



goods exclusively meant for sports under the generic head of sports goods but the respondent is trading these goods differently since the names are not specified in the list of specified rate of schedule-B and that the same are being taxed as per the list-C relating to un-specified goods. The officers of the respondent are being confused as these goods are being differently described in the body of purchase and sale invoices especially when these goods have no description in rate schedule while the other states have their proper description of the names of the sports goods. In the present imbroglio the officers of the respondent are imposing higher rate of tax rather than the tax prescribed at serial no.106 of Schedule-B of the Rate chart. As a necessary corollary, the petitioner is facing problem at the time of obtaining goods by using the departmental way bills because in the Government of Odisha website the way bills are floated with instruction to put the commodity code as per the commodity list while obtaining the goods with the strength of departmental way bills. The list in such website is also confusing because the serial no.95060000 relates to goods like articles and equipments of general physical exercise, gymnastics, athletics, other sports (including table tennis) or outdoor games, not specified or include elsewhere in this chapter, swimming pools and paddling pools) whereas the list at serial no.950699 also bears entries as other sports and games articles. Such attempt in floating the list in the website for giving clarification have created confusions for getting the way bills for the purpose of the OVAT Acts and Rules. Hence the applicant has filed this application with prayer that all the above goods namely weight lift machine, folding jogger, Sports T/M should be listed with entry of sports goods because the sports goods have different commercial names in trading and secondly commodity list should be floated with one serial nos. because the goods are one and the same for the purpose of this Act.

3. In response to the notice the state respondent has filed written notes of argument contending therein that the applicant has



sought for advance ruling in respect of two points firstly, that all the aforesaid three goods should be listed with entry of sports goods and secondly the commodity list should be one instead of two. On going through such application of the dealer, it appears that the application of the dealer does not come within the purview of Section 78(A) of the OVAT Act because there is no prayer for determination of rate of tax of a particular commodity or admissibility of input tax credit on a particular transaction of purchases. Secondly, if it is considered that the application of the applicant should be disposed of under section 78(A) of the OVAT Act, as per serial no.106 of Schedule-B, Part-II of the tax rate chart prescribed under the OVAT Act, sports goods excluding apparels and footwear are to be taxed @4%. The items being claimed by the dealer do not come within the purview of sports goods and hence these goods being not specified any where in the rate chart should be treated as unspecified goods and be exigible to tax @13.5% as per part-III of Schedule-B of the OVAT Rate Chart.

4. In view of the aforesaid contentions of the parties, the present application is to be disposed of on the following issues:

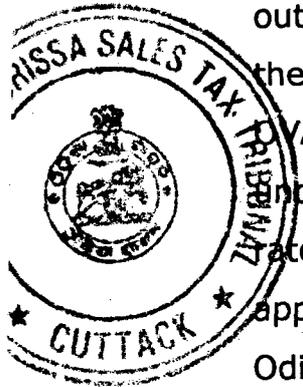
- (I) Whether, the goods namely weight lift machine, Folding jogger, sports T/M come within the ambit of sports goods?
- (II) Whether, the commodity list as claimed by the applicant should be one in place of more than it?

5. We have heard the Id. Counsel for the applicant and Mr.R.Rout, Id. SR-I for the State. Perused the materials in the case record. It is not disputed that the dealer is a registered dealer bearing TIN 21721115636 and it is engaged in resale of the commodities like toys, hosiery goods including Banyan, Chadi, Janghia, other sports and game articles , Gymnasium or athletics articles and equipments within the state of Odisha. As per the applicant it also sales wight lift machine, floding jogger, sports T/M. The first and foremost grievance of the applicant is that the different manufacturing companies/ traders of sports goods treat the aforesaid items differently before entry because



these items are not mentioned in the list of specified rate of schedule of the rate chart. Accordingly, the officials of the respondent are also confused between the different names of such goods described in the body of purchase and sale invoices. Such problem has become more confusing because the applicant while applying for departmental way bills from the Government of Odisha website, the applicant is unable to put the exact commodity code as per the commodity list and in such event the departmental way bills are not being made available to the applicant even from the website. When these items are not coming with the specific code number and in absence of proper list of goods the applicant is unable to furnish the proper commodity code so as to receive the way bills.

