

(1999) 06 GAU CK 0028
In the Gauhati High Court
Case No : Civil Rule No. 2841 of 1993

Kamal Jain

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 04-06-1999

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 74
Constitution of India, 1950 — Article 14, 19, 301

Citation : (1999) 3 GLT 4

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : O.P. Bhati, B.K. Jain and B.K. Chetri, for the Appellant; H.N. Sharma, Additional Senior Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

N. Sharma, J.—By this writ petition, petitioner seeks to challenge the inclusion of sugar other than the sugar candy as item excluded from the provisions of the Assam General Sales Tax Act, 1993 in SI. No. 36 of the First Schedule in the list of exempted item.

2. The petitioner has started Misri business, after coming into force of the Assam General Sales Tax Act, 1993 (hereinafter referred to "the Act, 1993") and he is the sole proprietor of Monika Enterprise at Guwahati. The contention of the petitioner is that prior to repeal of the Assam Sales Tax Act, 1947 by Section 74 of the Act, 1993, "sugar candy" was exempted from tax being "sugar" vide item/serial No. 46 of the Third Schedule to the repealed Act. But subsequently, vide item No. 36 of the First Schedule appended to the Assam General Sales Tax Act, 1993, the definition of sugar was altered by the State Legislature. By this, sugar candy has been excluded from the purview of sugar and made taxable within serial No. 2 of the Third Schedule appended to the Act, 1993 at 8 paise in the rupee. Challenging the legislative competency to alter the definition of "sugar", so as to exclude sugar candy from its purview, it is submitted by Mr. Bhati,

learned counsel for the petitioner that sugar vide Clause (viii) of Section 14 of the Central Sales Tax Act, 1956 is one of the items of special importance in inter-State trade or commerce, wherein sugar is defined as follows :

"(viii) sugar covered under sub-heading Nos. 1701.20, 1701.31, 1701.39 and 1702.11 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)."

3. Mr. Bhati further inviting to the definition submitted that Clause 24, chapter 17 of the Central Excise Tariff Act, 1985 defines sugar, which means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105 Co would be more than 90 for the purpose of sub-heading namely, 1710.10, 1701.20, 1710.31 and 1701.39 and that specially sub-headings 1701.20 and 1701.39 give a wide definition of "sugar" so as to include any form of sugar including sugar candy which is nothing but purified sugar itself, as sugar candy contains no other ingredients but sugar and that it is not a distinct item.

4. From the above submission made on behalf of the petitioner the issues for decision would be : (a) whether sugar candy is nothing but a purer form of sugar containing more than 90 per cent sucrose and (b) if it is so, whether it can be excluded from the purview of sugar by the Legislature.

5. However, the basic question is that whether the State Legislature is competent to exclude sugar candy from the list of exempted articles as mentioned in Schedule I in the list of exempted items.

6. The Assam General Sales Tax Act, 1993 (the Act, 1993) is the amalgamation and consolidation of the Assam Sales Tax Act, 1947, Assam Finance (Sales Tax) Act, 1956, Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 and Assam Purchase Tax Act, 1967. The Act 1993 came into force from July 1, 1993 and by virtue of Section 74 of this Act, the abovementioned amalgamated Acts have been repealed and the Act, 1993 came into force.

7. Mr. H.N. Sharma, learned Additional Senior Government Advocate, has submitted that under the Act several items have been included as taxed items which were exempted earlier from taxation ; that tax on sale or purchase of goods other than newspapers fall within the State List as mentioned in Article 246 of the Constitution of India and that the State Legislature is competent authority to legislate on the subject. Accordingly, it was further submitted that the State Legislature is competent to enact laws relating to the Assam General Sales Tax Act, 1993.

8. Now the next issue is whether exclusion of sugar candy from the list of exempted items can be held to be within its jurisdiction. The settled position of law is that imposition of tax is within the State jurisdiction and is a matter of policy of the Government as to which article is to be taxed and which should not be. It is the legislative body, the representatives of the people, who decides the

matter in the Assembly.

9. The Senior Government Advocate in support of his statement referred and relied on the decision of the apex Court reported in *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, wherein it is held :

"Besides the Legislature which is competent to levy a tax must inevitably be given full freedom to determine which articles should be taxed, in what manner and at what rate."

10. Further, it is held that in tax matters the State is allowed to pick and choose distincts, objects, reasons, methods even rates for taxation if it does so reasonably. Apex Court further held that validity of tax law can be questioned in the light of the provisions of Articles 14 19 and 301 if the said tax directly and indirectly imposes a restriction on the freedom of India. That the power of the State to levy taxes for the purpose of governance and for carrying out its welfare activities is a necessary attribute of sovereignty and in that case it is a power of paramount character. Similar view has been taken by the apex Court in the case of *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*,

11. Similar writ petitions have been filed by different petitioners challenging inclusion of some items as taxable items under the Act, 1993 before this Court, all of which were disposed of.

12. In Civil Rule No. 1165 of 1994 (*Kuki Ginger Producers Association of Karbi Anglong District v. State of Assam*) Reported in [2000] 117 STC 32 (Gau) the exclusion of ginger from exempted item in Schedule I, SI. No. 39 was challenged, which was dismissed, holding, inter alia, that the State Legislature has such power to exclude ginger from exempted list. Similar view was taken in the case of *Karimganj Dist. Betelnut Merchant's Association v. State of Assam* in CR No. 2498 of 1993, wherein petitioner has challenged the provisions of exclusion of supari and betelnut for conversion into supari from the "exempted list" in Schedule I, SI. No. 5 of the Act, 1993. This Court held that State Legislature has legislative competence to include or exclude any item from taxation and exclusion of supari from exempted item, being the will of the Legislature, cannot be challenged.

13. In view of the discussions made hereinabove, I hold that exclusion of the sugar candy from the list of exempted item in Schedule I of the Act, 1993 is within the legislative competency of the State and it does not violate the right of the petitioner under Articles 14 19 and 301 of the Constitution as the imposition of the tax on sugar candy does not prejudice the legal or constitutional rights of the petitioner. Further, sugar candy after changing it from sugar by a process is distinct and different item and is prepared by adopting special chemical process and, therefore, there cannot be any objection to include it in taxable item.

14. The learned Government Advocate has prayed for an exemplary cost stating

that realisation of State revenue has been hampered which is the main source of revenue of the State.

15. In this case no order for realisation of tax by the State has been passed by this Court and, therefore, I direct the parties to bear their own costs.

16. In the result, the writ petition is dismissed.