BEFORE THE CHAIRMAN, ODISHA SALES TAX TRIBUNAL: CUTTACK

S.A. No. 209 (VAT) of 2017-18

(Arising out of order of the learned Additional CST (Appeal), Odisha, Cuttack in Appeal Case No. AA/JCST/CUII/76/2014-15 disposed of on dated 18.07.2017)

Present: Shri R.K. Pattanaik, Chairman

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

-Versus-

M/s. Godrej Saralee Ltd. Bhanpur, Gopalpur, Cuttack ... Respondent

For the Appellant : Sri D. Behura, Standing Counsel (CT)
For the Respondent : Sri N.K. Das & Sri K.R. Mohapatra, Advocates

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Date of hearing: 24.02.2021 ***** Date of order: 17.03.2021

O R D E R

State has preferred the present appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (hereinafter referred to as 'the Act') read with Rule 93 of the Odisha Value Added Tax Rules, 2005 being aggrieved of the impugned order dated 18.07.2017 promulgated in Appeal Case No. AA/JCST/CUII/ 76/2014-15 by the learned Additional Commissioner of Sales Tax (Appeal), Odisha, Cuttack (in short, 'FAA'), who allowed the appeal of the dealer assessee thereby setting aside the order of assessment dated 29.03.2014 passed under Section 43 of the Act by the learned Joint Commissioner of Sales Tax, Cuttack-II Range, Cuttack

(hence called 'AA') for the tax period 01.04.2007 to 31.12.2008 on the grounds inter alia that it is unjust, improper and, therefore, liable to be set aside.

2. In fact, the dealer assessee is engaged in wholesale business dealing with mosquito repellent and other items of goods and it was subjected to A.G. (Audit), which result in submission of a report, whereupon, proceeding under Section 43 of the Act was initiated and finally, the AA raised a demand of ₹54,50,687.00 including penalty. Later to the above assessment, the dealer assessee approached the FAA claiming that mosquito repellent is an insecticide and thus, taxable @ 4% and not @ 12.5% as was held by the AA. The FAA then reached at a conclusion that mosquito repellent is to be taxed at lower rate of 4% being an insecticide under Entry 30, Part-II, Schedule-B of the Act. Against the impugned order dated 18.07.2017, which overruled the finding of the AA, the State knocked the doors of the Tribunal by taking a plea that insecticide and pesticide as detailed in Entry 30 are utilized in agricultural sector, whereas, the mosquito repellent is a domestic product easily available in market and cannot be equated with the former.

3. The dealer assessee has not filed cross-objection. It has justified the decision of the FAA and the conclusion that mosquito repellent is an insecticide falling under Entry 30, Part-II, Schedule-B of the Act, ever since 01.04.2007. But at the same time, the very initiation of assessment under Section 43 of the Act has been questioned by the dealer assessee on the ground that reopening of assessment, in the facts and circumstances of the case, amounted to change of opinion and review of the original decision of the AA under Section 42 of the Act.

But, as earlier mentioned, no cross-objection is on record challenging the maintainability of the action under Section 43 of the Act. As to the merits of the case, it is claimed by the dealer assessee that mosquito repellent has to be taxed as an insecticide @ 4% instead of 12.5% as an unscheduled goods under Part-III, Schedule-B of the Act.

4. Pertinent question is, whether, mosquito repellent is taxable @ 4% as per Entry 30, Part-II, or @ 12.5% as per Part-III, Schedule-B of the Act? The learned Standing Counsel (CT) for the State apprised the fact that between 01.04.2007 to 31.05.2007, mosquito repellent was not included in Entry 46, Part-II, Schedule-B of the Act, which contained drugs and medicines and other items and such exclusion was deleted w.e.f. 01.06.2007, which means, on a reading of the entries pre-and post amendment, mosquito repellent has been kept out of the purview of Part-II of Schedule-B and in that case, by no stretch of imagination, can, therefore, it be treated as a commodity to fall either under the ken of Entry 30 or 46 of Part-II, Schedule-B of the Act. Furthermore, the learned Standing Counsel (CT) brought to the notice of the Tribunal that the material on record so produced by the dealer assessee clearly indicated that mosquito repellent carries a brand name 'Goodnight' which is shown as household insecticide being manufactured by Godrej Consumers Product Ltd. and the FAA failed to appreciate the fact that, when it is a household insecticide, could not have been treated as a commodity akin to insecticides as appearing in Entry 30, Part-II, Schedule-B of the Act. The contention of the State is also to the effect that the words 'insecticides', 'pesticides' and other

