A M/S TRIMURTHI FRAGRANCES (P) LTD. THR. ITS DIRECTOR SHRI PRADEEP KUMAR AGRAWAL

v.

GOVT. OF N.C.T. OF DELHI THROUGH ITS PRINCIPAL SECRETARY (FINANCE) AND ORS.

B (Civil Appeal No. 8486 of 2011)

MAY 04, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

Central Sales Tax Act, 1956 – ss.14, 15 – Finance Act, 1988 C *– Central Excise Tariff Act, 1985 – Chapter 21, 24 of the Schedule – Additional Duties of Excise (Goods of Special Importance) Act, 1957 – Finance Act, 2001 – Delhi Sales Tax Act, 1975 – Tamil Nadu General Sales Tax Act, 1959 – Uttar Pradesh Trade Tax Act, 1948 – Taxability of* pan masala *or* gutka/gutkha *under the aforesaid State enactments – Whether* pan masala *was an exempted item, being* D *"tobacco" – Held: The holding in* Trimurti Fragrances (P) Ltd *case that there is no conflict between the* Agra Belting Works *line of cases, and the* Kothari Products Ltd. *line of cases, concludes the question w.r.t the efficacy/validity of notifications introducing as entries in a Schedule(s) and subjecting them to tax, when those articles are part* E *of the statute or are exempted from taxation – Assessees' contentions fail on this point – Further, the CET Act itself made a distinction between* pan masala*, whether it contained tobacco or not and all forms of tobacco – Right from 1995, the distinction in the CET Act between* pan masala *(Chapter 21) and tobacco (Chapter 24) had* F *been made – The definition of* pan masala *also clarified that despite one of its ingredients being tobacco, it would nevertheless be a separate article – Till 2001, "*Pan masala*" and chewing tobacco received different treatment – They are not interchangeable or synonymous expressions – Entry 2404 refers to chewing tobacco "including preparations commonly known as "*Khara Masala", G "Kimam", "Dokta", "Zarda", "Sukha" *and "*Surti*"" –* Gudaku *and snuff are dealt with under a separate heading – The effect of inclusion of* pan masala *with tobacco in Chapter 24 and simultaneously that product's exclusion from Chapter 21, as well as imposition of ADE with effect from 2001, on '*pan masala *containing tobacco' meant* H *that the product (i.e.* pan masala *without tobacco) went out for the*

first time of the reach of State sales tax – All along, goods and products described as pan masala *and* gutkha *were included in Chapter 21 – Therefore, till 2001 and the introduction of ADE, these two products were covered by local or Sales tax levies – Before 2001,* pan masala *and* gutkha *fell within Chapter 21, as pan masala, regardless of whether they contained tobacco – Goods classifiable under Chapter 24 i.e. tobacco items were more general, also they did not include* pan masala *– Subsequent changes made introducing 2404.40 in the CET Act do not affect or change the CST Act – Thus,* gutkha *and* pan masala *are not covered under sub-heading 2404.40 so far as CST Act is concerned – Thus, the arguments of the assessees that the rate of local tax cannot exceed the limit under the CST Act, rejected.*

Disposing of the appeals, the Court

HELD: 1.1 At the relevant time, 'Pan Masala' was described as a preparation containing betel nuts and any one or more other ingredients such as lime, katha, katechu, cardamom, copra, menthol and tobacco. This is the definition of Pan Masala under the CET Act which continued till 1995. Heading 21.06 covered 'Pan Masala' containing "lime, katha, katechu, cardamom, copra, menthol and tobacco" or any one or more of these ingredients. Chapter 24 dealt with tobacco and manufactured tobacco substitutes and the relevant sub-heading at that time was 2404.41 which deals with chewing tobacco, including preparations commonly known as khara masala, kimam, dokta, zarda, sukha and surti. Parliament Act 22 of 1995, substituted Note-3 to Chapter 21 of the CET Act. "Pan Masala" was described as "any preparation containing betel nuts and any one or more of the following ingredients, viz., lime, katha, katechu or tobacco, whether or not containing any other ingredients such as cardamom, copra and menthol". The primary ingredient of pan masala therefore, is betel nut, which could be mixed with other ingredients in combination or in isolation. This position prevailed as on 01.03.1988. In 1995, the definition underwent a change. Betel nuts remained the essential ingredient along with "lime, katha or tobacco" together, or separately. Whether the product contained cardamom, copra, and menthol or not was irrelevant:

yet one of the three ingredients (lime, katha and tobacco), had to be found in the preparation known as 'pan masala'. By Parliament Act 33 of 1996, the description to Chapter Heading 24.04 and sub-headings under it were re-numbered. The description of goods was reclassified. There was no change in Chapter 21; Heading 21.06 continued to be only 'pan masala'. That changed with effect from 01.03.2001, through Note-3. Entry No. 2 of Part-J in the First Schedule to the ADE Act is similar to sub-heading 2404.49 - as amended from 01.03.2001. As a result, additional excise duty could be imposed on ''Pan Masala containing tobacco".[Paras 46, 47 and 49][1070-G-H; 1071-B-D; 1072-C-D]

1.2 As far as the first point argued by the appellants are concerned, which is, whether in a state law which contains two provisions: one which taxes entries, and another which exempts articles from levy (the latter being listed separately, in a notification, or a schedule to the enactment itself), the inclusion, or insertion into the list or schedule of articles that can be taxed (like Section 4 of the DST Act) without amending the subsisting notification that excludes levy (as under Section 7 DST) would the levy fail? There was apparent conflict between two lines of judgments of this court i.e., *Radheshyam Gudakhu Factory* and *Kothari Products Ltd.* on the one hand, and *Dealing Dairy Products, Krishna Kuthar Kabra* and *Agra Belting Works* on the other hand. This court, in the latter three judgments held that notification introducing an entry and subjecting it to levy, when previously, it was exempt in another part of the taxing statute, the intention was to withdraw the exemption and make the sale leviable to tax at the rate prescribed in the later notification. The court held it to be unnecessary that "*a specific or separate notification withdrawing or revoking the notification should be issued*". This conflict was referred to a larger bench of five judges, in *Trimurti Fragrances (P) Ltd v. Govt of NCT of Delhi* (a case, which is part of the present batch). The holding, that there is no conflict between the *Agra Belting Works* line of cases, and the *Kothari Products Ltd.* line of cases, therefore, concludes the question urged with respect to efficacy or validity of notifications introducing as entries in a schedule(s) and subjecting them to tax, when those articles are

part of the statute or are exempted from taxation. The assessees' contentions therefore, fail on this point. [Paras 53-55][1074-G-H; 1075-A-C]

Trimurti Fragrances (P) Ltd v. Govt of NCT of Delhi **[2022] 15 SCR 516 – followed.**

State of Orissa v. Radheshyam Gudakhu Factory **(2018) 11 SCC 505;** *Commissioner, Sales Tax, U.P. v. Agra Belting Works* **[1987] 3 SCR 93;** *Sale Tax Officer, Sector IX, Kanpur v. Dealing Dairy Products & Anr* **(1994) 2 Supp SCC 639;** *State of Bihar v. Krishna Kuthar Kabra* **(1997) 9 SCC 763 – referred to.**

2. P*an masala* was expressly mentioned in Chapter 21 for the first time, in 1995 in the CET Act. Note 3 defined *'Pan Masala'* as *"any preparation containing betel nuts and any one or more of the following ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients".* However, at the same time, Chapter 24 contained a specific entry "tobacco" which enumerated tobacco, manufactured tobacco, substitutes etc. The relevant sub-heading at that time was 2404.41 which enumerated chewing tobacco, including preparations commonly known as *khara masala, kimam, dokta, zarda, sukha* and *surti*. Thus, the CET Act itself made a distinction between *pan masala* - whether it contained tobacco, or not, and all forms of tobacco. Right from 1995, the distinction in the CET Act between *pan masala* (Chapter 21) and tobacco (Chapter 24), had been made. The definition of *pan masala* also clarified that despite one of its ingredients being tobacco, it would nevertheless be a separate article. Throughout (till 2001), *"Pan masala"* and chewing tobacco have received different treatment. They are not interchangeable or synonymous expressions. Entry 2404 refers to chewing tobacco *"including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha" and "Surti"". Gudaku* and snuff are dealt with under a separate heading. The effect of inclusion of pan masala with tobacco in Chapter 24 and *simultaneously* that product's exclusion from Chapter 21, as well as imposition of ADE with effect from 2001, on '*pan masala containing tobacco'* meant that the product (i.e. pan masala without tobacco) went out, for the first time, of the reach of state sales tax. All along,

