TAMILNADU STATE APPELLATE AUTHORITY FOR ADVANCE RULING
(Constituted under Section 99 of Tamilnadu Goods and Services Tax Act 2017)

A.R.Appeal No. 05/2020/AAAR Date: 29/09/2020

BEFORE THE BENCH OF

1. Thiru.G.V.KRISHNA RAO, MEMBER

2. Thiru. M.A. SIDDIQUE, MEMBER

ORDER-in-Appeal No. AAAR/03/2020 (AR)
(Passed by TamilNadu State Appellate Authority for Advance Ruling under Section 101(1) of the TamilNadu Goods and Services Tax Act, 2017)

Preamble

1. In terms of Section 102 of the Central Goods & Services Tax Act 2017/Tamilnadu Goods & Services Tax Act 2017("the Act", in Short), this Order may be amended by the Appellate authority so as to rectify any error apparent on the face of the record, if such error is noticed by the Appellate authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer or the applicant within a period of six months from the date of the Order. Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made, unless the appellant has been given an opportunity of being heard.

2. Under Section 103(1) of the Act, this Advance ruling pronounced by the Appellate Authority under Chapter XVII of the Act shall be binding only

(a). On the applicant who had sought it in respect of any matter referred to in sub-section (2) of Section 97 for advance ruling;

(b). On the concerned officer or the jurisdictional officer in respect of the applicant.

3. Under Section 103 (2) of the Act, this advance ruling shall be binding unless the law, facts or circumstances supporting the said advance ruling have changed.

4. Under Section 104(1) of the Act, where the Appellate Authority finds that advance ruling pronounced by it under sub-section (1) of Section 101 has been obtained by the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void sb-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the appellant as if such advance ruling has never been made.

Name and address of the appellant	Kavi Cut Tobacco (Prop: ARUMUGAM) No.2, RS No. 239 Abiramapuram, Thanjavur, 613007
GSTIN or User ID	33AABPA9979P3Z2
Advance Ruling Order against which appeal is filed	Order No. 16/ARA/2020 dated 20.04.2020
Date of filing appeal	28.07.2020
Represented by	
Jurisdictional Authority-Centre	Trichy Commisionerate
Jurisdictional Authority -State	The Assistant Commissioner (ST), Thanjavur-1 Assessment Circle
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details	Yes. CPIN No. 20073300341294 dated 22/07/2020

At the outset, we would like to make it clear that the provisions of both the Central Goods and Service Tax Act and the Tamil Nadu Goods and Service Tax Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the Central Goods and Service Tax Act would also mean a reference to the same provisions under the Tamil Nadu Goods and Service Tax Act.

The subject appeal has been filed under Section 100(1) of the Tamilnadu Goods & Services Tax Act 2017/Central Goods & Services Tax Act 2017 by Shri. Arumugam(Prop: Kavicut Tobacco) (hereinafter referred to as 'Appellant'). The appellant is registered under GST vide GSTIN 33AABPA9979P3Z2. The appeal is filed against the Order No.16/AAR/2020 dated 20.04.2020 passed by the Tamilnadu State Authority for Advance ruling on the application for advance ruling filed by the appellant.

2. The Appellant is the supplier of the product which is stated to undergo the below process in the brand name Kavi cut tobacco. Process followed: Raw dried tobacco leaves are purchased from wholesale dealers /farmers.; Stems and dust particles are removed.; The First step is liquoring i.e. the dried tobacco leaves are cured using jaggery water for the purpose of preventing it from moulding or further decaying (the shelf life of the produce being very short).; Secondly, it will

be cut into small pieces in a cutting machine to facilitate easy manual packing.; Then the cut tobacco will be packed in packets /pottalams for the purpose of retail sale in the shops. The product doesn't undergo any change in the essential character and remains in its original nature. Accordingly the Appellant claims that the product is classifiable under 24012090.("Unmanufactured tobacco partly or wholly stemmed or stripped "Others"). The Appellant made an Application to AAR vide Application No. 13 dated 21.03.2019 seeking advance ruling on the

> "Classification of the product intended for manufacture and applicable rate of Compensation Cess."

