

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

ORDER

Dated Dispur, the 21st June, 2012

No. CTS-91/2002/304 : M/s Varun Beverages (International) Ltd. (Unit-II) Rani (Patgaon), Guwahati-781017 filed the petition under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on the following points :-

1. Whether an Industrial activity of transformation of raw water into marketable consumer product known as Packaged Drinking Water falls within the definition of manufacture as defined U/S 2(30) of the Assam Value Added Tax Act 2003 as amended.
2. Whether the Packaged Drinking Water is distinctly different goods known in the market vis-à-vis raw water. This has to be seen in the context of serial No.35 of First Schedule to Assam Value Added Tax Act 2003, chapter 1 of Industrial Policy of Assam 2008, fresh water processing at page 6 is an identified potential sector for Assam integral development, and chapter 4 of Industrial Policy of Assam 2008, para 4.1 and para 4.5 (5). Therefore, the question is whether investment made to create manufacturing facility for manufacture and sale of Packaged Drinking Water would be eligible for Fiscal and tax incentives as mention in chapter 6 and 7 of Industrial Policy of Assam 2008.
3. Whether manufacture of Packaged Drinking Water in an integrated, modern high tech manufacturing facility with total concept of maintaining hygiene, packed into ready to use consumer product complying with BIS specification and also international high standard specification of brand owner Pepsi fulfill the resource termed as water in the Industrial Policy of Assam 2008 into an industrial activity for development of Assam by providing employment and/or facilitating tourist inflow or business travelers' convenience and essential need of modern consumer preference. It is undisputed fact that making pet bottle and filling product results into emmergence of a distinctly new product than the raw materials namely pet resin/pet perform or raw water and others.
4. Whether the goods namely Packaged Drinking Water falls in the definition of eligibility under para (2(C)5) of the Assam Industries (Tax Exemption) Scheme, 2009. It is undisputed fact that the full-fledged manufacturing facility to manufacture packaging material namely PET bottle and filling product as per BIS specification

and complying with Standard of Packaged Commodity Act cannot be equated with "Peripheral activities like preservation during storage, cleaning operation, packing, re-packing, labeling or re-labeling, sorting, alteration of retail sale price takes place."

5. Whether the order passed by the Commissioner of Taxes in Order No. CTS-14/2008/132 dated 30th September, 2008, will not be applicable under the new Industrial Policy of Assam 2008 and The Assam Industries (Tax Exemption) Scheme, 2009. The order was passed under Assam Industrial Policy 1997 and The Assam Industries (Tax Exemption) Scheme, 2005 where there are material differences in the wordings, objectives and trust.

Shri B. Somani, Director, appeared on the date of hearing and placed his submission. He submitted that the application under Section 105 is filed with the request to hold that the tax and fiscal incentives under the Assam Industrial Policy 2008 and also the Assam Industries (Tax Exemption) Scheme, 2009 is available to the investment for manufacture of Packaged Drinking Water. Such an order will help them to get the internal benefit.

He also submitted that Packaged Drinking Water is a manufactured goods as per Excise Act. The product Packaged Drinking Water is totally different and distinct product vis-à-vis raw materials used therein, namely, caps, pet perform, labels, chemicals, salt, raw fresh water, packing material, etc. Further, under Rule 57(a) of AVAT Rule, the word used for specified exclusion for manufacturer definition namely "Purification and/or packaging of drinking water" does not cover package drinking water as defined in BIS specification or proposed to be manufactured in their unit. The word used meant for purification of water or packaging of purified water which are equivalent to supply of water by municipalities or small vendors for general drinking purposed on which no VAT tax is applicable. He also submitted that the benefit of tax exemption under other State, tax incentive schemes for manufactured product is available for packaged drinking water.

Perused the submission of the petitioner, the provision of AVAT Act and rules framed therein and the Tax Concession Scheme, 2009 is examined and clarification is given as under :

1. As per provision of Section 2(30), Government may prescribe certain activities not to be manufacture. In exercise of said provision, Government has prescribed 12 activities which shall not be treated as manufacture. Among them, purification and/or packaging of drinking water is one such activities. Therefore, the answer to query No. 1 is in negative.

2. As per provision of Assam Industries (Tax Exemption) Scheme, 2009, the scheme shall apply to the units which manufactures goods in Assam. However, as already clarified in 1 above, the activity of packaging of drinking water is not regarded as manufacture as per provision of AVAT

Act, 2003. Therefore, such unit cannot claim any tax incentive under the Industrial Policy of Assam, 2008. However, such industry can claim other incentive mentioned in the Industrial Policy of 2008.

3. Whether the making of pet bottle and filling product results into emergence of distinctly new product than the raw materials is now sub-judice before Hon'ble Gauhati High court, hence no comment. But as the whole process is excluded from manufacture as per provision of Section 2(30) of AVAT Act, 2003 read with Rule 57(A) of AVAT Rules, 2005. Hence, it will not be regarded as industrial activity under Assam Industries (Tax Exemption) Scheme, 2009.

4. In view of clarification given in 1, 2 & 3 above, the goods namely packaged drinking water will not fall in the definition of eligibility under the Assam Industries (Tax Exemption) Scheme, 2009.

5. The clarification given in the order No. CTS-14/2008/132 dt. 30th September, 2008 was in connection with the Assam Industries (Tax Concession) Scheme, 1997, the Tax Remission Scheme, 2005 and the Pipeline Order, 2005. However, Government has prescribed certain activities not to be manufacture by prescribing the same in the rule which is made effective from 1st October, 2008. The Assam Industries (Tax Exemption) Scheme, 2009 is also made effective from 1st October, 2008. Hence, the process of purification and/or packaging of water shall not be regarded as manufacturing process under the Tax Exemption Scheme, 2009 and there is no question of exemption to such unit.

Sd/- Dr. J.B. Ekka,
Commissioner of Taxes, Assam,
Guwahati-6.

Dated Dispur, the 26th June, 2012

Memo No. CTS- 91/2002/304-A

- 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, Varun Beverages (International) Ltd. (Unit-II) Rani (Patgaon), Guwahati-781017 for information.

(R.D. Borah),
Joint Commissioner of Taxes, Assam,
Guwahati-6.

M.D. Deb
25/6/2012