

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1335 OF 2010

M/s Reckitt Benckiser (India) Ltd. ..Appellant

VERSUS

**Commissioner Commercial
Taxes & Ors. ..Respondents**

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 17.12.2008 passed by the High Court of Kerala at Ernakulam in OT Appeal No.6 of 2006 by which the High Court has dismissed the said appeal and has upheld the order passed by the Commissioner with respect to the classification of the goods in question, the assessee has preferred the present appeal.

2. At the outset, it is required to be noted that the issue pertains to the classification of the appellant's products namely (i) Mosquito Mats, Coils and Vaporizers; and (ii) Mortein Insect Killers; (iii) Harpic Toilet Cleaner and Lizol Floor Cleaners; and (iv) Dettol Antiseptic Liquid for the purposes of Kerala VAT Act, 2003 (hereinafter referred to as "KVAT Act"). It was the case on behalf of the appellant that the products at (i) to (iii) were classifiable under Entry No. 44(5) of the III Schedule to the Kerala VAT Act as being 'pesticides, insecticides' corresponding to HSN

Code 3808 and therefore subject to VAT at the rate of 4%. With respect to the product at (iv) hereinabove, it was the case on behalf of the appellant that 'Dettol Antiseptic Liquid' is correctly classifiable under Entry 36(8) (h) (vi) being medicaments corresponding to HSN Code 3004.90 of the III Schedule, and thus also subject to tax at the rate of 4%.

2.1 However, the Commissioner of Commercial Taxes, rejected the contention of the appellant holding that the products (i) Mortein Mosquito Coil, Mat and Liquid Vaporizer is classifiable under Entry 66 of Notification SRO 82/06 dated 21.01.2006 issued under Section 6(1)(d) of the Kerala VAT Act which covers "Mosquito Repellants, electric or electronic mosquito repellants, gadgets and insect repellants, devices and parts and accessories thereof" corresponding to HSN Code 8516 79 20; (ii) Mortein Insect Killer is subject to tax at the rate of 12.5% under the residuary entry i.e. under SL No.103 of the

Notification SRO 82/06 on the ground that they are not specifically classifiable under the Second and the Third Schedule; (iii) Harpic Toilet Cleaner and Lizol Floor Cleaner are classifiable under SI No. 27(4) of the said Notification SRO 82/06; and (iv) Dettol Antiseptic Liquid is classifiable under Entry 103 of the said Notification SRO 82/06 i.e. residual entry on the ground that the said product is not in the nature of a medicine having therapeutic or prophylactic properties, but is used only for cleaning purposes.

2.2 The order passed by the Commissioner of Commercial Taxes holding the above was the subject matter of appeal before the High Court. The High Court by the impugned judgment and order has dismissed the said appeal confirming the order passed by the Commissioner of Commercial Taxes. The impugned judgment and order passed by the High Court is the subject matter of the present appeal.

2.3 Before we consider the submissions made on behalf of the respective parties the relevant entries relied upon by the respective parties are required to be referred to which are as under:

“Entry 44 of the Third Schedule reads as follows:

Sl. No.	Description	HSN Code
44	Fertilizers, pesticides, weedicides, insecticides, fungicides, herbicides, rodenticides, anti-sprouting products and plant growth regulators, biofertilizers, micronutrients and similar products	
5	Pesticides, weedicides, insecticides, 3808 fungicides, herbicides, rodenticides, anti-sprouting products and plant growth regulators, and similar products other than micro products	3808

(d) Entry 36(8)(h)(vi) of the Third Schedule reads as under:

Sl. No.		Description	HSN Code
36		Drugs, Medicines and Bulk Drugs including Ayurvedic, Unani, and Homoeopathic medicine but excluding mosquito repellants and those specifically mentioned in First Schedule and those notified under clause (d) of sub-section (1) of section 6.	
	8	Medicaments (excluding goods of HSN heading nos. 3002, 3005, or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the	

			form of transdermal administration systems) or in forms or packings for retail sale	
		h	Other	
		(vi)	Medicaments other than those given in sub-entries (i) to (v)	3004.90

Entry 66 of Notification No. SRO No. 82/2006, G.O.(P) No. 4/2006/TD Dated 21st January 2006.

