

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

ORDER

Dated Dispur, the 13th July, 2015.

No.CTS-10/2015/14:- The petitioner, M/s Contemporary Brokers Private Limited, has filed a petition dated 03.02.2015 seeking clarification as to whether they can charge VAT (plus interest) at the rate of 1% or 5% to the registered buyer in case of conversion of transaction of purchase of Tea from Export to purchase for internal purposes.

The submissions made on behalf of the petitioner are as under:

- I. that, a registered buyer purchased Tea from Auction Sale through the petitioner for export during 2010-11 and 2011-12;
- II. that, for above consideration, the tax was zero percent the purpose being the Export and;
- III. that, but the buyer did not submit Form-56 and now the buyer has requested the petitioner to convert the purchase for internal purposes.

And hence the above question as to whether the petitioner can charge the registered buyer with VAT (plus interest) at the rate of 1% or 5% now.

Perused the petition. I have also given my anxious consideration to the submission of the petitioner made before me on 20.03.2015 and 30.04.2015.

For better appreciation of the legal aspect, it is necessary to discuss relevant sections in AVAT Act 2003, which read as under:

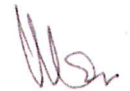
1. Under the provision of Section 10(1)(b) of the AVAT Act, 2003, the item specified in the Fourth Schedule are taxable at the point of first sale in the State.
2. The item 'tea' is taxable at **5 (five) percent** on first sale vide entry 20 of the Fourth Schedule.
3. Section 10(3) of the Assam VAT Act, 2003 starts with a **non obstante clause** and therefore **it has an overriding effect over other provisions of the Act.**


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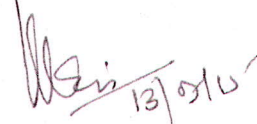
4. Section 10(3) deals with tea sold through Gauhati Tea Auction Centre (GTAC) and it specifies a special rate of tax of **half percent** for tea sold through direct auction in GTAC and two percent for private sale of tea with the rider that tea must be lying in the registered warehouse at the time of private sale.
5. In respect of tea sold in auction at GTAC or private sale through broker of GTAC, **the tax is payable by broker as deemed dealer** despite the fact that the broker are not the owner of such tea. [Section 10(3)(ii)]
6. Any dealer, who purchases tea at or through GTAC and then sells such tea in Assam, is deemed to be the first seller and accordingly he is liable to pay five percent tax. But he is entitled to claim set off of the tax paid on purchase at auction from his tax liability [see section 10(3)(iii)].
7. Tea sold in auction at GTAC or private sale through broker of GTAC after suffering tax either at 0.5% or 2%, as the case may be, under the AVAT Act, if is further sold in the course of inter-state trade or commerce **by a registered auction buyer**, the rate of CST is merely 0.25% w.e.f. 31-05-2008 against declaration form "C". This is in pursuant to notification issued under Section 8(4) of the CST Act, 1956. **If declaration form is not produced the transaction is being taxed at 5%, equivalent to State VAT rate.**
8. Provision of Section 10(3) of the AVAT Act **is a special provision which prevails over general provision.**

Now in the light of above legal background, the transaction of sales in course of export has to be examined.

Normally, the broker **does not pay any tax when tea is sold in auction for the purpose of sale in the course of export** provided 'certificate of export' in form 56 under the AVAT Rules is furnished to the broker. Therefore, if follows that the provision of Section 10(3) of the AVAT Act with regards to 0.5% tax on auction sale is not applied to the sale of tea meant for export. This being so, when an auction buyer does not furnish certificate of export' in form 56, the sale of tea would be liable to be taxed at 5% similar to inter-State sales of tea not supported by "C" forms.

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In view of the foregoing and while exercising powers conferred on the undersigned under section 105 of Assam Value Added Tax Act, 2003, the said petition dated 03.02.2015, filed by M/s Contemporary Brokers Pvt Limited, is disposed of with the clarification that in this case the sale of tea would be liable to be taxed at 5% similar to inter-State sales of tea not supported by "C" forms.



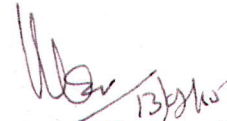
(Dr. Ravi Kota, IAS)
Commissioner of Taxes, Assam
Dispur, Guwahati-6

Memo No. CTS-10/2015/14-A

Dated Dispur, the 13th July, 2015.

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes, (All) for information.
4. The Assistant Commissioners of Taxes, (All) for information.
5. M/s. Contemporary Brokers Pvt. Limited, 2 A, CENTRE POINT, GS ROAD, ULUBARI, GUWAHATI – 781007 for information.



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