

CASE NO.:
Appeal (civil) 3083 of 2008

PETITIONER:
M/s. Reckitt Benckiser (India) Ltd.

RESPONDENT:
Commissioner, Commercial Taxes & Ors.

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT
O R D E R

CIVIL APPEAL NO. 3083 OF 2008
(Arising out of S.L.P.(C) No.6096/2007)

Leave granted.

The short question involved in this Civil Appeal is whether mosquito repellants and other items fall under Entry 44(5) of Schedule III to Kerala VAT Act, 2003. The items are enlisted as follows:

Sl.N
o.
Trade Name
Name of Active
Ingredient
Entry in relevant Statute
Licensing Authority
Licensing
Authority
1.
Mortein Coil, 8
hours, 10 hours and
12 hours
D-trans Allerthrin
Entry 55 in Schedule to
Insecticides Act, 1968 (at page
29 of Volume 2). License
required under Section 3(e) for
manufacture. Mandatory
declarations are made under
Rule 19 of Insecticide Rules,
1971
Central
Insecticide
Board (CIB) as
per Insecticide
Act, 1968.
2.
Mortein Mats
Prallethrin
Entry 120 in Schedule to
Insecticides Act, 1968 (at page
29 of Volume 2). License
required under Section 3(e) for
manufacture. Mandatory
declarations are made under
Rule 19 of Insecticide Rules

1971
-do-
3.
Mortein Vaporisers
Prallethrin
Entry 120 in Schedule to
Insecticides Act, 1968 (at page
29 of Volume 2). License
required under Section 3(e) for
manufacture. Mandatory
declarations are made under
Rule 19 of Insecticide Rules,
1971.

-do-
4.
Mortein Instant
Cockroach Killer
(CIK) Mortein
Instant Flying Insect
Killer (FIK) Mortein
Instant All Insect
Killer (AIK)
Deltamethrin,
Allethrin,
Imiprothrin and
Cyphenothrin
Covered under Entry 55 in
Schedule to Insecticides Act,
1968 (at page 29 of Volume 2).
License required under Section
3(e) for manufacture.
Mandatory declarations are
made under Rule 19 of
Insecticide Rules, 1971

-do-
5.
Lizol Disinfectant
Surface Cleaner
Benzalkonium
Chloride
A disinfectant in terms of
Section 3(b)(ii) of Drugs and
Cosmetics Act 1940
Drugs Controller

6.
Harpic Toilet Cleaner
Hydrochloric Acid
& Sodium
Hypochlorite
A disinfectant in terms of
Section 3(b) (ii) of Drugs and
Cosmetics Act 1940

-do-
7.
Dettol
Chloroxylenol
(PCMX)
Falls under Schedule K read
with Section 3(b)(ii) of Drugs
and Cosmetics Act 1940

-do-

Under Section 6 of 2003 Act, goods specified in the Second and Third Schedules are charged to duty at the rates specified therein whereas goods not falling within the said two Schedules are assessable to duty under separate Notifications to be

issued by the State Government. The narrow controversy in the present case which arose for determination before the High Court was: Whether the above enlisted items fall under para 44(5) read with Section 6(1)(a) of the 2003 Act?

According to the appellant, the said items fall under Para 44(5) which, at the relevant time, attracted duty at the rate of 4%, whereas, according to the Department, the said items came under Section 6(1)(d) read with Notification No.82 of 2006 - Entry No.66 which attracted the rate of duty of 12.5%.

We have examined the impugned judgment. In this case, we find that the High Court in the impugned judgment has failed to notice the Rules of Interpretation which require that in cases where HSN Code number is indicated against the Tariff Item mentioned in the Third Schedule, then one has to go by the provisions of the HSN as adopted by the Customs Tariff Act, 1975. If that is the case, then, one need to interpret the Entries in the Third Schedule not only in the light of the Entries in the Customs Tariff Act, 1975 but also the judgments applicable to the corresponding Entries in the Customs Tariff Act. On the other hand, it is urged on behalf of the Department that HSN, read with Customs Tariff Act, 1975, is not required to be read, in the present case, as the figure "3808" against para 44(5) stood omitted by Kerala Finance Act, 2006 which came into force w.e.f. 1st July, 2006.

At this stage, we may state that the appellant-assessee had moved the Commissioner under the relevant provisions of the Act for what is called as Advance Clarificatory Order which is very similar to Advance Ruling under the Income Tax Act. The Commissioner had decided the matter against the appellant vide order dated 7th April, 2006. That decision has been confirmed by the High Court vide impugned judgment.

The important point which we need to stress is that neither the Commissioner nor the High Court has considered the Rules of Interpretation of the Schedules to the Kerala VAT Act, 2003. The High Court has failed to consider the effect of the omission of the figure "3808" by Kerala Finance Act, 2006. In our view, a vital aspect is lost sight of. In the present case, the High Court has held that looking to the HSN Code 3808.10.91 \026 repellent for insects such as flies, mosquito, has a direct relation to Heading 3808. At the same time, the High Court has held that HSN Code 8516.79.20 of the Customs Tariff Act which deals with electrical or electronic devices for repelling insects fall under HSN Code 8516 and, looking at that HSN Code, the High Court has held that Code 3808.10.91 has to be read along with Heading 3808.

The basic controversy, therefore, which arose before the High Court was whether the above items fell within the sub-Heading 3808.10.91. In this connection, we find that Kerala VAT Act is aligned with Customs Tariff which in turn is aligned with HSN and consequently each product in question was required to be seen in the context of HSN Code and judgments based thereon.

Keeping in mind the above controversy, we set aside the impugned judgment and remit the matter to the High Court for fresh consideration in accordance with law. We may add that we express no opinion on the merits of the case. We keep contentions on both sides expressly open.

We may also clarify that under the Act, the transactions which have taken place prior to 7th April, 2006 will not be taken into account and the advance clarification will only apply for the period 7th April, 2006 onwards. We request the High Court to expeditiously hear and dispose of the Statutory Appeal of the appellant, preferably within six months from today.

Civil Appeal stands disposed of accordingly.