

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

ORDER

Dated Dispur, the 5th November, 2009

No. CTS-7/2009/94: M/s. Tax Bar Association, Guwahati filed petition seeking clarification on the following three issues—

(1) As per the Assam Gazette Extra Ordinary No. 346 and 347 both date 31.10.2009 issued under Memo No. FTX.55/2005/Pt-III/118 and No. FTX.55/2005/Pt-V/194 respectively dated 31.10.2009 it is seen that the same are made applicable w.e.f. 31.10.2009.

The notifications were issued late in evening on 31/10/09, by which time the dealers had already effected the sales for the day. As such it is not practicable for them to apply the new rates on this sales. It is, therefore, presumed that the new rates shall take effect from the next day i.e. 01/11/2009.

(2) As per the Assam Gazette Extra Ordinary No. 347 dated 31.10.2009 issued under Memo No. FTX.55/2005/Pt-V/194 dated 31/10/09 the item "Drugs & Medicines" has been inserted in the Second Schedule of Part A at sl. No. 111 attached to the Act.

The item previously taxable @ 4% on MRP under the Fourth Schedule. As such a logical question which arises is the fate of the tax paid stock in hand as on 31.10.09. Whether the dealers are liable to claim input tax on the said stock or is any other alternative method thought of.

(3) The items declared goods as specified under section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) have now been inserted at sl. No. 6 of the Third Schedule attached the Assam Value Added Tax Act, 2003. the item as appearing at sl. No. 23 of the second Schedule was previously attached with the following words "if such goods are not mentioned in this Schedule or any other Schedule". But the said wording has now been removed. As such now a confusion has arisen about declared goods which are also mentioned elsewhere in the Schedule/s.

Shri S. Surekha, Tax Consultant and Shri N.R. Purohit, Advocate appeared alongwith other members of the Association and placed the submissions. They submitted that—

(a) The notifications mentioned in (i) above were issued in late in evening on 31.10.2009 by which time the dealers had effected the sales for the day. As such, it is not practicable for them to apply the new rates on these sales. Therefore, the rates should take effect on the next date i.e. on 01.11.2009.

(b) As the dealers have already paid tax on MRP basis on the drugs and medicines, the ITC on the stock available with them on 31.10.2009 should be allowed to avail.

Perused their submission. Regarding issues at (1) and (2), clarification at this level cannot be issued as the notifications were issued by Government and the decision on the claim of ITC can only been taken by Government. So the matter will be referred to the Government.

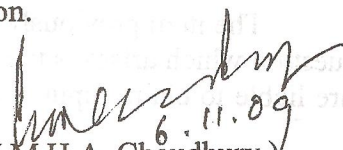
So far as third issue is concerned, it may be stated that in Second Schedule of the Act, a number of items which are declared goods as per section 14 of the Central Sales Tax Act, 1956 are mentioned alongwith non-declared goods in the same entry. So it is difficult to bifurcate such entries. However, as per provisions of section 15(a) of the Central Sales tax Act, 1956, declared goods cannot be taxed above 4%. As such it is clarified that any declared goods if mentioned in the Second Schedule shall be taxable @4% as per entry 6 in the Third Schedule. Further, those declared goods which are mentioned in First Schedule will remain exempted and those mentioned in the Fourth Schedule will be taxed at rates mentioned against such goods.

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

Memo No. CTS-7/2009/94-A
Copy to:-

Dated Dispur, the 6th November, 2009

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. Tax Bar Association, Guwahati for information.


6.11.09
(M.H.A. Choudhury),

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