

**GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT**



FORM VAT 305-A

O/o Commercial Tax Officer
MG Road Circle
3rd Floor, Pavani Prestige
Ameerpet, Hyderabad

Tin No : 28894097186 / Audit

Dated : 18-03-2014

NOTICE OF ASSESSMENT OF VALUE ADDED TAX

[See Rule 25 (5)]

Sub : APVAT Act '05 – M/s MODI & MODI CONSTRUCTIONS, modi Complex,
Ranigunj, Secunderabad, VAT-304 dt 04-02-2013- Show Cause
Notice issued - Reg

Ref : 1. VAT-304 dt 04-02-2013
2. Note submitted on 17-02-2014 to DC(CT) BGT Divn
3. DC(CT) B'pet Division Authorisation of Assessment 15-03-2014

-- XX ---

M/s MODI & MODI CONSTRUCTIONS, Modi Complex, Ranigunj, Secunderabad are the registered dealer vide TIN No 28894097186 wef 01-02-2011 on the rolls of CTO MG Road Circle and engaged in construction of Independent Houses / Row Houses in the name style of NILGIRI HOMES at Rampally village, Keesara Mandal, RR Dist.

On authorization of Deputy Commissioner(CT) Begumpet Division they were served Form-VAT-304 to produce the books of accounts. The assessee has filed their books of accounts from 01-02-2011 to 31-12-2013 for audit verification on 29-01-2014.

1. Reported Statement as per VAT-200
2. VAT-200 Returns file
3. P & L A/c
4. Purchase Register
5. Work Receipts

The undersigned has verified the records on 29-01-2014.

On verification of books of account of the dealer, purchases and Sales submitted by the dealers verified with reference to the monthly VAT-200 Returns filed during the period from 01-02-2011 to 31-12-2013. The following turnovers are disclosed :

REPORTED TURNOVER

SNo	Description	2010-2011	2011-2012	2012-13	2013-14 (Upto 01/14)
	INPUT TAX	--	--	--	
	Exempted Sales	--	--	106057209	32430750
	1% Sales	27824000	14143000	--	--
	Tax @ 1%	278240	141430	--	--
	5% Sales	--	2350000	35352403	10810250
	Tax @ 5%	--	117500	1767620	540512
	TOTAL-SALES	27824000	16493000	141409612	43241000
	OUTPUT TAX	278240	258930	1767620	540512
	VAT DUE	278240	258930	1767620	540513
	VAT PAID	278240	258930	1544042	330514
	EXCESS / BALANCE	--	--	223578	209999

On verification of records it is noticed that they are constructing row/independent by the name & style of Neelagiri Homes. They have opted for composition paying tax @ 4% / 5% on the 25% of the receipts under section 4(7)(d) of the APVAT Act.

They have effected purchases like Sand, Brick, Metal, Electrical items, Hardware, Sanitary items etc., both from local registered dealers and unregistered dealers.

There are no inter-State sales and they have not obtained 'C' Forms.

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).

Section 4(7)(d) reads as:

1(d)"Every dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may , in lieu of the amount of tax payable by him under clause (a) opt to pay tax by way of composition 2(at the rate of 5%) on twenty five (25%) of the amount received or receivable towards the composite value of both the land and building or the market value fixed therefore for the purpose of stamp duty, whichever is higher, subject to such conditions as may be prescribed"

The provision of the above section 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. Hear 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 takes up the construction of a house on such plot.

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 6(7)© of the APVAT Act with the dealer opts for composition. In this case the assessee opted for composition, hence they are liable to tax @ 4 / 5% under Sec. 4(7)© of APVAT Act.

As per the advance ruling by the authority for clarification and advance ruling in the case of M/s Noble Properties, Hyderabad vide No. A.R. Com. / 48/2012 dt 15-9-2012 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.
- a) Whether above two transactions fall under section 4(7)(d) of the APVAT Act
- b) If not, then what is the rate of tax for the above two transactions as per APVAT Act, 2005, (with composition and without composition)
- c) Are there any other taxes to be paid ?

Regarding the above nature of the transactions and the questions posed before it. The committee clarified as under:

- A. (I) Only first type of transaction, i.e. construction and selling of Villas along with land in a single deed will fall under section 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 section 4(7) d of the APVAT Act, 2005, if not, the transaction will fall under section 4(7) a of the APVAT Act, 2005.

