

(2009) 04 P&H CK 0097
In the Punjab And Haryana At Chandigarh

State of Haryana

APPELLANT

Vs

Swiss French Laboratories

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Haryana General Sales Tax Act, 1973 — Entry 39 Schedule B, 42(1)

Citation : (2010) 29 VST 254

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

H.S. Bhalla, J.—The facts required to be noticed for the disposal of this reference are that vide order dated February 13, 2002, the Sales Tax Tribunal, Haryana (for brevity, "the Tribunal") had allowed the appeal of dealer M/s. Swiss French Laboratories in STA No. 128 of 2001-02 and had held that sugar globules, sold by the dealer-assessee are covered by entry 39 of Schedule B to the Haryana General Sales Tax Act, 1973 (hereinafter referred to as, "the Act"). ETC Haryana moved an application u/s 42(1) of the Act, which was allowed by the Tribunal vide order dated June 13, 2005 and the following question of law was referred to this Court for determination:

Whether on a true and proper interpretation of entry 39 of Schedule B, the Tribunal was correct in law in holding that the sugar globules being manufactured and sold by this dealer "fall under the said entry.

2. We have heard learned Counsel appearing for the parties and also gone through the record minutely with the assistance of the learned Counsel.

3. It is an admitted case of the respondent-assessee that it was assessed for the assessment year 1997-98. On the sale of sugar globules, no tax was levied as it was held that in view of entry 39 of Schedule B, the same was treated as tax-free. The matter was taken up in revision u/s 40 of the Act and vide its order dated December 21, 2000, the turnover of the assessee to the tune of Rs. 15,15,700 was assessed holding that the goods, i.e., sugar globules, do not fall

under entry 39 of Schedule B of the Act and hence are not tax-free. Aggrieved against this order, an appeal was preferred before the Sales Tax Tribunal I, Haryana. The operative part of the order dated December 21, 2000 passed by the Tribunal reads as under:

I have heard the arguments of both the parties and have gone through the record. I find that the globules produced by the appellant are more than 90 per cent sucrose. I also find that there are enough citations to show that any product which has 90 per cent of more of sucrose is to be considered as sugar whatever be its form as long as it is not mixed with any other ingredient. I also find that the JETC(A) Ambala, in similar cases of M/s. J.P.L. Pharma and in the case of the appellant for the assessment year 1998-99, has held that the sugar globules sold by the appellant are nothing but sugar covered under entry 39 of Schedule B appended to the HGST Act, 1973. In view of the discussion mentioned above I accept this appeal and quash the order of the revisional authority dated December 21, 2000.

4. The State, being aggrieved by the aforesaid order, moved an application for referring the question of law, which has been reproduced above, to this Court. This application was allowed and the matter was referred to this Court for consideration u/s 42(1) of the Act, All this clearly spells out that the entire case revolved around entry 39 of Schedule B and before proceeding further, it is necessary to reproduce entry 39 of Schedule B, which is relevant for the determination of disputed question, referred to above.

SCHEDULE B (See Sections 6 and 15) _____

	Serial
Conditions and No. Description of goods exceptions	

___ 39 Sugar including khandsari ... and boora.	
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5. The learned Deputy Advocate-General appearing for the State of Punjab has vehemently argued that the goods in the present case are not termed as sugar in the common parlance and the true interpretation of entry 39 of Schedule B should be the same in the sense, which is understood in the common parlance. According to the learned State counsel, the State Government has exempted sugar, which is commonly presumed to be sugar in crystal form used in various household and for the manufacturing for sweet items. Learned Counsel has further submitted that sugar globules being sold by the assessee are used in the homeopathic medicine, which does not fulfil the criteria laid down by the State Government under Schedule B, which is meant only for sugar and finally, she has pleaded that sugar globules cannot be termed as sugar.

6. On the other hand, learned Counsel appearing for the assessee has pointed out that in a plethora of judgments, it has been held that sugar means an item which contains more than 90 per cent of sugar. In order to lend support to this

contention, he relied upon the judgment of the honourable Supreme Court of India in *State of Gujarat v. Sakarwala Brothers* reported in [1967] 19 STC 24 SC. According to him, the honourable Supreme Court has held that even patasa, harda and alchidana have also been held to be sugar by the aforesaid judgment. It has further been held that patasa, harda and alchidana are only different form of refined sugar with the sucrose sugar contents. Learned Counsel has also relied upon the judgments rendered in the cases of *Commissioner of Sales Tax, Delhi Vs. Nangumal Ram Kishore*, , *Paro and Co. Vs. State of Andhra Pradesh*, and *Chunnilal Motilal Vs. Commissioner of Sales Tax*, .

