



THE ASSAM GAZETTE

অসাধাৰণ

EXTRAORDINARY

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GOVERNMENT OF ASSAM
ORDERS BY THE GOVERNOR
FINANCE (TAXATION) DEPARTMENT

NOTIFICATION

The 28th July, 2005.

No. FTX.81/05/Pt./2: Whereas with a view to promoting rapid industrialization, the Government announced host of incentives in the Industrial Policy, 2003. The sales tax exemption was also granted, of course, as per Assam Industries (Sales Tax Concessions) Scheme, 1997. In the wake of such policy decision and assurance of the Government, a larger number of industrial units were either set up or are in the process of being set up. In the meantime, as per the national consensus, the Government of Assam introduced Value Added Tax (VAT) in Assam with effect from 1st May, 2005. Consequent upon such implementation, the sales tax concession available to the existing industries, which started the commercial production before implementation of VAT, was replaced by a remission Scheme, compatible to VAT. But the said Scheme, does not confer the benefit of remission to the industries, which took some steps for setting up of their units before implementation of VAT and would be commencing their commercial production after introduction of VAT though such industries are being set up with legitimate expectation of sales tax incentives.

It is, therefore, strongly felt that the industrial units, which have already made investment in the State with expectation of sales tax incentives should be allowed to enjoy the benefit of tax exemption, of course, in conformity with the provisions of the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2005).

Therefore, in exercise of the powers conferred by sub-section (1) of section 54 of the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2005), hereinafter referred to as the Act, the Governor of Assam is hereby pleased to notify the Assam Industries (Tax Exemption for pipeline units) Order, 2005, for granting exemption partially to such industrial units in the manner hereinafter appearing, namely:-

1. Short title and commencement.—

- (1) This Order may be called the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005, hereinafter to be mentioned as the Order.
- (2) It shall come into force on the date of its publication in the Official Gazette.

PART-I

2. Definition of Eligibility.—

Following shall be the eligible industrial units for the purpose of this Order:-

Category "A":- An industrial unit, which is in the process of being set up and commences the commercial production after the commencement of the Act but on or before 31st of March, 2006 and is in compliance with the eligibility criteria on the industrial unit as per the "Industrial Policy of Assam, 2003" shall be treated as a pipeline unit eligible for benefit under this Order under category "A".

Category "B":- An existing industrial unit which undertakes expansion/modernization/diversification as per the conditions laid down in the "Industrial Policy of Assam, 2003" and such expansion/modernization/diversification is completed and the resultant commercial production commences after the commencement of the Act but on or before 31st of March, 2006 shall be treated as an eligible industrial unit under category "B".

Category "C":- An industrial unit declared as relief undertaking on or before 31st of March, 2006 by the Government of Assam under the Assam Industrial Relief Undertaking (Special Provisions) Act, 1984 (Assam Act VII of 1984) or units declared sick by State Government/Director of Industries under any other Scheme/Act of the Government of Assam on or before 31st of March, 2006, and is in compliance with the eligibility criteria on the industrial unit as per the "Industrial Policy of Assam, 2003" shall be treated as an eligible industrial unit under category "C":

Provided that any industrial unit of the categories "A", "B", and "C" shall not be eligible for any benefit under this Order of its own venture or joint venture, if it is a Public Sector Undertaking under the Government of India:

Provided further that the following categories of industries shall not be eligible for any benefit under this Order:-

1. Plywood veneer, black board, block door manufacturing unit.
2. Saw mill.
3. Roller flour mill.
4. Re-rolling mills.
5. Tea industry excepting tea factory (Bought tea leaf factory), blending and packaging units in the small sector under management having no financial involvement or stake in an established tea garden or established tea company.
6. Weigh bridge.
7. Storage (except cold storage).
8. Galvanised sheet corrugating units.
9. Marble and decorative stone cutting from slab/sheets and polishing units.
10. Paper cutting from roll paper.
11. Coal to wash coal, sized coal.
12. Conversion of plain rod to tor rod.
13. Candle stick making unit.

