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WA No. 1474 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-05-2026

CORAM

THE HON'BLE MR JUSTICE G. R. SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

WA No. 1474 of 2026

AND

CMP NO. 13454 OF 2026 and CMP NO. 13455 OF 2026

New Kannan Vilas Tobacco Company
Rep by its Managing Partner
P. Nagendran, No.2/ 47, Navalar Street,
Mudikandanallur and Post,
Tharangambadi TK,
Mayiladuthurai-609 309.

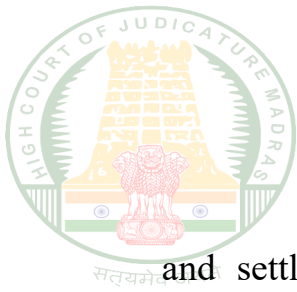
..Appellant(s)

Vs

The Assistant Commissioner
of GST and Central Excise,
Cuddalore Division,
1 Vellalar Nagar, Manjakuppam,
Cuddalore-607 001.

..Respondent(s)

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the impugned order dated 06.12.2024 passed in W.P. No.17606 of 2022 and consequently allow the Writ Appeal by holding and declaring that the Appellants products, namely Unmanufactured Tobacco, are classifiable under Tariff Item 2401 20 90 of the Customs Tariff Act, 1975, having regard to the nature of the product, process undertaken, applicable HSN Explanatory Notes



and settled judicial pronouncements and consequently quash the Order-in-Original No. 02/2022-GST dt.19.05.2022 passed by the Respondent impugned in the Writ Petition.

For Appellant(s): Mr.S.Jai Kumar.
Mr.Karthikeyan,
Mr.Nitin Chopra,
Ms.Prageetha J

For Respondent(s): Mr.S.Gurumoorthy

Judgment

(Judgment of the Court was delivered by G.R.Swaminathan J.)

This intra-court appeal is directed against the order dated 06.12.2024 passed in W.P. No.17606 of 2022 filed by the appellant herein.

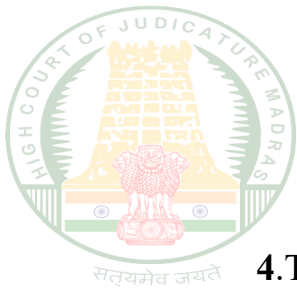
2.The appellant is engaged in the tobacco business. Their activity comprises the following : procuring raw tobacco from farmers, processing by drying, stripping and thereafter dipping it in jaggery water and subsequently mincing and packing for subsequent sale. Dipping the raw tobacco in jaggery water is called liquoring. This process is resorted to prevent mould and also to preserve the natural flavor of the tobacco. Initially, the appellant was adding



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further ingredients to tobacco after it was processed as mentioned above like chilli/mint/other flavors and essences and marketed the product as “chewing tobacco” classifying the same under Central Excise Tariff Heading (hereinafter referred to as “CETH”) 2403 99 10. During May 2017, Government of Tamil Nadu issued a notification dated 23.05.2017 vide Gazette No.146, whereby, manufacture, storage, transport, distribution or sale of gutkha, pan masala, chewing tobacco and any other food products containing tobacco or nicotine as ingredients were prohibited. In view of the change in the legal regime, the appellant stopped the addition of the flavors and essences to their product and started selling the same as “unmanufactured tobacco”. Notwithstanding the fundamental change in the character of the product, the appellant continued to classify the same under CETH 2403 99 10. However, the respondent issued show cause notice proposing classification under Tariff Item 2403 99 10 as “chewing Tobacco” and demanded compensation cess to the tune of Rs.42,29,357/- vide order-in-original No.02/2022-GST dated 19.05.2022.

3. Aggrieved by the same, the writ petition came to be filed. The learned Single Judge disposed of the writ petition with liberty to the appellant to work out the remedy before the appellate authority. Challenging the same, this writ appeal has been filed.



4. The issue raised in this case had come up for consideration before the Division Bench of this Court to which one of us (GRSJ) is a party in W.A. (MD)No.746 of 2025. The said writ appeal was disposed of in the following terms:-

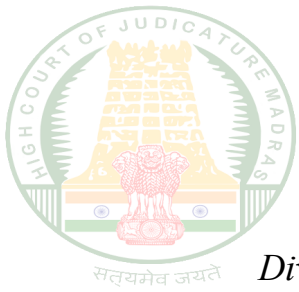
*13. This issue is no longer res-integra. It was authoritatively settled long ago in **Pachiappa Chettiar V. State of Madras ((1963) 2 MLJ 71)**. It is relevant to note that this question came up for consideration in connection with interpreting Section 5(viii) and (vii) of the Madras General Sales Tax Act. In the very opening line, the question was formulated in the following terms :*

“Whether the goods sold by the assessee, which is described as tundu tobacco, is “chewing tobacco” produced as a result of any manufacturing operations and assessable as a manufactured product”.

The process employed by the assessee was described as follows :

“The raw tobacco is cut into pieces. It is periodically sprinkled with palm jaggery water to keep it soft and wet. Otherwise, the tobacco becomes brittle and cannot be cut into pieces. The tobacco so treated with palm jaggery water is taken out little by little and cut into pieces. They are then separately arranged, packed in bundles, pressed and labelled.”

