

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).2466/2007

(From the judgement and order dated 22.1.2007 in WP(C)No. 1142/07
of The HIGH COURT OF KERALA AT ERNAKULAM)

M/S. GODREJ SARA LEE LTD.

Petitioner(s)

VERSUS

ASSTT. COMMR. KERALA VAT & ANR.

Respondent(s)

(With prayer for interim relief and office report)
(For final disposal)

Date: 10/10/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s) Mr. Dushyant A.Dave,Sr.Adv.
Mr. Rajiv Tyagi,Adv.

For Respondent(s) Mr. Yesobant Das,Sr.Adv.
Mr. R.Sathish,Adv.
Mr. B.S.Sharma,Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

Keeping the question of classification open we allow the civil
appeal by setting aside the purported show cause notices with no order as
to costs.

[SUMAN WADHWA]
COURT MASTER
Signed order is placed on the file.

[MADHU SAXENA]
COURT MASTER

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2007
(Arising out of SLP(C)No. 2466/2007)

M/S. GODREJ SARA LEE LIMITGED

.. APPELLANT

vs.

ASSTT. COMMR. KERALA VAT & ANR.

.. RESPONDENT

ORDER

Leave granted.

Godrej Sara Lee Limited is a registered dealer under Kerala General Sales Tax Act and Kerala Value Added Tax Act, 2003. It is engaged in the manufacture, storage and sale of Insecticides, Pesticides, Rodenticide etc. Its products are coils, mats, aerosols, liquids refills, etc. These products are for driving away/destroying mosquitoes. The said products were earlier taxed under Kerala General Sales Tax Act and thereafter under Kerala Value Added Tax Act as Insecticides, Pesticides, Rodenticide, etc.

Since 2003 when Kerala Value Added Tax act 2003 came into force and till 31.3.2006 the products referred to above were assessed for VAT under Entry 44 of the IIIrd Schedule to the 2003 Act.

-2-

With effect from 1st April, 2006, the Department sought to classify the above products under serial No. 66 of the Notification No.82/2006 dated 21.10.2006. Under serial.No.66 the above products came under HSN Code No. 8516.79.20 corresponding to electrical or electronic devices for repelling insects. This was disputed by the assessee claiming classification under Entry 44 clause (5) bearing HSN Code 3808 of the IIIrd Schedule to the Kerala Value added Tax Act 2003.

Therefore, the dates given herein above indicate, that, the Department is seeking to classify the above products under tariff item 8516.79.20 which in turn refers to electrical or electronic devices for repelling insects whereas the assessee is claiming classification under Entry 44 clause (5) which in turn refers to HSN Code 3808 (Insecticides, Pesticides, rodenticide etc.).

In the present case, broadly eight show cause notices were issued dated 28th September 2006 and 15 December, 2006. Suffice it to state that it covers the period 1st April, 2006 to 30 September, 2006 and also

for the months of October and November 2006, respectively. On going through the said show

-3-

cause notices we find that there is no allegation on escapement of tax. A bare reading of the show cause notice shows that the Department has sought to make best judgment assessment under Sec.22(3) of the Kerala Value Added Tax Act read with the Rules 2003 framed thereunder. There is no allegation of mis-declaration in the show cause notice. It appears that the show cause notice has been given by the Assessing Officer on the departmental instructions issued by the Commissioner in a conjoint matter. Even in the show cause notice there is no allegation of under assessment. One fails to understand how the assessee was supposed to reply to such a show cause notice. It is well-settled that the show cause notice is the foundation of the demand. Without such foundation the demand is unsustainable. In the show cause notice the demand is based on some computerized code numbers.

In the circumstances we are not required to examine the question of classification as in our view the show cause notice is defective. It is true that none of the authorities

-4-

have examined this question. However, we cannot ignore the glaring defect in the said show cause notices. Accordingly, the same are hereby set aside. Thereby all consequential orders are hereby set aside. We make it clear that we do not wish to express any opinion on the merits of the classification dispute. If the Department is so advised it can raise such a dispute in accordance with law.

Subject to above keeping the question of classification open we allow the civil appeal by setting aside the purported show cause notices with no order as to costs.

(S.H. KAPADIA)J.

.....J.
(B.SUDERSHAN REDDY)

NEW DELHI;
OCTOBER 10, 2007.