

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

**HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE D.V.S.S. SOMAYAJULU**

W.P.Nos.30185, 7336, 8635, 8638, 8717, 10161, 10320, 10500, 11405, 11440, 11480, 11502, 11531, 11543, 11834, 11903, 12059, 12061, 12062, 12087, 12094, 12179, 12277, 12291, 12344, 12793, 12915, 12949, 14416, 14445, 19010 and 21080 of 2021; W.P.Nos.11854, 16172, 16187, 16257, 16699, 16713, 16843, 16935, 17295, 19761, 19765, 19983, 20035, 20108, 20110, 20118, 20534, 20680, 22119, 22120, 22121, 22132, 22139, 23804, 30417, 30449, 30505 and 33532 of 2022

COMMON ORDER

Dt.24.03.2023

(Prashant Kumar Mishra, CJ)

In this batch of writ petitions, petitioners challenge the constitutional validity of the impugned notifications, i.e. notification No.318/FSSAMP/2014-20, dated 08.01.2020, published on 10.01.2020, and notification No.318/FSSA/AP/2014-21 dated 06.12.2021, issued by the Commissioner of Food Safety, by invoking Section 30(2)(a) of the Food Safety and Standard Act, 2006 (for short, "the FSSA, 2006") thereby 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"); as such, the writ petitions are heard together and disposed of by this common order.

2. Challenge to the notification is mainly on the ground that the Central Government is levying and collecting excise duty on the production of Tobacco products under the Central Excise Act, 1944 and that Tobacco and Tobacco related products are regulated under the COTPA, 2003 in respect of prohibition of advertisement, prohibition on sale on minors, prohibition on consumption in public places by making provisions for packing and labelling, as also statutory warning; therefore, Tobacco is not a food product so as to empower the State Government to issue the impugned notification.

3. It is stated that Government of India by its office memorandum dated 13.02.2012 has clarified that anything containing Tobacco is covered under the COTPA, 2003 and a clarification to this effect has been issued on 22.02.2012 by the Ministry of Finance, Government of India. The FSSA, 2006 has also clarified that Zarda, Khaini etc., are pure Tobacco products and are not covered under the FSSA, 2006.

4. Referring to the schedule of the COTPA, 2003, it is stated that Cigarettes, Cigars, Cheroots, Beedis, Tobacco, Pipe Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutka etc, are all coming within the meaning of Tobacco as per the COTPA, 2003.

5. The judgment in **Godawat Pan Masala Products I.P. LTD. v. Union of India and others – (2004) 7 SCC 68**, has been referred, wherein the Hon'ble Supreme Court has held that the power of banning an

article of food or an article used as ingredient of food on the ground that it is injurious to health, belongs appropriately to the Central Government and the State Food (Health) Authority has no power to prohibit the manufacture for sale, storage, sale or distribution of any article whether used as an article or adjunct thereto or not used as food and such power can only arise as a result of wider policy decision and emanates from Parliamentary Legislation by exercise of powers by the Central Government by framing rules under Section 23 of the COTPA, 2003. The Supreme Court eventually declared the notification issued under the provisions of the Prevention of Food Adulteration Act, 1954 as ultra vires the Act. Similarly, when criminal cases were registered under various provisions of Indian Penal Code and FSSA, 2006 in view of ban on Tobacco products through a notification in the year 2018, Criminal Petition No.3731 of 2018 and batch came to be filed and vide order dated 27.08.2018, the FIRs., and charge-sheets were quashed on the reason that Police has no power to register cases and the said order was not appealed against and has, thus, attained finality. Similar quash petitions were also allowed vide Criminal Petition No.5421 of 2019 and batch by order dated 18.12.2019, holding that offences under the COTPA, 2003 can only be launched if the Police find that Sections 5, 6, 7 and 10 are not complied with and against this judgment also, State has not carried the matter to Supreme Court. Similar is the case with Criminal Petition

No.5103 of 2020 and batch decided on 05.03.2020. Reference is also made to the judgments rendered by various High Courts on the subject.