6. In view of the aforesaid contentions of the dealer the first and foremost question that crops up for adjudication is whether the aforesaid three items would come under the purview of sports goods. But before delving into such material aspect of the case, we think it expedient to dispose of the point of law raised by the revenue at the outset that the present application of the applicant does not come within the ambit of Section 78(A) of the OVAT Act. The Section 78(A) of the OVAT Act inter alia provides that this Tribunal can invoke its jurisdiction under such provision when dispute arises regarding determination of rate of tax of a particular commodity. In the present case as per the applicant in view of the commodity list floated in the Government of Odisha website describing the same item in more than one list, the applicant is facing problem in receiving the website way bills through the website because the commodity list floated in such website is confusing. In order to fortify such contention the Id. Counsel for the applicant has contended that serial no.95060000 of the commodity list displays the items as articles and equipments for general physical exercise, gymnastics, athletics, other sports (including table tennis) or out door games, not specified or included elsewhere in the chapter, the swimming pools and paddling pools and that again in list no.950699 the

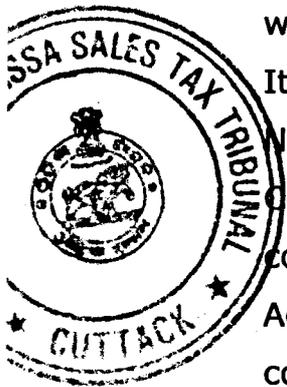


item has been described as other sports and game articles. Accordingly, as per the applicant the sports articles are displayed in two lists which was made confusion for getting the way bills from the Government of Odisha website. The proposition of law is not disputed that as per Section 78(A)(I)(i) of the OVAT Act the Tribunal has jurisdiction to give a finding under question as to determination of rate of tax of a particular commodity. In the present case as discussed above the applicant is confused regarding the rate of tax to be paid in respect of weight lift machine, floding jogger, sports T/M and the confusion has arose because the articles are coming under more than one list of the commodities floated by the Commissioner of Commercial Taxes in the Government of Odisha website. In order to fortify such contention the dealer has filed a copy of the commodity list with code no.95060000 and 950699 and both these entries are relating to sports goods. In this view of the matter, in our considered opinion, the present prayers of the applicant come under the purview of Section 78(A) of the OVAT Act and hence the present applicant as laid is found maintainable before this forum.

7. Now adverting to the merits of the case as per the applicant its aforesaid three items should be listed with entry of sports goods. The term sports goods is not defined in the OVAT Act. The entry no.106 of the schedule-B, Part-II of the rate chart reads sports goods excluding apparels and foot wear and the same is slated to be taxed @4%. This is an independent entry as per Section 14 of the OVAT Act. The Id. Counsel for the petitioner has filed a copy of the registration certificate of the dealer under the OVAT Act which discloses that the dealer is permitted to deal with goods like toys, hosiery goods including Banyan, Chadi, Janghia, other sports and games articles and gymnasium or athletics articles and equipment. The Id. Counsel for the appellant submits that the goods like weight lift machine, floding jogger, sports T/M should be taxed @4% treating the same as sports goods. In order to fortify such contention he has relied upon the decision of

Hon'ble High Court of Allahabad in the case of Cosco Industries Ltd. v.s. State of UP and Others disposed of in Civil Misc. Writ Petition No.361 of 2009. In this decision there is categorical observation that as per Section -70 of the UP trade Tax Act, 1948, the State Government is empowered to give commodity code nos. to any goods falling under a particular entry and that if the State Government allots the commodity code under a particular entry to any goods, in view of the provisions of Section-70 of the Act, it would be deemed that the said goods fall under the aforesaid entry. On examination the Hon'ble Court observed that the State Government of UP have allotted commodity code no.95060000 to articles and equipments of general physical exercise, gymnastics, athletics under entry no.60 relating to sports goods, games and toys and accordingly the Hon'ble Court held that the equipments for general physical exercise, gymnastics, athletics etc. sold by the petitioner would fall within the entry of sports goods that are exempted from payment of tax.

