

Sonic Electrochem and Another

Vs

Sales Tax Officer and Others

Civil Appeal No. 6753 of 1994

(S. P. Bharucha, G. B. Pattanaik JJ)

11.08.1998

JUDGMENT

PATTANAİK, J. –

1. The short question that arises in this appeal is whether Jet Mat produced by the appellant would come within Entry 129 of Schedule II Part A of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act") issued under Section 49 of the Act. The said entry at the relevant point of time read thus :

| #----- | Sl. No. | Description of | Rate of |
|--------|---------|----------------|----------------|
| ----- | --- | 129 Mosquito | Twelve paise |
| ----- | --- | Twelve paise | in repellents |
| ----- | --- | in the rupee | the rupee----- |
| ----- | --- | ----- | ## |

2. Though in the High Court, the appellant had challenged the validity of the Entry 129 of Schedule II Part A of the Act on the ground that it violates Article 14 of the Constitution and the High Court negated the same, the appellant in this appeal does not challenge the said conclusion of the High Court. After examining different entries, the High Court by the impugned judgment came to the conclusion that Jet Mat is nothing but a mosquito repellent within the ambit of the Entry 129, and therefore, is taxable.

3. Mr. Salve, learned Senior Counsel appearing for the appellant, contended that Jet Mat manufactured by the appellant is an insecticide and not a repellent and therefore could be exempted from tax under Entry 98 to the extent contained therein and the conclusion of the High Court that it is a repellent and as such taxable under Entry 129 is erroneous. In support of his contention, Mr. Salve referred to the Certificate of Registration in favour of the appellant issued under Section 9(3) of the Insecticides Act, 1968, the leaflet and the approved label of the commodity in question, the formulation contents of the said commodity and the chemistry of the active ingredients and submitted that all these documents unequivocally indicate the product in question to be an insecticide. The learned counsel also submitted that an exemption notification has to be construed broadly and widely as has been held by this court in the Case of Bombay Chemical (P) Ltd. v. CCE (1995 Supp (2) SCC 646) and consequently there would be no justification not to hold Jet Mat to be an insecticide and as such exempted from levy of sales tax on the sale and purchase of the same under Entry 98 of the Act. Mr. Salve also in his connection placed reliance on a decision of the Madhya Pradesh High Court in Miscellaneous Petition No. 1452 of 1989, wherein the Madhya

Pradesh High Court held the product to be an insecticide and a judgment of the Orissa High Court in OJC No. 8126 of 1992, wherein the Orissa High Court took the view that Jet Mat was a pesticide and as such exempted under the notification issued under Section 6 of the Orissa Sales Tax Act. Mr. Dholakia, learned Senior Counsel appearing for the respondent, on the other hand, contended that the product of the appellant is nothing but a mosquito repellent coming within the ambit of Entry 129 of the Act and a repellent does not cease to be so merely because by its action mosquitoes are also killed. According to Mr. Dholakia, the High Court was fully justified in its conclusion that the product manufactured by the appellant comes within the ambit of Entry 129.

4. It may be noticed that prior to August 1990, namely, before insertion of Entry 129, the product in question with which we are concerned was being taxed under the residuary Entry 13 of Schedule III of the Act. With effect from 1-8-1990, Entry 129 was inserted in Schedule II Part A of the Act and a notification was also issued under Section 49(2) granting partial exemption to the sale or purchase of pesticides and insecticides under Entry 98. In view of the specific Entry 129 dealing with mosquito repellents, it is difficult to accept the contention of the learned counsel for the appellant that the product in question will not come within the ambit of Entry 129 since one of its constituents "d-Allethrin 4%" happens to be an insecticide. The product Jet Mat which is the trade name containing "d-Allethrin 4%" and is commercially known as "Mosquito Repellent Mat" in our considered opinion is a mosquito repellent notwithstanding the fact that it not only repels the mosquitoes but also is capable of killing the mosquitoes. It is difficult to hold that it is an insecticide entitled for partial exemption under Entry 98 of the Act. In the Madhya Pradesh case which Mr. Salve relied upon, the question for consideration was whether the product in question is liable to sales tax at the rate of 3% under Entry 18 of Part IV of Schedule II or at the rate of 12% under Entry 1 of Part VI of Schedule II. Entry 18 of Part IV of Schedule II provided for levy of tax for insecticides. The other competing entry, namely, Entry 1 of Part VI of Schedule II has not been quoted anywhere in the judgment nor has it been discussed and on the other hand, the learned Judges have merely held that Jet Mat could be an insecticide coming within Entry 18 of Part IV of Schedule II. In the Orissa case, under the notification issued under Section 6 of the Orissa Sales Tax Act, pesticide was exempted from levy of sales tax and the question for consideration was whether the "Mosquito Repellent Mat" produced under the trade name of "Jet Mat" containing "d-Allethrin 4%" could be entitled to the exemption in question. The case of the Revenue was that it is an insecticide and not pesticide. The Court came to hold that "insecticide" will come within the expression "pesticide" for the purpose of exemption. The aforesaid two decisions dealing with different entries under two different Sales Tax Acts can have no bearing in interpreting the provisions of the Gujarat Sales Tax Act with which we are concerned in the present case. In the case in hand, when Entry 129 clearly stipulates the mosquito repellent is taxable and the rate of tax has been provided therein and in view of our conclusion that the appellant's product in question is also a mosquito repellent, we see no infirmity in the impugned judgment of the High Court requiring our interference. The appeal, accordingly, fails and is dismissed but in the circumstances, there will be no order as to costs.