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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Revn.Pet./1/2025

HAWKINS COOKERS LTD.
A CO. REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101, CUFFEE PARADE, MUMBAI 400005, REPRESENTED BY SRI BRAHMANANDA PANI, SENIOR VICE PRESIDENT, FINANCE AND ACCOUNTS AND COMPANY SECY., ADDRESS NEW UDYOG MANDIR II, PITAMBAR LANE, MAHIM, MUMBAI 400016

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. , FINANCE DEPTT., ASSAM, GUWAHATI.

2:THE COMMISSIONER OF TAXES

GUWAHATI.

3:THE JOINT COMMISSIONER OF TAXES

KAR BHAWAN
GUWAHATI
ASSAM

Linked Case : Revn.Pet./2/2024

HAWKINS COOKERS LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101
CUFFE PARADE
MUMBAI 400005 REPRESENTED BY SRI BRAHMANANDA PANI
SENIOR VICE PRESIDENT

FINANCE AND ACCOUNT AND COMPANY SECRETARY
ADDRESS NEW UDYOG MANDIR II
PITAMBER LANE
MAHIM
MUMBAI 400016

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
ASSAM GUWAHATI

2:THE COMMISSIONER OF TAXES
GUWAHATI

3:THE JOINT COMMISSIONER OF TAXES
KAR BHAWAN
GUWAHATI ASSAM

Advocate for : MR. A GOYAL
Advocate for : SC
TAXATION appearing for THE STATE OF ASSAM AND 2 ORS

Linked Case : Revn.Pet./5/2024

HAWKINS COOKERS LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101
CUFFE PARADE
MUMBAI 400005 REPRESENTED BY SRI BRAHMANANDA PANI
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FINANCE DEPARTMENT
ASSAM GUWAHATI

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GUWAHATI

3:THE JOINT COMMISSIONER OF TAXES
KAR BHAWAN
GUWAHATI ASSAM

Linked Case : Revn.Pet./4/2024

HAWKINS COOKERS LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101
CUFFE PARADE
MUMBAI 400005 REPRESENTED BY SRI BRAHMANANDA PANI
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ADDRESS NEW UDYOG MANDIR II
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VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
FINANCE DEPARTMENT
ASSAM GUWAHATI

2:THE COMMISSIONER OF TAXES
GUWAHATI

3:THE JOINT COMMISSIONER OF TAXES
KAR BHAWAN
GUWAHATI ASSAM

Linked Case : Revn.Pet./3/2024

HAWKINS COOKERS LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101
CUFFE PARADE
MUMBAI 400005 REPRESENTED BY SRI BRAHMANANDA PANI

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FINANCE AND ACCOUNT AND COMPANY SECRETARY
ADDRESS NEW UDYOG MANDIR II
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MUMBAI 400016

VERSUS

THE STATE OF ASSAM AND 2 ORS
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FINANCE DEPARTMENT
ASSAM GUWAHATI

2:THE COMMISSIONER OF TAXES
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3:THE JOINT COMMISSIONER OF TAXES
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GUWAHATI ASSAM

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A COMPANY REGISTERED UNDER THE COMPANIES ACT 1956 HAVING ITS REGISTERED OFFICE SITUATED AT MARKET TOWER F 101
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VERSUS

THE STATE OF ASSAM AND 2 ORS
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FINANCE DEPARTMENT
ASSAM GUWAHATI

2:THE COMMISSIONER OF TAXES
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KAR BHAWAN
GUWAHATI ASSAM

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Date of hearing and judgment : 17/07/2026.

JUDGMENT & ORDER (ORAL)

(M. Zothankhuma, J)

1. Heard Mr. A. Goyal, learned counsel for the petitioner in all the Revision Petitions and Mr. B. Gogoi, learned Standing Counsel, Taxation Department, Assam, appearing for the respondents.

