IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP No.93 of 2014 (O&M)
Date of decision: 7.9.2015

State of Haryana

……Appellant.

M/s Om Pesticides, Janta Mandi, Karnal and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Mamta Singla Talwar, DAG, Haryana with
Mr.Saurabh Mago, AAG, Haryana.

Mr. A.K.Sachdeva, Advocate for respondent No.1 in VATAP No.93 of 2014.

Mr. Arun Nehra, Advocate for respondents in VATAP Nos. 15 and 10 of 2015.

Ajay Kumar Mittal,J.

1. This order shall dispose of a bunch of 11 appeals viz. VAT Nos.93 of 2014, 10, 15, 27, 28, 29, 30, 31, 37, 38, 39 of 2015 as learned counsel for the parties are agreed that the issue involved in all the appeals is identical. However, the facts are being extracted from VAT Appeal No.93 of 2014.

2. VAT Appeal No.93 of 2014 has been preferred by the appellant-State under Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 23/17.1.2013, Annexure A.2 passed in STA No.151 of 2012-13, claiming following

substantial questions of law:-

> "i) Whether the chemicals namely Methyl Parathion, Cartap Hydrochloride, Acephate, Acetamiprid, imidaclorid, pretilachlor, paraquat, dichloride, Carbendazim, sold by the appellant firm being intermediate products and not the final product marketable for use on plants only fall under entry No.38B of Schedule B of HVAT Act 2003?
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> ii) Whether the Hon"ble Haryana Tax Tribunal was justified in holding that the above mentioned intermediate chemicals (which cannot be used in as such form on the plants) are covered by Entry No.38B of HVAT Act 2003?
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> iii) Whether the process is involved in obtaining the final product to be used for plants only from the above mentioned chemical in manufacturing process and if yes whether the raw material and the final product are alike so as to be covered under Entry No.38B of Schedule B of HVAT Act, 2003?"

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.93 of 2014 may be noticed. Application under Section 56(3) of the HVAT Act dated 31.1.2012 was filed by the respondent assessee to seek clarification on the issue whether the items/goods, namely, methyl parathion, cartap hydrochloride, acephate, acetamiprid, imidacloprid, pretilachlor, paraquat dichloride and carbendazim which are insecticides/pesticides are covered under Entry 38B of Schedule B appended to the HVAT Act or not. The applicant was afforded opportunity of hearing to plead its case. It was submitted that the goods were industrial raw material used in manufacturing of pesticides and insecticides and the final products will be covered in Entry 38B of Schedule B of the HVAT Act. The assessee also produced a copy of the Schedule appended to the Insecticides Act, 1968 (in short, "the 1968 Act") in which

all the goods for which clarification was sought were covered under the said Act. According to the appellant State, pesticides, weedicides and insecticides are not exempt generally from payment of VAT under the HVAT Act and these are exempt when used for plants only. This means that a pesticide or insecticide or weedicide to qualify for exemption from payment of VAT under entry 38B must be in a marketable state directly to be used for plants only and not otherwise like intermediate goods which are used in formulation of such final products. Though the said items may be covered under the 1968 Act, yet the same cannot be said to be covered under Entry 38B of Schedule B of the Act as the said entry is conditional one i.e. "used for plants only". Accordingly, a detailed order on clarification sought by the assessee was passed by the Principal Secretary, Government of Haryana, Excise and Taxation Department under Section 56(3) of the Act on 16.7.2012, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Tribunal. The Tribunal vide order dated 23.1.2013, Annexure A.2 allowed the appeal holding that the goods in question being insecticides, weedicides and pesticides are technical grades in concentrated form and after dilution by adding inerts and emulsifying agents etc. are used for plants production and are covered under Entry 38 B and are thus exempt from tax. Hence the instant appeals by the appellant-State.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-State submitted that the product being manufactured by the respondent was not the final product and in such a situation, it did not fall under Entry 38B of Schedule B of the HVAT Act. It was urged that each and every word of the entry has to be

given meaning and in view thereof, the expression “used for plants only” had to be given appropriate meaning and since the respondent assessees were not selling pesticides, weedicides and insecticides but were manufacturing the said items therefore, they were not entitled to claim benefit under Entry 38B of Schedule B of the Act. It was urged that the activity of the assessee is manufacture and not sale of the pesticides, weedicides and insecticides.