Regarding the second type of transaction the clarification issued 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 2005, 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 the section 4 (7) (a) of APVAT Act 2005.

In the present case the dealer sold the plot which is registered through sale deed and constructed a house on the same plot entering into separate agreement for construction. Therefore, the facts of the case are squarely fit into the facts of the case in M/s Noble Properties.

In view of the above modus operandi of the transactions of the assessee, the assessee is not eligible to opt under Sec.4(7)(d) of PVAT VAT Act but they are assessable under Sec. 4(7)© / 4(7)(b) of APVAT Act.

Further, it is noticed that they have purchased certain items Sand, Hardware and PVC Items etc worth of Rs 24085/- taxable @ 5% and Electrical items, Sanitary items worth of Rs.2,31,292/- taxable @ 14.5% respectively during the period April, 2011 to 13-09-2011 from unregistered dealers and incorporated in the construction. But they have not reported the above turnovers and not paid the tax on the same. Such purchase are liable to levy tax under Sec.4(7)(e) under composition scheme up to 13-09-2011.

In view of the above facts the assessment for the year 2010-2011, 2011-12, 2012-13 & 2013-14 (upto Dec.,2013) is proposed to assess as under.

2010-2011

Total Contractual Receipts	→	Rs	2,78,24,000/-
Taxable Turnover U/Sec-4(7)(b)	→	Rs	2,78,24,000/-
Tax due @ 4%	---	Rs	11,12,960/-
TOTAL TAX PAID	---	Rs	2,78,240/-
BALANCE TAX DUE		Rs	8,34,720/-
			=====

2011-2012

Total Contractual Receipts	→	Rs	1,64,93,000/-
Less : Non VAT purchase at 4% -- Rs 24,085/-			
-do- at 14.5% -- Rs 2,31,292/-			
		Rs	2,55,377/-
Taxable Turnover U/Sec-4(7)b	→	Rs	1,62,37,623/-
Tax Liability @ 5%	---	Rs	8,11,882/-
Tax on Un-regd @ 4%	---	Rs	963/-
Tax on Un-regd @ 14.5%	---	Rs	33,537/-
TOTAL TAX DUE		Rs	8,46,352/-
TOTAL TAX PAID		Rs	2,58,930/-
BALANCE TAX DUE		Rs	5,87,422/-
			=====

2012-2013

Total Contractual Receipts	→	Rs	14,14,09,612/-
Tax U/Sec-4(7)(b) @ 5%	→	Rs	70,70,481/-
Tax Paid as per VAT-200	→	Rs	15,54,042/-
BALANCE	→	Rs	55,16,439/-

2013-2014 (Upto December 2013)

Total Contractual Receipts	→	Rs	4,32,41,000/-
Tax U/Sec-4(7)(b) @ 5%	→	Rs	21,62,050/-
Tax Paid as per VAT-200	→	Rs	3,30,514/-
BALANCE	→	Rs	18,31,536/-

A detailed note submitted to the Deputy Commissioner (CT) Begumpet Division, vide ref 2nd cited, and obtained permission for assessment of the dealers under the provisions of APVAT ACT 2005

As per the authorization of Assessment by the Deputy Commissioner (CT) Begumpet Division vide **ADM 1C No 20140315017195 Dt 15-03-2014** proposed to assess the dealer for the period 2011-12 to 2013-2014 (Upto December 2013) as under :

TAX LIABILITY

2010-2011	→	Rs	8,34,720/-
2011-2012	→	Rs	5,87,422/-
2012-2013	→	Rs	55,16,439/-
2013-2014	→	Rs	18,31,536/-

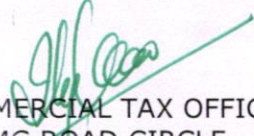
		Rs	87,70,117/-
=====			

A Penal proceedings will be followed separately as per provisions of APVAT Act.

Therefore M/s MODI & MODI CONSTRUCTIONS, Modi Complex, Ranigunj, Secunderabad are hereby requested to file their written objections within (7) days from the date of receipt of this notice, failing which the orders will be confirmed without any further notice / time.

To

M/s Modi & Modi Constructions
Modi Complex
Secunderabad


COMMERCIAL TAX OFFICER
MG ROAD CIRCLE
Commercial Tax Office
M G ROAD Hyderabad