

(2000) 02 MAD CK 0080

In the Madras High Court

Case No : Writ Petition No. 6332 of 1998 and W.M.P. No's. 9757 to 9759 and 21584/98 and 19319 and 19320 of 1999

Mayil Mark Nilayam

APPELLANT

Vs

Superintendent of Central Excise

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Central Excise Rules, 1994 — Rule 173B, 173B(1), 174, 206(3), 52A
Central Excises and Salt Act, 1944 — Section 11A, 12, 14, 6, 9(1)
Constitution of India, 1950 — Article 14, 19, 226

Citation : (2001) 127 ELT 659

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V.T. Gopalan for R. Balasubramaniam, for the Appellant; V.M.G. Varadarajan, ACGSC, for the Respondent

Judgement

E. Padmanabhan, J.—The petitioner, a partnership firm represented by its Managing partner prays for the issue of a writ of mandamus forbearing the respondents from taking any action by treating the products sold by the petitioner, namely, "Seeakkai Thool" and "Mohwa Powder" (Arappu Thool) as excisable goods falling under sub heading Nos. 3307.90 and 3402.90 in Chapter Nos. 33 and 31 respectively of the Central Excise Tariff Act, 1985.

2. This court admitted the writ petition on 29-8-1998. The respondents have been served and the respondents have also filed their counter affidavit.

3. Heard Mr. V.T. Gopalan, learned Senior Counsel for Mr. P.R. Balasubramaniam, appearing for the petitioner and Mr. V.M.G. Varadarajan learned Additional Central Government Standing Counsel, appearing for the respondents.

4. The petitioner claims that the petitioner has been carrying on the family business under the name and style of Mayil Mark Nilayam over a period of 50 years at Madras and they sell the product called "Puli Mark Seeakkai Thool" or in English "Tiger Brand Seeakkai Powder". People used to buy the said products

only as "Seeakkai Thool" or otherwise called in English language as Soapnut Powder.

5. The petitioner had been selling the said product in small sachets of various sizes. The petitioner also had registered its mark under the Trade and Merchandise Marks Act, 1958 and their products is very popular among the lower strata of the society. The powder is being used for removing oil smears over the human body and for removal of grease from any surface. According to the petitioner taking oil bath is a speciality in South India and few people use this powder for cleaning utensils. The product has been in use for generations in rural areas by the rural poor.

6. According to the petitioner the ingredients of their product are (i) Mohwa de-oiled cake 95% (ii) usilai leaves 3% and (iii) Seeakkai 2%. The application of the powder is not confined to hair alone as in the case of a shampoo but for the entire body and it is a compound of several natural substances and there is no chemical process. For administrative convenience the petitioner split the activity into three sub businesses viz., Tiger Industries, M.M. & Co., and N.V.M. & Co.

7. The petitioner had located its factory at Thiruvottiyur High Road, Chennai-21 and it is only a Small Scale Industrial Unit registered with the Department of Industries and Commerce, Chennai. On 2-1-1998 the Officers of the Anti-Evasion (Central Excise) inspected the petitioner's factory at about 10.30 a.m., while the petitioner was away. The Manager was present and he permitted the officers to proceed with the search and inspect the premises. A mahazar has been prepared, attested by witnesses. The officials seized documents from the premises listed out in the mahazar. The officials stated that they are passing detention order of the stocks in particular, the stocks set out in Annexure C and the raw materials found in the premises as Annexure D. The mahazar is silent about the evasion of Central Excise or any other crime.

8. The petitioner was made to sign a statement to the dictation of the officials who conducted the search. Copy of the statement was not furnished to the petitioner. The mahazar is in proof of seizure in order to enable the officials to take proceedings under the Central Excise and Salt Act, 1944.

9. The petitioner on 3-1-1998 applied to the respondent to furnish xerox copy of the Day Book Ledger and Stock registers of all the three businesses for the period from 1-12-1997 onwards and there is no reply. The petitioner took up the matter with the Chief Commissioner of Central Excise and had also represented that a statement had been recorded by force and to the dictation of the inspecting officers. The petitioner also addressed a similar letter to the Commissioner of Central Excise (Adjudication).

10. The petitioner also requested the Assistant Director, Directorate General of Anti-Evasion, Chennai-90 to release the seized goods valued at Rs. 2,12,441/- as the goods are perishable in nature besides expressing that the petitioner is willing to execute a Bond securing the value of the said material. There has been

no reply. The petitioner's counsel met the Additional Director General and moved an application and till date no action has been taken. Nor the goods were returned.