6. Opposing the contentions of the learned counsel for the State, learned counsel for the respondent assessees submitted that the items of the assessees were covered under the HVAT Act and they had been duly registered under it. Reliance was placed on judgments in ***M/s Bombay Chemical Private Limited vs. The Collector of Central Excise, Bombay I, Bombay,*** AIR 1995 SC 1469 (SC), ***Union of India and another vs. southern Distributors,*** (1996) 102 STC 509 (Mad.), ***Kissan Chemicals vs. Union of India and others,*** 1996(64) DLT 73 (Del.), ***B.H.Vasudeva Pai and Sons vs. State of Karnataka,*** (2006) 146 STC 232 (Karnataka).***Union of India (UOI) and others vs. Pesticides Manufacturing and Formulators Association of India,*** AIR 2003 SC 1, ***National Organic Chemical Ind. Limited vs. Commissioner of Sales Tax***, (1992) 87 STC 471 (Del.) and ***Amalendu Kumar Bera and others vs.The State of West Bengal,*** 2013(2) RCR (Civil) 534.

7. After hearing learned counsel for the parties, we do not find any merit in these appeals.

8. Entry 38B of Schedule B of the Act which relates to exemption from payment of VAT reads thus:-

"Pesticides, Weedicides, insecticides used for plants only"

9. As per language of the entry, two conditions have to be fulfilled in order to qualify for exemption. Firstly, the items must be pesticides or weedicides or insecticides and secondly, these should be meant for use for plants only. The Tribunal has considered the matter in detail and recorded that the products used by the assessee are pesticides, weedicides and insecticides. Further, they are technical grades in concentrated form and after dilution, these products remain insecticides/pesticides or weedicides and are used for plants after mixing inerts and other such agents to make them fit for use on the plants. It was further recorded by the Tribunal in its order dated 17.1.2013 as under:-

> "It follows from the language of the entry that an item to qualify for exemption under this entry as to be pesticides or weedicides or insecticides and further it must be used for plants only. The entry can be divided into two parts (i) that the product has to be pesticides, weedicides or insecticides and (ii) the same is used for plants only. It has been held in the impugned order the pesticides, weedicides and insecticides are not generally exempted from the payment of tax and the same will be exempted only if used for plants. The impugned order nowhere states that the produces in question are not pesticides, weedicides or insecticides. It only says that these products are not final products in the marketable state and being intermediate goods, the same are not used for plants by the farmers in that form. Thus, by implications, it has been admitted that the goods in question are pesticides, weedicides and insecticides but are not useable for plants. Otherwise also, all these products have been got registered under the Insecticides Act, 1968 from the Registration Committee of Ministry of Agriculture Government India, wherein the name of the product has been mentioned as

insecticides. Therefore, there is no denying the fact that the products in question are insecticides/pesticides. This also find support from the judgment of Hon'ble Supreme court of India in case of Bombay Chemical Pvt. Limited vs. Collector of Central Excise, Bombay reported as 99 STC 339. Thus, the first condition of the Entry 38B is duly met.

11. The next question arises whether these products are used for plants only or not? It has been held in the impugned order that since the products in question are not final products in the marketable state, therefore, the same cannot be used for plants. It has been stated therein that these products are raw material or intermediate goods intended to be used for formulation of final products which are used for plants and hence second condition is not met and on this ground the goods in question were held to be not falling under Entry 38B of Schedule B of the Act.

12. A perusal of the documents produced by the appellants would however reveal that the products in question are technical grade in concentrated form imported in or manufactured in the State of Haryana and are further diluted by the formulators by adding inerts or some emulsifying agents for the end use by the farmers. It is also revealed that by process of dilution these items do not cease to be insecticides/pesticides or weedicides as the dilution process does not amount to any manufacture in view of the ratio of the judgments cited by the appellants during the hearing of the case, as also mentioned in the grounds of appeal. There is no rebuttal of this fact as well as from the respondent side. Therefore, after dilution also these products remain insecticides/pesticides or weedicides and are used for plants after mixing inerts and other such agents to make them fit for use on the plants as per the recommendations of the experts.

