

(2014) 04 GUJ CK 0009
In the Gujarat High Court

Case No : Special Civil Application Nos. 591 and 592 of 2014

State of Gujarat

APPELLANT

Vs

Virumal Santumal

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 4
Gujarat Sales Tax Act, 1969 — Section 27, 45(4), 45(6), 49(2), 5

Citation : (2014) 3 GLH 289 : (2014) 45 GST 611 : (2014) 72 VST 403

Hon'ble Judges : Sonia Gokani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Jaimin Gandhi, Advocate for the Appellant; Uchit N. Sheth, Advocate for the Respondent

Judgement

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Akil Abdul Hamid Kureshi, J.—These petitions are filed by the State Government challenging the judgment of the Gujarat Value Added Tax Tribunal ("the tribunal" for short) dated 4.8.2009. Since issues are repetitive in nature and are likely to arise in many similar cases, we have heard learned counsel for the parties at length and we propose to dispose of the petition finally by this judgment.

2. Briefly stated, the facts are as under :

2.1 The respondent, is a dealer registered under the Sales Tax Act. The respondent deals mainly in patasa, harada, sakaria and alchidana. In the returns for years 2002-03 and 2003-04, the assessee had claimed exemption from payment of sales tax under the Gujarat Sales Tax Act on the sale and purchase of such items namely, patasa, harada, sakaria and alchidana. His returns were assessed by the Commercial Tax Inspector. He passed orders of assessment on 18.2.2005 accepting the returns of the assessee making no additions.

2.2 The Deputy Commissioner of Commercial Tax was prima facie of the opinion that the respondent was not entitled to exemption. He therefore, after issuing

notices passed two separate orders both dated 1.1.2009 levying tax on such transactions under entry no. 167 at the rate of 696 on the transactions. In such order he distinguished the decision of Supreme Court in case of the State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 in order to hold that the case of the respondent does not fall under entry 86 of Schedule-I to the Gujarat Sales Tax Act, 1969 ("the GST Act" for short). This was on the premise that, according to him, the important condition of the said entry namely, the levy and collection of additional duties of excise, should not be exempted on account of any exemption or drawback, was not fulfilled. He also did not accept the assessee's contention that even if the cases did not fall under entry 86, the same would fall under entry 8 of Schedule-IIA to the GST Act and would consequentially be exempted from payment of any tax by virtue of exemption notifications issued by the State Government. This was on the premise that according to him term "sugar" appearing under entry 86 of Schedule-I had a wider meaning as explained by the Supreme Court in case of Sakarwala Brothers (supra) whereas no such meaning could be ascribed to the term "sugar" used in entry 8. Resultantly, the common parlance meaning of the term "sugar" would have to be applied and it would exclude items such as patasa, harada, sakaria and alchidana. He accordingly taxed the transactions under entry 167 of Schedule-IIA to the GST Act pertaining to sweets and sweetmeats including shrikhand, basudi and doodhpak.

2.3 Aggrieved by the order of revisional authority, the petitioner preferred a revision application before the tribunal. The petitioner raised three fold contentions.

(1) Firstly, that the initial notice issued in form-45 by the revisional authority included all the items namely, patasa, harada, sakaria and alchidana whereas the final notice issued in form-49 referred only to the sale of patasa. The revisional authority therefore, could not have travelled beyond the notice issued in form-49 and taxed items other than patasa for which no final notice was issued.

(2) The second contention was that all items were covered under entry 86 since the levy and collection of additional duties of excise was not exempted. Such duties were in fact, paid by the vendors from whom he had made purchases of the goods.

(3) The third and alternative contention of the assessee was that if the items did not fall under entry 86, they would be covered under entry 8. By virtue of exemption notifications issued by the Government from time to time, the sales and purchases thereof would be fully exempted from payment of any sales tax.

