

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

ORDER

Dated, Dispur, *9th* November, 2015

No. CTCA-51/2006(5)/180: Assam Conductors Manufacturer's Association (hereinafter referred to as 'ACMA'), Guwahati filed a petition on 27/04/2015 seeking review of the clarification issued vide order No. CTCA-51/2006(5)/44 dated 2/04/2015.

The brief facts leading to filing of such review petition are as follows:

- (1) ACMA Guwahati had filed a petition on 23/08/2005 under Section 105 seeking clarification on the VAT rate applicable on sales of 'All Aluminum Alloy Conductor' or 'AAAC' and 'Aluminum conductors Steel Reinforced' or 'ACSR'.
- (2) The Commissioner of Taxes, Assam, vide no. CTS-16/2015/447 dated 05-01-2006, issued a clarification holding that "Aluminum Conductor" is an unspecified item and cannot be treated as extrusion of Aluminum. Hence it is covered by Entry at Sl. No.1 of the Fifth Schedule appended to the AVAT Act, 2003 and is taxable at 12.5%.
- (3) The above clarification issued by the Commissioner of Taxes, Assam on 05-01-2006 was assailed by the ACMA before the Honorable High Court by way of WP(C) No. 1776/2006. The petitioner, in the said writ petition, also sought interpretation of the items namely- All Aluminium Conductors (AAC), Aluminium Conductor Steel Reinforced (ACSR) and All Aluminium Alloys Conductors (AAAC).
- (4) The Hon'ble High Court disposed the WP(C) No. 1776/2006 on 28-05-2014 by remanding the matter back to Commissioner of Taxes, Assam, for deciding the application afresh on merits after holding proper enquiry in accordance with law.
- (5) A clarification was issued vide order No. CTCA-51/2006(5)/44 dated 2/04/2015 wherein it was held that AAA Conductor is not covered by the word "metal" as used in Entry 26 of the Second Schedule of the AVAT Act, 2003 and AAA Conductor, being an unspecified item, was taxable at 12.5% vide Entry 1 of the Fifth Schedule appended to the Assam VAT Act, 2003 for the period upto 03/02/2008 and from 4/2/2008 this item, being specifically inserted at Entry No. 97 of the Second Schedule, is taxable at 4% upto 30/10/2009 and at 5% with effect from 31/10/2009. Being aggrieved by the clarification, ACMA has sought review of the clarification.

The petitioner i.e. ACMA submitted that the clarification was issued without appreciating the basic question involved. The issue in question is not whether the AAA conductor is a aluminium metal or not, but the issue involved is whether AAA conductor falls within the ambit of 'extrusion' or not. The clarification is also contradictory to the earlier two clarifications issued by the Commissioner of Taxes, Assam.

After due consideration, a three member Committee was constituted vide order No. CTCA-51/2006(5)/163 dated 30/6/2015 to examine the process of manufacturing involved and issue of extrusion vis-à-vis the legal provisions. The Committee undertook field verification, thoroughly examined process involved in the manufacture of conductor and whether conductor obtained by such process can be said to have been obtained through extrusion and also examined the taxability of such product with reference to the legal provisions and thereafter submitted a detailed report.

Perused the report.

The basic question for consideration was whether the Aluminium Conductors of different varieties squarely fall under the ambit of 'extrusion of aluminium' or not as mentioned in the Entry 26 of the Part A of the Second Schedule appended to the Assam VAT Act, 2003.

It would be apposite to extract Entry 26 as below:

- "26. (i) Ferrous and non-ferrous metals and alloys such as aluminum, copper, zinc and extrusions of those.
(ii) Non- metals."

Before deciding the issue, it would be necessary to describe the process of "extrusion". When a material is pushed or pulled through a die or dies under a pressure to get a desired shape or size, the said process is known as extrusion process. The process involved in manufacturing of aluminium conductor reveals that through an integrated process, aluminium rod (normally of 9.5 mm thickness) is pulled through multiple dies in drawing machine to get the wire of desired thickness (normally of 2mm or more) and depending on the requirement of the purchaser, three or more such wires are twisted and bunched/clustered together and this end product is known as aluminium conductor. These conductors are used for transmission of high voltage electric current and distribution of electricity and its main consumers are electricity generating and distributing companies/ board etc. When the process involved in manufacture of aluminium conductor is examined vis-à-vis the extrusion process, it becomes amply clear that aluminium conductors are derived through the process of extrusion only.

Hence, after obtaining the approval of the Government vide letter No. FTX. 243/13/59 dated 29/10/2015 the clarification issued earlier is reviewed with following observations:

- (a) Aluminum Conductors i.e. AA Conductor, AAA Conductor and ACSR Conductor are covered by Entry No. 26 of Part-A of the Second Schedule appended to the Assam VAT ACT, 2003 and are taxable at the rate of taxes as specified in Second Schedule from 01/05/2005 to upto 03/02/2008.
- (b) From 04/02/2008 onward, a separate entry was inserted for AAA Conductor at Entry No. 97 of Part-A of the Second Schedule of the AVAT Act, 2003 and hence AAA Conductor is taxable at 4% upto 30/10/2009 and 5% w.e.f. 31/10/2009.
- (c) From 04/02/2008 onwards, AA Conductor and ACSR Conductor are covered by Entry No. 26 of Part-A of the Second Schedule of the AVAT Act, 2003 and are taxable at the rate of taxes as specified in Second Schedule.

With the above observations, the review petition is disposed of.


(Anurag Goel, IAS)
Commissioner of Taxes, Assam,
Dispur, Guwahati-6

Memo No. ETCA-51/2006(5)/180A

Dated Dispur, the 12th November, 2015

Copy to:-

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favour of kind information.
2. The Additional Commissioners of Taxes/ Joint Commissioners of Taxes (All), Head Office for information.
3. The Deputy Commissioner of Taxes , (All) for information.
4. The Assistant Commissioner of Taxes, (All) and Superintendent of Taxes (All) for information.
5. Assam Conductors Manufacturer's Association, Guwahati for information.


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