State of Gujarat

v.

Sakarwala Brothers

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER RAMASWAMI HON'BLE JUSTICE V. BHARGAVA

Civil Appeal No. 549 of 1965 | 27-09-1966

DESAI, C.J.

1. This is a reference under section 61(1) of the Bombay Sales Tax Act, 1959. The opponents are registered dealers dealing inter alia in "patasa", "harda" and "alchidana". The opponents requested the Deputy Commissioner of Sales Tax (Appeals), Gujarat State, Ahmedabad, to determine under section 52(1)(e) of the Bombay Sales Tax Act, 1959, whether any tax was payable in respect of the sales of "patasa", "sakar", "bura sugar", "harda" and "alchidana". Along with their application, they sent two copies of bills Nos. 46, 85 and 92 dated respectively 2nd May, 1960, 1st July, 1960, and 9th July, 1960. The Deputy Commissioner of Sales Tax held that the sale of "bura sugar" was exempt from tax as the item was covered by entry 47 of Schedule A to the Bombay Sales Tax Act, 1959, whilst the sales of other articles were covered by entry 22 of Schedule E to the Act and tax was payable on them. By a further order dated 3rd October, 1960, the Deputy Commissioner rectified the earlier order and held that the other articles were covered, not by entry 22 of Schedule E, but by entry 31 of Schedule C to the Act. The Commissioner of Sales Tax in revision, by his order dated 24th October, 1960, held that "sakar" (sugar-candy) was a form of sugar and was covered by the definition of sugar in entry 47 of Schedule A and was also exempt from tax. He held that articles like "patasa", "harda" and "alchidana" were products of sugar and not sugar as such in any form. The matter was carried further before the Sales Tax Tribunal. The Tribunal held that "patasa", "harda" and "alchidana" should be treated as forms of sugar and not sweets or products of sugar and were covered by entry 47 of Schedule A and were exempt from tax.

2. At the instance of the State of Gujarat, this reference has been made for the determination of the following questions :

"(1) Whether on the facts and in the circumstances of the case the sales of patasa, harda and alchidana (small lumps of sugar) effected by the opponents under their bills Nos. 46 and 92 dated 2nd May, 1960, and 9th July, 1960, respectively are exempt from the payment of all taxes leviable under the Bombay Sales Tax Act, 1959, adapted to the State of Gujarat by virtue of entry 47 in Schedule A to the said Act ?

(2) Whether the sales of patasa, harda and alchidana by the opponents can be regarded as the sales of sweets and sweetmeats within the meaning of entry 31 of Schedule C to the Bombay Sales Tax Act, 1959, or whether such sales should be covered by entry 22 of Schedule E of the Act ?"

The Tribunal has clarified the fact that "alchidana" or small lumps of sugar referred to by them did not contain any edible articles such as seeds of cardamom or groundnuts but were pure lumps of sugar. In the judgment of the Tribunal it has been observed as under :-

"If the chemical composition of the articles is to be taken as a guide in interpreting the entry 47 there is no doubt that patasa, harda and the alchidana are merely different forms of sugar as defined by the Central Excises and Salt Act, 1944. We were informed that a small portion of hydrogen sulphide is passed through the sugar solution for bleaching purposes after which patasas are prepared by splashing the solution on a piece of wood which converts the sugar into amorphous sugar, the hardas are prepared by pouring the solution into moulds which is then allowed to cool and the alchidanas are prepared by rapidly passing the solution of appropriate thickness through a sieve so as to convert it into granulated lumps of sugar. But whatever the process these articles are only forms of refined sugar with the requisite sucrose content .... After undergoing all the process, the articles continue to be sugar as defined by the Excises and Salt Act and the fact that they are distributed on festive occasions will not make them anything else than sugar on that account. It may be noted that it is possible to convert any of these articles into other articles by dissolving them in water and subjecting the solution to an appropriate process. They can

also be put to the same use to which sugar-candy or bura sugar can be put."Section 5(1) of the Bombay Sales Tax Act, 1959, provides as under :-

"Notwithstanding anything in this Act, but subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule."

Entry 47 in Schedule A runs as under :-

"Sugar as defined in Item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944."

Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, is thus exempt from payment of tax under the Sales Tax Act, 1959. Item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, defines sugar as under :-

"Sugar means any form of sugar containing more than 90 per cent. of sucrose."