3. The Original Authority has ruled as follows:

> 1. The product intended to be manufactured by the applicant and supplied as "Chewing tobacco" with the brand name "Kavi cut tobacco" is classifiable under CTH 2403 9910- Chewing Tobacco.
>
> 2. The applicable rate of Compensation Cess is provided under Sl. No. 26 of the Notification No. 01/2017-Compensation cess dated 28.06.2017 @ 160%

4. Aggrieved by the above decision, the Appellant has filed the present appeal. The grounds of appeal are as follows:

- The Lower Authority has failed to notice the decisions of the Apex Court in A.V. Pachiappa Chettiar and Ors Vs. State of Madras and Damodar J. Malpani and Ors Vs. Collector of Central Excise and Bell Mark Tobacco Vs. Government of Madras relating to Unmanufactured Chewing Tobacco.
- The Lower Authority has stated unrelated facts which confuse the real process undertaken in relation to the Product leading to wrong conclusion. The Lower Authority's discussion about Tobacco curing and about Jaffna Tobacco of Ceylon and chewing Tobacco of Tamil Nadu, are irrelevant to the question on hand. The Lower Authority failed to notice that the product does not undergo any change during the process and thus ought to have held that there is no manufacturing.
- The Lower Authority ought to have noticed that Chapter 2403 relates to Manufactured Tobacco while 2401 relates to unmanufactured tobacco. The Lower Authority has made a wrong finding that applying jaggery water on already cured tobacco would amount the product has been subjected to

processing. Hence, amounts to manufacturing of chewing tobacco. The Lower Authority has wrongly proceeded to discuss whether the product is chewing tobacco or not and has not focused on the core issue of whether the process relating to the product leads to manufactured tobacco (2403) or unmanufactured tobacco (2401). The Lower Authority failed to notice the Chapter Notes to Chapter sub heading 2401, which reads as follows:

> *"The term 'unmanufactured tobacco' includes many forms. It could be tobacco supplied as whole plants or leaves in the natural state, or as cured or fermented leaves. It also includes tobacco which has been stemmed/stripped, trimmed or untrimmed, broken or cut, including pieces cut to shape.*
> *Tobacco leaves which have been 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. However, it doesn't include tobacco which is ready for smoking."*

- Rule 2(a) of the general principles for the interpretation of the tariff states that the articles are to be classified on the basis of their essential character. The Lower Authority ought to have applied this rule and ought to have held that the Appellant's product is classifiable under 2401. The Lower Authority ought to have noted that there is indeed an entry under Chapter sub heading 2403 viz. Chewing Tobacco. The Explanatory notes to 2403 makes it amply clear that this Chewing Tobacco is highly fermented and liquored so as to merit its classification under 2403. It is to be noted that both high fermentation and liquoring are required to merit classification under 2403. Whereas in the case of the Appellant, the process does not involve fermentation at all and that jaggery water sprinkling (liquoring) is done only to prevent moulding and drying of the tobacco.
- The Lower Authority failed to appreciate the fact that chewing of tobacco by public is not only of the manufactured variety (as classified under 2403) but also of unmanufactured variety classifiable under 2401. The Lower Authority has blindly thought that chewing of tobacco is only of manufactured variety. In the suburbs and villages the practice of chewing unmanufactured tobacco is prevalent among the poorer sections of the society viz. agricultural labourers and lower working class.

- The Lower Authority ought to have noted that Hon'ble Supreme Court in Dunlop India Ltd. Vs. UOI 1983 (13) ELT 1566 (SC) and in Indian Aluminium Cables Ltd. Vs. UOI 1985 (21) ELT 3 (SC) has held that the basis of the reason with regard to the end use of the article is absolutely irrelevant in the context of the entry made under fiscal statute like CETA.
- The Lower Authority ought to have applied the ruling of the Hon'ble Madras High Court in Sunder India Ltd &Ors Vs. CCT & ORs reported in [2011] 38 VST 124 (Mad) wherein it was held that if there is ambiguity with regard to the rate of tax to be collected, the benefit should go to the assessee.
- The Lower Authority failed to apply the Hon'ble Supreme Court decisions in Woodcrafts Products Ltd. 1995 (77) ELT 23 (SC) wherein it is held that the description in the HSN explanatory Note has persuasive value.
- The Lower Authority ought to have held the product as unmanufactured as the raw tobacco leaf has not undergone any change and that the raw tobacco leaf is only liquored and cut to piece to facilitate packing.

PERSONAL HEARING:

5.1 Due to the prevailing PANDEMIC situation and in order not to delay the proceedings, the appellant was addressed through the Email Address mentioned in the application to seek their willingness to participate in a virtual Personal Hearing in Digital media vide e-mail dated 17th July 2020. The appellant provided their consent to be heard through digital means. Accordingly, the hearing was held virtually on 21st August 2020. Shri. Sathiyanarayanan Srinivasan-Advocate and authorised representative of the appellant appeared for the hearing. The representative explained the process undertaken resulting in the end product which is ready to be consumed by the consumers. He further, relying on the CESTAT decision in the case of Ravindra & Company [2000 (120) E.L.T. 699(T)] and clarification of CBEC in F.No. 81/5/87-CX.3 dated 23.06.1987, stated that the product merits classification under CTH 2401 and not under CTH 2403.