LIST OF GOODS

SL.NO.	Description of goods	HSN Code
(1)	(2)	(3)
66	Mosquito repellents, electric or electronic mosquito repellents, gadgets and insect repellents, devices and parts and accessories thereof	8516.79.20

3. Shri Siddharth Bawa, learned counsel has appeared on behalf of the appellant and Shri C.K. Sasi, learned counsel has appeared on behalf of the respondents.
4. Learned counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has materially erred in not accepting the case on behalf of the appellant that the products item nos.1 to 3 hereinabove shall be classifiable under Entry 44(5) of III Schedule of KVAT Act.
 - 4.1 It is submitted that the High Court has materially erred in accepting the case on behalf of the Commissioner that the aforesaid products nos. (i) to (iii) shall fall under Item No.66 of SRO 82/2006 and therefore liable to be taxed at 12.5%
 - 4.2 It is further submitted that the High Court has also erred in holding that the product Dettol will fall under the residual entry i.e. Sl.No.103 of SRO

82/2006 and not under Entry 36(8) (h) (vi) of III Schedule of the KVAT Act.

4.3 Now so far as the product Mortein range & Mortein Spray is concerned, it is vehemently submitted by learned counsel appearing on behalf of the appellant that even after introduction of SRO 82/2006, Mortein range & Mortein Spray continue to be classifiable as insecticides, as they are manufactured under an insecticides license issued under the Insecticides Act. It is submitted that the Mortein Spray kills insects, hence even according to the respondents' interpretation, Mortein Spray cannot fall under Item No.66 of SRO/2006, as Item no.66 deals only with Mosquito repellants.

4.4 In support of his submissions learned counsel appearing on behalf of the appellant has heavily relied upon the decision of this Court in the case of **Ponds India Ltd. vs. CTT (2008) 8 SCC 369 (Para 35)**. He has also relied upon the following

decisions of the Allahabad High Court and Karnataka High Court; **Knight Queen Industries Pvt. Ltd. vs. State of UP, 2005 SCC Online All 1214 (Para 23 to 36); Sl. No. 22 @ page 282-297; Order dated 14.07.2006** passed by this Court in **State of UP vs. Knight Queen Industries Pvt. Ltd.; Sl. No. 23 @ page 298-300; Ashok Agencies vs. State of Karnataka 2008 SCC Online Kar 141 (Para 8 to 12); Sl. No. 24 @ page 301-307; State of Karnataka vs. Godrej Consumer Products Ltd. (2014) 80 Kar LJ 328 (Para 15); Sl. No. 25 @ page 308-313.**

4.5 It is submitted by learned counsel appearing on behalf of the appellant that it is a case on behalf of the respondents that from 21.01.2006 Mortein range and Mortein Spray would fall under Sl. No.66 (mosquito repellent), which is the specific entry and subject to VAT at 12.5% and insecticide (Entry 44(5) of the III Schedule) is a general entry.

It is submitted that therefore the issue of classification between two competing entries i.e. Entry 44(5)(insecticide) and Sl. No.66 (mosquito repellent) introduced w.e.f. 21.01.2006. It is submitted that therefore according to Revenue, the judgment of the High Court with respect of Mortein repellent /Moretin range shall not be applicable, as the entries under the other VAT Acts, do not have a specific entry for “mosquito repellents”.

- 4.6 It is submitted that however the appellant rightly relied upon Entry 44(5) of the said Schedule claiming the tax at 4%.
- 4.7 So far as the product Harpic & Lizol is concerned, it is the case on behalf of the appellant that the State of Kerala issued a notification dated 24.10.2006 retrospectively effective from 07.01.2006 omitting HSN Code 3808 from Entry 44(5) of III Schedule of KVAT Act. It is submitted that Harpic & Lizol would still continue to fall in Entry 44(5) even after deletion of HSN Code 3808,

as they are disinfectants under the Drugs & Cosmetics Act/Rules and manufactured under the licence granted as a disinfectant, under the said act. In support of the above, he has relied upon the decision of this Court in the case of **Ponds India Ltd. (supra)** and **Bombay Chemicals Pvt. Ltd. vs. CCE 1995 Supp. (2) SCC 646** and the decision of the Andhra Pradesh High Court in the case of **Reckitt Benckiser India Ltd. vs. State of Andhra Pradesh in Tax Revision Case No.10 of 2007.**

4.8 Now so far as the product Dettol is concerned, it is the case on behalf of the appellant that the Dettol is an antiseptic liquid, manufactured under a Drug License and it prevents infection. It is submitted that it is considered as an essential drug and hence its price was controlled under DPCO and the MRP of Dettol continues to be monitored under DPCO, 2013.

