

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

S.A. No. 76 (VAT) of 2016-17

(Arising out of order of the learned Addl.CST, Odisha, Cuttack,
in First Appeal No. AA/CU II – 141(C)/2011-12,
disposed of on 05.12.2015)

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

M/s. Godrej Saralee Ltd.,
(Merged with M/s. Godrej Consumer
Products Ltd.), Plot No. 38,
Badakesharpur, Manguli, Cuttack ... Appellant

-Versus-

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

For the Appellant : Sri N.K. Dash, Advocate &
Sri K.R. Mohapatra, Advocate
For the Respondent : Sri D. Behura, S.C. (CT)

Date of hearing : 19.12.2022 *** Date of order : 17.01.2023

ORDER

Dealer assails the order dated 05.12.2015 of the Addl. Commissioner of Sales Tax, Odisha, Cuttack (hereinafter called as ‘First Appellate Authority’) in F A No. AA/CU II – 141(C)/2011-12 reducing the assessment order of the Joint Commissioner of Sales Tax, Cuttack II Range, Cuttack (in short, ‘Assessing Authority’).

2. Briefly stated, the case of the Dealer is that –

M/s. Godrej Saralee Ltd. carries on business of receiving mosquito repellent, mosquito coil, liquid, mat, tablets, aerosol, car freshener,

room freshener, cosmetics, shoe polish, etc.. The assessment period relates to 01.01.2009 to 31.08.2010. The Assessing Authority in assessment raised tax and penalty of ₹27,92,853.00 u/s. 42 of the Odisha Value Added Tax Act, 2004 (in short, 'OVAT Act') on the basis of Audit Visit Report (AVR).

Dealer preferred first appeal against the order of the Assessing Authority before the First Appellate Authority. The First Appellate Authority reduced the assessment to ₹24,80,435.00 and allowed the appeal in part. Being further aggrieved with the order of the First Appellate Authority, the Dealer prefers this appeal. Hence, this appeal.

The State files no cross-objection.

3. The learned Counsel for the Dealer submits that the Assessing Authority and the First Appellate Authority went wrong in raising tax @ 12.5% for the Good-knight machines though the Assessing Authority observed that the Dealer is selling the combo pack. He further submits that the finding of the Assessing Authority is hypothetical as he determined the rate of the machine by taking the rate of liquid at ₹54,00 when sold separately. He further submits that the Hon'ble Kerala High Court have been pleased to observe that the mosquito mats are placed on the instrument worked by electrical energy and thereby, it is an item falling under Entry 67 of the First Schedule to the Kerala General Sales Tax, 1963. So, he submits that the Assessing Authority and the First Appellate Authority should have assessed the tax @ 4% instead of 12.5%. He further submits that the First Appellate Authority and the Assessing Authority are arbitrary and illegal and as such, the same need interference in this appeal. He relies on the decisions of Hon'ble High Court of Kerala in case *of N.D. Narayanan Nambiar v. Sate of Kerala*, in **TRC No. 238 of 2000 dated 28.08.2000** (MANU/KE/0642/2000) and Hon'ble Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi in case of *Kramchand*

Appliances Pvt. Ltd. v. Commissioner of Central Excise, Chandigarh in Appeal No. E/2407/2005 dated 25.06.2012 (MANU/CE/0365/2012).

4. Per contra, learned Standing Counsel (CT) for the State objects the contention of the Dealer and submits that the Good-knight machine cannot be equated with Good-knight liquid. He further submits that both the Assessing Authority and First Appellate Authority have rightly passed the reasoned order, which calls for no interference.

5. On hearing the rival submissions and on careful scrutiny of the materials available on record, it transpires from the assessment order that the Dealer has purchased/received Good-knight machines along with liquid and is selling these in combination. The Assessing Authority observed that the value of the combo pack, i.e. machine and liquid, is of ₹99.00, and the liquid is sold at ₹54.00, when sold separately. Accordingly, the Assessing Authority determined the rate of machine at ₹45.00. The Assessing Authority took the receipt/purchase figure of combo pack for the month of October, 2009 as the average figure and determined the sale figure for the period under assessment, i.e. 20 months. As such, he estimated the sale figure at ₹2,50,00,000.00. He estimated the sale figure of Good-knight machines @ 45%, which came to ₹1,12,50,000.00 and added the same to 12.5% taxable group, thereby raised the tax demand including penalty. The First Appellate Authority reduced the turnover to ₹99,07,184.94 instead of ₹1,12,50,000.00 and levied tax @ 12.5%, which resulted the reduction of tax demand in appeal.

6. The point of determination in appeal is that whether the First Appellate Authority is justified in confirming levy of tax @ 12.5% on Good-knight machine of a combo pack is justified?

7. Undisputedly, the Assessing Authority and the First Appellate Authority have assessed the rate of tax on Good-knight liquid in a combo pack @ 4%. The Assessing Authority has observed specifically in the

assessment order that the Dealer has purchased/received Good-knight machines along with liquid and selling these in combination. The Assessing Authority took the cost of liquid at ₹54.00 and ascertained the cost of machine at ₹45.00. The combo pack was consist of liquid and machines at a price of ₹99.00. The orders of the Assessing Authority and the First Appellate Authority do not disclose that rate of the machines and liquid were quoted in the combo pack separately nor it shows that the Dealer can sale the machines and liquid separately. The Assessing Authority ascertained the cost of the machines at ₹45.00 on hypothetical finding that when the liquid is sold at ₹54.00.

8. In the case of *Karamchand Appliances Pvt. Ltd.* cited supra, Hon'ble Appellate Tribunal have been pleased to observed that a prospective buyer would purchase such combination pack for using it as mosquito repellent, which purpose is achieved by vaporising the liquid pesticide by subjecting it to heat with the aid of electro thermic apparatus. Hon'ble Appellate Tribunal further observed that the same implied that, electro thermic apparatus is merely a delivery machine, but the real mosquito repellent is liquid pesticides contained in refill bottle, thus liquid pesticides bottle in combination pack gives essential character of mosquito repellent to combination pack.

In the case of *N.D. Narayanan Nambiar* cited supra, Hon'ble Kerala High Court have been please to observe that mosquito repellents are not electrical goods. This decision is not applicable to the facts and circumstances of the present case as it is not the crux of the case that the Good-knight machine is an electrical goods and comes under Part-II of the Schedule.

9. As the observation of the Assessing Authority shows that the Dealer had purchased the combo pack and was selling the same in combination and the orders of the First Appellate Authority and the

Assessing Authority do not disclose that the Dealer had sold the machine separately from the combination pack. In view of the ratio decided in the case of *Karamchand Appliances Pvt. Ltd.* cited supra, the liquid pesticide bottle in combination pack gives essential character of mosquito repellent to combination pack. In absence of any material regarding selling of machines separately, the First Appellate Authority and the Assessing Authority cannot come to a conclusion that the machines are exigible to tax @ 12.5% instead of 4% as claimed by the Dealer.

10. For the foregoing discussions, we are of the unanimous view that the First Appellate Authority and the Assessing Authority went wrong in computing tax on sale of Good-knight machines @ 12.5% instead of 4%. So, the same needs interference in appeal. Hence, it is ordered.

11. Resultantly, the appeal is allowed and the impugned order of the First Appellate Authority is hereby set aside. The matter is remanded to the Assessing Authority for recomputation of tax liability keeping in view the observations made supra within a period of three months from the date of receipt of this order.

Dictated & Corrected by me

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

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

I agree,

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

I agree,

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