What we have to consider is whether "patasa", "harda" and "alchidana" could be regarded as forms of sugar containing more than 90 per cent. of sucrose. It is not disputed that "patasa", "harda" and "alchidana" contain more than 90 per cent. of sucrose. The only question is whether they could be regarded as forms of sugar, "Patasa", "harda" and "alchidana" are made from sugar. The process by which they are made has been set out by the Tribunal and the relevant passage in that connection has been quoted above. On these facts, we will have to consider whether "patasa', "harda" and "alchidana" are forms of sugar within the meaning of the definition of sugar.

3. It has been strongly urged by the learned Advocate-General, who appears on behalf of the applicant, that the words "any form of sugar" refer to any variety of sugar and that the words do not mean sugar in any form. He urges that the

word "form" has not been used in the sense of shape or size but that it has been used to indicate varieties of sugar. When the Legislature intended to refer to any variety of any goods it has used apt language for doing so. Item 14 in the First Schedule to the Central Excises and Salt Act, 1944, in connection with tea provides as under :-"'Tea' includes all varieties of the product known commercially as tea and also includes green tea." Item 16 which relates to soap provides that soap means all varieties of the product known commercially as soap. If the legislative intent was only to refer to all varieties of sugar, then even the term sugar standing by itself would have been sufficient to cover the same. When the Legislature uses the words "any form of sugar" the Legislature could not be intended to mean any variety of sugar. The words "any form" have been used also in connection with item 9 in the same Schedule in connection with tobacco. It is there stated that tobacco means any form of tobacco whether cured or uncured and whether manufactured or not and includes the leaf, stalks and stem of the tobacco plant but does not include any part of tobacco plant while still attached to the earth. The Legislature has used the words "any form" in a sense distinct and different from any variety. The words "any form of sugar" are intended to cover sugar in any form, by whatever name called. The qualifying words are that it must contain more than 90 per cent. sucrose. In considering the use of these words in the Central Excises and Salt Act, 1944, we are dealing with the use of the words in an enactment intended for the levy of excise duty. The Legislature, by using the words "any form of sugar" has intended to cover sugar of any variety in whatever form it may be found and by whatever name it may be called.

4. Mr. Nanavaty the learned Advocate on behalf of the opponents, drew our attention to a decision of the Assam High Court in the case of Kapildeoram Baijnath Prosad v. J. K. Das and Others ([1954] 5 S.T.C. 365.), where the Court had to consider whether "chira" and "muri" could be said to be covered by the words "all cereals and pulses including all forms of rice". In that case, the Advocate-General of the Assam High Court contended that the word "forms" used in connection with rice should be confined to mere varieties of rice but the said contention did not find favour with the Court. "Chira" is parched beaten rice. It involves the process of boiling paddy, its dehydration, frying and flattening. "Muri" involves the process of soaking, boiling and dehydration of paddy and the removal of husks. As a result of these processes the article rice becomes edible and can be taken as food without any more cooking. Even the article, when so transformed, bears a different name and cannot be commonly recognised as rice. Chief Justice Sarjoo Prosad in that case has observed that it

seemed to him that these commodities could be regarded more as forms of rice than products thereof and were exempt from tax under the Assam Sales Tax Act, 1947. In our view, the word "form" would connote a visible aspect in which the thing exists or manifests itself. Sugar may manifest itself in the form of "patasa" as a result of certain simple processes being carried out. It may similarly manifest itself in the form of "alchidana" or small lumps of sugar or as "harda". If sugar so manifests itself, it cannot be said that sugar has ceased to be sugar merely because it takes a particular shape or form which appeals to certain class of people on festive occasions. It has been stated by the Tribunal that all these articles could be put to the same use to which sugar-candy or "bura" sugar could be put.We have been referred to a case reported in Jethmal Ramswaroop and Others v. The State and Others ([1959] 10 S.T.C. 270.). In that case the High Court of Rajasthan had to consider a notification granting exemptions from sales tax to "sugar including refined sugar, khandsari and palmyra sugar but excluding all preparations thereof such as sweets, sugar-candy, confectionery, etc." In that case the Court held that "misri" (sugar-candy), "batasa" (same as "patasa"), makhana, ola and toys made from sugar were not merely sugar and were not covered by the exemption. By the very language used in the exemption notification, sugar-candy is regarded as a preparation of sugar and is excluded from the exemption. The words which we have to construe in the present case are distinct and different from the words which the High Court of Rajasthan had to consider.

