

**(2012) 11 GAU CK 0041**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 1794 of 2004, 2225, 2226 and 2227 of 2005

Bhola Ram Kanoo

APPELLANT

Vs

State of Assam and Others

RESPONDENT

---

**Date of Decision :** 09-11-2012

**Acts Referred:**

Assam General Sales Tax Act, 1993 — Entry 17 of Schedule I

**Citation :** (2013) 2 GLD 639 : (2013) 2 GLT 390 : (2012) 56 VST 163

**Hon'ble Judges :** A.K. Goel, C.J.;N. Kotiswar Singh, J

**Bench :** Division Bench

**Advocate :** A.K. Saraf, S.K. Agarwal and D. Barua, for the Appellant;

---

## **Judgement**

N. Kotiswar Singh, J.—The common issue raised in this batch of writ petitions filed by the same petitioner, W.P. (C) No. 1794 of 2004, W.P. (C) No. 2225 of 2005, W.P. (C) No. 2226 of 2005 and W.P. (C) No. 2227 of 2005, is whether, "raab gur" is to be exempted from payment of tax under the Assam General Sales Tax Act, 1993 (hereinafter referred to as "the Act") by treating the same as "gur" which is exempted from tax under entry 17 of Schedule I of the Act or by treating the same as a "cattle feed" which is also exempted from tax under entry 50 of the said Schedule. The petitioner in this batch of writ petitions is engaged in the business of sale and supply of gur, jaggery, raab gur, molasses, etc., in the State of Assam. The said items are brought from different States where they are manufactured and sold in the State of Assam. According to the petitioner, the authorities imposed the tax under the Act in spite of objections raised by the petitioner that "raab gur" is a form of "gur" which is not fit for human consumption and solely used as cattle feed which is exempted from tax under the Act. According to the petitioner, "raab gur" is nothing but another form of "gur". It is stated that after the juice is extracted from sugarcane, the juice is thickened by dehydration and takes the form of "raab" which is a semi-liquid form of sugarcane juice. After boiling the "raab" in a crystallizer, the same is allowed to get cooled and crystals are formed which are then rotated in the

crystallizer. The said crystals "raab", are put into a centrifugal machine and during the process of infusion of sulphur, the semi solid sugarcane is cleaned and whitened. The "raab" which is not put into centrifugal machine but dehydrated and hardened by open pan process becomes "gur" which is used for human consumption. On the other hand, the "raab" which is not allowed to be hardened, is sold in semi-solid form, is not fit for human consumption but used only for feeding cattle. Thus, according to the petitioner, "raab gur" is nothing but another form of "gur" which is not fit for human consumption but used for feeding cattle.

2. According to the petitioner, the fact that the "raab gur" is another form of "gur" is also clearly evident from the definition of "gur" as given in the Gur Control Order, 1994, the Gur Movement Control Order, 1963 and the Gur (Regulation of Use) Order, 1968.

3. The Gur Control Order, 1994 defines "gur" as:

2. (a) "Gur" means an article obtained after boiling sugarcane juice, with or without admixture of molasses and containing--

(i) total sugars (sucrose plus reducing sugars) ranging from 70 to 95 percent of dissolved solids; and

(ii) ash (sulphated) ranging from 1.5 to 5 per cent, of dissolved solids and includes guljaggery, shakkar, rab or intermediary product of sugarcane juice in its solid form.

4. Similarly, the Gur Movement Control Order, 1963, defines "gur" as:

2. (c) "gur" means the article commonly known as gur, gul jaggery, shakkar and raab includes uncrystallised sugar in any other form comprising original and convertible molasses and other impurities inherent or foreign, prepared by boiling sugarcane juice with or without admixture of molasses or pure molasses:

5. And the Gur (Regulation of Use) Order, 1968 defines "gur" as under:

In this order, "gur" means the gur, gul jaggery, shakkar, raab and other intermediary products, prepared by boiling sugarcane juice with or without admixture of molasses which is identifiable by the following characteristics, namely:--

(i) total sugars (sucrose plus reducing sugars) as percentage of dissolved solids ranging from 70 to 95 and

(ii) ash (sulphated) as percentage of dissolved solids ranging from 1.5 to 5.0 and includes a solution of any of the aforesaid articles in water.

6. Accordingly, the petitioner contended that "raab gur" being another form of "gur" is covered by entry 17 of Schedule I of the Act.

7. The petitioner also contends that cattle feed was once not an exempted item

and was taxable and during that time, the assessing authority had assessed the item "raab gur" as a cattle feed and imposed tax at the rate of four percent on the turnover as can be seen from the assessment order dated March 27, 2002 in annexure E to W.P. (C) No. 1794 of 2004. The petitioner, therefore, contends that even if "raab gur" is not treated as "gur" for the purpose of entry 17, it, being a "cattle feed" will be covered by entry 50 for exemption from tax under the Assam General Sales Tax Act, 1993.

