

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

ORDER

04 DEC

Dated Dispur the 30th November/2015.

No.CTS-3/2013/129 : M/s Luit Valley Petrochem Limited, Royal Centre Building, Room No.301, G.S. Road, Guwahati-7 has filed the present application for adjudication under section 105 of the Assam Value Added Tax Act, 2003, hereinafter referred to as the Act in short. The petitioner has sought clarification as to whether the rate specified against entry Sl. No.1 of the Fifth Schedule of the Act applies to all commodities enumerated as 'other goods' in the computer generated Registration Certificate issued to him even though the commodities are classifiable under other schedules of the Act. Further, clarification has also been sought on the applicable rate of Vat on the commodities, namely – (i) Geo Textile Bags and Geo Textile Tubular Mats ; (ii) Geo Textile Fabric and (iii) Polypropylene Rope Gabion.

The application is in order and hence admitted for adjudication. Shri B. Purohit, Advocate appeared on behalf of the petitioner and made averments on the fixed date of hearing.

As regard the first query raised by the applicant, it is clarified that the HSN code for enumerating items used by the computer system of the department covers only a limited number of descriptions of various commodities. The commodities lying outside such list are captured as 'other goods' by the computer system and the computer printout of a registration certificate describe those as 'other goods'. Therefore, this cannot be synonymous with the phrase 'other goods' used in the entry Sl. No.1 of the Fifth Schedule of the Act for the purpose of determining the applicable rate of tax thereon.

As regard the second query raised by the applicant as to the applicable rate of tax on certain commodities, the position is clarified item wise as given below after perusing the submissions made by the applicant and examining the relevant provisions of the Act in regard to the same.

(i) Geo Textile Bags and Geo Textile Tubular Mats :

The applicant has sought to classify these items under entry Sl. No.88 of Second Schedule Part-A of the Act. The said entry reads : "Textiles made ups, i.e., fabric that has undergone a stitching process but excluding bleaching, dying, water/shrink proofing, organdie process. It is crystal clear from perusal of description of the entry that 'textiles made-ups' are precisely defined as any fabric that has undergone a stitching process in the entry itself which has further laid down that bleaching, dying, water/shrink proofing, organdie process are not to be treated as stitching process. On the other, neither the

Contd. P/2

petitioner has submitted any materials to the effect that the concerned items are obtained through a stitching process nor this authority has come across any such information upon his own. Therefore, the items Geo Textile Bags and Geo Textile Tubular Mats do not fall under any enumerated entry of First, Second, Third and Fourth Schedule of the Act. Hence, the applicable rate of tax thereon shall be 14.5% as per entry Sl. No.1 of the Fifth Schedule of the same Act.

(ii) Geo Textile Fabric : The applicant has sought to classify the item under entry Sl. No.37 of First Schedule of the Act. But a close examination of the phraseology employed in enumerating the Sl. No.37 of First Schedule of the Act would negate the argument sought to be advanced by the applicant. The description 'textile fabric' is followed by the phrase "including" to widen the connotation for comprehending endi and muga cloth. This indisputably brings forth the conclusion that the preceding words "Textile Fabric" has been used only to cover textile fabric meaning woven or knitted fabric which are suitable for wearing, or for stitching into garments or for making other articles of use like bed linens, curtains, tapestries etc. Textile fabrics are distinguished from felt or burlap in that sense. Now, the description "geo textiles" connotes any permeable textile material that is used with foundation, soil, rock, earth etc. to increase stability and decrease wind and water erosion. Modern geo textiles are usually made from synthetic polymers such as polypropylene, polyethylenes and polyamides. These are not necessarily obtained by weaving or knitting. The non-woven geotextile is an arrangement of fibers either oriented or randomly patterned in a sheet resembling felt. These geotextiles provide planar water flow in addition to stabilization of soil. Typical applications include access roads, aggregate drains, asphalt pavement overlays and erosion control. Woven geotextiles looks like burlap and is made of two sets of parallel strands systematically interlaced to form a thin, flat fabric. These are generally preferred for applications where high strength properties are needed, but where filtration requirements are less critical and planar flow is not a consideration. In view of such facts, the description "textile fabric including endi and muga cloth" cannot comprehend geotextile fabric in its ambit. Therefore, geotextiles is definitely not covered by entry Sl. No.37 of First Schedule of the Assam Value Added Tax Act, 2003. Further, since the same product is also not covered by any enumerated entry under Second, Third or Fourth Schedule, the applicable rate of Vat thereon is clarified to be 14.5% as per entry Sl. No.1 of Fifth Schedule of the Assam Value Added Tax Act, 2003.

(iii) Polypropylene Rope Gabion : The applicant has sought to classify the item under entry Sl. No.155 of Second Schedule, Part-C of the Act by pleading that the item is nothing but polypropylene ropes entwined together. Since the item 'polypropylene rope is included in the description adopted under entry Sl. No.155, the applicable rate of tax on gabion made from polypropylene rope shall also be at the rate of 5 percent. However, on enquiry, it is found that a gabion is understood in common or

commercial parlance as a cylindrical basket either of metal or wicker filled with stones, earth etc. and is used mainly in construction industry. It is thus, a further downstream utility product obtained from ingredients like polypropylene or other polymer filaments for some specific uses and therefore, the same is a distinct and separate commodity from the polypropylene filaments from which it has emerged. An analogy can be found in products known as knitted wears and the basic material thereof namely knitting yarns. Both are recognized as different commercial commodity in trade and industry. In fact, this Commissionerate while issuing clarificatory order No.CTS-83/2007/76 dated 15.10.2008 under section 105 of the Act held that Fishnet Fabric in length and Fishnet Twine are different articles for the purpose of levy of tax. Therefore, the applicable rate of tax on Polypropylene Rope Gabion is 14.5% as per entry Sl. No.1 of the Fifth Schedule of the Assam Value Added Tax Act' 2003 since it is not covered by any other descriptive entry of First, Second, Third and Fourth Schedule of the Act.

The present application under section 105 stands accordingly disposed.


Sd/-Anurag Goel
Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

Memo No.CTS-3/2013/129-A

Dated Dispur, the 04th December, 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) for information.
5. M/s. Luit Valley Petrochem Pvt. Ltd., Royal Centre Building, Room No.301, Opposite S.B. Deorah College, Bora Service G.S. Road, Guwahati-781007 for information.


(A Choudhury)
Joint Commissioner of Taxes, Assam
Dispur, Guwahati-6.

Makes
03/12/15