SUMMIT BUILDERS,
MG ROAD, SECUNDERABAD.

Statement of facts:- **12/05 to 10/06/VAT**

1. Appellant is a dealer engaged in the business of execution of works contracts and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad. As the appellant has been constructing and selling independent houses, apartments etc., it has opted to pay tax under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.
2. The DCTO, Begumpet passed assessment order dated 17.4.2007 for the tax period from December, 2005 to October, 2006 demanding output tax of Rs.73,757.
3. Subsequently, the learned Deputy Commissioner (CT), Begumpet Division (for short DC) issued revision notice under Section 32 (2) of the Act proposing to revise the said assessment order. In that notice, it has been proposed to levy tax on the alleged short reported works contract receipts turnover for the tax periods Decemebr'2005 to March'2006 and April'2006 to October'2006 based on the information stated to have been received from other State Government Departments of Andhra Pradesh. It is also proposed to demand tax on 4% and 12.5% taxable goods purchases from un registered sources.
4. Subsequently, the appellant has filed objections in two instalments.
5. However without properly considering the objections filed, the learned DC passed the revision order dated 31.3.2011.
6. Aggrieved by such revision order, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:-

a. The impugned revision order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.
b. Whereas the appellant is an assessee on the rolls of the CTO, MG Road Circle, the assessment order dated 17.4.2007 has been passed by the DCTO, Begumpet without any authorization. It has been held in the case of Sri Balaji Flour Mills Vs CTO, Chittor in a decision dated 30.12.10 by the Honourable High Court of A.P., that such assessments are unauthorized and illegal. It is therefore submitted that the assessment order passed by the DCTO itself is illegal and unauthorized.
c. Appellant submits that the question of revising an illegal order does not arise. Law does not permit to revise an order, which is illegal. For this ground only, the impugned order is liable to be set aside.
d. It is next submitted that the relevant Section 32 relatiang to revisional powers, reads as follows:-

"32. Revision by Commissioner & others prescribed authorities

(1) The Commissioner may suo moto call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to him under the provisions of the Act, including sub-section (2) and if such order or proceeding recorded **is prejudicial to the interests of revenue,** may make such enquiry, or cause such enquiry to be made and subject to the provisions of the Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as he thinks fit.

(2) Powers of the nature referred to in sub-section (1) may also be exercised by the Additional Commissioner, Joint Commissioner, Deputy Commissioner and Assistant Commissioner in the case of orders passed or proceedings recorded by the authorities, officers or persons subordinate to them"

e. The impugned revision order very much shows that the assessment order of the DCTO is not prejudicial to the interests of revenue. There is nothing to suggest in the present revision order that the order of the DCTO is prejudicial to the interests of revenue. In such circumstances, there is no case for making revision of that order. It is therefore submitted that the action of the learned DC under Section 32 (2) is unauthorized exercise of power. For this ground also the impugned order is liable to be set aside.

f. **Levy of tax of Rs.45,954:-** In the revision show cause notice it is stated that appellant has received amounts on account of execution of works contracts to a tune of Rs.56,44,500/- and on account of car parking and service tax payments, an amount of Rs.10,73,384-00 totaling to Rs.67,17,884/- against which appellant has reported a turnover of Rs.21,22,500/- only for the period from **December'2005 to March'2006** resulting in short reporting of a turnover of Rs.45,95,384/-. Tax has been proposed on this amount @ 1%, which is not correct.

g. Appellant has opted to pay tax @ 1% under composition under Sec.4 (7) (d) of the APVAT Act'2005. Hence the consideration received or receivable which relates to the sale of apartments, houses etc., is only taxable, but not the credits or installments or any other amounts like car parking and service tax payments received during that period. During the period from December'2005 to March'2006 Appellant has sold the independent houses and registered the same in favour of the prospective buyers, for an amount of Rs.30,05,000 with the Sub-Registar's office and paid VAT @ 1% on the registration value which is the sale consideration received. Appellant has declared the said turnover in the monthly returns for the said periods (xerox copies of returns filed before the DC).

h. Appellant has informed the DC in writing that it is not clear from the revision show cause notice where from the works contracts receipts turnover of Rs.56,44,500/- is extracted. Appellant has therefore

requested the DC to kindly consider the turnover of Rs.30,05,000/- for the period from December'2005 to March'2006 and drop further action in the matter on this issue. It is further requested 'If it is proposed to proceed further on this issue we request to kindly furnish the break up for the figures adopted in the revision notice, to enable us to file effective objections in the matter.'

i. However to the surprise of the appellant, the learned DC committed a grave error in not furnishing the break up and simply confirmed the proposal. The DC observed that certain information has been furnished to the appellant. Revisional authority is not a post master to just furnish the information received from the others. When a particular turnover is proposed in the revision notice, it is for the revisional authority to explain the break up and source of that turnover. As the DC failed to furnish the required information, the impugned levy is illegal and is in violation of principles of natural justice.

