

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

ORDER

Dated: Dispur the 2nd April/2015

NO. CTS-3/2013/ 124 : A clarification under No. CTS-3/2013/82 dated 3rd May 2014 was given on an application U/s 105 on taxability of bulldozers and tractors when sold as new and when sold as condemned. The Applicant M/s Poddar Disposal Co. ,95/26 Cossipore Road Kolkata-700002, West Bengal has filed a review application for reviewing the aforesaid clarification. The application was found in Order and hence admitted.

Shri N.R. Purohit Advocate appearing for the Applicant submitted that the word condemn which is a verb expresses an action or state of being and ONGC has used the adjective form of the said verb, i.e condemned to officially declare the goods as unfit for use and otherwise the goods are covered under SL. No.65 and Sl. No. 96 of Part A of Second Schedule and since the goods are completely made of iron and steel and has become unfit for use ,useless and are in depleted and unusable condition therefore even if the same are sold as condemned or scrap the same are covered under Sl. No. 118 of Part A of Second Schedule and the Applicant deals in scrap of iron and steel and will sale the goods as scrap of iron and steel. Shri Purohit also submitted that the goods sold are bulldozers and tractors and since the same has become unusable for ONGC for their own purpose they are disposing them and have identified them as condemned bulldozers and tractors and in the particular trade in which the applicant is engaged condemned is understood as scrap. It was also submitted that adding the prefix condemned to a commodity already in the taxable Schedule of Goods will not have the effect of changing the nature of goods so as to treat the same as unclassified goods taxable @14.5% under Entry Sl. No.1 of Fifth Schedule of the Assam Value Added Tax Act,2003. Shri Purohit also placed reliance on the ratio in the case of Shri Chitta Ranjan Sahavs State Of Tripura And Ors. [1990 79 STC 51 Gauhati] wherein the Hon'ble Court has clearly opined that **'Where no definition is provided in the statute for ascertaining the correct meaning of a fiscal entry the same should be construed as understood in common parlance or trade or commercial parlance. Such words must be understood in their popular sense. The strict or technical meaning or the dictionary meaning of the entry is not to be resorted to.**

The matter was re-examined by perusing the reports submitted by the Assistant Commissioner of Taxes, Sivasagar and looking at the photos of the condemned bulldozer and tractors. The report of the Assistant Commissioner of Taxes, Sivasagar states that

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the goods condemned bulldozer and Tractors which ONGC is selling by way of auction in which the applicant has participated are made of iron and steel. The tractors sold as condemned are tracked tractors (different from tractors used for agriculture purpose) which are used for construction purposes.

Taking into consideration all the submission made by the learned Advocate for the Applicant, the report submitted by the Assistant Commissioner of Taxes, Sivasagar and the case laws cited it is clarified that condemned bulldozers and Tractors (excluding tractors used for agriculture purposes) sold by ONGC through auction to the Applicant shall be chargeable @5% under Entry Sl. No. 118 of the AVAT Act, 2003.


Sd/-
(Dr. Ravi Kota, I.A.S)
Commissioner of Taxes, Assam,
Guwahati

Memo No. CTS-3/2013/124

Dated Dispur, the 4th April, 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, Sivasagar for information.
5. M/s Poddar Disposal Co. C/o Sri N.R. Purohit , Advocate, 3rd floor Saraf Building Annexe. A.T. Road Guwahati-781001.


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


09/09/15