5.2 The authorised representative, furnished a written submission through e-mail dated 21.08.2020, wherein, inter-alia stated as follows:

- The Appellant is the supplier of the product which undergoes the below process, in the brand name Kulavi's Kavi cut tobacco.

- Process followed: Raw dried tobacco leaves are purchased from wholesale dealers /farmers. Stems and dust particles are removed from such tobacco. After that the First step is liquoring i.e. the dried tobacco leaves are cured using jaggery water for the purpose preventing it from moulding or further decaying (the shelf life of the produce being very short). Secondly, it will be cut into small pieces in a cutting machine to facilitate easy manual packing. Then the cut tobacco will be packed in packets /pottalams for the purpose of retail sale in the shops. The product which doesn't undergo any change in the essential character and remains in its original nature. Accordingly, the Appellant claim that the product is classifiable under 2401 2090. ("Unmanufactured tobacco partly or wholly stemmed or stripped "Others").
- It is their case that the product is classifiable under 2401 2090 and the AAR has ruled that it is classifiable under 2403 9910.
- The Lower Authority has wrongly proceeded to discuss whether the product is chewing tobacco or not and has not focused on the core issue of whether the process relating to the product lead to manufactured tobacco (2403) or unmanufactured tobacco (2401). The Lower Authority (AAR) has stated unrelated facts which confuse the real process undertaken in relation to the Product leading to wrong conclusion. The AAR has proceeded with a pre-conceived notion that chewing Tobacco has to be manufactured only ignoring the fact that there can be unmanufactured chewing Tobacco (in fact many of the chewing Tobacco available in the market is only unmanufactured). Therefore, the moot question is whether it is manufactured or unmanufactured tobacco.

- The AAR ruling is incorrect for the following reasons and that the product is classifiable under Chapter sub-heading 24.01 for the following reasons:-
  i. The process adopted by the Appellant does not amount to manufacture;
  ii. Chapter Notes to 2401 and Explanatory Notes to 2403; and
  iii. CBEC Clarification and Authorities relied.
- Not a Manufacture:- The term 'Manufacture' is defined under section 2(72) of CGST Act, 2016. The term '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." It is submitted that by the process adopted by them, the tobacco does not undergo any change which would constitute it as a manufacture. Therefore, the product is classifiable under Chapter sub-heading 2401 (Unmanufactured tobacco).

- Chapter Notes to Chapter sub heading 2401 reads as follows: "The term '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 not ready for smoking. Tobacco leaves which have been 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."
- The Lower Authority (AAR) failed to note that there is indeed an entry under Chapter sub heading 2403 viz. Chewing Tobacco. The Explanatory notes to 2403 makes it amply clear that this Chewing Tobacco is highly fermented and liquored so as to merit its classification under 2403. It is to be noted that both high fermentation and liquoring are required to be classified under 2403. Whereas in their case, the process does not involve fermentation at all and that jaggery water is sprinkled (liquoring) and is done only to prevent moulding and drying of the tobacco
- They rely on the Hon'ble Supreme Court decision in Woodcrafts Products Ltd. 1995 (77) ELT 23 (SC) wherein it is held that the description in the HSN explanatory Note has persuasive value. The Chapter Notes is essential to determine classification of goods. As tobacco leaves were cut into piece after only liquoring of jaggery water for the purpose of preventing it from moulding or further decaying (the shelf life of the produce being very short), the process adopted by the Appellant does not amount to manufacture, the product is classifiable under Chapter Sub-heading 2401.
- CBEC vide F. No. 81/5/87-CX.3, dated 23-6-1987, clarified that the Classification of unmanufactured tobacco merely broken by beating and then seived and packed in retail packets with or without brand names for consumption as chewing tobacco is under chapter subheading 24.01.
- The Lower Authority (AAR) has made a wrong finding that applying jaggery water on already cured tobacco would amount that the product has been

subjected to processing amounting to manufacturing, which is totally wrong and misconceived.

- They rely on the decision of the Hon'ble Madras High Court in A.V. Pachiappa Chettiar & Another Vs. The State of Madras reported in 1962 (13) STC 202 (Mad) wherein it is held that sprinkling of jaggery water on the tobacco and cutting into piece does not amount to manufacture.
- The Hon'ble New Delhi Tribunal in the case of Commissioner Of Central Excise, Kanpur Vs. Ravindra & Company reported in 2000 (120) E.L.T. 699 (Tribunal) has under similar facts and circumstances of their case, held that the product is classifiable under 2401 of CETA. The relevant portion of the judgement is reproduced below.

