

(2012) 06 AP CK 0020

Andhra Pradesh High Court

Case No: Tax Revision Case No. 10 of 2007 W.P. No's. 2652, 4033, 11272, 11301, 11613, 11703, 18288, 23875 of 2009; W.P. No's. 2408, 2443, 7202 of 2010; W.P. No's. 143, 145, 14521, 14522, 14523, 14525, 14526, 14530, 27457, 27470, 27519, 31010 and 31012 of 2011

M/s. Reckitt Benckiser (India) Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision: June 13, 2012

Acts Referred:

- Andhra Pradesh Value Added Tax Act, 2005 - Section 34, 67, 76(2), 79
- Constitution of India, 1950 - Article 226
- Drugs and Cosmetics Act, 1940 - Section 18, 3(b), 3(b)(i), 3(b)(iv)

Citation: (2012) 194 ECR 154

Hon'ble Judges: V.V.S. Rao, J; G. Krishna Mohan Reddy, J

Bench: Division Bench

Advocate: K. Priyadarshan Reddy, for the Appellant; A.V. Krishna Kaundinya, P. Balaji Varma, Government Pleader for Revenue and Government Pleader for Commercial Taxes, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao

1. M/s. Reckitt Benckiser (India) Limited (hereafter, the manufacturer) is engaged in the manufacture and sale of Lizol (floor cleaner), Harpic (toilet cleaner) and Mortein mosquito repellents. Whether these goods are exigible to value added tax @ 4% under entry 20 of Schedule IV to the Andhra Pradesh Value Added Tax, 2005 (the VAT Act)? This question falls for consideration in the tax revision case filed u/s 34 of the VAT Act and in all the Writ Petitions filed under Article 226 of the Constitution of India. The essential fact of the matter for proper appreciation of the issue is as follows. Mortein mosquito repellents, Lizol and Harpic are statedly household products manufactured by M/s. Reckitt Benckiser (India) Limited having registered

office at Okla Industrial Estate, New Delhi and branches all over India. After introduction of the VAT, they made an application u/s 67 of the VAT Act to the Advance Ruling Authority (ARA) seeking clarification as to the rate of tax applicable to household insecticides and disinfectants. Along with their application, they submitted copies of insecticides licence, CIB Registration Certificates, Write up published by WHO covering mosquito coil mat vapouriser and liquid vapouriser, the test report from Haffkine Institute for training, research and testing, Mumbai, covering mosquito coil, the test report from National chemical Laboratory, Pune, covering mosquito coil, test report from International Institute of Bio-technology and Toxicology, Kanchipuram, Tamilnadu, the Drug manufacturing license covering Harpic and Lizol and a copy of the decision of the Supreme Court in [Bombay Chemical Pvt. Ltd. Vs. Collector of Central Excise, Bombay I, Bombay,](#)

2. By their order dated 18.03.2006, the ARA came to the conclusion that though Mortein is an insecticide, it is exigible to tax under Schedule V to VAT Act @ 12.5% as it is excluded by HSN (Harmonised System of Nomenclature) Code 3808.10.91. The taxability of Harpic and Lizol were considered with reference to entries 20 and 88 of Schedule IV to VAT Act as well as the Government Order in G.O.Ms.No.1615, Revenue (CT.II) Department dated 31.08.2005 requiring the use of HSN Code for the purpose of classification of goods. Even with regard to these two products, the manufacturer could not get a favourable clarification and the ARA came to the conclusion that both of them are liable to tax @ 12.5%. The plea of the manufacturer that Lizol and Harpic are disinfectants did not favour with the said authority.

3. After the clarification by ARA, the respective jurisdictional assessing officers passed assessment orders computing the VAT @ 12.5%. The distributors, therefore, filed separate Writ Petitions seeking declaration and invalidation of the assessment orders or appellate orders or orders imposing penalty wherever such orders were passed. In the meanwhile, the manufacturer carried the matter to Sales Tax Appellate Tribunal (STAT) assailing the order of the ARA. The said appeal being T.A.No.572 of 2006 was rejected affirming the decision of ARA holding that Mortein mosquito repellent cannot be given the benefit of tax @ 4% as it contains only small amount of insecticide and that it is excluded from reduced rate of tax as it falls under HSN sub-heading 3808.10.91. In so far as Harpic and Lizol are concerned, the STAT held that though these products are household disinfectants they would not be covered by entry 20 of Schedule IV of the VAT Act.

