

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

ORDER

Dated Dispur, the 27th January, 2016.

No.CTS-63/2015/61 - The petitioner, Fancybazar Hardware Association filed a petition under Section 105 of the AVAT Act, 2003 seeking a clarification from the Commissioner of Taxes, Assam regarding levy of tax on their product "Aluminium sheets and coils". The queries made by the petitioner Fancy Bazar Hardware Merchant Association are :-

1. Whether the Vat rate on sale of Aluminium sheets and coils of various description, namely, plain or corrugated, coloured or without colour, plates and foils should be at the rate of 4% as per as per item No. 26 of the Schedule II of the Assam Value Added Tax Act, 2003 upto 31/10/2009?

2. Whether the rate of Vat chargeable on the sale of Aluminium sheets and coils of various description, namely, plain or corrugated, coloured or without colour, plates and foils should be at the rate of 5% as per entry at serial 26(i) of the Schedule II of the Assam Value Added Tax Act, 2003 after 31/10/2009?

The representatives of the petitioner were duly heard.

Perused the prayer of the petitioner. From the application it is apparent that the petitioner is of firm opinion that the commodities ,aluminium sheets and coils, dealt in by the petitioner can be covered by the entry at serial no. 26 of the Second Schedule /Part A of the Act and thus attract VAT at the rate of four percent up to 31/09/2009 and five percent thereafter. The petitioner is also found to have quoted a number of Court judgments while filing his written submissions.

It is on record that similar clarification under Section 105 of the AVAT Act had been issued by the Commissioner of Taxes on 21/11/2008 which however was quashed by the honourable Gauhati High Court in the WP(C) 1430/2009 on 29/01/2013.

Now the issue to be decided afresh is whether the items, aluminium sheets and coils are covered by the aforesaid entry at serial 26 of the Schedule II/Part A of the Assam Value Added Tax Act, 2003 or not. While doing so, it would useful to reproduce the said entry as follows:

"26(i). Ferrous and non-ferrous metals and alloys such as aluminium, copper, zinc and extrusions of those;

(ii) Non-metals"

Before the legal issues are taken up for consideration in regard to the submissions made in the petition, it would be appropriate to briefly examine the process of deriving the Aluminium Rolled products by the industry:-

- (1) The production of Aluminium consists of **three steps: bauxite mining, alumina production and electrolysis**. Bauxite remains the naturally occurring aluminium bearing mineral (ore) and the same has to be processed into pure Aluminium oxide(alumina) before it can be converted into Aluminium by electrolysis. This is achieved through the use of the **Bayer chemical process** in alumina refineries. The aluminium -oxide is released from the other substances in bauxite by dissolving in a caustic soda solution, which is then filtered to remove all insoluble particles. The dissolved aluminium hydroxide is then precipitated from the soda solution, washed and dried while the soda solution is recycled. After calcinations(a process involving heating of the substance at high temperature in absence of air), the end product, aluminium-oxide(Al_2O_3) is a fine grained white powder, which is commonly known as **alumina**.

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(2) The "alumina" obtained as above is subjected the process of **smelting** to derive the metal Aluminium called **Primary Aluminium** by a process called **Hall-Heroult process**. In it, the reduction of alumina into **liquid aluminium** is operated at around 950 degrees Celsius in a fluorinated 'alumina' bath under high intensity electric current. The process takes place in electrolytic cells (or pots) where carbon cathodes from the bottom of the pot act as the negative

electrode. Anodes (positive electrodes) consisting of blocks of graphite (carbon) are held at the top of the pot and are consumed during the process when they react with the oxygen coming from the alumina. At regular intervals, molten aluminium tapped from the 'pots' is transported to the cast house where it is 'alloyed' in 'holding furnaces' by the addition of small quantities of other metals (according to the user's needs), cleaned of oxides and gases, and then cast into ingots/wire rods. These ingots can take the form of extrusion billets, for extruded products, or rolling ingots, for rolled products, depending on the way it is to be further processed.

Now the question to be answered is whether the rolled products of the metal can be included within the meaning of the metal Aluminium.

The petitioner argued that all along, the traders had treated the item "aluminium sheets and other rolled products of aluminium" as covered by the aforesaid entry, which it claims to be reflected in the para 16 of the judgment and order of the Hon'ble Gauhati High Court in the case of Hindalco Industries Ltd. and anr. Vs. The state of Assam and others [WP(c) 1430/2009]. Furthermore, the petitioner has cited some more Apex Court judgment and orders in the subject. These are (i) judgment and order of the Supreme Court on 28/2/2008 in the case of Kalidas Sheet Metal Industries P. Ltd. V. State of Kerala, reported in (2008) 3 SCC 785 and (ii) judgment in the case of The State of Madhya Bharat (now the State of Madhya Pradesh) and Others-vs.-Hiralal, reported in AIR 1966 SC 1546. It was also stated that the Apex

Court judgment in Hindustan Aluminium Corporation Ltd.-vs.-State of U.P. and Others, reported in (1981) 3 SCC 578 has been distinguished in the case of Kalidas Sheet metal (P) Ltd. by the Apex Court itself as being not applicable and that the later judgment has put to rest all controversy in regard to various forms of metal.

