

**BEFORE THE ORISSA SALES TAX TRIBUNAL (FULL BENCH), CUTTACK**

**A.R. Application No.16/2012-13**

**P R E S E N T :**

**MR. A.K.Mahapatra**      **Mr.P.Mishra**      &      **MR. A.K.Bhuyan**  
1<sup>ST</sup> JUDICIAL MEMBER    2<sup>ND</sup> JUDICIAL MEMBER    ACCOUNTS MEMBER-I

M/s.Wizer Electronics Research Pvt. Ltd.,  
Sarat Chandra Kar, Plot No.SCR-6,  
Bapuji Nagar, Bhubaneswar

... Appellant

- **V e r s u s** -

State of Orissa, represented by the  
Commissioner of Sales Tax,  
Orissa, Cuttack

... Respondent

**Appearance :**

For the Appellant

... Mr.B.N.Panda, Advocate

For the Respondent

... Mr.M.S.Raman, Addl.S.C.(C.T.)

Date of Hearing: 15.07.2013

Date of Order: 17.07.2013

**ORDER**

The petitioner in a petition U/s.78A(1) of the Orissa Value Added Tax Act, 2004 (in short, the Act) asks this Tribunal for determination of rate of tax of his product 'cook stove' which uses Bio mass product as fuel having facility for ignition through solar energy and grid power.

2. The back drop of filing of this petition may be stated as follows :

The petitioner M/s.Wizer Electronics Research is a private limited company registered with the Registrar of companies, Odisha vide CIN-U 515 OR2010PTC012609 and also registered under the Act vide TIN-21635600917.

The petitioner is engaged in wholesale and retail trade in electronic products since the year 2011. In the month of February, a society named "The Energy and Research Institute" (TERI) of Delhi approached the petitioner through

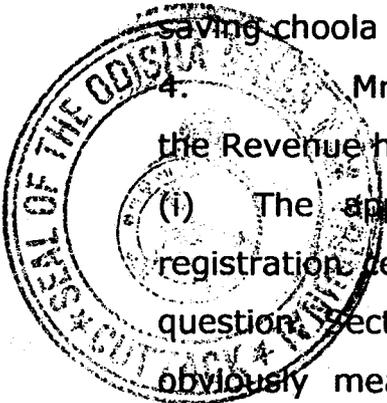
their branch office at Bhubaneswar for dealing in a product, viz. "Cook stove" which is developed and marketed by them. The said product uses Bio mass product as fuel having facility ignition through solar energy as well as grid power. Since the upto date rate chart published under the Act does not specify any entry covering the product in question, the petitioner has approached this forum to give an advance ruling about the rate of tax of the product.

3. Mr.Panda, the learned counsel appearing on behalf of the petitioner has submitted that the stove uses locally available bio mass which are renewable energy sources like fire wood, agricultural waste and dried cattle dung etc. as fuel and the fan in the stove is powered by a Lithium Ion battery back. Villagers who are not connected with electricity grid are provided with a solar panel to charge the battery and hence to run the stove and as such the 'cook stove' comes under Entry No.96 of Part-II of Schedule-B as Bio mass for cooking energy requirement is considered as a renewable energy source and has been approved by the Ministry of New and Renewable Energy (MNRE), Govt. of India. He would further contend that the energy saving choola is a tax exempted product in the State of Tamil Nadu.

4. Mr.Raman, the Additional standing counsel appearing on behalf of the Revenue has made the following submission :

(i) The application as laid is not maintainable on ground that the registration certificate of the dealer is silent with regard to the product in question. Section 78A of the OVAT Act when speaks of registered dealer, it obviously means that the registered dealer whose registration certificate indicates such goods which the dealer deal in. The applicant is entitled for advance ruling for it does not deal in the goods "cook stove" which uses biomass product as fuel. The query regarding rate of tax on the goods which the registered dealer (applicant) does not deal in would be academic.

(ii) The article "cook stove" which uses biomass products as fuel, would not be encompassed within the meaning of Entry 96, Part-II of Schedule B appended to the OVAT Act.



(iii) The aforesaid entry shows that such device which generates renewable energy falls within its scope. Cook stove never generates renewable energy. In this context it may be worthwhile to refer to *Diebold Systems Pvt.Ltd. Vrs.CCT, (2006) 144 STC 59 (Kar)*, wherein the issue was whether "Automated Teller Machine" (ATM) are "electronic goods" or "computers". In the said reported case, the Hon'ble Court upon consideration of literature and books on computers, came to hold that ATM is not a computer by itself even though it is connected to a computer that performs the tasks requested by the person using automated teller machine. Therefore, it is contended by the State of Odisha-respondent that "cook stove" is not "renewable energy device".

(iv) The applicant having not demonstrated the product, nor having explained the manner of operation of the product, no advance ruling possibly be permissible to be given.

(v) In such premises, it is apt to submit that "cook stove" being not classified any of the entries in the schedule appended to the OVAT Act, Part-III of Schedule B is attracted in the present case.

The questions of law raised for our consideration and decision are as under:

(i) Whether the petitioner has any locus standi U/s.78-A(1) of the Act to secure an advance ruling for determination of rate of tax for his product 'cook stove' which has not been enlisted in any entry of schedule of goods under the Act ?

(ii) Is 'cook stove' a device/equipment for generating renewable energy and whether it would fall under Entry No.96 Part-II of schedule 'B' of the Act?