goods and products described as *pan masala and gutkha,* were included in Chapter 21. The conclusion therefore, is that till 2001, and the introduction of ADE, these two products were covered by local or sales tax levies. On a plain application of the interpretive rules, especially Rule 3(a) it is clear that the heading which provides the most accurate description has to be followed. In the present case, there is no doubt, that before 2001, *pan masala* and *gutkha* fell within Chapter 21, as *pan masala,* regardless of whether they contained tobacco. Goods classifiable under Chapter 24, i.e. tobacco items were more general; also they did not include *pan masala.* As regards the question of the rate of tax, in view of the restrictions under Section 15 CST Act, neither *gutkha* nor *pan masala* were "declared goods" under Section 14 of the CST Act. The amendment to the CET Act did not become part of Section 14(ix). The goods under the relevant sub-headings of the CET Act were absent in the list of declared goods of the CST Act; they were not part of the provisions introduced to the Finance Act, 1988. Therefore, the subsequent changes made introducing 2404.40 in the CET Act do not affect or change the CST Act. Consequently *gutkha* and *pan masala* are not covered under sub-heading 2404.40 so far as CST Act is concerned. Resultantly the arguments of the assessees that the rate of local tax, cannot exceed the limit under the CST Act, are rejected as unmerited. [Paras 56, 62, 63][1076-B-D; 1078-A-D; 1080-D-G]

Pioneer Land & Urban Infrastructure v. Union of India **[2019] 10 SCR 381;** *Kothari Products Ltd. v. Government of A.P* **(2000) 9 SCC 263;** *Mahalakshmi Oil Mills v. State of Andhra Pradesh* **[1988] 2 Suppl SCR 1088;** *P. Kasilingam v. PSG College of Technology* **[1995] 2 SCR 1061;** *Collector of Central Excise Nagpur v. Simplex Mills Co. Ltd.* **[2005] 2 SCR 441;** *Tata Sky Ltd. v. State of Madhya Pradesh* **[2013] 2 SCR 849;** *Reliance Trading Company v. State of Kerala* **(2011) 15 SCC 762;** *Narottamdas v. State of Madhya Pradesh & Ors.* **[1964] 7 SCR 820;** *Girnar Traders (3) v. State of Maharashtra & Ors.* **[2011] 3 SCR 1;** *Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P,*

Lucknow **[1998] 2 Suppl. SCR 119;** *Madhya Pradesh v. M.V. Narsimhan* **[1976] 1 SCR 6;** *Nagpur Improvement Trust v. Vasantrao* **[2002] 2 Supp SCR 636;** *U.P. Avas Evam Vikas Parishad v. Jainul Islam & Anr* **[1998] 1 SCR 254 – referred to.**

Case Law Reference

(2000) 9 SCC 263	**referred to**	**para 14**
(2018) 11 SCC 505	**referred to**	**para 14**
[1987] 3 SCR 93	**referred to**	**para 17**
(1994) 2 Supp SCC 639	**referred to**	**para 17**
(1997) 9 SCC 763	**referred to**	**para 17**
[1988] Suppl 2 SCR 1088	**referred to**	**para 19**
[2013] 2 SCR 849	**referred to**	**para 30**
(2011) 15 SCC 762	**referred to**	**para 30**
[1964] 7 SCR 820	**referred to**	**para 33**
[2011] 3 SCR 1	**referred to**	**para 33**
[1998] 2 Suppl. SCR 119	**referred to**	**para 34**
[1976] 1 SCR 6	**referred to**	**para 43**
[2002] 2 Supp SCR 636	**referred to**	**para 43**
[1998] 1 SCR 254	**referred to**	**para 43**
[2022] 15 SCR 516	**followed**	**para 54**
[1995] 2 SCR 1061	**referred to**	**para 58**
[2019] 10 SCR 381	**referred to**	**para 59**
[2005] 2 SCR 441	**referred to**	**para 61**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8486 of 2011.

From the Judgment and Order dated 05.04.2006 of the High Court of Delhi at New Delhi in Writ Petition (C) No. 2925 of 2005.

With

A Civil Appeal Nos. 8485, 8487, 8488, 8491-8494, 8495, 8496-8501, 8502 of 2011, 8617, 10374-10379 of 2014 and 289 of 2023.

Dhruv Agrawal, Sr. Adv., Madhav Bhatia, Aditya Pandey, Ms. Bharti Tyagi, Pawanshree Agrawal, Ms. Shubhangi Negi, Mrs. Prabha Swami, Shwetank Sailakwal, Nishit Agrawal, Kanishk Mittal,
B Ms. Vanya, Zaid Raza, Vipin Kumar Jai, G. Prakash, Jishnu M L, Mrs. Priyanka Prakash, Nalin Talwar, Praveen Kumar, Ms. Sunaina Kumar, Advs. for the Appellant.

R Venkataramani, AG, N. Venkatraman, A.S.G., Arijit Prasad, R K Raizada, K. Radha Krishnan, Sr. Advs., Mukesh Kumar Maroria,
C Rupesh Kumar, Kanu Agarwal, V. Chandra Shekhra Bharathi, H.R. Rao, Zoheb Hussain, H. Raghvendra Bajaj, Ms. Amrita Vijay Kumar, Vikas Bansal, M. Yogesh Kanna, Bhakti Vardhan Singh, V. M. Vishnu, Ankit, Sabarish Subramanian, Vishnu Unnikrishnan, Ms. Shivani Jena, Naman Dwivedi, P. Shankar, R. Nedumaran, Gurmeet Singh Makker, Ms. Kannu Agarwaal, Arijit Prasad, Ms. V.C. Bharathi, H.R. Rao, Zoheb
D Hussain, Advs. for the Respondents.

The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

E 1. This judgment will dispose of appeals arising from judgments of three High Courts, on the question of taxability of *pan masala or gutka/gutkha*[1], under state enactments. The appellants unsuccessfully argued that state legislatures were not empowered to levy sales tax on those articles, in view of the provision in the Constitution enabling the Union to levy additional duties of excise, and further that in any case, the
F rate of state tax cannot exceed the limit prescribed by the Central Sales Tax Act, 1956.

Brief Facts

2. The relevant central enactments are the Central Sales Tax Act, 1956 (hereafter "CST Act"), the Central Excise Tariff Act, 1985
G (hereafter "CET Act"), and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereafter "ADE Act"). The state enactments in question are the Delhi Sales Tax Act, 1975 (hereafter

[1] Which is spelt differently in regional contexts as '*gutka*' or '*gutkha'* or '*guhtka*', For
H convenience, this is hereafter referred to uniformly as '*gutkha'*.

"DST Act"); Tamil Nadu General Sales Tax Act, 1959 (hereafter "TNGST Act") and the Uttar Pradesh Trade Tax Act, 1948 (hereafter "UPTT Act").

3. Section 14 of the CST Act declares certain goods to be of special importance; and Section 15 restricts the power of taxation on the said goods. Originally Section 14(ix) of the CST Act read as follows:

> *"(ix) tobacco, as defined in Item No. 4 of the First Schedule to the Central Excises and Sale Act, 1944 (1 of 1944)"*

Entry 4 of the CET Act, which defines 'tobacco', reads as follows:

> *"4. Tobacco*
>
> *"Tobacco" means any form of Tobacco, whether cured or uncured and whether manufactured or not and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.*
>
> ...
>
> *II. Manufactured Tobacco*
>
> ...
>
> *(5) Chewing tobacco, including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha" and "Surti"."*

4. The Finance Act, 1988 (Central Act No. 26/1988) substituted the expressions in Section 14(ix) of the CST Act, with the following words, w.e.f. 13.05.1988:

> *"14(ix). Unmanufactured tobacco and tobacco refuse covered under sub-Heading No. 2401.00, cigars and cheroots of tobacco covered under Heading No. 24.02, cigarettes and cigarillos of tobacco covered under the sub-Heading Nos. 2403.11 and 2403.21, and other manufactured tobacco covered under sub-heading Nos. 2404.41, 2404.50 and 2404.60 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)."*

5. The 1988 amendment to Section 14 of the CST Act was with a view to align the description of goods in that law, with the description in

A the CET Act, as is clear from the Finance Bill, 1988. Heading 24.04 of the CET Act originally read to include *"Gudaku with brand name and without brand name"* (Entries 2404.11 and 2404.12); cut tobacco (Entry 2404.13); *hookah* tobacco, chewing tobacco (including preparations known as *khara masala, khiman, dokta, zarda and surti* (Entry 2404.39); snuff (Entry 2404.49); and snuff of tobacco (Entry 2404.50).
B The entry in relation to chewing tobacco was amended w.e.f. 1993-94.

