

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

ORDER

Dated Guwahati the 03rd April, 2010.

No. CTS-21/2005/131 : M/s. Saurav Auto Private Ltd., 1, August Kranti Path, Beltola- Khanapara Road has filed an application under section 105 of the Assam Value Added Tax Act, 2003 seeking clarification on rate of tax on supply, installation and commissioning of gas engine driver generating sets. The application is found to be in order hence admitted.

Shri Jayanta Sharma, Director appeared and placed his submission. He submitted that they are charging 13.5% on supply, installation and commissioning of gas engine driver generating sets. However Oil India Ltd. sent an e-mail communication requesting them to register under Composite Scheme of works contract and charge tax @ 4%. He also submitted that out of total transaction, 90%-95% is the cost of generating sets remaining is the cost of labour etc. Hence they have treated the transaction as sale and charging tax as per prescribed rate under the Assam Value Added Tax Act, 2003. He also referred to the Circular No. 11/2009 issued by the undersigned.

Perused the submission. It is a fact that in the case of State of Andhra Pradesh -Vs- Kone Elevators (I) Ltd. (2005) 140 SK 0022, the Hon'ble Supreme Court held that the major component into the end product was the materials consumed on producing the lift to be delivered and the skill and labour employed for converting the main component into the end product was only incidentally used and delivery of end product by the Kone Elevators constituted a sale and not works contract. In light of the above referred judgment, it is found that the stand of petitioner is on the right perspective and his transaction is sale and not a works contract and taxes chargeable at 13.5%.

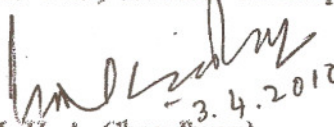
Sd/-Sanjay Lohiya,
Commissioner of Taxes, Assam,
Dispur, Guwahati-6.

Dated Dispur, the 03rd April, 2010.

Memo No. CTS- CTS-21/2005/131 -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. Saurav Auto Private Ltd., 1, August Kranti Path, Beltola- Khanapara for information.


3.4.2010
(M. H. A. Choudhury),
Addl. Commissioner of Taxes, Assam,
Dispur, Guwahati-6.