

(1985) 07 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4549 of 1982

I. T. C. Limited and another

APPELLANT

Vs

Collector of Central Excise and others

RESPONDENT

Date of Decision : 05-07-1985

Acts Referred:

Central Excises and Salt Act, 1944 — Item 4 Schedule 1, 35B
Finance Act, 1982 — Section 51

Citation : (1985) PLJR 238

Hon'ble Judges : S. S. Sandhawalia, C.J;N.P.Singh, J

Bench : Division Bench

Advocate : K. D. Chatterji and Ranjit Kumar Das, for the Appellant; Ram Balak Mahto, Aftab Alam and N. A. Shamsi, for the Respondent

Final Decision : Allowed

Judgement

S. S. Sandhawalia, C.J.—Whether cut tobacco in the continuous manufacturing process of factory made cigarettes is also independently leviable to excise duty as "smoking mixture for pipes and cigarettes" under tariff item 4, category II clause (iv) of Schedule I of the Central Excises and Salt Act, 1944, is the legally significant and equally the financially important question for the tobacco trade in this reference to the Division Bench. Despite the volume of pleadings on either side, it should suffice to advert to the salient facts to zero in on the focal point at issue. Writ petitioner no. 1, Messrs Indian Tobacco Company Limited, are engaged, inter alia, in the business of the manufacture and sale of machine-made cigarettes and also of smoking mixture in their factory at Munger and they own four other factories in the States of Uttar Pradesh, Karnataka, Maharashtra and West Bengal. It is stated that in the financial year of 1982 the company had paid more than 350 crores as Central Excise Duty. It has been averred that the petitioner company manufactures two distinctly different categories of tobacco products from unmanufactured tobacco, namely, factory-made cigarettes on the one hand and smoking mixture for pipes and hand-rolled cigarettes on the other. It is their case that the smoking mixture for pipes and hand-rolled cigarettes is

essentially different in its raw material, the process of manufacture and its character and content from the contents of machine-made factory cigarette. In paragraph 8 and in particular sub-paragraphs (a) to (n) thereof the distinctive features of the content and the process of manufacture of smoking mixture for pipes and hand-rolled cigarettes are detailed seriatim to highlight their contrast with the content and process of manufacture of the machine-made cigarettes spelt out in sub-paragraphs (a) to (g) of paragraph 9. It is the case that the unmanufactured tobacco, i. e., in-process material used for the manufacture of machine-made cigarettes, is referred to and commercially known as cut tobacco and is not a finished product which is capable of being marketed to the ultimate consumer. Such in-process material being unmanufactured falls under tariff item 4 category I and has been exempted from payment of duty. According to the petitioners, this position has all along been accepted by the Central Excise Department and no demand of excise duty on unmanufactured cut tobacco used in the manufacture of factory cigarettes was earlier raised. The Central Government by notification no. 29/79 C. E. dated the 1st of March, 1979 (Annexure 1) exempted unmanufactured tobacco from the whole of the duty leviable thereon whilst at the same time the rate of excise duty on factory made cigarettes was substantially increased. Even after this notification, the petitioner company were never required to pay any excise duty on the unmanufactured cut tobacco in the process of the manufacture of cigarettes in the factory. However, the petitioner company continued to pay duty on the manufactured cigarettes at the highest rates ranging from 372 per cent ad valorem to 413 per cent ad valorem.

2. However, on the 23rd of October, 1982 the petitioner company suddenly received a communication (annexure 2) from the Additional Collector of Central Excise Patna, holding that the cut tobacco in the process of the manufacture of machine-made cigarettes was dutiable as smoking mixture under tariff item 4, category II clause (iv) of the First Schedule. This order is said to have been issued without any show cause notice having been served upon the petitioner and without giving them any opportunity for hearing. The petitioner company in their reply to annexure 2 (vide annexure 3) explained that the unmanufactured cut tobacco in the process of the manufacture of factory-made cigarette was exempt from excise duty and requested the authority to rescind the earlier order in annexure 1. However, the respondents persisted in the stand and the Superintendent of the Central Excise, respondent no. 4, issued verbal order preventing the petitioner company from using unmanufactured cut tobacco for manufacture of cigarettes in the factory with effect from 30th October, 1982 and the writ petitioners were later informed (vide annexure 4) that no change was warranted in the earlier orders. Subsequently, the petitioner company were required (vide annexure 5) to supply certain figures in respect of cut tobacco used for the manufacture of cigarettes wrongly describing the said product as manufactured tobacco mixture for the years 1978-79 to October, 1982.