3. Limits of Tax exemption for the eligible units:-

- (1) Where, an eligible unit registered under the Assam Value Added Tax Act, 2003 (Assam Act VIII of 2005) manufactures any goods in Assam, other than those declared above as not eligible, ninety nine percent of the tax payable by such unit according to its return in respect of sales of such goods manufactured in such unit shall be eligible for partial exemption or continued to be eligible for such exemption until the amount of such tax payable exceeds the quantum of monetary ceiling or the period of eligibility, whichever is earlier.

- (2) Subject to the provisions of sub-para (1), all pipeline units (Category 'A'), existing units undergoing expansion/modernization/diversification (Category 'B'), and Sick/Relief undertaking units (Category 'C') shall be entitled to the benefit of partial exemption of tax on sales of finished products as per following scale:

Category	SSI/Tiny/SSSBE's	Medium and large
"A"	Nine years subject to maximum of 150% of fixed capital investment.	Nine years subject to maximum of 100% of fixed capital investment.
"B"	Nine years subject to maximum of 100% of additional fixed capital investment.	Nine years subject to maximum of 90% of additional fixed capital investment.
"C"	Five years subject to maximum of 100% of additional investment made for rehabilitation.	Five years subject to maximum of 100% of additional investment made for rehabilitation.

- (3) In the case of Electronic industries, the tax benefit is upto 250% of fixed capital investment spread over a maximum period of 9(nine) years.
- (4) Tax payable during the return period by an eligible unit shall be calculated according to the following formula:-

- (a) Tax payable = Output Tax plus actual or notional tax liability under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) minus Input Tax:

Provided that in a case where the unit is engaged in manufacture of goods taxable at the first point of sale in the Fourth Schedule of the Act, the amount of tax payable during the return period shall be the tax liability on intra-state sale and sales in course of inter-state trade or commerce.

- (b) The amount of tax to be eligible for partial exemption shall be ninety nine percent of the amount of tax payable in accordance with tax return and the balance one percent of the tax payable shall be deposited by the eligible unit into the Government Account. It is, however, made clear that the eligible unit shall be eligible to charge the tax amount in the tax invoice/bill/cash memorandum issued.

Explanation:-

- (a) Large/Medium Scale Industry means an industrial unit having investment as per scale as prescribed by the Government of India from time to time or as may have remained applicable at the relevant time in individual cases.
- (b) SSI means Small Scale Industry where the investment in plant and machinery upto a limit of Rs.1 crore or as prescribed or modified by the Government of India from time to time or as may have remained applicable at the relevant time in individual cases.

- (c) Tiny means Tiny industry having investment as per scale as prescribed by the Government of India from time to time or as may have remained applicable at the relevant time in individual cases.
- (d) SSSBEs means Small Scale Service Business Enterprises with investment as defined by Government of India from time to time or as may have remained applicable at the relevant time in individual cases.
- (e) Fixed capital means and includes cost of land, building, including factory shed, godown, laboratory, plant and machinery, installation charges and pre-operative expenses capitalized, electrical and such other equipments which are directly related to production activities.

4. Definition of "an industrial unit employing the people of Assam":-

- (a) An industrial unit shall be deemed to have complied with the criteria on the industrial units employing the people of Assam vide category "A", "B" and "C", provided it has in its employment at least 80% of its employees in the managerial cadre and at least 90% of its employees in the non-managerial cadre from amongst the people of the State of Assam:

Provided that such employment in managerial cadre and non managerial cadre shall be enhanced to 90% and 100% respectively within a period of five years.

- (b) The Certificate on the exact position of the industrial unit's employing the people of Assam shall be obtained from the concerned District Employment Officer.

5. Procedure for grant of Eligibility Certificate for category "A", "B" and "C" :-

- (1) The eligible industrial unit falling under Category "A", "B" and "C" shall make an application in the format annexed at Annexure I, Annexure II and Annexure III respectively in this Order for issuance of Eligibility Certificate to the specified authority viz., District Level Committee, State Level Committee or the Udyog Sahayak Committee of AIDC. Such application shall be supported by all the required documents. Every such application shall be considered by the specified authority.