6. Respondent-State has filed counter-affidavit defending the impugned notification stating that the FSSA, 2006 is a statute relating to food enacted after repealing multiple Food Laws with the object of fixing scientific based food standards and to regulate, monitor the manufacturing, import, processing, distribution and sale of food to ensure availability of safe and wholesome food to the public. The respondent-State has issued impugned notification by invoking Section 30 (2) of the FSSA, 2006 because Chewing Tobacco comes under the purview of "food" as Tobacco is kept in the mouth and chewed and it gets mixed with saliva into the body. The definition of "food" under Section 3 (j) of the FSSA, 2006, cannot be given a restricted meaning, as it encompasses any kind of food which is intended to be consumed. Therefore, Gutka and Pan Masala which contain Tobacco and Nicotine, come under the definition of "food" as per Section 3 (j) of the FSSA, 2006 read with Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 (for short, "the FSSA Regulations, 2011"). It is stated that quashing of criminal cases by the High Court, has no bearing on the validity of the notification, for which the source of power is different. In respect of the judgment of the Hon'ble Supreme Court in *Godawat Pan Masala Products I.P. Ltd. v. Union of India and others*, it is stated that the

said judgment was rendered prior to the FSSA, 2006 and the FSSA Regulations, 2011.

7. It is further stated in the counter-affidavit that the FSSA, 2006 has an overriding provision contemplated under Section 89; thus, it prevails over the COTPA, 2003, as the same is a latter Act than that of the COTPA, 2003. It is specifically pleaded that the COTPA, 2003 is an Act enacted to prohibit the advertisement and regulation of trade, supply and distribution of Cigarettes and other Tobacco products, but it does not guarantee the safety of those products when consumed along with food for which the FSSAS, 2006 will take precedence. The FSSA, 2006 does not operate or interfere with Smoking Tobacco products like Cigarettes, Cigars, Beedies, Hukka etc., but deals with smokeless chewing or consuming Tobacco conjointly with food. It is further stated in the counter-affidavit that excluding those substances mentioned in the definition of "food" under Section 3 (j) of the FSSA, 2006, statute did not mention Tobacco and Tobacco products to be excluded from the purview of the definition of "food". It allowed alcoholic drinks in the definition of "Food", which is injurious to health; therefore, it is sufficient to presume that Tobacco products which are also injurious to health when mixed with food articles, would definitely come under the operational activity of the FSSA, 2006 and the FSSA Regulations, 2011 made thereunder. It is further stated that there is no conflict between the COTPA, 2003 and the FSSA, 2006. Both operate differently and the FSSA, 2006 prevails over the COTPA,

2003 to the extent of Smokeless Tobacco that is used in the preparation of Gutka and Pan Masala which obviously becomes food product when it is mixed with other items and used for chewing. The counter-affidavit would further refer to Article 47 of the Constitution of India, which casts a duty on the State to raise the level of nutrition and the standard of living and to improve public health, to state that the directive principles of state policy also support the action and exercise of statutory power under Section 30(2)(a) of the FSSA, 2006 read with the FSSA Regulations, 2011.

8. Respondents would refer to the Division Bench judgment dated 31.11.2021 rendered by the High Court for the State of Telangana in *Mohammed Yanin Nayeem Mohammed v. State of Maharashtra*, wherein similar challenge has been rejected. Based on the above, it is stated that the impugned notification is well within the powers of the Commissioner of Food Safety under Section 30(2)(a) of the FSSA, 2006 read with Regulation 2.3.4 of the FSSA Regulations, 2011, and prayed to dismiss the writ petitions.

