

SUMMIT BUILDERS

5-4-187/3&4, III Floor, M.G. Road, Secunderabad - 500 003
Ph : 66335551

Date: 21.02.2011

To
The Deputy Commissioner (CT)
Begumpet Division,
Hyderabad.

Madam,

Sub: APVAT Act'2005 – Summit Builders, Secunderabad-revision show cause notice
for

The periods from Dec'2005 to October'2006-Reply submitted – Reg.

- Ref: 1) DC (CT), Begumpet Division Revision show cause notice in
R.C.No.E3/R/244/2010 dt. 07/01/2011.
2) Our letter dt.25/01/2011 requesting to furnish copies of the information
Received from other State Government Department of Andhra Pradesh
3) DC (CT), Begumpet Division Revision show cause notice in
R.C.No.E3/R/244/2010 dt. 03/02/2011.

We submit that we are in receipt of the revision show cause notice dated 07/02/2011 proposing levy of tax on the alleged short reported works contract receipts turnover for the tax periods December'2005 to March'2006 and April'2006 to October'2006 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.

On 25/01/2011 we have furnished bill wise purchase details 4% and 12.5% VAT goods purchased by us during the tax periods December'2005 to October'2006 which were verified and again a revision show cause notice dt.03/02/2011 is issued to us proposing levy of tax @1% on the alleged sort reported turnover and at differential rate of 3% and 11% on unregistered purchases of 4% and 12.5% purchases. We request you to kindly consider our objections on the following grounds:-



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December'2005 to March'2006:

In the revision show cause notice it is stated that we have received amounts on account of execution of works contracts to a tune of Rs.56,44,500/- and on account of car parking and service tax payments, an amount of Rs.10,73,384/- totaling to Rs. 67,17,884/- against which we have reported a turnover of Rs. 21,22,500/- only for the period from December'2005 to March'2006 resulting in short reporting of turnover of Rs.45,95,384/-. 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 the APVAT Act'2005 as admitted by your good self in the revision show cause notice itself.

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, builders 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 the credits or installments or any other amounts like car parking and service tax payments received during that period. During the period from December'2005 to March'2006 we have sold the apartments and registered the same in favour of the prospective buyers, for an amount of Rs. 30, 05,000 with the Sub-Registrar's office and paid VAT @1% on the registration value which is the sale consideration received by us. We have declared the said turnover in our monthly returns for the said periods (photo copies of returns enclosed). It is not clear from the revision show cause notice where from the works contracts receipts turnover of Rs.56, 44,500/- is extracted. We therefore request your good self to kindly consider the turnover of Rs.30, 05,000/- for the period from December'2005 to March'2006



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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 revision notice, to enable us to file effective objections in the matter.

In the revision notice, tax of Rs. 15,071/-@3% was proposed on the purchases of sand, stone metal and bricks purchased from un registered dealers and tax of Rs. 55,032/- @11.5% on the purchases of doors, windows, RMC mix, plywood, glass and electrical goods. We submit that the doors and windows etc., are actually purchased from the local VAT dealers on which we have already paid 12.5% VAT to our suppliers. The statement of purchases is enclosed herewith for your kind verification. Hence levy of tax on the purchases from VAT dealers is illegal. In fact there is no purchase tax that has been provided in the Act. Further we submit that sand, stone, metal and bricks are purchased from non VAT dealers to an extent of Rs. 5,02,356/-. All these non VAT purchases are used in the construction of Apartments on which we have opted for composition and paid tax @1% at the time of registration of the Apartments. As the goods are used in the construction, the property in these goods is already included in the value of the Apartments and hence the levy of tax on these non VAT purchases is also not correct.

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, which read as follows upto August,2006:-

“Any dealer having opted for composition **under clauses (b),(c) and (d)**, purchases or receives any goods from outside the State or India or from any dealer other than ACT dealer in the State and **uses** such goods in the execution of the works contract, such dealer shall pay tax on such goods **at the rates applicable to them under the Act** and the value of such goods shall be excluded for the purpose of computation of turnover on which tax by way of composition at the rate of 4% is payable”.

It may kindly be seen from the above that the above clause (e) is applicable only to a dealer, who has opted for composition under all the three clauses i.e., (b) (c) and (d) and it does not apply to a dealer, who opts under any one of the three clauses. The language of the clause is very clear and there is no possibility for second opinion. In our case, we have opted for



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composition only under clause (d) and hence the said clause (e) cannot be applied to our case. For this ground alone, no tax is payable on the goods specified in clause (e) by us.

Secondly, without prejudice to the above, we submit that even if for any reason the said clause (e) is made applicable, no tax need to paid a 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 in 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 o n 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 25% 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 25% but the rate of tax of 4% has been retained. On this score, all the ADCS have allowed the appeals also. 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.

April'2006 to October'2006:

Similarly for the period from April'2006 to October'2006, your good self has adopted output turnover of Rs. 2,65,19,128/- against the turnover of Rs. 2,10,19,500/- reported in the monthly returns alleging short reporting of a turnover of Rs. 54,99,628/-. In this connection we submit that we have reported a turnover of Rs.2,10,19,500/- in our monthly returns for the tax periods



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April'06 to October'2006 and paid tax@1% along with the returns in Form VAT 200 for the said periods. It is not clear from the revision notice where from the output turnover of Rs. 2,65,19,128/- has been taken. We therefore request your good self to kindly adopt the turnover of Rs. 2,10,19,500/- only for the said periods and drop further action in the matter. If it is proposed to proceed further on this issue we request to kindly furnish the break up for the figures adopted in the revision notice.

In the notice tax @ 11.5% on a turnover of Rs. 2,30,339/- was proposed as the purchase bills for plywood, glass, water proofing chemical, doors, cement etc., were not produced for verification. We enclose herewith the statement of purchases from local VAT dealers along with TIN. We request you to kindly verify the same and drop the proposal to levy tax @ 11.5%. We further submit that sand, stone, metal and bricks were purchased from non VAT dealers which are used in the construction of Apartments. As the property in the goods is transferred and the tax on the Apartments was paid at the time of registration we request you to kindly drop proposal to levy tax on these purchases. The other objections on this issue mentioned above hold good for this period also.

We further submit that we have already paid tax of Rs. 79,847/- on 30/12/2006 and Rs.17,046/- on 17/01/2007 on the un-registered purchases and the details of payment are enclosed herewith. We request your good self to kindly verify the same and give credit against our dues. We submit that we shall be availing the opportunity of personal hearing in the matter.

Yours truly,

For SUMMIT BUILDERS,



Managing Partner