- (2) An application for the Eligibility Certificate shall be verified and signed in the case of—

- (a) individuals, by the proprietor of the industrial unit;
- (b) an association of persons, by an adult member or the principal officer;
- (c) a firm, by the managing partner or an adult partner of the partnership firm;
- (d) a Hindu undivided or joint family, by the Karta, any adult member of the family or the manager;
- (e) a company, by the Managing Director, Secretary or the Chief Executive of the company;
- (f) any Government Department, by the Head of the Office concerned.

- (3) The person making an application shall specify the capacity, in which the application is made, verified and signed.
- (4) (a) In case of an industrial unit, having an investment upto Rs.10 lakhs on plant and machinery after expansion/modernization/diversification, if any, the application for eligibility shall be considered by the District Level Committee.
- (b) The case of an industrial unit, having an investment above Rs.10 lakhs and upto Rs.100 lakhs on plant and machinery after expansion/modernization/diversification, if any, the application for eligibility shall be considered by the State Level Committee.
- (c) The case of an industrial unit, where total investment on plant and machinery after expansion/modernisation/diversification, if any, exceeds Rs.100 lakhs, the application for eligibility shall be considered by the State Level Udyog Sahayak Committee of Assam Industrial Development Corporation.
- (d) In considering the cases, the District Level Committees, State Level Committee and the Udyog Sahayak Committee of AIDC, as the case may be shall satisfy themselves, whether all the required conditions and norms have been fulfilled by the industrial unit for being declared as an eligible industrial unit for the purpose of this Order.
- (e) While considering a case, these Committees shall make inquiries for the verification of all information and particulars in each case.
- (f) In case an industrial unit fulfils all the conditions and norms for being declared as an eligible unit for the purpose of this Order, the concerned Committee shall recommend for the grant of Eligibility Certificate in favour of the industrial unit for the purpose of this Order.
- (g) The Eligibility Certificate shall be granted in the format annexed at Annexure IV, V and VI in this Order to the eligible industrial unit of category "A", "B" and "C" respectively by the competent authority of the Industries Department of the Government of Assam.
- (5) (a) Such Eligibility Certificate shall be granted by the General Manager, District Industries and Commerce Centre of the district concerned, on approval of the District Level Committee if it is the case of an eligible industrial unit, where total investment on plant and machinery after expansion/modernisation/diversification, if any, is upto Rs.10 lakhs.
- (b) Such Eligibility Certificate shall be granted by the Director of Industries, Government of Assam, on approval of the State Level Committee if it is the case of an eligible industrial unit, where total investment on plant and machinery after expansion/modernisation/diversification, if any, is above Rs.10 lakhs and upto Rs.100 lakhs.

(c) Such Eligibility Certificate shall be granted by the Managing Director, Assam Industrial Development Corporation Ltd., on approval of Udyog Sahayak Committee of AIDC if it is a case of an eligible industrial unit, where total investment on plant and machinery after expansion/modernisation/diversification, if any, exceeds Rs.100 lakhs.

(6) (a) (i) Subject to the conditions laid down in para 3 of this Order, the Eligibility Certificate issued under the Order shall be for a period of 9(nine) years from the date of commencement of production of an eligible unit of the category 'A' or 9(nine) years from the date of commencement of production after the expansion/modernization/diversification by an eligible industrial unit of the category 'B'. This period of 9(nine) years shall stand reduced upto the date when the unit reaches the maximum permissible limit of exemption as per para 3 or upto the date of closure of the eligible industrial unit of the categories 'A' and 'B' if the date of closure, if any, occurs prior to the expiry of the above mentioned period of 9(nine) years.

(ii) For an eligible industrial unit of the category 'C', the period of validity of the Eligibility Certificate under this Order shall be limited upto the date of expiry of the period as is specified by the Government of Assam in the declaration in respect of this industrial unit, notified by the State Government under the provision of section 3 of the Assam State Industrial Relief Undertakings (Special Provisions) Act, 1984 (Assam Act VII of 1984) or upto the date when the unit reaches the maximum limit of exemption as per para 3.