(a). It appears on perusal that *Kalidas Sheet Metal Industres (P) Ltd. vs State of Kerala (2008)3 Supreme Court Cases 785* puts at rest the apparent controversy. Also mention can be made of *State of Madhya Bharat Vs Hiralal Ji* which has been followed in the Kalidas Sheet Metal Industry case by the Apex Court. The Apex Court while followed the said case also distinguished its earlier judgment in the case of *Hindustan Aluminium Corpn. Ltd. Vs. State of U.P.(1981) 3 SCC 578*. Both the approaches of the Apex Court are of extreme significance in the present matter, which run as under.

"8. The reliance placed by the learned counsel for the appellant on the decision of the Supreme Court in Hindustan Aluminium Corpn. Ltd. v. State of U.P. to contend that copper sheets and brass are distinct commercial items from copper and brass, and, therefore, would not fall under Entries 116-A and 116-D, is misplaced. In the said case the appellant was carrying on the business of manufacturing and dealing in aluminium metal as well as various aluminium products. The State Government had issued several notifications from time to time which indicated that the expression "metal" had been generally employed to refer to the matter in its primary sense i.e., the metal in the form in which it is marketable as a primary commodity. In these circumstances, the subsequent forms evolved from the primary form and consisting distinct commodities marketable were regarded as new commercial commodities. As observed earlier copper and brass metals are produced in rolling mills in the form of sheets, circles, ingots, strips or rods and are available in

the market in one of the above forms only as the metals are in solid form. Therefore, the principle laid down by the Supreme Court in **Hindustan Aluminium Corpn. Ltd.** cannot be made applicable to the facts of the instant case.”

While following the *State of Madhya Bharat Vs Hiralal Ji* AIR 1966 SC 1546; (1966) 2 SCR 752, the Supreme Court in the said order observed as below:

“9. This Court notices that in *State of Madhya Bharat Vs Hiralal Ji* this Court held that scrap iron when put through the process of re-rolling to produce attractive and acceptable forms of iron and steel in the shape of bars, flats and plates, must be regarded as continuing to be “iron and steel” for the purpose of the notification issued under the Madhya Bharat Sales Tax Act.”

(b). Referring to the Hon’ble Gauhati High Court’s judgment and order relating to the instant matter, namely, M/s Hindalco Industries Ltd. & ANR. Vs, The State Of Assam and ORS., the Court observed as under:-

“17. Treating any taxable commodity for tax under a taxing statute as a residuary item has to be mandated by legislative intent as well as necessitated by the textual context. It is neither a matter of routine nor of course. Such a course is permissible only if the commodity or the item is not amenable to any other classification.”

(c). It would be appropriate to take note of the fact that the Bureau of Indian Standards has in its publication : IS 5047-1(1986) : **Glossary of Terms Relating to Aluminium, Aluminium Alloys, Part 1: Unwrought and Wrought Metals [MTD 7: Light Metals and their Alloys]** has mentioned as follows:-

2.1.9 SLAB(Rolling Ingot Block)-A solid rectangular casting used for rolling into plate, sheet, strip and foil.

2.1.14 CASTINGS- Metallic shapes formed by pouring molten metal into a mould.

2.2.1 WROUGHT METAL – A metal which has been subjected to mechanical working by such processes as rolling, extrusion, forging etc.

2.2.2 PLATE- Hot or cold rolled product of rectangular section, 6.0mm thick or thicker. It may be either in straight length or in coil form. It has less control of surface finish and tolerance than applied to sheet.

2.2.4 SHEET/STRIP – Hot or cold rolled product of rectangular section, over 0.15 mm but less than 6.0 mm thick. It may either be in straight length or in coil form.

2.2.7 COIL- A wound continuous length of any material.

From the above discussions, it is abundantly clear that the items ‘aluminium sheets’ and ‘coils’ would be included within meaning of the metal ‘aluminium’ and would be covered by item 26 (i) of the Part A of the Second Schedule to the Assam Value Added Tax Act, 2003 with tax rate @5%.

However, as there is already a clarification issued on the taxability of “aluminium foils” (issued vide CTS-29/2008/187 Dtd.09/02/2011), the same is not interfered with at this stage and therefore is not covered by this clarification.

Further, it is made clear that this clarification will come into effect from this date only and all actions already taken in regard to the subject till this date by the respective Prescribed Authorities will remain unaffected in any manner.

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

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Dated Dispur, the 27th January, 2016.

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.
3. The Deputy Commissioner of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s. Fancybazar Hardware Association, Fancybazar, Guwahati for information.

H. Borgohain

(H. Borgohain)

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

M. D. S.
27/01/16