

(1972) 05 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Appeal No. 182 of 1970

Mangoo Mal Kishore

APPELLANT

Vs

H.K. Sharma

RESPONDENT

Date of Decision : 18-05-1972

Acts Referred:

Citation : (1972) 8 DLT 501 : (1974) 33 STC 182

Hon'ble Judges : Prithvi Raj, J

Bench : Single Bench

Advocate : D.S. Golani, V.K. Bharat and R.L. Tandon, for the Appellant;

Judgement

Prithvi Raj, J.

(1) The petitioners who are dealing in sugar, Khandsari, bura, batasha and misri have challenged three notices issued by the respondent purporting to be notices u/s 21(4) of the Bengal Finance (Sales. Tax) Act, 1941 (hereinafter to be called as the Act) under his letter No. ST/W-2/69-70/94 dated January 7, 1970 for the year 1965-66, annexure 19, No. S I /W-2/69.70/95, dated January 7, 1970 for the year 1966-67, annexure 20 and No. Sr/W2"69- 70/96 dated January 7, 1970 for the year 1967-68, annexure 21 on the ground that "Bura" is sugar and is not liable to sales tax ; that it is not open to the respondent to review the orders of assessment as is sought by him in the aforesaid notices (annexures 19 to 21), nor the respondent is empowered under Rule 71 of the Delhi Sales Tax Rule to reassess the turn-over of the firm as the petitioners firm's turnover was neither under assessed nor escaped assessment; that since "Bura" is not separately mentioned in Scheduled I or Scheduled Iii prescribed in section 5(1) of the Act as taxable goods, it is implicit that Bura is included in sugar shown as Entry No. 9 of the 2nd Scheduled made u/s 6 of the Act, that the impugned notices annexures 19- 21 are beyond the scope, power, jurisdiction and competence of the respondent that section 20(4) of the Act is ultra virus Article 19(1)(a) and 19(1) (f) of the Constitution of India as it imposes unreasonable restrictions on the trade and commerce to be carried out by the petitioners in "Bura" sugar.

(2) It may be stated here that during the pendency of the writ petition, assessment were framed in pursuance to the impugned notices and the petitioners filed an application seeking permission to challenge those assessment orders. The said application was allowed on April 19, 1971. The petitioners in the meantime went up in appeal to Assistant Commissioner, Sales Tax who by his order dated May 26, 1971, held that having regard to the circumstances of the case, the sales tax was to be charged with effect from January 1, 1970. The petitioners filed an application (C.M. No. 1362 of 1971) seeking permission to suitably amend the petition incorporating additional paragraphs with a view to question the findings of the Sales Tax Commissioner .S. N. Shanker, J. by his order dated September 17, 1971 accepted the application and allowed the petitioners to amend the main petition in terms of the application.

(3) The petitioners filed the amended petition challenging the assessment order dated March 13, 1970 passed by the respondent for the year 1965-66, assessing sugar-bura to sales tax annexure P-1 and similar order dated March 13, 1970 pertaining to assessment year 1966- 67, annexure P 2 and order dated 27th March, 1970 pertaining to the assessment year 1967-68, annexure P-3 in the amended writ petition. The petitioners also prayed that order of the Assistant Sales Tax Commissioner dated May 26, 1971, annexure P-4 passed in appeal in so far as it imposes the sales tax on bura-sugar with effect from January 1, 1970 be quashed.

(4) The respondent in his reply controverted the stand taken by the petitioners contending that (bura) is not covered under item No 9 of the Second Schedule appended to the Act and exemptions regarding sales tax allowed in the past on the said item was not correct; that the petitioners are bound to pay sale tax on that bura.

(5) The petitioners filed replication to the reply-affidavit filed by the respondent controverting the stand taken by the respondent and reiterated the pleas raised in the petition.

