

**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. 30/2015

CCT's Ref. No.LIII(2)/4/2015

Date: 31-01-2015

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

- Ref:-
1. Proceedings of the CTO., MG Road Circle, in AO No.3954, dated 31-07-2014.
 2. ADC (CT), Punjagutta Division Order No.847 in Appeal No.BV/76/2014-15, dated 19-12-2014.
 3. Application in Form APP 406, dated 08-01-2015 filed by the dealer.
 4. Hearing Notice in CCT's Ref. No.LIII(2)/4/2015, dated 17-01-2015.

ORDER:

M/s. Modi & Modi Constructions, M.G. Road, Secunderabad, have filed a stay petition seeking stay of collection of total disputed tax of Rs.35,26,335/- for the tax period from February 2011 to December 2013 under the APVAT Act, 2005 vide the reference 3rd cited, stating that their appeals are pending before Appellate Deputy Commissioner (CT), Punjagutta Division, Hyderabad ('ADC' for short) the case is posted for personal hearing on 23-01-2015. Sri M. Ramachandra Murthy, Chartered Accountant and authorized representative of the dealer appeared and argued the case on 23-01-2015. Heard the case.

The AR of the appellant submitted that the ADC has not considered all the grounds of appeal and arbitrarily dismissed the stay petition filed before him. The main appeal is pending for disposal. They further submit that the grounds that are stated in the main appeal may kindly be read as grounds of this application. In the grounds of their main appeal they stated that in the course of their business the appellant enters into agreement with their prospective buyers for sale of villas/apartments along with certain amenities. The agreement of sale which is the mother or intial agreement consists of land and cost of construction of the entier banglow. The appellant has paid VAT @1% or 1.25% on the total consideration received from these three components of the agreement.

The applleant further submit that it entered into agreement of sale with its prospective buyers where in the sale value of the land, development charges of land for laying of roads, drain, parks etc. and cost of construction or mentioned in this single document of sale agreement. Even though it entered agreement for construction and agreement for development charges subsequently the amount mentioned in these two agreements has already been shown in the original agreement of the sale and it has paid VAT @1% or 1.25% on the total consideration received as per the original agreement of the sale. Thus, the payment of tax @1% or 1.25% is as per the provisions of the Section 4(7)(d) of the Act.

The appellant relies on the Advance Ruling given in the case of M/s. Maytas wherein the prospective buyers enters into an agreement for the purpose of a flat/banglow/villaw for a specified price, which includes both value of the land and construction cost. In this mother or intial agreement the full price is mentioned. As a consequence thereof, there is a sale deed for the sale of land/semi finished structure and then a construction agreement. The Advance Ruling in this case held that in a situation where the entire price is mentioned in the intial agreement tax is payable only @1% or 1.25% under Section 4(7)(d) of the Act.

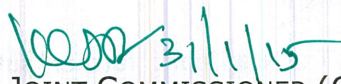
In this case the Commercial Tax Officer, MG Road Circle, Begumpet Division ('CTO' for short) has come to conclusion that the assessee has not paying tax @1% on the aggregate value of the cost of the land, cost of the development of the land and the cost of construction of the banglow and the fact of registration of the banglow in favour of the prospective buyer also is not substantiated by adducing the necessary documents. Further, more he has distinguished the facts of the M/s. Maytas case, with reference to the facts of the present case. The assessee is the absolute owner of the land and effected sale of flat in favour of buyer in the first instant and subsequently entered into agreement with the buyer for construction of house on the plot. The provision of Section 4(7)(d) of the Act applies where the dealer engaged in construction and selling of apartments, houses, building and commercial complexes and received the amounts towards the composite value of the both the land and building. The CTO observed that in this case the assessee sold open plot to the customer through the sale deed and then through a separate construction with the customer, the assessee took of the construction of a house on such a plot. Therefore, the construction of house on the plot sold to the customer does not fall under Section 4(7)(d) and it falls under works contract liable to tax under Section 4(7)(b)/(c) of the APVAT Act, 2005. Where the dealer opts for composition. The CTO relied on clarification issued by the authority for clarification and Advance Ruling in the case of M/s. Noble Properties, Hyderabad in A.R.Com/48/2012, dated 15-09-2012. Wherein the Ruling is as under:

- i) The sale of land and constructin 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 Section 4(7)(a) of the Act.

Therefore, the facts of the case are squarely fit into the facts of case in M/s. Noble Properties. Accordingly, the CTO has come to conclusion that the appellant is not eligible to opt for composition under Section 4(7)(d) of the Act, but he is assessable under Section 4(7)(b)/(c) of the Act.

The submissions made by AR of the appellant cannot be said to be without merit, it would be wholly in appropriate for me, at this stage, to express any opinion on the merits of the case as the applicant's appeal is still pending adjudication before the ADC. As the scope of Section 4(7)(d) of the Act is required to be examined by the appellate authroity, bearing in mind the afore said rulings of the Advance Ruling Authority I considered it appripriate it is dispose of the stay petition by granting stay of collection of the disputed tax on the condition that the appellant deposits 50% of the disputed tax after giving credit to the amount already paid by him towards pre deposit within two (2) weeks from the date of receipt of this order.

The stay petition is disposed accordingly.


JOINT COMMISSIONER (CT)-I

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

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

Copy to M/s. Modi & Modi Constructions,
No.5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad - 500 003.