4.9 It is submitted that Dettol falls under HSN 3004 90 specifically incorporated in Entry 36(8)(h)(vi) of Schedule III, therefore Dettol is classifiable as a drug/medicine under Entry 36(8)(h)(vi) of Schedule III. It is submitted that in Note 23 of the Rules of interpretation under Entry 36 of Schedule III, the only exclusion is dietary food, diabetic food, food supplements, medicated soaps, blood albumin etc. are not excluded.

4.10 It is further submitted that most importantly HSN Code was not deleted from Entry 36(8)(h)(vi) of Schedule III, even though by virtue of notification K.G. Ext.NO.1670 dated 24.10.2006 (retrospectively effective from 01.07.2006), HSN Code was deleted in Entry 44(5) of Schedule III under which the appellant has classified Mortein range, Mortein spray, Harpic & Lizol. It is submitted that therefore the Dettol continue to fall under Entry 36(8)(h)(vi).

4.11 It is further submitted that the active ingredients of Dettol are Chloroxylenol IP, Terpineol BP,

Alcohol Absolute IP (denatured) and it is an antiseptic having germicidal properties; it kills germs, bacteria and it prevents infection therefore it is applied on wounds, cuts, grazes, bites and stings and is used in hospitals for surgical use, medical use and midwifery, due to therapeutic & prophylactic properties.

4.12 It is submitted that this Court in the case of **ICPA Health Products (P) Ltd. vs. CCE, Vadodara (2004) 4 SCC 481** has held that the said products are used for disinfecting the skin prior to surgery. It is submitted that as per Concise Oxford Dictionary, 9th Edition the term “prophylactic” would mean, “intending to prevent diseases, a preventive medicine or course of action”. It is submitted that as the aforesaid products are used as a cleanser for cleaning of wounds and abrasions and minor cuts and to disinfect the skin prior to surgery, they have therapeutic and prophylactic properties. It is submitted that applying the legal principles

enunciated by this Court qua Dettol, the Dettol is a drug/medicine.

4.13 It is further submitted that this Court in the case of **Sujanil Chemo Industries vs. CCE & Customs, Pune (2005) 4 SCC 189 (para 6)** in the context of Licel used for killing lice in human hair has held that any medicine which kills disease or is a palliative or curative is therapeutic. It is submitted that Licel cures the infection of lice in human hair and is thus therapeutic. It is submitted that applying the same the Dettol is also a medicament.

4.14 It is submitted that in the case of **Ponds India Ltd. (supra)** in respect of the classification under the Trade Tax/VAT Laws this Court has taken into consideration the definition of 'Drug' as defined under the Drugs & Cosmetics Act, 1940 and the fact that the product is sold under a drug licence since drug or medicine is not defined under the Trade Tax/VAT Laws. It is submitted

that the Dettol is manufactured under a drug licence issued under the Drugs & Cosmetics Rules and its price has been regulated by the National Pharmaceutical Pricing Authority under Drug Price Control Orders issued from time to time including DPCO, 2013.

4.15 It is submitted that Rule 123 of the Drugs & Cosmetics Rules provides for certain exceptions to the drugs falling under Schedule K to the extent provided therein. Entry 39 deals with Liquid Antiseptics for household use. The appellant submits that Dettol being an antiseptic falls under Entry 39 of Schedule K provided under Rule 123 of the Drugs & Cosmetics Rules. It is submitted that this Court in the case of **Ponds India Ltd. (supra)** has considered the aforesaid aspect and had held that Vaseline White Petroleum Jelly to be a drug as it falls under Entry 28 of Schedule K provided under Rule 123 of the Drugs & Cosmetics Act/Rules.