> *"11. Even the Tribunal in number of cases has taken consistent view that cutting of unmanufactured tobacco leaves into small pieces, labelling with strings and packing in containers without adding any foreign ingredient, did not amount to manufacture, and would be classifiable under sub-heading 2401.00 of CETA as unmanufactured tobacco. In this context, reference may be made to CCE Surat v. Ranchhoddar Zinabhai & Sons, 1998 (104) E.L.T. 509 (T) and T.P.N.S. Chettiar Parvathi Vilas Tobacco & Cigars Co. v. CCE, 1989 (41) E.L.T. 79 wherein this view has been taken by the Tribunal. Similarly, in Ishwar Grinding Mills v. CCE Calcuttal, 2000 (117) E.L.T. 743 (T) and Shrikant Prasad v. CCE Calcutta, 2000 (117) E.L.T. 345 the Tribunal has consistently ruled that "the crushing/powdering of tobacco leaves first manually and then with power aided crushing/grinding machine, to form tobacco flakes/powder, did not amount to manufacture. The unmanufactured tobacco was classifiable under Heading 24.01 of the CETA attracting nil rate of duty."*

- To the same effect, the ratio of the law had been laid down earlier to that, by the different Benches of the Tribunal in ALNOORI Tobacco Products v. CCE, Calcutta-II, 1994 (70) E.L.T. 131 (T), CCE Pune v. Jaikisan Tobacco Co., 1986 (23) E.L.T. 184 (T) and Sree Biswas Vijaya Industries v. CCE Bhubaneswar, 1997 (96) E.L.T. 712 (T). The law laid down in all these cases fully covers their cases

They claimed that the Appellant's product is classifiable under Chapter sub-heading 2401 and that the Product would fall under 2401.20 (Tobacco, partly or wholly stemmed / stripped) as the product is a result of cutting of the tobacco produce.

DISCUSSIONS:

6. We have carefully considered the submissions of the Appellant, the ruling of the Lower Authority and the applicable statutory provisions. We find that the issue before us for decision is whether in the facts of the case, the product of the appellant is to be classified as 'Unmanufactured Tobacco-Chewing tobacco' under CTH 2401 2090 as claimed by the Appellant or as 'Manufactured Tobacco-Chewing Tobacco' under CTH 2403 9910 as held by the lower authority.

7. From the submissions, it is seen that the appellant is engaged in the supply of Tobacco product with the brand name 'Kavi cut Tobacco' for the purposes of chewing. The appellant contends that the Lower Authority has

- wrongly proceeded to discuss whether the product is chewing tobacco or not and has not focused on the core issue of whether the process relating to the product lead to manufactured tobacco (2403) or unmanufactured tobacco (2401) ;
- stated unrelated facts which confuse the real process undertaken in relation to the Product leading to wrong conclusion.
- proceeded with a pre-conceived notion that chewing Tobacco has to be manufactured only, ignoring the fact that there can be unmanufactured chewing Tobacco (in fact many of the chewing Tobacco available in the market is only unmanufactured) and had failed to notice the decisions relied upon by them. Therefore, the mute question is whether it is manufactured or unmanufactured tobacco. The appellant has relied on the clarification issued by CBEC vide F. No. 81/5/87-CX.3, dated 23-6-1987 and the decision of CESTAT in the case of Ravindra & Company reported in 2000 (120) E.L.T. 699 (Tribunal); & Hon'ble Madras High Court in A.V. Pachiappa Chettiar & Another Vs. The State of Madras reported in 1962 (13) STC 202 (Mad), Damodar J. Malpani and Ors Vs. Collector of Central Excise and Bell Mark Tobacco Vs. Government of Madras.

8.1 We take up the contentions placed before us. We see that the lower authority has dealt with the claim of the appellant that their product is 'unmanufactured Tobacco' and classifiable under CTH 240120 with reference to the Customs Tariff/HSN and relying on the literature on Tobacco available at the Website of ICAR-CTRI in Para 6.4 of the order, which is reproduced below:

6.4. The Customs Tariff Classification in respect of chapter 2401 are reproduced below for reference

.....

***Explanatory Notes to HSN 2401 is given** as under:*

.....

