

**BEFORE THE ADVANCE RULING AUTHORITY, ODISHA SALES TAX
TRIBUNAL: CUTTACK.
(FULL BENCH)**

✓ **A.R.Application No.4 of 2012-13**

Present : **Shri S.K.Paty, 1st. Judicial Member.**
 Shri G.C.Patnaik, 2nd. Judicial Member.
 &
 Mr.C.Jena, Accounts Member-III.

M/s. Raghav Tyres (P) Ltd.,
Kesigna, Kalahandi.

...Applicant.

-V e r s u s-

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

...Respondent.

For the Applicant
For the Respondent

: Mr.S.C.Agrawal, Advocate.
: Mr.R.Rout,SR-I.

Date of hearing : 18.08.2012

Date of order : 04.09.2012

ORDER

This is an application filed under section 78(A)(1)(i) of the Orissa Value Added Tax Act, 2004 (in short, the OVAT Act) for advance ruling on the question as to whether tyres and tubes of cycle and cycle rickshaw are taxable under the provisions of Orissa Entry Tax Act and if so the rate of tax to be paid on the same.

2. The fact necessary for disposal of the present application is that the dealer is a registered dealer under OVAT Act bearing TIN 21244800445. It is a manufacturer of tyres and tubes of cycle and cycle rickshaw and sale of the same inside and outside the State of Odisha. The entry no.68 of the rate chart of Schedule (1) of the ET Act provides for exemption of entry tax on cycle and cycle rickshaw, spare parts whereas the entry no.46 of the same schedule which relates to raw rubber, rubber and synthetic rubber products including tyres and tubes



Section Officer
The C.C.T(O)Cl.

has made such items as subject to ET @1%. The tyre and tube of cycle and cycle rickshaw being spare parts of cycle and cycle rickshaw are exempted from entry tax as per entry no.68 of schedule (1) of the rate chart. As because the entry no.46 speaks of taxability of entry tax on rubber and rubber products including tyres and tubes both these provisions are contradictory to each other which is causing inconvenience for payment of tax for the petitioner. Hence this application.

3. The revenue respondent has filed written notes of objection contending therein that the serial no.68 of part(1) of the schedule of the entry tax act has been omitted from the schedule w.e.f. 1.6.04 as per Finance Department Notification dtd.10.6.04 and hence the tyres and tubes as provided at entry no.46 of part-1 of the schedule are liable to be taxed @1% for entry tax.

In view of the aforesaid contentions of the parties, this application is required to be disposed of on the issue as to; Whether the tyres and tubes of cycle and cycle rickshaw are taxable under the provisions of entry tax Act and if so the rate of entry tax to be paid on

5. We have heard the Id. Counsel for the applicant and Sri R.Rout, SR-I for the State. It is not disputed that the present applicant is registered under the OVAT Act bearing TIN-21244800445 and that it is a manufacturer of tyres and tubes of cycle and cycle rickshaw and their sales inside and outside the State of Odisha. The entry no.46 of part-1 of the schedule of the ET Act provides as follows:

(I) Raw rubber, rubber and synthetic rubber products including tyres and tubes;

So also the entry no.68 of the schedule provides cycle, cycle rickshaw and their spare parts. As per Finance Department notification no.24087-CTN-16/2000-F (SRO no.294/2004) dtd.1.6.2004, the item vide entry no.68 has been exempted from levy of entry tax.



6. At the time of argument, the Id. SR-I for the state submits that this application filed by the applicant is not maintainable because in the present case we are concerned with the issue relating to levy of ET but the ET Act does not provide advance ruling as applied for by the applicant in the present application. Accordingly, the first and foremost issue for adjudication before this forum is whether the present application as laid is maintainable in the eye of law. On this score, it is submitted by the Id. Counsel for the applicant but as per rule-34 of the OET Rules, the provision of the OVAT Act shall mutatis mutandis apply to the present case. It is not disputed that as per rule-34 of the OET Rules any matter not specified under these rules but required for carrying out the purposes of the Act and Rules, the provision of the OVAT Act can be made applicable. But in our considered opinion, as per rule-34 for purpose of the provisions of the OET Act and Rules for matters not specified can be taken held up from the provisions of the OVAT Act. This provision can be extended for matters not provided under OET Act and Rules. In our considered opinion, with the help of such provision this Tribunal can not exercise a jurisdiction like advance ruling as sought for in this application. This conclusion is fortified especially when the OET Amendment Act, 2011 by bringing into the provision of advance ruling has been enacted by the Government of Odisha which is published in extraordinary gazettee of the law Department dtd.16.2.2012. As per Finance Department Notification dtd.18.6.2012, the provision of Advance Ruling as provided in OET Amendment Act, 2011 (as Orissa Act 2 of 2012), this provision has come into force from dtd.1.7.2012 which is apparent from the Odisha Gazettee dtd.18.6.2012. But the present application by the petitioner has been sent by registered post on 8.5.2012 which is received and registered by this Tribunal on dtd.16.5.2012 i.e. prior to giving effect to the aforesaid amended provision of OET Act. In the attending circumstances, the petitioner has filed this application before this forum where there is no provision to adjudicate the same under OET Act or





Rules. Hence the present application of the applicant is liable to be rejected.

7. In the ultimate analysis, the present application of the applicant is not maintainable and the same stands rejected but the petitioner is at liberty to file fresh application under the provision of law if so advised.

Dictated & corrected by me,

S.K. Paty
(S.K. Paty)
1st. Judicial Member.

S.K. Paty
(S.K. Paty)
1st. Judicial Member.

I agree,

G.C. Patnaik
(G.C. Patnaik)
2nd. Judicial Member.

I agree,

C. Jera
(C. Jera)
Accounts Member-III.



ATTESTED AS TRUE COPY

Memo No. 21391 Senior Stenographer.

Dated. 17-12-12

AR 4/12-13 (388) /CT..

Copy forwarded to all Officers of this office / All Sub-ordinate offices for information and necessary action .

(II) Copy forwarded to the Asst. Commissioner of Commercial Taxes, IT for information and necessary action .

[Signature]
DEPUTY STATE REPRESENTATIVE.
15-12-2012