

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

W.P No.

of 2013

Between:

M/s.Mehta & Modi Homes,
5-4-187/3&4, II Floor, Soham Mansion,
M.G.Road, Secunderabad.
Rep.by its Managing Partner,
Mr.Soham Satish Modi.

...Petitioner

A N D

- 1) The Commercial Tax Officer,
M.G.Road Circle,
Hyderabad.
- 2) The Commercial Tax Officer(INT),
O/o.The Deputy Commissioner (CT), Begumpet Division,
Hyderabad.
- 3) The Appellate Deputy Commissioner(CT),
Punjagutta Division, Hyderabad.
- 4) The Additional Commissioner(CT),Legal,
Office of the Commissioner of Commercial Taxes,
... Government of Andhra Pradesh, Hyderabad.

...Respondents

AFFIDAVIT FILED BY THE PETITIONER

I, Soham Satish Modi S/o Satish Mandal Modi, Aged about 44 years
R/o.Hyderabad, do hereby solemnly affirm and sincerely state on oath as follows:

1. I am the Managing Partner of the petitioner firm herein and as such I am
well acquainted with the facts of the case and I am authorized to file the present
Writ Petition on behalf of the petitioner.

2. It is submitted that the petitioner is a partnership firm carrying on business
in development of immovable property and construction of residential apartments
and Villas and is registered as a VAT dealer under the provisions of APVAT Act
2005 and is an assessee on the rolls of the 1st respondent herein.

3. It is submitted that the present Writ Petition is filed challenging the Order of
the 4th respondent Dt. 18-7-2013 in refusing to grant stay of recovery of the
disputed demands in pursuance of the revision application filed by the petitioner

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pending disposal of appeal before the 3rd respondent as illegal, arbitrary and high handed.

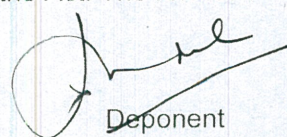
4. It is submitted that During the assessment years 2009-10 to 2012-13 the petitioner undertook the activity of development of land and construction of residential apartments/ villas at various places in Hyderabad and Rangareddy Districts which includes a project called "SILVER OAK BUNGALOWS (Phase-III)" Situated at Cherlapally Village, Ghatkesar Mandal, Rangareddy District. It is submitted that the petitioner in the course of its business in the first instance enter into agreement of sale with the prospective buyers for sale of apartment/Villa of similar size, similar elevation, same colour scheme etc., along with certain amenities. The agreement of sale consists of the consideration receivable through sale of semi finished apartment/Villa and cost of construction of the apartment.

5. The petitioner has been paying VAT @ 1% i.e. 4% on 25% on the total consideration received from these two components of agreement at the time of registration of the Flats as it has opted to pay tax under Composition under Section 4(7)(d) of APVAT Act 2005. The rate of tax was increased from 4% to 5% with effect from 15-5-2011 vide G.O.Ms.No. 33 Revenue (Commercial Taxes – II) Departemt Dated 21-01-2013. Under the scheme of VAT Act the petitioner is liable for payment of sales tax on the value of the property transferred as deemed sale in view of insertion of Clause 29A to Article 366 of the Constitution of India through the 46th Constitutional Amendment which authorized the State Governments to levy tax on the deemed sales.

6. It is submitted that under Section 4(7)(a) of AP VAT Act every dealer executing works contract shall pay the tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to such goods under the Act. It is submitted that the other method of payment of tax is composition prescribed under Section 4(7)(b) to 4(7)(d) of the Act. The relevant

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provision applicable to the Petitioner is Section 4(7)(d). For ready reference Section 4(7)(d) as applicable for the period in question is extracted here under:-

4(7)(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 whichever is higher subject to such conditions as may be prescribed;*

It is submitted that under Section 4(7)(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 the 25% (twenty five percent) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed. It is submitted that Rule 17(4) prescribes the procedure for exercising option for payment of tax under composition in terms of Section 4(7)(d) of the AP VAT Act, 2005. Rule 17(4)(a) and (b) are extracted here under for ready reference:-

Rule 17(4)(a) and (b)

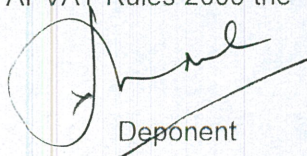
4. *Treatment of Apartment Builders and Developers under composition,-*

