Reserved On : 10/10/2025
Pronounced On : 19/12/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2407 of 2025

With
R/SPECIAL CIVIL APPLICATION NO. 2463 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 3629 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 3657 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 5014 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 5015 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

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Approved for Reporting	Yes	No
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PATEL PRODUCTS & ANR.
Versus
UNION OF INDIA & ORS.

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Appearance:
MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR DIGANT M POPAT, MR ANANDODAYA S MISHRA, MR ANAND NAINAWATI for the Petitioners

MS HETVI H SANCHETI, MR ANKIT SHAH, MR MAUNIL YAJNIK, MR TIRTH NAYAK, MR NEEL P PAKHANI, MR C.B. GUPTA for the Respondent(s) No. 2,3

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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Advocate Mr.Mihir Joshi with learned advocate Mr.Digant M. Popat, learned advocate Mr.Anandodaya S. Mishra and learned advocate Mr.Anand Nainawati for the respective petitioners and learned advocate Ms.Hetvi H. Sancheti, learned advocate Mr.Ankit Shah, learned advocate Mr.Maunil Yajnik, learned advocate Mr.Tirth Nayak, learned advocate Mr.Neel P. Lakhani and learned advocate Mr.C.B.Gupta for the respective respondents.

2. Rule returnable forthwith. Learned advocate Ms.Hetvi H. Sancheti, learned advocate Mr.Ankit Shah, learned advocate

Mr.Maunil Yajnik, learned advocate Mr.Tirth Nayak, learned advocate Mr.Neel P. Lakhani and learned advocate Mr.C.B.Gupta waives service of notice of rule on behalf of the respective respondents.

3. This group of petitions pertain to issue of classification as to whether non fermented non liquored crushed tobacco leaves packed in small retail pouches as “Chewing tobacco” should be classified under Customs Tariff heading No.2401 -“unmanufactured tobacco ; Tobacco Refuse” or Custom Tariff Heading No.24039910-“chewing tobacco” attracting different rates of duty under the provisions of Goods and Services Tax Act, 2017 (For short “the GST Act”).

4. In view of similar issue raised in these petitions, same were heard analogously and are being disposed of by this common judgment.

FACTS:

5. Facts of **Special Civil Application No.2407 of 2025** are that the petitioner is doing business of supplying raw, unmanufactured and unprocessed tobacco without lime tube under the brand name “OM SPECIAL PANDHARPURI TAMBAKKU NO.1” (here-in-after referred to as “the subject goods”) since 01.10.1990 after obtaining registration under the provisions of Central Excise Act, 1944 from the Jurisdictional Central Excise Department, Mumbai and thereafter obtaining registration from Anand, Gujarat on 10.05.2013. Jurisdictional Assistant

Commissioner of Central Excise (Anand) issued a Certificate dated 07.08.2013 certifying the classification of the subject products under Tariff Heading 2401 under the Customs Excise Tariff Act, 1985 (for short 'Tariff Act'). Pursuant to Circular bearing F. No. 81/5/2015-CX.3 dated 23.06.1987 issued by Central Board of Excise and Customs (CBEC) clarifying that unmanufactured tobacco merely broken by beating and then sieved and packed in retail packets with or without brand names for consumption by way of chewing tobacco would be classifiable under Tariff Head 24.01 of the Schedule to the Tariff Act as "unmanufactured tobacco; Tobacco Refuse".

6. It is the case of the petitioner that Ministry of Finance vide letter bearing F.No.81/01/2015-CX-3 dated 01.04.2015

further clarified that “unmanufactured tobacco” sold in small packs under brand name would be classifiable under Chapter Sub Heading 2401 of the Tariff Act.

7. After implementation of the GST Act, the petitioner migrated its registration as supplier of tobacco products classifiable as “Unmanufactured Tobacco; Tobacco Refuse” under Chapter Heading 2401 with effect from 01.07.2017. During the course of audit conducted under the provisions of GST Act, the respondent department issued audit report in Form EA-2000 in form where no allegation regarding classification was made. However, the Directorate General of GST Intelligence (DGGI), Ahmedabad Zonal Unit conducted a search at the place of businesses of the petitioner at Anand, Gujarat on 27.08.2019

followed by search at the premises of the petitioner on 31.07.2020 and statement of partner Shri Rahul M. Patel was recorded.

8. Thereafter respondent no.3 – The Additional Commissioner, Central GST and Central Excise, Vadodara -I issued a show cause notice on 28.06.2024 invoking extended period of limitation under section 74 of the GST Act to demand and recover Compensation Cess to the tune of Rs.413,48,78,774/- for the period from July, 2017 to March, 2023 and GST amounting to Rs.17,86,80,879/- for the period from June, 2019 to March, 2023 along with interest and penalty.

9. Another audit report dated 08.08.2024 was issued after conducting the audit under the provisions of the GST Act.

However, neither issue of classification was raised, nor any reference of the show cause notice was made thereto.

10. The petitioners therefore challenged the show cause notice before this Court by preferring Special Civil Application No.15970 of 2024 on the ground of being arbitrary and in excess of jurisdiction.

11. This Court by order dated 27.11.2024 permitted the petitioner to raise all the contentions before the adjudicating authority and directed the respondent authorities to pass an order in accordance with law after providing an opportunity of hearing to the petitioners and after considering the reply of the petitioners.

12. The petitioners thereafter filed reply

dated 24.12.2024 to the show cause notice along with detail submissions. The petitioners also made additional submissions during the course of personal hearing on 06.01.2025. Respondent no.3 thereafter passed the impugned order-in-original classifying such manufacture under the Tariff Heading 24039910 instead of Tariff Heading No.24012090. Thereafter the matter was heard from time to time.

13. Issue involved in **Special Civil Application No.2463, 5014 and 5015 of 2025** is identical and therefore, separate facts are not recorded.

14. Insofar as **Special Civil Application No.3629 of 2025** is concerned, the brief facts are the petitioner is engaged in the trading of "unmanufactured tobacco without

lime", under the brand name of "Mahendra Pandharpuri Tamaku" and is carrying out the activity of packing of retail pouches of unmanufactured tobacco and is in the same business since last 30 years and has been classifying the product under Tariff Item 24012090. It is the case of the petitioner that the packaging of the Petitioner itself mentions that it is "unmanufactured tobacco" and "Non-Edible" and the petitioner is neither "manufacturing" nor supplying "chewing tobacco".

15. The petitioner is also registered under the GST-regime and classifies the goods under Tariff Item 24012090 under Notification No.01/2017-Central Tax under Schedule IV at Sr.13 and discharges tax liability at 28% and pays Compensation

Cess at 71% under Notification No.01/2017-Compensation Cess (Rate) dated 28.06.2017 under Sr. 5 under description GM "Unmanufactured Tobacco (without lime tube), bearing a "brand name"".

16. The respondents carried out search at Petlad, Anand, Indira Colony, Anand and Valsad, Vapi on 29.06.2021, wherein they have found packaging machines. It is the case of the petitioner that in the Panchnama carried out pursuant to such search, it is nowhere mentioned about any kind of "manufacturing process" being carried out in either of the premises of the petitioner.

17. The respondents initiated the investigation under the excise regime and issued a Show Cause Notice dated

30.09.2022 under the Central Excise Act, 1944, which was subsequently further extended under the GST-regime as well. Moreover, samples were drawn and were sent for testing to CRCL.

18. In the show cause notice, it is the case of the respondents that the petitioner is engaged in the supply of "Chewing Tobacco" without lime and hence, shall be classified under HSN 24039910 as per the World Customs Organisation. Moreover, the same is classified under Notification No.01/2017-Compensation Cess (Rate) dated 28.06.2017 at Sr. No.26 under the description "Chewing Tobacco (without lime tube)", with Chapter heading, subheading 24039910 attracting Compensation Cess rate at 160%.