(b) If an industrial unit to which an Eligibility Certificate has been granted under this Order closes down or reaches the maximum limit of exemption, it shall be the duty of the unit to report within 14 days from the date of such closure in writing to the jurisdictional Prescribed Authority and the authority, which had issued the eligibility Certificate to it. Simultaneously alongwith this report, it shall also surrender the original Eligibility Certificate to the authority, which had issued the same and it shall also surrender the Certificate of Entitlement to the concerned Prescribed Authority. For any lapse or violation on the part of the industrial unit, it shall be liable for all penal actions under the provisions of the Assam Value Added Tax Act, 2003 and other laws in force.

6. Issue of Certificate of Entitlement by the Prescribed Authority:-

(i) The application for the grant of Certificate of Entitlement by category "A", "B" and "C" shall be submitted in the format at Annexure VII annexed herewith. It shall be verified and signed in the same way as in the case of application for the grant of Eligibility Certificate vide para 5(2) of the Order.

(ii) On receipt of the application for the grant of Certificate of Entitlement from the eligible industrial unit holding an Eligibility Certificate granted under this Order by a competent authority, the Prescribed Authority having jurisdiction over the unit, shall examine as to the correctness of the particulars, furnished in the application and the documents, accompanying therewith and after making necessary checks, if the Prescribed Authority is satisfied, that information furnished in the application is based on the information contained in the Eligibility Certificate granted to the industrial unit concerned and any further information furnished in the application or in connection with it is correct, it shall grant a Certificate of Entitlement to the eligible unit. The Certificate of Entitlement shall be effective from the date of commencement of production in case of category "A" and "C" and from the date of commencement of production after the expansion/modernization/diversification in respect of the eligible units falling under categories 'B' and it shall be valid for a financial year. Such Certificate of Entitlement shall be granted in the format annexed at Annexure VIII to the eligible unit of category "A", "B" and "C" within 30 days from the date of the receipt of the application from such industrial units.

(iii) The Prescribed Authority shall withhold the issue of Certificate of Entitlement or refuse to grant it, if the application and the documents, accompanying therewith are not found to be in order and the conditions laid down for the purpose are not fulfilled or if any information furnished is not correct.

(iv) A register of the Certificate of Entitlement issued by the Prescribed Authority shall be maintained by him in the format annexed at Annexure IX of this Order.

7. Annual Return:

In accordance with the provisions of the Act and the rules framed thereunder, the eligible unit shall file tax return and annual return within the prescribed time to the jurisdictional Prescribed Authority. However such tax return and annual return shall be in the formats annexed at Annexure X and XI of this Order.

8. Renewal of Certificate of Entitlement:

The Certificate of Entitlement shall remain valid for a year only, i.e., upto the end of financial year and thereafter shall be renewed after examination of annual return for each financial year or for a fraction of financial year till the eligible industrial unit reaches the maximum permissible limit of tax exemption as specified in the para 3 of the Order. The concerned Prescribed Authority of the area shall examine the returns furnished in the format at Annexure X and XI by the eligible unit and pass necessary orders as and when the unit reaches the maximum limit of tax exemption, withdrawing the Certificate of Entitlement with intimation to the authority granting the Eligibility Certificate besides taking action, for realisation of the due taxes and for violation of provisions, if any, under the provisions of the Assam Value Added Tax Act, 2003.

9. Particulars of Certificate of Entitlement on the invoice :

The holder of the Certificate of Entitlement in the case of an eligible industrial unit shall be competent to sell his finished products in the State of Assam or in the course of inter-State trade or commerce, for which the unit shall be eligible to exemption of taxes . In the tax invoice or the retail invoice, as the case may be, issued to the purchaser, the holder of the Certificate of Entitlement, in addition to his tax payer identification number (TIN) shall also clearly mention the number and date of his Certificate of Entitlement.