- a) *Where a dealer executes a contract for construction and selling of residential apartments, houses, buildings or commercial complexes and opts to pay tax by way of composition under clause (d) of sub section (7) of Section 4, he must register himself as a VAT dealer;*
- b) *¹(Before the commencement of execution of work) the VAT dealer shall notify the prescribed authority on Form VAT 250, of his intention to avail composition for all works specified in clause (a) above, undertaken by him;*

7. It is submitted that in terms of Rule 17(4)(d) a VAT dealer shall notify the prescribed authority in Form VAT 250, of his intention to avail composition for all works specified in Clause (a) that were undertaken by the VAT dealer. It is submitted that as per Rule 17(4)(e) of APVAT Rules 2005 the Builder/Developer

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need to deposit tax at 4% on 25% of the consideration received by it along with the monthly returns. For ready reference Rule 17(4)(e) of APVAT Rules 2005 is extracted here under:-

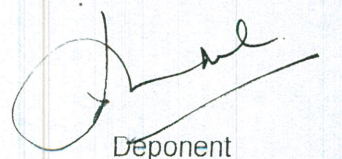
Rule 17(4)(e) of APVAT Rules 2005

The VAT dealer, executing a contract mentioned in clause (a) of this sub-rule, shall calculate the tax due at the rate of 5% of the 25% of the total consideration or the market value fixed for the purpose of the Stamp Duty, whichever is higher, and shall enter such details in Form VAT 200, filed for the month in which the sale of such property is concluded and registered. The tax due shall be paid with the return in Form VAT 200 and the particulars of payment of tax made directly or through the sub registrar shall be reported in the relevant columns in Form VAT 200

8. It is submitted that by G.O.Ms.No.1614, Revenue (CT-II) Department, dated 31.08.2005, Clause (i) was added under Rule 17(4) of AP VAT Rules. According to Clause (i) of Rule 17(4) the VAT dealer who opted to pay tax under composition under Section 4(7)(d) shall pay an amount equivalent to 1% (one percent) of the total consideration received or receivable on the market value fixed for the purpose of stamp duty whichever is higher. This payment shall be made by way of a demand draft obtained in favour of the Commercial Tax Officer or the Assistant commissioner concerned and the instrument is to be presented at the time of registration of the property to the Sub-Registrar, who is registering the property duly furnishing his TIN No. (Tax Payer Index No.) and the full Postal address of the Commercial Tax Officer/Assistant Commissioner concerned on the reverse of the Demand Draft. The Sub-Registrar shall then send the same to the Commercial Tax Officer/Assistant Commissioner concerned every week. It is submitted that in terms of Clause (i) of Rule 17(4), a VAT dealer who is engaged in the business of construction and selling of residential apartments, houses, buildings or commercial complexes and opted to pay tax under composition in terms of Rule 17(4)(a), he shall pay tax @ 4%/5% on 25% of the total

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consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher at the time of registration of the property in favour of the prospective buyers.

9. It is submitted that since the petitioner has opted to pay tax under Sec.4(7)(d) in pursuance of the initial agreement which includes the consideration receivable through sale of semi finished apartment and cost of construction of the apartment, the petitioner has been paying tax regularly on 25% of the total value of the apartment at 4%/5% through monthly returns/ at the time of registration.

10. While that being so, the 2nd respondent inspected the business and conducted audit of the petitioner for the tax period 2009-10 to 2012-13(upto September 2012) on the strength of an authorization alleged to have been granted by the Deputy Commissioner(CT), Begumpet Division. In pursuance of the audit conducted by the 2nd respondent, the 2nd respondent issued show cause notice Dt. 23-2-2013 proposing levy of tax under Section 4(7)(c) of the APVAT Act opining that the petitioner is not entitled to pay tax under composition on the amounts received towards completion of the flat since semi finished flat was got registered in favour of the prospective buyers. According to the 2nd respondent though the initial agreement is for the sale of finished flat since the petitioner registered the semi finished flat even before completion it is entitled to pay tax under composition only on the value of the unfinished flat cost and the balance amount received by the petitioner is taxable under non composition rate though there is a reference of the initial agreement in the sale deed and the completion agreement. It is submitted that the 2nd respondent relied on the Advance Ruling in the case of M/s. Noble Properties and M/s.VPL Projects Pvt Ltd., for the proposed levy. It is submitted that though the petitioner relied on the

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advance ruling in the case of M/s. Maytas Hill Country Pvt. Ltd. Dt. 30-7-2006 wherein it was held that after the agreement even if land is registered in the first occasion and constructions takes place subsequently the builder is entitled to pay tax under composition the 2nd respondent rejected the contentions of the petitioner on the ground the advance ruling in the case of M/s. Maytas Hill Country Pvt. Ltd. Dt. 30-7-2006 is distinguishable on facts. The petitioner has been following the advance ruling in the case of M/s. Maytas Hill Country Pvt. Ltd. Dt. 30-7-2006 and was collecting only 1%/1.25% from its customers on the total consideration received by it and remitting the same to the department.