19. Insofar as **Special Civil Application No.3657 of 2025** is concerned, brief facts are petitioner is a partnership firm engaged in the business of supply of raw, unmanufactured and unprocessed tobacco in form of dried and cut tobacco leaves without lime tube under the brand name “Suresh Tamakhu” in retail pouches of less than 10 grams.

20. It is the case of the petitioner that they have been classifying their product under Tariff Heading 2401 as unmanufactured tobacco since pre-GST regime i.e. under excise regime and in the certificate of registration granted to the petitioner on 12.05.1995 under Central Excise Act, 1944, it is explicitly stated that the petitioner is granted registration for manufacture of "Branded

Unmanufactured Tobacco classifiable under Chapter Heading 2401 00".

21. The petitioner receives dried cut tobacco leaves in jute gunny bags from their supplier, who classify the goods under CTH 2401 as "unmanufactured tobacco" and charge Goods and Services Tax at 28%. It is the case of the petitioner that the only process undertaken by the petitioner is unpacking of gunny backs and repacking of tobacco in retail pouches and no ingredient or any flavour is added while retail packing.

22. The petitioner cleared the retail packs of unmanufactured tobacco by classifying the same under CTH 2401 and discharged GST at the rate of 28% (14% CGST+14% SGST) under Sr. No. 13 of

Schedule IV of Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 along with Compensation Cess at 71% under Notification No. 01/2017-Compensation Cess (Rate) dated 28.06.2017.

23. The officers of the Directorate General of GST Intelligence (DGGI), Regional Unit, Vadodara carried out investigation with a belief that the Petitioner is misclassifying the tobacco product cleared by them under CTH 2401 as "unmanufactured tobacco" instead of classifying it as "chewing tobacco" under CTH 2403.

24. Pursuant to above investigation, two separate Show Cause Notices were issued to the petitioners. Show Cause Notice dated 5.4.2022 was issued classifying product

under Tariff Heading 2403 of the Schedule to Central Excise Tariff and demanding differential excise duty and National Calamity Contingent Duty (NCCD). This show cause notice and subsequent adjudication on issue of classification came to be decided in favour of the petitioners by CESTAT vide its Final Order Dated 15.5.2024 [Exhibit-18]. The Tribunal in its order held that tobacco supplied by the petitioners are classifiable under Tariff Heading 2401 and not 2403. This final order was not further appealed by the department on account of low tax effect.

25. However, respondent issued second show cause notice dated 25.04.2023 proposing to demand differential GST amounting to Rs.90,54,008/- and differential

Compensation Cess amounting to Rs. 16,64,24,781/-, along with applicable interest and penalties. Case of the department was that goods are classifiable under Tariff Heading 2403 as “chewing tobacco” and not under Tariff Heading 2401 as “unmanufactured tobacco” under the GST Act. Rate of Compensation Cess for goods under Tariff Heading 2401 without lime tube is 71% whereas for goods under Tariff Heading 2403 without lime tube is 160%.

26. The petitioners filed detailed reply to the show cause notice dated 25.4.2023 and contested the demand mainly on the ground that the issue stands settled in their own case by decision of Tribunal vide Final Order Dated 15.5.2024 and also relied upon Board Circular F. No. 81/5/87-CX.3 dated 23.06.1987.

27. The Adjudicating Authority however confirmed the classification against the petitioners mainly on the ground that classification under Tariff Heading 2401 is incorrect observing that the product of the petitioners can be used as chewing tobacco and therefore, same is classifiable under Tariff Heading 2403 as “chewing tobacco”. Further, Circular Dated 23.6.1987 has been distinguished on the ground that same is based on classification under Tariff Act whereas GST is based on Customs Tariff Act, 1975.

Submissions on behalf of the petitioners:

28. Learned Senior Advocate Mr. Mihir Joshi with learned advocate Mr. Digant Popat for the petitioners in Special Civil Application No.2407/2025, 2463/2025,

5014/2025 and 5015/2025 submitted that in Special Civil Application No.2407 of 2025, the respondents have issued an Order classifying non-fermented, non-liquored crushed tobacco leaves packed in small retail pouches as "chewing tobacco" under Tariff Heading 2403 resulting in an enormous cumulative liability of Rs 4,31,35,59,653/- as GST and Compensation Cess whereas in Special Civil Application No.5015 of 2025, the respondents have confirmed demand of excise duty and NCCD of Rs. 54,23,54,588/- for similar reasons. It was submitted that in Special Civil Application No.2463 of 2025, the respondents have issued an order resulting into a cumulative liability of Rs. 9,53,48,096/- as GST and Compensation Cess for similar reasons whereas in Special

Civil Application No.5014 of 2025, the respondents have confirmed demand of excise duty and NCCD of Rs. 1,04,05,983 for similar reasons.

29. Learned Senior Advocate Mr. Joshi submitted that the impugned orders misrepresent the crucial facts and reliefs on extraneous considerations demonstrating non-application of mind and a prejudicial approach against the petitioners.

30. It was submitted that, the impugned Order has erroneously observed that the petitioner's product undergoes various processes such as drying cleaning, sieving, sizing, cutting, and packaging into retail pouches which is contrary to the facts stated in the Show Cause Notice as well as statements recorded at the time

of investigation where it was stated that the petitioner only cleans, sieves and packs in retail pouches and it is an accepted fact that the nature of product does not change owing to the above processes.

31. It was submitted that GST and Compensation Cess is levied under GST Notification No. 01/2017-CT (Rate) and Compensation Cess Notification No. 01/2017-CC (Rate). It was submitted that both the Notifications adopts the First Schedule of the Customs Tariff Act, 1975 for classification and Central Excise duty and NCCD is levied under Fourth Schedule of the Central Excise Act, 1944. It was further submitted that First Schedule of the Customs Tariff as well as Fourth Schedule of the Central Excise is aligned

to harmonize system.

32. It was submitted that First Schedule to the Central Excise Tariff was also based on Harmonized System since 1986. During the period 1986-87 to 2004-05 ‘unmanufactured tobacco' was classified under Tariff Heading 2401 whereas ‘Chewing Tobacco’ was classified under Tariff Heading 2404. However, in the year 2005-06, Tariff Headings 2402 and 2403 were merged and Tariff Heading 2404 was renumbered as Tariff Heading 2403. Since then, First Schedule of the Central Excise Tariff was fully aligned to Harmonized System till 2017 when same was subsumed under GST Act.

33. It was further submitted that, Tariff Headings 2401 and 2403 in First Schedule

of Customs Tariff have been identical to the respective tariff entries in First Schedule of Central Excise Tariff. Thus, all directions, clarifications and judicial pronouncements on classifications issued under the erstwhile excise regime are relevant to define scope of Tariff Headings 2401 and 2403 under GST regime also.

34. Learned Senior Advocate Mr. Joshi submitted that since 1990, the petitioner has been classifying the impugned goods under Tariff Heading 2401. Such classification was also approved by the respondents under the “Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010” until commencement of GST regime.

35. Learned Senior Advocate Mr. Joshi submitted that the CBEC in Circular F. No. 81/5/87-CX.3 dated 23.06.1987 has categorically clarified that unmanufactured tobacco merely broken by beating and then sieved and packed in retail packets with or without brand name for consumption as chewing tobacco, which may be commonly known in the market as 'zarda', would be appropriately classifiable under Tariff Heading 2401 of the First Schedule to the Central Excise and Tariff Act, 1985 as 'unmanufactured tobacco' which position has been once again reiterated in Letter F. No. 81/01/2015-CX.3 dated 01.04.2015 wherein the CBEC has clarified that “unmanufactured tobacco" sold in small packs under brand name would be

classifiable under Chapter Sub-heading 2401 of the Central Excise Tariff. Placing reliance on aforesaid circular dated 23.06.1987, Learned Senior Advocate Mr. Joshi submitted that the subject goods of the petitioners are ‘crushed and sieved tobacco leaves’ and therefore, the aforesaid circular dated 23.06.1987 and further clarification dated 01.04.2015 would be squarely applicable in the present case.

