

(2001) 05 CAL CK 0041

Calcutta High Court

Case No: Writ Petition No. 4157 of 1987

Gulab Chand Harek Chand and
Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: May 15, 2001

Acts Referred:

- Bengal Finance (Sales Tax) Rules, 1941 - Rule 3(28)

Citation: (2002) 128 STC 602

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Amitava Lala, J.

In spite of repeated calls nobody appeared on behalf of the respondents. No affidavit has been filed.

2. In the judgment dated September 21, 1984 passed in C.R. No. 12432(W) of 1976 (Gulabchand Harekchand and Another Vs. State of West Bengal and Others,) in a co-ordinate jurisdiction it was held that tax cannot be levied on "gudakhu" as this is covered by the expression "tobacco". The petitioner's claim for exemption under Rule 3(28)(b) of the Bengal Sales Tax Rules, 1941 should be allowed and further held that as "gudakhu", not being a tooth paste or tooth powder, is not subject to the levy of tax under the West Bengal Sales Tax Act and also under the Entry Tax Act.

3. An appeal was preferred from the said order dated September 21, 1984 and by a judgment and/or order dated July 25, 1990, division Bench of this Court was pleased to dismiss the appeal by holding that it is not understood in common parlance that "gudakhu" being "tobacco" is dentifrice. Therefore, only the persons desire to have effect of "tobacco" are interested in "gudakhu". At the relevant point of time--as it is found from the notice dated 21st December, 1976 to 19th April, 1979--it was not

specifically included in the scheduled items for levy of entry tax. Therefore, the earlier judgment of the co-ordinate jurisdiction which was merged with the judgment of the division Bench by upholding the same up to 28th April, 1979 has a binding effect in this matter.

4. Under the circumstances, rule is made absolute. Interim order, if any, stands confirmed.

5. Thus, the writ petition stands disposed of. No order is passed as to costs.

6. Since the matter is related to different periods only but in-between the self-same parties, the matter is re-numbered not separately but in fact the earlier order is reviewed in the similarly placed situation and the order is passed accordingly by following the principles laid down in (1999) 2 Cal LJ 97 (Ashish Kumar Roy v. Union of India).

7. Let xeroxed certified copy of this dictated order be supplied to the parties by the department within seven days from the date of putting in requisition for drawing up and completion of the order as well as the certified copy thereof.

8. All parties are to act on a xeroxed signed copy of dictated order upon usual undertaking and as per the satisfaction of the officer of this Court as above.