

(1978) 09 GAU CK 0003**Gauhati High Court****Case No:** Civil Rule No. 443 of 1973

Basudeo Nirmal

APPELLANT

Vs

The Assam Board of Revenue
and Others

RESPONDENT

Date of Decision: Sept. 6, 1978**Acts Referred:**

- Constitution of India, 1950 - Article 226

Citation: (1980) 45 STC 306**Hon'ble Judges:** C.M. Lodha, C.J; K.M. Lahiri, J**Bench:** Division Bench**Advocate:** J. Singh, for the Appellant; B.M. Goswami, Government Advocate, for the Respondent**Final Decision:** Allowed**Judgement**

C.M. Lodha, C.J.

By this petition under Article 226 of the Constitution of India, the petitioner has prayed that the appellate order by the Assam Board of Revenue, Gauhati, dated 26th October, 1972, whereby the Board upheld the order dated 14th June, 1971, passed by the Assistant Commissioner of Taxes, Gauhati Zone, Gauhati, confirming the order of assessment made by the Superintendent of Taxes dated 18th November, 1969, be quashed. The relevant period with which we are concerned is the assessment year ending on 31st March, 1969. The short question submitted for our decision is whether an ayurvedic medicine called mritasanjiwani sura attracts levy of Finance sales tax.

2. The petitioner is a dealer in ayurvedic medicines prepared by Baidyanath Ayurvedic Bhawan. By his order dated 18th November, 1969, the Superintendent of Taxes assessed the petitioner for Finance sales tax on the turnover of mritasanjiwani sura. Aggrieved by the levy of tax on the said medicine, the petitioner filed an

appeal before the Assistant Commissioner of Taxes; but the same was rejected, whereupon he preferred a second appeal before the Board of Revenue. As stated above, that too was dismissed by the impugned order dated 26th October, 1972.

3. For a correct appraisal of the arguments advanced by the learned counsel for the petitioner, it is necessary to refer to items Nos. 28 and 67 of the Schedule appended to the Assam Finance (Sales Tax) Act, 1956. These two items, as they stood in 1962, read as follows:

4. It appears that, by Act No. 21 of 1972, items Nos. 28(d) and 67 were amended as below:

Section 4 . In the Schedule to the principal Act, --

(6) for item No. 28(d), the following shall be substituted, namely: --

(d) Ayurvedic, Homoeopathic and Unani medicines except those covered by item No. 67 of this Schedule...

(10) in item No. 67, between the words "preparations" and "containing", the following shall be inserted, namely: --

"under any pharmacopoeia".

5. Thus, it would appear that on 31st March, 1969, Ayurvedic, Homoeopathic and Unani medicines were not subject to the levy of Finance sales tax under item No. 28, and item No. 67 could not be pressed into service inasmuch as there was no yardstick to determine the percentage by volume of alcohol in spirituous medicinal preparations. It was only by virtue of insertion of the words "under any pharmacopoeia" that spirituous medicinal preparations could be brought to tax. We are led to this conclusion because of the implications of the term "pharmacopoeia" contained in Stedman's Medical Dictionary, Unabridged Lawyers' Edition. The word "pharmacopoeia" has been defined as follows:

A work containing a list of accepted drugs and establishing standards for their strength and purity, together with directions for making preparations from them. The first edition of the U.S.P. was compiled in 1820 and it has since been revised every ten years by a Committee of physicians and pharmacists. The work was made a legal standard by the terms of the National Food and Drugs Act in January, 1907. The 16th revision was issued in 1960. In works of *Materia Medica*, the various national pharmacopoeias are referred to under abbreviation, of which the following are those most frequently encountered; B.P., British Pharmacopoeia; Codex medicamentarius, the French Pharmacopoeia; I.C. Add. (or B.A.), the Indian and Colonial Addendum to the B.P.; I.P. International Pharmacopoeia; P. Austr., the Austrian Pharmacopoeia; P.G., the German Pharmacopoeia; P. Helv., the Swiss Pharmacopoeia; U.S.P., the United States Pharmacopoeia.

6. At this juncture, we may point out that the amendments contained in items Nos. 28 and 67 are not retrospective as the words used are "shall be substituted" and "shall be inserted" respectively. Therefore, these phrases added in the year 1972 cannot be read in the original text of the schedule. There is thus no escape from the conclusion that mritasanjiwani sura being an ayurvedic preparation, was not subject to the levy of Finance sales tax for the period ending on 31st March, 1969, as the law then stood. In this view of the matter, the impugned orders by the Superintendent of Taxes, the Assistant Commissioner of Taxes and the Assam Board of Revenue are liable to be struck down, to the extent Finance sales tax has been levied on mritasanjiwani sura.

7. Accordingly, we allow this petition and set aside the levy of Finance sales tax on the petitioner's turnover of mritasanjiwani sura for the period ending on 31st March, 1969. However, since the point canvassed before us was not taken before the Board of Revenue or the lower authorities, we leave the parties to bear their own costs.

K. Lahiri, J.

I agree.