4. The Tax Revision Case, in the circumstances, against the order of the STAT, would not lie. The manufacturer, therefore, filed two Writ Petitions being W.P.Nos.143 and 145 of 2011 assailing the order of the STAT and also seeking declaration that Harpic and Lizol are exigible to VAT @ 4%. Thus, TREVC.No.10 of 2007 and W.P.Nos.143 and 145 of 2011 are filed by the manufacturer assailing the order of the STAT confirming the decision of ARA. W.P.Nos.2652, 18288 and 23875 of 2009, W.P.Nos.2443, 7202 and 2408 of 2010 are filed assailing the order of the ARA for declaration as above.

W.P.No.11613 of 2009, W.P.Nos.31010, 31012, 14521, 14522, 14523, 14525, 14526, 14530, 27457, 27519, 27470 of 2011 are filed seeking a declaration that the goods are liable to tax @ 4% under entry 20 to Schedule IV to the VAT Act. The Writ Petitions being W.P.Nos.4033, 11272, 11301 and 11703 of 2009 are filed by the manufacturer or the distributors/dealers challenging assessment orders as well as orders imposing penalty, where the officials applied rate of tax at 12.5% under Schedule V. While doing so, needless to mention, the assessing officers relied on the ruling of ARA. In W.P.No.27470 of 2011, M/s. Raghu Agencies, a dealer seeks a declaration that Mortein spray and Mortein Rat Kill are goods exigible to tax @ 4% under entry 20 of Schedule IV of the VAT Act.

5. The core controversy circles round entries 20 and 88 to Schedule IV, which read as below.

20. Pesticides, Insecticides, fungicides, herbicides, weedicides and other plant protection equipment and accessories thereof (including drip and sprinkle irrigation systems but excluding mosquito repellents in any form).

88. Drugs and medicines whether patent or proprietary, as defined in clauses (i), (ii) and (iii) of Section 3(b) of Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940), and hypodermic syringes, hypodermic needles, perfusion sets, urine bags, catguts, sutures, surgical cotton, dressings, plasters, catheters, cannulae, bandages and similar articles, but not including:-

(a) Medicated goods;

(b) Products capable of being used as cosmetics and toilet preparations including Tooth Pastes, Tooth powders, cosmetics, Toilet articles and soaps;

(c) Mosquito Repellents in any form;

(d) (xxx)

6. Plain reading of entry 20 would show that (a) pesticides, (b) insecticides, (c) fungicides, (d) herbicides, (e) weedicides, (f) other plant protection equipment and accessories, and (g) drip and sprinkle irrigation system are included in the entry. The entry specifically excludes mosquito repellents in any form. Entry 88 includes specific named genus of goods manufactured under licence and excludes in its second part a few goods. The included goods are all the drugs and medicines as defined u/s 3(b)(i), (ii) and (iii) of the Drugs and Cosmetics Act, 1940 (the Drugs Act), hypodermic syringes, hypodermic needles, catguts, sutures, surgical cotton, dressings, plasters, catheters, cannulae, bandages and similar articles. The goods which are excluded from the entry 88 are medicated goods and products which can be on being used as cosmetics and toilet preparations including Tooth Paste, Tooth Powder, cosmetics, toilet articles and soaps as well as mosquito repellents in any form.

7. Before the ARA, the manufacturer contended that Harpic and Lizol are disinfectants and therefore, they are pesticides falling under entry 20. They also contended that they attract HSN Code 3808.40.00 but the ARA referred to entry 88 and came to the conclusion that Harpic and Lizol are capable of being used as cosmetics and in toilet preparation and, therefore, stand excluded from entry 88. For this reason these products were classified under entry 88(b) attracting tax @ 12.5% under residuary schedule.

HSN Code an Interpretation tool

8. After commencement of the VAT Act, with a view to remove difficulties and clarify the scope and application of thirteen (13) entries under Schedule-I and 54 entries under Schedule IV of the VAT Act, the Government of Andhra Pradesh GoAP) issued clarification about the applicability of HSN Code followed and applied under the Central Excise Tariff Act, 1985. Initially the Government issued two orders in G.O.Ms.No.398, dated 31.3.2005 followed by G.O.Ms.No.490, dated 15.4.2005. A few months thereafter the Government issued G.O.Ms.No.1615, dated 31.8.2005 in supersession of two earlier orders directing to apply HSN Code in respect of Schedule-I and Schedule-IV as specified in Annexures-I and II to the said G.O. The relevant portion in Annexure-II of the said order reads as under.