5. It was urged by the learned Advocate-General that the word "sugar" in entry 47 has been used in the same sense in which it is used in common parlance and that in common parlance, "patasa", "harda" and "alchidana" are not commercially known as and cannot be asked for or obtained as sugar. The learned Advocate-General is right when he says that the articles known as "patasa", "harda" and "alchidana" bear a distinct and different name from sugar and are not commercially purchased or sold as sugar. The Legislature, in entry 47, does not use the word sugar simpliciter. It has in terms stated that what is covered is sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944. When we turn to the definition appearing in the aforesaid item No. 8 that definition is not intended merely to cover sugar as known in common parlance. As stated by us earlier, it is intended to cover all forms of sugar. It is further intended to cover only sugar in any form which contains more than 90 per cent. of sucrose. A definition which refers to the chemical contents of an article cannot be said to be a definition which is intended to cover the article as understood in common parlance. It is with a

view to give a meaning different from that which the article bears in common parlance that a special definition has been given, and it is not possible for us to interpret the words used in entry 47 as only covering the term sugar as used in common parlance. A reference has been made to a decision of the Supreme Court reported in Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool ([1960] 11 S.T.C. 827; A.I.R. 1961 S.C. 412.). In that case, it was held that when raw groundnut oil was converted into refined oil by a process whereunder the non-oily content of the raw oil was separated and removed, rendering the oily content of the oil hundred per cent., the groundnut oil so refined continued to be groundnut oil within the meaning of rules 5(1)(k) and 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, notwithstanding that such oil did not possess the characteristic colour or taste, odour etc., of the raw groundnut oil. It was further held that the fact that in the course of hydrogenation the oil absorbed two atoms of hydrogen and that there was an intermolecular change in the content of the substance was not decisive of the matter. They held that there was no use to which the groundnut oil could be put for which the hydrogenated oil could not be used and that there was no use to which the hydrogenated oil could be put for which raw oil could not be used. On the facts of the present case, in spite of the fact that sugar assumes the forms of "patasa", "harda" and "alchidana", they could be put to the same use as sugar. In our view the term "sugar" as used in entry 47 is wide enough to cover "patasa", "harda" and "alchidana".Our answer to the first question is in affirmative. For the purpose of this answer, the term "alchidana" is confined to "alchidana" which consists purely of lumps of sugar and do not contain any other edible article such as the seeds of cardamom or groundnut etc.

6. In view of our answer to question No. (1), Mr. Nanavaty who appears on behalf of the opponents, does not press question No. (2), and that question is accordingly not answered.

The applicant will pay to the opponents the costs of the reference.

The State of Gujarat appealed to the Supreme Court.

N. S. Bindra, Senior Advocate (R. H. Dhebar with him), for the appellant.

A. K. Sen, Senior Advocate (S. L. Modi and O. C. Mathur of J. B. Dadachanji & Co. with him), for the respondents.

JUDGMENT

The Judgment was delivered by

RAMASWAMI, J. - The question of law involved in this appeal is whether the sales of patasa, harda and alchidana (small lumps of sugar) fall within the definition of "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959 (No. 51 of 1959) (hereinafter called the "Bombay Sales Tax Act") and are exempt from the payment of sales tax.

7. The respondents applied under section 52 of the Bombay Sales Tax Act to the Deputy Commissioner of Sales Tax to determine whether any tax was payable on the sales of patasa, sakar, bura sugar, harda and alchidana effected by them under their bills No. 46 dated 2nd May, 1960, No. 85 dated 1st July, 1960, and No. 92 dated 9th July, 1960. The Deputy Commissioner of Sales Tax held that the sale of "bura sugar" was exempt from tax as the item was covered by entry 47 of Schedule A to the Bombay Sales Tax Act, whilst the sales of other articles were covered by entry 22 of Schedule E to the Act and tax was payable on them as such. By a further order dated the 3rd October, 1960, the Deputy Commissioner rectified the earlier order and held that the other articles were covered not by entry 22 of Schedule E, but by entry 31 of Schedule C to the Act. The Commissioner of Sales Tax, however, revised the order of the Deputy Commissioner of Sales Tax and by his order dated 24th October, 1960, held that sakar (sugar-candy) was a form of sugar and sales thereof were exempt from tax under entry 47 of Schedule A to the Bombay Sales tax Act. He further held that articles like patasa, harda and alchidana were products of sugar and not sugar as such in any form. Thereafter, the respondents preferred an appeal to the Gujarat Sales Tax Tribunal which held that patasa, harda and alchidana should be treated as forms of sugar and not sweets or products of sugar and were covered by entry 47 of Schedule A and were exempt from tax. At the instance of the State of Gujarat the Tribunal referred the following questions of law for the opinion of the Gujarat High Court"(1) Whether on the facts and in the circumstances of the case the sales of patasa, harda and alchidana (small lumps