6. By Finance Act, 1995, 'Pan Masala' was brought under the Heading 21.06. In the year 1995, the Fourth Schedule was amended, and the relevant Clause (8) in Chapter 21 read as follows:

C *"(8) in Chapter 21, -*

(i) for NOTE 3, the following NOTE shall be substituted, namely:

'3. In this Chapter, 'Pan Masala' means any preparation containing betel nuts and any one or more of the following
D *ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol'.*

Clause (10) in Chapter XXIV reads as follows:

E *(i) for NOTE 2, for the figures and word '24.02, 24.03 and 24.04', the figures and word '24.01, 24.02, 24.03 and 24.04' shall be substituted."*

Clause (9) in Chapter XXI reads as follows:

"(i) for Heading Nos. 21.06 and 21.07 and the entries relating
F *thereto, the following shall be inserted, namely:*

21.06 2106.00 'Pan Masala' 50%"

Finance (No. 2) Act, 1996, again changed the entry, in the following manner:

G *"(7) in Chapter 24, after NOTE 4, the following NOTE shall be inserted, namely:*

5. In this Chapter, 'smoking mixtures for pipes and cigarettes' of sub-heading No. 2404.10 does not cover 'Gudaku'."

.....

H

"(iii) For Heading No. 24.03 and the entries relating thereto, the following shall be substituted, namely

Heading No.	Sub-Heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)
24.04		Other manufactured tobacco and manufactured tobacco substitutes; homogenized or 'reconstituted' tobacco, extracts and essences	
...	...	...	...
...	...	...	...
2404.40		Chewing tobacco and preparations containing chewing tobacco	40%

The relevant extracts from the Finance Act, 2001, which again carried out changes, read as follows:

" THE FOURTH SCHEDULE

[See Section 134 (a)]

PART - I

In the First Schedule to the Central Excise Tariff Act, -

(1) in Chapter 21, for NOTE 3, the following NOTE shall be substituted, namely:

3. In this Chapter, 'Pan Masala' means any preparation containing betel-nuts and any one or more of the following ingredients, namely:

(i) lime; and

(ii) kattha (catechu),

but not tobacco, whether or not containing any other ingredients such as cardamom, copra and menthol";

(2) in Chapter 24, after NOTE 5, the following NOTE shall be inserted, namely:

'6. In this Chapter, 'Pan Masala' containing tobacco", commonly known as 'Gutkha' or by any other name, means

A *any preparation containing betel-nuts and tobacco and any one or more of the following ingredients, namely:*

(i) lime; and

(ii) kattha (catechu),

B *Whether or not containing any other ingredients such as cardamom, copra and menthol."*

On the above products, a special excise duty of 16% was also levied in the V Schedule, apart from additional duties of excise in Part-II of the VI Schedule as indicated below:

C
Heading No.	Sub-Heading No.	Description of goods	Rate of duty
(1)	(2)	(3)	(4)

D In the First Schedule to the Central Excise Tariff Act, -
(1) In Chapter 24, for sub-Heading No. 2404.40 and the entries relating thereto, the following shall be substituted, namely:-

"- Chewing tobacco and preparations containing chewing tobacco; 'Pan Masala' containing tobacco :			
2404.41	-	Chewing tobacco and preparations containing chewing tobacco	16%
2404.49	-	'Pan Masala' containing tobacco	16%

E

The Delhi batch of appeals: Shanti Fragrances[2], Trimurti Fragrances[3], Kuber Tobacco[4], Sunrise Food Products[5], and Dharam Pal Satyapal[6]

F 7. In this batch of appeals, the grievance is in respect of five judgments of the Delhi High Court, on the interpretation of the DST Act.

[2] CA No. 8485/2011, against impugned judgment dated 05.11.2004 in WP (C) No. 11251/2004 (DHC).

[3] CA No. 8486/2011, against impugned judgment dated 05.04.2006 in WP (C) No. 2925/2005 (DHC)

G [4] CA No. 8491-94/2011, against impugned judgment dated 01.12.2006 in WP (C) No. 17886/2006 (DHC); and CA No. 8487/2011, against impugned judgment dated 05.04.2006 in WP (C) No. 23698/2005 (DHC).

[5] CA No. 8488/2011, against impugned judgment dated 05.04.2006 in WP (C) No. 9837/2005 (DHC).

[6] CA No. 8495/2011, against impugned judgment dated 14.11.2007 in WP (C) 7883/2007 (DHC)

H

The earliest judgment was delivered in relation to the appeal by M/s Shanti Fragrances; the subsequent judgments have reiterated the ruling in that case.

8. Section 3 of the DST Act imposes local sales tax on every dealer whose turnover exceeds the limit specified in a notification, and who is registered or is liable to pay tax under the CST Act, on all sales effected on or after the commencement of the DST Act. Section 3(6) reads as follows:

> *"no dealer who deals exclusively on one or more classes of goods specified in the Third Schedule shall be liable to pay any tax under this Act."*

Section 7 of the DST reads as follows:

> *"7. Tax Free Goods*
>
> *(1) No tax shall be payable under this Act on the sale of goods specified in the Third Schedule subject to the conditions and exceptions, if any, set out therein.*
>
> *(2) The [7][Lieutenant Governor may] by notification in the Official Gazette, add to, or omit from, or otherwise amend, the Third Schedule either retrospectively or prospectively, and thereupon the Third Schedule shall be deemed to be amended accordingly:*
>
> *Provided that no such amendment shall be made retrospectively if it would have the effect of prejudicially affecting the interests of any dealer."*

Entry 22 of the Third Schedule reads as follows:

> *"22. Tobacco as defined under the Central Excise and Salt Act, 1944 (1 of 1944)."*

9. The effect, *prima facie,* of an overall reading of provisions of the DST Act therefore, is that all dealers whose turnover exceeds the quantified amount which is termed "as taxable quantum" during the relevant period, are liable to pay state or local sales tax. Section 3(6) of

[7] Substituted for "*The Administrator may, with the previous approval of the Central Government and* " by Notification No. F4(120)/94 -Fin.(G)/2137 to 2145 dated 02.03.1998.

A the Act states that the dealer who exclusively deals in goods specified in the Third Schedule shall not be liable to pay tax.

10. By a notification dated 31.03.2000 issued by the competent authority i.e. the Lt. Governor of the National Capital Territory of Delhi (hereafter "NCTD"), Entry 46 was inserted in the First Schedule to the B DST Act. That Entry reads as follows:

"46. Pan Masala and Gutkha"

11. The First Schedule is dealt with under Section 4 of the DST Act (*"rate of tax"*) it broadly enacts [by Section 4(1)(a)] that the taxable turnover *"in respect of the cases specified in the First Schedule"* C would be at the rate of 12 paise to a rupee. Thus, goods enumerated in the First Schedule are *per se* subjected to be local or state sales tax levy under the DST Act @ 12%. Similarly, goods referred to in the Third Schedule are tax-free. It is also clear that the Lt. Governor is authorised to change the entries, as indicated in Section 7, that is to say, from tax-D free goods to taxed goods and *vice versa*.

12. The appellants had argued before the Delhi High Court, that tobacco is mentioned in the Third Schedule at Sl. No. 22 and that the expression (tobacco) refers to what is defined as such under the Central Excise Act, 1944 (hereafter "CEA"). Consequently, to ascertain E "tobacco", one has to refer to the CEA read with Chapter 24 of the Schedule to the CET Act. Chapter Note 3 thereof reads as under:

"In this Chapter, 'tobacco' means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, F *but does not include any part of a tobacco plant while still attached to the earth."*

13. Chapter Note 6 reads as follows:

"In this Chapter, "Pan Masala containing tobacco", commonly known as 'Gutka' or by any other name, means G *any preparation containing betel nuts and tobacco and any one or more of the following ingredients, namely:*

(i) lime; and

(ii) kattha (catechu),

H

whether or not containing any other ingredients, such as cardamom, copra and menthol."

Chapter 24 includes Heading No. 2404.49, which reads as under:

"Pan Masala containing tobacco"

14. The appellants had urged before the High Court that *"gutkha"* is *"tobacco"* and relied on *Kothari Products Ltd. v. Government of A.P*[8] and *State of Orissa v. Radheshyam Gudakhu Factory*[9]. This court in *Radheshyam Gudakhu Factory* (supra), noted that *"tobacco"* in Section 2(c) of the ADE Act means goods in Entry 9 of the First Schedule to the CET Act which is as follows:

"'Tobacco' means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth."

