

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

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**ORDER**

Dated Guwahati the 19<sup>th</sup> December, 2009.

No. CTS- 56/2005/196 : Sri Ujjal Baruah, Proprietor/Dealer, Dibrugarh has filed an application under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification relating to the levy, assessment and collection of tax on "rectified spirit" imported in to Assam. The application is found to be in order, hence admitted.

Sri Ujjal Baruah, Proprietor/Dealer appeared himself and placed his submission. He submitted that under "Section 3(2) of the Assam Entry Tax Act, 2008 provides that no entry tax shall be levied on such specified goods which are also taxable under the Assam Value Added Tax Act, 2003 "if such specified goods are brought into any local area by a dealer registered under the Assam Value Added Tax Act, 2003 for the purpose re-sale and such goods are sold inside the State and the dealer is liable to pay tax on the sales of such goods under the Assam Value Added Tax Act, 2003."

In this regard information was sought from Excise department. The Excise department vide their letter No. III-133/2009-2010/2 dtd. 04-11-2009 informed that "it may be mentioned here that spirit dispatched from distilleries are in over proof strength, and received in the Warehouse as such, in the measuring units of London Proof Litre. However the over proof spirit is reduced to Government approved fixed strength before issue to the retailers." Thus it evident that rectified spirit imported by the petitioner is unfit for human consumption. The strength is reduced by adding water by the petitioner as per Government approved fixed strength before issue to the retailers, which in common parlance is known as country spirit. In the case of Brindaban Alcohol V. CCT, Karnataka, [2007]7 VST,448(Karn), the Hon'ble Karnataka, High Court held that 'Rectified Spirit' and 'Ethyl Alcohol' treated differently for tax purpose was not a case of discrimination merely because chemical formula of both are same. It is held that "In the matter of levy of tax under the sales tax enactment what matters more, is how the product is understood in the market or commercial parlance. Here again such interpretation can arise only when the same product is sought to be differently taxed but when the same element gets a different name in the market and two different products are sold, though in reality the chemical combination may be same the comparison does not lead to an act of discrimination."

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So rectified spirit imported by the petitioner is not one and same as the country spirit. In common commercial parlance, rectified spirit and country spirit are two different commercial items. So, the petitioner will be liable to pay entry tax on rectified spirit which is not potable and VAT on potable country spirit i.e. potable alcohol, as both are different in commercial parlance.

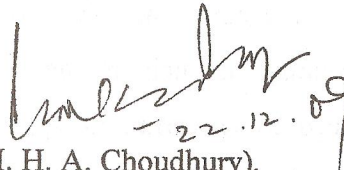
Sd/-Sanjay Lohiya,  
Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

Memo No. CTS-56/2005/196 -A

Dated Dispur the 22<sup>nd</sup> December /2009.

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. Sri Ujjal Baruah, Proprietor/Dealer of "Rectified Spirit" Duliajan, Dibrugarh (Assam), for information.

  
22.12.09  
(M. H. A. Choudhury),  
Addl. Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

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