

GOVERNMENT OF ASSAM  
OFFICE OF THE COMMISSIONER OF TAXES :::: ASSAM :::: KAR BHAWAN

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ORDER

Dated Dispur, the 24<sup>th</sup> February, 2009.

No. CTS-14/2008/404: M/s. Gayatri –ECI(JV), Dhaligaon, Bongaigaon filed an application under Section 105 of the Assam Value Added Tax Act, 2003, seeking clarification as to whether the charging of sale tax on royalty by the Department of Forest is legally tenable or not. The application is found to be in order, hence admitted.

Shri S. Mukherjee, A/R appeared and placed his submissions. He also submitted a number of judgment of Court cases. Perused the submission.

The brief background of the case is that the petitioner is extracting stones/pebbles/gravels/sand as per the order of Forest Department on payment of royalty and VAT and using the same in execution of works contract awarded by National Highway Authority of India (NHAI).

The contention of the petitioner is that they are extracting sand, pebbles, gravels and stones, etc. allotted by Forest Department on payment of royalty as prescribed in Second Schedule as per lease granted under Assam Minor Mineral Concession Rule, 1994. The petitioner states that the royalty paid against lease is not sale price of stone, sand, etc. In support of his contention the petitioner has referred to orders of Hon'ble Supreme Court in State of H.P. and Others –Vs- Gujarat Ambuja Cement Ltd., and another (2005) 142 STC 000IX, Gujarat Ambuja Cement Ltd and Other-Vs-Assistant Excise and Taxation Commissioner [2000] 118 STC 0315 (HP High Court), Tamilnadu Magnesite Ltd. – Vs- State of Tamilnadu and another (2007) 009 VST (Madras High Court), Associated Cement Co. Ltd. – Vs- Government of A.P.(1985) 058 STC 0223 (AP High Court), etc. The ratio in all these judgments is that no sales tax is leviable on amounts either Royalty or dead-rent payable under the statutory lease deeds.

To ascertain factual position with regard to the transactions with the applicant, the CCF(T), Assam, was requested to clarify the matter. He has since clarified the matter vide letter No. FGT.58/MISC/PERMIT/NHAI dated 17.02.2009 that "Government of Assam has allowed M/s. Gayatri ECI(JV) to extract 6,00,000 cu.m of stone from Dudhnath and Nakkati – 2 hill stone quarries on payment of simple Government royalty and VAT for execution of NHAI works under packages No. AS-10 and AS-11 by them vide Government letter No. FRM/117/2005/15 dated 29.10.2005. Government has allowed extraction of stone materials by them at the rate equivalent to Government royalty alongwith the payment of VAT. No mining lease has been granted to them under Assam Minor Minerals Concession Rule, 1994".

On perusal of Government letter No. FRM117/2005/15 dated 29.10.2005 addressed to CCF(T), Assam, it is seen that Government has allowed extraction of specified quantity of stones on permit on payment of simple Government Royalty and VAT during the period of project. There is no order of granting lease to the petitioner. Therefore, as per the clarification given by CCF(T), Assam and the permission letter from Government, it is clear that no mining lease has been granted to the petitioner. Therefore, the cases referred to by the petitioner do not apply in this case.

It would appear from the actual course of conduct of the parties namely Forest Department of Assam and M/s. Gayatri ECI(JV) that the consideration i.e. royalty realized by the former is essentially sale price against the specified quantity of stone/boulder lifted by the latter.

Therefore, Forest Department being the seller is liable to pay VAT on consideration i.e. royalty charged by them. The Forest Department is rightly charging VAT from the petitioner and depositing in the Government account.

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

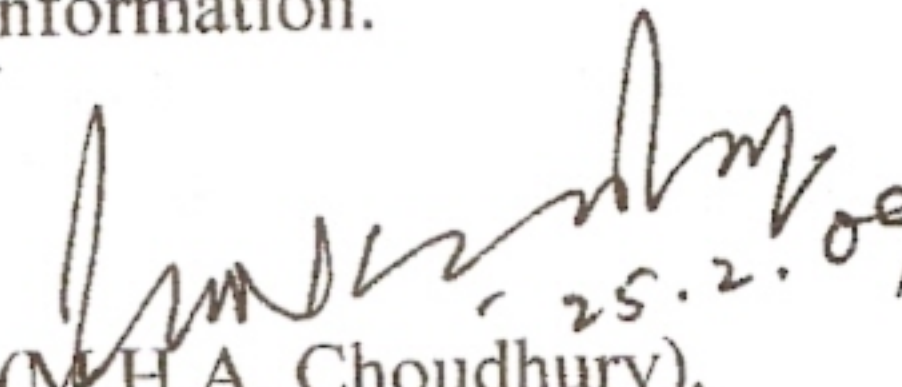


Memo No. CTS-14/2008/404-A

Dated Dispur, the 25<sup>th</sup> February, 2009.

Copy to :-

- 1) The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information of the Government.
- 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) M/s. Gayatri -ECI(JV), Dhaligaon, Bongaigaon for information.

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

31/2/09  
25/2/09