36. Learned Senior Advocate Mr. Joshi placed reliance on the following decisions to submit that, mere re-packing of raw tobacco from bulk packs to retail packs and labelling them with brand name would not convert ‘unmanufactured tobacco’ into ‘manufactured tobacco’ and that non-fermented, non-liquored crushed and sieved

tobacco leaves are classifiable under Tariff Heading 2401 and not 2403:

1) ***Collector of Central Excise, Pune v. Jaikisan Tobacco Co., Pune.*** reported in ***1986 (23) ELT 184*** wherein the Delhi Tribunal has held that *mere repacking and labelling at the respondents' end cannot amount to "preparation of…chewing tobacco…" within the meaning of Section 2(f) (i). Though Section 2(f)(ia) makes repacking and labelling as manufacturing operations; it does so "in relation to manufactured tobacco". It is not applicable to unmanufactured tobacco.*

2) Suresh Tobacco Co. v. Commissioner of Central Excise and Service Tax - CGST & Central Excise Vadodara I reported in ***2024 (5) TMI 1147*** wherein CESTAT-Ahmedabad

has held that *From the above explanatory note, it can be seen that the appellant's raw material as well as the finished goods are cut leaves from the natural leaves of tobacco. Therefore, the product of the appellant is unmanufactured tobacco. Now to take this product under CTH 2403 the tobacco has to undergo process of manufactured tobacco. Since the product of the appellant remained unmanufactured tobacco right from the raw material stage up to the finished stage it remains under Chapter heading 2401 and by any stretch of imagination cannot be called as manufactured tobacco. Therefore, since the tobacco has not been converted into manufactured tobacco, taking the same into CTH 2403 is without authority of law. Consequently, the*

unmanufactured tobacco even though it is consumed as a chewing tobacco since same remained as unmanufactured tobacco cannot be classified under 2403 9910.

37. Learned Senior Advocate Mr. Joshi submitted that the consumption method alone does not determine whether the products would be classified as "chewing tobacco" under Tariff Heading 2403. Tobacco leaves are used for various purposes such as smoking, sniffing, sucking or chewing. Hence, merely because Tobacco leaves are used for chewing cannot make them 'manufactured tobacco' or 'chewing tobacco'. Tobacco leaves must undergo manufacturing process such as fermentation and liquoring to make them 'manufactured tobacco'. It was further

submitted that the impugned Order does not have any finding in this regard and is totally non-speaking.

38. It was submitted that the argument of the respondent that the department has not filed appeal in **Suresh Tobacco** (supra) on account of monetary consideration and hence decision is not binding is flawed and misplaced inasmuch as Instruction No. 390/Misc/163/2010-JC, dated 17.08.2011 as amended vide Instruction of even number dated 17.12.2015 clearly suggests that monetary considerations would not apply to matters involving classification.

39. It was submitted that the imposition of much higher tax under Tariff Heading No. 2403 on the petitioner amounts to hostile discrimination as similar

unmanufactured tobacco products of suppliers in other states are classified under Tariff Heading No. 2401 attracting lower tax.

40. Learned Senior Advocate Mr. Joshi submitted that, the decision relied upon by the respondent in ***Haji K.P.M. Abdul Kareem*** reported in ***(2024) 25 Centax 204 (Mad.)*** wherein Hon'ble Madras High Court had deprecated change of classification to take advantage of rate arbitrage between two headings to pay lesser Compensation Cess would not be applicable in facts of the present case as in the present case, Respondent is seeking to change classification to charge higher tax.

41. It was therefore, submitted that the impugned order-in-original classifying

manufacture of the subject goods under the Tariff Heading 2403 instead of Tariff Heading No.2401 may be quashed and set aside.

42. Learned advocate Mr. Anandodaya Mishra for the petitioners in Special Civil Application No.3629 of 2025 in addition to the submissions of learned Senior Advocate Mr. Mihir Joshi, submitted that no manufacturing process was undertaken by the petitioner, as the petitioner only repacks the unmanufactured tobacco into small pouches of 8 grams from bulk pouches without lime. There is neither any finding of manufacture under Section 2(72) of the GST Act nor any evidence of emergence of a new, distinct product inasmuch as packing and labelling from bulk to retail packets of 8 grams alone cannot be equated with

manufacture for GST purposes, as also supported by the CRCL reports, which claims it to be broken leaves along with stems.

43. It was further submitted that consumption method alone would not determine whether the products would be classified as "chewing tobacco" under Tariff Heading 2403 or not. The sole basis of issuance of the Show Cause Notice and confirmation of demand and classification of product as "manufactured tobacco" is "chewing purpose" which is erroneous as Notification No.01/2017 differentiates between manufactured and unmanufactured tobacco used for chewing and chewing purpose shall not be the determinative of classification.

44. Reliance was placed on the Judgment of Hon'ble Supreme Court in ***Commissioner of Central Excise, Salem v. M/s. Madhan Agro Industries (India) Private Ltd***. *[Civil Appeal No. 1766 of 2009*], wherein it was held that coconut oil, being an oil and classified as oil, cannot be classified as cosmetic product merely because it is used as cosmetic products or toilet preparation. Hon'ble Supreme Court in the judgement held as under:

> *"40. Presently, it is an admitted fact that pure coconut oil is suitable for multiple uses. That notwithstanding, when a specific heading was created in Chapter 15, viz., Heading 1513, for 'coconut oil' along with other oils, it would not stand excluded therefrom so as to be classified as a cosmetic product under Heading 3305 in Chapter 33 in Section VI of the First Schedule, unless all the conditions required therefor are satisfied. As already noted, such conditions formed part of Chapter Note 2 in*

Chapter VI of the First Schedule itself, prior to the 2005 amendment, but after that amendment, whereby the said Chapter Note was brought into conformity with Chapter Note 3 in Chapter 33 of the HSN, the Explanatory/General Notes in the HSN in relation to the said Chapter Note would have to be fully satisfied. In effect, not only must the coconut oil be suitable for use as 'hair oil', but it must also be put in packaging sold in retail for such particular use, i.e., as hair oil. The phrase 'suitable for such use' under Headings 3303 to 3307 in Chapter Note 3 would have to be read in conjunction with the Explanatory Notes thereto, which categorically state that such packaging must be accompanied with labels, literature or other indications that the product is intended for use as a cosmetic or toilet preparation or it must be put in a form clearly specialized to such use - as in the case of acetone marketed in small bottles, along with an applicator brush, indicating its use as nail polish remover."

45. Learned Advocate Mr. Mishra further submitted that the petitioner is involved

in the same business since last 30 years and has been classifying the goods as "unmanufactured tobacco" even in the pre-GST regime. The Show Cause Notice and impugned Order, both lack any reasoned basis for classification of product under sub-heading 2403, while the petitioner has consistently classified the goods under tariff item 24012090 with no change in process or material.