9. Mr. K. Raja Reddy, Mr. S.M. Subhan, Mr. D. Kasi Rao and Mr. R. Leela Sai Sampath representing Mr. R. Siva Sai Swarup, learned counsel for the petitioners, would urge that there is no such power conferred on the Commissioner of Food Safety under Section 30(2)(a) of the FSSA, 2006 for issuing the impugned notification as Tobacco is not "food" covered under the FSSA, 2006, but it is an item covered under the

COTPA, 2003, which would take precedence over the FSSA, 2006, because the COTPA, 2003 is a special Act, whereas the FSSA, 2006 is a general Act. Referring to the judgment rendered by the Hon'ble Supreme Court in **Godawat Pan Masala Products I.P. Ltd.** (supra) and other judgments rendered by the High Court of Patna in **Omkar Agency v. The Food Safety and Standards Authority of India and anr. – 2016 SCC OnLine Pat.**, the High Court of Calcutta in **Sanjay Anjay Stores v. Union of India and ors. – 2017 SCC OnLine Cal 16323** and that of the High Court of Madras in **Designated Officer, the Food Safety & Drugs Control Dept. v. Jayavilas Tobacco Traders LLP** (order dated 20.01.2023 in W.A.No.2093 of 2018), it is argued that the law is well settled now that Tobacco is not a food product; therefore, the powers under the FSSA, 2006 cannot be exercised for issuance of notification to prohibit manufacture, storage, distribution and sale of Gutka, Pan Masala, which contain Tobacco and Nicotine as ingredients and Chewing Tobacco like Chap Tobacco, Pure Tobacco, Khaini, Kharra, Scented Tobacco/Flavoured Tobacco packed in pouches/sachets/containers etc. Reference is also made to judgments of the Hon'ble Supreme Court in **Commercial Tax Officer, Rajasthan v. Binani Cements Limited and another – (2014) 8 SCC 319**, **Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others – (1987) 1 SCC 424** and a judgment rendered by a single Judge of the Delhi High Court in **Sugandhi Snuff King Pvt. Ltd. and another v.**

Commissioner (Food Safety) Government of NCT of Delhi, wherein similar notification issued by the Delhi Government has been struck down. Reference is also made to the judgment of the Hon'ble Supreme Court in **M/s. Khedan Lal and Sons v. State of U.P. and another – 1980 Cri LJ 1346 = 1980 SCC OnLine All 526**.

10. Per contra, learned Advocate General would submit that the COTPA, 2003 was enacted in 2003, whereas the FSSA, 2006, was enacted in 2006; therefore, the FSSA, 2006 is a latter Act and would prevail over the provisions of the COTPA, 2003. It is contended that under the FSSA Regulations, 2011, it is provided under clause 2.3.4 that product should not contain any substance which may be injurious to health and that Tobacco and Nicotine shall not be used as ingredients in any food products. Similarly, Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (for short, "the FPSFA Regulations, 2011") define Pan Masala, treating it as "food" generally taken as such or in conjunction with pan. Therefore, according to him, Pan Masala is also "food" and it should not contain Tobacco and Nicotine. He would, thus, defend the impugned notification on the ground that, Pan Masala being a food product, the impugned notification is intra vires. He would refer to Section 89 of the FSSA, 2006, which has overriding effect and relied on the judgment of the Hon'ble Supreme Court in **Pharmacy Council of India v. Dr. S.K. Toshniwal Educational Trusts Vidarbha Institute of Pharmacy and others – (2021) 10 SCC 657**, judgment of the

Bombay High Court in ***Dhariwal Industries Ltd. & another v. State of Maharashtra and others – 2012 SCC OnLine Bom 1370*** and judgment of the High Court for the State of Telangana in ***Sri Kamadhenu Traders v. State of Telangana – 2021 SCC OnLine TS 3592***. He would also refer to judgment of the learned single Judge of this Court in ***Dasa Shekar v. State of A.P. – 2021 SCC OnLine AP 2907***, that of another learned single Judge in ***Uppara Veerendra v. State of Andhra Pradesh – 2021 SCC OnLine AP 4005*** as also on a judgment dated 27.08.2018 of yet another single Judge in ***Crl.P.Nos.3731 of 2018 and batch*** (*Chidurala Syamsunder v. State of Telangana and another*)

11. Learned counsel for the parties invited the decision of this Court on the issue of validity of the impugned notification although the said notification has lapsed by efflux of time during pendency of these writ petitions. Learned counsel for the petitioners requested the Court to record a finding on the broader issue as to whether or not the Commissioner of Food Safety, Andhra Pradesh, has the authority and jurisdiction to issue the impugned notification prohibiting the sale of tobacco products within the meaning of Sections 3(m) and 3(p) of the COTPA, 2003.