15. In *Radheshyam Gudakhu Factory* (supra) the issue was whether '*Gudaku*' was covered by the expression, 'tobacco' defined in ADE Act. The court held that *"gudaku"* is a form of smoking tobacco and is a product of tobacco, in common parlance. Before the Court there was no dispute that "*gutkha*" is not included in "tobacco". Thus, it is clear that "*Gutkha*" and "*Gudaku*" are both covered by the expression "tobacco" as understood in Chapter Note 3 of the CET Act. The appellants argued that when *'Gudaku'* and *'Gutkha'* are tobacco and fell within Entry No. 22 of the Third Schedule of the Act, local sales tax cannot be levied by introducing Entry No. 46 through a notification and by including it in the First Schedule. *Kothari Products Ltd.* (supra) was relied on; the dealer was dealing in *'Gutkha'* (under the brand "Pan Parag"). The introduction of Entry 194 (which taxed *"pan masala including gutkha"*) in the First Schedule to the A.P. General Sales Tax Act (APGST Act) was in issue. APGST Act had a provision[10] like Section 7 of the DST Act which exempted goods in the Fourth Schedule. The Fourth Schedule referred to tobacco (Entry 7) and its explanation stated that it shall be

[8] (2000) 9 SCC 263 [hereafter '*Kothari Products Ltd.*']
[9] 1988 (68) STC 92 (SC); (2018) 11 SCC 505 [hereafter '*Radheshyam Gudakhu Factory*']
[10] See Section 8.

A *"shall be goods included in the relevant heads and sub-heads of the First Schedule to the Additional Duties of Excise (Goods of Special Importance Act, 1957, but does not include goods where no additional duties of excise are levied under that Schedule."*

B 16. This court held that '*gutkha'* is tobacco covered by an Entry in the First Schedule to the said ADE Act and that the branded *gutka* in question was *"gutkha"*, and therefore, "goods" covered by Explanation to the Fourth Schedule to the APGST Act. It was hence exempted by Section 8. It was held that the Schedule to the APGST Act could not be amended by including *gutkha* as a kind of pan masala in Entry 194 of
C the First Schedule. Its inclusion was held to be invalid in law.

17. The revenue's stand before the High Court, was that tobacco in Entry No. 22 of the Third Schedule of the DST Act, is a general entry. Chapter 24 of the Schedule to the CET Act referred to various items under six heads. It was open for the state to levy tax in accordance with
D the Sales Tax Act; what was needed was to test the legislative competence of the state in levying the tax. It was urged that Entry No. 22 in Third Schedule is a general entry, and Entry No. 46, in the First Schedule is a *specific* entry. The revenue relied on this court's ruling in *Commissioner, Sales Tax, U.P. v. Agra Belting Works*[11], where the Court pointed out
E that if a notification under a provision[12] grants exemption from tax, and later, a subsequent notification (under another provision) prescribes the rate of tax, the intention is to withdraw the exemption and impose the levy at the rate prescribed in the later notification. The court held that since the power to grant exemption and variation of the rate of tax is with the State, there is no compulsion in the statute that a separate
F notification recalling exemption is a pre-condition for imposing tax at any rate. The revenue also relied on two cases that followed the ratio in *Agra Belting Works* (supra) - Sale *Tax Officer, Sector IX, Kanpur v. Dealing Dairy Products & Anr.*[13] and *State of Bihar v. Krishna Kuthar Kabra.*[14]. In the latter case, this court followed the two previous decisions
G and held that a notification introducing an entry and subjecting it to levy, when previously, it was exempt in another part of the taxing statute the

[11] [1987] 3 SCR 93: (1987) 3 SCC 140 [hereafter '*Agra Belting Works'*]
[12] In that case, Section 4 - as in Section 7 of the DST Act in the present case
[13] (1994) 94 STC 93 (SC): 1994 Supp (2) SCC 639 [hereafter '*Dealing Dairy Products*']
H [14] (1997) 9 SCC 763 [hereafter '*Krishna Kumar Kabra'*]

"intention was to withdraw the exemption and make the sale leviable to tax at the rate prescribed in the later notification". The court also held it to be unnecessary that "*a specific or separate notification withdrawing or revoking the notification should be issued".*

18. The Delhi High Court, after examination of the judgments cited held that it was difficult to depart from the reasoning indicated by the various judgments of this court indicated in *Agra Belting Works* (supra). It therefore, rejected the appellants' writ petition.

19. It was further held in the impugned judgments that State Legislatures were competent to levy taxes on the sale or purchase of the commodities subjected to additional excise duty. The levy of any sales taxes only meant that additional excise duty levied on such commodities by the Central Government would not be distributed among the states which had chosen to levy a tax on the sale of such article. The court relied on *Mahalakshmi Oil Mills v. State of Andhra Pradesh*[15]. The High Court ruled that pan masala containing tobacco is, under Chapter 24, shown at sub-heading No.2404.49, attracting a duty of 16% and an additional duty of 18% on the same. *Pan masala* containing tobacco manufactured by the appellants did not constitute a declared commodity under Section 14(ix) of the CST Act read with the CET Act because sub-heading 2404.49 under Chapter 24 of the CET Act are not sub-headings included in section 14(ix) of the CST Act. It was also held that *pan masala* was not a declared item nor was it a declared item on the date that Section 14(ix) of the CST Act was introduced in the form in which it existed in the statute.

The Tamil Nadu case: Dharampal Satyapal and Kothari Products[16]

20. In the appeals by Dharampal Satyapal and Kothari Products, a common judgment of the Madras High Court has been challenged. The appellants had urged that *gutkha*, was a preparation containing not only tobacco, but also betel nut, *katechu*, lime, flavours, permitted spices, saffron, and that tobacco is its essential character in relation to the dominant object of the user. The percentage of tobacco varies from 7%

[15] [1988] Suppl 2 SCR 1088 : (1989) 1 SCC 164 [hereafter '*Mahalakshmi Oil Mills*']
[16] CA No. 8502/2011 and CA No. 8496-8501/2011 respectively directed against common impugned judgment dated 13.04.2009 in WP No. 4001/2002 and 4604-09/2002 (Madras HC).

A to 15%. The appellants were aggrieved by the inclusion of the goods as *'Pan Masala'* (by whatever name called) - containing betel nuts, that is to say, nut of areca, *katechu* broken and perfumed, and lime or menthol or sandal oils or cardamom or tobacco or any one or more of these ingredients at Sl. No. 2 of Part-J of the First Schedule read with Section 3(2) of the TNGST Act. The period of dispute is from October, 2000 - February, 2001. The appellants urged – much like in the Delhi cases, that if the goods fell within the description of Sl. No. 1(iv)(d) of the Third Schedule of the TNGST Act, they are exempt from tax by virtue of Section 8. Once the goods are exempted by enumeration under the Third Schedule, Section 8 of the State Act operates, to exempt the goods from levy under the State Act. The subsequent specification of the goods in the First Schedule will have no effect in view of the exemption. The exemption under Section 8 of the TNGST Act is not subject to any restriction or condition as far as Sl. No. 1(iv)(d) of the Third Schedule is concerned. The definition under Sl. No. 1(iv)(d) of the Third Schedule is not restricted to chewing tobacco, but includes preparations containing chewing tobacco and the word 'including' should be construed to enlarge the Entry to comprehend all preparations of chewing tobacco and not restricted to just chewing tobacco.

21. Section 3 of the TNGST Act is the charging section; Section 3(2) enacts as follows:

> *"(2) Subject to the provisions of sub-section (1), in the case of goods mentioned in the First Schedule, the tax under this Act shall be payable by a dealer, at the rate and at the point specified therein on the turnover in each year relating to such goods."*

22. Much like Section 7 of the DST Act, Section 8 of the TNGST Act reads as follows:

> *"Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule, shall not be liable to pay any tax under this Act in respect of such goods."*

23. Serial No. 1 (iv)(d) of the Third Schedule to the TNGST Act (which enumerated exempted articles) read as follows:

> *"1. (iv) Other manufactured tobacco as described against the heading '24.04", including-*

(a) smoking mixtures for pipes and cigarettes.

(b) cut tobacco

(c) Bins

(d) Chewing tobacco and preparations containing chewing tobacco.

