

उपस्थित

प्रार्थी

प्रार्थना-पत्र संख्या व

दिनांक

प्रार्थी की ओर से

टिन नं०

श्रीमती अमृता सोनी, कमिश्नर, वाणिज्य कर, उत्तर प्रदेश।

सर्वश्री डेल्टा फूड्स प्रा०लि० बि०स० रोड, इण्ड० एरिया, गाजियाबाद।

009 / 19, 30.05.2019

श्री पवन कुमार गोयल, फर्म अधिवक्ता।

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उत्तर प्रदेश मूल्य संवर्धित कर अधिनियम, 2008 की धारा-59 के अन्तर्गत निर्णय

प्रार्थी सर्वश्री डेल्टा फूड्स प्रा०लि० बि०स० रोड, इण्ड० एरिया, गाजियाबाद द्वारा प्रार्थना पत्र संख्या 009/19 दिनांक 30.05.2019 को उत्तर प्रदेश मूल्य संवर्धित कर अधिनियम की धारा-59 के अन्तर्गत प्रार्थना-पत्र दाखिल किया गया, जिसमें उनके द्वारा निम्नलिखित प्रश्न का विनिश्चय किये जाने का अनुरोध किया गया है :-

"Whether Re-gasified Liquefied Natural Gas (RLNG) should be purchased @2% against C form as the applicant is using it for the purpose of producing energy (power) in the form of heat which is used to bake biscuits?"

जिसके संबंध में फर्म द्वारा निम्नलिखित तर्क दिये गये हैं -

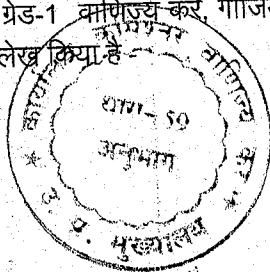
- Central Sales Tax Act, 1956 ("CST Act") has been amended by Act No. 18 of 2017. As per amendment, the definition of goods under Section 2(d) of CST Act has been substituted to mean (i) petroleum crude; (ii) high speed diesel; (iii) motor spirit (commonly known as petrol); (iv) natural gas; (v) aviation turbine fuel; and (vi) alcoholic liquor for human consumption.
- As per the Taxation Amendment Act, 2017, Section 14 and 15 of the CST Act have been omitted. Section 14 related to goods of special importance in inter-state trade and commerce and Section 15 relates to restrictions and conditions with regards to tax on sale or purchase of declared goods within a State. In view of the omissions of Section 14 and 15, restrictions as regards the rate of tax applicable for sale in a State have been removed.
- However, Section 8(1) which relates to goods sold in the course of inter-state trade or commerce of the description referred to in sub-section (3) of section 8 will be liable for tax at 2% under CST Act.
- In view of the amended definition of goods, only such goods that covered under the definition of 'goods' under the CST Act will be eligible for purchase against concessional Form-C.
- Section 8(3) of the CST Act provides list of goods that are eligible for purchase against Form-C. The relevant provision in this regard is Section 8(3)(b). This Section relates to goods of the class or classes specified in the Certificate of Registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in the tele-communication network or in mining or in the generation or distribution of electricity or any other form of power.
- As the law chose not to restrict only to generation or distribution of electricity but adds further by stating "any other form of power", the intention is to recognize that the term in Physics, the term Power is used not only in the context of electricity as "Power" is used to express as to how fast energy is used or transmitted. Energy is the quantitative property that must be transferred to an object in order to perform work on, or to heat, the object. Energy is a quantity. Common forms of energy include the

kinetic energy of a moving object, the potential energy stored by an object's position in a force field (gravitational, electric or magnetic), the elastic energy stored by stretching solid objects, the chemical energy released when a fuel burns, the radiant energy carried by light, and the thermal energy due to an object's temperature. Thus, fuel or gas used to heat oven to generate energy is also a form of Power, thereby making the purchase of the same eligible for concessional rate as per CST Act against issue of C Form.

