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PROCEEDINGS OF THE APPELLATE DY. COMMISSIONER(CT),
PUNJAGUTTA DIVISION HYDERABAD

PRESENT: SRI U. SREENIVASULU, M.Sc(Ag).,

ADC Order No.847

Stay Application R.No.52/2014-15
in Appeal No.BV/76/2014-15

Date of hearing:11-12-2014

Date of order :19-12-2014

Sub:- APPEALS – APVAT Act, 2005 – M/s Modi & Modi Constructions, Hyderabad – Appeal filed against the orders of the Commercial Tax Officer, M.G.Road Circle, Hyderabad – Assessment for the tax periods February, 2011 to December, 2013 – Stay petition heard – Stay rejected – Orders issued – Regarding.

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M/s Modi & Modi Constructions, Hyderabad (TIN: 36894097186), the appellant herein, filed an appeal against the assessment orders passed by the Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the Assessing Authority) for the tax periods February, 2011 to December, 2013 under the APVAT Act. The appellant also filed a petition in Form APP 406 seeking stay of collection of the disputed tax of ₹35,26,335/-.

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case on stay issue reiterating the contentions as set-forth in the grounds of appeal.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the grounds of appeal, the appellant mainly contended as under:

“Appellant submits that it is engaged in the business of construction and selling of Villas in the name and style of NILGIRI HOMES at Rampally village, Keesara Mandal, R.R. District consist of 95 Villas and town houses on 6.5 acres of land. The sanction for development of land along with construction of the Villas and town houses has been obtained under the group housing scheme. Developer can only sell fully completed villas / town houses. Developer has to comply with terms of sanction and has mortgaged 5% of the villas to HMDA. Developer is not authorized to sell plots of land without construction. In the present case, the Developer is the seller of the land, developer of the layout and developer of the construction. It opted for payment of tax @ % or 1.25% under composition under Section 4(7)(d) of the APVAT Act. It has 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 @ % or 1.25%.

Appellant submits that in the course of business it has in the first instance entered into agreement with the prospective buyers for sale of

independent Bungalows of similar size, similar elevation, same colour scheme etc., along with certain amenities. The agreement of sale consist of the consideration received through sale of land, development charges of land and cost of construction of the Villas / Apartments. It has paid VAT @ % or .25% on the total consideration received from these three components of the agreements.

The appellant relies on the Advance Ruling given in the case of M/s Maytas.

Appellant submits that 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 the applicant shall ensure payment of 1% or 1.25% of total consideration received or receivable as per the initial agreement of sale. Appellant submits that it entered into agreement of sale with its prospective buyers wherein 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 it entered into agreement for construction and agreement for development charges separately the amount mentioned in these two agreements has already been shown in the original agreement of sale and it has paid VAT @ 1% or .25% on the

total consideration received as per the original agreement of sale. Thus, the payment of tax at % or .25% is as per the provisions of Section 4(7)(d).”

In the impugned orders, while considering the objections of the appellant, which are similar to the contentions that are now raised in the grounds of appeal, the Assessing Authority, however, rejected such objections observing as under:

“They have stated that they are engaged in the business of construction and selling of 94 Independent Villas and opted for payment of tax under composition under section 4(7)(d) of APVAT Act and paid tax on the amounts received from the customers @ 1% / 1.25%.

They stated that in the first instance they enter into agreement for sale of independent villa and the agreement of sale consists of the consideration received through sale of land, development charges of land and cost of construction of villa and paid tax 1% / 1.25% on total consideration received from the above (3) components of the opponents.

They stated that the ref. of advance ruling in the case of M/s Noble Properties is not applicable to their case as they entered into initial agreement for sale of Villa alongwith Land and they relied on the advance ruling of Mytas Hill Country Pvt Ltd. They stated they are paying @ 1% / 1.25% of total amount received or receivable as per initial agreement of sale as per ruling in Mytas Hill Country Pvt Ltd.

The provisions of Section 4(7)(d) reads as under :

“Any dealer engaged in the 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;"

From the above provision of law, it is not only the dealer engaged in the construction, but also such dealer must also sell such constructed building or the like, in order to fit in within the scope of Sec. 4 (7) (d) of the Act. This is the reason why the Committee for Advance Ruling observed that the applicant shall be eligible for composition under Sec.4 (7) (d), whether it received consideration in composite manner or in separate portions towards land cost and construction cost; and that the applicant is not eligible to opt for composition, if it had received the consideration by excluding the cost of the land though it could be registered separately at any stage.

