

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

ORDER

Dated Guwahati, the 22nd July, 2011.

NO.CTS-42/2011/16 : M/s Jindal Saw Ltd., Kosi Kalan, Mathura, Uttar Prades filed an application dated 16-06-2011 seeking clarification as to whether Ductile Iron Pipe attracts tax under entry No. 50(vi) of the Schedule attached to the Assam Entry Tax Act, 2008. M/s Electro Steel Castings Limited, 19 Camac Street, Kolkata-17 also filed an application dated 17-06-2011 seeking clarification exactly on the same matter. The date of hearing fixed on the application of M/s Jindal Saw Ltd. was 08-07-2011 and that of M/s Electro Steel castings Ltd. was 23-06-2011. Both the applicants, however, appeared on 23-06-2011 for submitting their pleas and arguments and hence, a common hearing was taken for both the applicants. Sri Vinod Kr. Lohia, Sales Tax Practioner and Sri Diganta Lahkar, Manager represented M/s Jindal Saw Ltd. while Sri Sanjib Roy, authorized representative appeared for M/s Electro Steel Castings Ltd. Afterwards, the Superintendent of Taxes, Guwahati Unit 'C' also approached the undersigned for clarification on the same issue pursuant to a representation dated 05-05-2011 made by the Addl. Chief Engineer, PHE department. Therefore, all these references are taken for disposal vide a common order.

The applicant M/s Jindal Saw Ltd. also prayed for granting of time upto 04-07-2011 for making further submissions. He again prayed for extension of time in this regard upto 15-07-2011 . However , he has failed to make any further submission till 20-07-2011. Hence, the matter is taken for disposal on the basis of papers, submissions on record as on date.

Perused the relevant provisions of the Assam Entry Tax Act, 2008 as well as submissions made by the applicants. The main contention of the applicants is that since the item "Ductile iron Pipe" is not covered by entry SI No.50 (vi) of the Assam Entry Tax Act, 2008 Schedule or for that matter by any other entry of the same Schedule w.e.f. 04-01-2010, no entry tax is payable on import of ductile iron Pipe into local area of Assam w.e.f. 04-01-2010 .

The controversy can be resolved fully by determining whether SI No.50 (vi) of the Assam Entry Tax Act, 2008 Schedule covers the item ductile iron Pipe or not. The relevant entry reads as follows: " 50 Iron and Steel, that is to say------(vi) Steel tubes both welded and seamless, of all diameters and lengths including tube fittings;" According to the applicants, the description "Pipe" and "tube" are not synonymous and have different connotation in common parlance of trade and commerce. They have quoted the following points of difference between Pipe and Tube.

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Sl No.	Pipe	Tube
01.	Pipe is a vessel	Tube is a structural item
02.	Pipe is measured ID (Inner diameter)	Tube is measured OD (outer diameter)
03.	Pipes have a consistent ID regardless of wall thickness	Tube have a constant OD and it's ID will vary with wall thickness
04.	Pipe is normally used to convey gases or fluids	Tube is more frequently used in structures.

However, the citations mentioned under the columns 01 and 04 above appear to be wholly incorrect in as much as both Pipe and Tube are mainly used to convey gases or fluids. Moreover, neither Pipe is regarded as a vessel nor tube is understood as a structural in the common parlance of trade and commerce or in any technical connotation. Even the dictionary meaning of these two words in the contextual sense of the present case connote the same commodity of use. The meaning of 'Pipe' given in chambers 21st Century Dictionary in the contextual sense of the present case is, "a tubular conveyance for water, gas, oil etc." The meaning so assigned to "tube" therein is, "a long hollow cylinder which can be flexible or rigid and which is designed for holding or conveying air, liquids, etc." As regard, the citations mentioned under the columns O2 and 03 above, the same do not have any relevance or significance for the purpose of settling the issue.

In fact, one may gainfully advert to the clarification issued by Government of India in letter No. 24/03/73 S.T (P.T), Ministry of Finance dt. 20-11-73 while interpreting identical entry under section 14 (iv) (XI) of the central Sales Tax Act, 1956 wherein it was held that G.I. Pipes, Black Pipe would fall within the scope of item (xi) of Section 14(iv). Besides, the Supreme Court in the case of Gujrat Steel Tubes Ltd. -Vs- State of Kerala (1989) 74 STC 176 held that iron Pipes or galvanized iron Pipe are steel tubes within the meaning of Section 14 (iv) (XI) of the Central Sales Tax Act, 1956. Galvanized iron pipes were interpreted as "steel tubes" occurring in Section 14(iv)(ix) of the Central Sales Tax Act, 1956 also in the following Judgments of various Courts.

- (i) Commissioner of Sales Tax -Vs- Om Engineering Works (1987) 65 STC 465 (All).
- (ii) Commissioner of Sales Tax -Vs- Mitra Industries (1988) 69STC16 (All).
- (iii) Jain Tube Co. Ltd. State of Uttar Prades (1991) 80 STC 40 (All).
- (iv) Sales Tax Commissioner -Vs- State Veljibhai Motichand (1969) 23 STC 288 (Guj)

Contd.3p

It is also immensely relevant to consider the fact that the terms 'iron' and 'Steel' are generally used interchangeably and synonymously in the common parlance of the trade and commerce, consumers, meson, plumber etc. Also the terms ductile iron containing about 0.25% carbon is also known and recognized as mild Steel in the Common parlance of manufacturers, traders and consumers. In fact, mild Steels are suitable for fabrication into Pipe, wire or Sheets for their property of ductileness. Therefore, the interpretation sought to be advanced by the applicant that entry Sl No. 50(vi) of the Assam Entry Tax Act, 2008 Schedule does not cover ductile iron Pipe being imported by them into local areas of Assam is liable to be wholly negated. As regard the Judgement of Kerala High Court in case of Haru Adhikari -Vs- State of Kerala cited by the applicants, it appears to have been rendered in an altogether different context of facts and circumstances.

In any view of the matter, against available authority of the judgement of the Apex Court in the case of Gujrat Steel Tubes Ltd. -Vs- State of Kerala (Supra), the judgement of the Hon'ble Kerala High Court cited by the applicants ought not have any bearing on determination of the present issue.

Upon the above described premises of facts and law, it is hereby clarified that the items ductile iron Pipe squarely falls under Sl No. 50 (vi) of the Assam Entry Tax Act, 2008 Schedule and hence attracts tax at the rate of 2% under Assam Entry Tax Act, 2008.

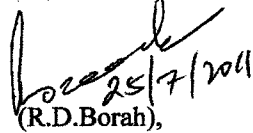
A copy of this order is to be issued also to the Addl. Chief Engineer (PHE), Guwahati for information and needful.

Sd/- M.Ahmed,
Commissioner of Taxes, Assam (i/c),
Dispur, Guwahati-6.

Memo NO.CTS-42/2011/16- A
Copy to :-

Dated Dispur, the 26th July, 2011.

1. The Principal Secretary to the Govt. of Assam, Finance Department, Dispur, Guwahati - 6 for favour of kind information of the Government.
2. The Addl. Commissioner of Taxes/Joint Commissioners of Taxes (All) for information.
3. The Deputy Commissioner of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s Jindal Saw Ltd., Kosi Kalan, Mathura, Uttar Prades for information.


(R.D.Borah),

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