of sugar) effected by the opponents under their bills Nos. 46 and 92 dated 2nd May, 1960, and 9th July, 1960, respectively are exempt from the payment of all taxes leviable under the Bombay Sales Tax Act, 1959, adapted to the State of Gujarat, by virtue of entry 47 in Schedule A to the said Act;

(2) Whether the sales of patasa, harda and alchidana by the opponents can be regarded as the sales of sweets and sweetmeats within the meaning of entry 31 of Schedule C to the Bombay Sales Tax Act, 1959, or whether such sales should be covered by entry 22 of Schedule E to the Act."

By its judgment dated the 11th December, 1962, the High Court answered the first question in the affirmative in favour of the respondents and in view of the answer to the first question the High Court did not answer the second question. This appeal is brought by special leave against the judgment of the Gujarat High Court dated the 11th December, 1962, in the Sales Tax Reference.

Section 5(1) of the Bombay Sales tax Act provides as follows :-

"Notwithstanding anything in this Act, but subject to the conditions or exceptions (if any) set out against each of the goods specified in column 3 of Schedule A, no tax shall be payable on the sales or purchases of any goods specified in that Schedule."

Entry 47 in Schedule A states as under :-

"Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944."

Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, is thus exempt from payment of tax under the Bombay Sales Tax Act. Item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, defines sugar as follows :-"Sugar means any form of sugar containing more than 90 per cent. of sucrose."

Item No. 31 of Schedule C of the Bombay Sales tax Act states :

"Goods, the sale or purchase of which is subject to sales tax or purchase tax and the rates of tax.

----------- S. No. Description of goods Rate of Rate of sales tax purchase tax

31 Sweets and sweetmeats (including Five Five shrikhand, basundi and doodhpak) naye paise naye paise except when sold in sealed in the in the containers of weight not exceeding rupee. rupee." five seers in each container.

The Tribunal said that alchidana or small lumps of sugar referred to by them did not contain any edible articles such as seeds of cardamom or groundnuts but were pure lumps of sugar. In the course of its judgment, the Tribunal observed as follows :-

"If the chemical composition of the articles is to be taken as a guide in interpreting the entry 47 there is no doubt that patasa, harda and the alchidana are merely different forms of sugar as defined by the Central Excises and Salt Act, 1944. We were informed that a small portion of hydrogen sulphide is passed through the sugar solution for bleaching purposes after which patasas are prepared by splashing the solution on a piece of wood which converts the sugar into amorphous sugar; the hardas are prepared by pouring the solution into moulds which is then allowed to cool and the alchidana are prepared by rapidly passing the solution of appropriate thickness through a sieve so as to convert it into granulated lumps of sugar. But whatever the process these articles are only forms of refined sugar with the requisite sucrose content .... After undergoing all the process, the articles continued to be sugar as defined by the Excises and Salt Act and the fact that they are distributed on festive occasions will not make them anything else than sugar on that account. It may be noted that it is possible to convert any of these articles into other articles by dissolving them in water and subjecting the solution to an appropriate process. They can also be put to the same use to which sugar-candy or bura sugar can be put."The question which we have to consider is whether patasa, harda and alchidana are "forms of