RELEVANT PROVISIONS:

12. To consider the rival submissions, it would be necessary to refer the relevant provisions of the FSSA, 2003, the regulations framed thereunder and the COTPA, 2003.

13. Section 3(j) of the FSSA, 2006 defines the term "food" in the following manner:

"3(j) 'food' means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in clause (ZK) genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal food, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances: Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purpose of this Act having regard to its use, nature, substance or quality;"

14. Sections 26(1) and (2) of the FSSA, 2006 make provision for the responsibilities of the food business operator, providing as follows:

"S. 26. Responsibilities of the food business operator._(1) Every good business operator shall ensure that the articles of food safety the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

(i) Which is unsafe; or

(ii) Which is misbranded or sub-standard or contains extraneous matter; or

(iii) For which a licence is required, except in accordance with the conditions of the licence; or

(iv) Which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) In contravention of any other provision of this Act or of any rule or regulation made thereunder."

15. Section 92 of the FSSA, 2006 empowers the Food Authority to make regulations by notification consistent with the Act, to carry out the provisions of the Act.

16. In exercise of its power, the Food Authority has enacted the FSSA Regulations, 2011, wherein clause 2.3 makes the provision for Prohibition and Restriction on sale of certain products. Clause 2.3.4 which is relevant for the present purpose makes the following provision:

"2.3.4: Product not to contain any substance which may be injurious to health: Tobacco and nicotine shall not be used as ingredients in any food products."

17. The Food Authority has made other regulations, viz. the FPSFA Regulations, 2011. Clause 2.11.5 needs reference, which is reproduced thus:

"2.11.5 Pan Masala means the food generally taken as such or in conjunction with Pan, it may contain;—

Betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabnarmusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non prohibited flavours.

It shall be free from added coaltar colouring matter and any other ingredient injurious to health. It shall also conform to the following standards namely:—

Total ash: Not more than 8.0 per cent by weight (on dry basis)

Ash insoluble in dilute HCl acid: Not more than 0.5 per cent by weight (on dry basis)"

18. The COTPA, 2003 defines Tobacco products to mean the products specified in the schedule. The schedule appended to the regulations enlists certain Tobacco products one of which is Pan Masala or any chewing material having Tobacco as one of its ingredients (by whatever name called). Entry No.9 of the schedule enlists Gutka and Entry No.6 enlists chewing Tobacco as Tobacco products.

DISCUSSION:

19. Based on the above provisions of law, we are required to consider as to whether Pan Masala and Gutka containing tobacco are "food" within the meaning of the FSSA, 2006 and whether the said Act would apply to such products or whether the COTPA, 2003 would apply for regulating manufacture for sale, storage, sale or distribution of such products.

20. The preamble to the FSSA, 2006 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.

21. On the other hand, the preamble of the COTPA, 2003 provides that the same is an Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

22. The issue as to the validity of the notifications issued by the Food (Health) Authority under Section 7(iv) of the Prevention of the Food Adulteration Act, 1954, by which the manufacture, sale, storage and distribution of Pan Masala and Gutka (Pan Masala containing Tobacco) were banned for different periods, was considered by the Hon'ble Supreme Court in **Godawat Pan Masala Products I.P. Ltd.** (supra).

23. Considering the submissions vis-à-vis the validity of the notification by contrasting the same with the provisions of the COTPA, 2003 referable to Entry 52 List I and Entry 18 List III to Schedule VII of the Constitution of India, occupying the entire field in relation to Tobacco

and considering the law on the issue, the Hon'ble Supreme Court refused to accede to the State's contention that Pan Masala or Gutka is food, to hold thus in paragraphs 60, 63 and 67:

"60. We are unable to accept the contention of the States. In our view, the scheme of the Act suggests that a decision to ban an article injurious to health, when used as food or as an ingredient in the manufacture of any article of food, can only be the result of broader policy. Hence, this larger power appears to have been located only in the Central Government under Section 23(1-A)(f) and not in the State Food (Health) Authority. As we have already pointed out, the power of the State Food (Health) Authority is only transitory in nature and designed to deal with local emergencies. In our considered view, the impugned notification is certainly an administrative act and not a legislative act. Inasmuch as by an executive act the manufacture for sale, storage, sale or distribution of the article concerned has been banned so as to interfere with the fundamental rights of the appellants guaranteed under Articles 14 and 19 of the Constitution of India, the impugned notification is illegal and unconstitutional."