11. Summons were issued to the petitioner's wife, his son and to the petitioner on 16-1-1998 requiring them to appear before the Senior Intelligence Officer of the Directorate of Anti-Evasion, though request has been made for waiving the presence of the petitioner's wife, son as they are only sleeping partners. The petitioner herein requested the respondent to take xerox copy of the records seized from the premises to submit an explanation and requested to postpone the appearance. There has been no reply. On 23-1-1998, the officials of the Directorate General of Anti- Evasion, Central Excise took the petitioner to their office at Besant Nagar, Chennai and he was interrogated extensively for long hours and the petitioner was forced to give a statement as per dictation. Thereafter the petitioner was arrested and taken to jail. The reason for such remand being that the petitioner had failed to register himself under the Central Excises and Salt Act, 1944 and that if the petitioner applies for registration, the matter would be easy for him to come out of jail.

12. While the petitioner was in custody a communication dated 28-1-1999 was issued by the Superintendent of Central Excise DI range D Division advising the petitioner to get itself registered with the Central Excise Department under Rule 174 of the Central Excise Rules 1994 which would enable the petitioner to clear the goods on payment of Central Excise Duty. The said notice is silent as to whether the product sold by the petitioner is falling under any of the items of classification under the Central Excise Tariff Act, 1980.

13. The petitioner's son addressed the said Superintendent of Central Excise pointing out that the "Mohwa Powder" and "Seeakkai Powder" are not classifiable under the Central Excise Tariff Act, 1985 and he has applied for registration without prejudice to his right or contentions. The petitioner was enlarged on bail on 4-2-1998. Thereafter the petitioner received a communication on 10-2-1998 informing that the Superintendent of Central Excise granted the Registration Certificate in Form R. 2 in Serial No. 0505401 in respect to Seekakai Thool classified under sub heading 3307.90 and Mohwa Powder classified under sub heading 3402.90 of the Central Excise Tariff Act, 1985.

14. The effect of the four registrations extracted on the facts and circumstances, it is pointed out that the petitioners cannot be allowed to clear the goods from the factory without payment of Duty under the two sub headings mentioned in the said certificate of registration. The registration is not voluntary and the certificates are not valid. No opportunity had been afforded to the petitioner to raise objections or give explanation about the seizure and also to point out as to how the products of the petitioner do not attract Central Excise Duty.

15. The whole exercise on the part of the Department is to collect Central Excise duty under some pretext when there is no liability. The classification of the items

mentioned in the certificate of registration really do not apply to the two products. The classification of item 3307.90 mentioned against Seeakkai Thool is not correct. Item 3307.90 finds a place in Chapter 33 under the caption "Essential Oils and Resinoids; perfumery, cosmetic or toilet preparations." Hence these products will not fall under or fit in the description.

16. The said chapter does not cover natural oleoresins or vegetable extracts or soap or other products. Even in respect to heading starting from 3307 various specified items are given, which itself clearly states that the substance mentioned in Note I(c) do not apply. The said classification relates to chemical items containing perfumes. The residual items in that group is item 3307.90 which merely mentions "others" and hence the powder sold by the petitioner which contains natural product like Mohwa de-oiled cake, Usilai leaves and Seeakkai would come under any of the products mentioned in the said chapter. So also the final products. The word others mentioned against item 3307.90 can be read and understood Ejusdem generis with the other items and can have relation to only such items.

17. The product item will not fall under any of the classification or entries and therefore it is clear that the Parliament had not chosen to impose excise duty on the product which is in use among rural poor. The product will not fall under any of the classification and definitely it will not fall under the caption in the entry namely "others". The same will not also come under residual item such as 3307.90, nor the respondents could force the petitioner to submit to their demands which cannot be sustained legally.

18. In respect of Mohwa Powder the claim of the respondent that the same will fall under item 3402.90 is not correct. The extracted registration by the respondent is of no avail. The said item namely, "Mohwa Powder" is not at all found in chapter 34 of the Central Excise and Tariff Act and the note appended clearly states that it will not cover. The item 3402 and 3403 is clear and there is no ambiguity.

19. According to the petitioner tariff items are to be understood visa-vis other items and item 3402.90 cannot relate to all the items which are totally unrelated to the classification found under Chapter 34 of the Central Excise and Tariff Act, 1985. So also Mohwa Powder which is a most harmless natural powder used by the rural poor. It does not have any perfume nor can it be classified as a Soap or a Scouring powder.