*From the above, it is evident that CTH 2401 covers unmanufactured tobacco. CTH 240110 covers 'Tobacco, not stemmed or stripped' and CTH 240120 covers 'Tobacco, partly or wholly stemmed or stripped'. The product is stated to be 'wet form of tobacco' and the applicant have stated in their submissions that the same is different from dry form of tobacco (with or without lime tube content) used in Northern Part of India called as dry of tobacco as per trade parlances. The applicant has furnished the manufacturing process of these two different types (as per their version and not substantiated through any literature/manual) and detailed the differences (again not substantiated with any test reports/ literature/ legal citations). The applicant's argument for classifying the product under CTH 2401 is based on the HSN Chapter Notes for Heading 2401. The applicants are of the view their process involves two activities that are referred to in the above notes, namely, (i) liquoring (soaking in jaggery water); and (ii) cutting (mincing into fine pieces) and therefore covered under this heading. On a fine reading of the above, it is evident that the cutting process prescribed in this note is along with the remarks 'but not tobacco ready for smoking'. This explanation of HSN clearly brings out the classification in the Customs tariff at 240120, which covers tobacco products for further manufacture and not for consumption as such as in the case of the applicant. From the explanation given by **ICAR-CTRI Central Tobacco Research Institute** and Explanatory General notes to chapter 24, it is seen that only tobacco which is cured at farm level for before supply to market would fall under this classification as 'Unmanufactured tobacco'. The fermentation that the applicant claims is by adding jaggery water does not get covered under this. As seen in the Explanatory General notes to chapter 24, only natural fermentation is covered. Therefore, the product of the applicant does not fall under CTH 2401.*

Thus we find the contention of the appellant that the Lower Authority has wrongly proceeded to discuss whether the product is chewing tobacco or not and has not focused on the core issue of whether the process relating to the product lead to manufactured tobacco (2403) or unmanufactured tobacco (2401) do not hold any merit. Reliance on the ICAR-CTRI(Central Tobacco Research Institute) website in relation to the 'Chewing Tobacco of Tamilnadu' cannot be termed as 'unrelated

facts' in as much as CTRI is the arm of Indian Council of Agricultural Research and involved in the various types of Tobacco grown in the country and the product under consideration is supplied and known in the market as 'Chewing Tobacco'.

8.2 On the contention of the appellant that the Lower authority had failed to notice the decisions relied upon by them we find that the lower authority has indeed taken note of the said decisions in Para 6.6 of their order and has observed that the questions raised in the said cases do not have relevance to the case at hand in the decisions of A.V. Pachiappa Chettiar and... Vs. the State of Madras and State of Madras Vs. Bell Mark Tobacco company, while the Decision of Apex Court in the case of Damodar J. Malpani and Ors Vs. Collector of Central Excise has been observed as a remand and not a final decision.

9.1 We now take up the core contention of the appellant that 'chewing tobacco' supplied by them is 'unmanufactured tobacco' and rightly classifiable under CTH 2401. The appellant has relied on the CBEC circular F. No. 81/5/87-CX.3, dated 23-6-1987 and the decision of CESTAT in the case of Ravindra & Company reported in 2000 (120) E.L.T. 699 (Tribunal); Hon'ble Madras High Court in A.V. Pachiappa Chettiar & Another Vs. The State of Madras reported in 1962 (13) STC 202 (Mad), Apex Court's decision in the case of Damodar J. Malpani and Ors Vs. Collector of Central Excise and Bell Mark Tobacco Vs. Government of Madras.

9.2 The Circular of CBEC is issued to clarify the classification of 'Unmanufactured Tobacco merely broken by beating and then sieved and packed in retail packets with or without brand names for consumption as chewing tobacco, which is commonly known in the market as Zarda'. The above issue has been taken up for discussion in the North Zone Tariff-cum-General Conference of Collectors of Central Excise wherein, Tariff advice No. 118/81 dated 04.11.1981, clarifying that unmanufactured tobacco merely broken into pieces and packed in gunny bags, whether sold under a brand name or not, is not classifiable as manufactured chewing tobacco under old TI 4.11(5) and the acceptance of the Order of CEGAT in the case of CCE, Pune Vs. M/s. Jai Kisan Tobacco Co., Pune wherein CEGAT has held that raw tobacco crushed in the form of flakes when packed into smaller packets without adding any ingredients and sold (under a brand name or not) should not be classifiable as manufactured chewing tobacco.

The conference with a view that marketing the product as 'Zarda' may not be enough to bring the product when packed into smaller packets in the category of manufactured tobacco and considering the HSN description of unmanufactured tobacco under corresponding Heading No 24.01, has inclined to support the classification of such product under heading No. 24.01 in the category of unmanufactured tobacco while noting that normally understood 'Zarda' preparation which come in the category of chewing tobacco as manufactured tobacco product would not be entitled to classification under 24.01 since these are squarely covered by the description appearing in sub-heading 2401.41 or 2404.49. The clarification of the Board, given under Para 5 of the said circular is given below:

> *"5. The Board has accepted the above views of the conference. Accordingly, it is clarified that un-manufactured tobacco merely broken by beating and then sieved and packed in retail packets with or without brand name for consumption as chewing tobacco, which may be commonly known in the market as "Zarda" would be appropriately classifiable under Heading No. 24.01 of the Schedule to the Central Excise and Tariff Act, 1985 un-manufactured tobacco."*