3. It is the petitioner company's stand that because of the oppressive nature of

the demand, the company had no alternative but to close down their production in the factory at Munger because it was impossible to continue the manufacture of their products by paying excise duty at the rate of 300 per cent before the completion of the manufacture of cigarettes and also to pay duty at the rates ranging from 372 to 413 per cent on the same cigarettes when so manufactured. Facing grave financial loss, the petitioner company preferred an appeal u/s 35B of the Central Excises and Salt Act, 1944 (hereinafter to be referred to as the "Act") to the Tribunal and sought relief by way of an interim stay which, however, could not be secured. The petitioner company's efforts to secure any other interim relief from the respondents also met with the same fate and (vide annexure A) the respondents reiterated their stand and requested the petitioner company to submit the price list for the alleged smoking mixture used in the rolling of the cigarettes in the factory which, according to them, were chargeable to duty at the rate of 300 per cent ad valorem. Being aggrieved, the writ petitioners presented the present petition and in a supplementary affidavit it has been averred that (vide annexure 14) a demand of Rs. 6,55,86,00,000 and odd has been raised against them.

4. The relief claimed is the quashing of annexure 2 and the consequential orders and demands in annexures 4, 5, 8 and 14.

5. On behalf of the respondents revenue a detailed counter affidavit running into 80 typed pages has been filed. Therein the stand taken on behalf of the petitioners is sought to be controverted both on facts and on law. The substratum of the respondents' case is that cut tobacco in the process of manufacture of machine-made cigarettes comes within the ambit of smoking mixtures for pipes and cigarettes and is, therefore, independently leviable to duty under tariff item 4, category II, clause (iv). In a detailed affidavit in reply to the counter affidavit the stand has been reiterated on behalf of the petitioners and a detailed chart has been placed on the record (vide annexure 17) to highlight 17 basic points of difference betwixt cut tobacco for manufacture of machine-made cigarettes on one hand and smoking mixture for pipes and cigarettes on the other.

6. The rival stands of the parties have been ably canvassed and debated before us by Mr. K. D. Chatterji on behalf of the writ petitioners and the learned Advocate-General, Mr. Mahto, on behalf of the respondent revenue. However, before one comes to grip with the focal issues involved, it seems apt to clear the deck for appraisal of the rival contentions. The learned Advocate-General was at pains to highlight the fact that in the levy of excise duties multi-point taxation is not only permissible but indeed in many cases seems to be the rule. By way of example, he drew our attention to tariff item 25 of Schedule I where-under excise duties are leviable at various points of manufacture with regard to steel and girders. There is indeed no quarrel whatsoever with this larger proposition of law. It is plain that the rule of a single point taxation, which sometimes arises under the Sales Tax law or the avoidance of double taxation under some other

taxing Statutes, is not attracted in the levy of excise duty. This seems to be plain on principle as well as on authority. It was observed in *Baidyanath Ayurved Bhawan (Pvt) Ltd., Jhansi Vs. The Excise Commissioner, U. P. and Others*, :--

Coming to the medicinal preparations with which we are concerned in this case, it was urged that if the view taken by the High Court is correct then, first the tincture used became dutiable and thereafter the medicinal preparations in which tincture was used became dutiable. It was said that that could not be the intention of the Parliament. We are unable to appreciate this contention. Multipoint taxation is not unknown to us.

It was again observed in *Avinder Singh and others vs. State of Punjab and others*, (1979) 1 Supreme Court Cases 137 that there was no constitutional bar against double taxation. There is thus no manner of doubt that the legislature, if so minded, can levy multipoint excise duty on unmanufactured or manufactured tobacco as well. The question here is not at all one of the power or competence of the legislature to do so which is not at all in dispute. It is plainly one of interpretation only. The issue herein is whether on a fair construction of the language of the tariff item four the legislature has clearly mandated a multipoint excise levy firstly at the stage of cut tobacco in the process of the manufacture of factory-made cigarettes and, secondly, on the manufacture of such cigarettes immediately thereafter as the finished product.

7. The learned Advocate-General had also attempted to place considerable reliance on rules 9 and 49 of the Central Excise Rules, 1944 with particular reference to their amendment and the retrospectivity given to them with effect from 1944 by virtue of section 51 of the Finance Act, 1982. Herein again there is no dispute with either the amendment of these provisions or the retrospectivity accorded to them. In the detailed counter affidavit filed on behalf of the respondents it is not even remotely the case that the levy on the writ petitioners has been made expressly or has been occasioned by the amendments to rule 9 or 49 retrospectively. Apart from this, even independently rules 9 and 49, to my mind, have no direct or even an indirect bearing on the issues before us. The liability to duty or the taxing event is not in any way dependent on rule 9 which only lays down the procedural aspect of the time when such duty is to be paid. The amendment had merely extended the concept of "removal" in the said rules because of a conflict of judicial opinion on the point whether the excise duty would become leviable only when the goods are removed from the factory or can also be attracted to in-process materials therein. It thus seems plain that the incidence and the liability to excise duty, which is the core issue here, is in no way influenced by the provisions of rules 9 and 49 or their amendment with retrospective effect.

8. Having cleared the ground of the peripheral issues, it is common ground that the basic question herein must turn around the relevant tariff entry 4 in the Schedule. It, therefore, seems apt to quote the relevant part thereof at the very outset:--

Item No.

Description of Goods

Rate of duty Basic Special Excise Rs. per kg.

1

2

3

4

Tobacco--

"Tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include, any part of a tobacco plant while still attached to the earth.