20. The expression "others" found in entry will not cover "Mohwa Powder" nor the respondent could treat the petitioner's product namely Mohwa Powder as an excisable duty commodity. The petitioner states that Seeakkai Thool (Soapnut Powder) and Mohwa Powder (Arappu Thool) are not excisable under the Central Excise Tariff Act, 1985 or the Central Excise and Salt Act, 1944 or the rules framed thereunder will have no application. In respect of the same product the Karnataka High Court had already rendered a ruling in W.P. Nos. 34614 and

34615 of 1997 (Karnataka Soapnut Powder Manufacturers" Association and Anr. v. The Superintendent of Central Excise and 4 Ors.) and the declaration made by the said Court is binding on the respondents herein as it is a judgment having a binding effect on the Union of India, (Finance Department) and its subordinate Authorities where they function.

21. It is further pointed out that the respondent themselves are not sure whether the petitioner's product falls under one or more of the tariff items. When similar question arose the position had been clarified by the Central Excise Department. Hence there is neither justification, nor authority in law for the respondents to insist upon the petitioner obtaining registration of its products, nor the respondents could insist the petitioner for payment of Excise duty on the two products in question. The products of the petitioner is not excisable; it is not liable for payment of excise duty and the action of the respondent is wholly without jurisdiction besides it is arbitrary and an unjust interference with the right of the petitioners fundamental right to carry on bona fide mercantile activity.

22. The action of the respondent is violative of Article 14 of the Constitution. The search and seizure is without jurisdiction. The respondents have proceeded on a total misconception of the statutory provisions and had chosen to launch prosecution against the petitioner. The demand made by the respondent to register the petitioner to clear the goods after payment of excise duty and the compulsion to maintain books or accounts or registers is without jurisdiction and the action of the respondent interferes with the livelihood of the partners of the firm and hence the present writ petition.

23. Pending the writ petition, the petitioner took out very many applications and they are also being disposed of. As already stated, on behalf of the respondents a counter has been filed by the Deputy Director in the office of the Directorate General of Anti-Evasion.

24. In the counter affidavit filed on behalf of the respondents, sworn to by the Deputy Director, the Directorate General of Anti-Evasion, Chennai, it is stated that the petitioner is engaged in manufacture of excisable goods viz., "Puli Mark Seeakkai Powder" and M.M. Brand Arappu Thool. To clear of those products without registration under Central Excise Act and without payment of Central Excise Duty by the petitioner is violation of the Statutory Provision of the Central Excise Act.

25. According to the respondents, the enquiry caused at the petitioner's premises revealed that within the premises there exist the following Units (i) M/s. Tiger Industries, M/s. Sornam Industries, M/s. Tiger Mills, M/s. Lakshmi Mills and seven packing contractors, all belonging to the same group. Further enquiry revealed existence of two other units i.e., M/s. M.M. & Co., and M/s. N.V.M. & Co., manufacturing and clearing Seeakkai and Arappu Thool without payment of Central Excise Duty. All those Units are directly controlled by M.N. Venkatachalam, partner of M/s. Mayil Mark Nilayam. Seeakkai Powder of 15,701

kgs. and Arappu Thool of 1384 kgs. valued at Rs. 2,12,241/- found in the said premises were seized on reasonable belief that the said goods are liable for confiscation.

26. The basic ingredients for the manufacturing of Puli Mark Seeakkai Thool are (i) Mohwa Cake (ii) Seeakkai (iii) Usilai Leaves (iv) Soapnut and (v) Turmeric which mixed in proportion of 350 : 5 : 50 : 10 : 2 parts respectively and such mixture is pulverised into powder and then it is packed into unit packings of 5 gms., 20 gms., 100 gms., 200 gms., and 500 gms. for retail sale. So also the M.M. Brand Arappu Thool manufactured by pulverising raw material Mohwa cake packed into 300 gms., 600 gms. packets and marketed as product used for cleaning utensils.

