

W.P.No.12942 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.12942 of 2021 and
W.M.P. No.13744 of 2021

Reckitt Benckiser (India) Limited,
Having its Corporate Office at
DLF Cyber Park, 6th & 7th Floor (Tower C),
405B, Udyog Vihar Phase III
Sector – 20, Gurugram,
Haryana – 122 016.

and factory at

Plot No.176, Unit 1 & 2,
SIPCOT Industrial Complex, Hosur,
Tamil Nadu 635 126
Through its Authorised Signatory
Mr.Rajesh Kumar Jha

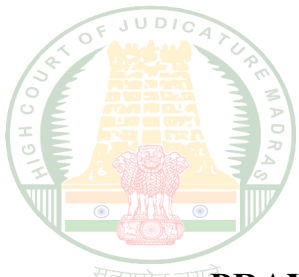
..Petitioner

Vs.

1. State of Tamil Nadu through
Its Principal Commissioner of GST
26/1, GST Bhavan,
Uthamar Gandhi Road, Nungambakkam,
Chennai 600 034.

2. The Assistant Commissioner (ST)
Hosur (South)-I
Tamil Nadu.

..Respondents



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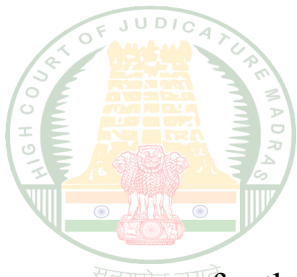
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order bearing reference No.ZD330321001694Y dated 12.03.2021 issued by the 2nd Respondent herein to quash the same and for a direction, directing the respondents to treat Harpic Disinfectant Toilet Cleaner and Lizol Disinfectant Toilet Cleaner as Disinfectants falling under Entry 87 of the Third Schedule to the TNGST Act from 01.07.2017 till 13.11.2017.

For Petitioner : Mr.Jawahar Lal
for Mr.R.Saravana Kumar

For Respondents : Mr.Haza Nazirudeen
Additional Advocate General
assisted by Mr.M.Venkateswaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 12.03.2021 insofar as it treats “Harpic Disinfectant Toilet Cleaner” and “Lizol Disinfectant Toilet Cleaner” under Item 31 of the Fourth Schedule to the Tamil Nadu Goods and Services Tax Act,2017 (hereinafter referred to as “TNGST Act”) thereby levying tax at the rate of 14% under the TNGST Act, while rejecting the classification made by the petitioner that the above products viz., “Harpic Disinfectant Toilet Cleaner” and “Lizol Disinfectant Toilet Cleaner” are disinfectants liable to tax at 9% in terms of Item 87 of the Third Schedule to the TNGST Act



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for the period 01.07.2017 to 13.11.2017.

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2. The petitioner is engaged in the manufacture and supply (sale) of floor cleaners, toilet cleaners, medicated soap, dish wash, hand wash etc. The petitioner is a registered dealer in the office of the 2nd Respondent herein. During the relevant period viz., July 2017 to November 2017 the petitioner had effected sales of Harpic and Lizol levying tax at 18% i.e. 9% SGST and 9% CGST on the supply (sale) of such goods and remitted the same.

3. Whiles, a notice dated 19.03.2020 was issued by the 2nd Respondent proposing to treat the sale of Harpic and Lizol at 28% i.e., 14% CGST and 14% SGST by treating the same as falling under Item No. 29 to 31 of the Fourth Schedule to the Goods and Service Tax Act, while rejecting the classification under Item 87 of the Third Schedule to the Goods and Service Tax Act. The relevant portion of the show cause notice reads as under :

“The goods which were sold during the period from July, 2017 to 13-11-2017 were liable to tax rate at 28% GST under item S1 No. 29 to 31 of the Fourth Schedule of Goods and Service Tax Act 2017 is summarized as under.



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Pre shave, shaving or after shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having droinfectant properties, such as Pre-shave, shaving or after-shave Preparations, Shaving cream, Personal deodorants and antiperspirants

30. 3401 30

Organic surface-active products and preparations for washing the skin, in the form of liquid or cream and put up for retail sale, whether or not containing soap; paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent

31 3402

Organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401.

The tax payers had been adopted 18% tax rate by using the following HSN code as under (Up to 13-11-2017)

<i>Item No.87 of Third Schedule vide HSN Code 38089400</i>	<i>INSECTICIDES, RODENTICIDES, FUNGICIDES, HERBICIDES, ANTI-SPROUTING No 87 of PRODUCTS AND PLANT GROWTH REGULATORS, DISINFECTANTS AND SIMILAR Third PRODUCTS, PUT UP IN FORMS OR PACKINGS FOR RETAIL SALE OR AS Schedule PREPARATIONS OR ARTICLES (FOR EXAMPLE, SULPHUR TREATED BANDS, WICKS AND CANDLES, AND FLY-PAPERS)-DISINFECTANTS.</i>
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But following goods sold by you in the course of inter and intra state supply not falls under the above HSN code and following item No.29 to 31 of Fourth schedule of Tamil Nadu Goods and Service Tax Act. 2017.”

