

(14)

**BEFORE THE ADVANCE RULLING AUTHORITY:  
ODISHA SALES TAX TRIBUNAL :CUTTACK.**

✓ **Advance Ruling Application No. 04 of 2013-14**

**Present :** ... **Shri M.S. Dhal**, Chairman,  
**Shri A.K. Mohapatra**, 2<sup>nd</sup> Judicial Member  
&  
**Shri J. Pradhan**, Accounts Member-II

M/s. Bajaj Electricals Limited,  
Khafvel Nagar, Janpath,  
Bhubaneswar.

... Applicant

**- Versus -**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack.

... Respondent

For the Appellant ... Mr. D. Mohanty, Advocate  
For the Respondent ... Mr. C.R. Satpathy, S.R.

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Date of hearing: 11.02.2014 \*\*\*\* Date of order: 14.02.2014  
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**ORDER**

This is a petition filed U/s.78-A of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') by the applicant seeking a clarification with regard to rate of tax in respect of the commodity under the trade name "GAZEBO", a product made of artificial fibre used for the purpose of making sheds in the garden/ bus stops and in public places.

2. The brief facts giving rise to this application are that the applicant is a Public Limited Company carrying on business of

wholesale distribution of electrical goods in the State of Odisha. Besides, he deals in "GAZEBO" by effecting purchases from outside the State of Odisha on 'C' form condition for sale inside the State on collection of appropriate rate of VAT from the purchaser as per Entry 52 of Part-II of Schedule-B of the OVAT Act, which specifies "fibres of all types including fibre rope and fibre waste being exigible to tax @ 5%. According to the applicant, the aforesaid product presumably being the similar type of item should be taxable at 5%. It is in it that the company is operating in different States with regard to sale of identical products on collection of 5% VAT. As there is no specific entry in the schedule of OVAT Act, it is more appropriate to sell the above item as fibre as per Entry 52 of Part-II of Schedule-B (supra). Accordingly, prayer has been made on behalf of the applicant to determine the rate of tax of the impugned item under the OVAT Act.

3. Heard on the application from the side of the applicant as well as the respondent. It is strenuously urged on behalf of the applicant in terms of the application that since there is no specific entry in the schedule of the OVAT Act with regard to the commodity in question and the same having resemblance with fibre is very much covered under Entry 52 of Part-II of Schedule-B of the OVAT Act. Accordingly, it is urged by him before this forum for determination of

rate of tax of the said commodity to the convenience of the applicant for payment of VAT for his business transaction.

Learned S.R. appearing for the respondent, on the other hand, counters the aforesaid submission by contending that the commodity for which an advance ruling has been sought for by the applicant from this forum never comes within the classification of fibre to be included in Entry 52 of Part-II of Schedule-B so as to entitle the applicant to pay VAT @ 5%.

4. In view of the rival contentions made by the parties, it would be appropriate at the outset to bear in mind the relevant provision, i.e. Sec. 78-A of the OVAT Act for proper appreciation of the dispute. Sec. 78-A(1) of the OVAT Act, reads as follows :-

"Any registered dealer may apply in the prescribed form and manner, to the Tribunal for obtaining an advance ruling on any disputed question relating to,-

- (i) determination of rate of tax of a particular commodity, or
- (ii) admissibility of input tax credit on a particular transaction of purchase and if admissible, the conditions and restrictions subject to which such input tax credit shall be admissible."

As per the said provision, this Tribunal has been empowered to render advance ruling with regard to the rate of tax of a

particular commodity. In order to obtain such advance ruling in the matter, the onus always lies on applicant to satisfy this forum with regard to genuineness of the claim made by him. In the instant case, since it is the specific stand of the applicant that the commodity in question having certain resemblance with fibres so as to get the tax benefit thereunder, the applicant is obliged to produce all the relevant materials/documents in support of such claim to satisfy the authority about the nature of the said commodity. But, unfortunately the applicant herein has produced no such document except one brochure of Bajaj Electricals Ltd.. On going through the said brochure, it clearly appears that the commodity under the name and style "GAZEBO" is "Polysteel" and made of marine quality composite over hot dip galvanized steel framing. It is also mentioned in it that these are individually hand crafted to replicate steel and cast iron, which usually require maintenance and care all the time. It is light in weight, weather proof and extremely durable and easy to install by using foundation bolts on the ground. From the specification described therein, it appears that the same commodity is made of U.V. stabilized class one fire retarded polyester composite with glass fiber reinforcement 750 GSM. From the aforesaid description of the brochure, it is not clearly forthcoming that the commodity exclusively comes under fibres of all types. That apart, in absence of other materials on record to establish

that the commodity in question comes under fibre category, it is not just and proper on the part of this forum to come to a definite conclusion that the commodity "GAZEBO" comes within the entry 52 of Part-II of Schedule-B of the OVAT Act so as to render advance ruling thereon with regard to the rate of tax.

In view of the foregoing discussions, we feel that the application filed by the applicant seeking for advance ruling on the impugned commodity deserves no consideration and the same is liable to be rejected.

5. In the result, the advance ruling application filed by the appellant stands rejected.

Dictated & Corrected by me,

Sd/-  
(M.S. Dhal)  
Chairman

Sd/-  
(M.S. Dhal)  
Chairman

I agree,

Sd/-  
(A.K. Mohapatra)  
2<sup>nd</sup> Judicial Member

I agree,

Sd/-  
(J. Pradhan)  
Accounts Member-II