46. Reliance was placed on the Judgment of Hon'ble Kerala High Court in ***N.V.K. Mohammed Sulthan Rawther And Anr. v. Union of India*** in WP (C) No.32324 of 2018 wherein it was held that in absence of change in the process undertaken by petitioner in normal course of business, no change in the nature of goods can be held, and hence, no undue benefit is

availed by the Petitioner. Hon'ble Kerala High Court in the judgement held as under:

> *"21. Then, the Court has held that the process of manufacture employed by the appellant company did not change the nature of the end product: "The betel nut remains a betel nut". Sri Mather has also produced literature before the Court, besides the brochures of supari producers, to underline what supari is and how it differs from mere betel nut powder or granules.*

47. Learned Advocate Mr. Mishra placed reliance on the following judgements to submit that re-classification by the respondent is erroneous in nature especially by invoking of "chewing purpose" as a basis for classification by placing reliance on amendments to the Central Excise Act –

1) Commissioner of Customs, Central

Excise and Service Tax, Hyderadabad v. Ashwani Homeo Pharmacy Civil Appeal No.9525 of 2018, wherein it was held as under:

> ***"Whether re-look at classification of the product in question justified***
>
> *30. For what has discussed hereinabove, it is apparent that the product in question had rightly been classified as 'medicament' in the past and nothing material had changed so as to re-classify the same. However, the Revenue has attempted to rely on the amendment of the tariff structure in the year 2012 as justification for re-look at its classification. The Adjudicating Authority stated this justification in the manner that there were substantial changes in the tariff headings, particularly when Chapter 30 came to be reworded so as to remove the distinction between patent/proprietary and generic medicaments and to classify them according to whether they are put up in unit containers for retail sale or not; the mention*

about the Act of 1940 and the various Pharmacopeia came to be deleted; and under Chapter 33, the phrase 'Hair oil' became prominent under which, subsidiary headings of 'perfumed hair oil' and 'others' came to be specified. According to the Adjudicating Authority, all these changes merited interpretation of the new entries vis-à-vis the product in question than what was decided or settled earlier. Learned ASG has also relied upon these very reasons in support of his contentions. In our view, there had been no justification in the Department seeking to re-open the settled position in relation to the product in question merely with reference to certain changes made in Chapter 30 and Chapter 33, which had essentially broadened their ambit and scope and provided modified marginal notes and tariff entries with detailed specifications. These changes had otherwise no impact, so far as the product of the respondent, AHAHO, is concerned.

31. In support of the

proposition for re-classification, the decision in Andhra Sugar Ltd. (supra) has been cited on behalf of the appellant. We have extracted the relied upon paragraph of the said decision hereinbefore and it is difficult to accept that the proposition therein, to the effect that the meaning ascribed by the authorities issuing Notification is a good guide of a contemporaneous composition of exposition of law, has any application to the present case. The applicable principles, as noticed from the decisions in BPL Pharmaceuticals and Vicco Laboratories (supra) remain that change of classification cannot be countenanced merely on the ground of coming into force of different tax structure without showing that the product has changed its character. The decision in Shree Baidyanath Ayurved Bhawan (supra) is pertinent to the point wherein, after an unsuccessful attempt to have the product DML accepted as a medicinal preparation (in Baidyanath I), the assessee-company made another attempt for change of

> *classification after coming into force of the Act of 1985. While rejecting such an attempt on the part of the assessee company, this Court held that since the product in its composition, character and uses continued to be the same, even after insertion of new Sub-Heading 3301.30, change in classification was not justified (vide paragraph 58 of the decision in Shree Baidyanath Ayurved Bhawan, reproduced hereinbefore). Thus, mere broad-basing of the entries in Chapter 30 and Chapter 33 of the First Schedule to the Act 1985, by itself, could not have been the justification for an attempt at re-classification of the product in question."*

2) Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhawan Ltd. reported in ***2009 taxmann.com 1041 (SC)*** wherein it was held as under:

> *"30. The learned Senior Counsel for the Department heavily relied upon a three-Judge Bench decision of this Court in Baidyanath wherein this Court held that the*

product DML. is not an ayurvedic medicine. This Court approved common parlance test applied by the Tribunal. He would submit that the product is the very same product for which Baidyanath is agitating to get a classification under the Heading "medicament". The product has not undergone any change in its composition, character and use; merely because there is some difference in the Tariff entries, the character and use of the product will not change. According to Mr K. Radhakrishnan, by inclusion of the book Ayurveda Sara Samgraha in the First Schedule to the Drugs and Cosmetics Act, 1940, the product DML could not be classified as "medicament".”

48. Learned advocate Mr. Anand Nainawati for the petitioner in Special Civil Application No.3657 of 2025 in addition to the arguments advanced by learned Senior Advocate Mr. Mihir Joshi, submitted that the Adjudicating authority has erred in not following the decision of the Tribunal in the petitioner’s own case on the ground

that same is not binding as same has been accepted only because no appeal could be filed due to low tax effect. This reasoning of the Adjudicating Authority is contrary to the decision of this Hon'ble Court in the case of ***Lubi Industries LLP Vs. Union of India*** reported at ***2016 (337) ELT 179 (Guj)*** wherein at para 6 it has been held as under:

> "6. .....Even if the decision of the Tribunal in the present case was not carried further in appeal on account of low tax effect, it was not open for the adjudicating authority to ignore the ratio of such decision. It only means that the Department does not consciously agree to the view point expressed by the Tribunal and in a given case, may even carry the matter further. However, as long as a judgment of the Tribunal stands, it would bind every Bench of the Tribunal of equal strength and the departmental authorities taking up such an issue…."

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

49. On the other hand, learned advocate Ms. Hetvi Sancheti for the respondent in Special Civil Application No,2407 of 2025 submitted that the impugned order is passed in terms of section 74 exercising powers conferred under sections 3, 5 and 6 of the GST Act by exercising jurisdiction in accordance with law and hence, the writ petition is premature, because alternative , efficacious statutory remedy i.e. appeal to the Commissioner (Appeals), is available under Section 107 of the GST Act.

50. It was submitted that the petition is filed in complete disregard to the available alternate remedy under the GST legislation. It was submitted that the petitioner's attempt to allege violation

of fundamental rights, is thoroughly unfounded inasmuch as the Show Cause Notice was issued on 28.06.2024 in pursuance of complaint dated 20.05.2019 and search and statement of the petitioner dated 31.07.2020. Further, the impugned order dated 20.01.2025 was passed after considering the defense submission of the petitioner dated 24.12.2024, additional submission dated 06.01.2025 and opportunity of personal/visual hearings were also provided on 18.10.2024, 06.11.2024, 13.11.2024 & 25.11.2024 and 06.01.2025, which was attended by the petitioner and therefore, the Principle of Natural Justice has been followed on every stage of proceedings.

51. With respect to the contention of the petitioner that the impugned order is

contrary to the binding circulars and therefore, arbitrary, it was submitted that the petitioner is placing reliance on various circulars of pre-GST regime, while under GST Act, comprehensive definitions and end-use focus override the previous emphasis on manufacturing processes used under Central Excise. Therefore, the claim of arbitrariness is baseless and lacks merit.

52. It was submitted that the product in question is not merely broken or beaten tobacco that would fall under Tariff Heading 2401 for “unmanufactured tobacco”, but rather a processed form of tobacco that is intended to be used as chewing tobacco. The steps involved in making it chewable, and its packaging as "chewing tobacco" clearly places it under Tariff

Heading 2403, which includes prepared or processed tobacco products. Therefore, the reliance paced on the 1987 Circular which applies to less processed products is misplaced. Further, the branding of the product as "chewing tobacco" under the Trademark Act, 1999, supports the classification under Tariff Heading 2403, as this is the correct category for products intended for direct consumption as “chewing tobacco” which is not disputed by the petitioner during their process of registration under Trademark Act, 1999.

53. It was further submitted that the circular specifically addresses the excise duty treatment of chewing tobacco under the erstwhile excise regime. In the GST tax system, “chewing tobacco” falls under Tariff Heading 2403 (“Tobacco and

manufactured tobacco substitutes”) and is taxed according to the GST slab. Accordingly, the reliance on the Circular 81/5/87-CX dated 23.06.1987 is misplaced because it pertains to excise duty under the excise duty regime which was levied on manufacture of the product and not on supply of the product.

54. Learned advocate Ms. Sancheti referred to the term "manufacture” defined under the GST Act in section 2(72) and submitted that "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly.

