

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES :::: ::::ASSAM :::: :::: KAR BHAWAN
DISPUR, GUWAHATI.

ORDER
Dated Dispur, the 8th July/2009.

No. CTS-41/2007/160 :- M/s Gopal Corporation Ltd., Amingaon, Guwahati-31 has applied under Section 105 of the AVAT Act,2003 seeking clarification on the following points :-

- a) Whether the activity of adding flavour and transforming the same from plain chewing tobacco to flavoured chewing tobacco would be construed as manufacture ?
- b) Whether such process would come within the purview of manufacture as defined under section 2(30) of the AVAT Act,2003.
- c) Whether the applicant is liable to pay entry tax under the AET Act,2008 on the import of plain chewing tobacco for sale where tax under the AVAT Act is being paid on the sale of such imported chewing tobacco.
- d) Whether the dealer is liable to get himself registered under the AET Act,2008.

The application is found to be in order, hence admitted. Dr. B.P. Todi, Sr. Advocate & Shri Ankit Todi, Advocate appeared on behalf of the petitioner and placed their submission.

Dr. Todi submitted that the petitioner brings plain chewing tobacco (in flakes form) from outside the State and makes value addition thereon by simple activity of adding flavour. He also submitted that inspite of the said activity, the chewing tobacco remains chewing tobacco (in flake form) and as such does not amount to transformation to a different commodity. Therefore, the petitioner is not liable to pay any entry tax on import of chewing tobacco in the State in view of the provision of section 3(2) of the AET Act,2008. They have also furnished sample of tobacco flakes and packet of chewing tobacco, which are examined.

Heard Dr. Todi and perused their submission. The physical verification of the samples of raw tobacco flakes and "Gopal 60" flavoured chewing tobacco, "Gopal 132" flavoured chewing tobacco is made. On examination of the packed samples it has come to notice that raw tobacco flakes is nothing but tobacco leaves cut into small flakes. After importing such raw tobacco flakes, the petitioner adds to the same natural and artificial flavours, glycerine, menthol, mixes spices and silver leaves to make it flavoured chewing tobacco.

The petitioner has submitted documents, i.e. tax returns etc. to show that they are not claiming transforming from raw tobacco to flavored chewing tobacco as manufacturing process.

The Hon'ble Supreme Court in *Burmah Shell Oil Storage & Distributing Co. of India Ltd. v. Belgaum Borough Municipality* 1963 Supp (2) SCR 216 : AIR 1963 SC 906 while expounding on

words of 'consumption' and 'use' stated " Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not "used up" in the process. A motor car brought into an area for use is not used up in the same sense as food stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense."

Going by interpretation given by the Supreme Court, it is not necessary that there has to be manufacture for consumption of a commodity. In order to determine whether a commodity has been used or consumed, the commodity must be either retained for use without using up or consumed in a manner which destroys, wastes or uses it up.

In the instant case, raw tobacco flakes are resold with value addition in form of flavouring etc. The main component of flavoured chewing tobacco, which is sold, is the raw tobacco which is imported. It cannot be said that the raw chewing tobacco is used or consumed in the process of value addition from raw tobacco to flavoured chewing tobacco. Rather the goods which are used for flavoring the raw tobacco are used up in the process. Hence, it is clarified that the petitioner is not liable to pay entry tax on import of raw tobacco into local area which is resold with value addition as flavoured tobacco under the Assam Entry Tax Act/2008.

In view of the above reply to all four questions are negative.

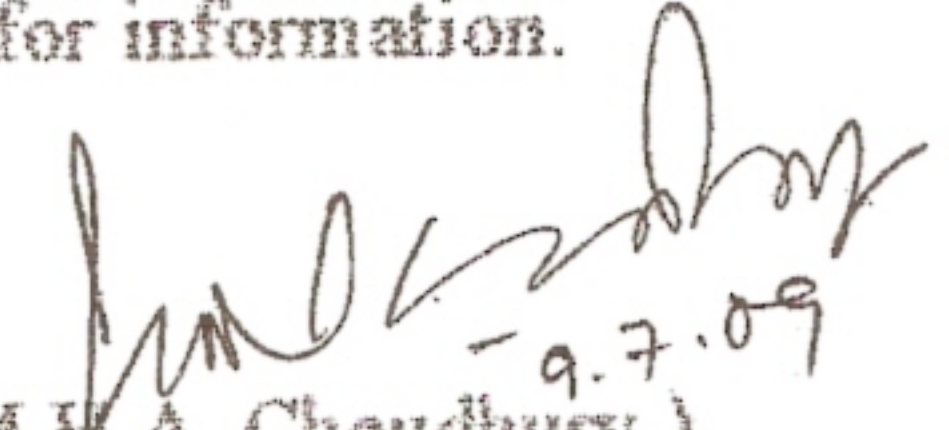
Sd/- Sanjay Lohiya,
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-41/2007/160-A

Dated Dispur, the 9th July/2009.

Copy to :-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur, Guwahati-6 for favour of kind information of the Government.
2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes (All) for information.
3. The Deputy Commissioners of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s Gopal Corporation Ltd., Amingaon, Guwahati-31 for information.


-9.7.09
(M.H.A. Choudhury),
Addl. Commissioner of Taxes, Assam,
Guwahati-6.