13. The appellants have produced alongwith appeals, the Registration certificates from the relevant authority, a perusal of which reveals that each and every product in question is used

for the control of various diseases in various crops. The learned counsel for the appellant has amply demonstrated the use of the goods in question for various crops by the help of Annexures A.1 to A.8 placed on the file. Likewise, the applications made for the registration of the products under the Insecticides Act from B1 to B7 placed on the file also reveals that the products in question are used for plants. Thus there is ample documentary evidence to prove that the products in question are used for plants only. There is no rebuttal of these facts from the respondent side.

14. A similar question arose before the Hon'ble Madras High Court in the case of Union of India and another vs. Southern Distributors (supra) with regard to the BHC (Technical) Pesticide whether it is directly used on crops or not it was contended by the department that BHC (Technical) is sold by the assessee as a raw material for making the pesticide and the BHC (Technical) itself cannot be used as the pesticide for crops to claim exemption under notification. This argument was not accepted by the Hon'ble court. Likewise, in the case of National Organic Chemical Limited vs. Commissioner of Sales Tax (supra), the Hon'ble High Court of Delhi has held that as clear from the publication of Punjab and Haryana Agricultural Universities that Aldrex 30EC was used to control pests by mixing with seeds or with irrigated water and therefore it fell under Entry 27 of the 3rd Schedule to Delhi Sales Tax Act, 1975 as the pesticides for plant protection. The judgment of the Hon'ble Supreme Court in the case of Commissioner of Trade Tax UP vs. M/s Kartos international etc. (supra) as relied upon by the respondent in the impugned order is distinguishable on facts as there the items are not used for the specified purpose for claiming exemption. In the instant case it is amply proved that the items are used for the purpose specified in the entry.

15. In view of the above, we find that the goods in question are insecticides/pesticides and weedicides in concentrated form

known as technical grade and after dilution by adding inerts and emulsifying agents etc. are used for plant protection for control/elimination of various diseases in the different crops as per recommendations. We hold accordingly. Resultantly, the appeal succeeds and the impugned order stands set aside."

10. Now we proceed to examine the various judicial pronouncements related with the subject. The Madras High Court delving into identical situation in ***Southern Distributor's*** case (supra) held as under:-

> "2.2. We have considered the arguments of Mr. K. S. Ahmed, Senior Government Pleader, Pondicherry, for the Revenue and Mr. C. Venkataraman, learned counsel for the assessee. The notification relied upon by the assessee-respondent is to the following effect :
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> > "In exercise of the powers conferred by sub-section (1) of section 19 of the Pondicherry General Sales Tax Act, 1967 (Act No. 6 of 1967), the Lieutenant Governor, Pondicherry, being satisfied that it is necessary so to do in the public interest, is pleased to exempt with immediate effect, the tax payable under the said Act on the sales of pesticides meant for agricultural use in the whole of the Union Territory of Pondicherry."
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> It is not in dispute that so far as the sales are made locally, the sales of pesticide meant for agricultural use in the whole of the Union Territory of Pondicherry are exempt. The notification exempts sales of pesticides meant for agricultural use in the whole of the Union Territory of Pondicherry. It is not the case of the Revenue that the commodity in question will not answer the description of "pesticide", but the contention is that for the agricultural use, the rigour or power of the product should be reduced by mixing it with other material. So long as notification itself does not prescribe the pesticide of any percentage or power it is to be exempt. There is no scope for

reading into the notification in question of any such limitation, as contended by the learned counsel for the Revenue. The Tribunal has chosen to place reliance on the certificates of the competent authorities concerned and other materials and has come to the conclusion that the product sold by the petitioner satisfied the requirements of the term "pesticide" and comes under the notification issued under section 19 of the Pondicherry General Sales Tax Act, 1967. We are in agreement with the finding of the Tribunal in this regard and we do not see any reason to differ from the finding of the Tribunal, which the Tribunal has arrived at, after considering various and other materials and has given a finding on fact. So, the question is whether the respondent-assessee is entitled to the exemption so far the assessment is made under the local Act. In view of the fact that we have accepted the view of the Tribunal that the goods sold by the assessee B.H.C. (Technical) is a pesticide, we do not see any reason to set aside the order of the Tribunal in so far as the exemption granted by the Tribunal is concerned. So, the Tax Case No. 978 of 1983 shall stand dismissed."