9.3 We find that in the case of Jaikisan Tobacco the decision of which was also considered for issuing the above clarification, the facts are that the respondent has purchased the raw tobacco in bulk and broken the same into pieces and made small packets. No process was undertaken. The CEGAT, while giving the decision, has ruled as under:

> *6. We have carefully considered the matter. We observe that the tariff entry has two clear sub-divisions-unmanufactured tobacco and manufactured tobacco. The entry "chewing tobacco" occurs under the second sub-division "II-Manufactured Tobacco". The first question to determine, therefore, is whether the product cleared by the respondents is manufactured tobacco or unmanufactured tobacco.*
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> *7. We find that it is not the respondents but others who have crushed tobacco leaves into flakes or Jarda. No duty was reportedly charged from those crushers because the department evidently considered the flakes as unmanufactured tobacco which is exempt from duty. The respondents have purchased such flake tobacco in bulk packs and have merely repacked it into smaller packs on which they have affixed their labels. If tobacco flakes in gunny bags were really unmanufactured tobacco, we are at a loss to understand how the repacking and labelling operations alone can convert them into manufactured tobacco. On the*

other hand, if the flakes in gunny bags were manufactured tobacco, then the duty liability under the tariff entry "chewing tobacco" should have to be fastened on to those who rendered it into the Jarda or flake form and not on the repackers. Mere repacking and labelling at the respondents' end cannot amount to "preparation of...chewing tobacco..." within the meaning of Section 2 (f) (i). Though Section 2(f) (ia) makes repacking and labelling as manufacturing operations; it does so "in relation to manufactured tobacco". It is not applicable to unmanufactured tobacco. (emphasis supplied)

From the above, it is seen that the clarification and the CEGAT Order above, has sought to clarify the chewing tobacco based on the Tariff entries of Central Excise existed during the relevant period read with the definition of 'Manufacture' prevailed at the period. Also, in both the circular and the CEGAT Order, it is clearly spelt out that by mere repacking from bulk to smaller quantities of 'unmanufactured tobacco' without any further processing on the bulk inputs the same remains 'unmanufactured tobacco' and it cannot be said to have undergone any process of manufacture.

9.4 Coming to the judicial decisions relied on by the appellant before us, in the case of Ravindra & Company reported in 2000 (120) E.L.T. 699 (Tribunal), the product emerges after beating, crushing and sieving the purchased tobacco leaves as seen in Para 9. The extract of the said para is given under:

9. *In the instant case, it is not the case of the Revenue that the tobacco being dealt with by the respondents is meant for smoking. It is rather admittedly meant for chewing. The process adopted for preparing this tobacco under the brand name of "Bandar Dholak Chhap and Hari Chhap" by the respondents also remains undisputed as the same has not been challenged by the Revenue in their grounds of appeals. They prepare this tobacco by beating, crushing and sieving the tobacco leaves purchased by them from the market without adding any foreign material therein. This process was also confirmed by the Range Superintendent in his report dated 11-10-1985 wherein he mentioned that the tobacco was prepared by the respondents by beating, crushing and sieving the tobacco leaves and packing in retail paper packets bearing the brand name. All these facts also find reference in para 12 of the impugned order dated 14-7-1998 of the Commissioner (Appeals). The correctness of these facts has not been questioned in the grounds of appeals by the Revenue. The Commissioner (Appeals) has also observed in that para that there was nothing on the record that*

either the Range staff or any other visiting Central Excise Officer even noticed the presence or mixing of any ingredient such as chuna, molasses, katha, perfume, spices etc. in the tobacco by the respondents. Therefore, keeping in view all these referred to above, the tobacco prepared by the respondents fall within the definition of "unmanufactured tobacco" as given under sub-heading 2401.00 in the HSN (reproduced above).

Thus, the product discussed in the cited decision was prepared by beating, crushing and sieving the raw material purchased, the process when undertaken on the raw material has been held by the Circular as 'unmanufactured tobacco'. The Tribunal following the ratio has decided the product to be 'Unmanufactured Tobacco'. The final product supplied by the appellant are not merely subjected to the process of beating, crushing and sieving the tobacco and packing in retail packets as is the factual position on the relied upon decision. The product in hand is obtained by spreading out the tobacco leaves which was stocked after grading and drying categorizing them age-wise; sprinkled with jaggery water, the stems and dust particles are removed and semi drying; cut into desired shape ; sun dried to remove moisture content, applied with some natural/agricultural preservatives and then weighed, manually packed& sealed. The product of the appellant definitely under goes a process and cannot be equated to the product discussed in the relied upon decision.