items as contained in Entry 30, Part-II, Schedule-B of the Act are only meant for agricultural utility and thus, there is an underlying distinction between mosquito repellent manufactured by the dealer assessee and insecticide/pesticide referred to in Entry 30. While contending so, rule of noscitur a sociis is sought to be invoked by referring to the decisions of the Hon'ble Apex Court in Godfrey Phillips India Ltd. Vs. State of U.P: (2005) 139 STC 537 (SC); and Commissioner of Sales Tax Vs. Kartos International: (2011) 40 VST 210 (SC), which, in fact, enunciated the law that rule of noscitur a sociis shall be made applicable, when words capable of being analogously defined take its colours from each other and the fact that ejusdem generis is a facet of it. That apart, other decisions such as Ramavatar Budhaiprasad Vs. Assistant Sales Tax Officer: (1961) 12 STC 286 (SC); Council of Science & Technology Vs. Macneill & Barry Ltd: (1986) 2 SCC 23; Commissioner of Central Excise Vs. Connaught Plaza Ltd: (2013) 18 GSTR 1 (SC); and Commissioner of Central Excise Vs. Sharma Chemical Works: (2003) 132 STC 251 (SC) have been cited in order to explain that the words and entries with respect to items in a taxing statute must have to be construed in terms of commercial or trade understanding, or according to its popular meaning, avoiding rigid and inflexible interpretation by taking resort to scientific and technical meanings. So, according to the State, even though it is an insecticide, but not an insecticide/pesticide like the ones in Entry 30, Part-II, Schedule-B of the Act, which are predominantly items of agricultural purpose and utility.

5. On the other hand, the learned Counsel for the dealer assessee cited a good number of rulings of different Hon'ble High Courts and of Hon'ble

Apex Court, which are described in the written note of submission dated 08.03.2021, contending that mosquito repellent is nothing but an insecticide and squarely falls within the ambit of Entry 30, Part-II, Schedule-B of the Act taxable @ 4%.

6. The rival contentions of the parties are to be critically examined by the Tribunal. It is a fact that mosquito repellent does not have any specific entry in the Act. That apart, the position from 01.04.2007 to 31.05.2007 was that mosquito repellent was excluded from Entry 46, Part-II, Schedule-B of the Act and subsequently, it stood deleted. On a proper reading of Entry 46, pre-and post amendment 2007, it would appear that mosquito repellent was never a part of it. As per the learned Standing Counsel (CT), mosquito repellent cannot also be an insecticide of the kind mentioned in Entry-30, as all the goods contained therein, are exclusively used in agriculture. It is further contended that in ordinary or commercial parlance, mosquito repellent is never understood as an insecticide/pesticide to find its place in Entry-30. Indeed, no distinct demarcation which may apparently be drawn in Entry-30 differentiating as something like a domestic insecticide and an insecticide/pesticide of agricultural type.

7. At this juncture, the Tribunal considers it to be desirable to discuss the decisions which have been referred to from the side of the dealer assessee. First and foremost, a ruling in the case of M/s. Transelektra Domestic Product Pvt. Ltd. Vs. State of Kerala and others reported in (2001) 122 STC 229 (Kerala) is cited, wherein, it has been observed that since mosquito repellent mat contains insecticide Allethrin chemical which is manufactured and sold by a licence

issued under the Insecticides Act, 1968 and fatally affects the nervous system of mosquitoes, it is to be classified as an insecticide and in that, the Hon'ble Kerala High Court quoted with approval a judgment of the Hon'ble Supreme Court i.e. in M/s. Sonic Electrochem Pvt. Ltd. Vs. Sales Tax Officer: (1998) 111 STC 181 (SC). In order to substantiate that mosquito repellent is nothing but an insecticide, the dealer assessee claimed to have enclosed a copy of certificate of registration issued by Ministry of Agriculture, Government of India under Insecticides Act, 1968 and Insecticides Rules, 1971. Furthermore, in Sonic Electrochem Pvt. Ltd. Vs. State of Orissa and others reported in (1994) 92 STC 117 (Orissa), the Hon'ble Court had the occasion to hold that mosquito repellent mat being a pest killer is an insecticide. A similar view has been expressed in other rulings, such as, Ashok Agencies, Bangalore Vs. State of Karnataka and others: 2008 (65) KLJ 97; and M/s. Knight Queen Industries Pvt. Ltd. Vs. State of U.P. and others: (2006) 145 STC 226. As a counter to the argument of the State that the product of the dealer assessee is easily available in market and sold in ordinary grocery shops and hence, cannot be an insecticide within the definition of Entry 30, Part-II, Schedule-B of the Act, a decision of Hon'ble Apex Court in the case of Puma Ayurvedic Herbal Pvt. Ltd. Vs. Commissioner, Central Excise, Nagpur reported in (2006) 145 STC 200 (SC) has been placed on reliance, wherein, it has been held that in order to be a medicinal preparation or a medicament, it is not necessary that the item must be sold under a doctor's prescription; similarly, availability of the product across the counter in shops is not relevant, as it makes no difference either way. It is, thus, made to suggest by the