- g) In our CST registration also it has been mentioned that we use natural gas for the purpose of "use in the generation or distribution of electricity or any other form of power".
- h) The Supreme Court has upheld the decision of the Punjab and Haryana High Court that Form-'C' should be made available to an assessee even after implementation of the goods and services tax (GST). A Bench led by Justice Ranjan Gogoi, while dismissing a Haryana government's appeal, observed that "if you (Haryana government) poke industries like this, they will run away". The issue before the court was whether after the amendment to the Central Sales Tax Act, 1956, power company Caparo Power was entitled to be issued 'C' Forms in respect of natural gas purchased from Gujarat-based BPCL and IOC in the course of inter-state sales for generation of electricity. The HC held that the sale tax law as defined in Section 2(i) of CST Act will mean the law for the time being in force in any state for levy of taxes on sale and purchase of goods. It further ruled that the definition is inclusive, and not restrictive, hence will include the HGST Act 2017 as well. The Haryana government in its appeal said Caparo was not engaged in re-selling of these goods and its registration under the CST Act lapsed on the commencement of the HGST Act. So, the company was not entitled for Form C. It further said the provisions of the CST Act would apply only if it sold the same goods that it had purchased (natural gas). However, the HC said the CST Act does not restrict the usage of Form C only for the purpose of resale, but can be used for resale, manufacture, processing or generation/distribution of electricity. Caparo had challenged the Haryana government's refusal to issue 'C' Forms on the grounds that there had been no change of law with regard to inter-state sale of natural gas in pre-GST. Stating that inter-state sales are outside the domain and control of any state, Counsel Ankur Saigal, who appeared for Caparo, argued that the issuance of Form C is under CST Act and not under HVAT Act and the State government is only the implementing agency and has no discretion to refuse the Form C if all the conditions are satisfied, as the issuance of Form C does not impact purchasing dealer state's revenue.
- i) The Karnataka State Government has already issued a circular No. 16/2017-18 dt. 02.03.2018 stating that Form 'C' can be issued for non-GST goods i.e., goods listed in section 2(d) of the CST Act, 1956 (Copy enclosed as Annexure-2).

2. प्रार्थना-पत्र की सुनवाई हेतु श्री पवन कुमार गोयल, फर्म अधिवक्ता उपस्थित हुए। उनके द्वारा प्रार्थना-पत्र में उल्लिखित तथ्यों को लिखित रूप में चेहराया गया तथा उनके द्वारा प्रस्तुत विवरण पर सुनवाई की गई।

3. एडीशनल कमिश्नर ग्रेड-1 काजियाबाद जोन-द्वितीय काजियाबाद द्वारा प्रेषित डिप्टी कमिश्नर, खण्ड-17 काजियाबाद की आख्या में उल्लेख किया है-



"The Cake and biscuits are being manufactured on job work basis for and on behalf of M/s Britania Industries Limited. This being so, the Applicant cannot be issued Form-C for the purchase of Natural Gas to be consumed in a manner as stated by the applicant in its application."

4. मेरे द्वारा धारा-59 के प्रार्थना पत्र में उल्लिखित तर्कों, प्रस्तुत साक्ष्य, एडी0कमि0 ग्रेड-1, वा0क0, गाजियाबाद जोन-2 द्वारा प्रेषित डिप्टी कमिश्नर खण्ड-17 गाजियाबाद की आख्या एवं विधि व्यवस्था का परिशीलन किया गया। प्रार्थी फर्म द्वारा जॉब वर्क के क्रम में सर्वश्री ब्रिटैनिया इण्डस्ट्रीज लिमि0 हेतु केक, बिस्कुट आदि का निर्माण किया जाता है। इस क्रम में प्रार्थी फर्म द्वारा oven को गर्म करने के लिए Re-gasified Liquefied Natural gas (RLNG) का प्रयोग किया जाता है। प्रार्थी फर्म के अधिकृत अधिकृत द्वारा सुनवाई के दौरान बताया गया कि फर्म नैचुरल गैस का प्रयोग ऊर्जा (Power) In the Form of heat के उत्पादन हेतु किया जाता है और उत्पादित heat का प्रयोग Oven गर्म कर बिस्कुट और केक आदि का निर्माण करने में किया जाता है।

राजस्व विभाग, वित्त मंत्रालय, भारत सरकार की अधिसूचना संख्या-25/2017-सीमा शुल्क, दिनांक 28-06-2017 द्वारा केन्द्रीय बिक्री अधिनियम-1956 की धारा-2(b) के खण्ड (d) को संशोधित करते हुए दिनांक 01-07-2017 से गुड्स को निम्नवत् परिभाषित किया गया है -

(d) "goods", means

i. petroleum crude:

ii. high speed diesel :

iii. motor spirit (commonly known as petrol):

iv. natural gas:

v. aviation turbine fuel: and

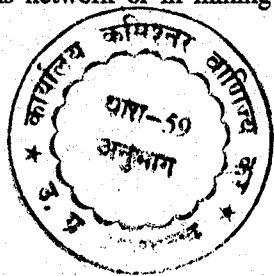
vi. alcoholic liquor for human consumption:

इससे स्पष्ट है कि केन्द्रीय बिक्री कर अधिनियम-1956 के अन्तर्गत दिनांक 01-07-2017 से उपरोक्तानुसार छः कॉमोडिटी ही "गुड्स" से अन्तर्गत सम्मिलित है।

केन्द्रीय बिक्री कर अधिनियम, 1956 की धारा-8(1) एवं 8(3)(b) निम्नवत् है:-

"8(1) Every dealer, who in the course of inter-state trade or commerce, sells to a registered dealer goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act, which shall be two percent of his turnover or at the rate applicable to the sale or purchase of such goods inside the appropriate state under the sales tax law of that State, whichever is lower:

"8(3) (b) Are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the central government in this behalf, for use by him in the manufacture or processing of goods for sale or in the tele-communications network or in mining or in the generation or distribution of electricity or any other form of power."