I Un-manufactured tobacco--

(1)

if flue-cured and used in the manufacture of cigarettes;

Twenty rupees.

Ten per cent of the basic duty

(2)

if flue-cured and used for the manufacture of smoking mixtures for pipes and cigarettes;

Forty rupees.

do

(3)

if flue-cured and not otherwise specified;

Twenty rupees.

Ten per cent of the basic duty chargeable.

(4)

if other than flue-cured and used for the manufacture of--

(a) cigarettes or (b) smoking mixtures for pipes and cigarettes;

Twenty rupees.

do

(5)

if other than flue-cured and not actually used for the manufacture of...

Three rupees.

do

(a) cigarettes or (b) smoking mixture for pipes and cigarettes or

(c) biris...

(i) stems of tobacco larger than 6.35 millimeters in size,

(ii) dust of tobacco,

(iii) X XXXX

(iv) tobacco cured in whole leaf form and packed or tied in bundles, hanks or bunches or in form of twists or coils;

(6)

if other than flue-cured and not otherwise specified;

Four rupees.

do

(7)

if used for agricultural purposes;

(8)

stalks

One rupee and ninety paise

do

II Manufactured tobacco--

(1)

Cigars and Cheroots

One hundred and seventy do percent, ad valorem.

(2)

Cigarettes

Two hundred and sixty do rupees per thousand or one hundred and seventy-five per cent ad valorem plus twelve rupees per thousand, whichever is higher.

(3)

(i) Birisin the manufacture of which any process has been conducted with the aid of machines, operated with or without the aid of power;

Six rupees per thousand

Ten per cent of the basic duty chargeable.

(ii) other biris

Three rupees per thousand

do

(4)

Smoking mixture for pipes and cigarettes.

Three hundred per cent, ad valorem.

do

(5)

Chewing tobacco, including preparations commonly known as kharamasala, kimam, dokta, Zarda, Sukha and surti.

Ten per cent. advalorem.

do

(6)

Snuff

Six rupees per kilogram

do

(7)

Hookah tobacco

Fifteen per cent. advalorem.

do

In the light of the aforementioned tariff item no. 4, the core question herein is as to what is the true import of the phrase "smoking mixtures for pipes and cigarettes" designedly employed by the legislature. Is it intended to cover the end finished product for the consumption of the limited and elitist class of consumers smoking pipes or hand-rolling their own cigarettes ? Can it be stretched and strained to cover the intermediary raw material of cut-tobacco in the process of manufacture in the pipeline of factory making cigarettes with machines.

9. As in the most other findings, the interpretation of the aforesaid sub-item (4)

in category II cannot be divorced from its legislative background and the particular context in which it is inlaid. It would appear that tobacco because of its peculiarity is in a somewhat singular position for the levy of excise duty. Whilst excise duty is generally (though not invariably) leviable on products which are manufactured or are in the process of manufacture, yet tobacco has been viewed as a subject for the levy of excise duty even in the raw. The description in tariff item no. 4 states that it means any form of tobacco whether cured or uncured and whether manufactured or not and includes the leafs, stalks and stems of the tobacco plant. It would follow therefrom that tobacco comes within the net of excise levies both in its unmanufactured stage as also in its subsequent manufactured stage. Therefore, tariff item no. 4 of the First Schedule, levies excise duty on tobacco and in two sharp categories of unmanufactured tobacco on one hand, and manufactured tobacco on the other, (and the further subdivisions of each category seems to stand in class of its own). Even the learned Advocate-General was fair enough to concede that in the innumerable entries in the exhaustive Schedule I there is no other material either identical or analogous to the clear cut categorisation of the manufactured and unmanufactured material as is the case with regard to tobacco. The only and somewhat remote analogy is with regard to tariff item no. 2 pertaining to coffee which divides this material into cured coffee and the coffee commercially known as "instant coffee". This also in a way is indicative of the clear line of distinction between an end consumer product like "instant coffee" and the generic and unmanufactured raw material.

10. Now, this meaningful division made by the legislature itself betwixt unmanufactured tobacco on the one hand and manufactured tobacco on the other for the purposes of levy of the excise duty deserves to be noticed and highlighted. The framers have themselves divided them into two clear and separate compartments by giving distinct heading of category I and category II to tariff item no. 4. Category I of unmanufactured tobacco has then been divided into 6 sub-items with distinct descriptions and varying rates of duty imposable. Similarly category II of manufactured tobacco has been divided into 6 sub-items with distinct descriptions including that in sub-item 4. which falls for construction, and each has been given a specific varying rate of duty. It would thus appear that the clear Legislative intent is that for purposes of excise levy manufactured tobacco and unmanufactured tobacco are not to overlap with regard to each of the sub-items.

11. To complete the legislative background, it deserves mention that in the year 1973 Mr. Y. B. Chavan, the then Finance Minister, proposed and moved the Finance Bill, which was subsequently enacted, to significantly enhance the excise levy on machine-made cigarettes. He also introduced a levy separately on smoking mixtures for pipes and hand-rolled cigarettes in order to bring this class also within the net. The purpose and object of these changes was well elaborated by the Finance Minister whilst moving the Finance Bill and in view of some obscurity and intricacy of interpretation involved it would become necessary to

make some detailed reference to this aspect hereinafter.