2. These 6 revision petitions have been filed against the impugned order dated 30/05/2024 issued by the Joint Commissioner of Taxes, Assam, whereby the petitioner is to be charged 12.5% Value Added Tax (VAT) on the sale price of the Pressure Cookers. The issue to be decided is, as to whether the VAT payable by the petitioner @ 12.5% should be calculated from the sale price of the Pressure Cooker, i.e. the full price of the Pressure Cooker received from the buyer minus the 4% VAT or on whether the 12.5% VAT was to be calculated on the basis of the sale price plus the 4% VAT added on to the sale price.

3. The brief facts of the case is that a notice was issued by the jurisdictional Assessing Officer on 24/03/2006, directing the petitioner to pay VAT on the sale of Pressure Cookers @ of 12.5% on the ground that the sale of Pressure Cookers was included in Entry 1 of schedule-V to the VAT Act. On the other hand, the petitioner's case was that Pressure Cookers were included in Entry 6 of Part-A of the 2nd schedule of the Assam Value Added Tax Act, 2003 (*herein after referred to as the VAT Act*), wherein only 4% VAT was payable by the petitioner. The issue of whether the petitioner was required to pay 4% VAT or 12.5% VAT was subsequently decided by this Court, where it held that the petitioner was liable to pay 12.5% VAT, as Pressure Cooker was included in Entry 1 of schedule-V of the VAT Act.

4. It is another thing that in the year 2010, Pressure Cooker came to be included in Entry 6 of Part A of the 2nd Schedule, so that it became a part and parcel of aluminum utensils, which required payment of VAT @ of 4% on the sale price, which was subsequently increased to 5%. The issue, however, in this case pertains to sale of Pressure Cookers prior to 2010 and the VAT @12.5%, payable prior to 2010.

5. As the issue of payment of VAT by the petitioner was settled by this Court, there is no dispute between the parties that the petitioner had to pay VAT @ of 12.5% to the authorities. The issue now before this Court is whether the payment of VAT @ of 12.5% would have to be from total consideration paid by the buyer for the Pressure Cooker, i.e. the sale price plus the 4% VAT tax already received by the petitioner from the consumer, or whether the 12.5% VAT would have to be calculated from the total consideration paid by the buyer for the Pressure Cooker minus the 4% tax added on to the sale price, in which case the petitioner would have to pay an additional 8.5% tax, as 4% tax has already been paid.

6. The Assam Board of Revenue, Guwahati, while deciding the said issue, vide order dated 08/08/2017 passed in Case No. 17 STA/2016, held in paragraphs 7, 8, 9 & 10, as follows :-

"*7. In such cloudy situation it is only the concerned assessing authority who will be able to find out the actual Taxable position of item, after going through the items wise scrutiny whether these are non-stick cookware as cleared by the Commissioner of Taxes or the Aluminium or Enamelled cookware as claimed by the appellant Tax payer.*

8. Second Issue raised by appellant is that Assistant Commissioner of Taxes has mistakenly levied VAT even on the VAT element in the gross consideration received by the appellant by illegally levying VAT on the receipt of the appellant on the sale of Pressure cooker which also includes the 8.5 different VAT leviable. In this issue Govt. advocate submitted that VAT was charged on basis of sale price only. There has been no charging of tax on tax as alleged by the appellant. But without knowing the every detail of taxes paid by the appellant and tax calculated for the appellant's taxable item. We could not ascertained actually who is right or wrong in calculation of tax following appropriate provision of law as claimed by the appellant.

9. The answer to the second issue and also can be find out after scrutiny of the tax details paid item wise by the appellant ascertaining and whether in calculation of tax, tax authority, strictly follow the relevant provision of law. And since neither appellant nor Govt. tax of this appeal assist the court by filing relevant documentary evidence concerning the *above issue, it is not possible for the court to disposed the find out the issue reasonably on the basis of some general documents submitted by the appellant in his favour. Hence we are the considered opinion that concerned assessing authority is to be the appropriate for disposal of the issue after examination of the issue under the banner of appropriate law.*

10. Appellant also alleged that assessment order was passed without giving them a reasonable opportunity of being heard.

In view of the above facts and circumstance and legal position in hand we are of the opinion that it is fit case of remand to the concerned tax authority for proper disposal of the issues. Accordingly we remand the matter to Assistant Commissioner of Tax who will examine the matter a fresh after giving the appellant a reasonable opportunity and will pass appropriate order as per law."

