

**GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES; ASSAM; KAR BHAWAN
DISPUR::GUWAHATI**

ORDER

Dated Dispur, the 30th April, 2015

No. CTS-2/2009/356: M/s Saran Industries, Antara Tower, Danish Road, Pan Bazar, Guwahati filed an application under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification as to whether packing materials namely glass bottles, plastic bottles, aluminium caps, plastic caps, label, plastic sleeves, gum, BOPP tape, carton, preform, plastic containers used by a manufacturing unit for packing of finished goods are liable to entry tax.

It has been submitted by the dealer:

- (a) That, as per provision of section 10(2) of the AVAT Act, 2003, there is a deemed sale of packing material along with finished goods and the State Government is getting VAT on the sale price of finished goods which includes packing materials also;
- (b) That, legislative intention behind the amendments brought about in the Assam Entry Tax Act, 2008 by Assam Gazette No. 188 dated 2nd September, 2014 is to tax the online purchase of goods and not to tax raw materials of a manufacturing unit and the raw material in broader sense includes packing materials, as well.

Perused the submission. Section 3(1) of the Assam Entry Tax Act is the charging section which creates the liability and stipulates that there should be levied and collected an entry tax on the entry of specified goods into any local area for consumption, use or sale therein at the rate specified against each item in the Schedule.

Section 3(2) describes that if such specified goods are brought into local area by the dealer registered under the AVAT Act, 2003 for the purpose of resale of such goods then the dealer is not liable to pay any entry tax. Packaging is adopted to require safety measure and sales promotion and not linked to production and sale.

The dealer has also represented that, recently, the Hon'ble Gauhati High in case of Tata Tea Ltd. v. State of Assam [WP (c) No. 3938/2009] had the occasion to consider somewhat similar situation. This matter was also considered in addition to the relevant existing provisions of the law.

In the instant case, the delivery and supply of goods is very specific. In other words, the liquor does not contain the elements of packaging goods either as substances or consideration. The actual sales and deemed sales in case of transfer of property in goods in the execution of work contract are of same genre following the 46th amendment of the Constitution of India and insertion of Article 366(29A). The rationality of same genre is not applicable in case of packaging goods where products viz., the liquor do not have a reasonable relation to the packaging materials. The differentiation which is the basis of classification is very distinct in this matter.

With regard to the first question in SI. No (a), I am of the opinion that there is no deemed sale of packaging goods based on the following grounds:

- (a) No separate price has been charged for the packaging goods in the invoice.
- (b) There is no expressed or implied agreement for the sale of such packaging goods.
- (c) The petitioner is only a license holder under the Excise Act and registered under the VAT Act to manufacture and sale IMFL.
- (d) The packaging materials do not form the part of the bargain, pricing or consideration. Only the brand of the product is priced. So there is not applicability of section 10(2) in this case.

With regard to the second point in Sl. No. (b), it is clarified that there is a clear distinction between the raw materials and packaging goods. The packaging goods are external attachment to wrap the product to protect from the damage and also to serve as advertisement to promote sales. It is not an ingredient or component of the products. The raw materials are the ingredient of the products which are processed to manufacture the finished or final goods. So the raw materials are basic materials that are used to make a product and form its internal part, whereas the packaging goods are materials used to wrap and protect goods that are sold in the market and it is an external part of the product.

In view of above, it is clarified that Entry Tax will be payable in respect of packing materials, namely glass bottles, plastic bottles, aluminium caps, plastic caps, label, plastic sleeves, gum, BOPP tape, carton, preform, plastic containers used by a manufacturing unit for packing of finished goods even when they are sold along with the contents provided the sales of content/finished goods is subjected to VAT in the State of Assam.

Sd/-
(Dr. Ravi Kota, IAS)
Commissioner of Taxes, Assam
Guwahati

Memo No. CTS-2/2009/356:-A

Dated Dispur, the 2nd May, 2015.

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/ Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioner of Taxes, (All) for information.
4. The Assistant Commissioner of Taxes, (All) for information.
5. M/s Saran Industries, Antara Tower, Danish Road, Pan Bazar, Guwahati for information.

(A Choudhury)
Joint Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

MPS
21/5/2015