(e) Snuff of tobacco and preparations containing snuff of tobacco in any proportion"

24. The High Court's judgement considered all previous decisions of the courts, including the judgement in *Kothari Products Ltd.* (supra) as well as judgments of various High Courts as to whether *Pan masala* is tobacco. The court adopted the test indicated as the 'common parlance test' i.e., whether a common man understands "*pan masala"* as tobacco or a product containing tobacco. It held that if the common man is asked to buy chewing tobacco, he may buy an article that is mainly chewing tobacco and in fact falls within the same class of the CET Act classification, but one would not buy pan masala. It was, therefore, held that pan masala is different from chewing tobacco or even tobacco. The court also ruled - that applying the General Rules for Interpretation under the CET Act, it was discernible that "pan masala containing tobacco" provides the most specific description for the goods in question, even if tobacco is one of the ingredients in the goods, since the description of pan masala in Heading 21.06 describes the goods more specifically, it had to be preferred, without going into Rule 3(b). What therefore, was held was that the amendment, brought into force from 2001, to the effect that chewing tobacco did not include and never included pan masala containing tobacco, and but for the inclusion of 'pan masala containing tobacco' in Chapter 24 (Heading 2404.49) with effect from 2001, they were goods separately covered under another class altogether, i.e. Heading number 21.06.

The Allahabad judgments: P.J. Aromatics[17], Sarin & Sarin[18] and Raj Pan Products[19]

[17] CA No. 10374-10379/2014, against impugned judgments dated 12.03.2014 in STR No. 1281-82/2004, and 11.04.2014 in STR No. 789-792/2004 (Allahabad HC).

[18] CA No. 8617/2014, against impugned judgment dated 25.04.2014 in TTR No. 91/2005 (Allahabad HC).

[19] CA No. 289/2023, against impugned judgment dated 08.11.2017 in TTR No. 1830/2004 (Allahabad HC).

25. In these cases, the assesses manufacture gutkha and disputed imposition of tax on sale of the same. The authorities, under the UPTT Act ruled that 10% tax was leviable on sale of *gutkha* which was treated as an 'unclassified item'. Section 3 under the UPTT Act, imposes the levy of trade tax on the sale by registered dealers, of various articles. Section 4 of the Act empowers the state to exempt articles from the levy; the relevant part of that provision, reads as follows:

> *"**Section 4** – Exemption from tax shall be payable on (a) the sale or purchase of water, milk, salt excluding processed and branded salt, newspapers, or any other goods which the State Government may, by notification, exempt."*

26. The State Government issued a notification dated 31.01.1985 exempting certain goods from tax under the UPTT Act, with effect from 01.02.1985. That notification[20], contained the Serial No. 14, which reads as under:

> *"14. Cigars, cigarettes, biris (both machine made and hand-made) and tobacco in any form whether cured and uncured and whether manufactured or not, including the leaf, stalk and stems of the tobacco plant and all products of tobacco, but including any part of the tobacco plant while still attached to the earth."*

27. By Notification dated 26.06.1997, published in Gazette on 01.07.1997, Entry 14 was amended to exclude, specifically *"pan masala containing tobacco"*, by whatever name called. Another amendment by Notification[21] dated 06.04.1999 published in Gazette dated 10.04.1999 resulted in Entry 14 reading as follows:

> *"14. Cigars, cigarettes, biris (both machine made and hand-made) and tobacco in any form whether cured and uncured and whether manufactured or not, including the leaf, stalk and stems of the tobacco plant and all products of tobacco, **excluding pan masala containing tobacco** but including any part of the tobacco plant while still attached to the earth."*

28. The exemption specifically withdrawn in respect to "*pan masala containing tobacco*", by whatever name called, by notification

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[20] dated January 31.01.1985

[21] No. T.I.F.-2-595/XI-9(4)/99-U.P. Act-15-48-Order-98

dated 26.06.1997, continued after issuance of notification dated 06.04.1999 as well. The Allahabad High Court noted the previous High Court decisions, as well as the judgment of this court, in *Kothari Products Ltd.* (supra) and held that in view of the specific provision in the APGST Act, the High Court held that gutkha (*gudaku*), an entry under the First Schedule to the ADE Act, was exempted from tax under the APGST Act. The High Court further held that there was no provision corresponding to the APGST Act in the UPTT Act and that the earlier notification (of 1985), was much wider and included tobacco products like *gutkha*, and pan masala containing tobacco which were exempted by virtue of Section 4(1) and by not with reference to any statute like the CET Act, etc. Therefore, it was ruled that the contention that something was included in the CET Act, would stand exempted from tax was not correct, unless the State Act contained a specific provision to that effect.

Appellants' contentions

29. Mr. Dhruv Agarwal, learned senior counsel appearing in the Delhi cases urged that the heading of Section 7(1) of the DST Act is *"Tax free goods"* and it uses the phrase *"-no tax shall be payable"*. In view of Entry 22 of Schedule III read with Section 7(1), *gutkha* was "tax free goods" and as per specific mandate of Section 7(1) *"no tax shall be payable under the Act"* (i.e. the DST Act) on sale of goods listed under Schedule III. The clear effect of Section 7(1) read with Entry 22 of Schedule III was that *gutkha* fell outside the charge or purview of the levy.

30. It was argued Section 7(2) *inter alia* provides that the Lt. Governor could by notification add to, or omit from, or otherwise amend Schedule III and *"thereupon"* it was deemed to be amended. In spite of this power, Entry 22 of Schedule III was not amended and *gutkha* continued to be tax-free goods. *Gutkha* thus, being tax-free goods continued to fall outside the DST levy and was not liable to be included in "taxable turnover" under Section 4(2)(a)(ii) of the DST Act. Section 4(1), provides for applying the rate of tax "*in the case of taxable turnover*". When the goods were exempt there was no question of their inclusion in the taxable turnover. Learned senior counsel relied on *Tata Sky Ltd. v. State of Madhya Pradesh*[22]. Learned senior counsel submitted that the High Court's reasoning that Entry 22 in Schedule III

[22] [2013] 2 SCR 849: (2013) 2 SCC 849

A was general and that Entry 46 of Schedule I was specific, had no application; he cited *Reliance Trading Company v. State of Kerala*[23].

31. It was urged that *Kothari Products Ltd.* (supra) is a three-judge bench ruling which held *"gutkha is a tobacco"* and that *gutkha,* being covered by Explanation to Fourth Schedule to the State Sales Tax
B Act (i.e., APGST Act) and the exemption contained in Section 8 of the Schedule to the State Act could not have been amended by including gutkha in the First Schedule. This court in *Radheshyam Gudakhu Factory* (supra) held that *gutkha* is a product of tobacco and that its essential and effective ingredient remains tobacco; it is also known as a product of tobacco in common parlance. Its essential character is that
C of tobacco; "tobacco" falls under Entry 35 of the Schedule to the Orissa Sales Tax Act. The decision in *Reliance Trading Company* (supra) is a three-judge ruling rejecting the revenue's submissions based on general and specific entries. It also held that the exemption operating in favour of goods in question in the Third Schedule of the Kerala General Sales
D Tax Act, 1963 continued as it was not amended even after amendment of the First Schedule. The result consequently was that irrespective of any presumed intention of the Legislature in amending the First Schedule, as long as the Entry in the Third Schedule remained un-amended, there was not subject to levy.

E 32. It was urged that so far as the other line of judgments mentioned are concerned, *Agra Belting Works* (supra) was a majority judgment of two judges and one judge expressed a dissenting opinion. In that case there were no 'tax free goods' under the statute as in the present case. Instead, that was a case of an Exemption Notification where there was another Notification providing the rate. In the judgment, the combined
F effect of two Notifications was considered. This court relied on *Agra Belting Works* (supra) in *Dealing Dairy Products* (supra), and relied on both these cases, when deciding *Krishna Kumar Kabra* (supra). In all the three cases, there was no issue relating to 'tax free goods' as in the present case.

G 33. It was next submitted that Entry 22 of the Third Schedule of the DST Act amounts to a *'Legislation by* way *of Incorporation'* so far as it includes a specific provision from the CEA defining 'tobacco' for the purposes of formulating provisions under the DST Act. The Lt.

H [23] (2011) 15 SCC 762 [hereafter '*Reliance Trading Company'*]

Governor is entrusted with the power to amend the Third Schedule of the DST Act which incorporates the definition of 'tobacco'. It was submitted that when the definition is so incorporated, subsequent changes in law, have no impact on the earlier, incorporated provisions. Counsel cited some decisions[24] of this court, on this aspect.

