

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES, ASSAM, GUWAHATI.
DISPUR, GUWAHATI-6

ORDER

Dated Dispur, the 24th June/2009.

No. CTS-48/2005/243: M/s Tata Tea Ltd., G.S. Road, Guwahati-5 has filed an application under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification as to whether the applicant shall be exempted from payment of Entry Tax under Section 3(2) of the Assam Entry Tax Act, 2008 on the import of "Black Tea" from outside the State of Assam which after blending and packeting is sold within the State of Assam and tax is paid on such blended and packaged tea under the AVAT Act, 2003. The application is found to be in order, hence admitted.

Dr. A.K. Saraf, Sr. Advocate, M/s Nitu Hawelia, Advocate and R.K. Madhota, Chief Manager (Taxation) of the company appeared. Dr. Saraf made his submission. He also submitted a written statement along with list of judgements relied on. Perused the application, written statement, submission and the judgements placed by Dr. Saraf.

Dr. Saraf submitted that as per provisions of Section 3(2)(i) of the AET Act, 2008, it becomes clear that exemption from payment of entry tax has been granted subject to three conditions, namely :-

- 1) If the specified goods, on its entry into local area is sold within the State of Assam,
- 2) The sale of such imported goods is in the form in which the goods have been imported,
and
- 3) Tax is payable on such sale under the local sales tax law.

He submitted that from the meaning that has been attributed to the words "consumption and use" by the various judicial pronouncements it becomes clear that whenever an imported article is used in a manufacturing process to produce an article different from the earlier one, which has been processed through, entry tax shall be paid on the imported goods. The petitioner procures black tea from the outside the State of Assam for blending and packaging and the tea so blended is sold within and outside the State of Assam. Since after blending and packaging the item remains tea, it cannot be said that the imported tea has been consumed and/or used in the process.

He further states that blended tea is taxed under the same entry i.e. tea falling under entry 20 of the fourth schedule attached to the AVAT Act, 2003. He further states that blending of different grades of tea does not constitute a process of manufacture. The term "consumption or use" is commonly used in the context of manufacture. Therefore, there is no consumption or use of imported Black Tea in the instant case.

Contd.2

He referred to Arunodaya Construction (P) Ltd. and another Vs. State of Assam & Ors., 2006(Suppl.) GLT 476 where the Hon'ble Gauhati High Court decided that the petitioners in the case consumed the cement in their manufacturing process of asbestos sheets, since the import of cement in the local area for the purpose of consumption, such consumption falls within the meaning of the word "consumption". He further relied on SM Ramlal Co. Vs. Secretary to the Govt. of Punjab(1995)14 TLD10 in which Hon'ble Supreme Court stated that "the expression use is not defined in the Act. In its ordinary meaning the word use as a noun, is the act of employing a thing; putting into action or service ; employing for or applying to a given purpose. But the word use occur in Entry 52 List II of the Seventh Schedule to the Constitution sandwiched between consumption and sale and it must take colour from the context in which it occurs. It is a settled rule of interpretation that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general : Maxwell on interpretation of Statutes, 11th edition P321. The coupling of the three words 'consumption', 'use' and 'sale' connotes that the underlying common idea was that either the title of the owner is transferred to another, or the thing or commodity ceases to exist in its original form. Unless it is proved that the wool brought within the limits of Notified Area Committee, Faridabad, by the appellant was intended to be so employed that it was to become a new commodity or a component of a new commodity, no octroi could be levied by the Notified Area Committee on the entry of wool."

The petitioner, therefore submitted that applying the above test also, in absence of any transfer of title to the goods or in absence of original commodity ceasing to exist in original form, it cannot be said that there is any consumption or use involved.

He further relied upon decision of 5 judges bench judgement in *Burmah-Shell Oil Storage & Distributing Co. of India Ltd.* in which the Supreme Court stated "Added to the word "consumption" is the word "use" also. There may be certain commodities which though put to use are not "used up" in the process. A motor car brought into an area for use is not used up in the same sense as food stuffs. The two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes or uses them up. In this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense."