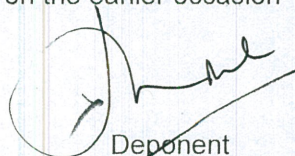
11. It is submitted that in response to the show cause notice the petitioner filed its objections objecting the proposed levy and requested to drop the proposed action since it has opted to pay tax under composition on the entire value of the flats/ Villas. Despite filing detailed objections the 2nd respondent however confirmed the levy through his orders Dt. 19-3-2013 on untenable grounds .

12. It is submitted that challenging the assessment order passed by the 2nd respondent the petitioner filed appeal and stay application before the 3rd respondent . Though the petitioner raised various legal contentions and relied on catena of judgments the 3rd respondent however rejected the stay application through a non speaking order Dt. 19-6-2013 though this Hon'ble Court time and again deprecated the practice of passing non speaking orders by the departmental officers while exercising the quasi judicial functions.

13. It is submitted that challenging the stay rejection orders of the 3rd respondent the petitioner filed revision application before the 4th respondent on 1-7-2013. Before the 4th respondent though the petitioner reiterated the contentions raised in the appeal and relied on an order passed by him on the earlier occasion

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in reference to the same issue pertaining to other assessment years wherein the 4th respondent passed conditional stay orders, the 4th respondent however rejected the revision petition filed by the petitioner on untenable grounds through the impugned order Dt. 18-7-2013. It is pertinent to mention here that challenging the similar levy when other assesses have approached the Hon'ble Court the Hon'ble Court has admitted the writ petitions and granted absolute stay. It is submitted that though the petitioner has not collected any portion of the disputed tax from its customers in the light of the advance ruling in the case of M/s.Maytas, the petitioner however paid 12.5% of the disputed tax from its funds in compliance of the pre deposit required for filing the appeal.

14. It is submitted that neither of the respondents 3 or 4 have considered the matter on merits and have rejected the stay applications in a routine fashion. It is submitted that in pursuance of the impugned order passed by the 4th respondent, the 1st respondent issued notice Dt. 20-7-2013 demanding payment of the entire disputed tax and is contemplating to take coercive steps.

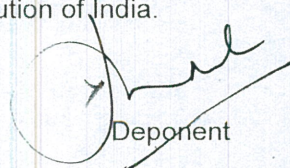
15. It is submitted that the petitioner has not collected the disputed tax and is hard pressed for funds due to the recession prevailing in the market. It is submitted that as against the impugned order passed by the 4th respondent, there is no further appeal Provision under the Provisions of AP VAT Act, 2005 and the petitioner is constrained to file the present Writ Petition invoking the extraordinary jurisdiction under Section 226 of the Constitution of India.

16. The petitioner has not filed any Writ, Suit or any other Proceedings before any Court of law seeking same relief as prayed in this Writ Petition.

17. As there is no other effective alternative remedy, in the circumstances of the case the petitioner is constrained to file the present Writ Petition invoking the extraordinary jurisdiction under Section 226 of the Constitution of India.

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GROUND S

- a) The impugned order passed by the 4th respondent dated 18.07.2013 is illegal, arbitrary, high handed and contrary to the issues involved.
- b) Neither of the respondents considered the contentions raised by the petitioner in correct perspective and have mechanically confirmed the levy.
- c) The 2nd respondent failed to appreciate that in terms of Clause (d) of Rule 17(4), the petitioner need to pay tax @ 1% on the total value of the consideration received or receivable in terms of the initial agreement in the light of the fact Form 250 filed by the petitioner opting for payment of the tax is for the entire value of the flat including the land cost.
- d) The 2nd respondent failed to appreciate that the expression received or receivable found in Section 4(7)(d) of the Act is referable to the sale consideration received or receivable in respect of the sale transactions which have culminated in execution and registration of sale deed.
- e) The 2nd respondent failed to appreciate that no portion of the turnover in dispute is not liable for levy under Section 4(7)(a) in the light of the Advance Ruling in the case of M/s. Maytas Hill Country Pvt. Ltd. Dt. 30-7-2006 .
- f) The 2nd respondent failed to appreciate that as long as the option exercised by the petitioner in Form 250 where the petitioner has opted to pay tax on the entire value of the flat mentioned in the initial agreement is revised the petitioner can not be denied the payment of tax under composition on the ground that subsequent to the initial agreement the petitioner has executed the sale deed for sale of semi finished flat and completed the balance work later.
- g) The petitioner has not collected the disputed tax and is hard pressed for funds. Any attempt of the respondents in invoking coercive action would cause severe hardship to the petitioner.