27. The petitioner is manufacturing and selling Seeakkai powder which is used as bath preparation. The petitioner's product is being used for both hair and the body. The products are mixture of raw materials in determined proportion pulverised, packed and marketed as Seeakkai powder. The petitioners have created many sub-business for the reasons known to them. Searches were conducted in terms of the provision of the Central Excise Act, 1944. Documents were recovered from the premises on a reasonable belief that they were relevant for furthering proceedings under the Central Excise Act, 1944. Show cause notices were issued to the petitioner and the Groups and were served on M.N. Venkatachalam on 26-6-1998. Statements were also recorded u/s 14 of the Central Excise Act and the copies of the Central relevant documents including the statements were furnished.

28. During enquiry questions were put to M.N. Venkatachalam and the answers were elicited in narrative form. A copy of the statement was also furnished to M.N. Venkatachalam along with the show cause notice. Any further documents, the petitioner was informed to come and take xerox copies as and when the petitioner require.

29. All the letters addressed by M.N. Venkatachalam had been replied by the Assistant Director under his signature. In terms of Rule 206(3) of the Central Excise Rules, 1994, materials seized by the excise Officer could be released to the owner on taking a bond in the prescribed form with such security as the Commissioner may require. The Commissioner by order dated 9-2-1998 ordered that the goods seized would be released provisionally on payment of cash security equal to the 25% of the value of the goods i.e., Rs. 50,000/- alongwith the necessary bond and the same has been communicated to M/s. Mayil Mark Nilayam on 12-2-1998 and the petitioner had not approached the concerned authority till date for release of the seized goods. Summons were issued under the Central Excise Act to all the concerned persons in connection with the enquiry in this case and there is no illegality in the said action. The respondents have complied with all the requirements and also the principles of natural justice in respect of the proceedings initiated by them. In the course of enquiry the residential premises was searched on 23-1-1998 and certain documents were

seized. Further statement was recorded from M.N. Venkatachalam. Summons were issued to the petitioner and partners/proprietors of Mayil Mark Nilayam and group units and no one appeared before the authority on the date mentioned.

30. The products Seeakkai and Arappu Thool appeared as excisable goods and as the petitioner had violated Section 6 of the Central Excise Act, 1944 read with Section 174 and Rule 9(1) 52A etc., and the petitioner appeared to have committed an offence u/s 9(1) etc., he was arrested under the Central Excise Act, 1944 on 23-1-1998 and produced before the Additional Chief Metropolitan Magistrate Court, E.O. II, Chennai for remanding him to judicial custody.

31. Merely because the products Seeakkai and Arappu Thool were manufactured by Small Scale Industries it did not mean that they were not excisable goods. The formalities have already been detailed and the petitioners suffix "Seeakkai" to their brand name to indicate the type of raw materials used by them for manufacture of bath preparations. The final product Puli Mark Seeakkai acquires a distinct composition and used in trade parlance as compared to the raw materials used. The process brings it change in name, character and use in the final product and therefore it amounts to manufacture.

32. Chapter 33, chapter Note 2 states that Heading Nos. 33.03 to 33.07 apply, inter alia, to products, whether or not mixed, suitable for use as goods of these headings and put up in packings with labels, literature or other indications that they are for use as cosmetics or toilet preparations or put up in a form clearly specialised to such use and includes products whether or not they contain subsidiary Pharmaceutical or antiseptic constituents, or as held out as having subsidiary "curative or prophylactic value".

33. The Supreme Court in Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur, had laid down as to how the statutes like excise Act had to be considered. The Advertisement issued by the petitioner in Tamil dailies, would show that the product is being marketed "for pleasant bathing" and "to avoid prickly heat, use Puli Mark Shikkakai Thool". Hence it is clear that the product is appropriately classifiable under Chapter Sub-heading 3307.09 of Schedule to Central Excise Tariff Act, 1985 as Bath Preparation.

34. The M.M. Brand Arapputhool (Mohwa powder) manufactured and marketed by the group as cleaning preparation for utensils etc., is also an excisable commodity having a distinct character in powder form. In Empire Industries Limited and Others Vs. Union of India and Others, the Apex Court held what is the meaning of the expression manufacture and it is not necessary that one should absolutely make out a new thing. In other words if by application of labour and skill an object is transformed to the extent that it is commercially known differently, it will suffice to say that manufacture has taken place for the purpose of Central Excise.

35. In Subharaj and Co. Vs. Collector of Central Excise, the Supreme Court observed that breaking and curshing of raw animal bones by a mechanical device

called disintegrator amounts to manufacture.