(6) The vital question for determination in this writ petition is as to whether bura is sugar and consequently exempt under item No. 9 of the Second Schedule appended to the Act or not. The question involved in this case was also involved in civil writ No. 320 of 1970 in Re : Bimsahber Dayal M anchor Lal v. Sales Tax Officer and three others". D. K. Kapur J. who heard the said civil writ No. 320 of 1970 after consideration of the case law on the subject by order dated January 17, 1972 came to the conclusion that the petitioners were right in submitting that the sales tax authorities had no jurisdiction to impose sales tax on bura on the ground that it was a form of sugar which was exempt by entry No. 9 to the Second Schedule of the Act, as applicable to Union Territory of Delhi and consequently the writ was allowed. I am in respectful agreement with the view taken by my learned brother in civil writ No. 320 of 1970.

(7) Mr. R.L. Tandon appearing for the respondent however, urged two contentions

on the basis of which he desired that the present writ petition be dismissed. Firstly, he urged that the petitioners have not exhausted all remedies which were available to them in pursuance to sections 20 and 21 of the Act. It was, vehemently contended that the petitioners had the right of further appeal against the order of the Assistant Commissioner. Not only this, it was submitted that the petitioners could ask the authorities to refer to this court for determination the question of law now sought to be raised by the petitioners. Since the petitioners had not exhausted all the remedies available to them, it was urged they should not be allowed to invoke the extraordinary jurisdiction of this Court. There is no substance in this submission. The petitioners challenge the jurisdiction of the respondent to impose the sales tax. It being so the writ petition cannot be said to be not maintainable. In *State of West Bengal v. North Adajai Coal Co. Ltd.*, a contention was raised that the High Court was incompetent to entertain the writ petition because the respondent had failed to exhaust the statutory remedies permissible under the Bengal Finance (Sales Tax) Act. It was observed that there was no substance in that contention and although normally before a petition under Article 226 of the Constitution was entertained, the High Court would insist that the party aggrieved by the order of a quasi judicial Tribunal should have recourse to the statutory authorities, which have power to give relief but that is a rule of practice and not of jurisdiction. It was further observed that in appropriate cases, the High Court may entertain a petition even if the aggrieved party had not exhausted remedies available under a statute before the departmental authorities, if a case is made for its interference. As already noted above, the petitioners have challenged the jurisdiction of the respondent to impose the sales tax on bura sugar, the writ is, Therefore, maintainable.

(8) Secondly, the learned counsel for the respondent adverting to section 6 and the Second Schedule to the Act stated that entry No. 9 in the Schedule mentions sugar and molasses only and the said entry does not make a mention about bura. Besides, it was contended that while determining whether bura is sugar, we should not lose sight of the fact as to how the commodity is known in the market in its ordinary parlance. It was submitted that in the market the word "sugar" is known and understood in its ordinary parlance as the crystal sugar and not bura. The learned counsel for the respondent submitted that when a customer in the market asked a shop-keeper to give him sugar, the shop-keeper necessarily gives him crystal sugar and not bura. Conversely it was submitted that a customer who asks for sugar and is given bura, shall not accept it in lieu of the sugar that is crystal sugar which he had asked for and intended to buy. It was, Therefore, submitted that since the two terms sugar and bura are differently understood in the market, it would not be appropriate to enlarge the scope of the word "sugar" so as to cover bura in the said term. It would be appropriate hereto to note *Ram Avtar Budhai v. Assistant Sales Tax Officer Okala*. In that case, the question for determination was whether "betel leaves" were vegetable. In that connection it was observed that "this word must be considered

not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of everyday use, it must be construed in its popular sense meaning that sense which people conversant with the subject matter with which statute is dealing would attribute to it."

(9) In the instant case also, it may be noted that the word sugar or bura has not been defined in the Act. In the circumstances, the word bura has to be understood in the sense as people in the common parlance understand it. In other words the word has to be understood and construed in the sense in which people dealing with the subject matter understand and attribute meaning to it. Looked at from this point of view, there is no denying the fact that the word bura is commonly associated and understood as bura chini. At least that is the sense with which people conversant with the subject matter consider bura as chini. Since the word bura or the word sugar has not been defined in the Act, it would be appropriate to consider the definition of the word sugar as given in other Acts to show what meaning was attributed to the word bura by the authorities. In the first Schedule to the Central Excise Salt Act, 1944, the word sugar means any form of sugar in which the sucrose content, if expressed as percentage of the material dried to constant weight at 105 degree centigrade would be more than 90%. Thus according to the said Act, sugar means any form of sugar in which the sucrose content would be more than 90%. According to the said definition, what is important is that sugar in any form having more than 90 percent sucrose content is sugar. It may be noted here that in Appendix "B" to the Prevention of Food Adulteration Rules, 1955 standards relating to sugar and bura prescribed are as follows :-