उपरोक्त के संबंध में मुख्यालय के परिपत्र संख्या 1718018/730 वाणिज्य कर, उ0प्र0 लखनऊ दिनांक 18-07-2017 द्वारा भी स्पष्ट किया गया है कि "गुड्स" के रूप में परिभाषित उक्त छः कॉमेडिटी की अन्तर्राज्यीय खरीद रियायती दर से केन्द्रीय पंजीयन प्रमाण पत्र में अधिकृत होने पर निम्नवत् स्थितियों में की जा सकती है -

1. उक्त गुड्स की पुर्नबिक्रयार्थ
2. उक्त गुड्स की उक्त परिभाषित गुड्स के प्रॉसेसिंग या निर्माण के पश्चात बिक्री की जाये,
3. उक्त गुड्स की टेलीकम्युनिकेशन नेटवर्क के प्रयोग के लिये,
4. उक्त गुड्स की माइनिंग में प्रयोग के लिये,
5. उक्त गुड्स की विद्युत अथवा शक्ति के किसी अन्य रूप में उत्पादन या वितरण में प्रयोग के लिये।

उपरोक्त प्रावधान में प्रयुक्त शब्द विद्युत अथवा शक्ति के किसी अन्य रूप में उत्पादन या वितरण का तात्पर्य निम्न है -
"Electricity is most often generated at power plant by electromechanical generation primarily driven by heat engines fueled by coal, natural gas etc. or nuclear fission or nuclear fusion but also by other means such as kinetic energy of flowing water, wind, solarphotovoltaic and geothermal power in which turbine or battery is used which is commonly known as other form of power.

उक्त से स्पष्ट है कि संगत प्रकरण में Re-gasified Liquefied Natural gas(RLNG) का प्रयोग मात्र ओवन को गर्म करने हेतु किया जाता है। इस प्रकार उपरोक्त प्रकरण में उत्पादित heat केन्द्रीय बिक्री कर अधिनियम 1956 की धारा 8(3)(b) में प्रयुक्त शब्द विद्युत अथवा शक्ति के किसी अन्य रूप में उत्पादन या वितरण में power के ingredient को पूरा न करने के कारण इसकी परिधि में नहीं माना जा सकता है।

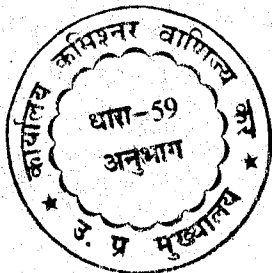
माननीय सर्वोच्च न्यायालय State Level Committee v/s Morgardshammer(India) Ltd. 1995 NTN Supreme Court 101,1996 UPTC 213 के वाद में स्पष्ट निर्णय दिया गया है कि-"The Provisions regarding exemption and exception should be strictly construed. It is not possible to accept the contention that if two views are possible, then one favouring the Assessee should be adopted in cases of exemption or exception."

अतः उक्त से स्पष्ट है कि प्रश्नगत प्रकरण में बिस्कुट/केक के निर्माण में baking process के दौरान oven गर्म करने हेतु RLNG (Natural gas) का प्रयोग किया जाता है, जिसके सुसंगत Form-C की सुविधा केन्द्रिय बिक्री कर अधिनियम, 1956 की धारा-8(3)(b) के अंतर्गत अनुमन्य नहीं है।

प्रार्थी द्वारा धारा-59 के अन्तर्गत प्रस्तुत प्रार्थना पत्र पर उल्लिखित प्रश्न का उत्तर उपरोक्तानुसार दिया जाता है।

उपरोक्त की प्रति प्रार्थी, कर निर्धारण अधिकारी तथा कम्प्यूटर में अपलोड करने हेतु मुख्यालय के आई0टी0 अनुभाग को प्रेषित की जाये।

दिनांक:- 11 अक्टूबर 2019



प्रमाणित प्रतिलिपि
धारा-59 अनु.
वाणिज्य कर मुख्यालय लखनऊ

ह/0-11.10.2019
(अमृता सोनी)
कमिश्नर, वाणिज्य कर
उत्तर प्रदेश, लखनऊ