

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

ORDER

Dated Dispur, the 4th July, 2012.

No. CTS-6/2009/285 : M/s Fusion Foods, Anil Plaza, Bhangagarh, G.S. Road, Guwahati filed an application under Section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on the rate of tax on cooked food sold in the restaurant as meal and rate of tax on the packed cooked food delivered to the house of the customer or place of the customer.

Shri Binit Todi, C.A. appeared on behalf of the petitioner and filed his submission. He submitted that they are running a restaurant and they sell cooked food to their customers. Sometimes the customers ask them to pack cooked food to take home or sometimes they ask to deliver the same to their house or other places. In both the situation food is cooked and served. They are not pre packed food and are not meant to be eaten after the instant meal time. The same cannot be preserved for a long time in the given packed condition and meant to be eaten/consumed immediately. In the light of above, they submitted that the cooked food packed by restaurant for carrying would fall under cooked food and hence taxable @ 5%.


Perused the submission and entries at Sl. No.112 of Part-A of Second Schedule under the AVAT Act, 2003 is examined. The entry reads as "Cooked food excluding packed cooked food." Therefore, it is clear that though cooked food is taxable @5% but the entry has excluded packed cooked food. Packed cooked food is not mentioned in any entries of First, Second, Third and Fourth Schedule. Hence, it is taxable @13.5% as per entry at Sl. No.1 of the Fifth Schedule of the AVAT Act, 2003. The petitioner has himself stated that apart from the cooked food, they are also selling cooked food which are packed. From the entry, it is clear that such packed cooked food shall be excluded from the entry at Sl. No.112 of Part-A of Second Schedule. Hence, the said item is taxable @13.5%.

Sd/- Dr. J.B. Ekka,
Commissioner of Taxes, Assam,
Guwahati-6.

Memo No. CTS-6/2009/285-A

Dated Dispur, the 10 July, 2012.

- Copy to
1. The Principal Secretary to the Government of Assam, Finance 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 Commissioner of Taxes (All) for information.
 4. The Assistant Commissioner of Taxes, Superintendent of Taxes(all) for information.
 5. M/s Fusion Foods, Anil Plaza, Bhangagarh, G.S. Road, for information.


(R.D. Borah),

Joint Commissioner of Taxes, Assam,
Guwahati-6.


M.D. B.
9/7/2012