10.1 We find that 'Chewing tobacco' can be both 'unmanufactured' and 'Manufactured'. The question is whether the product of the appellant is 'unmanufactured' or 'manufactured'. We find that the Lower Authority relying on the standards given by ICAR-CTRI, in para 6.3 of their ruling has established that the process undertaken by the appellant is not equivalent to that of 'curing/bulking' done at 'farm' which may be classified as ' unmanufactured Tobacco for chewing' but is similar to the process undertaken in manufacture of 'Chewing tobacco' as acknowledged by the ICAR-CTRI in as much as the raw tobacco is processed by smoking, stored and given jaggery water / salt water treatment. 'Customs Tariff' which gives the classification for determination of rates of goods as per Notification No. 01/2017-C.T.(Rate) do not define what is 'Manufactured tobacco' and 'Unmanufactured tobacco' and hence we need to look into the interpretations of judiciary.

10.2 We find that Hon'ble High Court of Madras in the case of Bell Mark Tobacco Company & Ors Vs. Government of Tamilnadu, while answering the issues raised before them, observed "what is to be considered as 'Unmanufactured chewing tobacco' and 'Manufactured chewing tobacco' when the same is not defined in the Act". The relevant portionare extracted as under:

> *17. The relevant factors to be considered at this stage are as follows :- The assessee purchases the tobacco and stores it in his licensed warehouse till it is required for being made into packets for sale. At the stage when the assessee issues the tobacco from the warehouse for being subjected to the further process before it was packed, he pays the prescribed excise duty. The learned counsel for the petitioner contended that even at the stage of purchase what the assessee purchased was known to the trade as chewing tobacco. It was found that the maximum period during which the tobacco is stored in the warehouse of the assessee is about 40 days. The learned counsel for the petitioners, however contended that very often the tobacco is taken out from the warehouse much earlier. During the time the tobacco is bonded in the warehouse it has to be looked after, and one of the principal items of work to be done is known as "bulking". That process consists of sprinkling leaves with a solution of jaggery water and turning over the leaves to keep them soft and pliable and to prevent driage. After the leaf is taken out of the warehouse, it is again soaked in jaggery water. Then flavouring essences are added. The leaf is then shredded. Shredded tobacco is taken packed and labelled. It should be noted that even before the assessee purchased the tobacco it had been subjected to some process. The Tribunal was of the view that that was not a manufacturing process, but only a process to cure the leaf and keep it in a fit condition for sale. The main process to which the tobacco is subjected at that stage is that it is soaked in jaggery water, dried in shade and subjected periodically to the process of bulking we have mentioned above.*
>
> *18. We see no reason to differ from the Tribunal, that the process of bulking and desanding to which the tobacco was subjected before the assessee purchased it did not amount to manufacturing process. What the assessee purchased was certainly not raw tobacco in the sense that it was straight off the field. It was cured tobacco. But then Clause (viii) of Section 5 takes within its scope both cured and uncured tobacco, which constitutes raw material for the manufacture of the products to which Section 5(vii) applies. What however is excluded from Section*

5(viii) is tobacco which has itself been subjected to a manufacturing process. Whether, if tobacco which has been subjected to a manufacturing process is again subjected to a further manufacturing process by the purchaser it will fall under Section 5(vii) does not arise for consideration in this case, and we express no opinion of ours on that question. Factually the position was that what the assessee purchased had not been subjected to any manufacturing process, and, therefore, the sale of the tobacco, no doubt known even at that stage to the trade as chewing tobacco, did not bring that sale within the scope of Section 5(vii). It was the sale of the manufactured product effected by the assessee, manufactured from the tobacco that he had purchased, that came within the scope of Section 5(vii). No doubt, soaking in jaggery water and the process of bulking were processes common both to the seller and to the assessee who purchased the tobacco. In other words, the assessee subjected the tobacco he had purchased to the same process. Had he stopped with that alone, it might be possible to contend that what he sold subsequently was not a manufactured product. Taking, however, the cumulative effect of the various processes to which the assessee subjected the tobacco before he sold it, it is clear that what was eventually sold by the assessee was a manufactured product, manufactured from the tobacco that the assessee had purchased. Soaking in jaggery water is not the only process to be considered. The addition of flavouring essences and shredding of the tobacco should establish that what the assessee sold was a product substantially different from what he had purchased. Once again, we have to point out that the fact that this assessee purchased the tobacco as chewing tobacco did not determine the question, whether the sale of the products manufactured by him from out of that tobacco falls within the scope of Section 5(vii) or not.