12. Against the aforesaid background, one may now turn to the specific language of sub-item (4), category II. This would bear repetition and is plainly couched in the words "smoking mixtures for pipes and cigarettes". It is significant to note that the legislature herein is not employing any scientific phraseology or any other term of art as such. The threshold question, therefore, is with regard to the true approach for the construction of such an entry. This assumes significance because on behalf of the respondents an attempt had been made to give a scientific and even chemical interpretation of the phraseology employed. It would appear that the respondent revenue had sent out samples for chemical analysis to the Chemical Examiner, Chemical Laboratory, Custom House, Calcutta and reliance was sought to be placed on its report, which is annexure A to the counter affidavit. Apart from the fact that the said report is wholly inconclusive, it has also been mentioned therein that the said Laboratory was not equipped to carry out all the tests as per Indian Standards Specification. What, however, deserves to be highlighted is that the attempts of the respondents to give a scientific or chemical twist to the interpretation of the plain word of sub-item (4) in category II is wholly unwarranted and unjustified. It is now well settled beyond cavil that the entries in the Schedule of a taxing statute in the absence of a definition must be understood as in common or commercial parlance. It is impermissible to construe them either scientifically or with over technicality as terms of art. It seems unnecessary to labour this point, because it is well settled by a long line of unbroken precedent of the Final Court itself, in *Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills*, where their Lordships were considering item 21 of this very First Schedule of the Act. It was categorically observed as follows:

It is contended on behalf of the appellant Union of India, that in a technical sense the felts manufactured by the respondent would still be woollen fabrics. The well-known rule in interpreting items in statutes like the one we are concerned with is that "resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

The same view has been consistently enunciated and reiterated in *State of Uttar Pradesh and Another Vs. Kores (India) Ltd.*, , *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co.*, and *Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh*, .

13. Now once it is held--as it must be--that the "smoking mixtures for pipes and cigarettes" should be construed as understood in Common parlance or in the commercial parlance of the market yard, the matter becomes somewhat easy sailing for the petitioners. The firm stand taken on behalf of the writ petitioners has been that in the tobacco trade and equally in the commercial parlance of the consumers the smoking mixture for pipes and hand-rolled cigarettes, which is directly used by the consumers, is radically different for the manufacture of

machine-made cigarettes in a factory. In paragraphs 8 and 9 of the writ petition the glaring differences betwixt the raw material, the process of manufacture, the methodology of packing and marketing, the end product of smoking mixture for pipes and cigarettes on the one hand and those of making machine-made cigarettes in the factory on the other have been highlighted in great detail and with particularity it is pointed out that smoking mixture for pipes and cigarettes is the end finished product fit for handing over the shop counter to the consumer for his immediate use. On the other hand, the raw material for making machine made cigarettes is an in-process product different in quality and content and is as yet in the pipe line of the factory for subsequent manufacture and packing and marketing later. In this context, it perhaps becomes necessary to produce in extenso annexure 17 to the reply to the counter affidavit which gives in a tabular form the basic and glaring point of difference between cut tobacco for manufacture of machine made cigarettes and the smoking mixtures for the pipes and cigarettes.

"Annexure-17

CHART REFERRED TO IN PARAGRAPH 17 OF THE AFFIDAVIT IN REPLY

Sl. No Point of difference

Cut tobacco for manufacture of machine made cigarettes

Smoking mixture for pipes and cigarettes

1. TOBACCO

Full leaf or lamina with its proper-propionate stem.

Full strips without NO STEM ADDED AT ANY STAGE

Full leaf is thrashed to separate stem resulting in small size lamina. Stems processed separately for add back at a later stage.

Necessarily lighter grades are used as only low level casings are used.

Tobacco are heavier bodied which are capable of absorbing high level of casings.

2. CONDTIONING/CASING

Low quantities of casing--because of low level of casing the moisture content of cased tobacco is raised to 20% for proper blending and cutting.

Higher quantity of casing and the moisture never exceeds 16% because they do not involve any subsequent drying operation and the product is marketed at this level of moisture content to meet the consumer requirements of pipe smoking.

3. APPLICATION OF Casing

Only specific grades of Tobacco are cased to overcome shatter ability of such grades. Some blends receive no casing at all.

All grades necessarily receive heavy levels of casing.

4. PRESERVATIVE (Approved under Food laws).

None used because the cigarettes are packed and marketed at 13-15% moisture content and at this moisture no risk of mould involved.

Necessarily used because the final product is marketed at 16% moisture content at which there is a great risk of mould attack in the market place.

5. FLAVOUR

Some blends do not receive any flavour. Only unobstrusive formulations are used on certain blends still preserving the basic flue cured or air cured characteristic of the smoke.

Aromatic characteristic of flavours are prominent both in tobacco and smoke and desirable for pipe smoking.