36. In the present case there is a manufacture as has been laid down by the Apex Court in *Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur*, . In the same analogy pulverising the Mohwa Deoiled make a new commercial product called "Arapputhool" emerges and the process amounts to manufacture in the light of the ratio of decisions in the Supreme Court. Arapputhool used for cleaning utensils is classifiable under Chapter 3405.40 of the Central Excise Tariff Act, 1985 as Scouring Powder. u/s 6 of the Act read with Rule 174 of the Central Excise Rules any person who is engaged in the production or manufacture, or any process of production or manufacture of any specified goods included in the Schedule to the Central Excise Tariff Act, 1985 shall get himself registered with the proper officer in such a manner as may be prescribed. Such Assessee shall file with Superintendent of Central Excise, having jurisdiction over the factory, a declaration stating the full description of all excisable goods produced or manufactured by him.

37. The proper Officer u/s 14 of the Central Excise Act can conduct enquiry with any person, seize relevant documents etc., in connection with the declaration filed under the Sub-rule (1) of Rule 173B and if necessary can reclassify the products and can demand the differential duty u/s 11(A) of the Central Excise Act, 1944. In the present case the Range Superintendent has only requested the petitioner to register themselves for manufacture of excisable goods. Such registration under Rule 174 is only for manufacture of excisable goods and not for classification of the product. The Petitioner had not filed the above declaration under Rule 173B with Superintendent of Central Excise till this date.

38. The Karnataka High Court in W.P. Nos. 34614 and 34615 of 1999 filed by Karnataka Soap Nut manufacturers Association held that there is no manufacturing activity when soapnut or Seeakkai powder is crushed and all that is done according to the petitioner is pounding of the nut and producing the powder and this soap nut powder is packed in sachets and sold. In the present case the petitioner manufactures of Puli Mark Seeakkai powder by mixing ingredients Mohwa deoiled cake, seeakkai. Usilai leaves, soapnut and turmeric in proportion and such mixture is pulverised to manufacture puli Mark Seeakkai Powder. So also M.M. Brand Arapputhool the character, and use of raw material Mohwa Deoiled cake and final products viz., Arapputhool are entirely different.

39. The order passed by a Single Judge of the Karnataka High Court had been set aside in Appeal No. 1413/98 and 1736/98 on 3-2-99 and the Seeakkai Powder would come within the ambit of the items "others" grouped as 3305.90 and therefore it is liable to excise duty.

40. It is the bounden duty of the every manufacturer of excisable commodity to get himself registered under the Central Excise Act and clear the manufactured goods on payment of duty unless there is specific exemption. The petitioner is manufacturing excisable commodities without a registration and without payment

of duty and without maintaining any statutory records cannot seek any indulgence from this court. It is further stated that everything has been done in conformity with the statutory provisions of the Central Excise Act, 1944 and the Rules framed thereunder. The action taken is within the provisions of the law and allegations that the respondents have acted without any justification and per se illegal are baseless and incorrect. The seizure also was effected in conformity with the statutory provisions. The provisions of the Customs Act has also been made applicable to Central Excise Act as per the notification issued u/s 12 of the Central Excise Act 1944. There is no illegality in the seizure and there was reasonable belief and therefore the seizure was effected.

41. The petitioner had not opposed the respondents for the release of the goods. The writ petition is premature and it is liable to be dismissed on that short ground. It is incorrect to contend that there is no alternative remedy against the investigating proceedings. Further statutory remedies are available under the Act and therefore the petitioner should not have rushed to this Court invoking the jurisdiction under Article 226 as has been held by number of pronouncements of this Court. There are absolutely no merits in the writ petition. The respondents are not interfering with the business carried on by the petitioner. They exercised the statutory powers with regard to assessment of excise duty in respect of the products Puli Mark Seeakkai Thool and Puli Mark Arapputhool. The writ petition is premature and the petitioner cannot be allowed to restrain the Department from proceeding with the adjudication after giving a show cause notice.

42. It is further pointed that a show cause notice has already been issued and the matter is pending before the adjudicating authority and therefore the order of interim injunction has to be vacated. The respondents further contend that there are absolutely no merits in the writ petition and the same may be dismissed.

43. The point that arise for consideration in this writ petition are;

- (i) Whether the products "Seeakkai Powder" and "Arappu Thool" are excisable?
- (ii) Whether they attract levy of excise duty under Chapters 32,33,34 or any other Chapter of the Excise and Tariff Act? and
- (iii) To what relief the petitioner is entitled to?