55. It was submitted that from the

definition it is clear that the term “manufacture” has three important parameters distinct name, distinct character and distinct use. The definition emphasizes use of the product as a deciding factor for manufacturing. In the facts of present case, disputed product which has a distinct name registered in a brand name as chewing Tobacco, as admitted by the petitioner while registering brand name. It has a distinct character as before finalizing the raw material was processed by drying, cutting and packing and it also has distinct use as the description on the disputed product itself says for the purpose of chewing. It was further submitted that "Chewing Tobacco" is explicitly included under the Sr. No. 2 of Explanatory Note of HSN (2017 Edition)

issued by the World Customs Organization for Chapter 2403, which read as follows:

> “This heading covers:
>
> (1) Smoking tobacco, whether or not containing tobacco substitutes in any proportion, for example, manufactured tobacco for use in pipes or for making cigarettes.
>
> (2) Chewing tobacco, usually highly fermented and liquored.
>
> (3) Snuff, more or less flavoured.
>
> (4) Tobacco compressed or liquored for making snuff
>
> (5) Manufactured tobacco substitutes, for example, smoking mixtures not containing tobacco. However, products such as cannabis are excluded (heading 12.11).
>
> (6)Homogenised reconstituted tobacco made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).

> (7)Tobacco extracts and essences. These are liquids extracted from moist leaves by pressure, or prepared by boiling waste tobacco in water. They are used mainly for the manufacture of insecticides and parasiticides. The heading does not cover: (a) Nicotine (the alkaloid extracted from tobacco) (heading 29.39). (b) Insecticides of heading 38.08;"

56. It was submitted that in Note no. (2), the addition highly fermented and liquored is preceded by word "usually" which certainly does not mean necessarily.

57. It was submitted that reliance placed on the Circular No. 81/01/2015-CX dated 01.04.2015 by the petitioner is misplaced because it pertains only to "unmanufactured Tobacco", however, the disputed product in present petition is specifically used as "Chewing Tobacco" and

therefore would fall in tariff Heading 2403.

58. It was submitted that even though both systems i.e. customs and excise tariff may classify tobacco under similar HSN codes, under the GST Act, comprehensive definitions and end-use focus override the previous emphasis on manufacturing processes under Central Excise. Therefore, the circulars and instruction issued under erstwhile Central Excise regime may serve as a reference, however, could not be completely applicable in present GST tax regime. Therefore, the contention of the petitioner that clarifications and circulars issued by the Board under erstwhile excise regime are applicable to the facts of the present regime and

binding upon the department, is factually incorrect.

59. It was submitted that as per Tariff Heading 2403, as outlined in the Fourth Schedule to the Central Excise Act, 1944, under 2403 99 10 -Chewing tobacco, no such condition of having fermented and liquored is provisioned. However, as per Explanatory Note of HSN (2017 Edition) issued by the World Customs Organization for Chapter 2403, stating as "(2) Chewing tobacco, usually highly fermented and liquored" inclusion of fermented and liquored chewing tobacco is mentioned, yet it does not exclude chewing tobacco which are not fermented and liquored as is emphasized by usage of word "usually", which mean generally but not necessarily.

60. It was submitted that the petitioner has placed reliance on various judgements of various courts pronounced during pre-GST regime, with circulars of pre-GST regime, while under the GST Act, comprehensive definitions and end-use focus, override the previous emphasis on manufacturing processes used under Central Excise regime. It was therefore submitted the impugned order cannot be claimed to be contrary to the judicial precedents, as the whole taxation system changed after implementation of the GST Act.

61. Learned advocate Ms. Sancheti submitted that the present issue does not pertain to broken tobacco leaves but to “chewing tobacco”, which is admitted by the petitioner while registering their product under Trademark Act, 1999.

62. Insofar as the decision relied upon by the petitioner in case of **Suresh Tobacco** (supra), it was submitted that the said decision was discussed in the impugned order and the Adjudicating Authority found that the case could not be relied upon in terms of section 120 of GST Act, as the judgment was accepted on Board's instruction on low monetary limit alone. Learned advocate Ms. Sancheti referred to section 120 which reads as under:

> "Section 120. Appeal not to be filed in certain cases.-
>
> (1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
> (2) Where, in pursuance of the orders or instructions or

directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1)." (Emphasis Supplied)

63. It was further submitted that the judgment of the Tribunal in case of **Suresh**

Tobacco (supra), no appeal was preferred due of low tax effect as per instruction from the Board in terms of section 120 of CGST Act, 2017 and the same could not be relied in terms of section 120(3) of CGST Act, 2017, since, the case was accepted solely on low monetary ground.

64. Learned advocate Ms. Sancheti submitted that as per Chapter-24 read with Rule 3(a) of Fourth Schedule to the Central Excise Act, 1944, same also supports the fact that the disputed product merit classification under 2403 99 10 – “Chewing tobacco” and there is no such condition that it must be fermented or liquored. Further, only reference for such addition is found in Sr. No. 2 of the Explanatory Note of HSN (2017 Edition)

issued by the World Customs Organization for Chapter 2403.

65. It was submitted that without prejudice to principle of binding nature of Judgment passed by the Court, the case law relied upon by the petitioner pertains to Central Excise regime, owing to the differentiated ground of levy. The incidence of Tax is entirely different in both taxation schemes. GST is levied on Supply which is different from Central excise regime where duty was levied on goods manufactured. In terms of definition of manufacture as provided under section 2(72) of CGST Act, 2017 the end use is equally important to ascertain classification which is entirely different from Central Excise Act wherein process had the prime importance.

66. It was submitted that the petitioner's claim of classification of tobacco merely on the basis of consumption is misleading inasmuch as, as per definition of “manufacture” provided under section 2(72) of the GST Act, it is clear that the term manufacture has three important parameters namely distinct name, distinct character and distinct use. The definition clearly emphasizes use of the product as a deciding factor for manufacturing. In present case disputed product has a distinct name registered as its brand name as chewing Tobacco. It also has distinct use as the description on the disputed product itself says for the purpose of chewing.

67. Learned advocate Ms. Sancehti

submitted that the decision relied on by the petitioner in case of **Collector of Central Excise, Pune vs Jaikisan Tobacco** (supra) is not applicable to the facts of the present issue as same pertains to Central Excise regime. Further, the assertions made by the petitioner are misplaced as the impugned order has not only based its findings on consumption, instead has established Distinct Name, Character and Use in terms of section 2(72) of GST Act amounts to manufacture.

68. It was therefore submitted that the subject goods either chewed or sucked merits classification under tariff Heading 2403 and therefore, the petitioner's attempt to differentiate chewing and sucking is misleading.

69. It was submitted that the petitioner was cleaning, sieving, sizing, cutting and packing the tobacco leaves and selling it for chewing purpose and in fact, they have registered their product under Trademark Act, 1999 under class 34 as Chewing Tobacco, which is certainly admission on their part. Further, in terms of section 2(72) of the GST Act, it is established that the subject good of the petitioner is having a distinct name. Further, as regards to distinct character, it is submitted that the character changes with the usage of the product. It is because of this only that the deeming provision was made under earlier Central Excise regime. As per Note 3 of Chapter 24 of the Fourth Schedule to the Central Excise Act, 1944, which classify activities like labelling.

repacking, and other treatments as "manufacture" holds significance.

70. It was submitted that the impugned order dated 20.01.2025 has dealt with a different product as compared to product under dispute in all the advance ruling relied upon by the petitioner. Further, tax enforcement is a reasonable restriction under Article 19(6)of the Constitution Of India and does not infringe upon the fundamental Right as enshrined in the Article 14 and 19 of the Constitution. The case laws relied upon by the petitioner is not applicable to the facts of present case, as same is meant for different product(s). Thus, the petitioner's allegation of hostile discrimination is legally not tenable.

71. It was submitted that the contention raised on behalf of the petitioner regarding inspection of their capacity by the department under Rule 6(2) of “Chewing Tobacco and Unmanufactured Tobacco capacity determination and collection of duty Rules” 2010, is irrelevant for classification of the subject goods under the GST Act, as the classification of subject goods under GST is independent from the aforesaid provision, also the classification opted by the petitioner during pre-GST regime cannot be equated with classification under GST regime.

