

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

PROCEEDINGS OF THE JOINT COMMISSIONER (CT)-I,
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES,
TELANGANA STATE, HYDERABAD

PRESENT: SRI K. CHANDRASEKHAR REDDY, M.A.,

JC ORDER No. 179/2015

CCT's Ref. No.LIII(2)/ 98 /2015

Date: 24-09-2015

Sub:-**STAY PETITION** – APVAT Act, 2005 – M/s. Modi & Modi Constructions, M.G.Road, Secunderabad – Tax periods from Feb'2011 to Dec'2013 - Stay petition filed for stay of collection of disputed tax - Heard the case - Orders issued – Regarding.

Ref:- 1. CTO, M.G.Road Circle VAT asst. order in A.O.No.3954, dated 31-07-2014.
2. ADC (CT), Punjagutta Division Appeal dismissal order No.370, in Appeal No. BV/76/2014-15, dated 20-03-2015.
3. Application in Form APP 406, dated 19-06-2015 filed by dealer.
4. Hearing Notice in CCT's Ref. No.LIII(2)/98/2015, dated 29-07-2015, 18-08-2015 and 10-09-2015.

ORDER:

Vide the reference 1st cited, the Commercial Tax Officer M.G.Road Circle ('CTO' for short) has passed VAT Assessment order for the tax periods from February 2011 to December 2013 in case of M/s. Modi & Modi Constructions, M.G.Road, Secunderabad. In the order passed the CTO has arrived under declared VAT of Rs.35,26,335/- on the transactions relating to sale of villas/apartments.

Aggrieved by the order of the CTO the dealer preferred an appeal before the Appellate Deputy Commissioner (CT), Punjagutta Division ('ADC' for short) contesting the VAT assessment order. The ADC rejected the Appeal filed by the dealer. Aggrieved by the ADC appeal dismissal order the dealer filed appeal before the Telangana Value Added Tax Appellate Tribunal, Hyderabad contesting the ADC. Now they filed stay petition before the undersigned seeking stay of collection of disputed tax.

Accordingly personal hearing is allowed to represent the case. Sri M.Ramachandra Murthy, Chartered Accountant and Authorized Representative ('AR' for short) of the dealer appeared and argued the case on 16-09-2015 on the following grounds:-

In the grounds of appeal the AR submitted that the assessee is doing business in construction and sales of Villas/Apartments and opted to pay tax under composition @ 1% or 1.25% under composition under Section 4(7)(d) of the APVAT Act, 2005. The appellant paid tax @ 1% / 1.25% on filing returns.

Appellant submits that in the Revision order No.LV (1)/464/2009 dated 29.6.2011 passed by the Hon'ble Commissioner in the case of Ambience Properties Limited, Hyderabad, it has been observed as follows:-

"One more crucial factor that clinches the status of the dealer company as nothing more than the contractor for the construction of the house, is that in the original tripartite agreement the value of the house is not mentioned. It is only the value of the land that finds place in that agreement. The deed for the sale of land subsequently registered also conforms to that value. The value of the house is mentioned only in the construction agreement between the dealer company and the purchaser of the plot. In the construction agreement the name of the original land owner does not appear. It is therefore unambiguously proved that the legal status of the dealer company is that of a contractor only for construction but not that of a contractor for construction and sale of apartments or residential houses specified under section 4(7)(d) of the APVAT Act. There is no element of sale in the house. There is no sale deed for the house and in the sale deed for the house site the value of the house is not included for payment of stamp duty. It should be noted at this juncture that the Advance Ruling in Maytas case cited by the dealer company is based on the fact that in the tripartite agreement itself the value of

the land, the value of the house are clearly mentioned either jointly or separately. But in the present case the value of the house is not mentioned at all in the original tripartite agreement. The agreement only says that the dealer company who is a developer should be necessarily appointed as contractor. No further additional status is conferred on the dealer company. The house is constructed as per a works contract agreement the purchaser of the plot as contractee entered into with the dealer company as contractor. The dealer company is therefore assessable under 4(7) (c) of the APVAT Act, but not 4(7)(d) of the said Act."