6. APPLICATION of Flavour

Sometimes applied on specific part of the blend with casing and sometimes on cut tobacco after drying to 13-14% M. C. Always carried out mechanically through sprays.

The total blend received the flavours manually on layered tobacco with a whisk brush.

7. BULKING Time.

3-4 hours before cutting.

Minimum 48 hours to allow absorption of high level of casing and flavours.

8. PRE-Cutting

No special treatment reqd. as the fluffy character of tobacco has to be maintained.

Kept under heavy pressure to allow caking for which 48 hours period of holding the tobacco under pressure is necessary.

9. CUTTING

40-50 cuts per inch at 18-20% moisture content.

20-30 cuts per inch for flake, for pipe smoking, 60 cuts per inch for roll your own tobacco at 16% moisture content.

10. STEMS

Separately processed added here.

NIL

11. DRYING

The cut tobacco at 10-20% M. C. is dried to 13-15% M. C. and cooled to ambient conditions.

Process ended at cutting.

12. STORAGE

Cut tobacco is held for 24 hours in skips of 20 kg. each in special room in which the temperature and relative humidity are controlled before conveying to cigarette making machine.

No waiting period. The cut tobacco is weighed and packed in pouches-rendered marketable to consumers.

13. REMARKS

It will be noted from the above that the raw material, i. e. tobacco, the casings, flavours, stages of processing and maintaining levels of moisture content are quite different. In the case of cigarette manufacture the moisture is at first raised to higher level and then it is reduced by drying, whereas in the case of smoking "tobacco moisture once raised to a specific level is retained throughout. The cigarette tobacco after cutting, drying and storage in controlled atmospheric condition cannot be consumed by the smokers either in a pipe or roll your own cigarettes. This is because the cigarette tobacco is too dry and breakable that it will not roll by hand. Besides being dry it burns very fast, and fast burning tobaccos are not suitable for pipe smoking. The smoking tobaccos at 16% moisture is very sticky and non-fluffy and cannot be fed to a cigarette making machine because it will jam the mechanism and cannot be wrapped in paper to form a cigarette rod on a machine. Besides, it will discolour the cigarette paper in a very short time because of high moisture and heavy casing.

It seems manifest that the categoric stand on behalf of the writ petitioners is that smoking mixtures for pipes and cigarettes in common and commercial parlance are something entirely and radically different from the raw material which goes into the machine roller of the factory made cigarette. In the market yard one product cannot even remotely be passed off for the other. They differ radically with regard firstly to the raw material. In particular, it deserves notice that while in smoking mixtures for pipes and cigarettes the stem of the tobacco is meticulously excluded by shifting it out by manual process by hand. In machine made cigarettes that tobacco stems form a very substantial part of its content. Equally, in process of manufacture, the end finished product and even in the method of their ultimate consumption by the consumer the two products are wholly dissimilar. The tobacco content in the machine made cigarette is too dry and breakable to be smoked in a pipe because fast burning tobacco is not suitable for pipe smoking as it would burn furiously therein. Similarly, this material cannot be rolled by hand into a cigarette because of the lack of moisture and breakability it would drop out of the paper forthwith. On the other hand,

smoking mixture for pipes and cigarettes, if attempted to be rolled in machine, would jam the mechanism because of the moisture and their sticky and non-fluffy content.

14. No pleading worth the name or rebuttal material has been brought on the record by the respondents to repel the clear cut stand of the writ petitioners in this context. In any event, if it was the stand of the respondents that cut tobacco in the process of manufacture of machine made cigarettes is commonly known as smoking mixture, the burden of proof would squarely lie on them. The respondents have failed to discharge this onus. Indeed, no averment has been made far from there being any credible evidence produced to show that in common or commercial parlance and in the tobacco trade circles inevitably the in-process raw material for the manufacture of the machine made factory cigarette is known or accepted as the smoking mixture for pipes or smoking mixture for cigarette.

15. To sum up on this aspect, it must be held that on the authoritative common or commercial parlance test, the smoking mixture for pipes and cigarettes is a product radically different from cut tobacco in the continuous manufacturing process of machine-made factory cigarettes.

16. The matter may now be examined from another yet equally significant and refreshing angle. As was noticed earlier, tariff item no. 4 has been itself divided by the framers into two distinct categories of unmanufactured tobacco and manufactured tobacco and distinctly labelled as such. The second category of manufactured tobacco has then been divided into distinct sub-items. These are cigars and cheroots, cigarettes, biris smoking mixtures, chewing tobacco, snuff and hukkah tobacco. Plainly enough, all these sub-items are the end products of the process of manufacture of tobacco. Indeed, they are all products which could be sold over the shop counter to the ultimate consumer who could straightaway use them without any further intermediary process. The learned Advocate-General was fair enough to concede that sub-items (1), (2), (3), (5) and (6) in category II are without exception, the end product for direct consumption by the ultimate consumer. That being so, the question that would arise is whether sub-item (4) of smoking mixtures for pipes and cigarettes is an exception to the other sub-items in this category, and may be construed as an intermediary product. Nothing could be brought to our notice to even remotely indicate that the framers with regard to this item alone were deviating from the generic class of end products contained in sub-items (1) to (6) in category II. Indeed, everything, on the other hand, is a pointer to this item being also a specifically and equally an end product for direct consumption by ultimate consumer rather than being an intermediary or in-process product during the course of manufacture. To my mind, the general indicia are clear and categoric that the framers in category II of manufactured tobacco were dealing separately and exclusively with end products of manufactured tobacco and not with any intermediary or as yet an in-process product. In any case, sub-item (4) of