34. Mr. Pawan Shree Agarwal, learned counsel appearing for P.J Aromatics, relied on *Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P, Lucknow*[25], to argue that subsequent legislation can be looked at in order to see the correct interpretation of an earlier legislation, especially when the earlier one is obscure or ambiguous or capable of more than one interpretation. Counsel relied on the amendment to the ADE Act, by Finance Act, 2001, which inserted Entry 8404.49 as the *species* of the *genus "Chewing Tobacco"* to read as under:

> *"**Chewing Tobacco and preparations containing Chewing Tobacco;***
>
> ***Pan Masala Containing Tobacco***
>
> *8404.41....*
>
> *8404.49 Pan Masala Containing Tobacco"*

35. A comparison of the above and the parent Entry 4 to the First Schedule to the CEA, 1944 shows that "*Chewing Tobacco*" was the *genus* and *"Pan Masala Containing Tobacco"* commonly known as *"gutkha"* was a *species* of chewing tobacco. Therefore, it was always covered under the original definition and formed part of Entry 14 of the Schedule to the UPTT Act (as well as Sl. No. 22 of the Third Schedule to the DST Act).

36. Mr. Agarwal argued that the levy of tax is under Section 3 of the UPTT Act while the rate of tax is provided in Section 3A. Section 4 of the Act empowers the State government to grant exemption. From a reading of Sections 3A and 3D it is manifest that the rate of tax on declared goods cannot be more than the rate which is provided in Section 15 of the CST Act. Legislatively, therefore, restrictions enacted under Section 15 of the CST Act have been recognized in Sections 3A and 3D

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[24] *Narottamdas v. State of Madhya Pradesh & Ors* [1964] 7 SCR 820; *Nagpur Improvement Trust v. Vasantrao & Ors* (2002) 7 SCC 657; and *Girnar Traders (3) v. State of Maharashtra & Ors.* [2011] 3 SCR 1

[25] [1998] 2 Suppl. SCR 119: (1998) 7 SCC 228

of the UPTT Act. It is important to note that the State has not relied on any notification prescribing rate of tax on *"Pan masala containing tobacco"* in these cases. *"Pan masala containing tobacco"* has been taxed as an '*unclassified item*' or what can be termed as a *'residuary entry'*. Thus, the question posed was whether the pan masala containing tobacco i.e., "*gutkha*" is taxable as declared goods under Entry 14(ix) of the CST Act or as an unclassified item or in the residuary entry.

37. It was submitted that *"Pan masala containing tobacco"* is a chewing tobacco for several reasons. One, the entry has to be read as widely as possible and any form of "chewing tobacco" including any of its preparations will form part of that entry. Two, g*utkha* is essentially a preparation of *chewing tobacco* and what makes it distinct from plain *Pan masala* are its essential characteristics i.e., tobacco (which is in *gutkha*). Three, it is a settled principle of classification that it is not a percentage of a particular item in the commodity which will determine the nature of product. Four, undisputedly *"gutkha"* is sold by the appellant PJ Aromatics under a brand name *"Jeet"*. Therefore, it was urged that it will fall in entry 2404.41 which is specifically covered under Section 14(ix).

38. It was further argued that Entry 21.06 of the CET Act has no relevance for the present purpose when notifications under the Act are being considered. Firstly, there is no entry as "pan masala containing tobacco", and secondly, there is no entry like 21.06 of the CET Act in the notification which provides the rate of tax and therefore the classification is under the residuary clause according to the revenue.

The revenue's contentions

39. Mr. N. Venkatraman, the Additional Solicitor General (ASG) appeared on behalf of the Govt. of NCT of Delhi; Mr. Raizada, learned Additional Advocate General (AAG) appeared on behalf of the State of UP, and Mr. Radhakrishna, learned senior counsel appeared on behalf of the State of Tamil Nadu.

40. The revenue submitted that in *Kothari Products Ltd.* (supra) what was dealt with was *Gudaku*, a tobacco product falling under sub-heading 2404.11 of the CET Act as well as the ADE Act and that is not the case of the petitioners herein; and that it was a decision rendered on an issue of fact which may not bind this court.

41. It was next argued that the use of the construction of the term 'including' in sub-heading 2404.41 in the present case, is followed by the words "*preparations commonly known as*" and therefore, the said word has to be understood and read as "and" in the conjunctive sense. As a result, the preparations mentioned therein should be treated as exhaustive and cannot be expanded beyond that.

42. It was argued that *pan masala* and *gutkha* in these cases are separate and distinct entries from tobacco and therefore the State Legislatures are competent to tax *pan masala* and *gutkha*. There is no dispute regarding distinction between the independent existence of entries, i.e., tobacco and *pan masala gutkha*, respectively. It was argued that the State Legislatures are competent to levy taxes on sale or purchase of the commodities subjected to ADE Act. All that the levy of any such sales tax would mean is that the additional excise duty levied and collected on such commodities by the Central government will not be distributed among the states which had chosen to levy a tax on the sale thereof. This issue has been well settled by this court in *Mahalakshmi Oil Mills* (supra).

43. It was further submitted that the argument with respect to definition of "tobacco" remaining unchanged, as was incorporated at the time of enactment of the state laws, without reflecting later changes, is incorrect. Counsel submitted that the definition had to be in terms of the changing definitions of tobacco under the Central enactments; reliance was placed on decisions reported as *State of Madhya Pradesh v. M.V. Narsimhan*[26]*; Nagpur Improvement Trust v. Vasantrao*[27]*,* and *U.P. Avas Evam Vikas Parishad v. Jainul Islam & Anr.*[28] for the proposition that in the present case, the definition of tobacco cannot be said to be an instance of legislation by incorporation, but rather, that it is a case of *legislation by reference*. Therefore, changes in the statute will automatically be reflected in the previous law.

44. It was urged that *"Pan Masala containing tobacco"* and *"chewing tobacco"* are not identical. They undoubtedly were included under the same heading. However, they were not one commodity. It was argued that the amendment with effect from 2001 that "*chewing tobacco*" does not include, and never included "*Pan Masala containing*

[26] [1976] 1 SCR 6: (1975) 2 SCC 377
[27] [2002] Supp (2) SCR 636: (2002) 7 SCC 657
[28] [1998] 1 SCR 254: (1998) 2 SCC 467

tobacco" and but for the inclusion of "*Pan Masala containing tobacco*" in Chapter 24 and sub-heading 2404.49 with effect from 2001, it would have been goods covered by Heading 21.06. The General Rules for Interpretation (in the CEA) was relied on, to say that *"Pan Masala containing tobacco"* is a specific description of the goods. Further, that tobacco is an ingredient in the article, is not relevant, because the description (of 'Pan Masala' in Heading 21.06) describes the goods specifically. That classification would prevail. It is, argued that Rule 3(b) is irrelevant. By its description, the goods are 'Pan Masala' containing tobacco.

Analysis and reasoning

45. As is evident, in all the three cases, emanating from judgments of the Delhi, Madras and Allahabad High Courts, the local enactments contain a similar scheme or pattern, which is (a) a provision that imposes levy of sales or trade tax; (b) a provision which empowers fixation of different rates for different goods, or classes of goods and (c) a provision or provisions which exempt goods, enumerated in a Schedule, for that purpose (like in the case of Delhi - in the Third Schedule, read with Section 7 of the DST Act) or through a general notification. In all cases, the arguments by the dealers were more or less identical, which is reliance on *Kothari Products Ltd.* (supra); that when specific goods are exempted, they cannot be taxed by inclusion in the notification relating to rate of taxation, notwithstanding that the authority to exempt, and the authority to tax or increase rates, resides with the state or the same authority. The dealer/appellants also relied on the provisions of the CET Act, especially Chapter 24, to contend that *pan masala* or *gutkha,* were tobacco, and therefore, exempt. All these arguments were rejected by the High Courts. The Delhi High Court judgment in the case of Shanti Fragrances, was noticed by the later judgments of the same High Court, as well as other High Courts.

46. At the relevant time, *'Pan Masala'* was described as a preparation containing betel nuts and any one or more other ingredients such as lime, katha, katechu, cardamom, copra, menthol and tobacco. This is the definition of *Pan Masala* under the CET Act which continued till 1995. Heading 21.06 covered *'Pan Masala'* containing *"lime, katha, katechu, cardamom, copra, menthol and tobacco"* or any one or more of these ingredients. Chapter 24 dealt with tobacco and manufactured tobacco substitutes and the relevant sub-heading at that

time was 2404.41 which deals with chewing tobacco, including preparations commonly known as *khara masala, kimam, dokta, zarda, sukha* and *surti*.