In the case on hand, it is only an averment of the assessee that it has been paying tax at 1% on the aggregate value of the cost of the land; cost of the development of the land; and the cost of construction of the bungalow, as against the findings of the undersigned to the effect that the assessee had sold the land in favour of the prospective buyer in the first instance, and subsequently entered into an agreement for the development of the land, and construction of bungalow. The fact of registration of the bungalow in favour of the prospective buyer also is not substantiated by adducing the necessary documentary evidence.

Furthermore, in M/s Maytas case, there existed a tripartite agreement, In that, land owner, developer, and the buyer of the land in the first instance, and subsequently for construction of a bungalow by the developer. In the case on hand there is no such tripartite agreement. In the revision order by CCT in the case of M/s Ambience Properties Limited observed the importance of Tripartite Agreement. The clarification sought for in M/s Mytas case is not akin to the facts of the case on hand. On verification of agreements filed by them it is noticed that they have entered into (3) separate agreements with the buyer for (i)

sale of Plot (ii) Development Charges on land and (iii) for construction of House on the Plot (as per the clause (e) of agreement of sale. The assessee has collected separate amounts for sale of land and for development / construction of house.

The assessee is the absolute owner of the land and effected sale of plot in favour of buyer in the first instant (clause 1 & 4 of sale deed) and subsequently entered into agreement with the buyer for construction of house on the plot (clause 1 & 2 of the agreement for construction).

The provision of Section 4(7)(d) of the Act applies where the dealer engaged in construct and selling of apartments, houses, buildings and commercial complexes and received the amounts towards the composite value of the both the land & building. Here in this case the assessee sold open plot to the customer through a sale deed and then through a separate construction agreement with the customer the assessee took up the construction of a house on such plot.

Therefore the construction of house on the plot sold to the customer does not fall under section 4(7)(d) and its falls under Works Contract liable to tax under Section 4(7)b/c of the APVAT Act were the dealer opts for composition. It is felt appropriate to advert attention to a recent clarification issued by the Authority for Clarification and Advance Ruling, in the case of M/s Noble Properties, Hyd., in No.A.R.Com./48/2012, dated 15-09-2012, the following issues were raised for clarification.

1. Construction and selling of Villas along with land in a single deed.
2. Sale of land and construction of residential houses on the same land with two agreements one for sale of land and another for construction of villas. It is mandatory for the buyer to get the villa constructed by them only.

Having regard to the above nature of the transactions, the applicant posed the following questions.

A. Whether the above two transactions fall under Sec.4 (7) (d) of the APVAT Act 2005,

B. If not, then what is the rate of tax for the above two transactions as per APVAT Act, 2005 (with and without composition)

C. Are there any other taxes to be paid?

Having regard to the above nature of the transactions and the questions posed before it, the Committee rendered its clarification as under:

“Only first type of transaction, i.e., construction and selling of villas along with land in a single deed will fall under Sec.4 (7) (d) of the APVAT Act 2005, if the dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes opts to pay tax by way of composition under Sec.4 (7) (d) of the APVAT Act, if not, the transaction will fall under Sec.4 (7) (a) of the APVAT Act.

Regarding the second type of transaction, the clarification is as under.

“(i) The sale of land and construction of villas/residential houses are two separate transactions, for which the land lord has entered into two separate agreements with the buyers.

(ii) The sale of land, which is an immovable property, is not taxable under the provisions of the APVAT Act, since the land is not a property in goods.

(iii) The agreement for construction of villas on the land sold by the applicant to the buyer will fall under Sec. 4 (7) (a) of APVAT Act.

In the present case the dealer sold the plot which is registered through sale deed and constructed bungalow on the same plot entering into construction agreement

Therefore the facts of the case are squarely fit into the fact of case in M/s Noble Properties. In view of the above

Modus Operandi of the transactions of the assessee, and the evidence available on record, the assessee is not eligible to opt for composition under Sec.4 (7) (d) of the Act, but is assessable under Sec. 4 (7) (b/c) of the Act.”

Though the appellant in the grounds of appeal raised certain contentions and their reiteration by the Authorised Representative during the course of personal hearing, they failed to furnish any sort of documentary evidence to contradict the findings of the Assessing Authority which are based on the Advance Ruling as extracted above. For these reasons, I do not find any case to grant stay of collection of the disputed tax of ₹35,26,335/- and accordingly the stay petition is rejected.


19/12/14
APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To

The Appellants.

Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad.

Copy to the Deputy Commissioner(CT), Begumpet Division, Hyderabad.

Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.