Appellant next submits that, The Commissioner has categorically observed that if in the agreement for sale, the value of house is also mentioned as ruled in Maytas case, then tax can be paid under clause (d). In the case before the Commissioner, the value of house is not mentioned in the initial agreement. Hence tax has been levied under clause (c) of the Act. But in this case the total value of the house is mentioned in the mother agreement which includes the land value, construction value and the development charges. Thus the facts in this case differ from the observation made.

Appellant is squarely covered by the Ruling in Maytas case. The agreement of sale entered into with the prospective buyer clearly shows that what is agreed to be sold is only the 'bungalow with land' for a specified price. This fact cannot be brushed aside. Appellant is squarely covered by the Mayatas Ruling and the Revision order of the Honourable Commissioner. In all cases, appellant has entered into Mother or Initial agreement, which clearly mentions the total price including the value of land and constructed bungalow. Hence, payment of tax under clause (d) is correct and such payment cannot be faulted with. With regard to Tripartite agreement appellant submits that in Maytas case, the land is not owned by the builder and hence the owner of the land is made as a party to the construction and selling of apartments agreement, where as in this case appellant is the owner of the land and hence it has directly entered into an agreement with the prospective buyers of the bungalow without a third person. In view of the above appellant submits that the ruling given in the case of Maytas is squarely applicable to this case and appellant is liable to pay composition tax of 1% or 1.25% only on the total value of the agreement which includes the value of land transferred. It is reiterated that appellant has in the business of construction and selling of apartments/buildings, the class of VAT dealer to which the benefit of composition of tax under Section 4 (7) (d) of the Act.

Appellant submits that in the assessment order 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 of villa on 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. Appellant submits that this part of advance ruling is not applicable to this case as appellant enters into initial 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 this case.

Appellant submits that, In the said Advance Ruling, the clarification sought was whether 'construction and selling of villa along with land in a single deed' will fall under Sec. 4(7) (d) of the APVAT Act. At Para A it was clarified that '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'. Appellant submits that as per clarification given in the second para B above appellant is rightly eligible for payment of tax @ 1% or 1.25% on the total consideration under section 4(7) (d) of the Act as it has entered into one single agreement for the sale of Villa along with land.

Appellant submits that as per Rule 17 (4) (i) of the APVAT Rules, the VAT dealer executing the construction and selling of residential apartment, houses, buildings or commercial complexes and opts to pay tax by way of composition shall pay an amount equivalent to 1% or 1.25% of the total consideration received or receivable or the market value fixed for the purpose of stamp duty, whichever is higher. Appellant submits that they have opted for payment of tax under Section 4 (7) (d) of the Act and filed the VAT 200 returns by disclosing the turnovers of registration values of the villas and paid the tax @1%/ 1.25% as applicable in the respective years. The appellant has declared the following Turnovers.

Year	Turnover
2010-11	Rs. 3, 50,89,600/-
2011-12	Rs. 3,56,86,894/-
2012-13	Rs. 2,96,52,080/-
2013-14 (upto 12/13)	Rs. 93,09,604/-

A statement showing the month wise turnovers disclosed in the VAT returns along with the payment particulars for the above four years is enclosed as Annexure-IX . It is submitted that when a specific request is made to the ADC to adopt the turnovers while passing the orders, Honourable ADC has not discussed on this aspect in the appeal order.

Appellant also submits that against the VAT payments of Rs.2,78,000/-, Rs.3,17,313/- ,Rs. 17,26,198/- and 5,74,264/- for the years 2010-11, 2011-12, 2012-13 and 2013-14(upto December) they are given tax credit of Rs. 2,58,930/-,Rs. 15,54,042/- and Rs. 3,30,514/- respectively. The tax payment details are also given in the Annexure at the time of filing appeal before Honourable ADC, but Honourable ADC has not considered this ground while passing the orders.