"smoking mixtures for pipes and cigarettes" in particular deals only with the end product sold over the counter to the pipe-smoking consumer or connoisseur who hand-rolls his own cigarette. It seems to have little or no relevance to cut tobacco in the pipe line in an automated cigarette factory rolling out machine made cigarettes by the billion. This seems to be the more so when this item is further sub-divided as it must be. So done, it will read as follows:

(i) Smoking mixtures for pipes.

(ii) Smoking mixtures for cigarettes.

Even the learned Advocate General had no option but to concede that so far as the smoking mixtures for pipes were concerned, they are obviously and patently an end consumer product. The smoking mixture is packed in pouches and sold and passed to the consumer for stuffing into his pipe and smoking it without any further intervening process. Would this identical smoking mixture, if stuffed and rolled into the cigarette of the connoisseur who chooses to hand-roll his own, change the basic character of the product ?. To my mind, it certainly would not and, therefore, both smoking mixture for pipes and smoking mixture for cigarettes must remain on an identical footing. Construing it otherwise would be patently doing violence both to its language as also the larger scheme of tariff item 4 and its clear cut subdivision into two categories. If the argument on behalf of the respondents were to be accepted, it would lead to anomalous result that whilst all other sub-items in category II are end consumer products and equally smoking mixture for pipes is of the same category. Yet by some undefined mystery what is characterised as smoking mixture for cigarettes may still be an intermediary or an in-process product in the factory pipe line. There appears to no rationale to draw this line of division in the same category II and equally in the same homogeneous product which may either be smoked in a pipe or hand-rolled in a cigarette.

17. In the larger perspective, therefore, category II of the manufactured tobacco with regard to all its sub-items deals with end products directly marketable to the consumer. It comprises of products which may be passed over, delivered or sold over the shop counter for immediate consumption by the ultimate consumer. Category II and the sub-items therein have no relevance to any intermediary or in process products in which, as yet, the manufacturing process has not been completed. Putting it the other way, the whole of category II including sub-item (4) deals with products wherein in the mechanical process of manufacture is over and complete and not with the product which may be in process or intermediary as yet. It qualifies only such products in which the manual process of use and enjoyment by the consumer alone remains. With particularity to sub-item (4) it means a product only packed and pouched which the ultimate consumer takes and smokes in his pipe or in a closely analogous process rolls it himself into a cigarette and then smokes it. That is why perhaps this sub-item is a composite one, for, in essence, it deals with the smoking mixtures so closely allied that it is for the consumer to decide whether he will use the smoking tobacco in his pipe

or a paper cover for enjoying the delicacy.

18. The view aforesaid is then buttressed when reference is made to sub-items (1),(2),(4) and (5) of category I. Herein also there are repeated reference to the manufacture of cigarettes on one hand and the manufacture of smoking mixtures for pipes and cigarettes on the other. It is thus plain that the framers are themselves drawing a distinct line between manufacture of machine made cigarettes and the manufacture of smoking mixtures for pipes and hand-rolled cigarettes. If the manufacture of cigarettes and the manufacture of smoking mixtures for pipes and hand-rolled cigarettes were identical, the legislature would not have wasted its words repeatedly by drawing the clear cut distinction between the two in category I as well.

19. To sum up on this limited aspect, it has to be held that sub-item (4) in category II like its other sub-items (1) to (3) and (5) to (7) is also intended to apply to the end finished product for the immediate consumption of the limited and elitist class of consumers smoking pipes or hand-rolling their own cigarettes only. It cannot be stretched or strained to cover any in-process or intermediary material without doing patent violence, to its language.

20. The learned Advocate-General with his usual (sic) perspicacity had contended that there was no warrant for construing the word "cigarettes" in sub-item (4) of category II as hand-rolled cigarettes. The submission was that the legislature had used the word "cigarettes" without any qualification and it cannot be permissible to interpose the word "hand-rolled" therein. On that premise, it was contended that the word "cigarettes" herein must be construed to include in its sweep both hand-rolled cigarettes and machine-made cigarettes.

21. The aforesaid argument, though it brings some credit to the ingenuity of the learned Advocate-General, is nevertheless untenable. For the detailed reasons given above, and because of the principle of the contextual and purposive construction, I have held that the word "cigarettes" herein must be limited by the context in which it has been laid. Obviously, it would have been better if the draftsman had been more specific by specifying that the word "cigarettes" herein took its hue from its preceding word "pipes" and pertained to hand -rolled cigarettes. However, that has not been done and having come up against this rock, one cannot simply fold one's hand. It was rightly observed in *Seaford Court Estates vs. Asher*, (1949) 2 K. B. 481 by Lord Denning that a Judge may not alter the fabric of the statute but it is his duty to iron out the creases. I am of the view that herein the question is no more than that of ironing out the crease which inevitably surfaces when the matter is examined in the larger perspective as has been done earlier.