learned Counsel for the dealer assessee that irrespective of the fact that mosquito repellent is a product which can be fetched in ordinary grocery shops, it shall have no bearing in the classification of goods under the Act. In the considered view of the Tribunal, such an argument advanced by the learned Counsel for the dealer assessee seems to be appealing. Notwithstanding availability of mosquito repellents in ordinary grocery shops, it does not lose its classification as insecticide. It is reiterated that no such demarcating line could be drawn in order to segregate insecticide domestically used from that of agricultural ones vis-a-vis Entry 30, Part-II of Schedule-B of the Act. In the humble opinion of the Tribunal, it would not be proper and justified to classify each and every product as an insecticide used in agriculture with reference to Entry 30. The word 'insecticide' which appears in Entry 30 must necessarily, therefore, to include insecticides of all kinds, whether, used domestically or in farming. In view of the ratio in Puma Ayurvedic Herbal Pvt. Ltd ibid, selling of a product like mosquito repellent from a grocery shop carries no relevance at all for the purpose of considering it as an insecticide under Entry 30, Part-II of Schedule-B of the Act.

8. Referring to the decisions in Godfrey Phillips India Ltd. and Kartos International supra, the learned Standing Counsel (CT) made a valiant attempt to apply the rule of noscitur a sociis on the principle that general words following specific words would take colour from each other. The principle of noscitur a sociis is, in fact, a rule of construction. It is one of the rules to interpret legislation. If meaning of a word is unclear and indeterminable, then in that case, the words

immediately surrounding it are to be looked into. In other words, the meaning of a word is to be judged by the company it keeps. The questionable meaning of a doubtful word can be derived from association with other words. It can be used wherever a statutory provision contains a word or phrase that is capable of bearing more than one meaning. The term 'noscitur a sociis' is a Latin expression in which 'noscere' means 'to know' and 'sociis' means 'association' and thus, it implies 'to know from association'. A judgment classicus on the rule of noscitur a sociis is in the case of Foster Vs. Diphwys Casson reported in (1887) 18 QBD 428. If the principle is properly understood, it does mean that a word which carries a dubious or unclear or ambiguous meaning or a meaning which is too flexible, in such a case, a meaning is sought to be attributed by looking at the other words adjoining it. In so far as the present case is concerned, there is absolutely no ambiguity with regard to the meaning of insecticide appearing in Entry 30, Part-II, Schedule-B of the Act which is unambiguously to include all kinds of insecticides both domestic and agricultural. Had it been that the word 'insecticides' could not be understood or applied to a given case for being greatly flexible, in such eventuality, it would have been justified to apply the rule of noscitur a sociis. Therefore, according to the Tribunal, said rule cannot be invoked.

9. Another line of argument may be added to the case. Despite not being a drug or medicine still it was shown not to have been included in Entry 46, Part-II, Schedule-B of the Act. Does it mean that each and every product must have to be of similar kind in order to be kept in a single entry? So, the other words

attributed to an item in an entry may not always necessary to influence a decision defining another product, unless its meaning is unclear or doubtful. So, it can be said that rule of noscitur a sociis and its principle cannot be directly borrowed and applied to the case in hand to define the meaning of insecticide appearing in Entry 30, Part-II, Schedule-B of the Act, which is clearly and unequivocally to subscribe within itself insecticides used domestically and agriculturally. Thus, the Tribunal arrives at an inescapable conclusion that mosquito repellent manufactured by the dealer assessee since falls in the category of Entry 30, Part-II, Schedule-B of the Act shall have to be made taxable @ 4% and not @ 12.5% as originally held by the AA.

10. Though the dealer assessee advanced an argument on the maintainability of the reopening of assessment under Section 43 of the Act, but in absence of any cross-objection, it is not entertained and attended to by the Tribunal.

11. Hence, it is ordered.

12. In the result, the appeal stands dismissed. As a logical sequitur, the impugned order dated 18.07.2017 passed in Appeal No. AA/JCST/CUII/76/2014-15 is hereby confirmed.

Dictated & Corrected by me

Sd/-
(R.K. Pattanaik)
Chairman

Sd/-
(R.K. Pattanaik)
Chairman