 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 paid VAT @1% on the total consideration received as per the original agreement of sale. Thus the payment of Tax @1% is as per the provisions of section 4(7)(d) which is also accepted by the assessing authority.

2). The dealer further stated that in M/s. Maytas Hill Country Pvt. Ltd., Begumpet, Hyderabad case the department clearly said that "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 application 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 at the time of execution of sale deed before sub-registrar as prescribed in clause (1) of sub rule (4) of Rule 17 of AP VAT Rules, 2005".

And the dealer contended that the above clarification from the Department clearly says that the initial agreement of sale which discloses total sale consideration and on this the applicant can pay 1% of Tax on total sale consideration to CTO/Asst. Commissioner and the dealer contended that they have been doing the same for all the time.

3). Further the dealer stated that in M/s. Kashi Kanchan, Tirumalgiri case the department has given one more clarification that the provisions of composition under clause (d) of sub section (7) of section 4 of AP VAT Act, 2005 are applicable only in respect of builders and developers who have **right to sell such constructed apartments, houses, buildings** or commercial complexes. Therefore, this provision is not applicable in respect of contractors who execute work for construction of building but do not have any right to sell such property. This category of contractors can opt for composition under clause (b) or clause (c) of sub section (7) of section 4 as the case may be.

The dealer contended that the above clarification is clearly applicable for them as they are very much builders and developers and have a right to sell the property and argued that they very much deserved to opt for composition under clause (d) of sub section (7) of section 4 of AP VAT Act, 2005.

Objections as per letters dtd.:11-04-2012.

1). The dealer stated that Section 4 (7) (d) of the Act read as follows during the relevant time:

"d) Any dealer engaged in 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 which ever is higher subject to such conditions as may be prescribed".

And the dealer contended that from the above section it is just sufficient to pay Tax under clause (d) if the dealer is engaged in construction and selling of houses etc. No other condition has been specified. Such dealer who is engaged in the construction and selling of houses has to pay Tax @ 4% on 25% of the specified consideration. The dealer further stated that, the mother agreement amply proves that they did construction and sale of independent houses. All other activity subsequent to the agreement is to comply with the conditions of agreement. Subsequent registration of land, construction and handing over etc., are only to comply with the agreement of constructing and selling the independent house. If there is no such agreement, it would have been a different case. Hence he contended that they are perfectly covered by section 4 (7) (d) of the Act.

The dealer stated that without prejudice to the above, as per Government Memo No.33263/CT-II(I)/2010-5, dated 17-06-2011 directions were issued to the effect that the builders, who are not registered with the Department and who have not opted for composition of Tax under section 4(7)(d) of the Act can pay Tax of 1% only. Hence clause (d) is specifically applicable to 'BUILDERS'. And argued that he is undoubtedly a builder. When the unregistered builder, who is not on the rolls of the Department and who has not opted to pay Tax by filing Form VAT 250 is permitted by Government without any hair splitting to pay Tax @ 1% on the consideration, it would be highly discriminatory and unjustifiable to hair split and propose to raise huge demand. In fact registered dealers must receive better benefit from the Department and not in the nature of huge demands.

Letter dated:nil received on 10-02-2012:

The dealer explained nature of his business in this letter as " They register the land to the buyers with the sub-registrar of the area and later they develop the land and construct the villa which they are not registering with the sub registrar they are paying 1 % tax on their receipts for the sale of villa but while registering the land they are not paying any tax with the sub-registrar as the sale of land is exempted under APVAT Act ".

DEPARTMENT REPLY TO THE OBJECTIONS

Examination of the copy of the agreement of sale entered into by the dealer with one of his buyer Mr . Mohd .Abdul Aleem filed by the dealer revealed the following provisions

E) The vendor in the scheme of the development project of Silver Oak Bungalows have planned that the prospective buyers shall eventually become the absolute owner of the identifiable land (i.e. plot of land) together with independent bungalow constructed thereon. For this purpose the vendor and the vendee are required to enter into three separate agreements, one with respect to the sale of land, second with respect to development charges on land and the third with respect to the construction of the bungalow. These agreements will be interdependent, mutually co-existing and inseparable though in the scheme of the project **the vendor will execute a sale deed (for land only ?) in favour of the vendee before commencing construction of the bungalow.**

4) That the vendee at his discretion and cost may avail housing loan from Bank / Financial Institutions. The vendee shall endeavor to obtain necessary loan sanctioned within 30 days from the date of provisional booking. The vendor shall under no circumstances be held responsible for non-sanction of the loan to the vendee for what so ever reason. The payment of installments to the vendor by the vendee shall not be linked with housing loan availed / to be availed by the vendee.

10) That the possession of the plot of land shall be delivered by the vendor to the vendee only upon registration of the sale deed(land). **The vendee immediately thereafter shall handover the possession of the plot of land back to the vendor for the purposes of carrying out construction of the bungalow thereon** and for providing other amenities which are part and parcel of Silver Oak Bungalows project. The vendor shall re-deliver the possession of the completed bungalow together with the plot of land to the vendee only upon payment of entire sale consideration and other dues by the vendee to the vendor.