21A. However, since some obscurity on this aspect is sought to be forcefully raised on behalf of the respondents, it becomes absolutely necessary to resort to further aid of construction as well for lending assurance to the view taken. Such aids are. not only permissible now but have the sanction of the Final Court. In

R.S. Nayak Vs. A.R. Antulay, the Constitution Bench has observed that the exclusionary rule with regard to the proceedings in the legislature has now been given a decent burial by the Supreme Court. It was observed that in line with the earlier decisions of the Final Court, it would be permissible to look at the report of the Committee which preceded the enactment of a legislation, the report of the Joint Parliamentary Committee and the report of a commission set up for collecting information leading to the enactment. However, the case directly on the point is K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, wherein it was held that the speech made by the mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of interpretation and the speech of the Finance Minister was then in terms adverted to and relied upon.

22. Following the above, the categorical statement of the Finance minister in his budget speech directly relevant to the point not only needs reference but necessitates quotation Therein after referring to his proposal for steeply raising excise levies on factory made cigarettes, by which he hoped to raise rupees 32 crores in a full year, he expressly stated as follows:

I am afraid I cannot, while coming down on the cigarette smoker make things easier for the pipe smoker or the person who rolls his own cigarettes. I therefore propose to levy a duty on manufactured smoking mixtures for pipes and cigarettes. which will yield about Rs. 80 lakhs of which Rs. 22 lakhs will accrue to the States.

It is plain from the above that the Finance Minister himself drew the sharp distinction betwixt the ordinary machine made cigarette smoker and the person who rolls his own cigarette. In line with the aforesaid speech, the excise levy was steeply raised on the factory made cigarettes and equally smoking mixtures for pipes and hand-rolled cigarettes were brought into the taxing net. At that time the rate of duty on both the machine-made cigarettes and the smoking mixtures was a relatively low figure of 200 per cent ad valorem and then later upward changes have been made in this rate. What, however, is of equal, if not more, significance is the fact that after express reference to this aspect, the Finance Minister at the national level, assessed that this levy on smoking mixtures for pipes and hand-rolled cigarettes would yield rupees 80 lakhs only. It is common ground that if the stand of the respondents were to be accepted, the extra excise duty would run into thousands of crores of rupees as is manifest from the fact that in the present case alone the demand raised with regard to the one single factory of the petitioner is to the tune of Rs. six hundred and fiftyfive crores of rupees and odd. It is manifest from the above that the speech of the Finance Minister himself and the subsequent changes in tariff item (4) of the First Schedule are a clear pointer to the fact that sub-item (4) in category II was levy on the smoking mixtures for pipes and hand-rolled cigarettes.

23. Yet again the above conclusion is reinforced by another very significant factor. It is common ground that sub-item (4) of category II was inserted in the

Schedule way back in 1973 consequent upon the Finance Minister's budget speech and the relevant year's Finance Act. For well-nigh 10 years the respondent revenue not only at the State level but admittedly even at the national level never chose to apply sub-item (4) of category II to machine made cigarettes in the factory. Learned counsel for the petitioners did not appear wholly off the mark in contending that this seems to be the brain wave of some officers of the revenue nearly 10 years thereafter and, perhaps, in only a few of Excise Collectorates. Equally, it was sought to be related to notification no. 29/79 dated the 1st March, 1979 (Annexure 1) whereby the Central Government had exempted all categories of unmanufactured tobacco under category I in tariff item (4) from the whole of the duty of excise leviable thereon both under the Central Excise and Salt Act and the additional duty of excise. Mr. Chatterji had submitted with some plausibility that in the wake of this exemption from the excise levy on unmanufactured tobacco, the somewhat zealous officers of the revenue in some regions looked for fresh pastures of excise levy and seem to have hit on the ingenious ideas of claiming for the first time that even in-process cut tobacco in the continuous pipe line of manufacture of machine-made cigarettes in a factory should be equated with smoking mixtures for pipes and cigarettes and become doubly leviable first under sub-item (4) and then under "sub-item (2) of category II. It is common ground that neither any change in tax had occurred since the insertion of sub-item (4) of category II in 1973 nor any binding statutory instruction at the national level for universal application has been issued to deviate from the stand and policy consistently adhered to for nearly 10 years, as in the present case it was only on the 7th October, 1982 that the Additional Collector Central Excise, made a visit the factory of the petitioner at Munger. Within 16 days thereafter, unexplicably, on the 23rd October 1982 (vide Annexure 2) he seems to have come to the empirical conclusion that cut tobacco is the process of manufacture for the machine-made cigarettes in the said factory, according to him, had now become leviable to tariff item 4(II) (4) of the First Schedule additionally.