"63. There is a plethora of legislation dealing with tobacco products, gutka and pan masala and the fact that licences have been issued to the appellants to manufacture the articles concerned, does not lead to the conclusion that the trade or business in the articles concerned, is an activity which is "criminal in propensity, immoral, obnoxious, injurious to the health of general public" or that the ban is a result of "public expediency and public morality".

"67. We are, therefore, unable to agree with the contention that pan masala or gutka does not amount to "food" within the meaning of the definition in Section 2(v) of the Act. However, we do not rest our decision solely on this issue."

24. The conclusion in the case has been summarized thus in paragraph 77:

"77. As a result of the discussions, we are of the view that:

1. Section 7(iv) of the Act is not an independent source of power for the State authority.

2. The source of power of the State Food (Health) Authority is located only in the valid rules made in exercise of the power under Section 24 of the Act by the State Government, to the extent permitted thereunder.

3. The power of the Food (Health) Authority under the Rules is only of transitory nature and intended to deal with local emergencies and can last only for a short period while such emergency lasts.

4. The power of banning an article of food or an article used as ingredient of food, on the ground that it is injurious to health, belongs appropriately to the Central Government to be exercised in accordance with the Rules made under Section 23 of the Act, particularly, sub-section (1-A)(f).

5. The State Food (Health) Authority has no power to prohibit the manufacture for sale, storage, sale or distribution of any article, whether used as an article or adjunct thereto or not used as food. Such a power can only arise as a result of wider policy decision and emanate from parliamentary legislation or, at least, by exercise of the powers by the Central Government by framing rules under Section 23 of the Act.

6. The provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 are directly in conflict with the provisions of Section 7(iv) of the

Prevention of Food Adulteration Act, 1954. The former Act is a special Act intended to deal with tobacco and tobacco products particularly, while the latter enactment is a general enactment. Thus, Act 34 of 2003 being a special Act, and of later origin, overrides the provisions of Section 7(iv) of the Prevention of Food Adulteration Act, 1954 with regard to the power to prohibit the sale or manufacture of tobacco products which are listed in the Schedule to Act 34 of 2003.

7. The impugned notifications are ultra vires the Act and, hence, bad in law.

8. The impugned notifications are unconstitutional and void as abridging the fundamental rights of the appellants guaranteed under Articles 14 and 19 of the Constitution."

25. In ***ITC LTD. v. Agricultural Produce Market Committee and others – (2002) 9 SCC 232***, in the context of levy of tax, the Hon'ble Supreme Court held that Tobacco is not a foodstuff.

26. It is also to be noticed that the FSSA, 2006 is a regulatory statute empowering the authority to regulate the manufacture, storage, distribution, sale and import of food products for human consumption. Such power does not authorize the authorities to prohibit the manufacture, etc. of Tobacco or Tobacco products, because the trade in Tobacco is not impermissible in India.

27. It is settled by the Hon'ble Supreme Court in ***Godawat Pan Masala Products I.P. Ltd.*** (supra) that Tobacco or Tobacco products are not *res extra commercium*. Therefore, if consumption of Tobacco or Tobacco products containing Tobacco or Nicotine was considered to be so

inherently dangerous for human health, the Parliament could have banned altogether the trade and commerce in Tobacco and Tobacco products even in the face of Article 19(1)(g) of the Constitution of India. However, the Parliament did not do so, but, instead, chose to regulate rather than prohibit trade and commerce in Tobacco and Tobacco products by promulgating the COTPA, 2003. As a corollary, on the strength of delegated legislation in the form of regulations framed under the FSSA, 2006, the authorities under the FSSA, 2006, cannot impose a ban in trade and commerce in Tobacco and Tobacco products.