11) That the vendor at its cost shall obtain necessary permissions from the concerned authorities for **the construction of the bungalow for and on behalf of the vendee** and the parties hereto have agreed to do all that is necessary and execute all such documents, affidavits etc., that may be required for this purpose.

12) That the vendee shall enter into a separate agreement with the vendor for construction of the bungalow as per the specifications and other terms and conditions agreed upon. The vendee shall also enter into a separate agreement with the vendor for payment of development charges on land.

18) That the vendee shall not cause any obstructions or hindrance and shall give reasonable access, permission, assistance etc. to the vender or to his nominated contractors or their agents, nominees etc. to construct, repair, examine, survey, make such additions alterations to the structures etc., that may be necessary for execution of the project and in respect to the Scheduled Property and also the adjoining areas.

On Examination of the above provisions in the agreement it is clearly evident that the vendor and the vendee are required to enter into three separate agreements, one with respect to the sale of land, second with respect to development charges on land and the third with respect to the construction of the bungalow. And as per the provision E , the vendor will execute a sale deed for land only in favour of the vendee before commencing construction of the bungalow.

And as per the provision no, 10 the possession of the plot of land shall be delivered by the vendor to the vendee immediately upon registration of the sale deed(land). The vendee thereafter shall handover the possession of the plot of land back to the vendor for the purposes of carrying out construction of the bungalow thereon

Thus upon registration of the land the vendee will become the absolute owner of the land and possession of the land also transferred to the vendee and any construction on the land after the registration will be only a works contract as the vendor (the dealer) has no **right to sell such building as he is not the owner of the land on which the building is being constructed** Therefore as mentioned by the dealer himself as per the advance ruling in CCT's Ref. No.PMP/P&L/A.R.com/566/2005 dated 18-05-2006 in the case of M/s. Kashi Kanchan, Tirumalgiri case the dealer is not eligible to be treated as a builder and as a result he is not eligible to pay tax @ 1 % on the value of consideration received for carrying out development of the site and construction of the building on the site owned by the vendee . in view of the above the dealer contention that it is just sufficient to pay Tax under clause (d) of section 4 (7) of the APVAT Act , if the dealer is engaged in construction and selling of houses etc. and no other condition has been specified is not correct as he has no right to sell such building.

The advance ruling in the case of M/s.Maytas Hill Country (P) Ltd. (CCT's PMT P&L/AR/Com /80/2006, Dt.30-07-2006) are 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 AP.VAT Rules, 2005.

Further the dealer in his letter dated nil and received on 10-2-2012 while explaining the nature of his business stated and admitted that neither the sub registrar is deducting any tax at the time of land registration nor the dealer is paying any tax on the land value as the sale of land is not liable to tax

Therefore as per the ruling no.2 of the above advance ruling the dealer is not eligible to pay tax @ 1 % on the turnover excluding land value and according to the third ruling above the dealer has to pay tax @1% of total consideration 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 which was also not followed by the dealer

Regarding the dealers contention that in the Government Memo No.33263/CT-II(I)/2010-5, dated 17-06-2011 directions were issued to the effect that the builders, who are not registered with the Department and who have not opted for composition of Tax under section 4(7)(d) of the Act can pay Tax @ 1% only is not relevant to his case as he is not a builder and only a works contractor under Sec.4 (7)(c) of AP VAT Act, 2005.

Conclusion:

In view of the above facts and reasons, 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 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 revised as detailed hereunder.

Computation of taxable turnovers and taxes:**2005-06:**

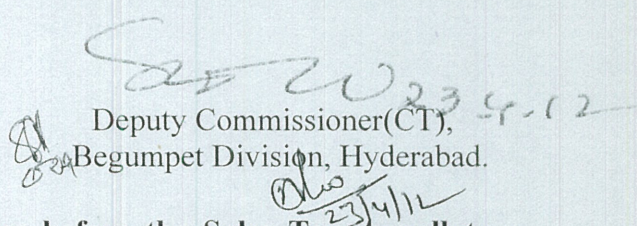
Receipts	Rs.5,42,50,247-00
VAT @ 4%	Rs. 21,74,009-00

2006-07:

Receipts	Rs.4,26,93,219-00
VAT @ 4%	Rs. 17,07,728-00

Total Tax Amount	Rs. 38,81,737-00
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The Commercial Tax Officer, M.G.Road Circle shall give effect to this order immediately.


 Deputy Commissioner(CT),
 Begumpet Division, Hyderabad.

Note: An appeal against this order lies before the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad within (60) days from the date of receipt of this order.

To

M/s. 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).

The Commercial Tax Officer, M.G.Road Circle along with APVAT Assessment Record.

Copy submitted to the Additional Commissioner (CT) Legal, Andhra Pradesh, Hyderabad for favour of information.