

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

ORDER

Dated Dispur, the 11th December, 2009.

No. CTS-41/2007/203: M/s Gaurav Associates, K. C. Road, Fancy Bazar, Guwahati has filed an application as per provision of section 105 under the Assam Value Added Tax Act, 2003 seeking clarification on rate of tax on icing sugar. The application is found to be in order, hence admitted.

Sri D. R. Sethia, Advocate appeared on behalf of the petitioner and filed his submission. He also submitted copy of the judgement and order of the Apex Court as well as clarification issued by the State of Maharashtra and West Bengal. Perused his submission and orders are examined. It is found that his whole argument is based on the judgement and order of the Hon'ble Supreme Court in the case of the State of Gujarat vs. Sakarwala Brothers. In the said order Hon'ble Court held that patasa, harda and alchidana fall with the definition of "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959.

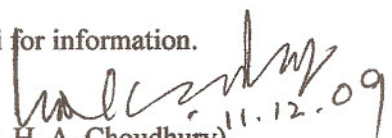
However the said judgement and order shall not be applicable in the case under the Assam Value Added Tax Act, 2003 as the entry in the both the Acts, i.e. under the Bombay Sales Tax Act, 1959 and the Assam Value Added Tax Act, 2003 are different from one another. While in the case of former the entry reads as "Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944" whereas under the latter, the entry reads as " Sugar (when not subjected to the additional duties of Excise)". Hon'ble Court held that patasa, harda and alchidana fall with the definition of "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959 because of the fact that under the Central Excises and Salt Act, 1944 sugar is defined as "Sugar means any form of sugar containing more than 90% of sucrose." However under the Assam Value Added Tax Act, 2003, the entry is "Sugar (when not subjected to the additional duties of Excise)". As per Notification No. 14/89-CE dated 01.03.89, Icing Sugar has been exempted under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Hence, even if icing sugar is considered as sugar, additional excise duty is not levied on it. Therefore, it will be taxable @13.5% under entry 1 of Fifth Schedule. Further, the clarification issued by Commissioner of Sales Tax, Maharashtra State and West Bengal shall not be applicable under the Assam Value Added Tax Act, 2003 for the same reason enumerated above. Hence, the order passed vide Memo No. CTS-41/2007/117 dated 13.03.09 in the case of "Icing Sugar" shall stand.

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

Memo No. CTS-41/2007/203-A
Copy to:-

Dated Dispur, the 11th December, 2009.

1. The Principal Secretary to the Government of Assam, Finance 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, (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.
5. M/s Gaurav Associates, K. C. Road, Fancy Bazar, Guwahati for information.


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

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

CORRIGENDUM

Dated Dispur, the ^{03th} ~~4th~~ April, 2010.


No. CTS-41/2007/204:- Kindly read "Sugar (when subjected to the additional duties of Excise)" in place of "Sugar (when not subjected to the additional duties of Excise)" wherever appearing in the order issued vide Memo No. CTS-41/2007/203-A dated 11th December, 2009.

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

Memo No.CTS-41/2007/204-A
Copy to :-

Dated Dispur, the ^{03th} ~~4th~~ April, 2010.

1. The Principal Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Addl. Commissioner of Taxes/Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioners of Taxes (All) for information and necessary action.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information and necessary action.


(Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

M. Des.
01/04/10