4.16 It is further submitted that the impugned judgment fails to consider the well settled principles of classification which are fundamental to any matter relating to classification under a taxing statute namely viz. (a) plain meaning to be given to the taxing provision; (b) burden to prove classification in a particular entry is always on the Revenue; (c) any ambiguity has to be resolved in favour of the assessee and in case of a reasonable doubt, the construction most beneficial to the assessee must be adopted; (d) specific entry would override a residuary entry; and (e) resort to residuary entry is to be taken as a last measure, only when by liberal construction the specific entry cannot cover the goods in question.

4.17 It is further submitted that the Gauhati High Court as well as the Rajasthan High Court in the case of **Reckitt Benckiser India Ltd. vs. Assistant Commercial Taxes Officer & Ors., STR-11/2012** have held Dettol to be a drug

under the respective entries of Assam VAT Act and Rajasthan VAT Act and have rejected the submission of the Revenue in those States that the Dettol falls under the residuary entry. It is submitted that the SLPs against the decision of the Rajasthan High Court by the Revenue have been dismissed by this Court.

5. Making above submissions and relying upon the above decisions, it is prayed to allow the present appeal.
6. While opposing the present appeal Shri Sasi, learned counsel appearing on behalf of the Revenue has vehemently submitted that the product Mortein range and Mortein Spray would not be classifiable under Entry No. 44(5) as insecticides as contended on behalf of the appellant. It is submitted that “Mortein Mosquito coil, mat and liquid vaporizer” cannot be classifiable as an insecticide and the same is unsustainable in view of the decision of this Court in the case of **Sonic Electrochem vs.**

STO, (1998) 6 SCC 397 wherein this Court has held that the product 'Jet Mat' which is a trade name containing 'd-Allethrin 4%' and is commercially known as "Mosquito Repellent Mat" is a mosquito repellent notwithstanding the fact that it not only repels the mosquitoes but also is capable of killing the mosquitoes and it is difficult to hold that it is an insecticide. It is submitted that the product "Mortein Mosquito Coil, mat and liquid vaporizer" would definitely come under Entry 66 "Mosquito Repellent".

6.1 It is submitted that the appellant – assessee is relying Entry 44(5) in support of their case products Mortein range and Mortein Spray shall fall as insecticides under Entry 44(5). It is submitted that Entry 44 related to products which are used in agricultural operations. It is submitted that all the products in that Entry are used in the agricultural field in relation to growing of agricultural products and controlling

of pets, insecticides etc. which attacked the plants.

6.2 It is submitted that the product such as Harpic Toilet Cleaner and Lizol Floor Cleaner are not used in relation to controlling pets and insecticides in the agricultural field. It is submitted that the name of these products contains the words “Toilet Cleaner and Floor Cleaner”. It is submitted that the use of “Harpic Toilet Cleaner” and “Lizol Floor Cleaner” is exclusively for cleaning of toilet and floor respectively and therefore cannot be treated as insecticide.

6.3 It is submitted that so far as the reliance placed upon the decision of this Court in the case of **Bombay Chemicals Pvt. Ltd. (supra)** is absolutely misplaced and shall not be applicable in the facts of the instant case. It is submitted that in the case of **Bombay Chemical Pvt. Ltd. (supra)** this Court was dealing with Entry

“Insecticides, Pesticides, Weedicides and Fungicides etc.” under the Central Exercise Salt Act, 1944. It is submitted that the said Entry is different from Entry 44 of the KVAT Act which are products exclusively dealing with the products in agricultural operations.

- 6.4 Now so far as the product Dettol antiseptic liquid is concerned, it is submitted that the same cannot be classified as an item used for Medicament for therapeutic or prophylactic uses. It is submitted that a medicament is an item used for therapeutic or prophylactic treatment for prevention and cure of diseases. It is submitted that the High Court has specifically found that the appellant has no case that Dettol is able to prevent or cure any disease and therefore has rightly held the Dettol is not a medicament. It is submitted that therefore the Dettol would fall under residuary Entry.
7. Making above submissions it is prayed to dismiss the present appeal.

