

known as plastic moulded tubes. By application of pressure, these tubes are subsequently converted into bottles used for container of drinking water, phenyl and various allied products. This product "Pet Preform" is neither shown as an exempted item nor defined as a taxable one. The applicant normally sales it's "Pet Preform" under the OVAT Act, 2004 by issuing tax invoices to the registered dealers, who are involved in manufacturing of PVC/Plastic bottles and at the time of such sale the appellant charges VAT @ 4% considering the same as industrial inputs for the buying dealer as per Sl.No.74 of the tax rates (Part-II) of the Scheule-B of the OVAT Act. The appellant faces difficulty while selling "Pet Preform" to unregistered dealers through retail invoices and in such case the appellant is charging VAT @ 13.5% while the other dealers involved in the same trade are issuing retail invoices @ 4% VAT. As per the appellant, the other plastic products such as Plastic Buckets [Sl.No.23 of Schedule-B], Combs, which are normally available in plastic [Sl.No.34 of Schedule-B], Feeding Bottles and Nipples, which are normally of plastic [Sl.No.51 of Schedule-B], Mixed PVC Stabilisers [Sl.No.77A of Schedule-B], Pipes of all varieties and fittings thereof, which include PVC pipes [Sl.No.86 of Schedule-B] Plastic Footwear [Sl.No.87 of Schedule-B], Plastic Granules & Plastic Powder [Sl.No.88 of Schedule-B], Spectacles, which are normally of plastic made [Sl.No.110 of Schedule-B], Toys [Sl.No.118 of Schedule-B], Umbrella [Sl.No.122 of Schedule-B], Scales & Pencil Sharpeners [Sl.No.129 of Schedule-B] and Zippers and Zip Fasteners [Sl.no.131 of Schedule-B] are taxed at 4% VAT. Relying upon such facts and law, it is prayed by the applicant to determine the rate of tax on its product "Pet Preform".

3. In response to notice the State-respondent has filed written submission contending therein that the applicant-dealer is a registered dealer and it carries on business in manufacturing of "Pet Preform" and generation of Carbon Dioxide (CO₂) and selling these products to the registered as well as unregistered dealers. The applicant normally sales "Pet Preform" to the registered dealers under the VAT Act who are involved in manufacturing of

PVC/plastic bottles by charging VAT @ 4% considering "Pet Preform" as Industrial inputs for the buying dealers as per Sl.No.74 of Part-II of Schedule-B of the VAT rate chart. This product "Pet Preform" is neither found in the list of Schedule-A (List of Goods exempted from VAT) notified u/s-17 of the OVAT Act, nor in Part-I (goods taxable at the rate of 1%) & Part-II (goods taxable at the rate of 4%) of Schedule-B of VAT Rate Chart, notified u/s-14 of the Act. "Pet Preforms" cannot be considered as packing materials as no goods are being packaged in it. "Pet Preforms" are used for manufacturing of PET bottles / jars etc. After long process the size, texture and design of "Pet Preforms" is changed to bottles/jars. Accordingly, "Pet Preform" commonly known as 'moulded plastic tubes' being an exclusive unspecified item, it is liable to tax @ 13.5% as per Part-III of Schedule-B (All other goods) of the rate chart prescribed under the Act when sold to unregistered dealers.

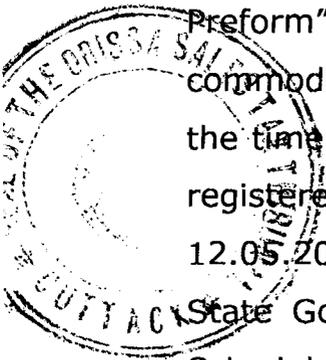
4. In view of the aforesaid prayer of the applicant and contention of the State-respondent, this application is required to be disposed of only on one issue i.e. What should be the rate of tax on the product of the applicant i.e. "Pet Preform"?.