28. If the ban on Tobacco and Tobacco products has not been imposed directly by the Parliament by enacting a Legislation on the field, the authorities under the FSSA Act, 2006, cannot do so indirectly, which has not been intended to be done by the Parliament directly. If there is no ban on Tobacco or Tobacco products, such power cannot be read into the FSSA, 2006 or the regulations framed thereunder, by treating the same as “food” under Section 3(j) of the FSSA, 2006.

29. The respondents have tried to convince this Court by referring to the FSSA Regulations, 2011 and the FPSFA Regulations, 2011, by submitting that food products should not contain any substance which may be injurious to health and Tobacco and Nicotine shall not be used as ingredients in any food products generally taken as such or in conjunction with pan. Clause 2.11.5 of the FPSFA Regulations, 2011 provides that Pan

Masala may contain betelnut, lime, coconut, catechu, saffron, cardamom, dry fruits, mulethi, sabnermusa, other aromatic herbs and spices, sugar, glycerine, glucose, permitted natural colours, menthol and non prohibited flavours; it should be free from added coaltar colouring matter and any other ingredient injurious to health. However, it is not legally permissible to accept the submission of the respondents for the reason that even if Pan Masala is taken to be "food" under the FPSFA Regulations, 2011 though not defined as such under Section 3(j) of the FSSA, 2006, the same would remain "food" till it does not contain Tobacco and Nicotine and the moment Tobacco and Tobacco products are mixed with pan masala, the same would become "food", which would be covered by COTPA, 2003, as defined under the schedule of the COTPA, 2003. Therefore, the moment Pan Masala or Gutka is included in the schedule of the COTPA, 2003, the law laid down in **Godawat Pan Masala Products I.P. Ltd.** (supra) would operate the field and the provisions of the FSSA Regulations, 2011, framed under the FSSA, 2006, would be in direct conflict with the provisions of the COTPA, 2003.

30. It is significant to mention that the Hon'ble Supreme Court in **Godawat Pan Masala Products I.P. Ltd.** (supra) has already held that COTPA, 2003 is a special Act intended to deal with Tobacco and Tobacco products, while Prevention of Food Adulteration Act, 1954, is a general Act. In the same analogy, the FSSA, 2006 being a general Act, would yield to the provisions of the COTPA, 2003, which is a special Act. It is

settled law that when a general Act is specifically passed, it is logical to presume that Parliament has not repealed or modified the former special Act, unless anything to the contrary appears from the subsequent general Act. For this proposition, we may profitably refer to the judgment of the Hon'ble Supreme Court in ***U.P. State Electricity Board v. Hari Shanker Jain and others – (1978) 4 SCC 16.***

31. Some of the High Courts have taken a similar view of the matter, while setting aside similar notifications. A Division Bench of the Patna High Court in ***Omkar Agency*** (supra) has quashed similar notification issued in exercise of powers under Section 30(a) of the FSSA, 2006. Similar view has been taken by a Division Bench of Madhya Pradesh High Court in ***Amarchand Upadhyay & another v. Union of India and others – (order dated 08.09.2017 in W.P.No.10998 of 2012).*** The Gauhati High Court has also taken a similar view to declare that the Assam Health (Prohibition of Manufacturing, Advertisement, Trade, Storage, Distribution, Sale and Consumption of Zarda, Gutka, Panmasala etc. containing Tobacco and/or Nicotine) Act, 2013, as unconstitutional.

32. The Calcutta High Court has quashed similar notification, that is being dealt with in the present petitions, in the matter of ***Sanjay Anjay Stores*** (supra).

33. In a recent decision rendered by a learned single Judge of the Delhi High Court in ***Sugandhi Snuff King Pvt. Ltd.***, (supra), similar

notification issued by the Commissioner of Food Safety, has been quashed.

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.

Sd/-

PRASHANT KUMAR MISHRA, CJ

MRR

Sd/-

D.V.S.S. SOMAYAJULU, J