47. Parliament Act 22 of 1995, substituted Note-3 to Chapter 21 of the CET Act. *"Pan Masala"* was described as *"any preparation containing betel nuts and any one or more of the following ingredients, viz., lime, katha, katechu or tobacco, whether or not containing any other ingredients such as cardamom, copra and menthol"*. The primary ingredient of *pan masala* therefore, is betel nut, which could be mixed with other ingredients in combination or in isolation. This position prevailed as on 01.03.1988. In 1995, the definition underwent a change. Betel nuts remained the essential ingredient along with *"lime, katha or tobacco"* together, or separately. Whether the product contained cardamom, copra, and menthol or not was irrelevant: yet one of the three ingredients (lime, katha and tobacco), had to be found in the preparation known as *'pan masala'*. By Parliament Act 33 of 1996, the description to Chapter Heading 24.04 and sub-headings under it were re-numbered. The description of goods was re-classified. There was no change in Chapter 21; Heading 21.06 continued to be only *'pan masala'*. That changed with effect from 01.03.2001, through Note-3 which reads as follows:

> *…"3. In this Chapter, 'Pan Masala' means any preparation containing betel nuts and any one or more of the following ingredients, namely:*
>
> *i) lime; and*
>
> *ii) kattha (catechu)*
>
> *but not tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol."*

Note-6 in Chapter 24 read as follows:

> *"6. In this Chapter, ''Pan Masala' containing tobacco', commonly known as 'Gutkha' or by any other name, means any preparation containing betel nuts and tobacco and any one or more of the following ingredients, namely:*
>
> *i) lime; and*
>
> *ii) kattha (catechu),*

whether or not containing any other ingredients, such as cardamom, copra and menthol."

48. In Chapter 24, for sub-heading 2404.40 and the related entries, the following was substituted, namely:

"Chewing tobacco and preparations containing chewing tobacco; 'Pan Masala' containing tobacco.

2404.41 - Chewing tobacco and preparations containing chewing tobacco

2404.49.1 - 'Pan Masala' containing tobacco"

49. Entry No. 2 of Part-J in the First Schedule to the ADE Act is similar to sub-heading 2404.49 - as amended from 01.03.2001. As a result, additional excise duty could be imposed on *''Pan Masala containing tobacco"*. As far as *Kothari Products Ltd.* (supra) is concerned, a Full Bench of the (undivided) Andhra Pradesh High Court had examined the interface between the APGST Act, and the provisions of the CET Act, in the context of whether *gudaku* was subjected to sales tax levy, as the dealers had contended that it was tobacco, and therefore, exempt under the local law.[29] The Full Bench ruling considered the local enactments, and sub-headings in Chapters 21 and 24 of the CET Act, and held that although *gutkha* falls within the term *'pan masala'*, since no additional duty of excise is levied on it, yet it could not be held that *gutkha* was exempt from state sales tax.

50. The Full Bench of the Andhra Pradesh High Court had to consider, if Entry 7 of the Fourth Schedule to the APGST Act, which excluded tobacco, also resulted in exemption as long as it was not subjected to tax under the ADE Act. The High Court held, interpreting the CET Act that each chapter contained a table, specifying against the description of "goods" in each sub-heading and the rates at which both basic duty as well as additional duty are levied. Chapter 21 deals with "Miscellaneous Edible Preparations". Note 3 to that chapter states that in that chapter "pan masala" meant any preparations containing betel nuts and any one or more of ingredients, namely, lime, katha (*catechu*) and tobacco, whether or not containing any other ingredients, such as cardamom, copra and menthol. It was held that "*chewing tobacco and preparations containing chewing tobacco*" is comprehensive enough

[29] *Kothari Products Limited v. Government of Andhra Pradesh*, 1997 (107) S.T.C. 618

to take in its fold *gutkha* which contains 7% chewing tobacco. The court then ruled that having regard to the ingredients of *gutkha*, it fell within the meaning of "*pan masala*" and was covered by heading 21.60 and subjected to basic duty of Central Excise, but no additional duty. Chapter 24 deals with "*tobacco and manufactured tobacco substitutes, etc*.". The court held that there was no reference to "*gutkha*" as such in any one of the headings and sub-headings of that chapter.

51. It was held by the Full Bench that provisions of explanation of the Fourth Schedule to the APGST Act, with reference to the heads and sub-heads in the CET Act, what was relevant in ascertaining the real import of the expression "*chewing tobacco and preparations containing chewing tobacco*" was the breadth of the terms used in the entry, sub-heading or a notification, or statute. From that aspect, the court concluded that *gutkha* fell within the wide language of the said expression. However sub-heading 2404.40 "*Chewing tobacco and preparations containing chewing tobacco*" was a general sub-head. The court concluded that it is a settled rule of interpretation that a specific reference prevails over a general entry. Since the court held that "*gutkha*" fell within the meaning of "*pan masala*" in the sub-heading 21.06, there could be no doubt that "*pan masala*" was a specific sub-head even assuming that it falls within the meaning of "chewing tobacco". Therefore, the court concluded that in view of the specific head "*pan masala*" in Chapter 21, that item was excluded from the general sub-head 2404.40 *"Chewing tobacco and preparations containing chewing tobacco"*. The court also concluded that though "*gutkha*" fell within the term "*pan masala*" in Chapter 21 under sub-head 21.06 yet as it is not subjected to additional duty, an essential condition envisaged by the explanation for claiming exemption, is lacking.

52. This court, in *Kothari Products Ltd.* (supra) reversed the Full Bench decision stating that:

> *"3. The contention on behalf of the appellants is that it is not open to the State of Andhra Pradesh to tax gutka. Section 8 of the State Sales Tax Act provides that a dealer who deals in the goods specified in the Fourth Schedule thereto shall be exempt from tax thereunder in respect of such goods. Entry 7 of the Fourth Schedule of the State Sales Tax Act refers to tobacco and the explanation in this behalf is that the goods mentioned in Entry 7*

A *"shall be goods included in the relevant heads and sub-heads of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, but does not include goods where no additional duties of excise are levied under that Schedule."*

B *The said Additional Duties of Excise Act, in Entry 2404, refers to "Gudaku" under the sub-Heading "Other manufactured tobacco". Gudaku which bears a brand name is taxable under Entry 2404.11 at the rate of 5% and Gudaku not bearing a brand name is subject to tax at nil rate under Entry 2404.12. The Schedule to the Central Excise Act also makes the same distinction between Gudaku bearing a brand name and Gudaku not bearing a brand name under the sub-Heading, "Other manufactured tobacco and manufactured tobacco substitutes; homogenised or 'reconstituted' tobacco; tobacco extracts and essences".*

C

D *4. Clearly, therefore, gutka is a tobacco that is covered by an entry in the First Schedule to the said Additional Duties of Excise Act and the branded gutka that the appellants manufacture is liable to tax thereunder. Gutka, therefore, is 'goods' covered by the Explanation to the Fourth Schedule to the State Sales Tax Act and, therefore, covered by the exemption contained in Section 8 thereof. The Schedule to the State Act could, therefore, not have been amended by including gutka as a kind of pan masala in entry 194 of its First Schedule. It must, therefore, be held that the inclusion of gutka in the said entry 194 in the manner in which it is done is bad in law and is struck down. The appellants will be entitled to all consequential benefits."*

E

F

53. As far as the first point argued by the appellants are concerned, which is, whether in a state law which contains two provisions: one which taxes entries, and another which exempts articles from levy (the latter being listed separately, in a notification, or a schedule to the enactment itself), the inclusion, or insertion into the list or schedule of articles that can be taxed (like Section 4 of the DST Act) without amending the subsisting notification that excludes levy (as under Section 7 DST) would the levy fail?