7. In *Sakarwala Brothers* case [1967] 19 STC 24 (SC), it was held as under (at pages 32-33 of STC):

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 the 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 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 *Commissioner of Sales Tax, Delhi Vs. Nangumal Ram Kishore*, , it was held as under (at page 283 of STC):

From the various points of view expressed above, it would appear that the questions referred to us have usually been answered by the courts in favour of the view that misri and batasha should also be treated as sugar. In most cases, this has been done because "sugar" has itself been defined as sugar in the Central Excise Act. There are no words of limitation in the present case. The words used in our Act, i.e., the Bengal Finance (Sales Tax) Act, 1941, are "sugar and molasses". It is not provided in the Act that "sugar" is used in its extended meaning or in its restricted meaning. In the U. P. Act, just referred to, the Legislature had given a restricted meaning, so khandsari sugar, etc., were not covered. In other cases, we have referred to, the court has held that the word "sugar" should be given a restricted meaning. As has been analysed above, there is no real difference between various types of sugar. They are all produced from the juice of sugarcane which is the principal source of sugar in this country. In some cases, greater refinement leads to a greater percentage of sucrose. The refined product is normally more costly. The mere fact that it is produced in a factory and khandsari sugar and bura sugar may be produced by hand machines, does not mean that the end-product is very much different from the other. The natural juice of the sugarcane when dried produces gur which has comparatively low percentage of sucrose. This may not be sugar as generally understood. All the other products such as refined sugar, cane-sugar, khandsari and bura sugar are products of the juice after it has been subjected to various types of refinement and exclusion of non-sucrose element. The fact that they had to be differently prepared does not mean that they are different items. They are really all different types of sugar. Misri and batasha, which we are dealing with, are produced from highly refined sugar as is obvious from the definition in the Prevention of Food Adulteration Act and the standard which has to be maintained. They are, therefore, sugar, but in a different form. They are not sugar additive mixed with another ingredient, but are sugar formed into different shapes. It would appear that they continue to be sugar and, hence, the exemption should apply to these articles also.

Turning now to the question of law referred to us, the first question is whether the term "sugar" used in entry No. 9 of the Second Schedule to the Act means sugar containing more than 90 per cent of sucrose. We think the answer to this question has to be in the affirmative. All products which can be described as "sugar" and which are not produced by mixing sugar with some other ingredient such as starch (as in icing sugar) or with nuts (as in sweetmeats or confectionery) are sugar provided they contain more than 90 per cent of sucrose. The 90 per cent sucrose seems to be the standard of all the sugar defined in the

Prevention of Food Adulteration Act. So, this can be taken as a standard for defining sugar. The same type of definition is to be found in the Central Excise Act. We would accordingly answer the first question in the affirmative.

As regards the second question, we hold that misri and batasha are sugar within the meaning of entry No. 9 of the Second Schedule and accordingly this question is answered in the affirmative.

(emphasis added)

9. In *Paro and Co. Vs. State of Andhra Pradesh*, , their Lordships of honourable Supreme Court of India, have observed as under (at page 37 of STC):

Apart from all other considerations, prima facie, it is difficult to comprehend that "sugar candy" can be other than purified sugar itself, for it contains no other ingredient but sugar. If sugar tablets are to be included in the expression "sugar"--and we do not see any reason why they should not be included therein,--there is no reason why "sugar candy" should be excluded therefrom.

It is, however, argued that if it was intended by the Legislature that sugar in whatever form it may be must be included in the term "sugar" used in Schedule V, the Legislature would have expressed so in clearer terms. It would have used the expression "sugar in all its forms". But as we have already noticed, having regard to the historic background and the expression used in the Central Act, we do not think there can be any clear context evidencing the intendment of the Legislature that the expression "sugar" used was not confined to sugar in its ordinary form but covered sugar in all its forms provided the sugar element is wholly predominant and that sugar candy is undoubtedly such form of sugar.

(emphasis added)

10. In *Chunnilal Motilal Vs. Commissioner of Sales Tax*, , their Lordships of the honourable Supreme Court have observed as under (at page 305):

It is true that entry 47 specifically mentioned sugar to mean in the same sense as item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944, which defined "sugar" to mean any form of sugar containing more than 90 per cent of sucrose. However, in the Madhya Pradesh Act, the phrase used is merely "sugar" including khandsari and palmyra. Of course/subsequent amendments have been made from time to time, but the phrase "sugar" was given a meaning unqualified by any other category. Their Lordships of the Supreme Court, affirming the view of the Gujarat High Court, held that the word "sugar" as used in entry 47 was wide enough to cover "batasa", "harda" and "alchidana". We do not see any distinction between the two definitions of "sugar" in all its forms as provided by the Central Excises and Salt Act, 1944, and the phrase "sugar" as used in the M.P. General Sales Tax Act, 1958. Of course, if sugar were to be mixed with some other substance, in that event it would be a taxable item. Moreover, the definition of "sugar" as provided by an allied enactment, which has a bearing on the M. P. General Sales Tax Act, 1958, ought to be taken for the

purposes of interpreting the word "sugar" occurring in the M. P. General Sales Tax Act, 1958.

11. When the sugar candy, alchidana, batasa and other similar items having used sugar to the extent of 90 per cent or more, then there cannot be any doubt that "sugar globules" (which are made of almost 100 percent of sugar) have to be regarded as sugar within the meaning of entry 39 of Schedule B to the Act. Thus the "sugar globules" fully answer the test of Sakarwala Brothers case [1967] 19 STC 24 and other judgments of the honourable Supreme Court as quoted hereinabove. Moreover, that definition of "sugar" is only illustrative. It is not exhaustive. There are well-known principles of interpretation that illustrative definitions have wider scope to include even further items. In that context also it has to be held that "sugar globules" would meet the characteristics of "sugar including khandsari" and "boora".

12. In the result, the question is answered in favour of the assessee and against the Revenue. In view of the complicity of the question, we leave party to bear their own costs.