

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

ORDER

Dated Dispur, the 19th December, 2009

No. CTS-70/2007/409: M/s. Excellent Gravure Ltd., A.K. Azad Road, Gopinath Nagar, Kalapahar Industrial Area, Guwahati-16 filed an application under section 105 of the Assam Value Added Tax Act, 2003 read with section 9 of the Assam Entry Tax Act, 2008, seeking clarification as to whether the items polyester film, metallised pet, metallised BOPP, aluminium foil film and poly film imported by the applicant is taxable under the Assam Entry Tax Act, 2008. The application is found to be in order, hence admitted.

Shri A.K. Saraf, Senior Advocate appeared on behalf of the petitioner and placed his submission. He submitted that as per Entry 28 of the Schedule attached to the Assam Entry Tax Act, 2008 "Films of all kind including X-Ray films" are taxable at the rate of four paise in the rupee. Since the items Polyester film, Metallised Pet, Metallised BOPP, Aluminium Foil Film and Poly Film imported by the applicant do not fall in the said Entry 28 of the Schedule attached to the Assam Entry Tax Act, 2008, the same are not taxable under the Assam Entry Tax Act, 2008. The item "Films of all kinds including X-Ray Films" in its natural meaning includes 'X-Ray films'. However, the said Entry 28 has specifically mentioned 'X-Ray films' to be included in Films of all kinds. The only rational purpose, which can be attributed to such legislation, is that by using the word 'including' in Entry 28 the Legislature intended to convey that it is only the X-Ray film and the like goods which are exigible to entry tax. The word 'including' appearing in Entry 28 of the Schedule cannot, but be held to have been used in restrictive sense and the Legislative intention is not to include each and every items except X-Ray films or films of the nature of the X-Ray films. By using the word 'including' in Entry 28, the Legislature intended to illustrate as to what items the expression "Films of all kinds" would convey. From a plain reading of Entry 28 of the Schedule attached to the Assam Entry Tax Act, 2008, it is clear that the items Polyester film, Metallised Pet, Metallised BOPP, Aluminium Foil Film and Poly Films would not fall within the purview under the Entry 28 of the Schedule and thereby not taxable under the Assam Entry Tax Act, 2008. He also submitted the judgment and order in Sterlite Optical Technologies Ltd. Vs. Oil India Ltd. and ors. [2001 (4) GLT 54]. Perused the submission as well as the order of the Hon'ble Court.

The entry at Sl. No. 28 of the Schedule attached to the Assam Entry Tax Act, 2008 reads as "Films of all kinds including X-ray films." Whereas the entry quoted in the judgment reads as "Sound transmitting equipment including telephones, mobile phones, pagers and component and parts thereof". Therefore, there is basic difference in the entries. While in the former the 'including' starts after the words "Films of all kinds" while in the latter the word "including" is after the words "sound transmitting equipment". The Legislative intention is made clear in the first part of the entry where words "of all kinds" are used to include films of various kinds. The word "including" is used for merely elucidating that x-ray films also falls within the entry. In case of sound transmitting equipments, since words "of all kinds" are not used and since optical fibre item is of different nature than telephones, mobiles etc., the Hon'ble High Court held that optical fibre does not form part of the entry.

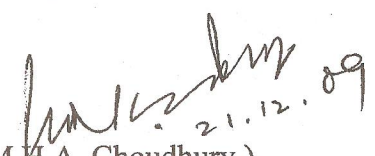
In view of the above discussion, it is clarified that the items polyester film, aluminium foil film, poly film, metallised pet, metallised BOPP shall come under entry at Sl. No. 28 of the Assam Entry Tax Schedule and, therefore, taxable @4% under the Assam Entry Tax Act, 2008.

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

Memo No. CTS-70/2007/409-A
Copy to:-

Dated Dispur, the 21st December, 2009

1. The Principal Secretary to the Government of Assam, Finance (Taxation) 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 Commissioners of Taxes (All) for information.
4. The Assistant Commissioners of Taxes/Superintendents of Taxes (All) for information.
5. M/s. Excellent Gravure Ltd., A.K. Azad Road, Gopinath Nagar, Kalapahar Industrial Area, Guwahati-16 for information.


(M.H.A. Choudhury),
Addl. Commissioner of Taxes, Assam,
Dispur, Guwahati-6.