"A.0.01. Cane Sugar is the crystallized sugar obtained from sugar-cane, beetroot, etc and includes the refined product obtained from gur. It shall contain not more than 0.8 per cent of ash, not more than 1.5 per cent of water and not less than 96.5 per cent of sucrose. It may contain sulphur dioxide in concentration not exceeding 70 parts per million "

Bura is defined as follows :

"A.0702. Bura shall contain not less than 96.5 per cent of total sugar expressed as sucrose and shall not contain more than half per cent of its weight as ash insoluble in dilute hydrochloric acid."

Thus both cane sugar and bura contain not less than 96.5 per cent of sucrose. The definitions of cane sugar and bura as extracted above leave no manner of doubt that the requisite sucrose content of sugar cane and bura is exactly the same. In the circumstances, taking into consideration the standard of sucrose prescribed for cane sugar and bura in Appendix "B" to the Rules under the Prevention of Food Adulteration Rules, 1955 leads to unavoidable conclusion that bura is a form of sugar. More so when the use to which either of them is put is the same namely, as sweetening agent. In section 16 of the Essential

Commodities Act, 1955 (Act X of 1955), the word sugar has been attributed the meaning as defined in clause 2 (d) of the Sugar Control Order, 1955 and the word bura according to the said Act also have been termed as bura sugar.

(10) In Delhi Sugar (Restriction of Sale and Possession) Order, 1964, the word sugar has been defined in clause E of the section 2 of the said Act as having the same meaning as in clause 2 of the Sugar (Control) Order, 1963. Sugar (Control) Order, 1963 defines sugar in clause E of Order 2 of the said order as meaning: (1) any form of sugar containing more than 90 per cent of sucrose including khandsari sugar, sugar candy and bura sugar In the sugar (Control) Order 1955, the word sugar as defined in clause (d) of Order 2 means (i) any form of sugar containing more than 90 per cent of sucrose including khandsari sugar, sugar candy and bura sugar,

(11) From the comparative study of the definition of the word bura as given in various Acts and orders referred to above, the word sugar as defined in those Acts and Orders means any form of sugar containing 90 per cent of sucrose including khandsari sugar, sugar candy and bura sugar and any sugar of crystalizing structure. It is, Therefore, apparent that the word sugar has been defined and understood not only to mean crystal sugar but bura sugar as well .The respondent has not been- able to show that bura is anything different than bura sugar, in this view of the matter, the only irresistible-conclusion is that the word bura is cover ed by the word sugar as understood in its common parlance not only amongst the people conversant with the subject matter but also by the Central Government who in its wisdom without mincing words in the various enactments and orders set out above clearly indicated that the word sugar means bura sugar as well.

(12) There is accordingly no force in the contention of the learned counsel for the respondent that the definition of the word sugar as given in other enactments and orders cannot be imported while considering the significance of the word sugar as mentioned in item 9 of the Second Schedule to the Act. The contention of the learned counsel for the respondent could have assumed significance if the word sugar had been defined in the Act, in which event of course the definition of the word sugar as contained in the other Acts could not be imported while considering the definition of the word sugar if given in the Act. But since the Act has not defined the word sugar, it is both relevant and expedient to consider the definition of the word sugar as contained in the various enactments and orders already noted in an earlier part of this judgment to discern and appreciate not only the popular sense in which the people conversant with the subject matter attribute meaning to the word sugar but also the same in which the central Government attributes meaning to the word sugar.

(13) For the reasons stated above, the petition is accepted and the impugned notices, annexures 19, 20 and 21 and the assessment orders passed pursuant thereto dated March 13, 1970, April 27, 1970, and April 27,1970 respectively as also order dated May 26, 1971 passed by Assistant Sales Tax Commissioner in

appeal, annexures P-1 to P-4 are quashed. In the circumstances of the case, however, parties shall bear their own cost