11. Further in ***Bombay Chemical Pvt. Limited's*** case (supra), it was observed by the Apex Court as under:-

"3.The appellant claimed that the disinfectant fluids manufactured by it were entitled to exemption after addition of item No. 18 in 1978. The Assistant Collector did not find any merit in the claim as insecticides, pesticides, weedicides and fungicides are necessarily required to possess the property and capability of killing insects, pests, fungi and weeds. It was held that the disinfectant fluids produced by the appellant did not have the property of killing any insect or pest, therefore, the goods produced by the appellant could not be held to be covered in the exemption notification. The appellate authority did not agree with this reasoning as in common parlance the products of the appellant were nothing but fungicides. In further appeal by the Department the two members out of the three who constituted the Bench did not agree with the reasoning of the Collector and reversed the order passed by him. It is the correctness of this order which is assailed in this appeal.

4.The Tribunal found that there was no dispute that the disinfectants were exciseable goods and that they were classifiable under Tariff Item 68. It was further found that these were being referred to and marketed as disinfectants and that the preparations in question were capable of killing various bacteria and fungi, but it refused to extend the benefit of the exemption notification as the notification being confined to specified categories, the appellant was not entitled to claim exemption by extension of the principle that since the goods produced by the appellant satisfied the broad test of killing insecticides it should be held to be pesticides or fungicides. According to the Tribunal, the exemption notification being meant to cove particular formulation with well-define uses and especially for killing insects, the cannot be equated or interpreted to include disinfectants which are preparations for general disinfection purposes and which are used in the bathrooms, gutters, floor cleaning, etc. The Tribunal considered various text books and literature produced by the appellant and the Department and observed that various authors have explained the terms used in the notification and the 'disinfectant' in different senses, some giving wider meaning to it and others narrower, therefore, it was not possible to draw any conclusion as to exact demarcation between various terms. The Tribunal held that it would be unsafe to classify any product as covered in the notification merely because it has the property to kill without reference to its normal use. It then found that some of the disinfectants produced by the appellant are referred to as 'deodorant fluid'. Others contain perfumery materials, i.e., Bioflor Lavender Type and Bioflor Jasmine

Type. The Tribunal held that the substances used for killing insects, pests, etc. are by their nature noxious and one is used to their having an unpleasant or irritating smell. On the other hand, the disinfectants are used either to neutralise existing unpleasant smell or even to add a pleasant smell. Consequently, even though the disinfectant fluids produced by the appellant from phenolic compounds (tar acids) could destroy bacteria and fungi, but this being a part of function as disinfectant fluids, it cannot be classified as fungicide or pesticide.

5.'Disinfectant' is defined in Webster Comprehensive Dictionary 'as a substance used to disinfect or to destroy the germs of infectious and contagious diseases'. In the Concise Oxford Dictionary of Current English, 'disinfectant' is defined as 'a commercially produced chemical liquid that destroys germs', In Encyclopedia Britannica, Volume 4, it is explained to mean, 'any substance, such as creosote or alcohol, applied to inanimate objects to kill microorganisms. Disinfectants and antiseptics are alike in that both are germicidal, but antiseptics are applied primarily to living tissue. The ideal disinfectant would rapidly destroy bacteria, fungi, viruses, and protozoans, would not be corrosive to surgical instruments, and would not destroy or discolour materials on which it is used'. It thus cannot be disputed that a disinfectant is also a killing agent. Even the Tribunal found that the goods produced by the appellant which contained high boiling tar acid kill the bacteria in the gutters and the bathrooms. In the Report of the Deputy Chief Chemist it, was mentioned that all above products numbering 14 were formulations containing high boiling tar acid as the principal active ingredient. It then noticed definition of pesticide and disinfectant and observed that, 'it appears from the above definition that disinfectants are used for killing or inactivating micro- organisms, in some literature for oils (containing high boiling tar acid) are mentioned in pesticide manual', But he opined that it was not clear whether the formulations containing tar acids, as in the case of the goods produced by the appellant which were used as disinfectants, will be covered broadly by the term 'pesticides'.

