

Reckitt Benckiser (India) Ltd. Vs Commissioner, Commercial Taxes and Others

Court: High Court Of Kerala

Date of Decision: Dec. 17, 2008

Acts Referred: Kerala Value Added Tax Act, 2003 " Section 6(1), 94
Kerala Value Added Tax Rules, 2005 " Rule 1

Citation: (2010) 250 ELT 523 : (2009) 2 KLT 678 : (2009) 12 Vat Reporter 54 : (2009) 22 VST 459

Hon'ble Judges: Harun-UI-Rashid, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: Joseph Vellapally, Vijayan K.U. and K.N. Sreekumaran, for the Appellant; Vinod Chandran, Special Government Pleader (Taxes), for the Respondent

Judgement

C.N. Ramachandran Nair, J.

This appeal, though originally dismissed by this Court vide judgment dated November 27, 2006, Reckitt

Benckiser (India) Ltd. Vs. Commissioner, Commercial Taxes, is restored to file of this Court vide judgment of the Supreme Court dated April 29,

2008 (Reckitt Benckiser (India) Ltd. v. Commissioner, Commercial Taxes [2008] 15 VST 10 (SC) in the civil appeal filed by the assessee. We

have heard senior counsel Sri Joseph Vellappally and Sri K.N. Sreekumar appearing for the appellant, and Sri K. Vinod Chandran, Special

Government Pleader, appearing for the respondent.

2. The Supreme Court has specifically directed this Court to consider rules of interpretation of the Kerala Value Added Tax Act, 2003, hereinafter

called the "Act" and to decide the matter with reference to the said Rules as well. The order under challenge is clarification issued by the

Commissioner of Commercial Taxes whereunder he clarified various products of the appellant, namely, Mortein coil, Mortein mats, Mortein

vaporisers and Mortein instant cockroach killer under serial No. 66 of S.R.O. No. 82 of 2006. The said entry reads as under:

66. Mosquito repellents, electric or electronic mosquito repellents, gadgets and insect repellents, devices and parts and accessories thereof.

3. The above finding, whereunder the rate of tax is 12.5 per cent, is rendered by the Commissioner after overruling the case of the appellant that all

the products fall under entry 44(5) of the Third Schedule to the Act, whereunder rate of tax is four per cent. It is to be noted that HSN code

provided against entry 44(5) is 3808. The Appendix to the Act providing for Rules of Interpretation of Schedules to the Act provides as follows:

HSN numbers are allotted in the Schedules either in four digits or in six digits or in eight digits. The four digit numbers indicate the heading in the

HSN classification, six digit numbers indicate the subheading and the eight digit numbers indicate the specific commodity number. While

interpreting the commodities in the Schedules, the following guidelines may be followed:

I. The commodities which are given four digit HSN number shall include all those commodities coming under that heading of the HSN.

4. If the above rule is applied, then commodities covered against four digit HSN numbers shall include all those commodities coming under that

heading of HSN. On going through the items serially mentioned under HSN Code 3808 we find that insecticides, and allethrin which is the active

ingredient of the appellant's products above referred to are covered under sub-entries. In fact, entry 3808.10.91 provides for repellents for insects

such as flies, mosquitoes. In view of specific coverage of repellents for insects such as flies and mosquitoes under the above heading, Rule 1 of the

Rules of Interpretation above referred to is squarely applicable and all the above items of the appellant will fall under entry 44(5) of the Third

Schedule to the Act.

5. We have to necessarily consider the scope of entry 66 of Notification S.R.O. No. 82 of 2006 issued by the Government with reference to the

powers conferred on it u/s 6(1)(d) of the Act, which authorises the State to issue notification prescribing rate of tax on items not covered by

Clause (a) or (c) of Section 6(1) of the Act which are items covered by the Second and Third Schedules to the Act. So long as any item is

specifically covered under any of the entries in the Second or the Third Schedule to the Act, the Government ceases to have any authority to issue

notification prescribing rate of tax for it. If any such order is issued, it cannot be enforced overlooking rates prescribed of the item under the

Second or the Third Schedule to the Act. So much so even after specific coverage of above items under entry 66, the items continue to be

assessable under entry 44(5) of the Third Schedule to the Act. However, Special Government Pleader brought to our notice the deletion of HSN

Code 3808 from entry 44(5) with effect from July 1, 2006 and according to him at least after the deletion of the same, Rule 1 of the Rules of

interpretation has no application because when the main HSN Code is removed, sub-heading will not be applicable and the notification will prevail.