7. Consequent to the order dated 08/08/2017 passed by the Assam Board of Revenue in case no. 17 STA/ 2016, the impugned order dated 30/05/2024 was issued by the office of the Joint Commissioner of Taxes, Assam, which states as follows :-

"*Explanation II of clause (44) of Section 2 states that for the purpose of this clause, 'salę price' does not include,*

"tax charged or chargeable under this Act."

Again Section 2 Clause 54 defined "taxable turnover" means the turnover on which a dealer is liable to pay tax as determined after making such deductions from his gross turnover and in such manner as may be prescribed."

From plain reading of the above it is clear tax can be levied on' *taxable turnover'" Taxable turnover is the sales price, which is net of tax charged or chargeable, Being the dealer the petitioner has charged tax @4% or 5% as the case may be, only the charged (collected) amount of tax will be deducted from its gross consideration to determine the taxable turnover. It is apparent from the records tax levied on "taxable turnover" of sale of "Pressure Cooker" at the applicable rate i.e @12.5%/13.5% as the case may be. The rate of tax leviable on the sale of 'Pressure Cooker was correctly applied by the Assistant Commissioner. The formula given in (h) by the Petitioner is not acceptable as tax cannot be levied on tax. Which will give a cascading effect. To arrive at Turnover on which tax to be levied first of all tax to be deducted from Gross Turnover along with any other deduction allowed by Act. Assessing Officer has correctly completed his calculation. I do not find any scope for interfering with assessment order.*

I therefore find no merit in the submission of the petitioner.

Revision petition is rejected.

Inform all concerned."

8. Section 2(33), 2(44), 2(23) and 2(54) of the Assam VAT Act states as follows :-

"***Section 2(33) "output tax***" *in relation to a registered dealer means the tax charged or chargeable under this Act in respect of the goods sold by that dealer;*

Section 2(44) "sale price" *means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged* *for anything done by the dealer in respect of goods at the time of or before delivery of the goods other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.*

Explanation I. For the purpose of this clause 'sale price' includes,-

(1) the amount of duties or fees levied or leviable on the goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Assam Excise Act, 1910 or under any other enactment whether such duties or fees are paid or payable by or on behalf of the seller or the purchaser or any other person;

(ii) in relation to the transfer of property in goods (Whether as goods or in some other form) involved in the execution of works contract, such amount received or receivable as consideration;

(ii) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery;

(iv) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration received or receivable for such transfer, and

(v) the amount received by the seller by way of deposit whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods.

*Explanation II.-For the propose of this clause, **'sale price' does not include,-***

*(1) **tax charged or chargeable under this Act**;*

(ii) any amount allowed by seller of goods to the purchaser as cash discount or commission or trade discount at the time of sale of goods according to the practice normally prevailing in the trade;

***Section 2 (23) "gross turnover**" means,-*

(1) for the purpose of levy of tax, the aggregate of the amount of sale price received or receivable by a dealer whether as principal, agent or in any other capacity in respect of sale of all taxable and tax-free goods, at all places of business in the State, during any prescribed period, including sale price in respect of sales in the course of inter-state trade or commerce or sales outside the State or sales in the course of import into or export out of the territory of India.

