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**IN THE COMMERCIAL TAX TRIBUNAL,
UTTARAKHAND, HALDWANI**

Present: Malik Mazhar Sultan, H.J.S President.
Rakesh Verma, Member.

Second Appeal No. 50 / 2025 {2012-2013}

**M/s. Kesarwani Traders Near Mandi Gate, Bareilly Road, Haldwani
Appellant.**

Versus

**Commissioner- Commercial Tax, Uttarakhand, Dehradun.
Respondent.**

For Appellant: Shri Akshay Agrawal, Ld. Advocate.
For Respondent: Smt. Hemlata Shukla State-Representative.

**Assessment year - 2012-13
First Appeal No- 1136/2016
Amount of disputed tax - Rs. 11,52,897/-**

J U D G M E N T

Malik Mazhar SultanPresident,

This Second appeal is filed against order dated 18.03.24 passed by Ld. Joint Commissioner (Appeal) in first appeal no 1136/2016, Assessment year 2012-13. By means of impugned order, confirming the assessment order dated 31.12.2015 passed under section 25(7) of UVAT Act first appellate authority rejected the first appeal of the appellant/dealer.

2. The facts necessary for the disposal of this appeal are that the appellant M/s Kesarwani Traders is a proprietorship concern registered with the department having its place of business in Haldwani. The appellant is engaged in trading of household insecticides namely Mosquito repellents, coils, refills,

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mats, etc. For the assessment year of 2012-13 a show cause notice was issued against the appellant /dealer alleging therein that the appellant/ dealer is paying tax on the sale of impugned product at the rate of 5% while on the sale of impugned product the trader/ appellant is required to pay tax at the rate of 13.5% because the impugned product is not classified under any Schedule of the Act. The dealer / appellant was called upon to show cause why a tax at the rate of 13.5% should not be levied against the sale of the impugned product. Thereafter, By means of order dated 31.12.2015 passed u/s 25(7) of UVAT Act it was held by the assessing authority that the impugned products are not covered under Entry 27 or 41 of Schedule II (B) hence they are taxable at the rate of 13.5% under the residuary entry.

3. Against the assessment order dated 31.12.2015 passed under Section 25(7) of the Act appellant/dealer preferred first appeal u/s 51 of the UVAT Act before the Joint Commissioner (Appeal) which was registered as first appeal no 1136/2016. This first appeal was rejected by the impugned order dated 18.03.24. It was held by the first appellate authority that being agriculture insecticide, the impugned product are not covered under any entry of the Schedule II B of the Act. hence liable to be tax as residuary item.

4. Impugned order dated 18.03.24 passed by first appellate authority is challenged in this second appeal filed by the dealer on the ground that, Ld. first appellate authority blindly followed the M/s Reckitt Benckiser Law which is related to Kerala VAT Act and the same is entirely different from the entry under consideration. That, Entry 27 relating to insecticides in Schedule II (B) of the UVAT Act can not be restricted merely in reference of plant/agriculture. It is vehemently argued on behalf of the appellant that the specific entry as "insecticides" under Entry 27 of Schedule II (B) of the Act shall prevail over the residuary Entry. It is further argued that the impugned products are understood as insecticides in common parlance. The impugned products are

sold by the appellant after obtaining the requisite licence under the Insecticides Rule 1971. Ld. Council for the appellant relied upon various case laws which will be discussed in the body of this judgment.

Heard the Ld. Counsel for the parties and perused the record.

5. Challenging the impugned order and assessment order Ld. Counsel for the appellant reiterated all the grounds described in memo of appeal. Supporting the order of Assessing Authority passed u/s 25(7) of the Act as well as impugned order passed in first appeal Ld. representative of respondent argued that impugned product is not classified in any Entry of Schedule II (B) and in term of Section 4 (2) (b) (i) (d) the same falls under residuary Entry hence taxable accordingly at the rate of 13.5%. It is further argued that the term "insecticide" mentioned under Entry 27 of Schedule II (B) of the Act pertains to agricultural related insecticide while the impugned goods has nothing to do with the agricultural. In support of his arguments Ld. State representative relied on the case Law of Hon'ble Supreme Court pronounced in **Raekitt Benckiser case**.