The above product was contrasted with what was known as “scented tobacco”, the manufacture of which involved the mixing up of quantities of jaggery, cardamom and other spices and conversion into a pasty mass and sold to customers. The Hon’ble



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Division Bench referred to an earlier decision rendered in 12 STC 126 (Bell Mark Tobacco Company vs. Government of Madras) in which decision also the raw tobacco purchased by the assesseees was subjected to soaking in jaggery water, dried in the shade and periodically subjected to the process of bulking. The Division Bench in Bell Mark Tobacco Company case held that if thereafter flavoring essences were added, leaf shredded and shredded tobacco was packed and labelled, that would amount to a manufacturing process. The Hon'ble Division Bench held that mere sprinkling of jaggery water, drying tobacco in the shade and subjecting it to the process called "bulking" would not convert the raw tobacco into some other product. It was further held that the Bell Mark was an authority for the proposition that up to the stage of these processes, no manufacturing of the raw tobacco into some other product is involved. The argument of the department is that on account of the processes adopted by the assessee, the tobacco has become capable of being chewed. This argument was specifically rejected. It was observed that even without adopting the aforesaid processes, a tobacco could be chewed. Would it then become a chewing tobacco?. While the raw product may be capable of a particular use, "manufacture" involves some change in that article. Though basically the material might remain the same, it is being adopted to a particular use which in the original form it was not capable of. That is the essence of manufacture. The same view was taken in Deputy Commissioner v. C.Abdul Shahoor Sahib and Co., (1963) 2 MLJ 343.



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14. One of us (GRSJ) followed Pachiappa Chettiar V. State of Madras ((1963) 2 MLJ 71) in E.S.Mydeen and Company v. Designated Officer WP(MD)No.18115 of 2021 while dealing with a circular/notification issued under the Food Safety and Standards Act, 2006. Even though Pachiappa Chettiar was cited before the learned Single Judge, it was not dealt with at all. Before us, the learned Standing Counsel argued that E.S.Mydeen was rendered in connection the Food Safety and Standards Act and that therefore, the learned Single Judge did not deal with the same. We are unable to subscribe to the aforesaid submission of the learned Standing Counsel. While E.S.Mydeen arose under the Food Safety and Standards Act, Pachiappa Chettiar arose under a taxing statute. The facts involved in Pachiappa Chettiar and the facts obtaining in the present case are not similar but identical. Pachiappa Chettiar is by a Division Bench. On the authority of Pachiappa Chettiar, we hold that the product made by the appellant is “unmanufactured tobacco” because it does not involve any manufacturing activity.

15. The ratio laid down in Pachiappa Chettiar finds an echo in the Explanatory Notes of HSN with respect to unmanufactured tobacco (24.01). It reads as follows :

*“24.01 - Unmanufactured tobacco; tobacco refuse.
2401.10 - Tobacco, not stemmed/stripped*



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2401.20 - Tobacco, partly or wholly stemmed/stripped
2401.30 - Tobacco refuse

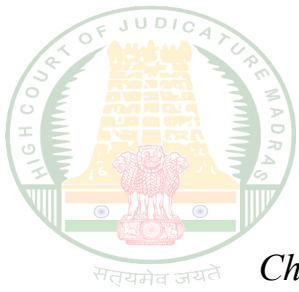
This heading covers:

(1) Unmanufactured tobacco in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but not tobacco ready for smoking).

Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading."

It was held in Holostic India Ltd v. CCE (2015) 7 SCC 401, that HSN Explanatory Notes are relevant and are a safe guide in case of doubt. The Hon'ble Supreme Court followed an earlier ruling in CCE v. Wood Craft Products Ltd., (1995) 3 SCC 454 in which it was held that to resolve any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. Thus, the case on hand passes muster when tested on the touchstone of the Explanatory Notes to HSN.

16.If the appellant's product involved addition of flavors and fragrances, it would certainly qualify as a manufactured product. In fact, the appellants were originally engaged in making such products. Following the ban imposed by the Government, they restricted their activities up to the stage indicated in Pachiappa



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Chettiar and refrained from engaging themselves in any manufacturing tobacco. This is evident from the cover label of the appellant's product. Earlier, it was called as "Special Panneer Tobacco". Now, following the giving up of adding flavors and fragrances, the product is called as "unmanufactured tobacco". The shift in the activity of the appellant is reflected in the nomenclature of the product also.

17. We have answered the issue in the light of what was laid down by the Division Bench of this Court. We do not want to stop with this. We would also seek to reinforce our conclusion by referring to the principles laid down by the Hon'ble Supreme Court in UOI v. Delhi Cloth and General Mills Co., Ltd., (1962) 10 TMI 1-SC. It was held therein as follows :

"Manufacture implies a change, but every change is not manufacture and yet, every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be a transformation ; a new and different article must emerge having a distinctive name, character or use".