Sl. No.	Entry No. in Schedule	Description of Goods	HSN Code
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1 to 13 are omitted here as not relevant

Pesticides, Insecticides,
fungicides, herbicides,
weedicides and other plant
protection equipment and
accessories thereof but
including drip and sprinkle
irrigation system but
excluding mosquito
repellents in any form

1. Insecticides, fungicides
etc

3808 (except
3808.10.91,

3808.30.30

2. Other appliances 
Agricultural or horticultural
(including drip/sprinkler
irrigation system)

&

3808.30.40

8424.81.00

9. The Chapter-38 of the Central Excise Tariff Act, 1985 (the Tariff Act) deals with the classification of miscellaneous chemical products and HSN Codes assigned to these products. As per Section 2 of the Tariff Act the duties of excise shall be the rates specified in First and Second Schedules. First Schedule contains excise tariff and general rules for the interpretation of the schedule whereas the Second Schedule contains special excise duty rates. The general rules of interpretation of the Schedules as mentioned in tariff are as below.

In this Schedule,--

(1)(a) (heading), in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(b) (sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(c) "tariff item" means a description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of the duty of excise or

eight-digit number with blank in the column of the rate of duty;

(2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.

10. G.O.Ms.No.1615 does not specifically give any indication as to the interpretation of main HSN Code or sub-codes. The rules of interpretation in the First Schedule to the Tariff Act make it clear that "heading" in respect of goods includes all sub-headings of tariff items the first four-digits of which correspond to that number; and "sub-heading" in respect of goods means and includes the tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number. Here we may quote the classification of tariff item (HSN Code 3808 with all its sub-headings).

	Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers)	
3808	Insecticides:	
10	--- Aldrin, aluminium phosphate, calcium cyanide, chlordane,	
3808	Aldrin	Kg.
10		16%
11		
3808	Aluminium phosphate (for example phostoxin	Kg.
10		16%
12		
3808	Calcium Cyanide	Kg.
10		16%
13		
3808	Chlordane	Kg.
10		16%
14		
3808	Chlorobenzilate	Kg.
10		16%
15		

3808	D.D.V.P. (Dimethyl-cichloro-vinyl-phosphate)	Kg.
10		16%
16		
3808	D.D.T. (excluding D.D.T. of heading 2903 62)	Kg.
10		16%
17	-- Diagonal , heptachlor, lindane, methyl bromide, parathion methyl, dimethoate technical, malathion:	
3808	Diagonal	Kg.
10		16%
21		
3808	Heptachlor	Kg.
10		16%
22		
3808	Lindane	Kg.
10		16%
23		
3808	Methyl bromide	Kg.
10		16%
24		
3808	Parathion, methyl	Kg.
10		16%
25		
3808	Dimethoate, technical grade	Kg.
10		16%
26		
3808	Malathion	Kg.
10		16%
27	-- Endosulphan technical, quinalphos, isoproturon, fenthion, cipermethrin technical, allethrin, synthetic pyrethrum:	
3808	Endosulphan, technical grade	Kg.
10		16%
31		
3808	Quinalphos	Kg.
10		16%
32		
3808	Isoproturon	Kg.
10		16%
33		
3808	Fenthion	Kg.
10		16%
34		

3808	Cipermethrin, technical grade	Kg.
10		16%
35		
3808	Allethrin	Kg.
10		16%
36		
3808	Synthetic pyrethrum	Kg.
10	-- Other	16%
37		
3808	Repellents for insects such as flies, mosquito	Kg.
10		16%
91		
3808	Paper impregnated or coated with insecticide such as	Kg.
10	D.D.T. coated paper	16%
92		
3808	Other	Kg.
10		16%
99		
3808	Fungicides:	
20		
3808	Maneb	Kg.
20		16%
10		
3808	Sodium pentachlorophenate (santobrite)	Kg.
20		16%
20		
3808	Thiram (tetramethylthiuram disulphide)	Kg.
20		16%
30		
3808	Zineb	Kg.
20		16%
40		
3808	Copper oxychloride	Kg.
20		16%
50		
3808	Other	Kg.
20		16%
90		
3808	Herbicides, anti-sprouting products and plant-growth	
30	regulators	
3808	Chloromethylphenoxy acetic acid (M.C.P.A)	Kg.
30		16%
10		