10. Raw Materials :

The expression "raw materials" shall have the same meaning as assigned to it in clause (38) of section 2 the Act and the admissibility of input tax credit thereon as well as on other goods shall be subject to the provisions of the Act.

11. Exemption of tax during the pendency of the application of Eligibility Certificate :

Where an eligible unit of has made an application for Eligibility Certificate in accordance with this Order and such application has remained pending for disposal, the amount of tax due according to the return under the Act shall be exempted in accordance with the provisions of this Order subject to the production of a certificate from the authority competent to issue such Eligibility Certificate to the effect that the application of the unit for the Eligibility Certificate is under consideration. On the basis of such certificate, exemption of tax can be granted for a period of six months only. If, the unit cannot obtain the Eligibility Certificate within such period of three months for reasons not attributable to it, exemption of tax can be allowed for a further period not exceeding six months subject to the production of a fresh certificate from such competent authority. If for any reason, such application for Eligibility Certificate is rejected, the unit shall, within thirty days from the date of order rejecting such application, make the payment of tax, which has been exempted pending disposal of such application for a Eligibility Certificate, along with the interest accrued thereon as per the provisions of the Act. The competent authority, which rejects the application for Eligibility Certificate of such unit, shall immediately send a copy of the order of rejection to the Prescribed Authority having jurisdiction over the unit.

12. Termination of Eligibility Certificate as well as the Certificate of Entitlement for violation of or non-compliance with any of the conditions laid down in the Order :

- (1) Under this Order, the Eligibility Certificate is granted to an industrial unit, which fulfils all eligibility conditions in terms of this Order and this Eligibility Certificate for the purpose of Certificate of Entitlement to enable the industrial unit to enjoy the benefit of tax exemption in terms of this Order. Violation of any condition of the eligibility or information on any of these conditions being found false at any time after the issue of the Eligibility Certificate or obtaining of such certificate by fraud or misrepresentation or suppression of facts or failure on the part of the holder of the Certificate of Entitlement to comply with any condition, laid down in his Certificate of Entitlement or to furnish any information required by his Prescribed Authority with regard to the implementation of this Order shall entail the termination of both the eligibility Certificate and Certificate of Entitlement.

- (2) For violation of any condition of eligibility in reference to which the Eligibility Certificate has been granted to an industrial unit as per the provisions of this Order or it is found at any time after the issue of Eligibility Certificate to an industrial unit that the information furnished by it on any of the conditions, which had led to the issue of the Eligibility Certificate to the unit is false or it is found that the Certificate was obtained by fraud or misrepresentation or suppression of facts, the competent authority of the Industries Department of the Government of Assam, which had issued the Eligibility Certificate shall be competent to terminate the same after giving an opportunity of hearing to the holder of the Eligibility Certificate against such termination. In the event of any such termination, the competent authority shall intimate the fact of such termination forthwith to the concerned eligible industrial unit and the Prescribed Authority concerned. On receipt of such intimation, the Prescribed Authority shall cancel forthwith the Certificate of Entitlement issued to that industrial unit and require such unit to surrender the same forthwith.
- (3) For failure on the part of a holder of the Certificate of Entitlement to comply with any condition, laid down in the Certificate of Entitlement, issued to him or to furnish any information required by the Prescribed Authority with regard to the implementation of this Order as per this Government notification, the Prescribed Authority who had issued Certificate of Entitlement shall be competent to terminate the Certificate of Entitlement, after giving an opportunity of hearing to the holder of the Certificate of Entitlement against such termination. In the event of any such termination, the Prescribed Authority shall intimate the fact of such termination forthwith to the concerned competent authority who had issued the Eligibility Certificate to this industrial unit. On receipt of such intimation the competent authority shall terminate forthwith the Eligibility Certificate, granted to the industrial unit and communicate the same to the industrial unit as well as the Prescribed Authority.

M.K. BAROOAH,

Commissioner & Secretary to the Government of Assam,
Finance (Taxation) Department, Dispur.