8. We have heard the learned counsel appearing on behalf of the respective parties at length.

9. So far as the product Mosquito Mats, Coils and Vaporizers and Mortein Insect Killers are concerned, it is the case on behalf of the appellant that the said products would fall in Entry 44(5) of III Schedule of KVAT Act and would fall under HSN Code 3808. Therefore, it is the case on behalf of the appellant that the aforesaid products shall be classifiable as insecticides under Entry 44(5) and therefore chargeable to tax at 4%. It is the case on behalf of the appellant that as the aforesaid products are manufactured under the licence granted under the Insecticides Act and therefore the said products can be said to be insecticides classifiable under Entry 44(5). The aforesaid has no substance. It is required to be noted that HSN Code 3808 has been deleted from Entry 44(5)

w.e.f. 01.07.2006 and from 21.01.2006 the aforesaid products would fall under Sl. No.66 namely 'Mosquito repellent', which is the specific entry and subject to VAT at 12.5%. The insecticides under Entry 44(5) therefore can be said to be a general entry. Once there is a specific entry the 'Mosquito Repellent', thereafter one is not required to go to the definition under another Act namely Insecticides Act. Sl.No.66 of Notification SRO 82/06 dated 21.01.2006 issued under Section 6(1)(d) of the Kerala VAT Act which covers "Mosquito Repellants".

9.1 Even otherwise it is required to be noted that Entry 44(5) which includes insecticides relates to products which are used in agricultural operations. All the products in the Entry are used in the agricultural field in relation to growing of agricultural products and controlling of pests, insecticides etc. which are attacking the plants. Therefore, in view of the specific Entry 66 of Notification SRO 82/06 dated 21.01.2006 the

aforesaid products namely Mosquito Repellants, electric or electronic mosquito repellants, gadgets and insect repellants, devices and parts and accessories thereof are rightly classified as Mosquito repellants. Now so far as the reliance placed upon the decision of this Court in the case of **Bombay Chemicals Pvt. Ltd. (supra)** is concerned, the said decision shall not be applicable to the facts of the case on hand while dealing with the specific entries under KVAT Act. It was a case under the Central Excise Act and the Entry corresponding to the Excise Act. In the present case under the KVAT Act there is a specific Entry Mosquito repellent so far as the product electric or electronic mosquito repellents, gadgets and insect repellents, devices and parts and accessories thereof are concerned and therefore the said specific entry shall be applicable in any case, the same cannot be said to be insecticides. We are in complete agreement with the view taken by the High Court that

Mosquito Mats, Coils and Vaporizers and Mortein Insect Killers products shall not be classifiable under Entry 44(5) as insecticides.

9.2 Now so far as the products Harpic and Lizol is concerned, it is the case on behalf of the appellant that the same is classifiable under Entry 44(5) of III Schedule of KVAT Act - HSN Code 3808 and the said products are also classifiable as insecticides.

9.3 However, it is required to be noted that after introduction of SRO 82/06 w.e.f. 22.01.2006 the Harpic and Lizol would fall under Sl. No. 27(4) of SRO 82/06. Sl. No.27(4) thus is a specific entry.

9.4 Even the High Court has also considered the use of the aforesaid two products. The aforesaid two products are used for cleaning the floor and toilet. As noted by the High Court and even from the product description and the nature of use stated in the products, the said two items are essentially used as stain removers and deodorants. Merely because they kill germs as

well, the same cannot be said to be insecticides classifiable under Entry 44(5). What is required to be considered is the dominant use which is cleaning and removal of stains of floor and the toilet. Thereafter, the same shall not fall under Entry 44(5) – HSN Code No.3808 as insecticides or disinfectant. Entry 27(4) of SRO No. 82 of 2006 is with respect to stain busters, stain removers, abir, blue and all kinds of cleaning powder and liquids including floor and toilet cleaning. In that view of the matter Entry 27(4) being a specific entry the same shall be applicable and the aforesaid two products namely Harpic and Lizol shall not be classifiable under general Entry 44(5) and in any case the same cannot be classifiable under Entry 44(5) as insecticides. We are in complete agreement with the view taken by the High Court that the product Harpic and Lizol shall not be classifiable under Entry 44(5) and shall be classifiable under

Entry 27(4) of SRO 82/2006 chargeable to tax at 12.5%.