3808	2 : 4 Dichlorophenozy acetic acid and its esters	Kg.
30		16%
20		
3808	Gibberellic acid	Kg.
30		16%
30		
3808	Plant-growth regulators	Kg.
30		16%
40		
3808	Weedicides and weed killing agents	Kg.
30		16%
50		
3808	Other	Kg.
30		16%
90		
3808	Disinfectants	Kg.
40		16%
00		
3808	Other:	
90		
3808	Pesticides, not elsewhere specified or included	Kg.
90		16%
10		
3808	Other	Kg.
90		16%
90		

11. The heading 3808 includes insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant growth regulators, disinfectants and similar products put up in forms or packings for retail sale or as preparations or articles. This heading has four sub-headings, namely, 3808.10 insecticides; 3808.20 fungicides; 3808.30 herbicides, anti-sprouting products and plant growth regulators; and 3808.90 other products i.e., pesticides, not elsewhere mentioned. Again these sub-headings have different products. We need to make a reference to 3808.10.91 whereunder the product "Repellents for insects such as flies, mosquito" is included. Similarly HSN Code 3808.30.30 the product included is Gibberellic acid and the plant growth regulators is included in 3808.30.40. It is significant to note that the "disinfectants" which are included in sub-heading 3808.40.00 is conspicuous by its absence in the relevant HSN Code in G.O.Ms. No. 1615 referred to herein above.

12. This Court has referred to the classification of goods under the Tariff Act and to the extent relevant to the classification of goods based on HSN Code in G.O.Ms.No.1615 to show that all the goods in entry 20 fall under HSN Code 3808

except "repellents for insects such as flies, mosquitoes" (HSN Code 3808.10.91), Gibberellic acid (HSN Code 3808.30.30) and plant growth regulators (HSN Code 3808.30.40) and taxable at 4%. The Division Bench decision in MGRM Medicare Ltd v CTO (2011) 45 VST 47 (AP) to which one of us (VVSJR,J) is a member following the decision of another Division Bench in Espi Industries & Chemicals Pvt. Ltd v Commercial Tax Officer (2008) 12 VST 112 (AP) held that wherever any HSN Code restricts the scope of any entry in the Scheduled to the VAT Act, it would be ultra vires and that any instructions issued u/s 76(2) of the VAT Act would not override the Schedules unless they are amended validly. The relevant observations are as follows.

Schedule to an enactment forms an integral part of the said Act. It is only if the Schedule is amended following the procedure stipulated in section 79 of the VAT Act, or by way of a legislative exercise, would it be valid and not by mere issuance of a notification u/s 76(2) of the VAT Act. It is not even the case of the respondents that the notification in G.O.Ms.No.1615 is a legislative exercise. The power to remove difficulties u/s 76(2) of the VAT Act, by issuance of an executive/administrative order, can neither nullify nor circumscribe entries in the Schedules to the VAT Act. Reliance placed by the respondent-assessing authority on the HSN Codes to restrict the scope of entry 2 of the First Schedule to the VAT Act is, therefore, illegal...

13. The Special Counsel made an attempt to impress upon us to ignore HSN Codes especially 3808 as per G.O. Ms. No. 1615. We are not able to accept the submission. We do not find any inconsistency between entry 20 of IV Schedule and HSN Codes for the pesticides and insecticides included in tariff item 3808 and of its sub-headings. From this, we may conclude that all "pesticides" and "insecticides" among others mentioned in entry 20 including all other products falling within the classification "pesticides" attract tax at 4%. Next question, therefore, is whether Lizol and Harpic fall within the category of "pesticides" or "insecticides"?

