

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

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ORDER

Dated Dispur, the 18 th August, 2016.

No. CTS-50/2011/152 - The petitioner M/s. Poddar Autocorp Pvt. Ltd., Guwahati, a registered dealer under the Central Sales tax Act, 1956, as well as under the Assam Value Added Tax Act, 2003, filed this petition in Form-76 as prescribed under Rule 57 of the Assam Value Added Tax Rules, 2005, seeking clarification as to whether;

1. The Company is entitled to purchase goods (as per separate list enclosed with the application marked as Annexure-II) in the course of Inter-State Trade or Commerce at concessional rate of tax on the strength of "C" Forms for use in the processing of goods for sale.

2. Whether the goods (As per Annexure-II) are liable to be incorporated in the certificate of registration?

3. The application seeking clarification is in conformity with the provision of Rule 57 of the Assam Value Added Tax Rules, 2005, and accordingly it is taken up for consideration to arrive at a logical conclusion.

Perused the application of the petitioner and also scrutinized Annexure-II with special reference to the goods recorded at Serial 1-17 ( As per Annexure-II).

Particulars of goods	Use thereof
1. Plants and machineries and spare parts thereof	For PDI of motor
2. Computer, Printer, Fax, Monitor	-do-
3. All Types of lubricants, Grease	-do-
4. Xerox Machine	-do-
5. Inverter, UPS	-do-
6. Car lift	-do-
7. Ceiling materials	For use in work shop & show room
8. Flooring tiles/industrial tiles	-do-
9. Acoustical Ceiling tiles	-do-
10. Glass	-do-
11. Display Board	-do-
12. Interior goods	-do-
13. Furniture	-do-
14. Aluminium composite panel	-do-
15. Aluminium channels	-do-
16. Air Conditioner	-do-
17. CC TV & security system	-do-

The petitioner is represented through their learned counsel R.K. Joshi, Advocate and submitted that pre-delivery inspection (PDI) is a process within the meaning of Section 8 (3) (b) of the Central Sales Tax Act, 1956, in automobile trades and as such the petitioner urged that they are entitled to purchase the aforesaid goods stated hereinabove for PDI of new vehicles and such item of goods need be inserted in their certificate of registration for purchase of such goods at concessional rate of tax in the course of Inter-State Trade or Commerce at the strength of "C" Forms. In support of this aforesaid submission, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in case of

THE COMMISSIONERS OF THE REVENUE

NOTICE

The Revenue Commissioners have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter mentioned therein.

The Commission has considered the matter and has decided to grant the relief requested in your letter.

Yours faithfully,  
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Chowgule & Company Pvt. Ltd.-Vs-Union of India (1981) 47 STC 124 (SC) and also the case of Orient Paper & Industries Ltd.-Vs-the State of M. P. (2006) 148 STC (SC) and also the provisions contained under Section 8 (3) (b) read with Rule 13 of the Central Sales tax Act (R & T) Rules, 1957.

Before arriving at a logical conclusion, it is necessary to discuss/analyse the word processing of goods for sale embodied under Section 8 (3)(b) of the Central sales Tax Act, 1956. The expression for use by him in the manufacture or processing of goods in Section 8(3)(b) of the said Act does not say that the goods in the manufacture of which the material purchased on the basis of the declaration is used, should belong to the manufacturing dealer or should be intended for sale by him alone. The requirement of clause (b) would be satisfied if the materials purchased on the basis of the declaration had been used by the dealer in the manufacture of goods intended for sale either by him or by other dealers for whom they were manufactured.

The word "process" has various sets of meanings depending upon the context. Various observations made in various cases are summarized as below :-

In CCE-Vs-Rajasthan State Chemical Works, AIR 1991 (SC) 2222 (3 Member Bench), various aspects of the term "process" have been discussed. Some observations made in this judgment are as follows :-

"Manufacture involves series of process. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. Each step towards production would be a process in relation to manufacture. Where any particular process is so integrally connected with ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, that process is want in relation to manufacture. The activity contemplated by definition of "process" is perfectly general, requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation or some material in order to its conversion to some particular stage".

The above definition is also upheld by the Apex Court in case of CCE-Vs-SD Pine Chemicals (P) Ltd., (1995) 99 STC 31C and also in case of Chillis Export House Ltd.,-Vs-CIT 1997 (92) Taxman 68 \*SC).

PDI is a after sale process of new vehicles and it is not integrally connected with the process of manufacture of automobiles in Automobiles Industries as because automobile of any description is dutiable under the Central Excise Act, 1994. Thus without payment of Central Excise Duty, no new vehicle can come out from the Automobile Factory without payment of Central Excise Duty.

From a cursory reading of Form No.49 pertaining to Automobile and Coach Building notified by the Government of India, Ministry of Finance (Department of Economic Affairs), New Delhi on 12/11/1958 vide Circular No.9 (88)ST/57 issued under Section 8(3)(b) of the Central Sales Tax Act, 1956 reveals that PDI is not a process of manufacture for sale of goods but an after sale service rendered to the valued customer before physical delivery of the chattel.

Charter 86-87 of Central Excise Act reveals that the automobiles are dutiable under tariff VAT 8702 and without payment of Central Excise Duty, the manufacturer of Automobile can not issue Central invoice cum challan and gate pass for removal of dutiable goods from their factory and in the instant case, the petitioner is not a manufacturer of automobiles but a retailer for which the petitioner have to do PDI before delivery to their customer and is a after sale service and not a process as urged for.

The citation quoted by the petitioner in his application seeking clarification for insertion of the aforesaid goods for PDI is not applicable in view of the aforesaid judgment of the Apex Court and the provisions of Central Excise Act, 1984 and provisions of Section 8(3) of the Central Sales Tax Act, 1956,

with reference to query 1 of the petitioner. However, item of goods at Serial 1,3 & 6 of the petitioner mention for PDI is integrally connected with the PDI a condition precedent for delivery of motor vehicles and as such item at Serial 1,3 & 6 of the petitioner may be clarified in affirmative.

As far as query 2 of the petitioner is concerned it is part and parcel to insert each and every item of goods a person intends to deal in the course of its business in his certificate of registration as prescribed under Section 7 (3) read with Rule 5(1) of the Central Sales Tax (R & T) Rules, 1957, in order to avail the benefit of concessional treatment of tax while purchasing goods either for sale or otherwise without which it shall be an offence as contemplated under Section 10(b) of the said Act.

From the above it is amply clear that for the purpose of PDI, the petitioner is not entitled to purchase the aforesaid goods at concessional rate of tax on the strength of "C" Forms in the course of Inter-State Trade or Commerce.

It is therefore clarified that the query of the querist at Serial 1 is partially allowed with special reference to at Serial 1,3 & 6 in affirmative and the rest of the Serials 2,4,5,7,8,9,10,11,12,13,14,15,16 & 17 are in negative.

Accordingly the petition is disposed of.

Sd/- Anurag Goel,  
Commissioner of Taxes, Assam,  
Guwahati.

Memo No. CTS-50/2011/152-A

Dated Dispur, the 18<sup>th</sup> August, 2016.

Copy to :-

1. The Commissioner Secretary to the Government of Assam, Dispur, Guwahati-6 for favour of kind information.
2. The Additional Commissioner of Taxes/Joint Commissioner of Taxes, (All) Head Office for information
3. The Deputy Commissioner of Taxes, (All) for information.
4. The Assistant Commissioner of Taxes, (All) for information.
5. M/s. Poddar Autocorp Pvt. Ltd., Guwahati for information.

43/19/2/16  
(H. Borgohain),  
Joint Commissioner of Taxes, Assam,  
Guwahati.