72. It was further submitted that reliance placed by the petitioner on decision of Hon'ble Apex Court in case of **Commissioner of Central Excise vs. Urmin Products Pvt Ltd** is misplaced as the Hon'ble Court

decided the issue of classification in light of Chewing Tobacco and Unmanufactured Tobacco "capacity determination and collection of duty Rules" 2010, for levy of excise duty on such products. The issue of classification of impugned products during the pre-GST regime is not under challenge in present writ. The petitioner claims that there is no change in manufacturing process undertaken by them from the central excise regime, but the classification of any product under the GST Act is not limited to the manufacturing process alone but also on distinct nature and end use of the product. It was submitted that the subject goods have been correctly classified under tariff Heading 2403 by the adjudicating authority.

73. Learned advocate Ms. Sancheti placed reliance on the judgment of Hon'ble Madras High Court in **Haji KPM Abdul Kareem v. Assistant Commissioner, GST & Central Excise, Thanjavur** reported in **(2024) 25 Centax 204 (Mad.),** wherein it was held as follows:

> "92. It further appears that vide letter dated 14.03.2019, the said petitioner in W.P(MD)No.204 of 2021 further stated that from Nov 2018 onwards they have changed the product manufactured from Tariff Heading 24 03 99 20 to 24012090 to Tariff Heading 24012090, and thereafter attempted to obtain a ruling from the Appellate Authority for Advance Ruling under the provisions of the GST Act for classifying the same product under the Tariff Heading 2401 20.
>
> 93. It is the elementary principle that insofar as the classification of products are concerned an assessee cannot change the classification merely to take advantage or benefit of any rate/concession, Classification can also not be altered because the product will attract higher rate of duty/tax. In this case,

> admittedly, the respective petitioners have classified their products under Heading 2403 99 10 of the Central Excise Tariff Act, 1985 which is similar to Customs Tariff Act, 1975 which are based on HSN Classification."

74. Learned advocate Mr.Ankit Shah, learned advocate Mr.Maunil Yajnik, learned advocate Mr.Tirth Nayak, learned advocate Mr.Neel P. Lakhani and learned advocate Mr.C.B.Gupta have also made submissions on similar lines for the respective respondents and therefore, same are not repeated.

Analysis:-

75. In this group of petitions, the petitioners have challenged order-in-original passed by respondent no.3 wherein the product sold by the petitioners being non-fermented, non-liquored crushed tobacco leaves in small retail pouches is classified under Tariff

Heading No.2403 as “chewing tobacco” instead of under Tariff Heading No.2401 as “unmanufactured tobacco”.

76. According to the petitioners, change of classification by respondent no.3 from Tariff Heading No.2401 to Tariff Heading No.2403 is in violation of the binding circulars, established legal principles and long standing settled legal position resulting into excessive cumulative tax liability including GST, compensation Cess and penalty.

77. Therefore, the question to be decided in these petitions is whether the respondents have rightly exercised the jurisdiction in classifying the product i.e. non-fermented, non-liquored crushed tobacco leaves in small retail pouches sold by the petitioners as “chewing tobacco” instead of “unmanufactured tobacco’ for levy of GST when such product

was classified under Tariff Heading No.2401 as “unmanufactured tobacco” under the provisions of erstwhile Central Excise Act read with Customs Tariff and Central Excise Tariff aligned with Harmonised System of Nomenclature (HSN).

78. It would, therefore, be germane to refer to relevant entries under the Customs Tariff Act aligned with HSN and relevant provisions of the Central Excise Act, Circulars issued from time to time under the Excise Act, provisions of the GST Act which has come into effect from 01.07.2017.

TARIFF HEADING

> “**2401** – Unmanufactured tobacco, tobacco refuse
>
> **2402** – Cigars, cheroots, cigarillos and cigarettes of tobacco or of tobacco substitutes.
>
> **2403**- Other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and

essences.

2404- Products containing tobacco, reconstituted tobacco, nicotine, or tobacco or nicotine substitutes, intended for inhalation without combustion; other nicotine containing products intended for the intake of nicotine into the human body.

CIRCULARS

(i) F. No. 81/5/87-CX.3, dated 23-6-1987

Government of India

Ministry of Finance (Department of Revenue) New Delhi

Subject Classification of unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand names for consumption as chewing tobacco, which is commonly known in the market as Zarda - Regarding.

A doubt has been raised as to whether unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand names for consumption as chewing tobacco, which is commonly known in the market as 'Zarda', should be classifiable as unmanufactured tobacco under Heading No. 24.01 or as manufactured chewing tobacco under sub- heading No. 2404.41 or

2404.49 depending on whether it is branded or unbranded.

2. The above issue came up for discussion in the North Zone Tariff-cum-General Conference of Collectors of Central Excise held at New Delhi on 27th and 28th May, 1987. In the course of discussion, the Conference noted that Tariff Advice No. 118/81, dated 4-11-1981 was issued by the Ministry in the context of the old Central Excise Tariff, clarifying that unmanufactured tobacco merely broken into pieces and packed in gunny bags, gunny bags, whether sold under a brand name or not, is not classifiable as manufactured chewing tobacco under old TI 4.11 (5). It was also observed that CEGAT had held in the case of CCE, Pune v. M/s. Jai Krishan Tobacco Co., Pune that raw tobacco crushed in the form of flakes and packed into smaller packets without adding any ingredients and whether sold under a brand name or not should not be classifiable as manufactured chewing tobacco. The said order has been accepted by the Government.

3. The Conference, after discussion, came around to the view that the only argument which could possibly be adduced in favour of classification of such products as 'Zarda' under the category of manufactured chewing tobacco would be that such products are found to have been marketed as 'Zarda', may not be enough to bring the product

in the category of manufactured tobacco under Heading No. 24.8. The HSN description of unmanufactured tobacco under corresponding Heading No. 24.01 is stated to cover unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed or trimmed or untrimmed, broken or cut (including prices cut to shape) but not tobacco ready for smoking.

4. The Conference was, therefore, inclined to support the classification of the product in question under Heading No. 24.01 in the category of unmanufactured tobacco. It was, however, noted by the Conference that normally understood 'Zarda' preparation which come in the category of chewing tobacco as manufactured tobacco product would not be entitled to classification under Heading No. 24.01 since these are squarely covered by the description appearing in sub-heading No. 2404.41 or 2404.49.

5. The Board has accepted the above views of the conference. Accordingly, it is clarified that unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand name for consumption as chewing tobacco, which may be commonly known in the market as 'zarda', would be appropriately classifiable under heading No. 24.01

of the Schedule, to the Central Excise and Tariff Act, 1985 as 'unmanufactured tobacco'

6. The above position may be brought to the notice of the lower field formations and the trade Interest may also be suitably informed.

7. All pending assessments may be finalised on the basis of the guidelines given above

(ii) F.NO. 81/01/2015-CX-3

Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise and Customs
dated; 01.04.15

TO
The Additional Chief Secretary,
Finance Department, Mantralaya,
Madam Cama Road, Hutamta Rajguru Chowk,
Mumbai-400032

Sir,

Sub: Issuance of clarificatory Circular explaining the impact of note 3 of Chapter 24 on classification of product-reg.

Please refer to your letter No. -VAT 1513/CR-75/Taxation 1 dated 31st December,2014

2. In this regard, I am directed to inform that "unmanufactured tobacco" sold in small packs under brand name would be classifiable under Chapter sub heading 2401 of the Central Excise Tariff, Chapter sub heading 2403 pertains to other manufactured tobacco.

3. Chapter Note 3 to Chapter 24 of Central Excise Tariff prescribes a deeming provision of "manufacture" to goods of heading 2401, 2402 or 2403, if these are subject to activities such as labelling, repacking etc as mentioned therein, so that these become liable to Central Excise Duty.

