

**Banshidhar Devendra Kumar Vs. the Assistant Commissioner (Judicial) Sales Tax and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/480948](http://sooperkanoon.com/480948)

**Court :** Allahabad

**Decided On :** Aug-26-1982

**Reported in :** [1983]54STC100(All)

**Judge :** K.N. Seth and ;R.B. Lal, JJ.

**Appeal No. :** Civil Misc. Writ No. 512 of 1977

**Appellant :** Banshidhar Devendra Kumar

**Respondent :** The Assistant Commissioner (Judicial) Sales Tax and ors.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** O.P. Agarwal, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**R.B. Lal, J.**

1. By this writ petition under Article 226 of the Constitution, the petitioner has prayed for quashing the two recovery notices and for a declaration that 'gur budda' is not taxable under the provisions of the U.P. Sales Tax Act.

2. The Sales Tax Officer assessed the petitioner-firm to purchase tax under Section 3-D(7) of the U.P. Sales Tax Act (briefly the Act) in respect of the turnover of 'gur budda' for the assessment year 1972-73. The firm made an application under Section 30 of the Act for reopening of the assessment on the ground that it had no information of the assessment proceedings. The firm did not make a deposit of any admitted amount of tax as required under that section and took up the stand that 'gur budda' is not 'gur' and is not a taxable commodity. The Sales Tax Officer held that 'gur budda' is a kind of 'gur' and the firm should have deposited the amount of tax on the admitted turnover of gur budda and as the deposit was not made the application was not maintainable. The firm filed a regular appeal against the assessment order and also filed an appeal against the order of rejection of the application for reopening the assessment.

3. The sales tax authorities started proceedings against the firm for recovery of assessed taxes for the assessment years 1972-73 and 1973-74. The firm filed this writ petition and took up the stand that 'gur budda' is not 'gur' and is not taxable under the provisions of the Act. The recovery notices are liable to be quashed.

4. The submission of the learned counsel for the petitioner is that 'gur budda' is not 'gur' but is a different commodity and is not taxable under the provisions of the Act. 'Gur budda' is manufactured from waste material which is left after extracting khand and contains hardly two per cent sugar. It is mostly used as cattle fodder or for manufacturing wine and it is generally not used for human consumption.

5. The contention of the respondents on the other hand is that 'gur' and 'gur budda' are one and the same commodity except that 'gur budda' is a slightly inferior type of 'gur'. It is also known as 'gur raskat'. The process of manufacture of 'gur budda' is that sugarcane juice is heated and converted into rab and from it khand in crystal form is extracted. The residue which is known as sheera is further heated and solidified and the product is called 'gur budda' or 'gur raskat'. Sometimes some sugarcane juice is added to the aforesaid kind of 'sheera' while preparing 'gur budda' or 'gur raskat'.

6. The petitioner-firm sent a sample of 'gur budda' to Sri Ram Institute for Industrial Research, Delhi, for test and a copy of the test certificate dated 31st January,

1979, has been filed as annexure 5 to the rejoinder-affidavit. The sample was tested according to the standard of quality prescribed for 'gur' under the provisions of the Prevention of Food Adulteration Act and prevailing in the year 1968. The test revealed that the sample contained 86.6 per cent total sugars expressed as invert sugar and 42.4 per cent sucrose, as against the minimum limit of 90 per cent and 60 per cent respectively according to the prescribed standard. This test certificate falsifies the contention of the petitioner that 'gur budda' contains hardly two per cent sugar contents.

7. The aforesaid test revealed that the sample contained free entrapped mud, which according to the Institute was deleterious to health. The presence of such matter would not change the essential nature of the commodity.

8. The respondents filed two annexures with their counter-affidavit. Annexure 1 is a survey report of the Sales Tax Officer, Baraut, dated 25th January, 1978. That officer had interrogated Sri Shri Ram and Sri Padam Prasad, partners of two sugar manufacturing firms, on 25th January, 1978, in order to find out as to what was 'gur budda' and whether there was any difference between 'gur budda' and 'gur raskat'. Sri Shri Ram told the officer that there was no difference between 'gur budda' and 'gur raskat' and both were interchangeable terms. He explained the process of manufacture of this kind of 'gur' and added that this 'gur' was eaten by poorer section of the society. Sri Padam Prasad also made a similar statement. Annexure 2 is report dated 28th July, 1978, of the Rashtriya Shakara Sanstha, Kanpur. This report shows that 'gur budda' is a variety of 'gur' which is of an inferior quality. In its rejoinder-affidavit the petitioner generally denied the averments contained in paragraphs 13 and 14 of the counter-affidavit, but did not dispute the averment in the survey report that 'gur budda' and 'gur raskat' are one and the same thing and interchangeable terms.

9. Explanation I to Section 3-D of the Act was added by the U.P. Sales Tax (Amendment) Act, 1974 and was given retrospective effect from 1st October, 1964. This explanation clarifies that 'gur raskat' and 'gur lauta' are to be deemed different from 'khandsari molasses' including 'shira sayar', 'shira galawat' and 'shira salawat' and 'rab' including 'rab sayar', 'rab galawat' and 'rab salawat'. Item No.

224 in the schedule of rates relates to 'gur including gur shakkar, jaggery powder, gur lauta, gur raskat and palmyra gur'. The use of the word 'including' indicates that the enumeration of varieties is not exhaustive.

10. The inescapable conclusion, therefore, is that 'gur budda' is nothing but 'gur raskat' and is a variety of 'gur' though a little inferior in quality. We accordingly hold that 'gur budda' is a variety of 'gur' and is included in the term 'gur' for purposes of the Act and is a taxable commodity as such.

11. The learned counsel for the petitioner has made no other submission in this case.

12. Since we have held that 'gur budda' is a taxable commodity under the Act, it cannot be held that the recovery certificates issued by the sales tax authorities suffer from any illegality or infirmity justifying interference in exercise of writ jurisdiction of this Court.

13. The writ petition has no merit and is accordingly dismissed with costs. The stay order is hereby vacated.