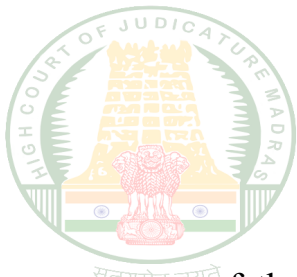


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4. The petitioner after seeking time submitted a detailed objection vide its letter dated 27.06.2020 running to 18 pages wherein it was inter alia submitted that the basis for classification adopted by the petitioner for treating supply (sale) of Harpic and Lizol under Item No. 87 of Third Schedule relatable to HSM code: 3089400 at 18% CGST / SGST as under:

a) That the State of Tamil Nadu had accepted the classification of Harpic and Lizol as Disinfectants under TNVAT Act by treating the sales of Harpic and Lizol as falling under Entry 17(a) of Part B to the Fourth Schedule of the TNVAT Act for the period 12.07.2011 to 29.05.2013 and under Entry 22 of Part C to the First Schedule to the TNVAT Act, from 29.05.2013 until GST was introduced with effect from 01.01.2017. Importantly, the department had questioned the classification of Lizol as a disinfectant on the basis of an Advance Ruling bearing No.A.C.A.A.R 19/2012-13 D.Dis.Acts Cell II/16835/2012 dated 27.07.2012. The above Advance Ruling was put to challenge before the Hon'ble Madurai Bench of the Madras High Court and the same was set aside holding that Harpic / Lizol was liable to be classified as disinfectants only. The above order



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of the learned Judge was not challenged by the Revenue and has thus attained finality.

b) Reliance was also placed on the fact that the authorities under the Drugs and Cosmetics Act, 1940, had treated Harpic and Lizol as disinfectants as evident from the fact that the petitioner had obtained a drug license under the Drugs and Cosmetics Act for Harpic and Lizol.

c) The Indian Institute of Chemical Technology, Hyderabad, had also certified both Harpic and Lizol as having very high capability to kill bacteria and germs and thus disinfectants.

d) The Central Excise authorities have also treated Harpic and Lizol as disinfectants and classified the same under Chapter 3808.91.

e) Reliance was placed on common / commercial parlance to submit that Harpic and Lizol was treated by the consumers as disinfectants and reliance was sought to be placed on the advertisements issued by the company in this regard.

f) Reliance was also placed on Judgements of various other High Courts including that of Andhra Pradesh, Guwahati etc., to submit that Harpic and Lizol was treated as disinfectants uniformly.



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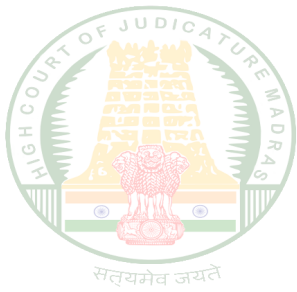
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5. An additional submission was submitted on 16.10.2020 reiterating the earlier submission while also requesting for a personal hearing.

6. The 2nd Respondent had proceeded to pass the impugned orders of assessment treating Harpic and Lizol as falling under Entry 31 of the Fourth Schedule vide HSM Code:3402 which reads as under:

<i>Item No.31 of Fourth Schedule vide HSN Code 3402</i>	<i>Organic surface-active agents (other than soap); surface – active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparation, whether or not containing soap, other than those of heading 3401</i>
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7. Importantly, the impugned order of assessment states that the proposal has been received from the State Tax Enforcement which was not indicated / disclosed in the show cause notice. The impugned order of assessment places reliance primarily on the ingredients used in Harpic and Lizol to reject the classification made by the petitioner while confirming its proposal to treat Harpic and Lizol as falling under Entry 31 of the Fourth Schedule liable to tax at 14% under TNGST. The relevant portion of the impugned order is extracted hereunder :



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“The reply filed by the taxpayer is stated as below:

The taxpayer replied that, since GST act 2017 came into force the company has been classifying harpic and lizol under item no 87 of Third schedule relatable to HSN code 38089400 subject to 18% by classifying it as disinfectants. But the department classify under item no 29,30,31 of fourth schedule relatable to HSN code 3307,3401,3402 subject to 28%.

Since Harpic is a disinfectant used in toilets and lizol is a disinfectant used on floors does not mean the expression Toilet preparation. The expression 'Toilet preparation' listed under item no 29,30,31 of fourth schedule relates to products used in human body like cosmetics, soaps, cream etc. Hence harpic and lizol cannot be used on human body for cleansing therefore they will not fall under entry 29,30,31.

Hence they are used for external purpose as disinfectant they will fall under item no. 87 of Third schedule relatable to HSN code 38089400 subject to 18%.