14. The manufacturer obtained licence under the Insecticides Act for producing Mortein products. Similarly they obtained licence under the Drugs Act for manufacturing Harpic and Lizol. A submission is made that from the factum of manufacturer obtaining licence under the Drugs Act it should be inferred that they are ex facie classified as drugs falling under entry 88. We are afraid, the submission cannot be accepted. All along, the case of the manufacturer has been that Harpic and Lizol are toilet cleaner and floor cleaner respectively with germ killing capabilities and that they are pesticides. They contended that the disinfectants capable of destroying the germs come within the HSN Code "Pesticides". If this argument of the manufacturer is accepted, their products under consideration are exigible @ 4% VAT.

15. It is too well settled that while interpreting the entries in a Sales Tax Act one should not resort to the scientific and technical meaning of the terms or expressions used. Usual method for an assessment officer or a dealer would be to provide the

popular meaning or the meaning attached to the products by those who deal in them. Functional utility and predominant use play an important role in determining the classification of the taxable goods. The dictionary meaning, the technical meaning and the meaning from users' point of view or popular meaning would all furnish a clue to understand the classification of a product.

16. In *Nuclear Fuel Complex v State of Andhra Pradesh* (2011) 42 VST 273 (AP) a Division Bench of this Court to which one of us (VVSJR,J) is a member summarised the principles of interpretation of entries in tax laws. It would be relevant to extract the same hereunder.

Interpretation of an entry, under the Tax Laws, is a quasi-judicial function [State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another](#). While interpreting an entry, the Court's role is to consider its effect after examining it from different angles ([State of Kerala and Others Vs. Kurian Abraham Pvt. Ltd. and Another](#), Neither can one single universal test be applied nor can there be a static parameter for proper classification. Functional utility, design, shape and predominant usage have also to be taken into account while determining the classification of an item [O.K. Play \(India\) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon, A. Nagaraju Bros., Visakhapatnam Vs. State of A.P.](#), Different tests are laid down for interpretation of an entry in a taxing statute namely, dictionary meaning, technical meaning, user's point of view, popular meaning, etc [Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh](#),

In interpreting entries in a Sales Tax Act, resort should be not to the scientific and technical meaning of the terms or expressions used, but to their popular meaning i.e., the meaning attached to them by those dealing in them [Shri Bharuch Coconut Trading Co. and others Vs. The Municipal Corporation of the City of Ahmedabad and others, Shri Bharuch Coconut Trading Co. and others Vs. The Municipal Corporation of the City of Ahmedabad and others](#), Ponds India Ltd). Where the definition of a word has not been given, it must be constructed in its popular sense, that sense which people conversant with the subject-matter, with which the statute is dealing, would attribute to it [Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad, Asian Paints India Ltd. Vs. Collector of Central Excise](#), The test commonly applied to such cases is: How is the product identified by the class or section of people dealing with or using the product? That is a test which is attracted whenever the statute does not contain any definition. It is, generally, by its functional character that a product is so identified [Commissioner of Sales Tax, U.P. Vs. Macneill and Barry Ltd., Kanpur, Porritts and Spencer \(Asia\) Ltd. Vs. State of Haryana, Atul Glass Industries \(Pvt.\) Ltd. Vs. Collector of Central Excise](#),

In determining the meaning or connotation of words and expressions describing an article or commodity, the turnover of which is taxed in a sales tax enactment, if there is one principle fairly well settled it is that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and

the consumer. It is they who are concerned with it, and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted (*Geep Flashlight Industries Ltd v Union of India* (1985) 22 ELT 3; [Delhi Cloth and General Mills Co. Ltd. and Another Vs. State of Rajasthan and Others](#),

17. The verb "infect" means, "to introduce pathogenic microorganisms into; to corrupt; to spread to; to affect successively; to inflict with a virus". The word "disinfect" means "to rid of disease-causing bacteria, etc., by cleaning, especially with a chemical". The word "disinfectant" as a noun means "a chemical that destroys bacteria" (see *The Chambers Dictionary*, 10th Edition, 2007). The "disinfectant" thus is a chemical substance that destroys bacteria and pathogenic microorganisms when it is used for cleaning.

18. In *Bombay Chemical Pvt. Ltd* the Supreme Court was concerned with item 18 of the First Schedule to the Central Excise and Salt Act, 1944. The said item included insecticides, pesticides, weedicides and fungicides. As per Notification No. 5575 -CE issued under Rule 8(1) of the Central Excise Rules, 1944 these products were exempted from the whole of the duty of excise. Therein appellant - a manufacturer of disinfectant fluids, unsuccessfully claimed exemption under item-18 before Central Excise authorities as well as the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi. Before the apex Court, it was contended that the disinfectant fluid produced by the appellant had the capability of killing any insects or pests. The test for classifying a tariff was reiterated in the following terms.

