(2000) 07 KL CK 0029

In the High Court Of Kerala

Case No : O.P. No''s. 5886, 11347 of 1990 etc.

Mahendran APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 17-07-2000

Acts Referred:

Insecticides Act, 1968 — Section 9(3)

Citation : (2000) 2 ALT(Cri) 353 : (2001) 1 ILR (Ker) 28

Hon'ble Judges : M. Ramachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : Ramachandran Madras, B.S. Krishnan, P.R. Raman and K. Anand, for the Appellant; V.V. Asokan and T.K. Nambiar, Spl. Government Pleaders, for the Respondent

Judgement

J.B. Koshy, J.—The question to be considered in all these Writ Petitions is whether mosquito repellent mats manufactured by the petitioners in the name "Good Knight" and "Banish" can be classified as insecticides for the purpose of levying sales tax under the Kerala General Sales Tax Act. The above mat is made up of paper pulp impregnated with the base Insecticide Chemical Allethrin Technical (4%) which is volatile at specified temperature without decomposition. When placed on the EMD heater the base chemical evaporates and suffuses the atmosphere proximate. The allethrin fatally affects the mosquitoes by causing irreparable damage to their nervous system and thereby causing death. Till 1.4.1991 there was no specific classification for the mosquito repellent. In 1.4.1991 the above was classified as under 123B under the heading "Mosquito Repellent". From 1.4.1992 it was classified under item 85. Therefore, from 1.4.1991 there is no dispute about classification or tax payable or the rate of tax payable with respect to the mosquito repellent mat.

2. Before 1.4.1991, mosquito repellent bar was not specifically classified. Petitioners claimed that it will come under Entry 87 which reads as follows:

"Pesticides and Plant Protection Chemicals".

Thereafter it was rearranged as Entry 139 which reads as follows:

"Pesticides, Fungicides and Plant Protection Chemicals".

However, the Department took the stand that mosquito repellent mats manufactured by the petitioners will not be an insecticide and it only give a very pleasant smell and used for the domestic purposes to repel the mosquitoes and that the product is harmless either to human being or to domestic pets. The meagre quantity of 4% allethrin could not make the product an insecticide. Therefore, this will come as a general item liable to tax at multi-point rate.

3. The Madras High Court considered the very same question in the decision in Transelektra Domestic Products Pvt. Ltd. v. Commercial Tax Officer, Porur Assessment Circle, Madras (1993) 90 STC 436 and held trial it can be classified as an insecticide and cannot be taxed as a general item liable to tax at multi-point rate. A similar view was expressed by the Sales Tax Appellate Tribunal, West Bengal. It is also submitted that in Maharashtra and Gujarat this is classified as an insecticide either till specific entry was introduced. According to the petitioners, the allethrin fatally affects the mosquitoes by causing irreparable damage to their nervous system and thereby causing death. Petitioner had applied for and was granted licence to manufacture insecticides in Form No. V and these goods are manufactured under Certificate issued under S. 9(3) of the Insecticides Act. Copies of the licence and Registration Certificate issued were also produced in the Original Petition. These goods are covered by the provisions of the Insecticides Act and these goods can be classified in a specific entry and cannot be included in unclassified items. When we can attach a parentage lo a product it need not be sent to orphanage, that is residuary entry as held by the Supreme Court in Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others, . Since the mosquito repellent mat contains insecticide allethrin chemicals, which is manufactured and sold under licence issued under the Insecticides Act and it will fatally affect the nervous system of mosquitoes, we are of the opinion that it can be classified as an insecticide till it was specifically classified from 1.4.1991 onwards. Government specifically classified mosquito repellent mat as coming under Entry 123(b)from 1.4.1991 under item 85 from 1.4.1992 making it a single point rate.

4. Learned Government Pleader cited the decision of the Supreme Court in Sonic Electrochem & Anr. v. Sales Tax Officer & Ors. (1998) 111 STC 181 there the manufacturers claim that it is an insecticide despite specific classification of mosquito repellent in the schedule. The Supreme Court found that since mosquito repellent mat was specifically mentioned in the schedule, petitioners cannot claim that it can be classified as an insecticides. But, the Supreme Court also found that the ''Jet mat'' having as one of its constituents "d-Allethrin 4%", has the qualities of an insecticide. It not only repels mosquitoes but is also capable of killing them, but in view of the most specific entry ''mosquito repellent'' in the Schedule, it can be classified only under that entry.

5. We are disposing of the Original Petitions holding that the mosquito repellent mat manufactured by the petitioners can be classified under Entry 87 and 139 as the case may be as pesticides before it was more specifically classified from 1.4.1991 onwards. The authorities may conclude the proceedings on the basis of the above direction.