

**BEFORE THE FULL BENCH, ODISHA SALES TAX TRIBUNAL:  
CUTTACK**

**S.A. No. 210 (VAT) of 2017-18**

(Arising out of order of the learned Addl.CST (Appeal), Odisha,  
Cuttack in First Appeal No. AA- 106101610000080/2016-17,  
disposed of on 18.07.2017)

Present: **Shri G.C. Behera, Chairman**  
**Shri S.K. Rout, 2<sup>nd</sup> Judicial Member &**  
**Shri M. Harichandan, Accounts Member-I**

State of Odisha, represented by the  
Commissioner of Sales Tax, Odisha,  
Cuttack

... Appellant

-Versus-

M/s. Godrej Consumer Products Ltd.,  
At/PO- Bhanpur, Gopalpur, Cuttack

... Respondent

For the Appellant : Sri M.L. Agarwal, S.C. (CT)  
For the Respondent : Sri N.K. Das, Advocate &  
Sri K.R. Mohapatra, Advocate

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Date of hearing : 19.10.2022      \*\*\*      Date of order : 04.11.2022

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**ORDER**

State is in appeal against the order dated 18.07.2017 of the Addl. Commissioner of Sales Tax (Appeal), Odisha, Cuttack (hereinafter called as 'First Appellate Authority') in F A No. AA - 106101610000080/ 2016-17 reducing the assessment order of the Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack (in short, 'Assessing Authority) to return figure.

2. The facts of the case, in brief, are that –

M/s. Godrej Consumer Products Ltd. is engaged in business of mosquito repellents, mosquito coils, liquid mat, tablets, aerosol, car freshener, room freshener and shoe polish etc. on wholesale basis. The

assessment period relates to 01.04.2005 to 31.03.2007. Assessing Authority raised tax and penalty of ₹8,28,08,362.00 u/s. 43 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') pursuant to A.G. Audit report.

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority allowed the appeal and reduced the demand to return figure. Being aggrieved with the order of the First Appellate Authority, the State prefers this appeal. Hence, this appeal.

The Dealer files cross-objection supporting the order of the First Appellate Authority to be just and proper.

3. Learned Standing Counsel (CT) for the State submits that the order of the First Appellate Authority is unjust and improper on the ground that the mosquito repellent should not be considered as insecticide or pesticide in real term since it is meant for keeping away the mosquito in real sense. He further submits that insecticide and pesticide are utilized in the agricultural sector whereas the mosquito repellents are used in common house and can easily fetch in any ordinary grocery shop and thus, the same should be considered in popular commercial parlance. Accordingly, he submits to set aside the order of the First Appellate Authority and to restore the order of the Assessing Authority.

4. Per contra, learned Counsel for the Dealer supports the order of the First Appellate Authority in reducing the demand raised in assessment to return figure to be just and proper. He submits that the observation of the First Appellate Authority is based on the ratio of various Hon'ble High Courts as well as Hon'ble Supreme Court holding that the goods "mosquito repellent" is nothing but 'insecticides' and as such, falls within the ambit of entry at Sl. No. 30 of Part-II of Schedule-B of the OVAT Act, which is exigible to tax @ 4%. Supporting the contentions, he relies on the decisions in the cases of *Sonic Electrochem (P) Ltd. v. State of Orissa and others*,

reported in [1994] 92 STC 117 (Orissa); *Puma Ayurvedic Herbal (P) Ltd v. Commissioner, Central Excise, Nagpur*, reported in [2006] 145 STC 200 (SC) and *Commissioner of Central Excise, Calcutta v. Sharma Chemical Works*, reported in [2003] 132 STC 251 (SC) and also order dated 17.03.2021 passed by this Tribunal in S.A. No. 209 (VAT) of 2017-18 in respect of the instant Dealer relating to the subsequent period 01.04.2007 to 31.12.2008.

5. On hearing the rival submissions and after careful scrutiny of the materials available on record, it is found that the sole point for adjudication of the dispute in appeal is, whether 'mosquito repellent' comes within the ambit of 'pesticides and insecticides' as per entry at Sl. No. 30 of Part-II of Schedule B under the OVAT Act.

6. Assessing Authority recorded a finding that 'mosquito repellents in any form' was excluded from entry at Sl. No. 46 w.e.f. 01.07.2005 and levied tax @ 12.5%. First Appellate Authority reduced the assessment to return figure in appeal.

7. Bare reading of the entry at Sl. No. 46 of Part-II of Schedule-B reveals that "mosquito repellents in any form" was excluded in amended provision of Sl. No. 46 w.e.f. 01.07.2005. Entry at Sl. No. 30 includes goods such as chemical fertilizers, pesticides, rodenticides, weedicides, insecticides, germicides, herbicides and fungicides. Now, question remains whether 'mosquito repellent' will come under 'insecticides' as per entry Sl. No. 30.

8. In the case of *Sonic Electrochem (P) Ltd.* cited supra, Hon'ble Court have observed that 'insecticide' is a species of 'pesticide' would be entitled to the exemption from levy of tax in view of the Notification of the State Govt. u/s. 6 of the OST Act and since the appellate authority has come to the conclusion that the goods manufactured by the assessee are 'insecticide', the said item is entitled to exemption in question. Relying on

this decision of the Hon'ble Court, this Tribunal has already recorded a finding that 'mosquito repellent' comes under 'insecticides' and within entry of Sl. No. 30 of Part-II of the Schedule-B in the case of the instant Dealer in S.A. No. 209 (VAT) of 2017-18 dated 17.03.2021 for a subsequent period of assessment, i.e. 01.04.2007 to 31.12.2008. So, it can be safely held that mosquito repellent will come within entry at Sl. No. 30 of Part-II of the Schedule-B, which is exigible to tax @ 4%.

9. On the foregoing discussions, we do not find any impropriety in the order of the First Appellate Authority to call for any interference in appeal. Hence, it is ordered.

10. Resultantly, the appeal stands dismissed being devoid of any merit and the impugned order of the First Appellate Authority is hereby confirmed. Cross-objection is disposed of accordingly.

**Dictated & Corrected by me**

**Sd/-  
(G.C. Behera)  
Chairman**

**Sd/-  
(G.C. Behera)  
Chairman**

**I agree,**

**Sd/-  
(S.K. Rout)  
2<sup>nd</sup> Judicial Member**

**I agree,**

**Sd/-  
(M. Harichandan)  
Accounts Member-I**