

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

ORDER

Dated Dispur the 29th February/2016.

No.CTS-42/2011/158 : M/s Oil India Limited (herein after referred to as OIL), Duliajan filed a petition seeking clarification U/s 105 of the Assam Value Added Tax Act' 2003 on two questions raised by them.

The questions are as follows :

Question No. (1) :- With reference to amendment made vide Notification No.206 dated September 19, 2014 regarding issue of credit note where it has been mentioned that VAT element is not to be disturbed at the time of issuing credit note.

As per the said notification the amendment is effective from 19.09.2014. In this connection, we understand that the said amendment will apply to sales made on or after 19.09.2014 and accordingly Credit Note can be issued for discount offered on sales made up to 18.09.2014 with adjustment of VAT liability. But no adjustment of VAT will be made in credit note for sales made on or after 19.09.2014.

Question No. (2) :- With the amendments made vide Notification No.206 dated Sept. 19, 2004 in the provisions of definition of sale price [Sec 2(44)], levy of tax on sales [section 10] and adjustment in output tax [sec 13], it emerges that the impact of cash discount, trade discount or sales incentive on VAT payable can be given only at the time of issuing original invoice and subsequently VAT element cannot be altered/ disturbed by way of credit note issued for cash discount, trade discount or sales incentive.

It is understood that aforesaid amendment is issued based on the premise that purchasing dealer (s) take input tax credit based on the original invoice and hence VAT portion is not allowed to be altered. In this respect, we would like to submit that Crude Oil is goods of special importance as declared under Chapter IV of CST Act, 1956. Moreover, in terms of section 14 of Assam VAT Act, oil refinery is not eligible for input tax credit on the purchase of crude oil in the refining, manufacturing, processing or packing of any petroleum products specified in the Fourth Schedule.

Perused the petitioner's prayer. Clarification is given as below.

A close examination of the provision of the Assam Value Added Tax (Amendment) Act, 2014, which came into being from 19th September, 2014, would reveal that newly inserted sub-section (4) starts with a non-obstante clause meaning thereby that this provision will have over-riding effect, Section 10(3), in explicit term, provides that after issuing a sales invoice, if any credit note is issued on account of discount or sales incentives by a registered selling dealer to a purchasing

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registered dealer, such credit note will not disturb the tax component shown in the original invoice. Therefore, in relation to query No.1, it is clarified that this provision will be applicable in respect of sales made on or after 19th September, 2014.

With regard to query No.2, it is important to bear in mind definition of "sale price" as contained in section 2(44) of the AVAT Act, 2003 is applicable to all goods irrespective of their Schedule. The expression "output tax" as defined in section 2(33) means a tax charged or chargeable in respect of goods sold by a dealer. The opening paragraph of section 10, which provides for levy of tax on sales, in no uncertain terms, states that every dealer shall pay output tax on his taxable turnover. The applicability of section 10 is not restricted or confined to goods under VAT chain. While clause (a) of Section 10 covers all goods taxable on every sale falling under Second, Third and Fifth Schedule appended to the AVAT Act, 2003, clause (b) covers all goods taxable at first point of sale falling under Fourth Schedule of the AVAT Act. Section 13 of the AVAT Act deals with adjustment in output tax. Sub-section (3), inserted by the Amendment Act, 2014, is an overriding provision. Newly inserted sub-section (3) provides that after issuing a sales invoice, if any amount is allowed by selling dealer to a purchasing dealer as cash discount or trade discount or commission or sales incentives or otherwise through issuance of credit note, the selling dealer shall not reduce his output tax on account of such adjustment. Therefore, from a combined reading or provisions of section 2(44), 2(33), 10 and 13, as amended, it is amply clear that the tax component on sale of any goods, covered by any Schedule of the Assam VAT Act, as shown in the original invoice shall not be disturbed or reduced because of subsequent issuance of credit note for reasons mentioned above. Hence the amended provision will also apply to any item covered by Fourth Schedule including crude oil.

Sd/-
(Anurag Goel, IAS)
Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

Dated Dispur, the 01st March, 2016.

Memo No.CTS-42/2011/158-A
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.
4. The Deputy Commissioner of Taxes (All) for information.
5. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
6. M/s.Oil India Limited, Duliajan for information.

(A. Choudhury)
Joint Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

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01/03/16