This decision had been followed in a number of subsequent decisions. What was hitherto a judicial dictum has now become a statutory definition. Section 2(72) of CGST Act, 2017 is as follows :



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"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;

Applying the above, one can notice that as a result of the process adopted by the assessee, no new product having a distinct name, character and use has emerged. The product continues to be raw tobacco. It was capable of being chewed in the first instance and is capable of the very same use even post the process adopted by the assessee. Hence, one has to hold that there is no manufacturing activity involved.

*18. Another decision that is squarely applicable to the case on hand is **Crane Betel Nut Powder Works v. CCE, Thiruppathi (2007) 4 SCC 155**. It was held therein as follows :*

“30....the issue involved in this appeal boils down to the question as to whether by crushing betel nuts and processing them with spices and oils, a new product could be said to have come into being which attracted duty separately under the Schedule to the Tariff Act.

*31. In our view, the process of manufacture employed by the appellant Company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the “betel nut remains a betel nut”. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in *Delhi Cloth & General Mills Co. Ltd. [AIR 1963 SC 791 : 1963 Supp (1) SCR 586]* and the passage from the American judgment (*supra*) become meaningful. The observation that manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation is*



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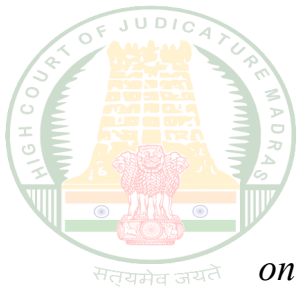


apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product continues to retain its original character though in a modified form.

32. In our view, the Commissioner of Customs and Central Excise (Appeals) has correctly analysed the factual as well as the legal situation in arriving at the conclusion that the process of cutting betel nuts into small pieces and addition of essential/non-essential oils, menthol, sweetening agent, etc. did not result in a new and distinct product having a different character and use.”

In the case on hand, the appellant has not gone up to that stage at all. The appellant’s process falls far short of what was dealt with in Crane Betel Nuts case. Crane Betel Nuts case is holding the field till date. If even the process referred to in Crane Betel Nuts will not be a manufacturing activity, it is needless to mention that an activity that does not travel that far will also not be a manufacturing activity.

19. The department has nowhere claimed that the appellant is adding any other material apart from jaggery water to the dried tobacco leaf. The assessee had challenged the department to subject their product to testing to find out if any new material has been added. The department did not pick up the gauntlet. We initially thought of remanding the matter on this ground. But on second thoughts we felt that when there was no dispute whatsoever

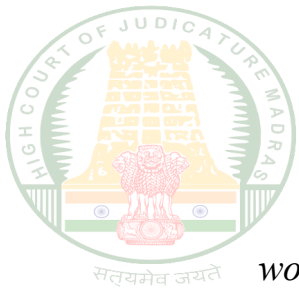


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on facts, there was no need for subjecting the goods in question to any test. Only if there is a divergence of view on facts which could be resolved by a lab test, we need to make a remand. Such is not the case here. The appellant has taken a firm stand that except sprinkling with jaggery water, no other material is added. The department has nowhere contested this assertion. What is to be adjudicated is not a question of fact but a pure question of law in respect of facts on which there is consensus. We have held that a similar question was already answered by a Division Bench in Pachiappa Chettiar. We after a careful reading of that judgment are of the respectful view that it was rightly decided and we have no hesitation in following the same.

20.The learned Single Judge was under the impression that the ban imposed by the Government of Tamil Nadu was in force from 2013 onwards. The learned Judge is both right and wrong. The ban was in force in respect of gutkha and pan masala. The ban was extended to chewing tobacco only with effect from May 2017. That is why, the assessee changed their business model. They ceased to make chewing tobacco. They stopped with unmanufactured tobacco.

21.Looked at from any angle, we are of the view that not only the department failed to discharge the onus cast on them, the assessee has more than established that their stand is correct. We hold that so long as the appellants are confining their activity to what was approved in Pachiappa Chettiar case, their product



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would fall under CETH 2401 20 90.

22. For the foregoing reasons, we set aside the order impugned in the writ petition as well as the order of the learned Single Judge assailed in this appeal. This writ petition as well as the writ appeal stand allowed. Consequently, connected miscellaneous petition is closed.”

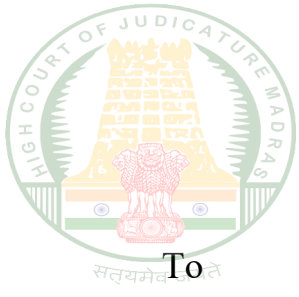
5. In view of the judgment made in W.A.(MD)No.746 of 2025, the order of the learned Single Judge is set aside. So long as the appellant is confining their activity to what was approved in Pachiappa Chettiar's case, its products would fall under CETH 2401 20 90.

6. This writ appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

(G.R.S.,J.) & (V.L.N.,J.)
29-05-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

SKM



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To
The Assistant Commissioner
of GST and Central Excise,
Cuddalore Division, 1 Vellalar Nagar,
Manjakuppam, Cuddalore-607 001.



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Case Citation: (2026) taxcode.in 1316 HC



WA No. 1474 of 2026

**G.R.SWAMINATHAN J.
AND
V.LAKSHMINARAYANAN J.**

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