

## Executive Overreach in Tax Classification Quashed

In a crucial judgement, the hon'ble Bombay High Court has, in the case of **M/s Schulke India Pvt. Ltd. Vs. Union of India- 2024 (11) TMI 522 (Bom.)**, held that judicial and quasi-judicial authorities must decide issues on classification, rate of tax, etc. independently and without being influenced by the Press Release.

The Ministry of Finance, through a Press Release dated 15.07.2020, classified alcohol-based hand sanitizers, including those traded by the Petitioner, as "disinfectants" subject to an 18% GST. Based on this classification, a Show Cause Notice ('SCN') was issued to the petitioner.

The petitioner contended that the impugned Press Release lacked authority of law, is arbitrary and violated the separation of powers and could undermine fair adjudication. Reliance was placed on the judgement of **Reckitt Benckiser India Ltd. v. CCT (2023) 384 E.L.T. 616 (S.C.)**, wherein the Apex Court classified "Dettol antiseptic liquid" as a "medicament" and since the petitioner's products are similar, the Press Release, contradicting this binding precedent, is arbitrary and should be struck down.

The issue pertains to the validity of the Press Release dated 15.07.2020, where the Ministry of Finance, purporting to exercise executive powers, directed judicial and quasi-judicial authorities to classify alcohol-based hand sanitizers as "disinfectants" subject to 18% GST.

The hon'ble High Court observed that the issue of classification is essentially an issue of interpretation, and it must be undertaken by the judicial and quasi-judicial adjudicatory authorities. The executive cannot overstep into areas exclusively reserved for judicial or quasi-judicial decision-making.

The hon'ble High Court relied upon the judgement of **State of Jharkhand v. Govind Singh (2005) 10 SCC 437**, wherein the Supreme Court held that once a law is enacted, the Legislature becomes functus officio and cannot interpret it, though it can amend or repeal it through a new law. Similarly, in **Miten Shyamsunder Mohota v. Union of India (2008) 5 Mah. LJ 27**, the Bombay High Court reaffirmed that interpretation of the law falls to the courts once the Legislature has enacted it.

It was, thus, held that the classification of a product under the law is a matter for judicial and quasi-judicial authorities, not the executive. Any attempt by the executive to influence or direct these authorities in their decision-making would interfere with their functions and cannot be permitted.

The court further held that while it would not quash the SCN (which could have been issued independently of the Press Release), it found the impugned Press Release to be

improper and quashed it. The authorities were allowed to decide the classification and tax rate independently.

*“37. The above decision assists the Petitioner rather than the Respondents in the case. The impugned Press Release virtually expresses a firm view on the classification of alcohol-based hand sanitisers as “disinfectants” and not “medicaments”. The impugned Press Release urges the authority to levy tax at 18% based on the premise that alcohol-based hand sanitisers are “disinfectants” and not “medicaments”. Though we do not propose to quash the impugned show cause notice cum demand notice dated 17.04.2023 because such a show cause notice could have as well been issued by the Respondents in the absence of the impugned Press Release or independent of the impugned Press Release. At the same time, we are satisfied that the Petitioner has made out a case for quashing the impugned Press Release so that the judicial and quasi-judicial authorities under the Act can decide on the issue of classification and, consequently, the rate of tax independently without even remotely being influenced by the impugned Press Release.”*

The Hon'ble Bombay High Court, in this case, examined the legality of the Press Release dated 15.07.2020, which classified alcohol-based hand sanitizers as "disinfectants" subject to 18% GST. It was held that such executive instructions cannot dictate matters of classification or tax rates, as these fall within the exclusive jurisdiction of judicial and quasi-judicial authorities. It emphasized that decisions regarding legal interpretation must be independent of executive influence to uphold the principle of separation of powers. Although the SCN issued based on the Press Release was flawed, the Court refrained from quashing it, noting that the proper officer could have issued it independently. This judgment reinforces the importance of judicial independence and the need to prevent executive overreach in matters of legal adjudication.