

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

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ORDER

Dated Dispur, the 28th August, 2009.

No. CTS-70/2007/318: The Assistant Commissioner of Taxes, Silchar Unit vide his letter No. 481 dated 01.06.2009 sought clarification as per provision of section 105 under the Assam Value Added Tax Act, 2003 (hereinafter referred to as Act) regarding an Industrial Unit namely, M/s R. K. Chemicals, Sardamoni Lane, College Road, Silchar-4, a registered dealer under the jurisdiction of the Silchar Unit. The question raised by the Assistant Commissioner of Taxes, Silchar are as follows:-

- (1) Whether the process of producing soap stone powder from soap stone is a manufacturing process?
- (2) What is the rate of tax on "Soap Stone Powder"?

The matter relates to an industrial unit, which is already enjoying tax benefit under the Assam Industries (Tax Exemption for Pipeline Unit) Order, 2005. In order to give the unit an opportunity of being heard as per the provisions of section 105 of the Act, they were asked to appear for a hearing and make their submission.

Accordingly, Dr. A.K. Saraf, Senior Advocate appeared on behalf of the petitioner and filed his submission. He also submitted a written statement and copies of a number of judgment and order, which were perused. He submitted that the petitioner is manufacturing soap stone powder from soapstone and both are commercially different commodity and has got different identity. In common parlance test also both are different product and is having commercial identity. The process, apart from grinding the raw material into soap stone powder, the dirt, grits, silica, moisture, quartz stones and other visible foreign materials are also removed. Moreover end uses of both the commodities are also different.

Perused the submission and related judgments are examined. The petitioner has not stated that the chemical composition changes in the process of conversion of soap stone to soap stone powder, although he has stated that impurities are removed and physical attributes like brightness, moisture etc change. With regard to grinding of soapstones and minerals, the Hon'ble Bombay High Court in the case of Commissioner of Income Tax – Vs – Premier General Traders Pvt. Ltd. stated – "We have heard Mr. Desai, learned counsel for the Revenue, who submits that as a result of grinding of the soapstones or the chemicals, no new article or thing has emerged. According to him, for the purpose of deduction under section 80J of the Act, it is necessary that the industrial undertaking manufactures or produces articles. According to him, in the instant case, there is no manufacture or production of any article. He relies, in support of his contention, on the decision in Commissioner of Sales Tax vs. Mahalaxmi Stores (195) 97 STC 601 (Bom), wherein it was held that stones do not cease to be stones, merely by reason of the fact that they have been reduced in size by the process of crushing or breaking. We have carefully considered the above decision. In that case, the question before this Court was whether the process of crushing boulders to obtain stones of smaller sizes termed as "gitti" can be regarded as a process of manufacture. This Court answered the question in the

negative and held that the process of crushing boulders to obtain stones of smaller sizes cannot be regarded as a process of manufacture. Our attention was also drawn by learned counsel to the decisions of the Supreme Court in Deputy Commissioner of Sales tax v. Pio Food Packers (1980) 46 STC 63 and in Sterling Foods v. State of Karnataka (1986) 63 STC 239. We have carefully considered the submissions of learned counsel. We find that the process undertaken by the assessee in this case cannot be regarded as a process of manufacture of articles or things."

The petitioner relied on judgment of CEGAT – Delhi in the case of Associated Soapstone Distributing Company Pvt. Ltd. vs. Collector of Central Excise, reported in 1985 (22) ELT 109, held as under :- "we observe that soap stone powder was different in appearance as compared to soap stone lumps. The Collector, who examined the samples of both, as observed that while the lumps were having a yellowish colour, the powder was white. However, we do not place much importance on this colour factor alone; the more important thing is the use of the material. None of the industries for which soap stone powder is intended, can use the soap stone lumps. The lumps are totally useless for them. They become useable as raw material by the user industry only after they have been powdered to the required fineness. It is only in powder form that the material becomes marketable to the user industry." The Hon'ble Tribunal further held " Whatever may be nature of the user industry, the point made by us still remains valid that the material becomes usable only after powdering. It is evident, therefore, that the name, character and use of soap stone lumps and soap stone powder are not the same; they are two distinct products by that test."

Here it is pointed out that even in the crushing of boulder to produce stone chips, the use of stone chips is different from use of boulder and boulders cannot be used where stone chips is required. But the Hon'ble Supreme Court in the case of State of Maharashtra vs. Mahalaxmi Stores (2003) 1 SCC to (2002) 129 STC 79 (SC) did not consider the activity as manufacture. Therefore, it is not possible to agree with the CEGAT. Hence, the process of producing soapstone powder from soapstone does not involve manufacture.

Now, the second question is on the rate of tax applicable on the item soap stone powder. It is submitted by Dr. Saraf that soap stone powder is used as filler to give smoothness, porosity and opacity to paper. He submitted that the item is covered under entry at Sl. No. 131 of Part-C of the Second Schedule of the Act.

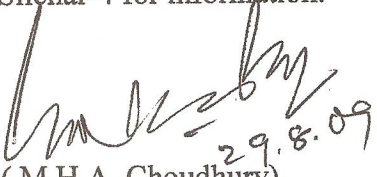
The entries of Schedule under the Act have been examined. It is found that the entry at Sl. No. 131 of Part-C of the Second Schedule reads as "Finishing agents, dye carriers to accelerate the dyeing or fixing of dye-stuffs and other products and preparations (for example dressings and mordents) of a kind used in textile, paper, leather or like industries not elsewhere specified or included." The use of soap stone powder is found to be in the nature finishing agents; hence the item shall be covered in the entry at Sl No. 131 of Part-C of the Second Schedule of the Act and shall be taxable @ 4%.

*Sd/-*  
( Sanjay Lohiya ),  
Commissioner of Taxes, Assam,  
Guwahati.

Memo No. CTS-70/2007/318-A  
Copy to:-

Dated Dispur, the 29th August, 2009.

1. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur for favour of kind information.
2. The Addl. Commissioners of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes, Zones (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.
5. The Assistant Commissioner of Taxes, Silchar Unit, Silchar for information and necessary action.
6. M/s. R.K. Chemicals, Sardamoni Lane, College Road, Silchar-4 for information.

  
29.8.09  
(M.H.A. Choudhury),

Addl. Commissioner of Taxes, Assam,  
Guwahati.