

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

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**ORDER**

Dated Dispur, the 3<sup>rd</sup> August, 2016.

No.CTS-58/2015/77 : The petitioner M/s Gulf Bio Analytical L.L.C filed a review petition on 21.12.2015 under section 105(6) of the Assam Value Added Tax Act, 2003, seeking review of earlier clarification issued by the Commissioner vide letter No. CTS-40/2013/159 dated 13.10.2015.

The Original clarification dated 13.10.2015 was issued by the Commissioner of Taxes, Assam holding that:

1. "Regarding query No 1- "Whether raising of adhoc/interim invoices for progressive payments by Gulf Bio Analytical, L.L.C., on M/S BCPL for supply of imported materials ( under direct import transaction), Indigenous materials ( under Interstate sale transaction), Design & Detailed Engineering & Construction, Installation, Inspection and Commissioning ( involving only labour and services) for the DLOA. BCPL/C&P/DLOA/A416-000-LB-TN-9500/ KPR/ WK-114 dated 10.07.2014 is liable to tax under AVAT Act 2003 and whether M/S BCPL is liable to deduct AVAT under section 47 of AVAT Act 2003?"

It is found that petitioner firm i.e. Gulf Bio Analytical, L.L.C. is liable to pay tax under section 18(1) (d) of that AVAT Act 2003.

2. Regarding query No 2- "Whether any of transaction of D.L.O.A. BCPL/C&P/DLOA/A416-000-LB-TN-9500/ KPR/ WK-114 dated 10.07.2014 is liable to tax under AVAT Act 2003 and whether M/S BCPL is liable to deduct AVAT under section 47 of AVAT Act 2003?"

The petitioner is liable for deduction of tax under section 47(1), 47(2) and 47(3) of the AVAT Act 2003 wherein there is a sale, works contract, lease or hiring of any other incidence of tax. Therefore, tax will be deducted at source accordingly in the case. However, if the petitioner thinks that he is liable to a lesser quantum of tax, he may obtain lower deduction tax certificate from the tax authority under whom he is registered."

On being aggrieved by the clarification dated 13.10.2015, the petitioner filed a petition dated 21.12.2015 under section 105(6) of the AVAT Act 2003 for reviewing the clarification dated 13.10.2015.

CA Mahabir Prasad Bagaria, FCA, Authorized Representative appeared on 16.02.2016 on behalf of the petitioner. He was heard. His submission are recorded as below:

1. That the contract awarded by the contractee BPCL, has 3 components; viz.
  - (i) Residual process design and detailed engineering- there is no transfer of property in goods.
  - (ii) Procurement & supply- there is direct export of Lab equipments by the petitioner to BCPL from countries outside India and very few items like gases, marble and furniture in the course of inter- state trade or commerce. All items are directly consigned to BCPL and BCPL has paid Entry tax for such items which are not covered under exemption notification FTX.58/2008/254 dated 20/10/2012.
  - (iii) Construction, installation, inspection and commissioning (para 2.1.1 DLOA) - the petitioner erected, installed and commissioned the lab equipments in BCPL plant.
2. That import and inter-state purchases are not liable to tax by State Government by virtue of the provisions of the Constitution and section 8 and 11 of the Assam Value Added Tax Act, 2003 and section 3 & 6 of the Central Sales Tax Act 1956.
3. That interim/adhoc invoices were raised for obtaining payments and that too after completion of import/ inter-state transactions. Mode of payment cannot decide the true nature of the contract as per Hon'ble Supreme Court judgment in Sentinel Rolling Shutter & Co (P) Ltd V Commissioner of Sales Tax- [ 1978] 42 STC 409 (SC).



4. That the provision of section 47 of the Assam value Added Tax Act, 2003, is applicable only in case of intra-state transaction and not in case of inter-state trade or in the course of import of goods in the course of import or export out of the territory of India. In support of this submission the Authorised Representative placed reliance on the ratio decided by the Apex Court in case of SAIL vs. State of Odissa (2000) 118 STC 297 (SC). In addition to the aforesaid judgement the Authorised Representative also placed reliance on the ratio decided by the Honourable Gauhati High Court in case of Allied Traders V State of Assam and Others [2002] 3 GLR 596.

