

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

Dated Guwahati, the 24th November, 2010.

NO.CTS-50/2005/196 : Shri Atanu Ganguly, 1/1A, Vansittont Raw,Kolkata-1 filed an application under section 105 of the Assam Value Added Tax Act,2003 seeking clarification as to whether there can be any levy of tax on providing of motor launch on purely daily hire charge basis.

Shri T.K. Bhattacharjee, Tax Consultant appeared and placed his submission. Copy of the contract agreement No.CON/BB/DBRT/70 DT. 8.6.09 is also submitted. He submitted that they have been supplying Motor launches on hire charges basis to NFR at Dibrugarh in connection with construction of Bogi beel bridge across river Brahmaputra since March,2009. The launches are given on purely daily hire charges basis. The manning, maintenance and repair of the vessel are to be undertaken by contractor and the fuels for running the vessels is to be procured and supplied to the vessel by the contractor. In case of break down of any vessel , similar type of other vessel has to be supplied by the contractor. All these points are elaborate in contract agreement between page 31 to 38 especially clause Nos. 2,3,6,7, 12, 13, 14, 20,23, 34 and 37. The clauses mentioned by the petitioner are as below :-

2. Each launch shall be provided with a properly qualified master/sarang and an Engine Driver having marine Certificate, in addition to four numbers of Khalasi and one cook (who knows cooking well) for survey/inspection party and touring officers in the launch shall be provided.
3. The launches shall be provided with adequate number of qualified crew having relevant statutory certificate, which shall be produced for verification as and when demanded by Engineer-in -charge (EIC). In addition, adequate and suitable helping hands for proper operation of the various activities connected with dredging shall be provided.
6. The contractor has to make his own arrangement for accommodation and food for the crew.
7. The contractor has to make his own arrangements for procurement and storage of adequate quantity of fuel and lubricant for uninterrupted operation of the launch/tug and other crafts. The Contractor has to arrange for storage and supply of portable water with tap facilities for drinking and other uses of vessels crew and operators.
12. Hire charges shall not payable for any day or part thereof or any period during which the launch/tug is not made available for services (i.e., survey, inspection etc.) due to any reason attributable to the contractor or his acts and deeds subject to clause 17 below.
14. Routine repairs and maintenance works shall be adjusted with mutual discussion with Engineer in charge such that the overall works schedule is not affected. In total maximum 48 hours may be allowed per month for maintenance of engines and other machineries, and payments for this period is allowable.
20. The crew of the launch shall have to work under the instruction of the Engineer-in-charge or his representative.
23. Operation of the launch shall be the responsibility of the contractor and any liability arising out due to damages etc. shall be the contractors' account.
34. The launches shall be used for Hydrographic survey and for carrying men and materials and for accommodation and general inspection etc. in river Brahmaputra.
37. The running charges including cost of POL shall be paid to the contractor strictly on the basis of actual movements of the launches, which is entered and countersigned in

Perused the submission and contract agreement is examined apart from the clauses mentioned by the petitioner. There are two other clauses in the contract agreement namely 31 and 33, the details of which is as below :-

31. The launches shall be physically taken over by the Engineer's representative after the same is mobilized to the place mentioned in schedule of this contract within the stipulated time and found satisfactory and in accordance with the specification and conditions laid down in this contract and as recorded during the initial inspection by the Authority. The Engineer-in-charge will thereafter issue a certificate in this regard indicating the date of taking over. Hire charges shall be payable to the contractor from the date recorded in the certificate as mentioned in Sl. No. 8 of Special Specifications of contract.
33. The launch shall be de-hired on the expiry of the period mentioned in schedule respectively until and unless the same is extended by the Engineer-in-charge in writing prior to expiry of the contract period. Mobilization and demobilization charges shall be paid only if the relevant terms and conditions of agreement are carried out successfully.

In this connection, it may be mentioned that Hon'ble Apex Court in the case of Bharat Sanchar Nigam Ltd. and Another -Vs- Union of India and other (2006) 145 STC 91(SC-3 Judges) held that to constitute a transaction for the transferred of the right to use the goods the transaction must have the following attribute:

- (A) There must be goods available for delivery.
- (B) There must be a consensus ad idem as to the identity of the goods.
- (C) The transferee should have legal right to use the goods consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee.
- (D) For the period during which the transferee has such legal right, it has to be the exclusion to the transferor, this is the necessary concomitant of the plain language of the statute viz. a "transfer of the right to use" and not merely a licence to use the goods.
- (E) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others.

It appears that the launches are hired for specific period of time. Further, the launches are physically taken over by the transferee and the same will be de-hired on the expiry of the stipulated period. It appears that effective and general control of the launches are handed over to transferee. During the currency of the agreement, all that transferor is required to provide the repairing/maintenance and personnel, that too under the direction and supervision of the transferor.

In view of the above findings, it is evident that the agreement in question is transfer of the right to use the launches which comes under the purview of "deemed sale" under section 2(43)(iv) of the Assam Value Added Tax Act, 2003 and the same is exigible to tax under the Assam Value Added Tax Act, 2003.

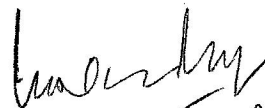
Sd/-(Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-50/2005/196-A

Dated Guwahati, the 30th November, 2010.

Copy to :-

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes (All) for information.
3. The Deputy Commissioners of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. Shri Atanu Ganguly, I/A, Vansittont Raw, Kolkata-1 for information.



(M.H.A. Choudhury),^{30.11.10}
Addl. Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

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