2.4 The tribunal accepted the first two contentions of the petitioner. The tribunal held that in the notice in form-45, the Deputy Commissioner had referred to all the items, but in the notice in form-49, he confined his case only to sale of patasa. He therefore, could not have passed the final order levying tax on all items. The tribunal held that by virtue of decision of Supreme Court in case of

Sakarwala Brothers (supra), the products in question were sugar for the purpose of entry 86 and since the additional duty of excise was not exempted, the goods were covered under such entry. In light of such conclusion, the tribunal did not examine the alternative contention of the assessee that if the items did not fall under entry 86, they would be covered under entry 8 and by virtue of exemption notifications issued by the Government from time to time, no tax was leviable in any case. It is this judgment of the tribunal which the State has challenged before us.

3. We may record that previously a tax appeal was filed. However, the Court was of the opinion that against the order passed by the tribunal in the revision petition, tax appeal would not be maintainable. The State therefore, preferred these writ petitions.

4. Learned AGP Shri Jaimin Gandhi for the State raised the following contentions :

(1) That the goods in question did not fall under entry 86 of schedule-I to the GST Act since the vital condition contained therein was not satisfied. He submitted that such condition must be viewed in the background of legislative intent namely, that in case of only those goods where additional duties of excise has been paid by the dealer, can he claim the benefit of entry 86. In the present case, admittedly, the dealer had not paid such tax. The fact that the vendor had paid such tax on the goods at the point of manufacture is of no relevance.

(1.1) In this context reliance was placed on the decision of Supreme Court in case of Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, .

(2) Entry 8 of Schedule-IIA does not contain definition of sugar unlike in entry 86 of Schedule-I. The term "sugar" therefore, for the purpose of entry 8 cannot be given wider meaning. Items such as patasa, harada, sakaria and alchidana are not considered sugar in common understanding. These items therefore, would not fall in the said entries and were correctly classified under entry 167 as sweet and sweetmeats.

(3) When the tax was short-paid, penalty under section 45(6) read with section 45(4) of the Gujarat Sales Tax Act was rightly imposed.

5. On the other hand, learned counsel Shri Uchit Sheth for the respondent assessee opposed the petitions, raising the following contentions :

(1) The notice issued by the revisional authority was defective. The notice in form-49 did not propose levying of tax on items other than patasa. No such tax therefore, could have been imposed on all items.

(2) All the items were covered under entry 86 of schedule-I to the GST Act. He referred to the decision of the Supreme Court in case of Sakarwala Brothers (supra) wherein, in background of similar language used by the Legislature in Bombay Sales Tax Act, it was held that patasa, harada, sakaria and alchidana would be covered under the definition of term "sugar" in the expanded meaning

given by the Legislature. He pointed out that these items were not exempted from payment of additional duty of excise. They would therefore fall under entry 86.

(3) In any case, the items would fall under entry 8 of Schedule-IIA which is a successor entry of entry 3E of the same Schedule. He took us through the legislative history and changes made from time to time to contend that at all points of time, the intention was clear namely, not to levy sales tax on sale and purchase of sugar including patasa, harada, sakaria and alchidana.

6. Section 67 of the GST Act pertains to revision. Clause (a) of sub-section (1) of section 67 provides that subject to the provisions of section 66 and any rules which may be made on this behalf, the Commissioner on his own motion within three years or on application made to him within one year from the date of any order passed by officer appointed under section 27, may call for and examine the record of any such order and pass such order as he thinks fit and proper within twelve months from the date of service of notice for revision. Sub-section (1) of section 67 thus empowers the Commissioner under the circumstances mentioned therein to exercise revisional powers.

7. Rule 60 of the Gujarat Sales Tax Rules, 1970 ("the GST Rules" for short) pertains to notice for production of accounts, documents etc., and provides that where the Commissioner requires any dealer to produce any accounts or documents or to furnish any information under section 59, he shall issue a notice therefor in form 45. Rule 67 pertains to notice to person likely to be affected adversely and reads as under :

67. Notice to person likely to be affected adversely

(1) Before an appellate or revising authority passes an order in appeal or revision which is likely to affect the appellant or applicant or any other person adversely, it shall serve on him a notice in Form 49 and shall give him a reasonable opportunity of being heard.

(2) Before the Commissioner including an officer below the rank of Commissioner who has been delegated the powers of the Commissioner under clause (a) of sub-section (1) of section 67, passes any order under the said section, which is likely to affect adversely to any person who is a party to such proceeding, he shall serve on such person a notice in Form 49 and shall give him a reasonable opportunity of being heard.

