BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2025

Pronounced on : 17.04.2026

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WA(MD)No.746 of 2025
and
CMP(MD)No.5111 of 2025

M/s.Omega Traders,
Rep.by its Partner,
Mr.J.Mohammed Yoosuf,
No.5735, Santhanathapuram,
3rd Street, Pudukkottai – 622 001. ... Appellant/Petitioner

Vs.

Assistant Commissioner,
Office of the Assistant Commissioner
of GST & Central Excise,
Pon Nagar, Medical College Road,
Thanjavur – 613 007. ... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 24.10.2024 in W.P.(MD)No.5414 of 2021 and allow the writ appeal and to reclassify and declare the appellant's products viz., unmanufactured Tobacco under heading 2401 20 90 of the Customs Tariff considering the nature and process adopted, relevant HSN explanatory notes, Judicial pronouncements and the submissions made by the appellants, both written and oral, during the hearing.
(Prayer is amended vide order dated 01.08.2025)

For Appellant : Mr.S.Jaikumar,
Mr.M.Karthikeyan assisted by Mr.M.Nitin Chopra

For Respondent : Mr.N.Dilipkumar, Senior Standing Counsel

JUDGMENT

(By G.R.SWAMINATHAN, J.)

This intra-court appeal is directed against the common order dated 24.10.2024 dismissing WP(MD)No.5414 of 2021 filed by the appellant herein. The writ petition filed by the appellant was taken up for disposal along with a few more writ petitions and given a common disposal by the learned Single Judge.

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.

3.Initially, the appellant was adding 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.

4.GST came into force on 01.07.2017. Products falling under CETH 2403 99 10 were levied with compensation cess to the tune of 160% apart from the other usual levies. The appellant and other traders, thereupon, gave a representation for classifying their goods under CETH 2403 99 90. The Superintendent of GST and Central Excise, Pudukottai - 1 Rage vide reply dated 17.07.2017 called upon the appellant to maintain the earlier classification ie., CETH 2403 99 10. Compensation Cess for goods classified under CETH 2403 99 90 attracted 96%. The assessees including the appellant did not accept the classification insisted by the department. Hence, Memorandum

dated 29.01.2019 followed by another letter dated 30.06.2019 was issued calling upon the appellant's representative to appear along with certain documents. The appellant's representative appeared for enquiry on more than one occasion and answered the queries raised by the department. Not satisfied with the stand taken by the assessee, notice dated 04.07.2019 was issued calling upon the assessee to show cause as to why the product manufactured and cleared by the appellant should not be re-classified under CETH 2403 99 10 and HSN 2403 99 10 respectively for the purpose of Central Excise duty and GST. The assessee was also called upon to offer their explanation as to why an amount of Rs.1,90,730/- being the short payment compensation cess should not be demanded from them. The appellant responded with their explanation dated 22.07.2019. The appellant's explanation was rejected and order dated 31.03.2020 was passed holding that the product manufactured and cleared by the appellant was classifiable only under Chapter Heading HSN 2403 99 10. The demand and penalty proposed in the show cause notice were also confirmed. Aggrieved by the same, the appellant filed WP(MD)No.5414 of 2021.

5.As already mentioned, the writ petition filed by the appellant was taken up along with other writ petitions raising the issue of classification. One such writ petitioner had already suffered an adverse advance

ruling. The learned Single Judge dismissed all the writ petitions by a common order. The learned Judge held that once advance ruling was sought and obtained, the assessee cannot wriggle out of the same even if it is adverse. The scope for judicial review is highly limited. The assessees had been classifying their products only under CETH 2403 99 10 under the erstwhile Central Excise regime. Merely because the GST regime had come into force, that cannot result in change of classification. The learned Judge was of the view that the assessees have been shifting their stand only to evade payment of compensation cess. Such conduct is impermissible. The assessees could have availed the alternative remedy.

