

PROCEEDINGS OF THE ADDITIONAL COMMISSIONER(CT) (LEGAL), OFFICE OF THE
COMMISSIONER OF COMMERCIAL TAXES, ANDHRA PRADESH, HYDERABAD.

PRESENT: SRI D. RAMACHANDRA REDDY, B.Sc, B.L., CAIIB, M.B.A.,

A.C. Order No.176

CCT.Ref.No.L.III (2)/ 112 /2012

Dated 24-07-2012

Sub:- Stay Petitions – M/s. Mehta & Modi Homes, M.G.Road, Secudnerabad - for
the tax period 2005-2006 & 2006-2007 - under APVAT Act'2005 – Heard
the case – Orders – passed.

- Ref:-1) CTO (Audit), Begumpet Division, Form 305, in TIN.No.28840298894,
dt.12-08-2007 of Mehta & Modi Homes.
2) Proceedings of the DC(CT), Begumepet Division, Hyderabad DC order.No.
162 Rc.No.E3/R/219/2011, Dt.23-4-2012.
3) Application in Form 400, dated. 29-06-2012 filed by the dealer.
4) A.R.No:259/2012 M/s.Mehta & Modi Homes, M.G. Road, Secunderabad
pending before the Hon'ble STAT, Hyderabad.

ORDER:

The stay petition is filed by M/s. Mehta & Modi Homes, M.G.Road, Secunderabad against the revision orders passed by Deputy Commissioner (CT), Begumpet Division raising a demand of Rs.38,81,737/- under Section 4(7) (c) of APVAT Act 05. Inter alia, the appellant's Authorised Representative Sri M. Ramachandra Murthy, Chartered Accountant has specifically contended that even though the appellant enters 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 the appellant has paid VAT @ 1% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% by the appellant is strictly as per the provisions of Section 4(7) (d) which is also accepted by the assessing authority.

The Authorised Representative submitted that the appellant is engaged in the business of construction and selling of independent bungalows / Villas at Charlapally and has opted for payment of tax @ 4% on 25% of the consideration received or receivable (1%) under composition scheme under Section 4(7) (d) of the Act). The appellant has declared the turnover relating to the constructions and sale of bungalows in the monthly VAT returns and paid tax on the amounts received from the customers @ 1%. Even though the appellant enters 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 the appellant has paid VAT @ 1% on the total consideration received as per the original agreement of sale. Thus the payment of Tax @ 1% by the appellant is strictly as per the provisions of Section 4(7) (d) which is also accepted by the assessing authority. In the revision notice it is alleged that the appellant executes a sale deed for sale of land and later enters into two separate contracts for development of plot and for constructions of bungalow.

The Authorised Representative then submitted that 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. The appellant reiterates that in the course of business the appellant enters into agreement with the prospective buyers for sale of independent bungalows of similar size, similar elevation, same colour, scheme etc along with certain amenities.

It was further submitted that the Advance Ruling Authority in the ruling M/s. Maytas Hills County (P) Ltd – vide CCT's Ref.No.PMT/P&L/AR com-180/2006 dt.30-07-2006 without any ambiguity has clearly given the ruling that VAT has to be paid @ 1% on the total consideration received as per initial agreement of sale originally agreed upon whether in separate portions for land and constructions cost the above clarification is clearly applicable to the appellant's case as the appellant is very much a builder and developer and has exclusive right to sell the property and very much entitled to opt for composition under clause (d) of sub section (7) c Section of the said Act.

During the personal hearing the Authorised Representative relied upon the following advance ruling.

- (i) CCT's Ref.No.PMT/P&L/A.R.Com 180/2006, Dt.30-7-2006.
- (ii) CCT's Ref.No.PMT/ P&L/A.R.Com 586/2005, dt/18-5-2006 in the case of M/s. Kashi Kanchan, Tirumalghery.

Submitting the above, the Authorised Representative requested to grant stay of collection of taxes.

The main issue involved in this case is whether the revisional authority is correct in adopting section 4(7) (c) of VAT Act 2005 or the contention of the Appellant that he comes under Section 4(7)(d) of VAT Act ? I have carefully gone through the contentions of the appellant. There are two agreements – one for sale of land, and later on for construction of independent villas, because of which the Deputy Commissioner, Begumpet treated the later transaction as without composition and levied tax under – 4(7) © of APVAT Act 2005. It is submitted that an appeal is pending before the Hon'ble Sales Tax Appellate Tribunal, Hyderabad.

In view of the above, without expressing any opinion on the merits of the case, I feel it just and proper to grant stay of collection of the 50% of the disputed tax of Rs.27,46,805/- out of total disputed tax of Rs.38,81,737/- for the tax period 2005-2006 and 2006-2007 APVAT Act 2005, subject to payment of 50% of the total disputed tax on or before 14-08-2012. Any amount paid at the time of / after admission of appeal shall be given credit to the assessee. The stay will be in force, till disposal of appeal by the Hon'ble Sales Tax Appellate Tribunal, Hyderabad. If the assessee fails to pay the amount as above, the assessing authority / competent authority is at liberty to enforce collection of disputed tax.



24/7/12
ADDITIONAL COMMISSIONER (CT) (LEGAL)

To
M/s. Mehta & Mohan, 100, M.G. Road, Secunderabad
through the Commercial Tax Officer (Audit) Begumet Division
(in duplicate) for service and return of served copy immediately.

Copy to the Commercial Tax Officer (Audit) Begumet Division
Copy to the Deputy Commissioner (CT), Begumet Division.