"Whether the petitioner has any locus standi U/s.78A(1) of the Act to seek an advance ruling a rate of tax for his product, it gravitates to refer Sec.78-A(1) of the Act for better appreciation of the point. The said section reads as follows:

"78-A-1) A bare reading of the aforesaid section of law it is luculent that "any registered dealer" may apply for obtaining an advance ruling on any

disputed question relating to determination of rate of tax of a particular commodity or admissibility to input tax credit on a particular transaction of purchase and if admissible the conditions and restrictions subject to the such input tax credit shall be admissible. The petitioner is a registered dealer under the Act having been assigned with TIN-21635600917. The contention of Mr.Raman is that the petitioner having not been registered to deal with 'cook stove' in his registration certificate has no locus standi to obtain any advance ruling. We are not gullible to sustain such restricted meaning of 'any registered dealer' to a registered dealer who holds a registration certificate to deal with a specified commodity. We are not concerned with the technical meaning of 'any registered dealer' who holds a registration certificate to deal with a commodity specified in the R.C. as in a fiscal statute plain meaning rule is applied (see Partington Vrs. Attorney General (1869) LR 4HL 100, Page 122.)

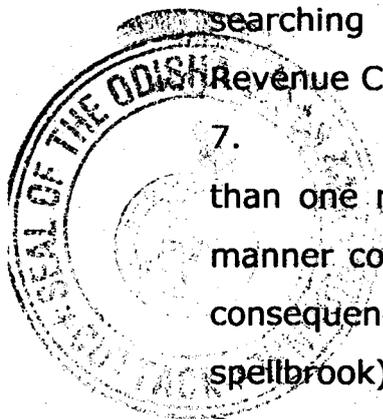
5. In interpreting an expression used in a legal sense, the Courts are required to ascertain the precise connotation which it possesses in law.

6. It is further more trite that a Court should not be overzealous in searching ambiguities or obscurities in words which are plain (see Inland Revenue Commissioner Vrs. Rossminster LTd.(1980) A11ER 80 Page 90).

7. It is now well settled that when an expression is capable of more than one meaning the Court would attempt to resolve that 'ambiguity' in a manner consistent with the purpose of the provisions and with regard to the consequences of the alternative construction (See Clark & Tokeley Ltd. (t/a spellbrook) Vrs. Oakas (1998) 4ALLER 353).

8. In Inland Revenue Commissioners Vrs. Trustees Sir John Aird's settlement (1984) 1 Ch 382, it is stated :

".... Two methods of statutory interpretation have at times been adopted by the Court. One sometimes called interalist is to make a meticulous examination of the precise words used. The other sometimes called purposive is to consider the object of the relevant provision in the light of other provision of the Act, the general intendment of the provisions of law. They are



not mutually exclusive and both have their part to play even in the interpretation of a taxing statute".

9. Mr.Panda, the learned counsel appearing for the petitioner has brought our notice to the letter of the Energy and Research Institute (TERI) of Delhi who approached the petitioner to deal in its product in Orissa and as the product is not enlisted in the rate chart, the petitioner who is a registered dealer under the Act has locus standi to file a petition for obtaining an advance ruling on the rate of tax of the commodity. When any purposive meaning is given to the words "any registered dealer", it squarely dissipates that the registered dealer whose registration certificate specifies a particular commodity to deal with can apply for obtaining an advance rule U/s.78A(1) of the Act. Accordingly, this point is answered in negative against the Revenue.

10. Question – Is 'cook stove' a device/equipment for generating renewable energy and whether it would fall under Entry No.96 Part-II of Schedule 'B' of the Act.

Entry No.96, Part-II of Schedule 'B' reads as follows :

"Renewable energy devices and spare parts".

The rate of tax is 4%.

11. The 'cook stove' is not included under Entry No.96, Part-II of the schedule 'B' to the Act. The pith of argument of Mr.Panda is that, the 'cook stove' uses Biomass product as fuel having facility for ignition through solar energy as well as grid power which are renewable energy sources like fire wood, agriculture waste and dried cattle dung etc. and then the 'cook stove' comes under Entry No.96, Part-II of the Schedule 'B' of the Act. Howbeit, the entry 96 Part II of the Schedule 'B' of the Act speaks that renewable energy devices and spare parts but not a "cook stove" which neither is a device nor is a spare part. The 'cook stove' consumes renewable energy/grid power as is evident from the literature. The phraseology "renewable energy devices/spareparts" means a division of goods of a mechanism which regenerates alternative sources of energy like solar energy system, wind mills and biogas plant. The legislature has never intended that the commodity

which consumes those energy. In fine we conclude that 'cook stove' does not fall under Entry No.96, Part II of the Schedule 'B' of the Act. Accordingly, the second question is answered in negative against the petitioner.

12. Argument has been advanced that some States like Tamil Nadu and Kerala have given tax concession to the product in question. Well settled is the rule of law that, it is the discretion of the State Government on which commodity it will impose tax at what rate or not and the Court must be slow to usurp upon the power of legislature on such matter. If the petitioner is so advised, he may approach the appropriate forum for redressal of his grievance.

13. In the ultimate analysis, the petition being devoid of merit stands rejected.

14. No order assessed as to costs.

Dictated and corrected by me,

Sd/-  
(P.Mishra)  
Judicial Member-II

Sd/-  
(P.Mishra)  
Judicial Member-II

I agree,

Sd/-  
(A.K.Mahapatra)  
Judicial Member-I

I agree,

Sd/-  
(A.K.Bhuyan)  
Accounts Member-I

TRUE COPY ATTESTED

  
Computer Stenographer