4. In this regard, your attention is invited to explanatory notes to the HSN for Chapter 24 wherein the scope of these headings namely, "24.01-Unmanufactured tobacco, tobacco refuse" & "24.03-Other manufactured tobacco and manufactured tobacco substitutes: "homogenized" or "reconstituted" tobacco; tobacco extracts and essence" is explained. Copy of the same is enclosed for reference.

Chapter 24 Schedule I of the Central Excise Tariff Act, 1985 - Note No.2

In relation to products of headings Nos.24.01, 24.02, 24.03 and 24.04, labelling or relabelling of containers and repacking from bulk

packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to ‘manufacture’.

Chapter 24 Schedule I of the Central Excise Tariff Act, 1985 - Note No.3

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, but does not include any part of a tobacco plant while still attached to the earth.

Central Excise Act, 1944

“[(f) "manufacture" includes any process—

(i) incidental or ancillary to the completion of a manufactured product;

(ii) which is specified in relation to any goods in the section or Chapter notes of [The Fourth Schedule] as amounting to [manufacture; or]

[(iii) which in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including

> the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer; and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;"

Central Goods and Service Tax Act, 2017

> 2(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

79. On perusal of the above provisions and notification and circular issued during the period of applicability of Central Excise Act, 1944, the cut tobacco leaves containing the retail pouches were treated as "unmanufactured tobacco" classified under HSN 240 and Chapter Heading 24.01 of the Central Excise Tariff Act, 1985 and the same was

cleared on payment of GST at the rate of 28% under Serial No.13 of Schedule IV of Notification No.1/2017 -Central Tax (Rate) dated 28.06.2017 and compensation Cess at 71% as per Serial No.5 of Notification No.1/2017-Compensation Cess (Rate) dated 28.06.2017 till the impugned orders were passed.

80. With the introduction of GST regime from 01.07.2017, basic excise duty on all tobacco products under Chapter 24 was exempted vide Serial No.1 of Notification No.11/2017-CE dated 30.06.2017 which was omitted by subsequent Notification No.02/2019-CE dated 06.07.2019. Difference in levy of duty under CTH 2401 and CTH 2403 are as under:

LEVY	'UNMANUFACTURED TOBACCO' UNDER CTH 2401	'CHEWING TOBACCO' UNDER CTH 2403
Goods and Services Tax	28% S. No. 13 (Schedule-IV) of Notification No.01/2017-CT (Rate)	28% S. No. 15 (Schedule-IV) of Notification No.01/2017-CT (Rate)

Compensation Cess	71% S. No. 5 of Notification No. 01/2017-CC (Rate)	160% S. No. 26 of Notification No. 01/2017-CC (Rate)
Excise Duty	NIL S. No.1 of Notification No.03/2019-Central Excise (Tariff)	0.5% (From 06.07.2019) S. No.19 of Notification No.03/2019-Central Excise (Tariff)
National Calamity Contingency Duty	NIL Not covered in Seventh Schedule to Finance Act, 2001	10% [upto 31.03.2020] 25%[w.e.f. 01.04.2020] Seventh Schedule to Finance Act, 2001

81. The contention of the petitioners that HSN Explanatory Note of Chapter Heading 2401 covers “unmanufactured tobacco” as well as tobacco leaves used and it is not in dispute that the petitioners are only carrying out the process of repacking as done by cutting, sieving unmanufactured tobacco and repack the same without carrying out any process by adding any other ingredients and therefore, the retail pouches in which such cut tobacco leaves would remain as unmanufactured tobacco as there is no difference between tobacco leaves procured by the petitioners and repacked tobacco in retail pouches, as the raw material remains the same in finished

goods except retail packing and therefore, it was claimed under Tariff Heading 2401.

82. The petitioners have referred to and relied upon various decisions of the Tribunal and the Advance Ruling Authority wherein it has been ruled that unmanufactured tobacco merely broken by beating and then sieved and packed in retail packets with or without brand name is classifiable under Tariff heading 2401 even if it is meant for consumption as chewing tobacco.

83. Reliance was placed by the petitioners on HSN Explanatory Notes to Chapter Heading 2401 to classify the product under Chapter Heading CTH 2401 on the ground that the raw materials as well as finished goods are cut leaves from natural leaves of tobacco and therefore it remains unmanufactured tobacco only and in order to classify the same under

Tariff Heading 2403, the tobacco has to undergo process of manufactured tobacco and the product of the petitioners remained unmanufactured tobacco right from the raw material stage upto the finished goods stage, the same was classified under Tariff Heading 2401. It was therefore, contended that the end-use of the product for chewing purpose cannot be determinative for classification under the Tariff Heading.

84. CBEC has also clarified this aspect in Circular dated 03.06.1997 to the effect that unmanufactured tobacco merely broken by beating and then sieved and packed in retail packet with or without branding for consumption as chewing tobacco which may be commonly known in the market as “Zarda” would be appropriately classifiable under Tariff Heading 2401 as “unmanufactured tobacco”.

85. The contention of the petitioners that merely because introduction of the GST Act, classification ought not to have been changed by the respondent authority without there being change in any circumstance of repacking of the final product by the petitioners as the conversion from bulk to retail pack of unmanufactured tobacco remained as unmanufactured tobacco only, needs to be considered in light of the definition of the term “manufacture” in section 2(72) of the GST Act. The definition of “manufacture” provided in section 2(72) of the GST Act is different than the definition of “manufacture” provided in section 2(f) of the Central Excise Act. The definition of “manufacture” in section 2(f) of the Central Excise Act stipulates that "manufacture" includes any process incidental or ancillary to the completion of a manufactured product and which is specified in relation to any

goods in the section or Chapter notes of the Fourth Schedule as amounting to manufacture or in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods whereas definition of “manufacture” in section 2(72) of the GST Act stipulates that "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacture" shall be construed accordingly.

86. If the definition of term “manufacture” provided in section 2(72) of the GST Act is applied for levy of GST on the product sold by the petitioners in small retail pouches containing non fermented non liquored crushed tobacco leaves, it would have to be analysed as to whether such processing of tobacco leaves in gunny bags would

result in emergence of new product having a distinct name, character and use or not. Admittedly, the tobacco leaves in the gunny bags cannot be used for chewing purpose unless the same is processed for the purpose of making it suitable for “chewing” by packing in small retail pouches. The petitioners are also branding such small retail pouches of the non-fermented non liquored crushed tobacco leaves for chewing purpose. Thus, the small retail pouches prepared by the petitioners would have a distinct name, character and use, partaking the character of “chewing tobacco”.

87. It is true that the petitioners are not adding any material to the tobacco leaves which are sold in small retail pouches after undergoing the process such

as drying, cleaning, sieving, sizing, cutting and thereafter packing into retail pouches and accordingly, the petitioners have classified such product as unmanufactured tobacco under Tariff Heading 2401 during the excise regime and the authorities under the Central Excise Act has also considered it as a valid classification in view of clarification issued by CBEC in circular dated 23.06.1987.

88. However, the definition of “manufacture” in section 2(72) of the GST Act refers to processing of raw materials or inputs in any manner which means that the tobacco leaves in gunny bags procured by the petitioners which is a raw material is processed by drying, cleaning, sieving, sizing, cutting which results in emergence

of “chewable tobacco” having a distinct name and character and use. Therefore, small retail pouches containing the tobacco leaves processed as “chewing tobacco” would fall within the Chapter Heading 2403 9910 under the sub-heading “chewing tobacco” of Tariff heading 2403.