8. It can thus be seen that notice under form-45 which can be issued under rule 60 of the GST Rules is for production of accounts or documents or information as may be required by the Commissioner. Neither rule 60 nor form-45 therefore, has any relevance to the power of Commissioner to revise an order passed by the authority appointed under section 67 of the GST Act. It is at best, a step preparatory to the issuance of notice for exercising revisional powers. Before doing so, if the Commissioner requires examination of any accounts, documents

or requires any information from any dealer, he may call upon the dealer to do so in terms of rule 60 of the GST Rules. On the other hand, rule 67 is specific and requires the Commissioner to issue notice in form-49 to a person likely to be affected adversely, to give him reasonable opportunity of hearing before any appellate or revisional order is passed by the appellate or revisional authority. Sub-rule (2) of rule 67 further clarifies that before the Commissioner or officer who has been delegated powers of the Commissioner under clause (a) of sub-section (1) of section 67 passes any order under the said section which is likely to affect adversely to any person who is a party to such proceedings, he shall serve on such person a notice in form-49 and also grant him a reasonable opportunity of being heard.

9. It thus becomes clear that notice under rule 60 in form-45 is not a notice of Commissioner or his delegatee to take an order under revision. Such notice is to be issued in terms of rule 67 in form-49. It is meant to give person likely to be adversely affected by the appellate or revisional order, a reasonable opportunity of being heard.

10. Under the circumstances any mention of the items in form-45 would have no relevance for exercising revisional power by the Commissioner under rule 67(1) of the GST Act. Whether any reference was made to such items in the notice under form-45, the power of the Commissioner can be exercised under section 67(1) only if a notice has been given of reasonable opportunity of being heard to an assessee before the order is revised and such notice is prescribed in form-49. In the present case, admittedly in the notice under form-49 mention was made by the Commissioner only for taxing patasa and no other items. His final order therefore, could not have travelled beyond such notice which would fall foul of requirement of rule 67 and reasonable opportunity of being heard to the assessee. To that extent in our view tribunal was perfectly justified in coming to its conclusion which we have recorded earlier.

11. Coming to the central controversy, we may notice that Schedule-I to the GST Act pertains to goods, the sale or purchase of which is free from all taxes. This schedule is framed under section 5, sub-section (1) whereof provides that subject to conditions or exceptions if any set out against each of the goods specified in column 3 of Schedule-I, no tax shall be payable on the sales or purchases of any goods specified in that Schedule. Entry 86 of Schedule-I reads as under:

12. In order to appreciate the entries in question in the background of legislative intention, we may refer to legislative changes made from time to time. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as "the Act of 1957") was enacted in the year 1957. From the preamble to the Act, it can be seen that the same was enacted to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds among the States in pursuance of the principles of distribution formulated and the recommendations made by the

Finance Commission in its report. Section 4 of the Act of 1957 provides that during each financial year, there shall be paid out of consolidated fund of India to the States in accordance with the provisions of the Second Schedule such sums, representing a part of the net proceeds of the additional duties levied and collected during that financial year as are specified in that Schedule.

13. For the period between 6.5.1970 to 9.4.1981, Schedule-I to the GST Act contained entry-42 as under :

14. It can thus be seen that as per entry 42, sugar falling in the said category would be exempt from payment of sales tax without any condition. The term "sugar" was defined in the Central Excises and Salt Act, 1944 as under :

Sugar" means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105°C, would be more than ninety.