Explanation. The amount received by a dealer on account of price variation or price escalation in respect of sale or supply of goods shall be deemed to form part of Gross Turnover of the financial year during which it is actually received; (ii) for the purpose of levy of tax, the aggregate of the amounts of purchase price paid and payable by a dealer in respect of all purchases of goods made by him during any prescribed period;

***Amendment**. In Section 2, in clause (23), in sub-clause (i), the word "sales" and in sub-clause (ii) the word "purchase" has been omitted by Assam Act No. IX of 2008, published in the Assam Gazette vide Notification No. LGL.6/2003/Pt/132 Dtd. the 8th April, 2008.*

***Section 2 (54) "taxable turnover**" means the turnover on which a* *dealer is liable to pay tax as determined after making such deductions from his gross turnover and in such manner as may be prescribed;*

9. It is not disputed that tax (VAT) has to be calculated on the sale price, which is minus the charged tax or the chargeable tax. For understanding the issue, let us assume the sale price of the Pressure Cooker to be Rs. 100/-, i.e., without tax. As the petitioner was earlier of the view that he should have been charged VAT @ 4% only, he had taken the total consideration of Rs. 104/- from the consumer/buyer and paid 4% of the sale price as VAT, i.e. Rs. 4/- was paid as tax. As it had been clarified by this Court that the VAT on Pressure Cooker would be liable to VAT @ 12.5% VAT and not 4% VAT prior to the year 2010, the petitioner has now taken the stand that the sale price and tax on the Pressure Cooker already being Rs.104/- at the time of sale, 12.5% VAT has to be calculated and included in the Rs.104/. If the contention of the petitioner's counsel is to be accepted, the sale price of the Pressure Cooker minus 12.5% tax on Rs. 104/-, would be Rs. 91/-. Thus, 12.5% of Rs. 91/- would be Rs. 11.375. As Rs. 4/- has already been given as VAT, the petitioner would be liable to pay only an additional Rs. 7.375 to the respondent, instead of the balance Rs. 8.5/-.

10. We cannot accept the submission of the learned counsel for the petitioner that the 12.5% VAT payable by the petitioner would have to be calculated from the sale price of Rs. 91/- minus tax, as the said submission does not take care of the earlier payment of Rs. 4/- as 4% VAT, which had been charged on the sale price of Rs. 100/-. When the sale price of the Pressure Cooker comes down to Rs.91/-, the earlier 4% tax paid by the petitioner would have to be calculated at the sale price of Rs.91/-, in which case 4% tax on

Rs.91/- would be even less than Rs. 4/-, which would be totally contrary to the reason for charging 4% (Rs. 4/-) from the consumer/buyer on the Pressure Cooker, which cost Rs. 100/-, in the first place.

11. When the 4% tax paid by the petitioner earlier had been made on the sale price of Rs. 100/-, the 12.5% VAT now payable by the petitioner, would also have to be considered on the sale price of Rs. 100/-. As such, Rs. 8.50/- (which is the 8.5% balance VAT payable out of the total VAT of 12.5%) minus the already paid Rs. 4/- would have to be paid on the sale price of Rs.100/-. The attempt of the petitioner to lower the sale price, only because he is now liable to pay 12.5% VAT instead of 4%, would lead to an anomalous situation, whereby there would be an undue loss caused to the Public Exchequer. The same would lead to various difficulties and a fraud played upon the authorities, by paying a lower tax amount than what is due from the petitioner. The attempt by the petitioner to now pay the balance 8.5% tax, by reducing the sale price from Rs. 100/- to Rs. 91/- is illegal and unreasonable. Though the counsel for the petitioner has taken a stand that there cannot be VAT on VAT, we find that there would not be any VAT on VAT, if the 12.5% tax payable by the petitioner is calculated from the sale price of Rs. 100/- and not on Rs. 91/-, Rs. 100/- being the sale price and Rs. 4/- being the 4% tax earlier paid by the petitioner. The balance 8.5% payable by the petitioner would have to be calculated on the sale price of Rs. 100/-.

12. Mr. B. Gogoi, learned Standing Counsel, Taxation Department, Assam, submits that the balance 8.5% VAT on the Rs.100/- sale price has already been paid by the petitioner.

13. Due to the above reasons, we do not find any reason to interfere with the impugned order dated 30/05/2024 issued by the Joint Commissioner of Taxes, Assam. Accordingly, the revision petitions fail and are accordingly dismissed.

JUDGE **JUDGE**

Comparing Assistant