24. Faced with this somewhat inexplicable stand aforeasid, the Learned Advocate-General's stand was that apparently the revenue was earlier in an error for nearly a decade in not applying this sub-item to machine-made cigarettes. This stand has not appeared to be very tenable and it is not easy to attribute to the revenue a slip or error of this nature for nearly 10 years involving, as it does, a loss of thousands of crores of rupees of revenue which must result therefrom. The stand of the respondent revenue, therefore, merits only rejection.

25. On behalf of the respondents, the last ditch argument in this context was that there can be no estoppel against the statute and merely because sub-item (4) of category II under item 4 of the tariff was not earlier so applied, this is no reason for not doing so if the language thereof warrants the same. It is unnecessary to examine this stand. For, on the finding already arrived at in favour of the petitioners, no estoppel need now be raised against the revenue. What, however, is significant is that the respondent revenue not having thus

applied sub-item (4) to machine-made cigarettes, the well-known doctrine of *noscitur a sociis* is straightaway attracted in the present case. That view has been repeatedly noticed and approved of by the final Court. It suffices in this context to make reference to *The Deputy Commissioner of Sales Tax (Law) vs. M/s. G.S. Pal and Co.* (AIR 1980 Supreme Court 611).

26. Lastly one must inevitably notice the learned Advocate-General's reliance on Lord Rowlatt's famous dictum for his submission that one must look at sub-item (4) in category II and notice merely what is clearly said therein without any rule for further intendment or interpretation.

27. Nearly 7 decades ago in *Cape Brandy Syndicate vs. Inland Revenue Commissioners* (1921) 1 K. B. 64- Rowlatt, J., had laid down his terse--and yet classic--dictum in the terms following:--

It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim which does not mean that words are to be unduly restricted against the Crown, or that there is to be any "discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

The aforesaid enunciation has received an unbroken affirmance in England as well as by our Final Court in *The Commissioner of income tax, Patiala vs. M/s. Bhahwada Nand and Sons and others* (AIR 1966 Supreme Court 1342); *M/s. Baidyanath Ayurved Bhawan (Pvt) Ltd., Jhansi vs. The Excise Commissioner, U. P. and others* (AIR 1971 Supreme Court 378) and *C. A. Abraham vs. income tax Officer, Kottayan and another* (AIR 1961 Supreme Court 609). It is thus well-settled that any alleged hardship ensuing from a taxing statute is a consideration foreign to its validity or scope in a court of law. However, this rule cannot be stretched to the limit that even though a construction based on the language of a taxing statute leads to patently mischievous and anomalous results, the same should not be avoided. It was conceded before us that barring sub-item (4) all the other sub-items in category II are finished end products ready for the direct consumption of the ultimate consumer. No reason appears why sub-item (4) should not fall in the same class. Again no other sub-item in category II of manufactured tobacco overlaps the other in the sense that it may be leviable to duty under more heads than one. Therefore, not the remotest reason appears why machine-made cigarettes may come under the ambit of both sub-item (4) of smoking mixtures for pipes and cigarettes and sub-item (2) for cigarettes. It is plain to the eye that smoking mixtures for pipes and cigarettes are themselves leviable to one of the highest rates of excise duty at 300 per cent ad valorem. Similarly in sub-item (2) cigarettes are equally leviable at one of the highest rates of excise duty at a composite rate ad valorem plus Rs. 20 per thousand. Could it possibly be the framers' intent that the cut tobacco in process of just

being converted into a machine-made cigarette in a factory be first imposed the levy of 300 per cent under sub-item

(4) and be forthwith subjected to a levy under sub-item (2) at 300 per cent the highest rates the moment it is only rolled into paper. Apart from the excise levy on unmanufactured tobacco under category I this construction would envisage a levy of nearly 600 per cent on the machine-made cigarettes. As the Finance Minister had said somewhat tongue in cheek in his budget speech--

That leaves me with no choice but to fall back as the "old faithful" cigarette to help me out of the predicament. Tobacco has been a much maligned commodity almost from the days of its discovery. While I would certainly refrain from adopting any attitude of castigation towards the numerous devotees of the tobacco leaf, I shall be content if those who take pleasure from the use of this weed will contribute in some higher measure to the national Exchequer.

Plainly enough, neither he nor the statutory provisions under category II can possibly be intended to virtually kill the tobacco goose which lays golden eggs for the revenue.

28. To finally conclude, it is held that cut tobacco in the continuous manufacturing process of factory made cigarettes is a product entirely different from the product known as smoking mixtures for pipes and cigarettes. Consequently, such cut tobacco in the process of manufacture is not leviable to excise duty under tariff item 4 category II clause (4) of Schedule I of the Central Excises and Salt Act. Once it is held as above, it necessarily follows that the demands sought to be raised against the petitioners are wholly unsustainable in law. Annexure 2 and the consequential annexures 4, 5, 8 and 14 are, therefore, quashed. The writ petition is allowed with costs.

Nagendra Prasad Singh, J.

I agree.