Contd.3

He also referred to ACQUEOUS VICTUALS PVT. LTD. Vs. State of UP(1998)5SCC474 where the Hon'ble Court referring to the decision in the Burmah-Shell case stated "that it becomes obvious that the word "retention" is held to be a synonym with the word "repose", meaning thereby the article concerned must finally rest within the municipal limits. In the light of the aforesaid judgment of the Constitution Bench of this Court, therefore, it is obvious that before a municipality can impose octroi duty on any commodity, it has to be shown that the commodity concerned was brought within the municipal limits for consumption, that is, for being totally used up so that it ceases to exist within the municipal limits themselves or it was to be used for an indefinite period within the municipal limits so that it ultimately rests within the municipal limits and does not go out subsequently."

The petitioner states that in the light of the aforesaid legal position, it is clear that the concerned commodity must "repose" within the State and is not taken out later on. Tea is brought into Assam and after blending and repacking into smaller consumer packs, is sold outside the State - it does not "repose" within the State. Where a commodity is consumed in the manufacture of another commodity, as far as the first commodity is concerned it stands consumed within the State, and the test of "repose" is satisfied. If it goes out of the State, albeit in a value added form, without being lost or destroyed or changing its identity completely, it cannot be said that the commodity that was brought in has reposed in the State.

With regard to the above referred judgments, it is stated that in the SM Ramlal Co. case, the three judge bench gave a very restricted interpretation of the word "use" based on the facts of the case. The decision of the 5 judge bench in Burmah-Shell case which expounded the interpretation of words "use" and "consumption" together needs to be taken as guide for the purpose of instant case.

The petitioner or their learned Advocate have not stated a crucial fact which they admitted at the time of hearing that the blended tea prepared and sold by the petitioner constitutes of local Assam tea 80%-90% by weight or volume and imported Black Tea 10% or 20%. So what is sold by the petitioner is basically the local Assam Tea which is blended with imported tea in a small measure for value addition. Therefore, the imported Black Tea is used up in improving the quality of local Assam Tea to fetch a higher price for the petitioner.

The Hon'ble Supreme Court in the Burmah-Shell case stated the two expressions "use" or "consumption" together therefore, connotes ^{or} for consumption in a manner which destroys, wastes or uses them up. The Hon'ble Supreme Court further added that the word "consumption" must receive a larger meaning than merely the act of consuming in the generally understood sense. Going by the interpretation given by the Supreme Court, it is ^{not} necessary that there has to be manufacturing process for consumption of a commodity. Further, even if the blended tea is taxed at the same rate as tea, it cannot be

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said that the imported tea which is used for blending of local Assam tea has not been consumed in its use in blending as explained by the Hon'ble Supreme Court. It is not necessary that for consumption identity of the imported good must be lost. As explained by the Hon'ble Supreme Court consumption may be in a manner which destroys, wastes or uses up a commodity. In the instant case, the imported black tea is used up in improving the quality of local Assam tea. Hence, the use of imported Black Tea in blending with local Assam tea falls within consumption as explained by the Hon'ble Supreme Court in *Burmah-Shell* case.

In view of the above, it is clarified that entry tax is leviable on Black Tea imported in a local area which is used for blending of local Assam Tea and the blended Tea is sold within the State or outside the State.

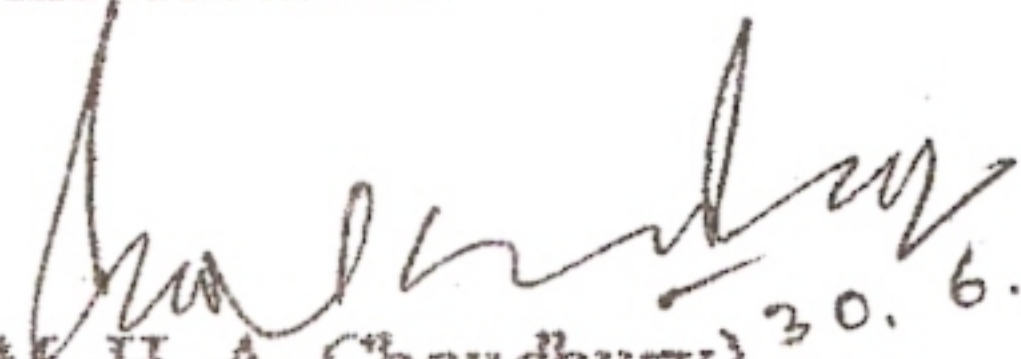
Sd/-(Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

Dated Dispur the 18th July /2009

Memo No. CTS-48/2005/243 -A

Copy to:-

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. Tata Tea Ltd., G.S. Road, Guwahati-5 for information.


(M. H. A. Choudhury), 30.6.2009

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