... .. when a question arises whether a particular goods is covered in any category or not, it has to be examined if it satisfies the characteristic which go to make it a goods of that category. And whether in trade circle it is understood as such and if it is a goods of technical nature then whether technically it falls in the one or the other category. Once it is found that a particular goods satisfies the test then the issue which arises for consideration is whether it should be construed broadly or narrowly.... .. Each of the words insecticides, pesticides, fungicides or weedicides are understood both in the technical and common parlance as having broad meaning. Therefore, if any goods or items satisfy the test of being covered in either of the expression, then it is entitled to exemption. The broad and basic characteristic for exemption under the notification is that the goods must have the property of killing germs and bacteria, insects or pests and it should be understood in the common parlance as well as being covered in one of the broad categories mentioned in the notification. Since the goods produced by the appellant are capable of killing bacteria and fungi which too, is covered in the expressions "pesticide" and "fungicide" there appears no reason to exclude the goods from the aforesaid notification.

19. In these cases, manufacturer placed before us the test report issued by SGS Laboratory, Kolkata certifying that Harpic and Lizol kill germs. In addition they also

placed the report of the Indian Institute of Chemical Technology (IICT), Hyderabad with regard to determination of anti-microbial activity of Harpic Power (toilet bowl cleaner) containing 10% Hydrochloric Acid. Similar report is regarding determination of antimicrobial activity of Lizol containing Benzalkonium Chloride IP 4%. A cursory look at these two reports would show that both these products when applied to bacteria like *Escherichia coli*, *Staphylococcus aureus*, *Enterococcus hirae*, *Pseudomonas aeruginosa*, *Candida albicans* (different microorganisms), kill the germs and percent of kill is more than 99%. The summary of the Harpic test report reads as under.

SUMMARY AND CONCLUSION

The data obtained from the present study clearly indicates that the both marketed samples of "Harpic Power" products (containing 10% Hydrochloric Acid; batch Nos # PFDE049 and PFDE048) clearly demonstrates that a percent reduction in viable counts from $1.5 - 5.0 \times 10^8$ cell/ml to not more than 650 cfu/ml after definite contact time intervals (5 - 30 min) against the test organisms; *Escherichia coli*, *Staphylococcus aureus*, *Enterococcus hirae*, *Pseudomonas aeruginosa* and *Candida albicans*. Both the products are deemed to have passed the test.

INTERPRETATION OF THE RESULTS

"Harpic Power" supplied by M/s.Reckitt Benckister (India) Ltd., Gurgaon-122 016 is effective and could be used in the control of common household microorganisms. The product when tested against this standard passed the test and can be described as "DISINFECTANT" for toilet bowls.

(emphasis supplied)

20. The summary of the test report in respect of Lizol (disinfectant surface cleaner) is as follows.

SUMMARY AND CONCLUSION

The data obtained from the present study clearly indicates that the both marketed samples of "LIZOL" - a disinfectant surface cleaner products (containing Benzalkonium Chloride IP 4%; batch Nos # U0214 and U0267) clearly demonstrates that a reduction in viable counts from $1.5 - 5.0 \times 10^8$ cells/ml to not more than 39×10^2 cfu/ml after definite contact time intervals (5 - 30 min) against the test organisms; *Escherichia coli*, *Staphylococcus aureus*, *Enterococcus hirae*, *Pseudomonas aeruginosa* and *Candida albicans*. Both the products are deemed to have passed the test.

INTERPRETATION OF THE RESULTS

"LIZOL" supplied by M/s.Reckitt Benckister (India) Ltd., Gurgaon-122 016 is effective and could be used in the control of common household microorganisms. The product when tested against this standard passed the test and can be described as

"DISINFECTANT" for surfaces.

(emphasis supplied)

21. We are not persuaded to take a different view ignoring the test report of IICT as above. In Bombay Chemical Pvt. Ltd., the Supreme Court ruled that a disinfectant which is used for killing germs may be broadly covered in the word "pesticide". The relevant observations are as follows.