In view of the rival contention of the parties the point of determination involved in this appeal is as under.

Whether the Impugned product traded by the appellant that is Mosquito Coils, mat, refill is classified/classifiable under Entry 27 of Schedule II (B) of the Act. In other words, whether the impugned product will come within the preview of "insecticides" as enumerated under Entry 27 of Schedule II (B) of the Act.

6. In this matter the following facts are undisputed-

(I) The chemical composition of the impugned product is D-Trans Allethrin, Transfluthrin and Pallethrin. All these Chemicals have been

enumerated in the Schedule to the Insecticides Act 1968 as "insecticides".

(II) The product in question is produced and distributed in accordance with the insecticides Act and rules made thereunder.

7. Entry 27 of the schedule is reproduced as under-

Chemical Fertilizers, micronutrients & plant growth promoters / regulators and their herbicides, rodenticide, insecticides, weedicides, and pesticides.

The term 'and their' after the term "plant growth promoter/ regulator" was added by means of amendment after notification number 237/ xxvii(8)/2006 dated 3.5.2007. Prior to this amendment Entry 27 was as follows-

Chemical Fertilizers, Bio-Fertilizer, Micronutrients and plant growth promoters and regulators, Herbicides, Rodenticide, Insecticides, Weedicides and Pesticides.

8. By means of order passed under section 25(7) of the Act the assessing authority observed that the term "and their" as added by way of amendment after the term "plant growth promoters/regulator" in the concerned Entry signify that the term "insecticides" refers to the agriculture insecticides and not as regard household insecticides. Holding that the impugned products are household insecticide which are not covered under Entry 27 of Schedule II (B) or under any other Entry of the Schedule hence liable to be charged at the rate of 13.5 % tax. According to assessing authority the term "insecticides" mentioned in Entry 27 is restricted merely to the insecticides used for the protection of plant in the course of agriculture.

9. Confirming the assessment order passed under section 25(7) of UVAT Act first appellate authority held that in view of government notification No 237 dated 3.5.2007 the product in question is agriculture insecticides which is

not covered under any entry of U.K.VAT Act hence liable to be tax as residuary item.

10. Having gone through the insecticide Act 1968 it transpired that the production, sale, transport and distribution of insecticide is regulated by the Insecticide Act 1968 read with Insecticide Rules 1971. According to Section 3(c) of Insecticide Act all types of chemicals which are enumerated in the schedule to the Insecticide Act are considered as insecticides. Undisputedly, the chemical composition of the impugned product is D-trans Allethrin, Transfluthrin as active ingredient and these chemicals are enumerated in Schedule to the Insecticide Act. It is also undisputed that the product in question was produced and distributed in accordance with the insecticide Act and rules made thereunder. It is thus clear that impugned product that is, Mosquito Coils, mat and refill are household insecticides.

Now the question is whether household insecticides comes within the purview of Entry 27 of Schedule II (B) of the UVAT Act or not. In other words whether the term Insecticide as used in Entry 27 refer only to plant/agriculture related insecticides or all kind of insecticides.

11. After perusal of Entry 27 of Schedule II (B) we are of the considered opinion that each goods in entry after Coma ' , ' is separate. In this Entry the term "Chemical Fertilizer", "Rodenticides", "Insecticides" "Weedicides" and "Pesticides" are independent in itself and deserve to be treated separately and independently. While the entry "Micronutrient and plant growth promoter/regulator and their Herbicides" is a single and independent entry which appears to be in reference of plant/agriculture. The above mention another independent entries such as "Chemical Fertilizer", "Rodenticides", "Insecticides" "Weedicides" and "Pesticides" can be used either in reference of agriculture or anywhere else. It is also pertinent to mention here that this

Tribunal in second appeal number 1 & 2 M/S Navneet Traders vs Commissioner Sale Tax has adjudicated upon the same issue holding that each entry after full stop “.” or coma “,” is independent and deserve to be read separately and the term “Insecticides” should be taken to cover all kind of Insecticides as defined under Insecticide Act.