15. Question whether items such as patasa, harada, sakaria and alchidana, would fall within the term "sugar" for the purpose of entry 47 of Schedule A of the Bombay Sales Tax Act, 1959 came up for consideration before this Court. It is an undisputed position that the definition of term "sugar" for the said entry was identical to one adopted under entry 42 of Schedule-I to the GST Act. A division bench of this Court on a reference made by the Sales Tax Tribunal held that patasa, harda and alchidana were products of sugar and would be covered under the definition adopted for the purpose of said entry 47 of the Bombay Sales Tax Act. The Court agreed with the suggestion of learned Advocate General that items patasa, harada and alchidana bear a distinct and different name from sugar and are not commercially purchased or sold as sugar. However, the Legislature in entry 47 has not used word sugar simpliciter and covered the term as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944. The Court held that this definition did not intend merely to cover sugar as known in common parlance but was intended to cover all forms of sugar in any form which contains more than 90% sucrose. It was observed that 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. On such premises, the reference was answered in favour of the assessee. In the said case also, dispute was raised by the revenue that the item in question would fall in entry 31 which pertains to sweet and sweetmeats including shrikhand, basudi and doodhpak. The contention was however negatived in view of special definition of term "sugar" adopted by incorporation from the Central Excises and Salt Act, 1944. Revenue carried the matter in appeal before the Supreme Court. The Supreme Court confirmed the judgment of the High Court. It was noted that the chemical composition of patasa, Harada and Alchidana is same as that of the sugar as there is more than 90% sucrose. The contention of the revenue that patasa, harda and alchidana were sugar and used on festive occasions and therefore, should be distinguished from sugar was not accepted observing that this circumstance has no relevance on the question

of legal classification for the purpose of Bombay Sales Tax Act.

16. For the period between 10.4.1981 to 31.3.1989, entry 42 was modified in the following manner:

17. Thus, after 10.04.1981, exemption was available to sugar falling under entry 42 only when levy and collection of additional duties of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was not exempted on account of any exemption or drawback granted under that Act. Rate of duty had to be provided for sugar not falling in entry 42. Schedule-IIA pertains to goods, the sale or purchase of which is subject to sales tax or purchase tax and rates of tax. Simultaneously, therefore, entry 3E was inserted in Schedule IIA as under:

18. Parallely, under exemption notification issued under section 49(2) of the GST Act, by virtue of entry 133, sugar covered under entry 3E in Schedule-II Part A of the GST Act was exempted from payment of whole of the tax. It may be noted that entry 3E of Schedule-II Part A referred to Sugar as defined in item No. 1 of the first schedule of Central Excises and Salt Act, 1944.

19. Thus the definition of sugar for the purpose of entry 42 to Schedule I and entry 3E to Schedule-II Part A remained the same. By virtue of these entries, sugar falling under entry 42 would be exempt from payment of tax, if the condition contained in second column of entry was satisfied. If such condition was not satisfied, it would fall under entry 3E and would ordinarily be taxed at the rates specified therein. However, by way of exemption notification issued by the Government, such tax was also waived. We are informed that this was done in view of the representations made by the trade as is apparent from the circular dated 17.9.1981 issued by the Government. The circular refers to legislative changes made in entry 42, corresponding insertion of entry 3E in Schedule-IIA and issuance of exemption notification on account of difficulties faced by the trade which was brought to the notice of the Government through representations.

20. From 1.4.1989 to 31.3.1992, entry 42 was amended and read thus :

21. It can be seen that the first column of this entry underwent a change. Instead of sugar as defined in item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944, it was referred to as 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. This was necessary because the First Schedule to the Central Excises and Salt Act, 1944 (now Central Excise Act, 1944) came to be replaced by the Central Excise Tariff Act, 1985 and different headings and sub-headings were introduced for taxing various products. This change was thus purely consequential to the amendments made in the Central Excises and Salt Act, 1944 and introduction of newly enacted the Central Excise Tariff Act, 1985.

22. In essence the definition of term "sugar" did not undergo any change. For

the purposes of sub-heading Nos. 1701.10, 1701.20, 1701.31 and 1701.39, sugar means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105°C would be more than 90. Thus verbatim definition of term "sugar" remained the same for these entries as contained in item No. 1 in the First Schedule to the Central Excises and Salt Act, 1944. In effect for purposes, thus entry 42 underwent no change despite amendments made therein which are purely consequential in nature. Simultaneously entry 3E to Schedule-IIA was also changed and read as under:

23. The significant change between existing entry 3E and entry 3E with effect from 1.4.1989, was that the words "Sugar as defined in Item No.1 of the First Schedule to the Central Excises and Salt Act, 1944" were deleted and now simpliciter description of goods read as "Sugar to which entry 42 in Schedule I does not apply." For all purposes, therefore, this was also consequential change in entry 3E which only dropped description of sugar as defined in item no. 1 of the First Schedule to the Central Excises and Salt Act, 1944 since the Schedule itself did not survive. It is true that so far in entry 42, no corresponding clarification was made to cover sugar as referred to in sub-heading Nos. 1701.10, 1701.20, 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985. We may record that exemption notification under section 49(2) of the GST Act and entry 133 by which sugar covered under entry 3E was exempted from payment of whole of the tax continued to hold the field.