8. As the petitioner did not pay tax on the aforesaid item "raab gur" treating to be an exempted item, the assessing authority imposed the tax. In W.P. (C) No. 1794 of 2004, respondent No. 4 vide order dated November 29, 2002 imposed tax at eight percent on the petitioner treating "gur" to be taxable against which the petitioner preferred a revision petition before the Joint Commissioner of Taxes, Assam. The Joint Commissioner of Taxes vide his order dated January 28, 2004 dismissed the revision petition with the finding that "raab gur" is neither a "cattle feed" nor a "gur" and held that "raab gur" is not included in Schedule I or any Schedule and is to be treated as unclassified goods under entry 2 of Schedule III and taxable at eight percent.

9. The relevant portion of the said order dated January 28, 2004 is reproduced hereinbelow:

I have heard both the parties to the issue and perused the records. The petitioner classified "rub gur" as cattle feed and claimed deduction on the turnover of the item. The claim of deduction was not entertained by the assessing officer who held that "rub gur" is not exempted goods as per Schedule I attached to the Act. Any item which is enlisted in Schedule I is exempted from levy of tax under the Act. It is seen that gur and jaggery are exempted as per entry 17 of Schedule I. "Rub gur" is not included in this entry nor in any other entry of Schedule I or any other Schedule. So it is unclassified item which should be covered by entry 2 of Schedule III and hence taxable at eight percent. Entry 50 of Schedule I includes cattle feed, which is therefore exempted. Now let us consider if "rub gur" is a cattle feed. In common parlance "rub gur" is a form of gur and not cattle feed. I cannot agree to the contention of the petitioner that "rub gur" is used only as cattle feed. It has many other known uses. Also, the ultimate use of an item cannot be a criteria for the purpose of classification. The statutory provision is clear when it include "gur and jaggery" in entry 17 of the Schedule I and "rub gur" or any other form of gur are not included in entry 17 of Schedule I. "Rub gur" being not included in Schedule I or any other Schedule should be classified as an unclassified goods under entry 2 of Schedule III and is taxable at eight percent. I am therefore of the opinion that the assessing officer was justified in treating "rub gur" as an unclassified item as per entry 2 of Schedule III. I therefore find no reason to interfere with the order of assessment made by the assessing officer.

In the result, the petition of revision fails.

10. In these writ petitions, the aforesaid revisional order dated January 28, 2004 and consequential orders levying tax on "raab gur" are under challenge.

11. It is the case of the Revenue that even though "gur and jaggery" are exempted as per entry 17 of Schedule I of the Act, "raab gur" is a different item and is not included in the entry in any other entry of Schedule I or any other Schedule. Therefore, it is an unclassified item which would be covered by entry 2 of Schedule III of the Act and accordingly, taxable at eight percent. As regards the contention of the petitioner that the "raab gur" is also used as cattle feed and hence exempted from tax under entry 50, it is the stand of the Revenue that "raab gur" is used not only as a cattle feed but has other uses. The Revenue also contended that the ultimate use of an kern cannot be criteria for the purpose of classification.

12. Therefore, the issue to be decided by this court is whether "raab gur" is to be treated as "gur" so as to be covered under entry 17 of Schedule I of the Act for exemption from payment of tax. Similarly, if "raab gur" is treated as a "cattle feed" it will also enjoy exemption, as "cattle feed" is exempted under entry 50 of Schedule I of the Act.

13. The first contention of the petitioner is that "raab gur" is another form "gur" and hence should be treated as "gur" for the purpose of exemption under entry 17 of Schedule I of the Act. The petitioner has also relied upon the definition of "gur" as given in Gur Control Order, 1994, the Gur Movement Control Order, 1963 as well as the Gur (Regulation of Use) Order, 1968, to show that "gur" also means "raab gur".

14. It is now well-settled that definition of a word in another statute cannot be imported unless the Acts are *pari materia* and the word or expression used in any statute is to be used in the context of the particular statute for the reason that the legislative intent in the different statutes may be different. The present issue involving meaning of "gur" and "raab gur" is in the context of the exemption clause under the Assam General Sales Tax Act, 1993. By the exemption provided, certain articles which, otherwise, would be subjected to tax are exempted from tax. Therefore, by the very nature of the statute, only such items which are specifically mentioned under the exemption clause are to be exempted from tax. There could not be liberal interpretation of the exemption clause to enlarge the scope of exemption unless the statute so intends. The orders cited by the petitioner essentially relate to control/regulation of the movement of "gur". It is possible that the Legislature might have intended to enlarge the scope of the definition clause to bring more articles under control or regulation while issuing the aforesaid orders. These orders are neither cognate laws nor are in *pari materia* with the Assam General Sales Tax Act, 1993. Therefore, it may not be appropriate to rely on the definition of "gur" given in these orders for the purpose of explaining the meaning of "gur" under the Act for determining the scope of exemption provided under the Assam General Sales Tax Act, 1993.