Appellant submits that Honorable ADC has failed to appreciate the facts of the case and misunderstood the nature of transaction and relied upon the Advance Ruling in the case of M/s. Madhu Collections (Ref No. A.R. Com/66/2011, dated 16-10-2012) which is not relevant to the present context. It is submitted that the facts in Madhu collections Advance Ruling are entirely different. In that case there is no initial agreement. The Ruling does not at all speak of any such initial agreement to sell fully completed flat for a total consideration. This is the major difference. Case of the appellant is not on par with Madhu collections case. The Honorable ADC has completely ignored the initial or mother agreement. Whereas in Maytas Ruling, importance has been attached only to such initial agreement.

Appellant submits that Honorable ADC has not properly appreciated the facts of the case and dismissed the appeal.

In any case, appellant submits that recent decision of Honorable High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in the case of Omega Shelters (P) Limited (W.P No. 11528 of 2013) settled this long pending issue once for all. It has been held therein as follows:-

"If dealers engaged in the construction and sale of residential apartments, houses, buildings or commercial complexes exercise the option, and comply with the conditions stipulated in Section 4(7)(d) and Rule 17(4), they cannot be denied the benefit of composition there under for the construction made by them, for the very same person, after execution of a registered deed for the sale of a semi-finished structure. Denial of the benefits of the composition scheme under Section 4(7)(d) to such dealers, for the post-sale construction made in terms of the initial agreement, is illegal and is contrary to the provisions of the AP VAT Act and the Rules made there under."

Appellant submits that the from the above decision it is clear that as long the appellant is complying with the condition stipulated in Section 4(7)(d) and rule 17(4) the benefit of composition cannot be denied if the post sale construction is made in terms of initial agreement. It is submitted that the appellant has entered into agreement of sale which is the mother agreement and which consists of the consideration received through sale of land, development charges of land and cost of construction of the bungalow. The appellant has paid VAT @ 1%/1.25% on the total consideration received from these three components of the initial agreement according to Section 4(7)(d) and Rule 17(4). Appellant therefore submits that the decision in case of Omega Shelters is applicable to appellant's case. The action of CTO and ADC in allowing levy of tax under Section 4(7)(b) is illegal and against the decision of the Honorable High Court.

Thus, they requested to grant stay of collection of disputed tax.

I have examined the impugned orders and the contentions of the appellant put forth in the grounds of appeal. The appellant contended that they are eligible to pay tax

@ 1% on the works contracts receipts consideration under Section 4(7)(d) of the APVAT Act, 2005 as there is initial agreement for sale of Villas for which they are receiving consideration for sale of land, development charges of land and cost of construction of bungalow.

Prima-facie there is arguable case. The various issues raised by the appellant on the applicability of rate of tax on sale of Villas are to be decided in appeal before the Telangana Value Added Tax Appellate Tribunal, Hyderabad. Further the Hon'ble High Court of A.P. in the case of M/s. Omega Shelters (P) Ltd. (W.P. No.11528 of 2013) has held that the dealers engaged in construction and sale of residential apartments/ houses/ buildings exercise the option, and comply with the conditions stipulated in Section 4(7)(d) and Rule 17(4) they cannot be denied the benefit of composition there under for the construction made by them, for the very same person, after execution of a register deed for the sale finished structure. Denial of the benefit of the composition scheme under Section 4(7)(d) to such dealers, for the post sale construction made in terms of the initial agreement is illegal and contrary to the provisions of the APVAT Act and Rules made there under.

Hence, without expressing any opinion on the merits of the case, I feel it just and proper to grant stay of collection of total disputed tax Rs.35,26,335/- till disposal of the appeal by the Telangana Value Added Tax Appellate Tribunal, Hyderabad.

WOM 24/9/15
JOINT COMMISSIONER (CT)-I

To
✓ M/s. Modi & Modi Constructions, M.G.Road, Secunderabad
through the Commercial Tax Officer, Ranigunj Circle, Begumpet Division
in duplicate for service and return of served copy immediately.

Copy to the Commercial Tax Officer, M.G.Road Circle, Begumpet Division
Copy to the Deputy Commissioner (CT), Begumpet Division.

Copy to M/s. Modi & Modi Constructions, 5-4-187/3 & 4, 2nd Floor, Soham Mansion,
M.G.Road, Secunderabad.