

**GOVERNMENT OF ASSAM  
OFFICE OF THE COMMISSIONER OF TAXES :: :: ASSAM  
DISPUR, GUWAHATI-781006**

**ORDER**

Dated Dispur, the 22<sup>nd</sup> May, 2017.

No.CTS-83/2015/50                      The petitioner M/s. Asian Paints Limited, NH-37, Gorchuk, Guwahati-35 filed a petition seeking clarification regarding the rate of tax of their product "Asian Paints Wood Tech Termishield".

Perused the prayer of the Petitioner. According to the Petitioner the product is classified under the Central Excise Chapter heading 3808 as an insecticide. The product is a ready to use oil borne wood preservative used and control of termite infestations and borers in hardwood, plywood and all wooden furniture. The product can be applied on wooden furniture by means of a brush/spray or by directly injecting into the wood. The Petitioner is presently paying tax @14.5% on this product. The reason for seeking clarification is whether the item can be placed at serial nos.19 of Part A of Second Schedule of the Assam Value Added Tax Act.

At this stage, it is pertinent to extract the relevant entry of goods covered by serial no.19 of Part A of Second Schedule of the Assam Value Added Tax Act. The entry reads as follows:

"Chemical fertilizers, pesticides, weedicides and insecticides excluding mosquito repellents, electric or electronic mosquito repellents, gadgets and insect repellents, devices and parts and accessories thereof".

Now, the question is whether the goods mentioned by the petitioner falls within the meaning of the term "insecticide "or" insect repellent".

The dictionary meaning of insecticide is that is that it is a type of chemical that kills insects and bugs. Form the submission of the Petitioner, it is however not evident that the product of the petitioner is an insecticide killing insects or is actually an insect repellent though its usage is only for termination of termites and borers infesting wooden furniture. Even in the case of Ellora Services Vs Commissioner of Central Excise, Mumbai submitted by the Petitioner to strengthen his plea, the Hon'ble CESTAT held that the product Wudcare manufactured by Ellora Services in an insecticide only because it satisfied the test of marketability and use as an insecticide. It was held that a product can be classified as an insecticide even if a product does not conform to the definition of insecticide.

The judgement submitted is not relevant to the case of the Petitioner because the Assam Value Added Tax Act, 2003 has excluded insect repellent from the purview of serial nos.19 of Schedule II of the Assam Value Added Tax Act, 2003. From the submission of the Petitioner it is clear that his product is similar in function and composition to the product "Wudcare" and the judgment cited does not establish that the product "Wudcare" is an insecticide killing insects. In fact, a thorough reading of the stated judgment clearly established that the product is a repellent but under Central Excise, it was held to be an insecticide because it passed the test of marketability and its use as an insecticide.

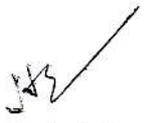
With the above observation, the petitioner's petition is disposed of with the clarification that tax payable on the product "Asian Paints Wood Tech Termishield" is as per the rates applicable under serial nos.1 of Schedule V of the Assam Value Added Tax Act, 2003.

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

Memo No.CTS-83/2015/50-A,  
Copy to:-

Dated Dispur, the 13<sup>th</sup> July, 2017.

1. The Principal Secretary to the Government of Assam, Finance Department, Dispur for favor 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. Asian Paints Limited for information.

  
(H.Borgohain)  
Addl. Commissioner of Taxes, Assam,  
Dispur, Guwahati-6.