6.Heard the learned counsel appearing for the appellant/assessee and the learned Standing Counsel for the department. The learned counsel appearing for the assessee after obtaining leave of the court, amended the writ prayer. He reiterated the contentions set out in the grounds of appeal. He also filed written notes of argument and took us through the same. He wanted us to set aside the order impugned in the writ petition as well as the order of the learned Single Judge and grant relief as prayed for

7.The learned standing counsel for the department submitted that the reasons assigned by the learned Single Judge are sound. He also harped on the fact that the assessees are shifting their goal posts. They all along classified their product under CETH 2403 99 10. They wanted to reclassify their product subsequently under CETH 2403 99 90. This was the core issue before the department as well as the learned Single Judge. Like Rip Van Winkle, they have suddenly woken up from their slumber and demand classification under CETH 2401 20 90. Thus, an altogether new element has been introduced in the debate. The stand of the assessees will not pass muster if the canons of interpretation applicable to Excise law are applied. He called upon us to dismiss all the writ appeals. He wanted us to relegate the parties before the appellate authority. In support of his submissions, he relied on a catena of decisions.

8.The points that arise for consideration are as follows :

a. Whether the writ petition filed by the appellant deserves to be dismissed for non-exhaustion of alternative remedy?

b. Whether the appellant is bound by the classification earlier made by them or whether the appellant is entitled to seek reclassification before this Court?

c. Whether the product made by the appellant is classifiable under CETH 2401 20 90?

9.It is well settled that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition “not maintainable”. Where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then writ petition should not be dismissed on the ground of the availability of an alternative remedy (vide ***State of U.P. v. Indian Hume Pipe Co. Ltd., (1977) 2 SCC 724***). The Hon’ble Supreme Court in ***Godrej Sara Lee Ltd vs The Excise and Taxation Office reported in 2023 (2) TMI 64*** held that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of.

10.The learned Single Judge after dismissing the writ petitions, in the final paragraph gave liberty to the appellant to file a statutory appeal before the Appellate Commissioner under Section 107 of the Act. The learned standing counsel relied on quite a few decisions to contend that

in matters such as this, the assessee ought to be called upon to exhaust his statutory remedies before invoking the writ jurisdiction. In normal circumstances, we might have agreed with the objection raised by the standing counsel. But in the case on hand, calling upon the appellant to go before the authority would be a futile exercise. The learned Single Judge had given his seal of imprimatur to the stand taken by the department. Obviously, the hands of the appellate authority stand tied. No purpose will be served by filing an appeal. It is for this reason, we overrule the stand of the Standing Counsel. If the writ court is of the view that the petitioner deserves to be non-suited on the ground of failure to exhaust the alternative remedy, merits of the matter ought not to be gone into. We would even go to the extent of remarking that it would be advisable to show the door to the petitioner at the threshold stage itself. At the final hearing stage after exhaustively listening to arguments on merits advanced from either side, the writ court should not ordinarily invoke this ground. The earliest writ petition in the batch was filed in January 2021. The matters were disposed of finally on 24th October 2024. We have come across cases in which it was held that at the final hearing stage, the petition should not be dismissed on this ground. Be that as it may, since the issue involves a question of law, we hold that the writ petition is maintainable.

11.It is true that the assessee has not been consistent in their stand. As rightly pointed out by the learned Standing Counsel, they have taken three different positions. Should the submissions made before us in these appeal proceedings be rejected on this ground ? We think not. We are reminded of a popular saying by a statesman that consistency is more a virtue of an ass. What matters more is correctness and we are here to judge which stand is correct. We may add in a lighter vein that one can be consistently wrong too. In any event, the stand of the assessee is not really relevant. They are bound to take a position that suits them. We cannot therefore blame them for being inconsistent. When the matter comes up before us for consideration, it is our duty to answer the question posed to us to the best of our lights. We, therefore, unhesitatingly ignore the past conduct of the assessee. In fact, our thought process is in consonance with what has been propounded by the Hon'ble Supreme Court. It is well settled that there is no estoppel in law against a party in a taxation matter (vide ***Elson Machines Pvt Ltd vs Collector of Central Excise 1988 (38) E.L.T. 571 (SC)***). Even if the assessee had made a wrong admission, that would not be conclusive of a classification dispute. The department must apply its mind and justify the classification it proposes to adopt. In ***CCE v. Maheshwari Mills Ltd (2002) 10 SCC 733, Elson Machines*** was explained as laying down the principle that there is no estoppel against seeking to take a different

