

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

PRESENT: HON'BLE MALIK MAZHAR SULTAN, H.J.S.

PRESIDENT

SHRI RAKESH VERMA ..

MEMBER

Second Appeal No. 44 of 2025 { F.Y. 2016-2017 }

Commissioner Commercial Tax, Uttarakhand, Dehradun

Appellant.

Versus

M/s. Chandra Prakash & Sons, Mangal Padav, Haldwani

Respondent/Dealer.

For Appellant: . Smt. Hemlata Shukla, Deputy Commissioner (State Tax)
State-Representative.

For Respondent: Shri Akshay Agrawal, Ld. Advocate.

J U D G M E N T

Introduction

This second appeal has been filed by the Department under Section 53 of the Uttarakhand Value Added Tax Act, 2005. The Department has challenged the order no 31 dated 04.02.2025 passed by the Joint Commissioner (Appeals), Commercial Tax, Haldwani. By that order, the first appellate authority partly allowed the dealer's appeal and held that the sale of mosquito coils, refill mats, etc., is taxable at **5%** and not at **13.5%**, as held by the Assessing Authority.

Fact Of the Case

The dealer is engaged in the business of buying and selling cosmetics, detergents, mosquito repellents, mosquito refill mats, coils, incense sticks, and

Second App. No. 44/ 2025

s/d
(Rakesh Verma)

s/d-04-04-26
(Malik Mazhar Sultan)

other household goods. For the assessment year 2016–17, the assessment was completed ex parte on 29.01.2020, and tax liability of Rs. 36,75,000 was determined.

Later, on an application under Section 31 of the Act, the assessment was reopened. The dealer's books of accounts, audit report, and VAT returns were examined. A show cause notice was issued stating that the dealer was paying tax on mosquito-related products at 5%, whereas tax should have been paid at 13.5% because, according to the Department, these products were not covered under any schedule of the Act.

The dealer was asked to explain why tax at 13.5% should not be charged. After considering the reply, the Assessing Authority passed an order dated 22.09.2021 under Section 25(7) of the Act, holding that mosquito coils, mats, and refills were not covered under Entry 27 or Entry 41 of Schedule II(B). Therefore, the products were held taxable at 13.5% under the residuary entry

Aggrieved, the dealer preferred a first appeal. The Joint Commissioner (Appeals), by order 31 dated 04.02.2025, held that mosquito refill mats fall under Entry 27 of Schedule II(B) relating to insecticides and allied products and are taxable at 5%. Against the said appellate order, the Department has filed the present second appeal.

Against the assessment order dated 22.09.2021 passed under Section 25(7) read with 31 of the Act dealer preferred first appeal u/s 51 of the UVAT Act before the Joint Commissioner (Appeal) which was registered as first appeal no 375/2022. This first appeal was allowed by the impugned order no 31 dated 04.02.25. It was held by the first appellate authority that mosquito refill mats fall under **Entry 27 of Schedule II(B)**, which relates to insecticides, and therefore are taxable at **5%**

Submission of the Department

Impugned order dated 04.02.25 passed by first appellate authority is challenged in this second appeal filed by the department/appellant on the ground that, Ld. first appellate authority does not followed the M/s Reckitt Benckiser Law and Entry 27 is only relating to insecticides in Schedule II (B) of the UVAT Act and has to be restricted merely in reference of plant/agriculture. The Department has mainly contended that the first appellate authority erred in law by treating mosquito refill mats as insecticides. The goods are not specifically mentioned in Schedule II(B). Reliance was placed on the judgment of the Hon'ble Supreme Court in Reckitt Benckiser (India) Ltd. vs Commissioner Commercial Taxes & Others, wherein mosquito repellents were held not to be insecticides under the Insecticides Act. The assessment order dated 22.09.2021 was legal and proper and deserved restoration.

State representative/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 . State representative /appellant 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 **Reckitt Benckiser case**.

Submission of the Respondent

The respondent/dealer supported the impugned appellate order and submitted that the Mosquito refill mats are used to kill or repel mosquitoes, which are

insects. Entry 27 of Schedule II(B) specifically includes insecticides, pesticides, weedicides and allied products. The dealer was billed by manufacturers at 5%, VAT was collected at 5%, and ITC was also claimed at 5%, showing consistent classification. The issue is no longer res integra as this Tribunal has already decided earlier cases holding mosquito coils, refill mats, and vaporizers taxable at 5%.

The first appellate authority has rightly relied upon earlier decisions of this Tribunal, including Commissioner Commercial Tax vs M/s Godrej Consumer Products Ltd., decided on 24.09.2024, wherein mosquito repellents were held covered under Entry 27.

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

Point for Determination

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 dealer 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.

Discussion

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.

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.

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.

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.

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.

Ld. Counsel for the respondent/dealer 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 respondent/dealer 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.

As regard the applicability of the ratio of above mentioned case laws Ld. State representative/appellant 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 department 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 State representative/appellant is not sustainable.

Other contention of Ld. State representative/appellant 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

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.

This Tribunal is 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 dealer deserve to be classified as "insecticide" as appearing in Entry 27 Schedule II (B) of Uttarakhand VAT Act.

Ld. State representative/appellant relied on **M/s Reckitt Benckiser (India) Ltd. Vs Commissioner taxes and others. Civil appeal no. 1335 of 2010. decided on 10.04.2023.** We have gone through this Ruling 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.

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 appellant.

The contention of the appellant 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 respondent/dealer asserted that Entry for "insecticide" under Entry 27 part II Schedule (B) would prevail over residuary entry. Ld. Counsel for the respondent /dealer 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, respondent/dealer on his official website list out goods in questions as "household insecticide". In common parlance also the goods are understood as insecticides.

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 "insecticide". The tribunal in this case made it clear that all items of this Entry should be read separately and independently as per comma after each item. This fact also strengthens the claim of the dealer.

Conclusion

On the basis of above discussion we are of the considered opinion that Ld. first appellate Authority has rightly come to the conclusion that the impugned product is 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 04.02.25 passed by first appellate authority in first appeal number 375/2022 is sustainable and does not suffer any illegality, perversity or jurisdictional error. The Department appeal, devoid of merit, is liable to be dismissed.

ORDER

Accordingly, the impugned order dated 04.02.25 passed in first appeal no. 375/2022 is hereby affirmed . Let the file be consigned.

s/d

(Rakesh Verma)

Member,

Commercial Tax Tribunal,

Uttarakhand, Haldwani.

s/d-04-04-26

(Malik Mazhar Sultan)

President,

Commercial Tax Tribunal,

Uttarakhand, Dehradun.

सत्य परिचयिणि

(R)

Dated :04-04-26

सत्य परिचयिणि संख्या...67.....
दिनांक.....04/04/26.....
आयकर विभाग, उत्तराखण्ड, हल्द्वानी पीठ.
हल्द्वानी पीठ.

सत्य परिचयिणि संख्या...67.....
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