9.5 However, so far as the product Dettol is concerned, it is the case on behalf of the appellant that Dettol is an Antiseptic Liquid and therefore is classifiable as a drug/medicine under Entry 36(8)(h)(vi). The active ingredients of Dettol are Chloroxylenol IP, Terpineol BP, Alcohol Absolute IP (denatured) and it is an antiseptic having germicidal properties and it kills germs, bacteria and it prevents infection therefore it is applied on wounds, cuts, grazes, bites and stings. It is also used in hospitals for surgical use and medical use.

9.6 Thus the Dettol is used as an antiseptic liquid and is used in hospitals for surgical use, medical use and midwifery, due to therapeutic & prophylactic properties. Therefore, the same can be said to be an item of medicament to be treated as a drug and medicine. Here also the dominant use is a relevant consideration.

9.7 In the case of **Ponds India Ltd. (supra)** this Court has held that while deciding the issue whether any particular item would be covered under relevant entry or classification, different tests viz. the dictionary meaning, technical meaning, user's point of view, popular meaning etc. are to be applied. In paragraphs 35 & 38 it is observed and held as under:

“35.....while interpreting an entry in a taxing statute, the court's role would be to consider the effect thereof upon considering the same from different angles. 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.”

XXX XXX XXX

“38. Whether a product would be a drug or a cosmetic sometimes poses a difficult question and, thus, answer thereto may not be easy. For the said purpose, the court may not only be required to consider the contents thereof, but also the history of the entry, the purpose for which the product is used, the manner in which it

has been dealt with under the relevant statute as also the interpretation thereof by the implementing authorities.”

- 9.8 Thus, as per the settled position of law while considering a particular entry the principles of classification which are fundamental to any matter relating to classification under the taxing statute are:
- (a) plain meaning to be given to the taxing provision;
 - (b) burden to prove classification in a particular entry is always on the Revenue;
 - (c) any ambiguity has to be resolved in favour of the assessee and in case of a reasonable doubt, the construction most beneficial to the assessee must be adopted;
 - (d) specific entry would override a residuary entry; and
 - (e) resort to residuary entry is to be taken as a last measure, only when by liberal construction the specific entry cannot cover the goods in question.

9.9 At this stage it is required to be noted that the Guwahati High Court and the Rajasthan High Court have held the Dettol to be a drug under the respective entries of Assam VAT Act and Rajasthan VAT Act and have rejected the submission of the Revenue that the Dettol falls under the residuary entry. It is to be noted against the decision of the Rajasthan High Court, the Revenue had preferred the SLPs before this Court which are dismissed by this Court.

9.10 In view of the above and considering the dominant use of Dettol and the active ingredients of Dettol referred to hereinabove and that the Dettol is used as an antiseptic and is used in hospitals for surgical use, medical use and midwifery due to therapeutic & prophylactic properties the same would fall under Entry 36(8) (h) (vi) as claimed by the appellant and would not fall under the residuary entry as claimed by the Revenue. To that extent the impugned judgment

and order passed by the High Court deserves to be quashed and set aside.

10. In view of the above and for the reason stated above, present appeal succeeds in part. The impugned judgment and order passed by the High Court in so far as the products Mosquito Mats, Coils and Vaporizers and Mortein Insect Killers; Harpic Toilet Cleaner and Lizol Floor Cleaners is hereby confirmed. So far as the impugned judgment and order passed by the High Court with respect to Dettol Antiseptic Liquid is concerned, the impugned judgment and order passed by the High Court is set aside and it is held that the product Dettol would fall under Entry 36(8) (h)(vi) of Schedule III of the KVAT Act and shall be liable to be taxed at 4%.

Present appeal is accordingly partly allowed to the aforesaid extent. However, in the facts and

circumstances of the case there shall be no order
as to costs.

.....J.
(M. R. SHAH)

.....J.
(KRISHNA MURARI)

New Delhi,
April 10, 2023