12. Ld. Counsel for the appellant relied upon the case laws pronounced by the Hon’ble High Court of Allahabad in **knight queen industry Private Limited vs state of UP and others, 2006 (145) STC 226 (Allahabad)**. In this matter dealing with the issue of classification of related product it was held by the Hon’ble Court that Mosquito Mat Coil or Refill are Insecticide. It has been held by the Hon’ble Court that D-Trans Allethrin and Pallethrin are used in manufacturing goods which have been described as household insecticides on their product as per the statutory requirement under the Insecticide Act. In the absence of any specific Entry relating to mosquito repellent/mosquito destroyer and at the same time there being an entry mentioning “insecticides” it can reasonably be said that an ordinary person will ordinarily understand the product of the petitioner falling under the category of insecticide.

Ld. Counsel for the appellant further relied upon **Sonic Electronic Private Limited vs state of Orissa (1994) 92 STC 117**. In this matter it was held by the Hon’ble High Court of Orissa that Mosquito Repellent Mat are classifiable as Pesticides being Insecticides for the reason that Pesticides includes Insecticides.

In **Ashok Agencies vs state of Karnataka 2008 SCC online Karnataka 141** it was observed by the Hon’ble High Court of Karnataka that Mosquito Repellent is to be covered under the entry of Insecticides and Pesticides under the Karnataka VAT Act.

In **Tranceelectra Domestic Product Private Limited vs CTO Madras on (1993) 90 STC 436** it has been held by the Hon’ble High Court that Mosquito

Mat are classifiable as Insecticides. In this matter while interpreting entries Fungicides, Herbicides, Insecticides, Pesticides, Rodenticides and combination thereof the Hon'ble Court observed that Allethrin mosquito Mats are classifiable under the aforesaid entry as Insecticide.

13. As regard the applicability of the ratio of above mentioned case laws Ld. representative of the respondent submitted that above mentioned case laws are in reference of the UP VAT Act, Orissa VAT Act, Madras VAT Act and Karnataka VAT Act. The entries pertaining to "insecticides" is differently worded in VAT Act of the above mentioned States. On the basic of above it is argued on behalf of respondent that these case law are not applicable to the present matter, that is in reference of the Uttarakhand VAT Act. We have gone through the relevant Entry of the above mentioned State VAT Acts. The term "insecticide" find place in the relevant Entry of all the above mentioned State legislations and the same is also included under Entry 27 Schedule II (B) of Uttarakhand VAT Act. We are of the considered view that this argument of respondent is not sustainable.

14. Other contention of Ld. representative for the respondent is that Entry 27 will not cover impugned product such as Mosquito Repellent because the same type of products were excluded from Entry 41 Schedule II (B) of Uttarakhand VAT Act. Which indicate that Mosquito Repellent was never intended to be covered under Entry 27 of Schedule II (B) of the Act.

Entry 41 is reproduced as under –

Drugs and Medicine whether patent or proprietary; as defined in section 3(a) or clause (i), (ii) and (iii) of section 3(b) of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) or Rule 3(dd) of the Drugs and Cosmetics Rules, 1945; including vaccines, hypodermic syringes, hypodermic needles, catguts, sutures, surgical cotton, dressings, plasters, catheters, cannulae, bandages, medicated ointments produced under drug licence, light liquid

paraffin of IP grade and similar articles but not including the following medicated goods-

- (i) all kinds of oil
- (ii) tooth pastes, tooth powder and other dentifrices
- (iii) soap
- (iv) shampoo
- (v) cosmetics and toilet preparations
- (vi) talcum powder
- (vii) mosquito repellent in any form

15. The items enumerated in this entry appears to be drugs or medicine. We are of the opinion that such kind of Mosquito Repellent which are commonly treated as medicine and sold as such are excluded from Entry 41 of the schedule II (B). Entry 41 is intended to excluded only cream based Mosquito Repellent such as Odomos. Cream based Mosquito Repellent are very different from Coil, Vaporizers and Aerosol because these are potent chemical developed to interfere with olfactory system of Mosquitoes. Further, it is settled principal of law as propounded by the Hon'ble High Court in **Hewlett Packard India Sales Private Limited vs State of Assam 2012 (56) VST 472** that merely because a product has been excluded from one entry does not mean that it is excluded from the entire schedule. On the basis of above discussion it is clear that merely because mosquito repellent which are in the nature of drug was excluded from Entry 41 does not mean that it is excluded from Entry 27 of Schedule II (B) as well. The exclusion from this Entry pertaining to drug was intended to exclude cream based mosquito repellent which are in the nature of drug from the category of drugs and that does not mean that the impugned product are excluded entirely from the schedule.

