

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE NINALA JAYASURYA

W.P.No.3819 of 2019; W.P.Nos.21893 of 2020; 1872, 2441, 3279, 3477, 3517, 3641, 3765, 3804, 3815, 3823, 3834, 3847, 3876, 3954, 4055, 4061, 4070, 4123, 4124, 4153, 4155, 4160, 4173, 4187, 4198, 4221, 4234, 4252, 4288, 4323, 4325, 4326, 4337, 4358, 4488, 4502, 4514, 4515, 4662, 4746, 4785, 4820, 4860, 5006, 5204, 5272, 5379, 5382, 5384, 5406, 5427, 5436, 5443, 5450, 5451, 5458, 5486, 5489, 5492, 5494, 5529, 5545, 5558, 5560, 5592, 5620, 5636, 5666, 5706, 5723, 5740, 5751, 5754, 5777, 5778, 5794, 5810, 5815, 5837, 5871, 5959, 5960, 5967, 5992, 6007, 6045, 6095, 6136, 6205, 6327, 6452, 6487, 6503, 6512, 6542, 6573, 6578, 6584, 6836, 6855, 6870, 6910, 6956, 6963, 6965, 6972, 7106, 7167, 7189, 7282, 7312, 7352, 7407, 7437, 7578, 7639, 7673, 7675, 7722, 7779, 7804, 7818, 7941, 8000, 8026, 8029, 8064, 8071, 8079, 8086, 8118, 8139, 8141, 8151, 8214, 8418, 8427, 8429, 8430, 8442, 8445, 8523, 8565, 8596, 8619, 8760, 8763, 8778, 8779, 8912, 8918, 8987, 8998, 9036, 9094, 9108, 9229, 9242, 9280, 9319, 9363, 9390, 9432, 9612, 9718, 9790, 9842, 9846, 9851, 9896, 9975, 10024, 10056, 10170, 10215, 10216, 10219, 10267, 10481, 10501, 10971, 10973, 10975, 10976, 10977, 11036, 11058, 11061, 11160, 11162, 11181, 11254, 11353 of 2021; and W.P.No.28300 of 2022.

(Through physical mode)

COMMON ORDER (ORAL)**Dt:26.04.2023***(per Prashant Kumar Mishra, CJ)*

1. Though different notifications have been challenged in this batch of writ petitions, in substance, the issue raised in this batch of writ petitions is concerning the powers of the Commissioner of Food Safety and any other officer of the State Government in prohibiting the manufacture, storage, distribution, transportation and sale of Gutka/Pan Masala, which contains Tobacco and Nicotine as ingredients and chewing tobacco products etc., within the meaning of Sections 3(m) and 3(p) of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (for short, "the COTPA, 2003").

2. Similar issue has been decided by this Court in W.P.No.30185 of 2021 and batch, vide common order dated 24.03.2023. The operative portion of the said order reads as follows:

"34. In view of the above discussion, the legal position is abundantly clear that the COTPA, 2003 is a special Act specifically dealing with Tobacco and Tobacco products by including Pan Masala or any chewing material having Tobacco as one of its ingredients by whatever name called.

The FSSA, 2006 being a general Act, provides that it is an Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. Thus, the FSSA, 2006 deals with food as defined under Section 3(j) of the said Act, whereas Tobacco and Tobacco products are covered under the COPTA, 2003. Since ***Godawat Pan Masala Products I.P. Ltd.*** (supra) still holds the field, Pan Masala or Gutka containing Tobacco, cannot be considered to be "food" and the Commissioner of Food Safety, Andhra Pradesh is neither authorized nor has any jurisdiction to issue the impugned notification.

35. *Ex Consequenti*, it is declared that the Commissioner of Food Safety, Andhra Pradesh is neither authorized nor having any jurisdiction to issue the impugned notification, prohibiting the manufacture, storage, distribution, transportation and sale of Gutka/Pan Masala which contains Tobacco and Nicotine as ingredients and Chewing

Tobacco products, within the meaning of Sections 3(m) and 3(p) of the COTPA, 2003, in exercise of powers under Section 30(2)(a) of the FSSA, 2006.

36. As a further consequence, the respondents are directed not to interfere with the lawful day-to-day business activities of the writ petitioners with regard to Tobacco products.

37. The seizure of Tobacco products by the respondents under the impugned notifications or under the FSSA, 2006/ the FSSA Regulations, 2011, is also held to be bad in law. All the seized products are directed to be released forthwith. No further coercive action can also be taken under the provisions of the FSSA, 2006/ the FSSA Regulations, 2011 against the licensed businesses.

38. The writ petitions are allowed to the extent indicated above. No order as to costs. Pending miscellaneous applications, if any, shall stand closed."

3. Considering the commonality of the issues involved in this batch of writ petitions and the aforesaid W.P.No.30185 of 2021 and batch, we are inclined to allow these writ petitions also.

4. Accordingly, these Writ Petitions are allowed in terms of the common order dated 24.03.2023 in W.P.No.30185 of 2021 and batch. No costs. All the pending miscellaneous applications shall stand closed.

5. Copy of the order in W.P.No.30185 of 2021 & batch be placed on record of each of the writ petitions of this batch and be appended while communicating this order.

PRASHANT KUMAR MISHRA, CJ

NINALA JAYASURYA, J

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(per Prashant Kumar Mishra, CJ)

Dt:26.04.2023

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