Disinfectant" is defined in Webster Comprehensive Dictionary "as a substance used to disinfect or to destroy the germs of infectious and contagious diseases". In the Concise Oxford Dictionary of Current English, "disinfectant" is defined as "a commercially produced chemical liquid that destroys germs". In Encyclopaedia Britannica, Vol. 4, it is explained to mean, "any substance, such as creosote or alcohol, applied to inanimate objects to kill micro-organisms. Disinfectants and antiseptics are alike in that both are germicidal, but antiseptics are applied primarily to living tissue. The ideal disinfectant would rapidly destroy bacteria, fungi, viruses and protozoans, would not be corrosive to surgical instruments, and would not destroy or discolour materials on which it is used". It thus cannot be disputed that a disinfectant is also a killing agent.

"Pesticide" has been defined in Butterworths Medical Dictionary, 2nd Edn., as "a comprehensive word to include substances that will kill any form of pests, e.g., insects, rodents and bacteria". The term "pesticide" includes a large variety of compounds of diverse chemical nature and biological activity grouped together usually on the basis of what kind of pests they are used to destroy or eliminate. Under the US Federal Environment Pesticide Control Act, the term "pesticide" has been defined to include "(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, other forms of terrestrial or aquatic plants or other forms of animal life, e.g., viruses, bacteria, or other micro-organisms, which the administrator declares to be a pest and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant" (Pesticides in the Indian Environment, by P.K. Gupta p. 2).

"Fungicide" inhibits growth or destroys fungi pathogenic to man or other animals or inanimate surfaces. The appellant had imported tar acid to manufacture insecticide, pesticide and fungicide. The Director General had permitted import for this purpose. In the letter written by the appellant claiming exemption, it was stated that disinfectant fluids manufactured by it were capable of being used for the purpose of destroying fungi of medical importance.

A disinfectant which, therefore, is used for killing may broadly be covered in the word "pesticide". Disinfectants, may be of two types; one to disinfect and other to destroy the germs. The former, i.e., those products which are used as disinfectant for instance lavender etc. may not be covered in the expression "pesticide". But

those products which are used for killing insects by use of substances such as high boiling tar acid have the same characteristic as "pesticide".

(emphasis supplied)

22. The Special Counsel for CT would also rely on Bombay Chemical Pvt. Ltd to submit that even according to the manufacturer Harpic and Lizol only control the germs and in the absence of such capability to kill the germs they cannot be classified as disinfectants. We have no hesitation in rejecting the submission. We have referred to the test report for SGS Laboratory, Calcutta and IICT, Hyderabad. Both these reports support the view that Harpic and Lizol are disinfectants. Applying the ratio in Bombay Chemical Pvt. Ltd the conclusion is irresistible that Harpic and Lizol are covered in "pesticides" liable to tax at 4%.

23. The Special Counsel nextly submits that Harpic and Lizol are manufactured under licence under the Drugs Act; and they are therefore drugs falling under entry 88 but being toilet preparations stand excluded therefrom. A careful reading of entry 88(b) would show that Harpic and Lizol would be "odd men out" among the goods mentioned in the entry. The said entry speaks of only the products capable of being used as cosmetics and toilet preparations. Illustratively it mentions tooth pastes, tooth powders, cosmetics, toilet articles and soaps. It does not deal with toilet cleaner or floor cleaner used as disinfectants to kill bacteria and germs. When the language of the taxing entry is plain, it is not for the Courts, to introduce words to uphold the assessment. We cannot read Harpic and Lizol as being included in toilet preparations to bring them under the excluded category under entry 88(b) of IV Schedule to the VAT Act. Even if the manufacturer obtained drug licence, for manufacturing disinfectants they do not cease to be pesticides and hence fall under in entry 20.

24. The view that disinfectants do not fall under excluded category of goods under entry 88(b) and are broadly covered in the term "pesticides" also derive support from HSN Code based classification of items in IV Schedule as ordered by the Government in G.O.Ms.No.1615, dated 31.8.2005. As seen from the said G.O. extracted hereinabove, all the goods in entry 20 of IV Schedule are covered under the HSN Code (heading) 3808 except three products, namely, repellents for mosquitoes, Gibberellic acid and plant growth regulators. The product "disinfectants" are in sub-heading 3808.40.00 and they are not excluded from the main "heading". Thus all the disinfectants would fall within HSN Code 3808 which deals with most of the goods mentioned in entry 20. That being the position, in our considered opinion, any reference to entry 88 may not be called for. Even if the manufacturer obtained drug licence for producing Harpic and Lizol the same cannot be a conclusive that these goods within the ambit of entry 88.

