

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

ORDER

Dated Dispur, the 30th Sept/ 2008.

No. CTS-14/2008/132 : M/s N.E. Packaged Drinking Water Manufacturer's Association, Kamakhya Umananda Bhawan, A.T. Road, Guwahati-1 has filed an application in Form-76 for determination of disputed question as to whether an industrial activity of transformation of non-commercial underground raw water into marketable commercial commodity known as packaged drinking water tantamount to "manufacture" as defined under Section 2(30) of the Assam Value Added Tax Act, 2003 (as amended) (hereinafter referred as AVAT Act/2003).

The application is found to be in order, hence admitted. Heard the learned representative of the petitioner. The relevant documents placed along with the application are also perused.

Although in the petition the petitioner has asked whether an industrial activity of transformation of non commercial underground raw water into marketable commercial commodity known as 'packaged drinking water' tantamount to manufacture as derived under Section 2(30) of the AVAT Act/2003, in the Para-1 of Annexure-A, the petitioner states that it is an association of industrial units which were in commercial production of 'packaged drinking water' before the commencement of AVAT Act/2003 and were found eligible under the Assam Industries (Sales Tax Concession) Scheme, 1997) and as such deserved to be treated as eligible industrial unit under Para-2 of the Assam Industries (Tax Remission) Scheme, 2005 for enjoyment of sales tax benefit under the scheme.

In view of the above, for clarification of all concerned, it needs to be clarified whether activity of transformation of underground raw water into packaged drinking water would be eligible in tax benefits under

- (a) The Assam Industries (Sales Tax Concession) Scheme, 1997 (hereinafter referred as Scheme, 1997).
- (b) The Assam Industries (Tax Remission) Scheme, 2005 (hereinafter referred as Scheme, 2005) and
- (c) The Assam Industries (Tax Exemption for Pipeline Units) Order, 2005. (hereinafter referred as Order, 2005).

It is made clear that for any activity to be eligible for tax benefits under 1997 Scheme, the provision of the Assam General Sales Tax Act/1993 have to be considered. In case an industrial unit is eligible under the 1997 Scheme, it will also be eligible under Scheme, 2005 for the remaining period/financial limit, after 1.5.2005, i.e. the date of coming into force of

AVAT Act/2003. For any activity to be eligible under Pipeline Order,2005, the provision of AVAT Act/2003 have to be considered.

The petitioners have stated that the transformation of underground raw water into packaged drinking water involves treatment of underground raw water as well as packaging of water. The contention is accepted. Further, the petitioner states that they are registered under Central Excise Act and paying Excise Duty, they are licensees of Food Adulteration Act /1954 etc.

It is stated that as far as the Central Excise Tariff Act/1985 is concerned, as per note in Chapter-22 in relation to water, process such as filtration, purification, packaging or adoption of any other treatment to render the product marketable to the consumer shall amount to manufacture. However, this definition cannot be used for the purpose of sales tax or VAT in the State.

1. Whether transformation of underground raw water to 'packaged drinking water' can be considered to be eligible for tax concession under 1997 Scheme.

In WP(C)No. 1659/2007 Deepak Kr. Podder – Vs- State of Assam and Others, the Hon'ble High Court decided on the question whether conversion of raw mustard oil to pure mustard oil would be eligible for grant of sales tax exemption under the 1997 Scheme. In the judgment, the Hon'ble High Court stated that the 1997 Scheme was formulated under Section 9(4) of the AGST/1993 and even if the 1997 Scheme does not provide the meaning of manufacture, but it is not entirely correct to rely on wider definition of manufacture given under the Section 2(22) of the AGST/1993 to decide any activity would be eligible for sales tax under 1997 Scheme notified under Section 9(4) of the Act. The Court held that no new product is produced through process of purification of raw mustard oil to pure mustard oil. The raw material used as well as produced goods is nothing but mustard oil although it may be mustard oil of better quality. Therefore, this process of filtration of raw mustard oil to pure mustard oil is ineligible for granting sales tax exemption under the 1997 Scheme. In this regard, the petitioner has contended that transformation of raw water to pure drinking water is different from transformation raw mustard oil to pure mustard oil because (a) Use of raw mustard oil or packaged mustard oil is same whereas packaged drinking water is used exclusively for drinking and raw water is used for cleaning etc. (b) Moreover the AGST Act does not distinguish between raw mustard oil and packaged mustard oil as far as rate of tax is concerned whereas raw water and packaged drinking water are recognized as separate product under item No. 40 of Schedule-1 and item No. 1A of Schedule-II of the AGST Act.

Even if the rate of tax on raw water and packaged drinking water is different, both are water and it cannot be considered as eligible for sales tax exemption under the 1997 Scheme. Even raw underground water is used for drinking by vast majority.

So the units involved in transformation of raw water into packaged drinking water are not eligible under 1997 Scheme. Since, these units are not eligible under 1997 Scheme, they are not eligible under Remission Scheme,2005 also.

2. Whether the process of transformation of raw water to packaged drinking water can be considered eligible under Pipeline Order, 2005.

As per Para 3(1) of the Pipeline Order, 2005 only eligible units who manufacture goods in Assam are eligible for tax concession. The definition of 'manufacture' as defined under AVAT Act includes any activity that brings out a change in an article as a result of some process etc. and results in transformation into a new and different article so understood in commercial parlance, having distinct name, character, use. So emergence of new commodity is necessary. However, water remains water even after transformation from raw water to packaged drinking water, there is no manufacture involved. The same view has been taken by Kerala High Court in Teejan Beverages Ltd. - vs - State of Kerala (2003)131 STC538. The petitioners have tried to distinguish this decision with the decision of Andhra Pradesh High Court in case of Surya Mineral Water- vs- Commissioner of Industries etc. (205) 139 STC 0348. However, in this case, the Hon'ble Andhra Pradesh High Court did not state whether transformation of raw water into packaged drinking water amount to manufacture. Hence, this decision cannot be applied here. The decision of the Kerala High Court can be applied because even in Kerala like other States, the rate of tax on raw water and packaged drinking water are different and the definition of "manufacture" given in Kerala Government notification is similar to that of given in AVAT Act.

In view of the above, transformation of underground raw water into packaged drinking water is not eligible for tax benefits in any of the three schemes.

Inform all concerned.

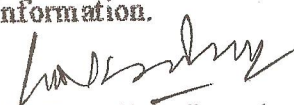
Sd/- (Sanjay Lohiya),
Commissioner of Taxes, Assam,
Guwahati-6.

Dated Dispur, the 30th Sept/2008.

Memo No. CTS-14/2008/132-135

Copy to :

1. The Commissioner & Secretary to the Govt. 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 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 N.E. Packaged Drinking Water Manufacturer's Association, Kamakhya Umananda Bhawan, A.T. Road, Guwahati-1, for information.


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


21/9/08.