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f) Though no portion of the disputed turnover is exigible to tax in the hands of the petitioner, the petitioner has however paid 12.5% of the disputed tax at the time of filing of appeal and any direction for payment of further amount would cause severe hardship.

RELIEF NOW SOUGHT FOR

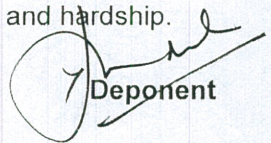
18. For the reasons stated above, it is prayed that this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of **Mandamus** declaring the action of the 4th respondent in rejecting the revision petition filed by the petitioner seeking stay of recovery of the balance disputed tax of Rs.39,24,375/- from out of the total disputed tax of Rs.44,85,000/- for the tax periods 2009-10 to 2012-13 under the Provisions of AP VAT Act, 2005 through the impugned proceedings in CCT's Ref.No.LIII(2)/136/2013 dated 18.07.2013 as illegal, arbitrary, high handed and set aside the same and restrain the respondents 1 and 2 from taking any coercive steps for recovery of the balance disputed tax pending appeal before the 3rd respondent and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

19. It is further prayed that this Hon'ble Court may be pleased to grant stay of recovery of the balance disputed tax Rs.39,24,375/- from out of the total disputed tax of Rs.44,85,000/- for the tax periods 2009-10 to 2012-13 under the AP VAT Act, 2005, pending disposal of the writ petition and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case as otherwise the petitioner will be put to irreparable loss and hardship.

Sworn and signed before me
on this the 26th day of July, 2013
at Hyderabad.

Before me,

Advocate::Hyderabad.


Deponent

VERIFICATION

I, Soham Satish Modi S/o Satish MandaL Modi, Aged about 44 years R/o.Hyderabad being the Managing Partner of the petitioner herein, do hereby verify and declare that the contents in the affidavit, the paras 1 to 17 are true and correct basing on the personal knowledge and paras 18 and 19 are on legal advice and believed to be correct.

Verified at Hyderabad on this the 26th day of July, 2013.

ADVOCATE



DEPONENT

**In the High Court of Judicature
of Andhra Pradesh at Hyderabad**

APPELLATE SIDE

No. _____ of 20

A G A I N S T

No. _____ of 20

On the file of the Court of _____

Between :

Appellant
Petitioner

V E R S U S

I
We

Respondent

APPELLANT/PETITIONER

RESPONDENT

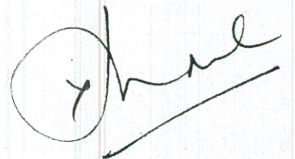
In the above Application do hereby appoint and retain,

BHASKAR REDDY. VEMIREDDY (1200)

B.Sc., B.L.

ADVOCATE

Advocates of the High Court to appear for ME / US in the above APPEAL / PETITION / OA and to conduct and prosecute or defend the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed there in including all applications for return of documents or the receipt of any moneys that may be payable to ME/US in the said Appeal / Petition / OA and also to appear in all applications under Clause XV of the Letters Patent and in all applications for review and for leave to the Supreme Court of India and in all applications for review of Judgement.



I certify that the contents of this Vakalat were read out and explained in
(.....) in my presence to the executants who appeared perfectly to understand the same and made his / her / their signatures or mark in my presence.

Executed before me this day of 200 .

Advocate, Hyderabad

S. R. No.

District

**In the High Court of Judicature of
Andhra Pradesh at Hyderabad**

APPELLATE SIDE

No. _____ of 20

AGAINST

No. _____ of 20

On the file of the Court of _____

VAKALAT

ACCEPTED

Appellant
Counsel for **Petitioner**
Respondent

Date/...../20

BHASKAR REDDY. VEMIREDDY (1200)
B.Sc., B.L.

ADVOCATE

Appellant
Advocate for **Petitioner**
Respondent

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RESIDENCE :

Flat No. 5, D.No. 6-2-918/2, Nirmala Residency,
Opp. SBI, Khairtabad, Hyderabad - 500 004.