SUMMIT BUILDERS,
Soham Mansion, M.G. Road, Secunderabad.

Tax Period: 04/07 to 03/08/VAT

Statement of facts:-

1. Appellant is a dealer engaged in the business of execution of works contracts and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad, with TIN No 28790571789. Appellant is in the business of constructing and selling independent houses, apartments etc., paying tax under Section 4 (7) (d) of the APVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.

2. The Commercial Tax Officer, M.G. Road Circle, Begumpet Division (herein after called as CTO) has issued Show Cause Notice dated 19-03-2012 which was served on appellant, dated 21-03-2012 proposing under declaration of output tax of Rs. 2,73,950/- for the period from April'2007 to March'2008.

3. The appellant has filed detailed objections through letter dated. 14-05-2012 and also requested for personal hearing. However without properly considering the objections filed and without providing an opportunity of personal hearing to the appellant the learned CTO has issued FORM VAT 305 (Assessment of Value Added Tax) dated 28-06-2012 demanding a tax of Rs.2,73,950/-.

4. Aggrieved by such order, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:

a. The impugned assessment order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.

b. The learned CTO in the assessment order mentioned that **"as per information received from other State Government Departments of Andhra Pradesh"** appellant has received amounts on account of execution of works contracts to a tune of Rs.2,87,29,625/- and on account of car parking and service tax payments Rs.20,07,674/- totaling to Rs.3,07,37,299/-. It is also stated that the appellant have reported a turnover Rs.44,13,225/- for the period from April'2007 to March'2008. Thus it is alleged that appellant has short reported works contract receipts turnover of Rs.2,58,98,047/- and on that the learned CTO has levied tax @ 1% .

c. Appellant submits that learned CTO grossly failed to provide the details on which he relied upon for passing such an order even though the appellant has mentioned in the reply that the nature of the items alleged to have been purchased from the other State Government Department of Andhra Pradesh was not mentioned in the notice. The learned CTO has not mentioned such items even in the assessment order.

d. The learned CTO has passed the order without providing personal hearing opportunity to the appellant. Further the learned CTO has not provided any information to the appellant with regard to the information he received from other State Government Departments with respect to the works contracts receipts to the extent of Rs. 2,87,29,625/-. The appellant submits that the assessment order passed is liable to be set aside on this ground alone.

e. Without prejudice to the above the appellant submits that they are engaged in the business of execution of works contracts i.e., sale of independent houses and apartments and opted to pay tax @ 1% under composition under Sec.4 (7) (d) of APVAT Act'2005.

Sec. 4 (7) (d) of the APVAT Act reads as under:-

"Any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 4% of twenty five percent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;..."

As per the above clause a dealer engaged in the construction and sale of apartments, houses etc., is liable to pay tax @ 4% of 25% of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher.

Hence the consideration received or receivable which relates to the sale of apartments, houses etc., is only taxable, but not other amounts like car parking and service tax payments received during that period. During the period November'2006 to March'2007 appellant have sold the independent houses and registered the same with the sub-registrar's office and paid VAT @ 1% on the registration value which is the sale consideration received by the appellant from prospective purchasers. They have declared the said turnover in monthly returns for the said periods. It is not clear from the assessment order as well as from the show cause notice where from the works contracts receipts turnover of Rs.2,87,29,625/- for the period from April'2007 to March'2008 is extracted

by learned CTO. Appellant now submits to kindly consider the turnover of Rs.44,13,225/- for the period from April'2007 to March'2008.

f. The learned CTO in his order levied tax of Rs.14,970/-@ 4% on the 4% purchase turnover of Rs.3,74,261/- from unregistered sources and as per the information received from other State Government Department of Andhra Pradesh. The nature of these items alleged to have been purchased was not mentioned in the order. The appellant submits that the above taxes are levied purporting to be under clause (e) under Section 4 (7) of APVAT Act'2005.

g. The appellant submits that even if for any reason the said clause (e) is made applicable, no tax need be paid at the higher rates because clause (e) is very clear in saying that under clause (e) tax is payable only at the rates applicable to those goods under the Act. In the present case appellant have opted for composition under Section 4 (7) (d) of the Act. In respect of the goods used by them in the execution of works contract, the rate of tax is 4% of 25% of the consideration received or receivable. Clause (e) says THE RATE APPLICABLE **UNDER THE ACT**. The rate applicable under the Act is 4% of 25%. Clause (e) does not authorize collection of tax at the full rate of 4% or 12.5%, as **there is no mention of 'Schedules to the Act' in that clause**. For example in respect of 'lease tax', in Section 4 (8) of the Act, it is specifically mentioned 'at the rates specified in the Schedules'. As, such words do not find place in Section 4 (7) (e), it cannot be assumed that the rates in the Schedules have to be applied. It is settled law that there cannot be any presumption with reference to the charge to tax. Any ambiguity in the provision shall be interpreted in favour of the tax payer. It is also settled law that when there is possibility to apply two rates of tax on the same commodity, the least of the two has to be applied. The appellant therefore humbly submits that on mere presumption, higher rates of tax cannot be applied. There is no authorization in clause (e) to collect tax at the rates of 4% or 12.5% as the case may be. Further appellant have paid tax at the rate of 4% only under clause (d) and not at 1%. The appellant has already paid tax 4% on the same goods, the question of paying tax once again @ 4% does not arise. What has been reduced under clause (d) is only the quantum of turnover to 25% but the rate of tax of 4% has been retained. In the result no tax becomes payable either @ 4% or @ 12.5%.

h. It is therefore submitted that levy of tax under clause (e) is neither correct nor legal.

i. The learned CTO has failed to provide the information from where he has extracted the details of purchases from unregistered dealers in his order. Further the appellant submits that the learned CTO has not provided an opportunity of personal hearing to substantiate appellant's contentions. As the

CTO failed to furnish the required information, the impugned levy is illegal and therefore the assessment order is liable to be set aside.

j. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order as illegal and to allow the appeal.

APPELLANT