44. If the contentions of the petitioner that the two products are not excisable commodities or goods is sustained, it follows that the writ petition is to be allowed with all consequential reliefs. On the other hand if the contention of the Revenue is sustained, the writ petition has to be dismissed and with respect to the classification or reclassification or quantum of levy of duty or penalty, this court will decline to go into it.

45. It is also stated by the petitioner that under threat an application for registration had been filed in respect of Mohwa Powder under entry 3402.90 and Seeakkai Thool under entry 3307.90. There is no dispute about the composition

or Seeakkai Powder as well as Arappu Thool.

46. Chapter 33 of the Excise Tariff Act covers essential oils and resinoids, perfumery, cosmetic or toilet preparations. It is also seen that Chapter 33 does not cover natural oleoresins or vegetable extracts falling under heading No. 13.01, soapnut or other products falling under entry 34.01. According to the respondents, the product Puli Mark Seeakkai falls under heading 3307.39 as bath preparation and Arappu Thool falls under heading 3405.04. It was further contended that at any rate Mohwa Powder will fall under heading 3402.90 and Seeakkai Thool will fall under heading 3307.90.

47. Some of the Chapters which is relevant and which is being relied upon by Revenue, it would be proper to extract. Chapter 33, headings 33.03 to 33.07, reads thus :-

-----		33.03
3303.09	Perfumes and toilet waters, not containing 18% the substances specified in Note 1(C) to this Chapter	
-----		33.04
3304.00	Beauty or make-up preparations and 30% preparations for the care of the skin (other than medicaments), including sunscreen and suntan preparations; manicure or pedicure preparations.	
-----		33.05
Preparations for use on the hair	3305.10 Perfumed hair oils 18% Other	
3305.91 Hair fixer 18%	3305.99 Other 30%	
-----		33.06
Preparations for oral or dental hygiene including dentifrices (for example, tooth paste and tooth powder and denture fixative pastes and powders		
3306.10 Tooth powder and tooth paste 8%	3306.90 Other 18%	
-----		33.07 Pre-
shave, shaving or after-shave preparations [not containing substances specified in Note 1(C) to this Chapter]. Personal deodorants, bath preparations, depilatories and other perfumery, cosmetics or toilet preparations, not else-where specified or included : prepared room deodorisers, whether or not perfumed or having disinfectant properties.		
3307.10 Pre-shave, shaving or after-shave 30%	3307.20 Personal deodorants and anti-perspirants 30%	
3307.31 Bath Oil (Thailam) 18%	3307.39 Other 30%	

48. Chapter 33 as already pointed out relates to essential oil and resinoids, perfumery, cosmetic or toilet preparations, but it will not cover natural oleoresins or vegetable extracts of heading No. 13.01. Arappu Thool or Seeakkai Thool will not fall under any of the headings in Chapters 33.03 to 33.07. Chapter 34 which relates soap organic surface-active agents, washing preparations etc., which will cover shampoos, detritrices, shaving creams and foams, or bath preparations containing soap or other organic surface-active agents.

49. Headings 34.01 and 34.02 as well as 34.05 are extracted for immediate reference :

----- 34.01
Soap; organics surface-active products and preparations for use as soap, in the form of bars, cakes moulded pieces or shapes, whether or not containing soap; paper, wadding, felt and non-wovens, impregnated, coated or covered with soap or detergent. Soap in any form :- 3401.11 Soap, other than for toilet use, whether or 8% not containing medicament or disinfectant. 3401.12 Soap, in or in relation to the NIL manufacture, of which, no process has been carried on with the aid of power or of steam for heating. 3401.13 Laundry soaps produced by a factory NIL owned by the Khadi and Village Industries Commission or any organisation approved by the said commission for the purpose of manufacture of such soaps. 3401.20 Other 18% 3401.20 Organic surface-active products and 18% preparations for use as soap in the form of bars, cakes, moulded pieces or shapes 3401.30 Paper wadding felt and non-wovens, 18% impregnated, coated or covered with soap or detergent.
----- 34.02
Organic surface-active agents (other than soap), surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap. 3402.10 Sulphonated castor oil, fish oil or sperm NIL oil. 3402.90 Other 18%
----- 3405
Polishes and creams, for footwear, furniture, floors, coachwork glass of metal; scouring pastes and powders and similar preparations (whether or not in the form of paper wadding felt, non-wovens, cellular plastics or cellular rubber, impregnated, coated or covered with such preparations) excluding waxes or heading No. 34.04 3405.10 Polishes, creams and similar 18% preparations for footwear or leather. 3405.20 Polishes, creams and similar 18% preparations for the maintenance of wooden furniture, floors or other wood work 3405.40 Scouring pastes and powders and other 18% scouring preparations. 3405.90 Other 18%

50. In fact as pointed out earlier on a perusal of the heading and entries it is clear that the two products will not fall under any one or other entries or headings and the contention of the counsel for the petitioner that the two products are not excisable has to be sustained and the contra contention put forward by the respondent cannot be sustained.

