

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

**ORDER**

Dated Dispur, the 8<sup>th</sup> April, 2011.

No. CTS-56/2005/236 : M/s Repose, M.G. Road, Mangaldoi submitted an application under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on rate of tax of the following items –

1. Ross
2. Kata
3. Bakery Biscuits
4. Hand-made cookies
5. Cakes
6. Paratha
7. Pastries
8. Pop
9. Petish
10. Traditional Indian Savories (Bhujia, Dalmoth, Mixture, Chira Chips, Fried Green Peas, fried Pulses and legumes, Badam Pakora)
11. Nimki
12. Sandwiches.
13. Hotdogs
14. Burgers
15. Samosa
16. Kachori
17. Chop
18. Pies
19. Deserts such a mousse, suffle, pudding etc.
20. Hand made Chocolates.
21. Hand made flavoured drinks like Milk shakes, sorbets, slush etc.

Shri H. Agarwala, C.A. and Shri Sanrat Deka, partner of the firm appeared on behalf of the petitioner and placed their submission. They also submitted some literature on the items which are examined. They submitted that the above items can be classified as cooked food as per entry at Sl. No. 112 of Part-A of second schedule of the Assam Value Added Tax Act, 2003. As per their submission, all the aforesaid items are food item and undergoes the process of cooking/heating.

Perused the submission. In the case of Commissioner of Sales Tax, Madhya Pradesh, Indore v/s Shri Ballabh Das Iswar Das, Bombay Bazar, Khandwa (1968) 21STC 309(MP) Hon'ble Court held that –

“ When one talks of ‘food’ or ‘cooked food’ what one means is that which one takes into the system to maintain life and growth, to supply aliment or nourishment. In a wide sense food would no doubt include everything that is eatable. But in common parlance ‘cooked food’ means those things which one eats at regular times of the day at breakfast, dinner or supper. Biscuit is no doubt a kind of food if the term is understood in a very wide sense. The process of baking involved in the manufacture of biscuits is no doubt a form of cooking. But it is not ‘cooked food’ which one takes at meal hours. Biscuits can be eaten alone or as adjunct to other food. But no one would normally dream of living on biscuits only day in and day out without getting diseases flowing from malnutrition and under-nourishment. No one who goes to a hotel or restaurant for a meal and asks for cooked food, will accept biscuits. The term ‘cooked food’ used in Entry No. 41 of Schedule II to the C.P and Berar Sales Tax Act, cannot be read in a wide sense so as to include everything made fit for eating by application of heat, as by boiling, baking, roasting, broiling etc. the term is confined to those cooked things which one generally takes at regular meal hours. It is no doubt true that the entry treats ‘pastries’ as cooked food when it specifically provides for exclusion of pastries from its scope. But this artificial exclusion of pastries from cooked food cannot afford any justification for including in ‘cooked food’ that which is not ‘cooked food’ as understood in common parlance.”

Keeping in view the above judgement, the items under dispute are examined and following clarifications issued –

<u>Item</u>	<u>Rate of tax</u>	<u>Entry in the Schedule</u>
1. Ross	13.5%	Sl. No. 1 of the Fifth Schedule
2. Kata	13.5%	Sl. No. 1 of the Fifth Schedule
3. Bakery Biscuits	13.5%	Sl. No. 1 of the Fifth Schedule
4. Hand-made cookies	13.5%	Sl. No.1 of the Fifth Schedule
5. Cakes excepting packaged cakes	5%	Sl. No.112 of part A of Second Schedule
6. Paratha excepting packaged Paratha	5%	Sl. No.112 of part A of Second Schedule
7. Pastries excepting packaged Pastries	5%	Sl. No.112 of Part A of Second Schedule
8. Pop excepting packaged Pop	5%	Sl. No.112 of Part A of Second Schedule
9. Petish excepting packaged Petish	5%	Sl. No.112 of Part A of Second Schedule
10. Traditional Indian Savories (Bhujia, Dalmoth, Mixture, Chira Chips, Fried Green Peas, fried Pulses and legumes, Badam Pakora)	13.5%	Sl.No. 1 of the Fifth Schedule
11. Nimki	13.5%	Sl. No. 1 of the Fifth Schedule
12. Sandwiches excepting packaged Sandwiches	5%	Sl. No.112 of part A of Second Schedule
13. Hotdogs excepting packaged Hotdogs	5%	Sl. No.112 of part A of Second Schedule
14. Burgers excepting packaged Burgers	5%	Sl. No.112 of part A of Second Schedule
15. Samosa excepting packaged Samosa	5%	Sl. No.112 of Part A of Second Schedule

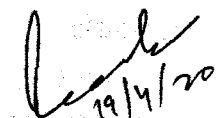
16. Kachori excepting packaged Kachori	5%	Sl. No.112 of Part A of Second Schedule
17 Chop excepting packaged Chop	5%	Sl. No.112 of Part A of Second Schedule
18 Pies excepting packaged Pies	5%	Sl. No.112 of Part A of Second Schedule
19 Deserts such a mousse, suffle, pudding etc.excepting packaged Deserts.	5%	Sl. No.112 of Part A of Second Schedule
20 Hand made Chocolates.	13.5%	Sl. No.1 of the Fifth Schedule
21 Hand made flavoured drinks like Milk shakes, sorbets, slush etc.	13.5%	Sl. No. 1 of the Fifth Schedule

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

Memo No. CTS-56/2005/236-A

Dated Guwahati, the 19 April, 2011

- 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 Commissioner of Taxes (All) for information.
  4. The Assistant Commissioner of Taxes, Superintendent of Taxes(all) for information.
  5. M/s Repose, M.G. Road, Mangaldoi, for information.

  
19/4/2011  
(R.D. Borah),

Joint Commissioner of Taxes, Assam,  
Guwahati-6.

*M. Deb*  
19/4/2011