

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

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**ORDER**

Dated Dispur, the 3<sup>rd</sup> April, 2017.

No.CTS-58/2015/119: A clarification was issued vide order No.CTS-58/2015/10 dated 28.8.2015. The application for clarification was filed by M/s Atanu Ganguly seeking clarification whether the VAT is required to be paid on the hiring charges received by them from NF Railway, Dibrugarh. While issuing the clarification it was held that the transaction does not attract VAT.

However, after issuance of the order the matter was re-examined in depth and found that the transactions covered by the above quoted clarifactory order were essentially for the transfer of the right to use the involved goods namely launch vehicles belonging to M/s Atanu Ganguly by the transferee NF Railway (construction) as per tests laid down by the Hon'ble Supreme Court of India in the case of Bharat Sanchar Nigam Ltd. and another Vs Union of India and other (2006) 145 STC 91 (SC-3 Judges). Therefore the matter was referred to Government for review of said order. Now, Government vide letter No.FTX.243/2013/93 dated 18.03.2017 conveyed approved for review of the orders No.CTS.58/2015/10 dated 28.8.2015 and No.CTS.51/2011/280 dated 10.5.2016.

In view of above position the orders are reviewed as below :-

After going through the special specification as contained in the Contract Agreement No.CON/BB/DBRI/90 dated 4.7.2012 and more particularly the specifications under Para 1.1. A, 31 & 33, it is clear that the instant contract agreement is exigible to tax as there is transfer of right to use the goods which falls under the ambit of "deemed sale". Further, similar matter of the petitioner was clarified vide order No.CTS-50/2005/196 dated 26.11.10 and instant matter also is squarely covered by the said order.

Sd/-

(Anurag Goel, IAS)  
Commissioner of Taxes, Assam  
Dispur, Guwahati-6

Memo No. CTS-58/2015/119-A

Dated Dispur, the 5 th April, 2017.

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favor 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.
6. M/s. Atanu Ganguly, I/IA, Vansittart Row, Room No.7, 1<sup>ST</sup> Floor, Kolkata-700001 for information.

(A. CHOUDHURY)

Addl. Commissioner of Taxes. Assam.