24. With effect from 1.4.1992 to 31.3.2006, the entries were renumbered. Entry No. 42 to Schedule-I which was re-numbered No. 86, continued exactly in the same language. Like-wise entry 3E of Schedule-IIA was renumbered as entry 8 also in the same language which read as under :

25. Entry 133 of exemption notification under section 49(2) of the GST Act was slightly changed. Instead of exempting sugar covered by entry 8 in Schedule-II Part-A, an exclusion clause was added namely, "other than sugar imported from all places out of India and sold within the State of Gujarat". Thus the tax structure remained the same. Entry 42 assumed No. 86. Entry 3E was renumbered as entry 8. Exemption entry under entry 133 continued to grant exemption but excluded sugar imported from any place out of India and sold within the State.

26. By virtue of such provisions, contained in the Schedules to the GST Act, it clearly emerges that case of the respondent is covered in entry 86 of Schedule-I of GST Act. The fact that by virtue of decision in case of Sakarwala Brothers (supra), such items are considered as sugar for the purpose of sugar covered under sub-heading Nos. 1701.10, 1701.20, 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985, there is no dispute possible in fact, not seriously raised. Such sub-headings defined the term "sugar" in the same manner as it was done under item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944. It was in this context interpreting the term "sugar" defined in expansive manner, it was held that patasa, harada, sakaria

and alchidana which contained more than 9096 sucrose are sugar for the purpose of the said entry. If this is clear, the goods can be ejected out of entry 86 only if conditions subject to which exemption is to be granted, are not satisfied. The condition is when levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is not exempted on account of any exemption or drawback granted under that Act. If this condition is satisfied, it would not be open for the petitioner to deny the benefit of exemption to the respondent in terms of entry 86 of Schedule-I to the GST Act. In the present case, it is not even the case of the petitioner that levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, is exempted. The respondent had pointed out before the tribunal that his vendors pay full additional duty at the point of clearance of goods. State Government however, raised a curious contention namely, that such duty must be paid by the respondent. We do not see any such warrant in condition contained in entry 86. Condition in plain terms is that levy and collection of additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, should not be exempted on account of any exemption or drawback. When admittedly, the additional levy of duty is not exempted nor is the case of the petitioner that any drawback is granted, entry 86 would certainly apply. Such condition nowhere provides that such additional duty must be borne by the dealer. Additional duty of excise would be payable on manufacture of goods and would therefore, be paid by the manufacturer, in the present case the suppliers from whom the respondent dealer would be purchasing such goods.

27. The decision of Supreme Court in case of Delhi Cloth & General Mills Co. Ltd. (supra) was rendered in vastly different situation. It was a case whereunder the notification, exemption from payment of sales tax was available provided that the dealer furnished the proof to the satisfaction of the Assessing Officer that additional duty leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 had been paid. It was thus an additional condition and an onus was cast on dealer claiming exemption to demonstrate that not only the additional duty was not exempt, same was actually paid. It was in this background that the Supreme Court rendered its decision. Only condition of entry 86 is that additional levy and collection of additional duty of excise should not be exempt. There is no additional onus cast on the dealer to establish that same was actually paid.

