GOVERNMENT OF ANDHRA PRADESH
COMMERCIAL TAXES DEPARTMENT

DEPUTY COMMISSIONER (CT) BEGUMPET DIVISION

NOTIFICATION OF ASSESSMENT

FORM VAT 305

Tax Office Address:
Commercial Tax Officer (INT)
O/o The Deputy Commissioner (CT)
Begumpet Division., Hyderabad
VI Floor Pavani Prestige,
Ameerpet, Hyderabad

A.O.17318

Date	Month	Year
19	03	2013

TIN

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03.Name : M/s MEHTA AND MODI HOMES,
Address : Door No 5-4-187/3 & 4, M.G. Road, Sec'bad.

Examination of your records on 19-02-2013 has shown that the correct amount of Value Added Tax have not been declared in the VAT 200 Returns listed below. Under the provisions of APVAT Act, 2005 the following tax amounts are assessed for the tax period Shown below:

Period	Output / Input Tax	Declared	Found Correct	Under Declared
2009 – 10	output	449675	1344675	895000
2010 – 11	Output	935316	2496310	1561000
2011 – 12	Output	1397249	3104249	1707000
2012 – 13	Output	510559	832559	322000
			Net Tax Due	44,85,000/-

(Rupees Forty Four Lakhs Eighty Five Thousand only)

Explanation for the above

M/s Mehta and Modi Homes, 5-4-187/3 & 4, M.G. Road, Sec – Bad are builders constructing and selling of independent residential villas in fully developed / operational gated housing complex at IDA Cherlapally and paying tax @ 4% on 25% of sale consideration. In this gated housing complex they are laying Bitumin roads, constructing club houses, swimming pools. drains, parks, electricity, etc. They have started paying tax from 2006-07. As per Deputy Commissioner (CT), Begumpet Division audit authorization in ADM 1B No 20121128093283 dt: 29.11.2012 issued and served VAT 304 notice on 29.11.2012 to Sri Jaya Prakash, accounts officer of the company to keep ready of their business records for VAT audit to be held on 11.12.2012. After taking adjournment they filed following business records.

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19/3/2013

Commercial Tax Officer (INT.)
O/o. The Deputy Commissioner (CT)
Begumpet Division, Hyderabad.

1) Statement of sale details of villas where VAT is paid from the starting of project

2) Statement of un – registered villas and vacant from the starting of project

3) Statement of abstract purchase value of goods involved in executive of works contract 01.04.2009 to 31.03.2010 certified by Charted Accountant

4) Audited p & l, balance sheet 2009-10, 2010-11, 2011-12

5) Sale deeds of residential plots to prospective buyers of villa Prashanth Benerji, Ramesh Chanda, Anil Kongeri

6) Copy of agreements for construction with buyers Sri Prashanth Benerji, Ramesh Chanda, Anil Kongeri.

On verification of the above documents it is noticed that they are selling land / plot separately and entering separate agreement for construction of villa and paying tax U/s 4 (7) (d). As per advance ruling in AP COM/48/2012 dt: 15.09.2012 on the case of M/s Nobel Properties, Bajanra hills, Hyderabad it was clarified that agreement for construction of villa on the land sold by the builder to the buyer will fall under the section 4 (7) (b) of APVAT Act taxable @ 5% on total consideration received towards the construction of building. Further as per advance ruling in AR COM/165/2006 dt: 01.02.2007 in the case of M/s VPL Projects (P) Ltd, it was clarified that on a land already owned by the customer and the applicant has no rights to sell or to register the housing unit, such transactions does not come within the preview of construction and selling of residential houses. Further the tax rate of 4% on 25% of the consideration received is specifically linked to consideration received or receivable or market value fixed for the purpose of stamp duty as clarified in advance ruling no CCT/PMT/P&L/AR COM/566/2005 dt: 18.05.2006in the case of M/s Kashi Kanchan, Tirmulgherry. Hence this is a normal works contract attracting provisions under clause (a) and clause (c) of sub – section (7) of section (4) of the APVAT Act. Whereas the assesse is paying tax @ 4 / 5% on 25% value of total sale consideration of villa as per section 4 (7) (d) of APVAT Act 2005 which is against the clarification cited above which are binding on this assessing authority. Hence it is proposed to reject the payment of VAT tax due by assesse U/s 4 (7) (d) and proposed to levy tax U/s 4 (7) (b) @ 4 / 5% on total consideration received on building

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construction charges as worked out below from 2009-10 to 2011-12.