We do not think we should consider this question because clarification was on the unamended provision and we are concerned only with validity of

the clarification issued by the Commissioner u/s 94 of the Act. Therefore the effect of amendment is left open for consideration and adjudication by

the assessing officer in the course of assessment as the appellant has not sought clarification for the period after amendment.

6. The remaining products of the appellant, which are covered by main clarification order against which this appeal is filed are the products sold

under the brand names, Lizol, Harpic and Dettol. The appellant's case is that Lizol and Harpic are disinfectant specifically falling under HSN Code

No. 3808.40.00 and therefore these items will fall under entry 44(5) of the Third Schedule to the Act. However, Special Government Pleader

pointed out that these items are not essentially disinfectants and at the maximum they may contain disinfectant as well. In order to appreciate the

contentions, we have called for the product samples which are produced in court. The appellant has described the products in the leaflet affixed to

the bottle in the following style:

Harpic:

Power toilet cleaner-triple action

1. Removes tough stains
2. Kills all germs
3. Fights odours.

Lizol 3 in 1 disinfectant surface cleaner

Unique formulation removes the toughest of stains,

provides 99.9 per cent germ kill and leaves a pleasant pine fragrance.

7. It is stated in the direction for use of Lizol that the item is used for cleaning floor and bathroom surfaces, kitchen surfaces, and safe on all

surfaces like ceramic, marble, granite, mosaic, etc.

8. From the product description and the nature of use stated in the products, there can be no doubt that, the items are essentially used as stain

removers and deodorants, though they kill germs as well. Sub-item disinfectant covered by HSN Code No. 3808.40.00 has to be understood

with reference to the items mentioned in main HSN No. 3808 which provides for insecticides, rodenticides, fungicides, etc. In fact the sub-items

mentioned under HSN Code No. 3808 are mostly direct chemicals. Therefore what is intended to be covered is essentially disinfectant and not

cleaning agent which serves as a disinfectant as well. Since the dominant object of the products, namely, Lizol and Harpic is removal of stains and

used as a cleaning agent of all surfaces, we reject the appellant's claim that the items fall under HSN Code No. 3808 and under entry 44(5) of the

Third Schedule to the Act. Since the items are not covered by any other entry of Schedule II or III, these products come under entry 27(4) of

S.R.O. No. 82 of 2006 as stain busters, stain removers, abir, blue and all kinds of cleaning powder and liquids including floor and toilet cleaning.

9. So far as Dettol is concerned, the appellant's case is that it is a medicament falling under entry 36(8) of the Third Schedule to the Act. For easy

understanding, product description attached to the bottle is extracted hereunder:

Dettol:

Effective protection--antiseptic germicidal

Recommended dilution:

First aid : 1 tablespoon to 250 ml of water

Bathing : 1 teaspoon to a bucket of water.

Shaving : two teaspoons to a mug of shaving water.

Nappy wash : one table spoon to 500 ml. of water.

Other personal uses:

Dandruff - one table spoon to 500 ml of water mouth wash and gargle 10 to 20 drops in a glass of water.

Surgical, medical, midwifery - see brochure available to doctors and nurses on request.

Epidemics:

Treat linen, floors and for spraying rooms--1 table spoon to 500 ml. of water.

10. The question to be considered is whether the above nature of use will bring the item as medicament. A medicament is an item used for

therapeutic or prophylactic treatment, that is in the course of prevention and cure of diseases. The appellant has no case that the above disinfectant,

that is Dettol, is able to prevent or cure any disease. It certainly kills germs and is used for various purposes referred to in the leaflet attached to it

which includes even washing. It is a product generally to maintain hygiene. Therefore we are unable to uphold the appellant's contention that Dettol

is a medicament. The appellant has no case that the item falls under any other entry in the Second or the Third Schedule to the Act. Consequently,

the Commissioner rightly held that the item falls under residuary entry of Notification S.R.O. No. 82 of 2006.

11. The appeal stands allowed in part as indicated above.