G

H

54. There was apparent conflict between two lines of judgments of this court i.e., *Radheshyam Gudakhu Factory* and *Kothari Products Ltd.* (supra) on the one hand, and *Dealing Dairy Products* (supra), *Krishna Kuthar Kabra* (supra) and *Agra Belting Works* (supra) on the other hand. This court, in the latter three judgments held that notification introducing an entry and subjecting it to levy, when previously, it was exempt in another part of the taxing statute, the intention was to withdraw the exemption and make the sale leviable to tax at the rate prescribed in the later notification. The court held it to be unnecessary that "*a specific or separate notification withdrawing or revoking the notification should be issued"*. This conflict was referred to a larger bench of five judges, in *Trimurti Fragrances (P) Ltd v. Govt of NCT of Delhi*[30] (a case, which is part of the present batch). The court held that the judgment in *Agra Belting Works* (supra) does not in any manner conflict with the ruling in *Kothari Products Ltd.* (supra) or *Radheshyam Gudakhu Factory* (supra):

> *"In our considered opinion there is no conflict between the Kothari Products (supra) line of cases and the Agra Belting line of cases. The Kothari Products (supra) line of cases was on the question of whether "tobacco" or other goods specified in the First Schedule to the ADE Act and hence exempted from Sales Tax under State sales tax enactments, can be made exigible to tax under the State enactments by amending the Schedule thereto. On the other hand, Agra Belting Works (supra) line of cases was on the question of interplay between general exemption of specified goods from sales tax under Section 4 of the U.P. Sales Tax Act and specification of rates of sales tax under Section 3-A of the said Act. This Court held that goods exempted from sales tax under Section 4 would be exigible to tax by virtue of subsequent notification under Section 3-A specifying the rate of sales tax for any specific item of the class of goods earlier exempted under Section 4. There being no conflict, the reference to Constitution Bench is incompetent."*

55. The above holding, that there is no conflict between the *Agra Belting Works* (supra) line of cases, and the *Kothari Products Ltd.* (supra) line of cases, therefore, concludes the question urged with respect

[30] [2022] 15 SCR 516: 2022 SCC OnLine SC 1247

to efficacy or validity of notifications introducing as entries in a schedule(s) and subjecting them to tax, when those articles are part of the statute or are exempted from taxation. The assessees' contentions therefore, fail on this point.

56. Turning next to the question of whether *pan masala* was an exempted item, being "tobacco", it is noticeable that *pan masala* was expressly mentioned in Chapter 21 for the first time, in 1995 in the CET Act. Note 3 defined *'Pan Masala'* as *"any preparation containing betel nuts and any one or more of the following ingredients, namely lime, katha (catechu) and tobacco, whether or not containing any other ingredients".* However, at the same time, Chapter 24 contained a specific entry "tobacco" which enumerated tobacco, manufactured tobacco, substitutes etc. The relevant sub-heading at that time was 2404.41 which enumerated chewing tobacco, including preparations commonly known as *khara masala, kimam, dokta, zarda, sukha* and *surti*. Thus, the CET Act itself made a distinction between *pan masala* - whether it contained tobacco, or not, and all forms of tobacco. Right from 1995, the distinction in the CET Act between *pan masala* (Chapter 21) and tobacco (Chapter 24), had been made. The definition of *pan masala* also clarified that despite one of its ingredients being tobacco, it would nevertheless be a separate article.

57. This court had to consider the effect of the term "includes" in relation to the definition of tobacco in *Mahalakshmi Oil Mills* (supra). The controversy was whether the term "tobacco" and the inclusive clause was wide enough to cover tobacco seeds. This court, observed that:

> *"14. Can then the words "tobacco" and "any form of tobacco" in the first part of the definition be given a wider meaning and read as including the seeds also, particularly as it talks of "tobacco in any form, cured or uncured, manufactured or unmanufactured"? We do not think they can be for several reasons. In the first place, tobacco seeds hardly answer to the description of either the expression "manufactured tobacco" or the expression "unmanufactured tobacco" in their ordinary connotation; and the expression "cured or uncured" cannot also be associated with tobacco seeds. The expression used in the first part of the definition, though every wide, is, therefore, singularly inappropriate to take within its purview tobacco seeds as well. Secondly, the*

definition occurs in a statute levying excise duty which is concerned not with the parts of a plant grown on the field but with the use to which those parts are put or can be put after severance. The legislature could not but have been aware that if the leaves, stalks and stems of the tobacco plant are used for manufacturing cured tobacco, biris, cigarettes and so on, the seed is also used to produce oil and cake. It takes care to mention the first three items which are used in the manufacture of some forms of tobacco consumption which are also enumerated but refrains from referring to seeds which it would have done had it been intended to include the oil and cake also for purposes of the levy. The categories of unmanufactured tobacco enumerated in the entry in the Schedule include "stalks" but not "seeds". This also indicates that seeds are not intended to be included. In other words, the omission of the word "seeds" from the second part of the definition casts its shadow on the first part as well. Indeed it rather looks as if the second part of the definition is intended to restrict rather than expand the scope of the first part. Thirdly, it is to be noticed that the first part of definition is somewhat restrictively worded…"

58. In *P. Kasilingam v. PSG College of Technology*[31] this court followed the same principle, i.e., that "includes" used in conjunction with some words, expands the natural import of the term, to the extent it incorporates those words:

"The word "includes", when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate "an exhaustive explanation of the meaning which, for the purposes of the Act, most invariably be attached to these words or expressions" [See: *Dilworth v. Commissioner of Stamps*, [1899] AC 99 at pp. 105-106 (Lord Watson); *Mahalakshmi Oil Mills v. State of Andhra Pradesh*, [1989] 1 SCC 164, at p. 169)*."*

[31] [1995] 2 SCR 1061

59. These decisions have been followed in later judgments as well; one of them is *Pioneer Land & Urban Infrastructure v. Union of India*[32]. For these reasons, throughout (till 2001), *"Pan masala"* and chewing tobacco have received different treatment. They are not interchangeable or synonymous expressions. Entry 2404 refers to chewing tobacco *"including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha" and "Surti""*. *Gudaku* and snuff are dealt with under a separate heading. The effect of inclusion of pan masala with tobacco in Chapter 24 and *simultaneously* that product's exclusion from Chapter 21, as well as imposition of ADE with effect from 2001, on '*pan masala containing tobacco'* meant that the product (i.e. pan masala without tobacco) went out, for the first time, of the reach of state sales tax. All along, goods and products described as *pan masala and gutkha,* were included in Chapter 21. The conclusion therefore, is that till 2001, and the introduction of ADE, these two products were covered by local or sales tax levies.

60. The General Rules of Interpretation (of the CET Act) which guide the appropriate classification of products, *inter alia,* provide that:

> *"THE FIRST SCHEDULE—IMPORT TARIFF (See Section 2) GENERAL RULES FOR THE INTERPRETATION OF THIS SCHEDULE*
>
> *Classification of goods in this Schedule shall be governed by the following principles:*
>
> *1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.*
>
> *2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as*

[32] [2019] 10 SCR 381: (2019) 8 SCC 416

complete or, finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows: -

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) when goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

61. In *Collector of Central Excise Nagpur v. Simplex Mills Co. Ltd*[33] this court outlined the role of the interpretive rules:

[33] [2005] 2 SCR 441: (2005) 3 SCC 51

A *" [...] for legal purposes, classification "shall be determined according to the terms of the headings and any relevant section or chapter notes". If neither the heading nor the notes suffice to clarify the scope of a heading, then it must be construed according to the other following provisions contained in the Rules. Rule 1 gives primacy to the section and chapter notes along with terms of the headings. They should be first applied. If no clear picture emerges then only can one resort to the subsequent rules. The appellants have relied upon Rule 3. Rule 3 must be understood only in the context of sub- rule (b) of Rule 2 which says inter alia that the classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3. Therefore when goods are prima facie, classifiable under two or more headings, classification shall be effected according to sub- rules (a), (b) and (c) of Rule 3 and in that order."*

62. On a plain application of the interpretive rules, especially Rule 3(a) it is clear that the heading which provides the most accurate description has to be followed. In the present case, there is no doubt, that before 2001, *pan masala* and *gutkha* fell within Chapter 21, as *pan masala,* regardless of whether they contained tobacco. Goods classifiable under Chapter 24, i.e. tobacco items were more general; also they did not include *pan masala.*

63. As regards the question of the rate of tax, in view of the restrictions under Section 15 CST Act, neither *gutkha* nor *pan masala* were "declared goods" under Section 14 of the CST Act. The amendment to the CET Act did not become part of Section 14(ix). The goods under the relevant sub-headings of the CET Act were absent in the list of declared goods of the CST Act; they were not part of the provisions introduced to the Finance Act, 1988. Therefore, the subsequent changes made introducing 2404.40 in the CET Act do not affect or change the CST Act. Consequently *gutkha* and *pan masala* are not covered under sub-heading 2404.40 so far as CST Act is concerned. Resultantly the arguments of the assessees that the rate of local tax, cannot exceed the limit under the CST Act, are rejected as unmerited.

64. For the foregoing reasons, the appeals by the assessees have to fail. The revenue's appeals are consequently allowed. There shall be no order on costs. A

Divya Pandey
(Assisted by : Shevali Monga, LCRA)

Appeals disposed of.