(Figures Rs. In Lakhs)

S.No	Description	2009-10	2010-11	2011-12		2012-13 (up to Sep)
				(up to Sep 15)	(After Sep 15)	
1	Turnover declared	449.67	935.31	1041.63	355.61	449.67
2	Tax paid @ 4/5% on 25% value of (1)	4.49	9.35	10.41	4.44	6.38
3	No of villas sold	14 No s	26 No s	22 No s	9 No s	8 No s
4	Estimated turnover of construction @ Rs: 24,00,000/- each villa	336.00 @4%	624.00 @4%	52.80 528.00 @4%	216.00 @5%	192.00 @5%
5	Tax proposed @ 4/5% U/s 4 (7) (d)	13.44 - 4.49	24.96 - 9.35	21.12 - 10.41	10.80 - 4.44	9.60 - 6.38 = 79.92
6	Under declared tax	8.95	15.61	10.71	6.36	3.22 = 44.85

Thus they have under declared total output tax of Rs: 44.85 lakhs from 2009 – 10 to 2012 – 13 (up to sep) as worked out above as per the discussion made supra.

In view of the above it is proposed to assess them total under declared output tax of Rs: 44.85 Lakhs and issued VAT 305 A assessment notice as per Deputy Commissioner (CT) Begumpet Division assessment authorization in ADM 1C 20130223525462 dt: 23.02.2013.

Accordingly a VAT 305 A notice dt: 23-02-2013 was issued and served on the assesse on 23.02.2013 requesting them to file written objections if any within (15) days of receipt of the notice. On 12.03.2013 Sri M. Jaya Prakash, accounts officer of the company filed letter raising following objections.

1) That advance ruling in M/s Nobel Properties is not applicable to their case as they enter initial agreement for sale of villa along with land. As per clarification in second para B above they are eligible to pay 1% tax on total consideration.

2) That ruling in second part of VPL Projects (P) Ltd, is applicable to them and hence payment of 1% of tax on total consideration is in order.

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3) That advance ruling in M/s Kashi Kanchan is in respect of land developers and 1% rate is specially linked to consideration for the purpose of stamp duty. They stated that as per their initial agreement they have every right to sell such property hence this ruling is not applicable to them.

4) That they enter agreement with prospective buyers for sale of proto type bungalows with certain amenities and total consideration consists of cost of land, development of land, cost of construction of bungalow and they paid 1% on this receipts as per ruling in M/s Mytas dt: 30.07.2006 and enclosed copy.

5) That they are eligible to pay 1% tax whether consideration received in composite manner or separate towards land cost and construction cost.

6) That after registering land by a sale deed and there is no subsequent registration after completion of construction also they are eligible to pay @ 1% tax on total consideration.

7) That even though they are separately entering agreement for construction and for development charges subsequently they are paying tax @ 1% on total of these two agreements.

8) That as per Mytas ruling they are paying tax @ 1% on total consideration of land cost and construction cost hence requested to drop proposal of tax U/s 4 (7) (b).

In personal hearing on 16.03.2013 Sri M. Jaya Prakash, G. Kanka Rao of the company and Sri D.S.Ram Kumar, C.A.authorized tax consultant also reiterated the same contention. Further they stated that they are not registering original / initial agreement at sub – Registar but not submitted any evidence to this effect. In very few cases they registered construction agreement at Sub Registar. The contention of assesse is examined carefully in the light of advance rulings cited. As per ruling in M/s Nobel Properties only construction and selling of villas along with land in a **single deed** will fall under section 4 (7) (d). Further if the agreement for construction of villas on the land sold by the applicant to the buyer doesn't fall under section 4 (7) (d) but falls under section 4 (7) (c) if opts composition and 5% of VAT on the total consideration received on construction of buildings. In their case there is no single sale deed of land and buildings hence they doesn't come under section 4 (7) (d). In M/s VPL Projects (P) Ltd, for query no (4) it was clarified that if the applicant is executing the constructions of houses in a land already owned by the customer and the applicant has no rights to register the housing unit such

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transaction doesn't come within preview of construction and selling of house hence doesn't fall U/s 4 (7) (d). Further for query (3) if the houses either in semi finished or finished condition are sold by an initial agreement of sales and subsequently by a sale deed wherein the applicant is having right to sell and receive the consideration whereas in their case only plot is sold and there is no right to sell subsequently hence this ruling in query (3) is not applicable to them.

In M/s Kashi Kanchan it was clarified that only in respect of builders and developers who have right to sell such houses section 4 (7) (d) is applicable. Further rate of 4% on 25% of consideration received or receivable or market value fixed for the purpose of stamp duty total stamp duty is collected on houses including on land whereas in their case only on land cost stamp duty is paid hence section 4 (7) (d) is not applicable to them.

