

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

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**ORDER**

Dated Dispur, the 26<sup>th</sup> March, 2009.

No. CTS-50/2005/144:- M/s. Torsa Machines Ltd., Guwahati has filed an application under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification regarding rate of tax on "stone crusher machines and its spare parts and accessories" manufactured by the applicant. The application is found to be in order.

Shri A.K. Saraf, Senior Advocate appeared on behalf of the firm and placed his submission. A written submission was also made. He submitted that the petitioner manufactures and sells stone crusher machines. The stone chips prepared from the machines are used inter-alia in the manufacture of concrete sleepers, construction of roads, bridges, buildings and other construction works. Since the stone crusher machine is used for the process of manufacture of the goods, the same shall come under entry at Sl. 15 of the Part-A of the Second Schedule and hence taxable @4%.

The petitioner states in his written submission "where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture of goods would be commercially inexpedient, goods required in that process would fall within the expression manufacture of goods. For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloths woven, put on rolls, dyed, calendared and pressed. All these processes would be regarded as integrated processes and included in the manufacture of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior process as goods used in the manufacture of cloth.

That entry 15 of the Second Schedule attached to the Act as amended by Notification No. FTX.55/2005/Pt-IV/39 dated 16<sup>th</sup> October, 2008 does not justify the importation of restriction which is not clearly expressed nor imperatively intended. Production of concrete sleepers would not be possible without stone chips and a manufactures of concrete sleepers may use stone crusher machine for conversion of boulders into stone chips and thereafter use stone chips in the production of concrete sleepers. For such manufacture of concrete sleepers, stone crusher machine is certainly a machine used for the manufacture of goods. As such it cannot be said that stone crusher machines cannot be used for manufacture of goods. Simply because a person may use the stone crusher machine only for conversion of boulders into stone chips, it cannot brand the stone crusher machine as being not capable of being used for manufacture. Any



machine which is capable of being used for manufacture of goods would fall within the purview of entry 15 of the Second Schedule of the Assam VAT Act, 2003.”

Perused the submission and the relevant entries in the Act examined. It is found that only such machineries as used in the manufacture of goods attract tax at 4% vide entry at Sl. No. 15 of Part-A of the Second Schedule of the Assam Value Added Tax Act, 2003. The Hon'ble Supreme Court in the case of State of Maharashtra Vs. Mahalakshmi Stores [2003] 1 SCC 70: [2002] 129 STC 79 (SC) held that crushing of boulder into small stone does not result in manufacture because no new commercial commodity into existence. In the present case, the machineries produced by the petitioner are being used in crushing stone of bigger size to into small pieces, which does not involve manufacture.

The argument of the petitioner that production of concrete sleepers would not be possible without stone chips and a manufacturer of concrete sleepers may use stone crusher machine for conversion of boulders into stone chips and thereafter use stone chips into production of concrete sleepers has to be examined in context of overall reality. Production of concrete sleepers is one of the uses of stone chips and it is not the most significant use. Rather, it is a minor use. Stone chips are mostly used for construction of roads, bridges, buildings, etc. As generally seen, persons engaged in construction of roads, bridges, buildings, etc. buy stone chips from stone crushers and use the same in construction. In this case, crushing of stone is not generally done by the same person and at the same site of construction. There may be instances, very few, where persons engaged in construction also own stone crushers. Even in the case of manufacture of concrete sleepers few manufacturers of concrete sleepers also are involved in stone crushing themselves. Most manufacturers of concrete sleepers purchase stone chips from stone crushers and manufacture concrete sleepers.


When rate of tax is dependent on use of goods, then the prevalent dominant use of goods has to be considered. A few examples otherwise cannot be considered to determine rate of tax. In the instant case rates of tax depends on whether such goods are used in manufacture. In order to consider any activity to be an integral part of manufacturing activity, one has to consider whether generally such activity is being done as a part of larger manufacturing process or is being done generally in a stand alone manner. It is found that construction of roads, bridges and buildings which involve major use of stone chips, stone crushing is a generally stand-alone activity. Even in a case of manufacture of concrete sleepers, the petitioner cannot state that this activity of stone crushing is generally integrated with manufacture of concrete sleepers.

In view of the above, it cannot be considered that stone crusher machines are used in manufacturing activity. Hence, the stone crusher machines and its spare parts and accessories



do not fall under amended entry at Sl. No.15 of Part-A of the Second Schedule attached to AVAT Act/2003.


The applicable rate of tax on the stone crushing machineries and its spare parts and accessories shall be 12.5% as per entry at Sl. No. 1 of the Fifth Schedule annexed to the AVAT Act/2003.

  
( Sanjay Lohiya ),  
Commissioner of Taxes, Assam,  
Guwahati.

Memo No. CTS-50/2005/144-A  
Copy to :

Dated Dispur, the 26<sup>th</sup> March, 2009.

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur for favour of kind information.
2. The Addl. Commissioners of Taxes, Assam (All) for information.
3. The Joint Commissioners of Taxes, Assam (All) for information.
4. The Deputy Commissioners of Taxes, Zones & Appeals (All) for information.
5. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
6. Shri A.K. Saraf, Senior Advocate, Guwahati for information.
7. M/s. Torsa Machines Ltd., Guwahati-1 for information.

  
( Sanjay Lohiya ),  
Commissioner of Taxes, Assam,  
Guwahati.

  
26/3/09

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