

MEHTA & MODI HOMES

5-4-187/3 & 4, IInd Floor, Soham Mansion, M.G. Road, Secunderabad – 500003
Phone: +91-40-66335551, Fax: 040-27544058

Date: 12th September 2012

To,
Commerical Tax Officer,
MG Road Circle,
Hyderabad.

Sir,

Sub: APVAT Act'2005 - M/s. Mehta & Modi Homes, Secunderabad – Notice of Assessment of Value Added Tax in Form VAT 305A – Assessment year 2008-09 – Objections called for – Reply submitted – Reg.

Ref: Notice of Assessment in form VAT 305A dated 24th August 2012.

We submit that we are in receipt of notice of Assessment notice dated 24/08/2012 proposing to levy tax @ 4% on all the receipts under section 4(7)(c) of APVAT Act 2005, instead of section 4(7) (d) of APVAT Act, 2005 which the company has opted to pay under Composition Scheme. We request to kindly consider our further objections on the following grounds:-

At the outset, it is submitted that the Assessment for the period July 2008 ought to have been completed on or before August 2012. We submit that the Notice of Assessment in Form 305A for the assessment year 2008-09 was served on us 24th August 2012 which is barred by limitation. Section 21(3) of APVAT Act 2005 reads as follows "Where the authority prescribed is not satisfied with a return filed by the VAT dealer or TOT dealer or the return appears to be incorrect or incomplete, he shall assess to the best of his judgment within four years of the due date of the return or within four years of the date of filing of the return whichever is later" Thus the above mentioned period is barred by limitation. For this ground alone, the proposed levy of tax under section 4(7)(C) may be dropped. Without prejudice to this we submit our objections as follow:.

We submit that we are engaged in the business of construction and selling of independent Bungalows at Charlapalli, Ghatkesar Mandal, R.R. District and opted for payment of tax @ 1% under composition under Sec. 4(7) (d) of the APVAT Act. We have declared the turnover relating to construction and sale of flats in the monthly VAT returns and paid the tax on the amounts received from the customers @ 1%. Your goodself has proposed to levy tax @ 4% on the receipts / receivables under Sec.4(7)© of the APVAT Act, based on the clarification given by the Advance Ruling Committee in the case of M/s. Maytas Hills Country Pvt. Ltd.



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In the proposed notice of assessment it is alleged that we execute a sale deed for sale of land and later we enter into two separate contracts for development of plot and for construction of bungalow. Based on the Advance Ruling issued in the case of Maytas Hill Company Pvt. it was stated that we are not eligible to opt to pay tax @ 4% of 25% consideration received towards construction cost by excluding cost of land though it could be registered separately at any stage. It is further stated that this clarification matches with the transactions of our company and hence the transactions of development and construction of bungalow fall under category of execution of civil works contract and proposed to tax @ 4% on receipts under Sec.4 (7) © of the APVAT Act.

We submit that our transactions are totally misconceived and misunderstood by your good self. We submit that in the course of our business we in the first instance enter into agreement with our 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. We have paid VAT @ 1% on the total consideration received from these three components of the agreement. In the Advance Ruling in the case of Maytas the ruling is given 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 APVAT Rules,2005.

At page 2 of the present notice the following para is included as part of the above Advance Ruling:

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

In fact this sentence does not form part of the above Advance Ruling.

From the above Ruling 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

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the applicant shall ensure payment of 1% of total consideration received or receivable as per the initial agreement of sale. We submit that we enter into agreement of sale with our 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 we 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 we have paid VAT @ 1% on the total consideration received as per the original agreement of sale. Thus the payment of tax @ 1% by us is as per the provisions of Section 4(7) (d).

We submit that the Advance Ruling Authority in the above ruling 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 construction cost.

We submit that the said ruling is binding on all the officers under Section 67 (4) (iii) of the Act. We are therefore eligible for payment of tax @ 1% on the total consideration as per the mother agreement.

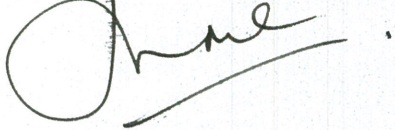
The observation made in the notice that the clarification given in the Advance Ruling cited above that in the event a piece of land belonging to the applicant is sold to the customer through a sale deed and then through a separate construction agreement matches with our transactions is not at all correct. It is a factual error. Hence the proposal made in the notice that our turnover is liable to tax @ 4% on all the receipts under Sec. 4 (7) © of the said Act may kindly be dropped.

We therefore request you to kindly drop the proposal to levy tax under Section 4 (7) (c) of the Act and on the part of the total consideration agreed. We also request to provide us an opportunity of personal hearing to substantiate our contentions.

Thanking you,

Yours faithfully

For MEHTA & MODI HOMES,



Authorised Signatory