

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: 12.03.2013

To,
The Commercial Tax Officer (INT),
Begumpet Division,
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 2009-10 to 2012-13 (upto September'2012) – Objections called for – Reply submitted – Reg.

Ref: 1) Notice of Assessment in form VAT 305A dated 23rd February 2013.

- 1) We submit that we are in receipt of notice of assessment in Form VAT 305A dated 23/02/2013 proposing to levy tax @ 4% / 5% on the receipts under section 4(7)(b) of APVAT Act 2005, for the years 2009-10 to 2012-13 (up to September'2012) relying on the advance rulings issued in the case of M/s. Nobel Properties, Banjara Hills dated 15/09/2012, M/s. VPL Projects Pvt. Ltd., dated 01/2/2007 and M/s. Kashi Kanchan Tirumulgherry dated 18/05/2006 against the payment made by us under Section 4 (7) (d) of the said Act. We request to kindly consider our further objections on the following grounds:-
- 2) We submit that we are engaged in the business of construction and selling of independent residential villas in fully developed / operational gated housing complex at IDA, Charlapalli, and opted for payment of tax under composition under Sec. 4(7) (d) of the APVAT Act. We have declared the turnover relating to construction and sale of villas in the monthly VAT returns and paid the tax on the amounts received from the customers @ 1%.
- 3) In the notice it is stated that we are selling land / plot and entering into separate agreement for construction of villa and paying tax under section 4(7) (d) and it is stated that our payment under Section 4 (7) (d) is against the clarification issued in the above mentioned Advance Rulings.
- 4) In the notice it was stated that as per the Advance Ruling given in the case of M/s.Nobel Properties, Banjara Hills dated 15/09/2012, it was clarified that agreement for construction villa and the land sold by the builder to the buyer will fall under Sec. 4(7)(b) of APVAT Act taxable @ 4% on the total consideration received. We submit that this advance ruling is not applicable to our case as we enter initial

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agreement for sale of villa/apartment along with land for a specific amount where as in the above advance ruling there is no initial agreement as in our case. We submit that as per clarification given in the second para **B** above we are rightly eligible for payment of tax @ 1% on the total consideration under section 4(7) (d) of the Act as we have entered into one single agreement for the sale of Villa along with land.

5. In the case of VPL Projects P Limited in Advance Ruling No.165/2006 dated 1.2.2007, it has been clarified as follows:-

“3. Whether the houses either in semi finished condition or finished condition are sold by an initial agreement of sale and subsequently by a sale deed wherein the applicant is having right to sell and receive the consideration from the prospective buyer , such arrangement becomes a tripartite agreement (owner of land , developer and prospective buyer of housing unit) and the total consideration received from the prospective buyer will have to be taken into consideration and in case composition under clause (d) of sub section (7) of Section 4 is already opted by the applicant , the tax at 1% of the total consideration received needs to be paid either directly by the developer or the way of collection of tax at the time of registration before the Sub Registrar. The total consideration agreed upon or market value for registration whichever is higher must be taken into consideration by payment of 1% tax if the developer opted for composition.”

- 5.1 In the above advance ruling it was clearly stated when the houses either in the semi finished condition or finished condition are sold by an initial agreement of sale and subsequently by a sale deed it becomes a tripartite agreement and in the case of option under composition under Sec 4(7)(d) the payment of tax @ 1% on the total consideration received is to be paid. In our case also we have opted for composition under Sec 4(7)(d) and the ruling given in the second part of the advance ruling is directly applicable to us. Hence the payment of tax @ 1% / 1.25% on the total consideration is in order.

6. In the notice your good selves further relied on the Advance Ruling in CCT's Ref. No. PMT/P&L/A.R. Com/566/2005 dated 18-05-2006 in the case of M/s Kashi Kanchan, Tirumalghery. In this case the Department has given a clarification that the provisions of composition under clause (d) sub section (7) of Section 4 of APVAT Act, 2005 are applicable only in respect of land developers who have right to sell such constructed apartments, houses, buildings or commercial complexes. It was also clarified that the tax rate of 4% of 25% of the consideration received is specifically linked to consideration or market value fixed for the purpose of stamp duty. In our case we have sold the villas along with the land as per the initial agreement i.e, mother agreement and we have every right to sell such property. Thus the above advance ruling is not applicable to us.

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- 7 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 by following the advance ruling given in the case of M/s. Maytas. In the said Advance Ruling dated 30/07/2006 the ruling is given as under:-
- 7.1 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.**
- 7.2 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.
- 7.3 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.
8. Copy of the said Advance Ruling is here with enclosed for ready reference. 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 we 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).
9. 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

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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.

10. We therefore request you to kindly drop the proposal to levy tax under Section 4 (7) (b) 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

Encl.: As Above

Endorsement.

Personal hearing granted
on 16-3-2013 at 11-30 AM in my
Chamber VI floor, Parvati
Prestige, Ameepeet. Produce all
documentary evidence in support
of contention.

↓
12/8/2013
CTO (Per.)
Bengaluru Dim.

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