

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

\*\*\*

ORDER

Dated Dispur, the 8<sup>th</sup> October/ 2013.

No. CTS-14/2012/256 M/s. PCM Cement Concrete Pvt. Ltd., Siliguri, West Bengal filed the petition under Section 105 of the Assam Value Added Tax Act, 2003, seeking clarification as to whether the work of "Welding of 52 Kg.(72 UTS)/52Kg.(90 UTS) Rails in situ or the depot or at location decided by Railway by using own Mobile Flash Butt Welding on non-running lines/running lines or on cess or well consolidated formation or ballast Bed' is taxable under VAT.

Shri Ashok Agarwal, authorised representative appeared on behalf of the petitioner and filed his submission. He also submitted copy of the contract agreement No.Dy. Chief Engineer/Con/N.F.Rly./Mlg. Certificate provided to the contractor for similar work by the Government of West Bengal towards non-application of VAT. He submitted that the work of Mobile Flash Butt is labour oriented work and there is no involvement of transfer of property in goods in such execution.

Perused the submission and provision of the Assam Value Added Tax Act, 2003 is examined. Section 2(57) of the Assam Value Added Tax Act, 2003 reads "Works Contract includes any agreement for carrying out for cash, deferred payment or other payment or other valuable consideration, the building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property."

Further, as per provision of Section 2(48) of the Assam Value Added Tax Act, 2003 "tax" means a tax on sale or purchase as the case may be, payable under this Act and includes any amount payable by way of composite tax.

Again, as per Section 2(43) "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another for cash or for deferred payment or other valuable consideration & includes (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of an Works Contract.

Therefore, there has to be a transfer of property in goods in a Works Contract. But in the present case, it appears that there is no transfer of property in goods and therefore the contract does not come under the definition of Works Contract as provided in section 2(57) under the Assam Value Added Tax Act, 2003 and therefore it is also not "sale" as per provision of AVAT Act, 2003. Hence, tax is not leviable under the provision of the Assam Value Added Tax Act, 2003.

Sd/-Dr. J.B.Ekka  
Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.

Memo No. 14/2012/256- A  
Copy to :-

Dated Dispur, the 21 October, 2013.

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. PCM Cement Concrete Pvt. Ltd., Siliguri, West Bengal for information.

  
(R.D. Borah)

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

  
21/10/13  
\*\*\*\*