19. As what constitutes a manufacturing process has not been defined by the Sales Tax Act itself, that expression has to be construed as it is normally understood in the English language. Even then there can be no inflexible standard of universal application. What constitutes a manufactured product will have to be decided with reference to the circumstances of the case. See North Bengal Stores Ltd. v. Board of Revenue, Bengal [1946] 1 S.T.C. 157, Hiralal Jitmal v. Commissioner of Sales Tax [1957] 8 S.T.C. 325. In our opinion, the Tribunal was right in holding that the process to which the assessee subjected the tobacco he had purchased before he sold it in packets as chewing tobacco was manufacturing process, and that what was sold was a manufactured product of tobacco. We also agree with the Tribunal, and the material on record justified its

other finding that the tobacco the assessee purchased had not been subjected to any manufacturing process prior to that purchase.

The Apex Court in the State of Madras Vs. Bell Mark Tobacco Co [Laws(SC)-1966-10-4] decided on 04th October 1966 has completely agreed with the above view of the High Court that the cumulative effect of the various process to which tobacco was subjected before it was sold, amounted to a manufacturing process.

10.3 Further, in the case of A.V. Pachiappa Chettiar And..Vs. The State of Madras relied on by the appellant in para 11 of the decision, it is stated as follows:

11.....While the raw product may be capable of a particular use, "manufacture" as understood in these decision, involves the connotation of some change in the article in question. 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 we conceive to be the essence of manufacture.....

and has held that in the factual position of that case, the resultant product is 'Unmanufactured Tobacco'. Again we see that in the said case, the tobacco taken out of the warehouses is unbundled and kept in a heap at the place where it is converted into pieces; there it is periodically sprinkled with palm jaggery water to keep it soft and wet; the tobacco so treated is taken out little by little and cut into pieces, bundled (as per Para 1) whereas in the case at hand, the process undertaken is different in that the raw material are graded and dried categorizing age-wise, undergoes dipping in jaggery water, undergoes the process of stalking and semi-drying, mincing, added with natural/agricultural preservatives after storing for few hours/days and then weighed & packed

10.4 We see that Customs Tariff/HSN do not define 'Unmanufactured/ manufactured tobacco' in the Section /Chapter notes specifically. 'Manufacture' under the GST law is defined under Section 2(72) as

(72) "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;

Thus, any process on the raw material resulting in emergence of a new product with a distinct name, character and use is defined as 'manufacture' under GST.

The appellant has stated to have purchased 'Raw dried tobacco leaves' from wholesale dealers/farmers and then undertakes the process of grading, drying,

dipping in jaggery water, stalking, semi-drying, mincing, subjecting to natural/agricultural preservatives, weighing and packing for supply. Thus, the raw material which is 'Raw dried tobacco leaves' undergoes the above process and the end product 'Chewing Tobacco' with distinct character and use emerges. This is established by the test reports furnished by the appellants before the lower authority which is discussed in Para 3.3 of the ruling of the lower authority. The said para is given below:

> *"3.3 The applicant vide their letter received on 05.07.2019 furnished the test report of the raw material and the finished product from Enviro Care India Private Limited, a NABL certified lab and also photographs of the manufacturing process as undertook by them during the hearing. The test report for the sample marked 'Chewing Tobacco before processing' and 'Chewing Tobacco after processing' are furnished. On perusal of the reports it is seen that the chemical parameters in both consists of Moisture, Total Ash, Acid Insoluble Ash and Nicotine. While the Nicotine content remains unchanged, the Moisture content is more than doubles and the content of Total Ash and Acid insoluble Ash are reduced....."*

Thus, it is evident that the raw material undergoes a set of processes and emerges as a distinct product which makes it marketable/consumable for the chewing needs. Therefore, the product supplied by the appellant is "Manufactured Tobacco product for Chewing". Once it is held that the product is 'Manufactured Chewing tobacco', the classification of the product is under CTH 2403 9910 which specifies 'Chewing Tobacco' under the head "2403-Other Manufactured tobacco and manufactured tobacco substitutes...." as held by the lower authority and there appears to be no need for our intervention with the order of the Lower Authority.

11. In view of the above we, Pass the following Order:

ORDER

For reasons discussed above, we do not find any reason to interfere with the Order of the Advance Ruling Authority in this matter. The subject appeal is disposed of accordingly.

29/9/2020

(M.A.SIDDIQUE)
Commissioner of State Tax
Tamilnadu /Member AAAR

(G.V.KRISHNA RAO)
Chief Commissioner of GST & Excise
Chennai Zone/Member AAAR

To

Shri. Arumugam /By Speed Post/
(Prop: Kavi Cut Tobacco)
No.2, RS No. 239,Abiramapuram,
Thanjavur- 613007

Copy to

1. The Chief Commissioner of GST & Central Excise, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai-600034.
2. Principal Secretary/Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.
3. The Advance ruling Authority
4. The Commissioner of GST & Central Excise, No.1, Williams Road, Cantonment, Trichy Commissionerate, Trichy. 620 001.
5. The Assistant Commissioner (ST)
6. Master File/ Spare-2.