16. We are of the opinion that "Insecticide" is specie and mosquito repellent products such as Mosquito Coil, mats, refills etc are nothing but different forms of "Insecticides" such as D- terns Allthrin, Prallethrin, Transfluthrin etc. The

impugned products traded by the appellant deserve to be classified as "insecticide" as appearing in Entry 27 Schedule II (B) of Uttarakhand VAT Act.

17. Ld. State representative relied on **M/s Raeckitt Benckiser (India) Ltd. Vs Commissioner taxes and others. Civil appeal no. 1335 of 2010. decided on 10.04.2023.** We have gone through this Rulling of Hon'ble Supreme Court. This case law relates to specific Entry 66 and general Entry 44(5) of Kerala Vat Act. In Para 9 of this Judgement it was observed by the Hon'ble Apex Court that-

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".

It was further held in Para 9.1 of this Judgement that-

9.1 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. 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.

18. It is thus clear that on the point under consideration Kerala Vat Act is different. Under Kerala Vat Act there was specific entry to cover mosquito repellent to be taxed at the rate of 12.5%, while under U.K Vat Act there is no such specific entry to cover mosquito repellent. We are of the considered opinion that in view of U.K. Vat Act no benefit of this Case Law can be given to the respondent.

19. The contention of the respondent is that the impugned products are classifiable under Residuary Category as the same are not specifically mentioned in any Entry of the Schedule. In this regard Ld. Counsel for the appellant asserted that Entry for "insecticide" under Entry 27 part II Schedule (B) would prevail over residuary entry. Ld. Counsel for the appellant relied upon **Maruti yeast India Private Limited vs state of UP & others (2008) 5 SCC 680**. In this case law it has been held by the Hon'ble Apex Court that it is now well settled principle of law that in interpreting different entries attempt should be made to find out as to whether the same answer the description of the content of basis entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of last resort. **It is thus well established rule of classification that a product can be classified under a residual entry if the same is not classifiable under any other entry. If an item can reasonably be covered under any specific Entry in the Schedule the same should not be put under residuary category.** Undisputedly, appellant, on his official website list out goods in questions as "household insecticide". In common parlance also the goods are understood as insecticides.

20. Further, the same issue came for consideration before this Tribunal in second appeal number 1 & 2 of 2022, **M/S Navneet Traders vs Commissioner Sale Tax**. In this case the tribunal examined Entry 27 and 41 of Schedule II (B) of the Act. It has been held in this matter that impugned products are covered under Entry 27 of the Schedule under the head of

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“insecticide”. The tribunal in this case made it clear that all items of this Entry should be read separately and independently as per coma after each item. This fact also strengthen the claim of the appellant.

21. On the basis of above discussion we are of the considered opinion that Ld. first appellate Authority has wrongly came to the conclusion that the impugned product is not covered under Entry 27 of the Schedule II (B) of UVAT Act. We are of the view that the term Insecticide as mentioned in Entry 27 of the Schedule is not restricted merely to the kind of Insecticides used for the protection of plant in the course of agriculture. The term “Insecticides” is independent and should be read separately sufficient to cover the “household insecticides” as well. Accordingly the impugned order dated 18.03.24 passed by first appellate authority in first appeal number 1136/2016 is unsustainable and liable to be set aside. This second appeal deserve to be allowed.

ORDER

Accordingly, the impugned order dated 18.03.24 passed in first appeal no. 1136/2016 is set aside and this Second appeal no 50 / 2025, M/s Kesarwani Traders vs Commissioner Sales Tax is hereby allowed.

Let the file be consigned.

S/d- 11/03/2026
(Rakesh Verma)
Member,
Commercial Tax Tribunal,
Uttarakhand, Haldwani.

S/d- 11/03/2026
(Malik Mazhar Sultan)
President,
Commercial Tax Tribunal,
Uttarakhand, Dehradun.

Dated : 11 March, 2026