25. We may passingly mention that Section 18 of Drugs Act mandates a licence for manufacture, sale or distribution of any drug, cosmetic or medicine. The word

"drug" is defined in Section 3(b) of the Drugs Act. It is inclusive definition. A plain reading of Section 3(b)(iv) thereof shows that not only medicines for internal or external use of human beings or animals but substances that affect structure or function of human body or used for destruction of vermin or insects which cause disease in the human beings and animals are also drugs. Further all substances intended for use as components of a drug and such devices intended for internal or external use among others, in the "mitigation or prevention of disease" would be drugs. When a manufacturer produces any disinfectant fluids, they are basically intended for prevention of disease by destroying and/or controlling bacteria and microorganisms that are unusually present. That may be one reason why even under the Drugs and Cosmetics Rules, 1945 (the Drugs Rules) the disinfectants are placed in Schedule-K in respect of which they were exempted from the provisions of Chapter IV and the Rules made thereunder. Harpic and Lizol are the products/goods sold even in general stores and on the counters of departmental stores. We therefore reject the submission of the State that Harpic and Lizol fall under entry 88 merely because they are manufactured under drug licence.

26. Thus to sum up on this aspect we hold that Harpic and Lizol are disinfectants capable of destroying germs and microorganisms like *Escherichia coli*, *Staphylococcus aureus*, *Enterococcus hirae*, *Pseudomonas aeruginosa* and *Candida albicans* etc. Being disinfectants they fall within the category of pesticides covered by entry 20 of IV Schedule. We also conclude that even though Harpic Lizol are manufactured under drug licence issued in Form-25 issued under Rule 70 of the Drug Rules, they do not fall under entry 88 and, therefore, the question of these goods coming within the excluded category under entry 88(b) does not arise. Both the goods in question, therefore, are exigible to tax at 4% but not at 12.5%. In view of these findings we are not able to approve the ruling of the ARA as affirmed by the STAT.

27. The manufacturer also sought clarification in respect of Mortein mosquito coils, liquid vapouriser and mat vapouriser. Construing on entry 20 and entry 88, ARA as well as STAT ruled that Mortein is liable to tax at the rate of 12.5% under V Schedule. There is no serious challenge to this but in W.P.No.27470 of 2011 filed by M/s.Raghu Agencies, a dealer on the rolls of the CTO, a question is raised that the Mortein also kills mosquitoes and rats. The entry 20 and the entry 88 would show that they referred to "Mosquito repellents" in any form. Do they prima facie deal with Mortein rat kill and Mortein spray? They are claimed to have capabilities of killing, but are not subject matter of the controversy in these writ petitions. We, therefore, leave open the question, whether Mortein rat kill and Mortein spray also are covered or excluded by entry 20 and/or entry 88 to be decided in appropriate case. We hasten to add that insofar as Mortein mosquito repellents like coil, mat vapouriser and liquid vapouriser are concerned, they are liable to tax at 12.5% as found by ARA as well as STAT.

28. In the result, for the reasons in the order, W.P.Nos.2652, 18288 and 23875 of 2009, W.P.Nos.2408, 2443 and 7202 of 2010, W.P.Nos.143 and 145 of 2011 are allowed subject to observations herein above. Tax Revision Case No. 10 of 2007 shall stand disposed of. W.P.Nos.11613 of 2009, W.P.Nos.14521, 14522, 14523, 14525, 14526, 14530, 27457, 27519, 31010 and 31012 of 2011, are also allowed as prayed for. W.P.Nos.4033, 11272, 11301, 11703 of 2009 and W.P.No.27470 of 2011 are disposed of setting aside the impugned orders/notice. In all the matters, it is left open to the respective assessing officers to undertake fresh reassessment after due notice keeping in view this judgment. The Tax Revision Case and Writ Petitions, as also miscellaneous petitions, shall stand disposed of in terms as above, without any order as to costs.