8. In the present case admittedly the commodity code nos. are prescribed in respect of different goods which are floated in the website of Commissioner of Commercial Taxes, Government of Odisha. It is contended for the applicant that as per Harmonised System of Nomenclature (HSN) as adopted by the Government of India under the Central Excise Tariff Act, 1985, the commodities are allotted with commodity code numbers. As per section 70 of the UP value added Tax Act, the Government of UP has been empowered to allot commodity code in respect of any goods and accordingly the Government of UP has adopted the HSN No. in respect of different goods. As because there is no provision in the OVAT Act or Rules to provide any commodity code no. in respect of any goods, the rulings of the Hon'ble High Court of Allahabad being relied upon for the applicant can not be made applicable to the facts and circumstances of the present case. So far as the contention of the applicant regarding existence of the name of the same commodity in more than one entry of the list of commodity code



nos. floated by the CCT (Odisha) is concerned, we are of the considered opinion that as because the OVAT Act or Rules are silent on this score, this Tribunal should not give any opinion on this aspect. If at all the dealer applicant is facing any problem in getting government way bills due to existence of the name of the same commodity in more than one serial no. of the list of the commodity code nos. floated by the Government of Odisha, this may at best be administrative problem which may be sorted out by the competent authority in administrative side and this is not a legal dispute to be adjudicated before this forum and as such this dispute is not coming within the ambit of Section 78(A) of the OVAT Act. Accordingly, such contention on behalf of the dealer applicant can not be entertained. We give such opinion because the HSN has no role in OVAT Act or Rules because it is admitted by both the parties that the OVAT Act or Rules is silent to provide any code no. in respect of any goods in the State of Odisha as commodity code nos.

9. So far as the rate of tax on the three items being claimed by the applicant, the serial no.106 of schedule-B, Part-II of the OVAT Act reads as sports goods excluding apparels and foot wear. The items like weight lift machine, floding jogger, Sports T/M in common parlance are utilised as gymnasium goods and not as sports goods. These items are not utilised as sports goods for any kind of sports. In our considered opinion, the goods for which the applicant has filed this application are not used as sports goods and these goods may be fitness exercise equipments. Accordingly, in our considered opinion, the goods like weight lift machine, floding jogger, sports T/M can not constitute sports goods. In the attending circumstances, these goods do not come under any list of OVAT Rate Chart and hence these goods being unspecified goods should be taxed @13.5% as per Part-III of the Schedule-B of the OVAT Rate chart.

The Id. Counsel for the dealer has placed reliance on the rulings of West Bengal Sales Tax Tribunal in the case of Godrej



Industries Limited Vrs. State of West Bengal and Others reported in (2012)53 VST 210 (WBTT) wherein it is held that –

“Schedule to an Act is an integral part of the Act. When the entry is unambiguous and plain meaning can be derived from it none other than the Legislature is empowered to make any interpretation contrary to the meaning as conveyed by the entry. Moreover, the external aid can be taken only when the internal aid is insufficient to interpret any entry in the Act under scrutiny.”

As per the Id. Counsel for the appellant if the OVAT Act and Rules are silent in relation to Central Exercise Tariff Act, in view of the cited rulings of the West Bengal Sales Tax Tribunal, the external help i.e. the assistance of Central Exercise Tariff Act can be taken in favour of the dealer to conclude that these three articles now pressed by the dealer come under the generic term sports goods. The observation of the aforesaid rulings are not disputed but we have discussed and concluded that the OVAT Act and Rules are silent regarding acceptance of the commodity code or HSN as adopted in the Central Exercise Tariff Act. The OVAT Act and Rules are clear to adjudicate the issue now raised by the applicant. In the present premises, no extraordinary help in such case is necessary as urged on behalf of the applicant. Accordingly, such rulings of WBTT stated supra is of no help for the applicant.

10. Now adverting to the issue no.2 that the commodity list should be one instead of two, we have discussed this point at length in the earlier paragraphs. At the cost of repetition we observe that as because the OVAT Act or Rules are silent to furnish any code no. in respect of any goods or to prescribe any list of goods with commodity code no, it is not expedient for this forum to give any observation on this score.

11. In the ultimate analysis, in our considered opinion, the items like weight lift machine, floding jogger, sports T/M are to be taxed



@13.5% as unspecified goods. The advance ruling application is disposed of accordingly.

Dictated & corrected by me,



*Sd/-*  
(S.K.Paty)  
1st. Judicial Member.

*Sd/-*  
(S.K.Paty)  
1st. Judicial Member.

I agree,

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

I agree,

*Sd/-*  
(C.Jena)  
Accounts Member-III.

ATTESTED AS TRUE COPY

*h*  
Senior Stenographer