

# SUPREME COURT OF INDIA

Kothari Products Ltd.

Vs.

Govt. of A.P.

(S.B. Bharucha, A.P. Mishra and N.S. S Hegde JJ.)

25.01.2000

## ORDER

1. The appeal is filed against the judgment and order of a Full Bench of the High Court at Andhra Pradesh. The appeal in this Court is restricted to the product "gutka" (gudaku).
2. The appellants manufacture and sell gutka under the brand name "Pan Parag". They filed a writ petition in the High Court challenging, inter alia, the introduction of entry 194 in the First Schedule to the A.P. General Sales Tax Act, 1957. That entry sought to tax "pan masala including gutka...".
3. The contention on behalf of the appellants is that it is not open to the State of Andhra Pradesh to tax gutka. Section 8 of the State Sales Tax Act provides that a dealer who deals in the goods specified in the Fourth Schedule thereto shall be exempt from tax thereunder in respect of such goods. Entry 7 of the Fourth Schedule to the State Sales Tax Act refers to tobacco and the explanation in this behalf is that the goods mentioned in entry 7 "shall be goods included in the relevant heads and sub-heads of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957, but does not include goods where no additional duties of excise are levied under that Schedule". The said Additional Duties of Excise Act, in entry 2404, refers to "gudaku" under the subheading "other manufactured tobacco". Gudaku which bears a brand name is taxable under entry 2404.11 at the rate of 5 per cent and gudaku not bearing a brand name is subject to tax at nil rate under entry 2404.12. The Schedule to the Central Excise Tariff Act also makes the same distinction between gudaku bearing a brand name and gudaku not bearing a brand name under the sub-heading, "other manufactured tobacco and manufactured tobacco substitutes ; homogenised or 'reconstituted' tobacco; tobacco extracts and essences".
4. Clearly, therefore, gutka is a tobacco that is covered by an entry in the First Schedule to the said Additional Duties of Excise Act and the branded gutka that the appellants manufacture is liable to tax thereunder. Gutka, therefore, is "goods" covered by the Explanation to the Fourth Schedule to the State Sales Tax Act and, therefore, covered by the exemption contained in Section 8 thereof. The Schedule to the State Act-could, therefore, not have been amended by including gutka as a kind of pan masala in entry 194 of its First Schedule. It must, therefore, be held that the inclusion of gutka in the said entry 194 in the manner in which" it is done is bad in law and is struck down. The appellants will be entitled to all consequential benefits.
5. The appeal is allowed and the judgment and order under appeal is set aside.

No order as to costs.