After hearing on 16.02.2016 and considering the submission, it appeared that the clarification issued vide CTS-40/2013/159 dated 13.10.2015 needs to be reviewed.

Hence, an approval of the Government of Assam was sought for reviewing the earlier clarification dated 13.10.2015 vide letter No CTS-58/2015/40 dated 21-03-2016 under second proviso to section 105(6) of the AVAT Act 2003. The Government of Assam vide letter No FTX.243/2013/80 dated 12-07-2016 accorded the necessary approval for review of clarification dated 13.10.2015.

Perused the submissions. An examination and analysis of the contract document reveals that ultimate consignee is M/s Brahmaputra Cracker & Polymer Limited (BCPL), Dibrugarh, Assam [para 20.0 of Detailed Letter of Acceptance (DLAO)]. As per para 14 of Schedule of Prices (SoP) goods are required to be consigned to Owner i.e. Brahmaputra Cracker & Polymer Limited (BCPL). Most importantly, custom duties (including CVD, SAD) shall be payable by Owner i.e. BCPL. [Para 20 of SoP]. As per all the import documentation of lab equipments like Commercial Invoices, Packing List, Bill of Entry, Certificate of Origin and Air Way Bill, the **importer and consignee is Brahmaputra Cracker & Polymer Limited (BCPL)** and exporter is the petitioner i.e. M/s Gulf Bio Analytical L.L.C. It may also be mentioned that BCPL used Road Permits issued to them by Tax Department. Apart from export of lab equipment from other country, the petitioner i.e. M/s Gulf Bio Analytical L.L.C also made inter-State supplies of some items like furniture, marble and gases etc. to M/s BCPL and such items were also brought into Assam on the strength of Road Permits issued to BCPL and BCPL had paid due entry taxes thereon as those items are outside the purview of exemption notification.

It is important to note that law has to be applied to given facts. The facts have already been explained above. Article 286 of the Constitution of India, prohibits a State from taxing the sale or purchase of goods which takes place in the course of import or export. Again, section 8 of the AVAT Act, 2003, which starts with a non-obstante clause having an over-riding effect over the other provisions, clearly enunciates that sale or purchase in the course of inter-State trade or commerce, sale or purchase taking place outside the State, and sale or purchase in the course of import into or export outside the territory of India are not liable to be taxed.

The facts of the present case are examined on the touchstone of the above legal provisions. In case of imported lab equipments, no local sale or purchase transaction took place inside Assam and therefore, such transactions are not liable to be taxed under the AVAT Act, 2003 and this being so, the question of deduction of tax at source will not arise u/s 47 of the AVAT Act, 2003. Provision relating to deduction of tax under section 47 of the AVAT Act, 2003 applies only when a transaction of sale takes place inside Assam and is liable to be taxed under the AVAT Act, 2003. The transactions, in the present case, do not fall within the domain of AVAT Act, 2003 and are not liable to be taxed under the AVAT Act, 2003. Hence, the question of deduction of tax at source under section 47 of the AVAT Act 2003, does not arise. Further, there is no provision for deduction of tax at source either under the CST Act, 1956 or under the Assam Entry Tax Act, 2008.

This clarification is in supersession of the earlier clarification issued by Commissioner vide CTS-40/2013/159 dated 13-10-2015.

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

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Memo No.CTS-58/2015/77-A

Dated Guwahati 3<sup>th</sup> August, 2016

Copy to:

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioner of Taxes/ Joint Commissioners 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 Gulf Bio Analytical, L.L.C., No. #660, 7<sup>th</sup> Block, 2<sup>nd</sup> Phase, Banashankari 3<sup>rd</sup> Stage, Bangalore- 560085 for information.

(A. Choudhury)

Joint Commissioner of Taxes, Assam  
Guwahati

M.P.S.  
3/08/2016