51. The question as to how the heading or entries should be considered was the subject matter of consideration in a number of pronouncements of the Apex Court as well as this Court and various other courts.

52. In 1991 (51) E.L.T. 61 (Assistant Collector of Central Excise v. Ramdev Tobacco Company), the Apex Court held thus :

"6. The rule of ejusdem generis is generally invoked where the scope and ambit of the general words which follow certain specific words (which have some common characteristic and constitute a genus) is required to be determined. By the application of this rule the scope and ambit of the general words which follow certain specific words constituting a genus is restricted to things ejusdem generis with those preceding them, unless the context otherwise requires. General words must ordinarily bear their natural and larger meaning and need not be confined ejusdem generis to things previously enumerated unless the language of the statute spells out an intention to that effect. Courts have also limited the scope of the general words in cases where a larger meaning is likely to lead to absurd and unforeseen results. To put it differently, the general expression has to be read to comprehend things of the same kind as those referred to by the preceding specific things constituting a genus, unless of course from the language of the statute it can be inferred that the general words were not intended to be so limited and no absurdity or unintended and unforeseen complication is likely to result if they are allowed to take their natural meaning. The Cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives "a different indication or such meaning is likely to lead to absurd results in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words, there can be no question of invoking this rule. Nor can this rule have any application where the general words precede specific words."

53. In *Amar Chandra Chakraborty Vs. The Collector of Excise, Government of Tripura and Others*, . Their Lordships of the Supreme Court held thus :-

"9. Before dealing with the contention relating to Article 19 we consider it proper to dispose of the argument founded on the ejusdem generis rule and Article 14 of the Constitution. It was contended by Shri Sen that the only way in which Section 43 can be saved from the challenge of arbitrariness is to construe the expression "any cause other than" in Section 43(1) ejusdem generis with the causes specified in Clauses (a) to (g) Section 42(1). We do not agree with this submission. The ejusdem generis rule strives to concile "the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent. In the present case, it is not easy to construe the various clauses of Section 42 as constituting one category or class. But that apart, the very language of the two sections and the objects intended respectively to be achieved by them also negative any intention of the legislature to attract the rule of the ejusdem generis."

54. In *Collector of Central Excise, Bombay Vs. M/s. K.W.H. Helioplastics Limited*, , the Apex Court held that if it is established that the description of the goods

manufactured are akin to the description of the goods given under Heading or sub heading, as the case may be, then there is no difficulty in holding that the products and if they are not referable to any of the headings or one or more headings, as the case may be, then the respondents will have no jurisdiction at all even to issue a show cause notice. There must be akin to the description of goods found in the entry.

55. The Seeakkai, in my considered view will not fall under the ambit of items "other" grouped as 3305.99 and therefore it is not an excisable commodity. Seeakkai is a natural product and it is crushed into powder and used for removing oil strains or used for taking oil bath. It is misnomer to call Seeakkai as a soapnut. Seeakkai or Arapputhool or for that matter Arapputhool which are the subject matter of consideration in this writ petition will not fall under anyone of the entries or heading even if they are mixed with one or more other elements and used for the purpose of bath or cleaning utensils as the case may be. The two products namely Seeakkai or Arapputhool will not fall under any one of the entries relied upon by the respondents. Nor it will fall under other items as the expression has to be read ejusdem generis.