15. Further, it is also seen from the definitions of "gur" given in these orders that "molasses" is also included within the meaning of "gur". In entry 17 of Schedule I, the exempted items are "gur and molasses". Therefore, if molasses which otherwise is also a kind of "gur" is included in the exemption clause, it is clear indication that all forms of "gur" are not exempted except those mentioned therein. Therefore, unless "gur" means and is identical to "raab gur", it cannot be brought within the scope of entry 17 of Schedule I of the Act. If the intention of the Legislature was to bring all kinds of "gur" for the purpose of exemption, there was no need to mention "molasses" which is also another form of "gur" within the said entry. Therefore, we are also in agreement with the Revenue that even though "raab gur" in common parlance is a form of "gur", it is a distinct item and not the same as "gur" and is not specifically included in the Schedule I or any other Schedule for the purpose of exemption. Hence, "raab gur" cannot enjoy exemption from tax under entry 17 of Schedule I of the Act.

16. We will now examine the other contention of the petitioner that "raab gur" being an item of cattle feed can be exempted from tax under entry 50 of Schedule I of the Act. It is the specific stand of the petitioner that "raab gur" is not fit for human consumption and used as a cattle feed. It is not disputed by the authorities that "raab gur" is used as a cattle feed. The only case of the Revenue is that apart from its use as a cattle feed, there are other many known use and the ultimate use of an item cannot be criteria for the purpose of classification. We are unable to agree with this stand of the Revenue inasmuch as it is not shown as to the primary known uses of "raab gur" other than as a cattle feed. Even if "raab gur" is used for other purposes as contended by the Revenue, the fact that "raab gur" is used as a cattle feed is not denied by the Revenue authorities. Since, cattle feed is exempted under entry 50 of Schedule I of the Act, "raab gur" which is also used as a cattle feed would be exempted under the said entry 50. Cattle feed could be of any substance known by different names or may consist of different products and there is no reason as to why any substance, if known and used as a "cattle feed" would not enjoy exemption under entry 50 of Schedule I of the Act.

17. The Revenue also held that the ultimate use of an item cannot be the criteria for the purpose of classification. We are not able to agree with this proposition. End use of a merchandise has been accepted as an important criterion for classification under the excise laws. In *Commissioner of Central Excise, Calcutta Vs. Sharma Chemical Works*, , the Supreme Court held that (pages 261 and 262 in 132 STC):

...The main criteria for determining classification is normally the use it is put to by the customers who use it. The burden of proving that banphool oil is understood by the customers as a hair oil was on the Revenue. This burden is not discharged as no such proof is adduced. On the contrary, we find that the oil can be used for treatment of headache, eye problem, night blindness, reeling head, weak memory, hysteria, amnesia, blood pressure, insomnia, etc. The

dosages required are also set out on the label. The product is registered with the Drug Controller and is being manufactured under a drug licence."

18. Even though, in the said case, the Supreme Court was dealing with issue whether "banphool oil" is classifiable as a "perfumed hair oil" or as an "ayurvedic medicament" under the Central Excise Tariff Act, 1985, we are of the view that the said principle of "end user" may be also applied in the present case to ascertain the scope of the entry "cattle feed". If the end use of "raab gur" can be cattle feed, we are of the view that "raab gur" can be also treated as cattle feed.

19. The respondents in their affidavit-in-opposition (filed in W.P. (C) No. 1794 of 2004) stated that with the growth of scientific and modern practices of agriculture and animal husbandry, market has witnessed large scale circulation of a distinct and unique merchandise described and understood as "cattle feed" and any attempt to give a generalised meaning to the term so as to include within the sweep thereof other commodities or goods would be gravely erroneous as it would vitiate the very basis and principle of commodity taxation. However, nothing has been mentioned as to what are those products and merchandise which are distinct and unique which can be described and understood as "cattle feeds". If it is accepted by the authorities that "raab gur" is also a "cattle feed", merely because it has other uses will not detract it from coming within the purview of entry 50. There is no indication in the Assam General Sales Tax Act, 1993 that only a particular kind of merchandise will be treated as "cattle feed" for the purpose of entry 50. It may be relevant to mention here that the Revenue authorities themselves had once treated "raab gur" as a cattle feed for the purpose of taxation when the said item "cattle feed" was not included as an exempted item earlier. Therefore, we are of the view that "raab gur" being a cattle feed would be liable to be exempted from tax under entry 50 of Schedule I of the Assam General Sales Tax Act, 1993. As a result these writ petitions are allowed. The respondent-authorities are restrained from levying tax on the petitioner in respect of the item "raab gur" which is a "cattle feed", which is covered by entry 50 of Schedule I of the Assam General Sales Tax Act, 1993 and respondents-authorities are directed to act vis-a-vis the petitioner accordingly.