

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

ORDER

Dated Dispur, the 3rd Nov, 2011

No. CTS-53/2006/214: M/s Om Logistics Ltd., 130, Punjabi Bagh (T.C.) Ring Road, New Delhi-35 has filed an application under Section 105 of the AVAT Act, 2003 seeking clarification as to whether inspite of complying with the requirement of sub-section (4) of Section 76 of the Assam Value Added Tax Act, 2005, they are liable to deposit/furnish security while obtaining Transit Passes.

Shri Kuber Sharma, Authorised representative appeared on behalf of the petitioner and filed his submission. He submitted that –

“As per condition precedents contained u/s 76(4), a transporter or driver or person-in-charge of the goods vehicle is required to furnish security if, the transporter or driver or person-in-charge of the goods vehicle fails to provide/furnish-

- (a) Correct and complete documents relating to the consignment of the goods; and
- (b) Correct information about ownership of the goods and their destination; and
- (c) The transporter of the goods has no permanent address within the State.

In the instant case the transporter furnish all the abovementioned documents/information to the officer-in-charge of the Entry Point Check Post at the time of interception. In spite of furnishing these all documents/information, the officer-in-charge of the Entry Point Check Post insist upon the driver or the transporter or the person-in-charge of the goods vehicle to furnish security, which causes hardship to the transporter or driver or the person-in-charge of the goods vehicle.”

He also submitted that –

“The Hon’ble Gauhati High court in case of Pradip Kumar Sarawagi & Sons. Vs. Commissioner of Taxes & Ors. (2004) 137 STC 318(Gau) and in case of Shygun Lyngdoh Vs. State of Assam (2007) 8 VST 776(Gau) and in case of Salemfort Khonglah vs. State of Assam (2007) 7 VST 38 (Gau) held that in case of sales of goods in the course of inter-State trade or commerce security can

be insisted upon & not otherwise i.e. not in case of transfer of stock.”

Perused the submissions. Provisions of Section 76(4) of the AVAT Act, 2003 is also perused which reads as –

“Where it appears the officer-in-charge of the entry check-post or barrier or to the officer empowered by the Commissioner in this regard that the driver or the person-in-charge of the vehicle, or the transporter is not giving correct and complete documents relating to the consignment of the goods and correct information about the ownership of the goods and their destination and also in a case where the transporter of the goods has no permanent address within the State, the officer-in-charge of the entry check-post or the officer empowered by the Commissioner shall before issuing the transit pass, require the driver or the person-in-charge of the vehicle, or the transporter to furnish a security equivalent to the amount of tax calculated on the goods at the rate of tax prevailing in the State, in the form of a demand draft, call deposit or guarantee from a Scheduled Bank.

The security so furnished shall be released to the person who furnished the security on submission of the transit pass as per provision of sub-section (6). If, however, the transit pass is not submitted in time as provided in the said sub-section or is submitted without due endorsement(s) as provided in the same sub-section, the amount of such security shall be adjusted against the amount of tax that may be assessed under sub-section (6) and shall be deposited into the Government account.”


From the provisions of the Act as well as from the judgment and order submitted by the petitioner, it is clear that demand of tax and/or security is a quasi-judicial act which is vested upon officer-in-charge of the check-posts. No authority, superior to an assessing authority, can interfere with the quasi-judicial functions of an assessing authority by issuing administrative directions. Further, it is the discretion of the officer-in-charge of the check-post to decide the matter about the genuineness of the documents. Superior authority can not give any view on the same or issue any direction in this regard. It is, however, clarified that security can only be demanded by complying with the provisions of the AVAT Act, 2003.

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

Memo No. CTS-53/2006/214-A

Dated Guwahati, the 9 Nov, 2011

- 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. Commissioner^s 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 Om Logistics Ltd., 130, Punjabi Bagh (T.C.) Ring Road, New Delhi-35, for information.


3/11/2011

(R.D. Borah),

Joint Commissioner of Taxes, Assam,
Guwahati-6.

M. Deb.
03/11/2011