Further the active ingredient of Harpic is Hydrochloric acid, which is well-known disinfectant and in addition, it has other ingredients like Bis/2 Hydroxyethyl oleylamine, alkyltrimethyl ammonium chloride, methyl salcilate etc which are used for disinfecting surface on which it is applied killing various microorganisms.

The active ingredient of Lizol is Benalkonium Chloride solution and other chemicals used for disinfecting floor, cooking platform, sink etc and kills microorganisms.

In the view of the above the taxpayer classifies Harpic and Lizol as disinfectants and levy 18% tax rate under item no 87 of Third schedule relatable to HSN code 38089400.

The reply of the taxpayer observed and the assessment for the year 2017-2018 is passed as discussed below:-

The issue arises on account of the fact that the item is having both the characteristics of a cleaning preparation and a disinfectant which are classifiable under Chapter 34 & 38 respectively. The three functions of the items are (a) cleaning (b) killing germs and (c) deodorization.

Though the item contains some disinfectant properties, the main usage is as a cleaning preparation that is the primary function of the products is for cleaning of toilet and floor. During this process, it



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cleans the stains, grease and also kills the germs and bacteria present in the bowl.

In support of the above by analyzing the reply of the taxpayer which contains chemical compounds used, ingredients etc the following has been identified:-

Lizol:

The ingredients used are Benzalkonium Chloride solution (Maximum share), Fatty alcohol ethoxylate, Sodium bicarbonate, EDTA tetrasodium and other fragrance and perfumed products and other chemical products.

Here the chemical Benzalkonium Chloride solution which contains 95% of ethanol/ethyl alcohol. The main usage of ethyl alcohol is it act as a solvent for oil, resins, fat etc. It solubilizes the oil and thus removes grease, stains etc

Fatty alcohol ethoxylate which is used as surfactant. The term surfactants mean surface active agents widely used for cleaning purpose. It reduces the surface tension of cleaning solution thus helps it to have easier flowing property.

Sodium bicarbonate which is a salt when dissolves in water breakdown as sodium and bicarbonate which neutralizes the acid. Hence it is used to remove grease and stains etc.

EDTA tetrasodium which is a chelating agent. Chelating agent neutralizes metal ions in hard and converts it into soft water. Hard water is not suitable for cleaning. Hence it is used to convert hard water to soft water for better cleaning purpose and allows surfactants to react over it.

Other than the above main ingredients some fragrant and other perfumed products and chemicals are used.

From the above discussion it is cleared that the use of main active ingredients of Lizol is surface cleaning products not falls under disinfectant.

Harpic:-

The ingredients of Harpic are Hydrochloric acid, Bis/2 Hydroxyethyl oleylamine, alkyltrimethyl ammonium chloride, methyl salicylate etc



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The main ingredient which is Hydrochloric acid above 10% usage is the main corrosive compound used in toilet bowl to remove stains.

The usage of Bis/2 Hydroxyethyl oleylamine is to remove odour and alkyltrimethyl ammonium chloride which is used as surfactants.

Methyl salicylate is used as fragrant agent and odour masking agent.

From above discussions it is concluded that Harpic is exclusively used for cleaning toilets not as disinfectant.”

7.1. On a close reading of the impugned order of assessment I find that though detailed objections under various Heads have been made by the petitioner the impugned order of assessment has not dealt with the same. It is fundamental that any quasi judicial order ought to be made taking into account all factors that are relevant while eschewing the irrelevant. The fact that the impugned order of assessment do not even refer to several aspects raised in the objection indicates that the same has been made without applying its mind to the objections made. It is trite law that when objections are raised a duty is cast on the assessing authority to apply its mind to the objections and deal with each one of them. Failure to do so would vitiate the order of assessment on the ground of non-application of mind.



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8. Secondly, the impugned orders of assessment for the first time reveals that the entire proposal have been made on the basis of the proposal received from the enforcement wing authorities. Since, it is only in the impugned order of assessment it was disclosed for the first time about the fact that proposal had been received from the enforcement wing authorities, the petitioner's was disabled from submitting their objections on the above aspect.

9. I find that the impugned order of assessment suffers from the vice of non-application of mind to the objection and also non-disclosure of the fact the proposal have been received from the enforcement wing thereby the impugned order of assessment stands vitiated.

10. In view of the same the impugned order of assessment is set aside, however, liberty is granted to the 2nd Respondent to pass fresh order of assessment after granting reasonable opportunity to the petitioner in accordance with law, within a period of 4 months from the date of receipt of a copy of this order.



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11. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

Speaking (or) Non Speaking Order
Index: Yes/No
Neutral Citation: Yes/No
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To:
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1. The Principal Commissioner of GST
26/1, GST Bhavan,
Uthamar Gandhi Road, Nungambakkam,
Chennai 600 034.
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MOHAMMED SHAFFIQ, J.

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