

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

**

ORDER

Dated Dispur the 1st February, 2016.

No.CTS-62/2015/29: M.P. Bagaria & Co., Chartered Accountant, Dibrugarh has filed an application u/s 105 of the Assam Value Added Tax Act, 2005 seeking clarification on the following points :-

1. Whether in the clarification order No.CTS-51/2011/280 dated 6th June, 2015 the liability under Assam Value Added Tax Act for item/entry No.3 of the Fifth Schedule read with Section 2(28) for consequential deduction under Section 47 (2) of the Assam Value Added Tax Act for hiring has been determined.
2. If the Assam Value Added Tax Act liability under the provisions for item/entry No.3 of the Fifth Schedule read with Section 2 (28) for consequential deduction under Section 47(2) of the Assam Value Added Tax Act, 2003 has not been considered in the said clarification, then whether the transactions/activities mentioned in the said clarification order and similar type of transactions attract any Assam Value Added Tax Act liability under item/entry No.3 of the Fifth Schedule read with Section 2 (28) for consequential deduction under Section 47(2) of the Assam Value Added Tax Act, 2003.

Perused the application.

Liability to pay tax in respect of a leased transaction arises by virtue of charging provision contained in Section 7 of the Assam Value Added Tax Act read with Section 10 and Fifth Schedule appended to the Assam Value Added Tax Act. Section 47 which provides for deduction of tax at source is only a machinery provision and is not a substantive provision. Unless there is a sale or deemed sale under the Assam Value Added Tax Act and unless there is liability to pay tax in respect of such transaction, the provision of TDS is not applicable.

The question as to whether, in a given case, there is or there is no transfer of right to use goods, is a question of fact and this fact can be determined on the basis of terms of the contract, which may govern a given transaction/case. It is needless to say that each case depends on its own facts.

In view of the above, it is clarified that the clarification issued vide No.CTS-51/2011/280 dated 6th June, 2015 was rendered in the context of a particular contract agreement and work order mentioned in the said clarification and the application of such clarification is confined/limited to that particular case. Hence such clarification will not and cannot be applied to any other case.

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

Contd. P/2

Memo No.CTS-62/2015/29-A

Dated Dispur, the 2nd February, 2016.

Copy to :-

1. The Principal Secretary to the Govt. of Assam, Finance Department, Dispur, Guwahati - 6 for favour of kind information of the Government.
2. The Addl. Commissioner of Taxes/Joint Commissioners of Taxes (All) for information.
3. The Deputy Commissioner of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s. M.P.Bagaria & Co., Chartered Accountant, Dibrugarh for information.



(H. Borgohain)

Joint Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

M.P.B.
02/2/16