5. We have heard the learned counsel for the applicant and Mr. R. Rout, the learned S.R. for the State. It is not disputed that the present applicant is a registered dealer bearing TIN 21611108373 and that it carries on business in manufacturing "Pet Preform" and generation of Carbon Dioxide gases (CO₂) and selling the products to both the registered as well as unregistered dealers. It is also not under dispute that this product "Pet Preform" is commonly known as moulded plastic bottles and that the term **"PET"** means **Polythylene Terephthalate** and **"Preform"** means **before formation or before in hand**. Polythylene Terephthalate (PET) is a condensation polymer produced from purified Terephthalic Acid and mono ethylene glycol by a continuous melt phase of polymerization process followed by solid state polymerization using Duport technology. The PET resin is converted into 'PET Preform' through injection moulding process where in neck and incomplete body is formed, which is the finished product of

application. It is also not in dispute that this product i.e. "Pet Preform" is the finished product of the applicant and that this finished product is utilized by other dealers for manufacturing pet bottles or jars or other plastic containers or goods.

6. From the above process of production of "Pet Preform", it is manifest that this finished product of the applicant is an industrial input for other dealers because this good is utilized as raw material for production of their finished products like plastic bottle, jar or other plastic container or plastic goods. It is also not disputed that this product i.e. "Pet Preform" is not reflected in Schedule-A (List of goods exempted from VAT) notified U/s.17 of the OVAT Act nor in Part-I (Goods taxable @ 1%) nor Part-II (Goods taxable @ 4%) of Schedule-B of the VAT Rate Chart notified U/s.14 of the OVAT Act. The samples of "Pet Preform" were shown by the applicant at the time of hearing of this application and it is not disputed that this product cannot be utilized as a packing material. Thus it is not disputed that the goods "Pet Preform" which is commonly known as moulded plastic tubes is a separate commodity and further that it is an unspecified item. It is also not disputed at the time of argument that the "Pet Preform" when sold as industrial inputs to registered dealers as per Notification No.20279-CTA-19/05-F dated 12.05.2006 (SRO No.153/06) Ex.Gaz.No.648 dt.15.05.2006, issued by the State Government is liable to tax @ 4% as per Serial No.74 of Part-II of Schedule-B of the Rate Chart.

7. It is not disputed that the petitioner is selling its "Pet Preform" to the registered dealers @ 4% tax. The Govt.of Orissa through Finance Department Notification No.12.05.2006 vide SRO No.153/06 stated supra has inter alia notified that the industrial input shall be construed as those inputs which directly go into the composition of finished products manufactured by the purchasing dealer for sale and shall include consumables directly used in such manufacturing process for production of finished products, which the purchasing dealer is licensed to manufacture subject to the condition that such industrial inputs are specified in the registration certificate of the



purchasing dealer. Accordingly, there is no provision prescribing the rate of tax on sale of "Pet Preform" to unregistered dealers. As a necessary corollary the goods "Pet Preform" being an unspecified item, in our considered opinion it is liable to be taxed @ 13.5% i.e. as per Part-II of Schedule-B of the rate chart prescribed under the OVAT Act, when sold to unregistered dealers.

8. In the ultimate analysis, in our considered opinion the "Pet Preform" should be taxed @ 4% when sold as an industrial input to registered dealers and @ 13.5% in case of other sales.

Dictated and corrected by me,

Sd/-
(S.K.Paty)
Judicial Member-I

Sd/-
(S.K.Paty)
Judicial Member-I

I agree,

Sd/-
(G.C.Patnaik)
2nd Judicial Member

I agree,

Sd/-
(P.C.Mishra)
Accounts Member-II

Attested as true copy

D
Computer Stenographer

O/o the A.C.C.T. (O) Cuttack.

Memo No. 16229 /Ct

Dated. 21-09-12

ICM 03/12
Copy forwarded to all sub-ordinate offices for information and necessary action. *all officers of Head Office.*

Memo No. 16230 /Ct

IC Dy. Sate representative. *21.9.2012*

Dated. 21-09-12

Copy forwarded to the A. C. C. T. (I.T & Policy) for favour of information and necessary action.

IC Dy. Sate representative. *21.9.2012*