j. **Tax of Rs.68,860:-** In the revision notice, tax @ 3% was proposed on the purchases of sand, stone metal and bricks purchased from un registered dealers and tax @ 11.5% on the purchases of goods taxable @ 12.5%. In fact there is no purchase tax, that has been provided in the Act. Further sand, stone metal and bricks are purchased from non VAT dealers to an extent of Rs.502356/-. All these non VAT purchased goods are used in the construction of Apartments on which appellant has opted for composition and paid tax @ 1% at the time of registration of the Apartments. As the goods are used in the construction, the property in these goods is already included in the value of the Apartments and hence the levy of tax on these non vat purchases is also not correct.

k. This tax has been levied under Section 4 (7) (e) of the Act. It is submitted that clause (e) is applicable only to a dealer, who has opted for composition under all the three clauses i.e., (b), (c) and (d) and it does not apply to a dealer, who opts under any one of the three clauses. The language of the clause is very clear and there is no possibility for second opinion. In this case, appellant has opted for composition only under clause (d) and hence the said clause (e) cannot be applied. For this ground alone, no tax is payable on the goods specified in clause (e).

l. Without prejudice to the above, appellant submits that even if for any reason the said clause (e) is made applicable, no tax need be paid at the higher rates because clause (e) is very clear in saying that under clause (e) tax is payable only at the rates applicable to those goods under the Act. In this case appellant has opted for composition under Section 4 (7) (d) of the Act. In respect of the goods used by the appellant in the execution of works contract, the rate of tax is 4% of 25% of the consideration received or receivable. Clause (e) says THE RATE APPLICABLE UNDER THE ACT. The rate applicable under

the Act is 4% of 25%. Clause (e) does not authorize collection of tax at the full rate of 4% or 12.5%, as **there is no mention of 'Schedules to the Act' in that clause**. For example in respect of 'lease tax', in Section 4 (8) of the Act, it is specifically mentioned 'at the rates specified in the Schedules'. As, such words do not find place in Section 4 (7) (e), it cannot be assumed that the rates in the Schedules have to be applied. It is settled law that there cannot be any presumption with reference to the charge to tax. Any ambiguity in the provision shall be interpreted in favour of the tax payer. It is also settled law that when there is possibility to apply two rates of tax on the same commodity, the least of the two has to be applied. It is therefore submitted that on mere presumption, higher rates of tax cannot be applied. There is no authorization in clause (e) to collect tax at the rates of 4% or 12.5% as the case may be. Further appellant has paid tax at the rate of 4% only under clause (d) and not at 1%. As appellant has already paid tax 4% on the same goods, the question of paying tax once again @ 4% does not arise. What has been reduced under clause (d) is only the quantum of turnover to 25% but the rate of tax of 4% has been retained. In the result no tax becomes payable either @ 4% or @ 12.5.

m. The learned DC has simply avoided discussing any objections of the appellant, which would tantamount to admitting to them.

n. It is therefore submitted that levy of tax under clause (e) is neither correct nor legal.

o. **Tax of Rs.54,996:-** Similarly for the period from **April'2006 to October'2006**, the DC has adopted output turnover of Rs.2,65,19,128/- against the turnover of Rs.2,10,19,500/- reported in the monthly returns alleging short reporting of a turnover of Rs.54,99,628/-. Appellant has reported a turnover of Rs.2,10,19,500/- in the monthly returns for the tax periods April'06 to October'2006 and paid tax @ 1% along with the returns. The revision notice also shows Rs.2,10,19,500/- as the turnover reported in the returns in Form VAT 200 for the said periods. It is not clear from the revision notice where from the output turnover of Rs.2,65,19,128/- has been taken. Appellant has therefore requested to adopt the turnover of Rs.2,10,19,500/- only for the said periods and drop further action in the matter. Appellant has also stated 'If it is proposed to proceed further on this issue we request to kindly furnish the break up for the figures adopted in the revision notice.'

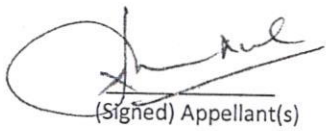
p. However to the surprise of the appellant, the learned DC committed a grave error in not furnishing the break up and simply confirmed the proposal. The DC observed that certain information has been furnished to the appellant. Revisional authority is not a post master to just furnish the information received from the others. When a particular turnover is proposed in the revision notice, it is for the revisional authority to explain the break up and source of that

turnover. As the DC failed to furnish the required information, the impugned levy is illegal and is in violation of principles of natural justice.

q. **Tax of Rs.69,874:-** This amount of tax has been levied under Section 4 (7) (e) of the Act. All the grounds that are mentioned earlier on this issue may kindly be read as applicable to this tax amount also.

r. It is submitted that levy of tax of Rs.1,14,814 for the period from December, 2005 to March, 2006 and Rs.1,24,870 for the period from April, 2006 to October, 2006 under the above heads in the so called revision is therefore not correct.

s. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order as illegal and to allow the appeal.



(Signed) Appellant(s)

VERIFICATION

I,_____ of the appellant herein do hereby declare that the facts stated above are true and correct to the best of my knowledge and belief.

Verified today the 02nd day of May, 2011

(Signed) Appellant(s)