

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES::ASSAM::KAR BHAWAN
DISPUR.GUWAHATI.

ORDER

Dated Guwahati, the

1st February, 2010.

No. CTS-3/2009/95 : M/s. Ganga Paper Products. Lalmati, near Nidhi Bhawan, N.H.-37, Beltola, Guwahati-28 filed on application under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on taxability of rate of tax on "paper plate" under the Assam Value Added Tax Act, 2003. The application is found to be in order, hence admitted.

Shri Navin Kumar Jain, Charter Accountant appeared on behalf of the petitioner and placed his submission. He submitted that the item "paper plate" should be taxable @5% under item No.90 "Cups and Glasses of papers and Plastics." He also placed two judgements. In the first judgement in State of Maharashtra -Vs-Bradma of India Ltd. [2005]140STC0017 (SC), the Hon'ble Court held that a specific entry would override a general entry. In the second, in the case of Maruti Yeast India Pvt. Ltd., -Vs- State of UP[2008]14VST259(SC), the Court observed that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another residuary entry, the former should be preferred. He also submitted the extract of Karnataka Value Added Tax Act Schedule, Andhra Pradesh Value Added Tax Act Schedule and Tamil Nadu Value Added Tax Act Schedules wherein the rate of taxes are 4%.

The entry at Sl. No.90 of the Second Schedule to the Assam Value Added Tax Act, 2003 reads as "Cups and Glasses of papers and Plastics.". There is no mention of "plate of paper" in the entry. Therefore there is no specific entry for the said item as against contended by the petitioner. Further on examination of the entries of the other States, it is seen that there is specific entry mentioning plates alongwith cups and glasses in the Schedule, hence the item is taxable @4% in the said States. It is, therefore, clarified that "paper plates" are taxable @13.5% as per entry at Sl. No.1 of the Fifth Schedule of the Assam Value Added Tax Act as the item is not mentioned in any entries of First, Second, Third and Fourth Schedules of the Assam Value Added Tax Act, 2003.

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

Dated Dispur the 3rd February, 2010.

Memo No. CTS-3/2009/95 -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. Ganga Paper Products. Lalmati, near Nidhi Bhawan, N.H.-37, Beltola, Guwahati-28 for information.

(A. Chowdhury),
Superintendent of Taxes, (Law),
Office of the Commissioner of Taxes, Assam,
Dispur, Guwahati-6.