sugar containing more than 90 per cent. of sucrose" and hence are covered by the definition of entry 47 of Schedule A to the Bombay Sales Tax Act. It is not disputed that patasa, harda and alchidana contain more than 90 per cent. of sucrose. It is contended, however, by Mr. Bindra on behalf of the appellant that they are not "forms of sugar" but they are products of sugar and do not fall within entry 47 of Schedule A. We are unable to accept this argument as correct. It is not disputed on behalf of the appellant that the chemical composition of patasa, harda and alchidana is the same as that of sugar, viz., there is more than 90 per cent. of sucrose. Mr. Bindra, however, laid stress on the argument that patasa, harda and alchidana were sweets used on festive occasions. But this circumstance has no relevance on the question of legal classification for the purpose of the Bombay Sales Tax Act. On the other hand, it appears from the judgment of the Tribunal that it is possible to convert these articles into sugar by dissolving them in water and by subjecting the solution to an appropriate process. It is stated by the Tribunal that these articles can be put to the same use to which sugar-candy can be put. It is, therefore, manifest that patasa, harda and alchidana are only different forms of refined sugar with the requisite sucrose contents. It is argued by Mr. Bindra that the phrase "any form of sugar" referred to any variety of sugar and phrase cannot be taken to mean sugar in any form. It is not possible to accept this argument as correct. If the Legislature had intended to refer to "any variety of sugar" there is no reason why it should not have used that expression in item No. 47. It is significant that item No. 14 which relates to tea states as follows :"'Tea' includes all varieties of the product known commercially as tea and also includes green tea."

Item 16 which relates to soap provides that soap means "all varieties of the product known commercially as soap". But in item No. 47 the Legislature has used the words "any form of sugar" and not "any variety of sugar". We are accordingly of opinion that the word "sugar" in item No. 47 is intended to include within its ambit all forms of sugar, that is to say sugar of any shape or texture, colour or density and by whatever name it is called. The qualifying words are that it must contain more than 90 per cent. of sucrose. We hold that the view taken by the High Court is correct and the argument of Mr. Bindra on behalf of the appellant must be overruled.

8. In the course of his argument reference was made by Mr. Bindra to the decision of Henrietta Louise Lutz v. Daniel Magone, Collector, etc. (153 U.S. 105; 38 L.Ed 651), in which it was held that in the interpretation of revenue

laws, words are to be taken in their commonly received and popular sense, or according to their commercial designation, if that differs from the ordinary understanding of the word. The question involved in that case was whether the plaintiffs were entitled to free importation of saccharine on the ground that it was an acid used for medicinal, chemical or manufacturing purpose. It was held by the Supreme Court that these words should be received in their ordinary acceptation and to speak of a substance, as an acid, which is admitted to be three hundred times as sweet as sugar, was to confuse all our natural impressions with respect to the relative qualities of acidity and sweetness. This decision has no application to the present case where the facts are manifestly different.Learned counsel also referred to the decision in the Unites States v. One Hundred and Twelve Casks of Sugar, Nathan Goodale ((1834) 8 Peters 276), where it was observed by the Supreme Court that the denomination of merchandise, subject to the payment of duties, is to be understood in a commercial sense, although it may not be scientifically correct. The question which arose in that case was whether the Collector of the District of Mississippi was entitled to seize and forfeit casks of sugar in a state of partial solution in water on the ground that the article was sugar and not syrup. The argument of the claimant was that the article fell under the class of syrup and ad valorem duty of fifteen per cent. is paid only if there is no false designation of the merchandise. The Supreme Court was not able to decide upon the evidence whether the article was liable to be charged to specific duty as sugar but affirmed the decree of the lower court that the property seized should be restored to the claimant on the payment of 15 per cent. of ad valorem duty and that the libel be dismissed. The Supreme Court treated the question as essentially a question of fact and thought fit not to interfere with the finding of the lower court that the contents of the casks were syrup and were liable to the lower rate of duty. On behalf of the respondents, however, reliance was placed on M/s. Tungabhadra Industries Ltd. v. Commercial Tax Officer, Kurnool ([1961] 2 S.C.R. 14; 11 S.T.C. 827), in which the question at issue was whether the appellant was entitled to a deduction in respect of sales of hydrogenated groundnut oil under rules 4 and 5 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. It was decided by this Court that the hydrogenated groundnut oil continued to be "groundnut oil" notwithstanding the processing which was merely for the purpose of rendering the oil more stable. To be groundnut oil two conditions had to be satisfied - it must be from groundnut and it must be "oil". The hydrogenated oil was from groundnut and in its essential nature it remained an oil. It continued to be used for the same purpose as groundnut oil which had not undergone the process. It was further stated the mere fact that hydrogenated oil was semi-solid did not alter its

character as an oil.For the reasons already expressed we hold that the decision of the Gujarat High Court dated December 11, 1962, is correct and that this appeal must be dismissed with costs.

9. Appeal dismissed.