view from that taken in an approved classification list. That there can be no estoppel against law is an indubitable proposition. When we say that the assessee is not bound by the stand they had originally taken or by the admission made during enquiry, we are only applying the general principle to a specific case of classification. There is yet another justification on first principles. The principle of estoppel is invoked only when the other party changes their position pursuant to the representation made. Courts then restrain the party that made the representation from resiling from their stand. This is the condition precedent for applying the doctrine of estoppel. The department cannot be heard to say nor is it their case that they stand prejudiced because of the shift in position by the assessee. The Hon'ble Supreme Court had consistently held that the onus lies only on the department to justify the classification. In ***2006 (197) E.L.T 324 (SC) (vide HPL Chemicals Ltd vs CCE)***, it was held that the classification of goods, being a matter relating to chargeability, the burden of proof squarely lay on the Revenue. It was further held that if the department intends to classify the goods under a particular heading or sub-heading different from that claimed by the assessee, the Department has to adduce proper evidence and discharge the burden of proof. **In *Union of India and Ors. v. Garware Nylons Limited and Ors (1996 (87) ELT 12(SC)*)**, the Hon'ble Supreme Court held as follows:

> "15... The burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Mere assertion in that regard is of no avail. It has been held by this Court that there should be material to enter appropriate finding in that regard and the material may be either oral or documentary. It is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority..."

The Hon'ble Supreme Court in the decision reported in **[*2025] 150 GSTR 415(SC) (vide Gastrade International Vs. Commissioner of Customs, Kandla*)** held as follows :

> "39.There cannot be any dispute to the proposition of law as noted by the High Court that the burden of proof as regards the classification of any goods of importation is upon the Revenue/Customs authority and the standard of proof in proceedings under the Tariff Act is not "beyond reasonable doubt". However, whether "preponderance of probability" can be the appropriate test for classification under the Customs Act would be required to be examined in the light of the "General Rules for the interpretation of this Schedule" as provided in the First Schedule - Import Tariff in Part 2 of the Tariff Act."

In ***Commissioner of Central Excise, Nagpur Vs. Vicco Laboratories (2005) 4 SCC 17*,** the three Judges Bench of the Hon'ble Supreme Court reiterated that the the burden of proof that a product is classifiable under a particular tariff head is on the revenue and it must be discharged by proving that it is so understood by consumers of the product or in common parlance. We, therefore, have no hesitation to answer the second issue also in favor of the appellant.

12.The case of the assessee is that the subject product falls under the heading CETH 2401 20 90. The case of the revenue is that it falls under CETH 2403 99 10. The tariff entries are as follows :

Tariff Item	Description of goods
1	2
2401	**Unmanufactured tobacco; tobacco refuse**
2401 20	*Tobacco, partly or wholly stemmed or stripped :*
2401 20 90	Other
2403	**Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences**
	Smoking tobacco, whether or not containing tobacco substi-tutes in any proportion:
2403 99	*Other :*
2403 99 10	Chewing tobacco
2403 99 90	Other

Tariff heading 2401 specifically deals with “unmanufactured tobacco” while 2403 99 10 deals with “chewing tobacco”. The case of the assessee is that their product falls under the heading “unmanufactured tobacco”. Thus, the whole issue boils down to this : whether the product dealt with by the assessee involves manufacturing process. If it involves a manufacturing process, the stand of the revenue has to be upheld. Otherwise, the case of the assessee must be sustained.

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 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 assessees 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*.

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

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 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 :

> *"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 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 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

assessees 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 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.

(G.R.S., J.) & (K.R.S., J.)
17.04.2026

Index : Yes / No
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SKM

To

Assistant Commissioner,
Office of the Assistant Commissioner
of GST & Central Excise,
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