6.'Pesticide' has been defined in Butterworths Medical Dictionary, Second Edition, as 'a comprehensive word to include substances that will kill any form of pest, e.g., insects, rodents and bacteria'. The term 'pesticide' includes a large variety of compounds of diverse chemical nature and biological activity grouped together usually on the basis of what pests they are used to destroy or eliminate, Under the US Federal Environment Pesticide Control Act, the term 'Pesticide' has, been defined to include '(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, roderit, nematode, fungus, weed, other forms of terrestrial or aquatic plants or other forms of animal life e.g., viruses, bacteria, or other microorganisms, which the administrator declares to be a pest and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant' [Pesticides in the Indian Environment, by P.K. Gupta p.2].

7.'Fungicide' inhibits growth or destroys fungi pathogenic to man or other animals or inanimate surfaces. The appellant had imported tar acid to manufacture insecticide pesticide and fungicide. The Director General had permitted import for this purpose. In the letter written by the appellant claiming exemption, it was stated that disinfectant fluids manufactured by it were capable of being used for the purpose of destroying fungi of medical importance.

8.A disinfectant which, therefore, is used for killing may broadly be covered in the word 'pesticide'. Disinfectants, may be of two types; one to disinfect and other to destroy the germs. The former, i.e., those products which are used as disinfectant for instance lavender etc. may not be covered in the expression 'pesticide'. But those products which are used for killing insects by use of substances such as high boiling tar acid have the same characteristic as 'pesticide'.

9.Item No. 18 which was added in 1978 grants exemption to the categories of goods which can be classified as insecticides, pesticides, weedicides or fungicides. They have to be understood in broad sense. The reasoning of the Tribunal that if an expression is capable of a broader and a narrower meaning then it is the latter which could be preferred does not appear to be correct. Where entries are descriptive of category of goods they have certain characteristics. Therefore, when a question arises whether a particular good is covered in any category or not, it has to be examined if it satisfies the characteristic which go to make it a good of that category. And whether in trade circle it is understood as such and if it is a good of technical nature then whether technically it falls in the one or the other category. Once it is found that a particular good satisfies the test then issue which arises for consideration is whether it should be construed broadly or narrowly. One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly. Item 18 is an exemption notification."

12. In ***National Organic Chemical India Limited's*** case (supra), the Delhi High Court while dealing with identical situation observed that different types of pesticides are used in different ways. Merely because a chemical may not be recommended for spraying on crops, it cannot be said that it cannot be used for plant protection as it could be added to seeds or to the soil. In the said case, Chemical Aldrex 30 EC was held to be the pesticide used for plant protection and therefore the same was covered by

Entry 27 of the Third Schedule to the Delhi Sales Tax Act, 1975.

13. In view of the above, the Tribunal was right in concluding that the product of the respondent assessees was covered under Entry 38B of Schedule B of the HVAT Act. The substantial questions of law are answered against the State.

14. Further, we find that there is delay in filing the appeals ranging from 442 to 756 days. No satisfactory explanation has been given for the same. With regard to delay in filing the appeal, in ***Amalendu Kumar Bera's*** case (supra), the Apex Court held that merely because the respondent is the State, delay in filing the appeal or revision could not be and shall not be mechanically considered and in the absence of sufficient cause delay shall not be condoned. It was observed thus:-

> "10......True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree holder puts the decree in execution..."

Accordingly, the appeals are dismissed on merits as well as on the ground of limitation.

(Ajay Kumar Mittal)
Judge

September 7, 2015
'gs'

(Ramendra Jain)
Judge