

SUMMIT BUILDERS

5-4-187/3&4, III Floor, M.G. Road, Secunderabad - 500 003

Ph : 66335551



To,
The Commercial Tax Officer
M.G. Road Circle,
Hyderabad

Sir,

Sub: APVAT Act'2005- Summit Builders, Secunderabad- Show Cause Notice for
the Periods from April 2007 to March'2008 - Reply submitted - Reg.

Ref: CTO, M.G. Road Circle in show cause notice dt.19/03/2012.

We submit that we are in receipt of the show cause notice dated 19/03/2012 proposing levy of tax on the alleged short reported works contract receipts turnover for the tax periods April 2007 to March'2008 based on the information stated to have been received from other State Government Department of Andhra Pradesh. It is also proposed to demand tax on 4% and 12.5% taxable goods purchases from unregistered sources.

April'2007 to March'2008:

In the show cause notice it is stated that we have 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, an amount of Rs.20,07,674/- totaling to Rs.3,07,37,299/-. It is also stated that we have reported a turnover Rs. 44, 13,225/- for the period April'2007 to March'2008. Thus it is alleged that we have short reported works contract receipts turnover of Rs.2, 58, 98,047/- and on that your goodself has proposed to levy tax @ 1%.

In this connection we submit that we are dealers engaged in the business of execution of works contracts i.e., sale of independent houses and apartments. We have opted to pay tax @ 1% under composition under Sec.4 (7) (d) of APVAT Act'2005 as admitted by you in the show cause notice.

We submit that 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;..."

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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 April'2007 to March'2008 we 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 us from our prospective purchasers. We have declared the said turnover in our monthly returns for the said periods. It is not clear 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. We therefore request you to kindly consider the turnover of Rs.44,13,225/- for the period from April'2007 to March'2008 and drop further action in the matter on this issue. If it is proposed to proceed further on this issue we request to kindly furnish the break up for the figures adopted in the notice.

In the notice tax of Rs.14, 970/-@ 4% was proposed on the 4% purchase turnover of Rs.3,74,261/- from un registered sources as per the information received in your office from other State Government Department of Andhra Pradesh. The nature of these items alleged to have been purchased was not mentioned in the notice. We submit that it appears that the above taxes are proposed to be levied purporting to be under clause (e) under Section 4 (7) of APVAT Act, 2005.

We submit 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 our case we have opted for composition under Section 4 (7) (d) of the Act. In respect of the goods used by us 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. We therefore humbly submit 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 we have paid tax at the rate of 4% only under clause (d) and not at 1%. As we have 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

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25% but the rate of tax of 4% has been retained. In the result no tax becomes payable either @ 4% or @ 12.5%. We therefore request your good self to kindly drop the proposal made in the notice.

We therefore request you to kindly drop the proposal to levy tax on the alleged output turnover of works contract receipts and un registered purchases under Section 4 (7) (e) of the Act. We also request to provide us an opportunity of personal hearing to substantiate our contentions.

Thanking you,

Yours faithfully

for Summit Builders


Authorised signatory.