

Mehta & Modi Homes

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Date: 16th September 2014

To,
The Commercial Tax Officer,
M.G. Road Circle,
Hyderabad

Sir,

Sub: Stay Petition filed for the collected of disputed Tax – For the year 2007-08 - Reg.

Ref: 1) ADC Order No. 49255 dated 06.09.2013 in ADC Panjagutta, Hyderabad
2) J.C Order No. 21/2014 dated 16.07.14 from Joint Commissioner CT L.
3) W.P No. 22358 / 2014 dated 06.08.2014 from the High Court of Telangana.

As per the directions of the High Court, Telangana, in his proceedings cited above, we are enclosing Demand Draft No. 177794 dated 15.09.2014 for Rs.5,94,287/- (Rupees Five Lakhs Ninety Four Thousand Two Hundred and Eighty Seven Only) as per the details furnished below.

Disputed Tax	Rs. 15,84,765/-
Stay granted for 50% of the Disputed Tax	Rs. 7,92,383/-
Balance payable	Rs. 7,92,383/-
Payment made 12.5% As per letter Dated 25 th September 2013	Rs. 1,98,096/-
Balance, Now Paid	Rs. 5,94,287/-

Kindly acknowledge

Thanking you,

Yours faithfully
For **MEHTA & MODI HOMES**


Authorised Signatory

Encl: 1. DD No.177794 dated 15.09.2014 for Rs.5,94,287/-



THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

-
WRIT PETITION No.22358 of 2014

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed against the order passed by the third respondent rejecting the petitioner's request for grant of stay of collection of the disputed tax, pending adjudication of their appeal before the second respondent.

The petitioner is a private limited company carrying on business of development in immovable property. It opted for composition under Section 4 (7) (d) of the Andhra Pradesh Value Added Tax Act, 2005 (for brevity, 'the Act'). On the ground that, in addition to a composite agreement for sale of land and buildings, the petitioner had also entered into three separate agreements for sale of land, land development and construction of buildings, they were held disentitled to composition, under Section 4 (7) (d) of the Act, by the assessing authority and, accordingly, tax of Rs.16,01,701/- was levied on them.

Aggrieved thereby, the petitioner preferred an appeal before the Appellate Deputy Commissioner and paid 12.5 % of the disputed tax i.e. Rs.1,98,096/-. The petitioner claims to have paid additional amounts and the balance tax payable, in accordance with the order of the assessing authority, is said to be Rs.13,86,669/- as on date. On the petitioner's application for grant of stay being rejected by the second respondent, they invoked the jurisdiction of the third respondent who, by his order dated 18.07.2013, rejected the petitioner's request for grant of stay.

document was executed as an agreement of sale, the actual transaction could not be combined and they were separate; of these transactions, the transaction of sale of plot, being immovable property, was not liable to VAT; and the transactions of development and construction of a bungalow fell under the category of execution of a civil works contract and was liable to VAT @ 4% of the receipts under Section 4 (7) (c) of the Act.

Sri V.Bhaskar Reddy, learned counsel for the petitioner, would submit that the ruling in Maytas Hill County Private Limited supports the case of the petitioner, and not the revenue; the question which arose for consideration in Maytas Hill County Private Limited was whether the applicant could opt for composition under Section 4 (7) (d) of the Act only for the consideration received towards construction costs excluding the cost of land; the Advance Ruling Authority had held that the applicant was not eligible to opt for 4% of 25% only on the consideration received towards construction cost excluding the cost of land, though it could be registered separately at any stage; in the present case, the petitioner is paying 1% on the entire cost of land, building development charges, etc; and their case is, in fact, covered by the ruling of the Advance Ruling Authority on the application filed by M/s Sai Sree Developers (P) Limited, Hyderabad (order of the authority dated 23.01.2007) wherein it was held that the words "whichever is higher" in Section 4 (7) (d) of the Act is significant; if the developer is taking the total consideration received, he was eligible to pay tax at 4% of 25% of the consideration; he is not entitled to claim any deduction whatsoever either representing cost of proportionate title of the land or any other

While the submission urged before us, by Sri V.Bhaskar Reddy, learned counsel for the petitioner, cannot be said to be without merit, it would be wholly inappropriate for us, at this stage, to express any opinion as the petitioner's appeal is still pending adjudication before the second respondent. As the scope of Section 4 (7) (d) of the Act is required to be examined by the Appellate Authority, bearing in mind the aforesaid rulings of the Advance Ruling Authority, we consider it appropriate to dispose of the Writ Petition granting stay of collection of the disputed tax on condition that the petitioner deposits 50% of the disputed tax, after giving credit to the amount already paid by them towards pre-deposit, within six weeks from today.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

06th August, 2014.
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