

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES: ASSAM
KAR-BHAWAN, DISPUR, GUWAHATI-6

No: CTS-10/2015/85

Dated Guwahati the 18th Dec.,2015.

M/s Dynamic Services, 139 Dakshindare Road, Kolkata-48 has filed an application under section 105 of the Assam Value Added Tax Act,2003 seeking clarification whether on board housekeeping services of Guwahati based on Trains is taxable or not under the Assam Value Added Tax Act, 2003.The application is found in order and hence admitted.

Ms. Angira Bania and Banajita Bhattachargee Advocates appeared on behalf of the petitioner and placed their submission. The petitioner entered into a contract agreement with N.F. Railway, vide contract agreement No. GHY/Sr CDO/OB HS/05 of 2015-16 dt.13-08-15 for a period of three years from 09-05-2015 to 08-05-2018 for an amount of Rs.5,13,93,273.00. They pleaded that the said contract agreement is purely a labour and service contract and there is no element of transfer of property in goods and therefore no scope for levy of tax. They contended further that the materials mentioned in the contract are consumables which cannot be taxed as per provision of Rule 10(e) of the Assam Value Added Tax Rules, 2005.

Citation was also made from the law declared by Madras High Court in the case of State of TamilNadu vs Bijay Kumar Mills Ltd(1996) 100 STC 213 (MAD) and by the Hon'ble Supreme Court of India in the case of Gannon Dunkarly Company Ltd vs State of Rajasthan (1993) 88 STC 204 (SC). As such they pleaded that the instant contract agreement is beyond the purview of the AVAT Act, 2003 in view of statutory provision u/s 11(c) of the said Act and Rule 10 (e)of the AVAT Rules, 2005. Hence no deduction of tax at source u/s 47 of the said Act is permissible.

Perused the submission and heard the Advocates. Provision of the Assam Value Added Tax act and Rules are also examined. Also perused the contents of the contract agreement. In Hindustan Shipyard Ltd vs State of Andhra Pradesh (2000) 119 STC 533, Hon'ble Supreme Court of India observed that there may be three categories of contracts. (I) The Contract may be for work to be done for remuneration and for supply of materials used in the execution of the work for a price (II) It may be a contract for work in which the use of materials is ancillary or incidental to the execution of the work and (III) It may, be a contract for supply of goods where some work is required to be done as incidental to sale. The first contract is a composite contract consisting of two contents one of which is for the sale of goods and the other is for work and labor. The second is clearly a contract for work and labour not involving any sale of goods. The third is a contract of sale where the goods are sold as chattel and the work done is merely incidental to sale.

On examination of the contract between the petitioner and N.F. Railway and annexure B of the contract showing break-up of rates, it is evident from Sl. No.17,18 and 19 that the cost of cleaning chemicals/mosquito repellent disinfectant , toiletries cost of accessories (Cleaning Tools) have be worked out separately for a price. The contract itself is a composite contract for work to be done for remuneration and for supply of materials used in the execution of work for a price. This is not a contract where materials are accessory or incidental to the execution of the work without any separate price element for the materials in the context of the text of the contract.

It is therefore clarified that the materials enumerated under Sl 17,18 and 19 of the break-up of rate will be exigible to tax under the Assam Value Added Tax Act, 2003 at the appropriate rate.


Sd/-
(Shri Anurag Goel)
Commissioner of Taxes, Assam
Dispur, Guwahati-6

Memo No: CTS-10/2015/85-A

Dated Guwahati the 18th Dec., 2015.

Copy to:

1. The Principal Secretary to the Govt of Assam, Finance Deptt. for favour of information.
2. Addl. C.T. Assam/J.C.T.(All), Assam for information and necessary action.
3. D.C.T.(All) for information and necessary action.
4. A.C.T./S.T.(All) for information and necessary action.
5. M/s Dynamic Services, 139 Dakshindare Road, Kolkata-48 for information.


(Shri P.K.Das)
Joint Commissioner of Taxes, Assam
Dispur, Guwahati-6


19/12/15