28. This discussion would be sufficient to dismiss the petition. However, when an alternative contention has been raised by the respondent and argued by both the sides, we consider it proper to entertain the same also. We may recall that the alternative contention of the assessee was that even if the goods were not covered under entry 86, same would fall under entry 8 of Schedule-IIA to the GST Act and would be exempt from payment of tax by virtue of exemption notifications issued from time to time. The fact that sugar falling under entry 8, is exempt from payment of tax by virtue of exemption notifications is not in

dispute. What the petitioner however, disputes is that the item in question would not fall under entry 8 since the term "sugar" must be understood in common parlance term without giving it any artificial or expansive meaning, which is adopted for the purpose of entry 86. To our mind such contention is misconceived. We must however, first begin by considering that in *Sakarwala Brothers* (supra), this Court as well as Supreme Court recognized that in common parlance term and in common understanding, items such as patasa, harada, sakaria and alchidana, would not be covered under the term "sugar". It was only because of specific definition incorporated in the said entry as defined in item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944, that such terms were included.

29. Term "sugar" for the relevant entry of Bombay Sales Tax Act, it was verbatim the same as entry 86. However, we have noticed the changes which were made by the State Legislature from time to time in predecessor entry 42 and entry 3E. We have noticed that when the condition was imposed in entry 42 for enjoying exemption and correspondingly, entry 3E to Schedule-IIA was introduced for taxing these goods which were not falling under entry 42, the definition of term "sugar" in both the entries was identical. In clear terms, therefore, the intention was to tax sugar not covered under exemption entry 42 (now entry 86) under entry 3E (now entry 8) in which identical definitions were adopted for both the entries. Having done so, on the representations by the trade, the State Government issued exemption notification waiving entire sales tax even on sugar falling under entry 3E. It was only by virtue of deletion of the First Schedule to the Central Excises and Salt Act, 1944 and its replacement by the newly enacted Central Excise Tariff Act, 1985, that changes had to be made in entries 42 and 3E. Entry 42 post 1.4.1989 had reference to sub-heading Nos. 1701.10, 1701.20, 1701.31 and 1701.39 of the Schedule to the Central Excise Tariff Act, 1985 instead of item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944. We have noticed that despite these changes the definition of sugar in effect remained the same. It was therefore, also that in entry 3E the reference to sugar as defined in item No. 1 of the First Schedule to the Central Excises and Salt Act, 1944 came to be deleted. It is true that post 1.4.1989, entry 3E only refers to sugar to which entry 42 of Schedule-I does not apply. However, looking to the historical changes made from time to time in such entry, we have not the slightest hesitation that even after 1.4.1989, entry 3E included sugar to which entry 42 in Schedule-I did not apply and the term "sugar" had a common meaning for both entry 42 as well as entry 3E. Very insertion and existence of entry 3E was to specify rate of tax for sugar to which entry 42 did not apply. In other words sugar which was defined in entry 42 but was not included in it because the condition for inclusion was not satisfied would be taxed as per entry 3E of Schedule-IIA.

30. When seen in this light, we cannot accept the contention that for the purpose of entry 3E, we must discard definition of term "sugar" as referred to in Central Excise Tariff Act, 1985 and must treat items such as patasa, harada, sakaria and

alchidana as different from sugar as understood in common parlance.

31. We may notice that in a circular dated 3.4.1989 while explaining the changes made after 1.4.1989 in the GST Act, it was explained that in Schedule-I in entry 37, 40, 42, 43 and 44, if additional duty of excise is paid, sales tax is not to be levied. The definition of these terms were adopted from Central Excises and Salt Act, 1944. Now with the introduction of Central Excise Tariff Act, 1985 in place of Central Excises and Salt Act, 1944, definition of these terms is referred to from the said Act. Interestingly, in the Gujarat Value Added Tax Act also, similar entries and exemptions are provided. In that background, in circular dated 1.8.2012 issued by the State Government, it is provided that by virtue of decision of Supreme Court in case of Sakarwala Brothers (supra), items such as patasa, harada, sakaria and alchidana containing more than 90% sucrose are considered as sugar and therefore, would be exempt from payment of VAT. When the State Authorities themselves have clarified the situation, as mentioned above, we see no scope for any further debate. Quite independently also, we have given our own interpretation to various entries holding the field. We fully endorse the view of the tribunal. We further hold that even if case of the respondent does not fall under entry 86 of Schedule-I, by virtue of condition contained therein not being satisfied, same would fall under entry 8 of Schedule-IIA and not in entry 167 as contended by the Revenue. In the result, both the petitions are dismissed.