89. However, the contention of the petitioners that the respondents could not have invoked the extended period from July, 2017 to March, 2023 as the petitioners were bona fide classifying the product under Chapter Heading 2401 as the petitioners were classifying the same during the excise regime and therefore, the extended period of limitation as provided in section 74(1) of the GST Act read with section 11 of the Goods and Service Tax (Compensation to States) Act,

2017 could not have been invoked for demand of GST and Compensation Cess for the extended period because section 74(1) can be invoked when there is fraud or any willful misstatement or suppression of facts to evade tax. The respondent authorities therefore would have been justified to issue the show cause notice under section 73 of the GST Act only for past three years as per sub-section (10) Of section 73 and the respondent authority cannot raise any liability on account of change of classification from Tariff Heading 24012090 to Tariff Heading 24039910 beyond the said period.

90. In view of settled legal position under the Central Excise Act, the product of small retail pouches have been rightly classified under Tariff Heading 2401 as

unmanufactured tobacco in view of definition of “manufacture” under the Central Excise Act and in view of change of definition of “manufacture” as contained in section 2(72) of the GST Act, in view of the fact that small retail pouches as produced by the petitioners results in emergence of new product having a distinct name, character and use namely “chewing tobacco” under Tariff Heading 24039910.

91. As the Chapter Heading 2403 contains other manufactured tobacco and manufactured tobacco substitutes; “homogenised” or “reconstituted” tobacco; tobacco extracts and essences, “chewing tobacco” would fall under the category of CTH 2403 9910.

92. As per Explanatory Note of HSN (2017 Edition) issued by the World Customs Organization in Chapter 2403, Item No.(2) “Chewing tobacco” is described as “(2) “chewing tobacco”, usually highly fermented and liquored". This Explanatory Note clearly demonstrates that chewing tobacco is not always highly fermented and liquored, but it can be without any fermentation and without Liquor or any addition to the raw tobacco which can be processed as “chewing tobacco”. As per the explanation, the chewing tobacco may include any other material or may be fermented or may be liquored but converse is not true that tobacco without being fermented or liquored ceases to be a “chewing tobacco”. Raw tobacco leaves processed so as to convert it for chewing

results in having a distinct name, character and use namely “chewing tobacco”.

93. On perusal of the photographs of the retail pouches manufactured by the petitioners which are placed on record, it is discernible that such retail pouches carry the warning for health hazard for chewing the tobacco as per the Cigarettes And Other Tobacco Products (Prohibition Of Advertisement And Regulation Of Trade And Commerce, Production, Supply And Administration) Act, 2003 (for short ‘Copta’). This warning also clearly shows that what is sold by the petitioners is “chewing tobacco” and merely because no ingredients are added, it would not be “unmanufactured tobacco” falling under Tariff Heading No. 2401 2090 in view of

definition of “manufacture” under the GST Act.

94. Section 3(k) of the ‘Copta’ defines the term “production” as under:

> “(k) "production", with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include-
>
> (i) packing, labelling or re-labelling, of containers;
>
> (ii) re-packing from bulk packages to retail packages, and
>
> (iii) the adoption of any other method to render the tobacco product marketable;”

95. Thus, “production” as defined in ‘Copta’ includes chewing tobacco or any chewing material having tobacco as one of

its ingredients and also includes packing, labelling or re-labelling of containers and re-packing from bulk packages to retail packages. Section 3(p) of the 'Copta' defines "tobacco products" which means the products specified in the Schedule to the said Act and the Schedule includes at item no.6 "chewing tobacco". Hence, "chewing tobacco" is a tobacco product. There is no requirement in the 'Copta' that the chewing tobacco has to be either fermented or liquored and re-packing from bulk packages to retail packages tobacco would amount to production as per the said Act. Section 7 of the Act provides for restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products which reads as

under:

> “7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.-(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label [such specified warning including a pictorial warning as may be prescribed.
>
> xxx
>
> (4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration
>
> (5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum

permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act."

96. The petitioners have followed the aforesaid provisions of section 7(4) and 7(5) by printing warning on the retail pouches produced which contains "chewing tobacco".

97. Considering the above provisions of the 'Copta' as well as Explanatory Note of HSN (2017 Edition) issued by the World Customs Organization read with definition of "manufacture" as per section 2(72) of the GST Act, we are of the opinion that the chewing tobacco manufactured by the petitioners sold in retail pouches after re-packing from bulk packages to retail

packages would fall within the Tariff Heading No. 2403 9910 as “chewing tobacco’ and not under Tariff Heading 24012090 as “unmanufactured tobacco”.

98. The respondent authorities have therefore rightly classified the same under the Tariff Heading 2403 9910 as “chewing tobacco” under the provisions of the GST Act which would attract the rate of GST and Compensation Cess accordingly.

99. In view of foregoing reasons, the impugned order-in-original based upon the notice under section 74(1) of GST Act is required to be modified so as to consider the same for the period which can be covered under section 73(10) of the GST Act. It is therefore,held that the respondent authorities would have

jurisdiction to issue the show cause notice under section 73 and not under section 74 of the GST Act and as such, the impugned order-in-original shall be treated as having been passed under section 73 of the GST Act and it cannot be said that the respondent authorities has no jurisdiction to issue the show cause notice in view of the definition of “manufacture” as per section 2(72) of the GST Act, small retail pouches of tobacco leaves sold by the petitioners would be covered under the category of chewing tobacco under Tariff Heading 2403 9910 in view of description mentioned in Explanatory Note of HSN read with definition of “manufacture” in section 2(72) of the GST Act as well as provisions of the ‘Copta’.

100. Reliance placed by the petitioners on the classification of the product as unmanufactured tobacco under Tariff Heading 2401 in the Central Excise regime would have to be now changed to classification of Tariff Heading 2403 9910 and the petitioners would be liable to pay GST and Compensation Cess applicable as per Tariff Heading 2403 9910 and not as per Tariff Heading 24012090. Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 prescribing the GST rate on the basis of Tariff Heading as specified in First Schedule to Customs Tariff Act, 1975 and the Rules made thereunder would have to be in consonance with the definition of “manufacture” as provided in the GST Act. The respondent authorities, therefore,

have rightly classified the product of the petitioners as “chewing tobacco” under Tariff Heading 2403 9910.

101. These petitions are accordingly disposed of as under:

1) Insofar as Special Civil Application No.2407 of 2025, Special Civil Application No.3629 of 2025, Special Civil Application No.3657 of 2025 and Special Civil Application No.2463 of 2025 are concerned, the respondent authorities have passed the order under section 74(9) of the GST Act and has also imposed penalty and interest by invoking the provisions of the GST Act. Therefore, these petitions are partly allowed to the extent that the impugned order-in-original is sustained so far as it refers to the classification of

the product of the petitioners under Tariff Heading No.2403 9910 as “chewing tobacco” and such order is deemed to have been passed under section 73 of the GST Act and not under section 74 of the GST Act and therefore, the respondent authorities shall pass order giving effect after recomputing the amount payable as GST considering the show cause notice as well as the impugned order-in-original having been passed under section 73(9) of the GST Act without considering the extended period of limitation from July, 2017 onwards.

2) Insofar as Special Civil Application No.5014 of 2025 and Special Civil Application No.5015 of 2025 are concerned, both the petitions pertain to the order-

in-original passed under the provisions of section 11A(10) of the Central Excise Act, 1944 and therefore, both the petitions are allowed as the demand raised under the provisions of Central Excise Act as discussed here-in-above, cannot be sustained as the provisions of Central Excise Act could not have been invoked to levy of any duty on the chewing tobacco manufactured by the petitioners as, in view of the definition of “manufacture” under section 2(f) of the Central Excise Act and in view of the circulars, notifications and clarifications issued by the Board prior to coming into force of GST Act, the products cannot be said to have not been rightly classified under Tariff Heading 2401 under the excise regime by the respondent authorities at

the relevant point of time. The petitioners, therefore, cannot be made liable to pay any excise duty by change of classification under the provisions of the Central Excise Act, 1944

102. Petitions are accordingly disposed of. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

RAGHUNATH R NAIR