

AFR

IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No. 27 of 2021

State of Odisha, represented by the **Petitioner**
Commissioner of Sales Tax

Mr. S.K. Pradhan, Addl. Standing Counsel

-versus-

M/s. Godrej Sara Lee Ltd. **Opposite Party**

Mr. R.P. Kar, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
15.02.2023

Order No.

Dr. S. Muralidhar, CJ.

03. 1. The Petitioner (Department) has filed this revision petition aggrieved by an order dated 17th March, 2021 of the Odisha Sales Tax Tribunal, Cuttack Bench, Cuttack (Tribunal) dismissing the Department's S.A. No.209(V) of 2017-18 which in turn was an appeal under Section 78(1) of the Odisha Value Added Tax Act, 2004 (OVAT Act) by the State aggrieved by the Order dated 18th July, 2017 of the Additional Commissioner of Sales Tax (Appeals) allowing the Dealer's Appeal Case No.AA/JCST/CU II/76/2014-15 thereby setting aside an assessment order dated 29th March, 2014 passed under Section 43 of the OVAT Act by the Joint Commissioner of Sales Tax, Cuttack II Range, Cuttack (JCST) for the tax period from 1st April, 2007 to 31st December, 2008.

2. The question before the ACST as well as the Tribunal was whether the mosquito repellent 'Good Knight' sold by the Opposite Party-Dealer could be classified as 'insecticide' under Entry 30 of Part II of Schedule B to the OVAT Act attracting 4% tax or would fall in the residual entry of 'all other goods' under Part III of Schedule B to the OVAT Act in which case it would be amenable to tax @ 12.5%?

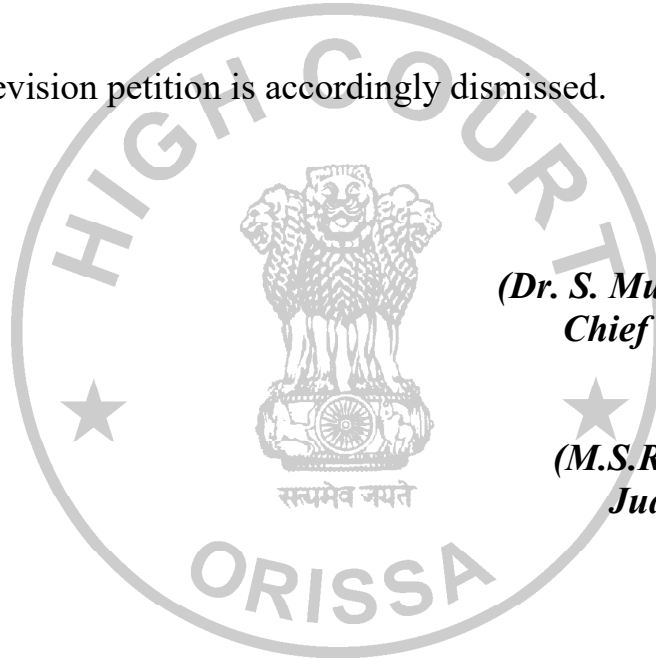
3. The ACST and the Tribunal have concurrently held that the product in question is in fact an insecticide within the meaning of that expression in Entry 30 of Part II of Schedule B and, therefore, amendable to tax @ 4% thereby rejecting the plea of the Department that it should be classified as 'all other goods' in terms of Part III of Schedule B of the OVAT Act, amenable to tax at 12.5%.

4. The literature accompanying the product, which has been enclosed with the present revision petition, reveals that one of the principal ingredients of the product is 'Transfluthrin 0.88% w/w Liquid Vaporiser'. It is explained in the said literature that Transfluthrin 0.88% w/w Liquid "is an effective insecticide recommended for the control of adult mosquitoes in the household". Additionally, as pointed out by Mr. R.P. Kar, learned counsel appearing for the Opposite Party-Dealer, the Opposite Party holds a certificate of registration of insecticides under Section 9 (3) of the Insecticides Act, 1968 for manufacture of the said insecticide transfluthrin 1.6% w/w Liquid Vaporiser. It is evident therefore, that the product sold by the Opposite Party-

Dealer has been correctly categorized as an 'insecticide' under Entry 30 of Part II of Schedule B of the OVAT Act. The Court is, therefore, satisfied that no error has been committed either by the ACST or the Tribunal in accepting the plea of the dealer and negating the contrary plea of the Department.

5. The Court is not persuaded, therefore, that the question sought to be urged by the Department in the present revision requires to be examined by this Court.

6. The revision petition is accordingly dismissed.



(Dr. S. Muralidhar)
Chief Justice

(M.S.Raman)
Judge

S.K. Jena/Secy.