

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

Before Sri Binod Kumar, I.A.S., Commissioner, Sales Tax, West Bengal

In the matter of :

An application filed under section 102 of West Bengal Value Added Tax Act, 2003, read with rule 202 of the West Bengal Value Added Tax Rules, 2005.

- And -

In the matter of :

Case No: 24X/PRO/VAT/15/268

- And -

In the matter of :

Sri Subrata Pal, Partner, carrying on business under the trade name of
M/s Century Products at 78, P.O.-Hathkhola, Sova Bazar Street, Kolkata-700005

Date of order: 27.01.2016

The instant application was filed by Sri Subrata Pal, Partner, carrying on business under the trade name of M/s Century Products, holding TIN 19370633057, under section 102 of the West Bengal Value Added Tax Act, 2003, wherein two questions, as mentioned below, have been raised:

1. Whether Citronella Incense Sticks, can be treated as Agarbatti or not?
2. What will be the rate of tax of above mentioned Agarbatti when it will be manufactured at applicant's Howrah factory?

The 1st question asked by the applicant is for establishing identity of an item and the 2nd question is related to the rate of tax applicable to its sale when it is manufactured at Howrah Factory.

Section 102 of the West Bengal Value Added Tax Act, 2003 provides for as under:

Determination of certain disputed questions.-

- (1) If any question arises, otherwise than in a proceeding before a court or, Tribunal or before a notice initiating assessment proceeding under section 46, is served upon the registered dealer, whether—

- (a) any tax is at all payable in respect of any particular sale or purchase of goods, or if tax, is payable, the rate thereof; or
- (b) any goods shall be treated as capital goods within the meaning of sub-section (6) of section 2 or not,

the Commissioner may, upon application, in prescribed manner and with prescribed fees, determine such question by an order passed in writing after giving such dealer an opportunity of being heard.

- (2) If any question, referred to in sub-section (1), arises from any order passed under any other provision of this Act, such question shall not be determined under this section.

However, establishing identity of a particular goods, other than as capital goods, is beyond the scope of section 102. In view of this, applicant's 1st question as to whether Citronella Incense Sticks can be treated as agarbati or not, can not be determined here as it does not fulfill the conditions laid down under sub-section (1) of section 102 of the West Bengal Value Added Tax Act, 2003.

It may be mentioned here that Citronella Incense Sticks were seized by the Officers of Barrackpore Range under section 76 of West Bengal Value Added Tax Act, 2003, vide Seizure Case No. 253/BPR/14-15 dated 18.03.2015. These incense sticks were held taxable by the Deputy Commissioner of Barrackpore Range as insect repellent and a penalty was imposed on the transporter from whose custody the goods were seized. The Transporter then filed revision petition before the Joint Commissioner, Barrackpore Range, who after hearing the matter, affirmed and upheld the order passed by the Deputy Commissioner.

The Transporter then moved the Hon'ble West Bengal Taxation Tribunal making the Commissioner of Commercial Taxes, W.B., as one of the Respondents, and challenged the seizure of goods and subsequent imposition of penalty. He also raised the question of taxability of Citronella Incense Sticks under the WB VAT Act, 2003, before the Hon'ble Tribunal. The Hon'ble Tribunal passed an interim order in RN-942 of 2015 on 09.06.2015 and ordered release of goods against payment of Rs.84,000/- as cash security.

Thereafter, the Transporter moved the Hon'ble High Court at Calcutta challenging the order of the Hon'ble W.B. Taxation Tribunal, which was listed as Case No. WPTT 68 of 2015.

Hon'ble High Court stayed the order of penalty and set aside the order of the Hon'ble Tribunal for payment of cash security by an order dated 12.08.2015 without going into merit of the matter and left all the points open to be dealt with by the Hon'ble Tribunal.

As the matter stands now, the next date of hearing fixed by the Hon'ble Tribunal is the 5th of May, 2016, and the Commissioner of Commercial Taxes, W.B., is one of the respondents.

In view of the above, and since the matter is sub judice, the application filed under section 102 of the West Bengal Value Added Tax Act, 2003, read with rule 202 of West Bengal Value Added Tax Rules, 2005, can not be entertained at this stage and is hereby summarily rejected.

Send a copy of this order to the applicant for information.

Sd/-
(Binod Kumar)
Commissioner,
Sales Tax, West Bengal