56. A Division Bench of this Court had occasion to consider the assessability of Usilai Arappu Powder, Seeakkai Powder or Arapputhool under the Tamil Nadu Sales Tax Act and held that the two products will not fall under the entry "hair applicant." In that context, the Division Bench in W.A. Nos. 975 to 978 of 1994, dated 22-2-1995, held thus :-

"It is also not possible to hold that the brand name in question falls under Serial No. 1 part F of First Schedule of the Act, as this entry is similar to the entry at Serial No. 51 of the First Schedule. Further the legislature has, by Act No. 55 of 1994, introduced an expression hair applicant in part I of Serial No. 51, First Schedule of the Act. This also indicates that the entry as it stood did not include sale of "hair applicant". However, we should not be taken to have expressed that the tiger brand soapnut powder falls within the expression hair applicant. In our view, it is sufficient to notice that the sale of tiger brand soapnut powder for the first time during the period 12-3-1993 to 1-4-1994 came to be subjected to sales tax under Serial No. 51, First Schedule of the Act pursuant to the impugned letter dated 11-5-1994 as till then, the sales of such product were being subjected to Sales Tax only under residuary entry of Serial No. 63, Part D, First Schedule of the Act.

4 - It is also disputed that the tiger brand soapnut powder does not fall within the category of hair oils, hair creams, hair dye, hair darkeners, hair tonics, brilliantines, pomades and vaselines. If that be so, it is not at all permissible for the Special Commissioner to classify the tiger brand soapnut powder as "hair applicant" and to bring the sales of such product under Serial No. 51, First Schedule of the Act."

57. Though there is some controversy as to whether Seeakkai Powder is soapnut

powder or not, the counsel for the petitioner contends that Seeakkai powder is not the soapnut powder, but it is separate commodity and it is misnomer to call Seeakkai or Arapputhool as the case may be as soapnut powder.

58. The meaning of the expression soap as given in the New Webster's Dictionary is at page 1438, which reads as follows :-

"A Chemical compound of an alkali and fat, soluble in water, and used for detergent or cleansing purposes."

59. As against the expression soap which is used as a detergent for cleaning purposes the soapnut or soapbark or a soapberry is totally a different which is a fruit of certain tropical and subtropical trees of the genus Sapindus, used as a substitute for soap; any of the trees bearing such fruit is known as Saponaria. Soapberry will get dry or berry dried is called as soapnut commonly and it is also referred to as a soapbark and it will be misnomer to refer the same as a substitute for soap.

60. The expression "Seeakkai" means "Soap Pod Wattle" (Tamil Lexicon). Hence it is clear that Seeakkai is not soapnut powder or soapnut. Hence it is clear that Seeakkai is different from soapnut and it is not in effect a substitute. It is neither a detergent or a scouring powder, nor it has any application to the oil to the hair, nor it will come under any of the headings in chapter 33 or 34. It cannot also be brought under the expression "other" in any of the chapters as well.

61. The product which the petitioner marketed namely Seeakkai Powder or Arapputhool may contain one or more natural plants or seeds or dried berries or leaves. But the product is neither a soap nor a detergent nor it will come under any of those categories as included in chapter 33 or 34. Hence, it is clear that the two products namely Seeakkai and Arapputhool which are being used by poor villagers, as a substitute are not excisable products or commodity. It is clear that it is not the intention of the Legislature to bring in those products as one of the excisable commodities. Both the Chapters will not apply and therefore the two products are not excisable, though it cannot be ruled out that there was no manufacturing process at all.

62. There is manufacturing process by the mixture of two or more items and it may satisfy the definition of manufacture or processing. But the Seeakkai or Arapputhool or for that matter, even assuming that it is being applied for the purpose of taking oil bath to remove the oil from the body or being used as a scouring powder, the two products are not excisable. Once the two products are not excisable, the respondents have no jurisdiction to proceed.

63. It was contended by the learned counsel for the respondents that the petitioner has got the efficacious alternative remedy and without exhausting the same, the petitioner has rushed to this Court and this Court has to dismiss the writ petition as the petitioner has got an alternative remedy. In this respect, the counsel for the writ petitioner relied upon the decision of the Apex Court in

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, where their Lordships of the Supreme Court held thus :-

"20. Much water has since flown beneath the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "TRIBUNAL".

Hence, this objection is overruled."

64. In the circumstances, the writ petition is allowed and the rule nisi is already issued is made absolute. Consequently, W.M.P. Nos. 19319 and 19320 of 1999 are dismissed and W.M.P. Nos. 9757 and 9758 of 1998 are closed.

65. In W.M.P. No. 9759 of 1998, there will be a consequential direction to the respondents to forthwith release all the books of accounts, finished products and raw materials seized from the petitioner on 2-1-1998 from the petitioner's premises at No. 431, Tiruvottiyur High Road, Chennai 21, if they have not already been released on a bond, if any executed will stand cancelled consequently.

Parties shall bear their respective costs in this writ petition.