In M/s Mytas Hill County (P) Ltd, it was clarified that where the land and house constructed there on are sold through a single deed section 4 (7) (d) applicable. In respect of where the land is first sold and a construction agreement registered with Sub – Registar section 4 (7) (d) is applicable if laid down in the initial agreement of sale whereas they have not submitted any evidence of registering of construction agreement so far. Further (3) constructions agreements mentioned in VAT 305 A notice also not registered with Sub – Registar. In personal hearing dt: 16.03.2013 also they stated that very few construction agreements are registered with Sub – Registar. Hence the facts of M/s Mytas Hill County (P) Ltd, are different to the applicant own case hence ruling in situation (2) and (3) of the same is not applicable to the assesse as they are not registering **single deed** for land and house and also not registering construction agreement with Sub - Registar hence the ruling in M/s Mytas Hills County (P) Ltd is not applicable to assesse case as facts are different. In view of latest clarification in M/s Nobel Properties and M/s VPL Projects (P) Ltd and discussion made supra in respect of M/s Mytas Hills County (P) Ltd the contention of assesse is rejected and proposal of tax @ 4 / 5% U/s 4 (7) (c) on composition of consideration received on construction cost as proposed in VAT 305 dt: 23.02.2013 is here by confirmed and issued VAT 305 assessment notification with under declared output tax of Rs: 44,85,000/- as detailed below.

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There are no Inter – State sales.

The demand of Rs: 44,85,000/- shall be paid within (7) days of this order as they already availed time in filing business records for VAT 304 audit initation notice dt: 29.11.2012 and granting (15) days time in assessment notice.

NOTE: An appeal against these orders lies to the Appellate Deputy Commissioner (CT) Punjagutta Division, within (30) days from the date of receipt of these orders.

19/3/2013

COMMERCIAL TAX OFFICER (INT)
BEGUMPET DIVISION HYDERABAD

Commercial Tax Officer (INT.)
O/o. The Deputy Commissioner (CT)
Begumpet Division, Hyderabad.

19/3/2013

అసలు ప్రతి / ORIGINAL

ఖజానా పేరు, _____ SUB-TREASURY

ఆంధ్రప్రదేశ్ ప్రభుత్వము / GOVERNMENT OF ANDHRA PRADESH

రాష్ట్ర అమ్మకపు పన్ను / STATE SALES TAX

ఖజానా చలానా నం. _____ TREASURY CHALLAN NO.

పెద్ద పద్దు MAJOR HEAD:	0040	చిన్న శీర్షిక MINOR HEAD:	102
పన్ను వసూళ్ళు / TAX COLLECTIONS UNDER VAT RECEIPTS ON TURNOVER TAX			05
ఉప పద్దు SUBHEAD			107
01 పన్ను వసూళ్ళు / TAX COLLECTIONS			
02 సర్‌చార్జీ / SURCHARGE			
87 ఇతర రాబడులు / OTHER RECEIPTS			

00001038S

00001038S

మొత్తము / Amount in Rupees ++++ 1000

అక్షరాలలో / In words Rupees One Thousand Only

డీలరు పేరు, చిరునామా / DEALER'S NAME AND ADDRESS

m/s Mehta & Modi Homes
Secunderabad

డీలరు రిజిస్ట్రేషన్ నంబరు _____ DEALER'S REGISTRATION NUMBER

ఏ నిమిత్తము వైకము జమ చేయబడెను FOR WHICH THE AMOUNT IS DEPOSITED: Appeal Fee

ఏ	ఏఏ	ఏ1	ఏ2	ఏ3	ఏ4	ఏ5	ఏ7	ఇతరములు
A	AA	A1	A2	A3	A4	A5	A7	OTHERS

25 ఏ 2343 10

ఏ కాలమునకు జమ చేయబడెను PAYMENT FOR THE PERIOD

	రోజు DD	నెల M/M	సం.Y
నుండి / FROM			
వరకు / TO			

బి	బిబి	బి1	బి2	బి3	బి4	డిమాండు DEMAND	నెం. / No. _____ తేదీ / D
B	BB	B1	B2	B3	B4		

పన్ను వాయిదా / TAX INSTALMENT

జమ చేయించిన అధికారి పేరు, హోదా OFFICER AT WHOSE INSTANCE AMOUNT IS DEPOSITED: ARC RTO Ele

ఖాతా పద్దులు పరిశీలించినవారి HEAD OF ACCOUN EVERIFIED

తేది / DATE _____ చలానా తెచ్చినవారి సంతకము SIGNATURE OF REMITTER _____ ఎస్.టి.ఓ. / టి.ఓ. / S.T.O./T.O.

అమలుగా రూపాయలు ..... RECEIVED RUPEES ..... Fifty Only

..... అమలుపరచిన.

నగదుద్వారా / చెక్కుద్వారా / డి.డి. ద్వారా BY CASH / CHEQUE NO. / D.D. No. _____

ఎస్.టి.ఓ. / బ్యాంకు మేనేజరు S.T.O. / BANK MANAGER

గమనిక - (1) చెల్లించిన తర్వాత చేయబడును. (2) ఈ చలానాలోని వివరములు తప్పుగా ఉన్నయెడల రద్దు చేయబడును.