

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES:::ASSAM:::GUWAHATI

ORDER

Dated Dispur, the 7th December, 2015.

No.CTS-58/2015/34 : M/s Tata Chemicals Ltd., Mother Teresa Road, Narangi, Guwahati-26 filed an application under section 105 of the Assam Value Added Tax Act, 2003, seeking clarification as to the applicable rate of VAT on micronutrients, plant growth promoter/regulator . The application is found in order and is therefore admitted for adjudication. Shri S.K. Surekha, Consultant and Authorized Representative of the firm appeared for hearing and filed written submission besides the arguments and papers made over with the original application. Perused his submission, examined the relevant provisions of law and also enquired into other factual aspects.

To begin with, the applicant has fairly admitted that micronutrients and plant growth promoter/regulator are not included in Sl. No.99 of second schedule, Part-A of the Act as revealed from column 7 of the clarification application. The main contention raised therein was that “micronutrient” and “plant growth promoter/regulator” attracts tax @5% in the eastern states of Bihar, Jharkhand, Odissa and Tripura and whereas these are exempt item in the state of West Bengal. As such, these items ought to be treated as being covered by the entry Sl. No.19 of the second schedule, Part A of the Assam Value Added Tax Act, 2003 since essentially these are used as fertilizes of the soil and/on crop and therefore, the description “Chemical fertilizer ” employed in the said Sl. No.19 of the second schedule should comprehend these item too. In the written submission, the applicant firm further contended fertilizers connote any substance used or intended to be used as a fertilizer of the soil and/or crop. The specification of fertilizer laid down in the fertilizer control order (FCO) issued by the Government of India include simple fertilizer, mixture of fertilizers, micronutrients, fortified, fertilizer, bio fertilizer, organic fertilizer non-edible deoiled cake etc. According to the petitioner, although the note No.1 of the second schedule says “micronutrients and plant growth promoter/regulator are not covered by the scope of this part-II”² the entry Sl. 19 of the second schedule, Part-A, General will nevertheless comprehend the items “micronutrients and plant growth promoter/regulator.

To resolve the issue, it would be appropriate to engage our attention to the fact as to how the term “Chemical fertilizer is understood in common parlance of the trader users. The Chief Fertilizing materials obtained chemically and understood as such by farmers, grower, traders etc. are such ingredients as Nitrogen (N), phosphate (P₂ O₅) and potassium (K₂O). On the other hand, micronutrients being small amounts of trace elements like boron, chlorine, copper, zine, iron, manganese and molybdenum needed for better crop yields are not understood as fertilizers in common

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parlance of the former and users. In fact this is the reason why a few states have enumerated "micronutrients, plant growth promoters/regulator" specifically as separate commodities inspite of the fact of having another entry "Chemical fertilizer" with the same rate of tax. But since the same has not been done by the authorities while enumerating taxing entries under the AVAT Act, 2003, there appear no case for levying tax at the lower rate of 5% on "micronutrients and plant growth promoter/regulator" through extended interpretation of the words "Chemical fertilizer" used in Sl. No.19 of the second schedule, Part-A of the AVAT Act, 2003 so as to maintain parity with other states. Such thing can be done only by prescribed legislative procedure and not by invoking power conferred by the present ^{petition} ~~section~~ 105 of the Act. It would also be worthwhile to ever remember in so far as interpretation of a taxing statute is concerned, there is no room for applying principle based an equity.


It is therefore clarified that the commodities namely "micronutrients and plant growth promoters/regulator" not being covered by any enumerated entry of the first, second, third and fourth schedule of the AVAT Act, 2003 shall attract VAT @14.5% as per entry Sl. No. 1 of the fifth schedule of the same Act.

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

Memo No.CTS-58/2015/34-A
Copy to:-

Dated Dispur, the..9th December, 2015.

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 Tata Chemicals Ltd., Opp.SBI, Mother Teresa Road, Narangi, Guwahati-26 for information.


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

ms
9/12/15