
(2001) 05 AP CK 0002
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12649 of 2000

P. Laxmi Devi

APPELLANT

Vs

Government of A.P. and others

RESPONDENT

Date of Decision : 08-05-2001

Acts Referred:

Andhra Pradesh Stamp (Amendment) Act, 1971 — Section 7
Constitution of India, 1950 — Article 14, 19(1)
Stamp Act, 1899 — Section 47

Citation : AIR 2001 AP 446 : (2001) 4 ALD 336 : (2001) 3 ALT 666

Hon'ble Judges : G. Bikshapathy, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. R. Narasimha Reddy for Mr. Vijay B. Prapkari, for the Appellant;

Judgement

This Judgment has been overruled by : Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi, AIR 2008 SC 1640 : (2008) 2 JT 639 : (2008) 3 SCALE 45 : (2008) 4 SCC 720 : (2008) AIRSCW 1826 : (2008) 2 Supreme 472

Ramesh Ranganathan, J.—This appeal, u/s 35G of the Central Excise Act, 1944, (hereinafter referred to as Excise Act), is against the order of the Customs, Excise and Service Tax Appellate Tribunal, Bangalore, in Appeal E/734/2004, dated 12-4-2005, whereby the order of the Commissioner of Customs and Central Excise, in Appeal No. 81/99(G)/EC dated 6-5-2004, was set aside. The Commissioner of Customs and Central Excise, in his order dated 6-5-2004, had set aside the order of the Assistant Commissioner of Customs and Central Excise, Guntur Division, dated 25-4-2005 (sic. 14-10-1998), classifying the product of the Appellant under Chapter subheading No. 2107.00 instead of sub-heading No.0801.00 of the schedule to the Central Excise Tariff Act, 1985, (hereinafter referred to as Tariff Act). The Appellant's contention that their products were required to be classified under Chapter sub-heading No.0801.00 was upheld by the Commissioner.

2. The facts, to the extent necessary for this appeal, are that the appellant

herein produces betel nut powder known as "supari", and clears the said goods on payment of duty at the appropriate rates specified in the Schedule. They were availing credit on various inputs and utilizing the said credit towards payment of duty on their final product. The Appellants filed a revised declaration with effect from 17-7-1997. They filed two supplementary declarations classifying their product viz., betel nut pieces under Ch. S. II No.0801, incorporating changes in the mode of packing of certain varieties. These products were classified earlier by the Appellants themselves, under Ch. Sub-heading No. 2107.00. Appellants after 17-7-1997, continued to pay duty at the rate, applicable under Ch. Sub heading No. 2107.00 "under protest."

3. The 2nd respondent, vide notice dated 1-10-1997, called upon the Appellants to show cause as to why their product, i.e., betel nut powder known as "supari", should not be classified under Ch. sub-heading No. 2107.00 and why their claim for classification of the said product under Ch. S.II No.0801.00 should not be rejected. Appellants submitted their reply to the show cause notice on 17-11-1997 contending that their product did not satisfy the test of "manufacture" and that betel nuts, not grounded, are classified under Chapter 8 and not under Chapter 21. The 2nd respondent, by order dated 14-10-1998, while holding that the product manufactured by the Appellant viz., betel nut known as "supari" was rightly classified under Ch.S.II. No. 2107.00, and was liable to duty at the appropriate rate specified in the Schedule to the Tariff Act, rejected the contention that their product should be classified under Chapter sub-heading No.0801.00.

4. In the Appeal, the Commissioner of Customs and Central Excise, Guntur, by order dated 6-5-2004, held that the process of cutting betel nut into small pieces and adding of essential oils, spices, menthol, and other ingredients did not result in a new and distinct product having a different character and use and there was no "manufacture" involved, even according to Note-7 of Chapter-21 of the Tariff Act. The Commissioner held that though the item, "betel nut powder" known as "Supari", finds place/mention in the Tariff, it is of no consequence unless the product emanated as a result of manufacture or production, which was not so in the present case. The Commissioner held that betel nut in the form of pieces, and not in the form of powder, could not be classified under Chapter subheading 2107.00 of the Tariff. Further, in view of the explanatory Notes to Harmonised System of Nomenclature, (hereinafter referred to as HSN), the resultant product was classifiable under Chapter, sub-heading No.0801.00 of the Tariff and not under Chapter sub-heading No. 2107.00 The Appeal was allowed and the order, of the Assistant Commissioner Central Excise, was set aside.

5. In the Appeal filed by the Revenue, against the order of the Commissioner dated 6-5-2004, the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, (hereinafter referred to as CESTAT), held that the end product of the process was different from the original material and a new and distinct product known as "supari powder" had emerged. The order of the

Commissioner, dated 6-5-2004, was set aside. Hence the present Appeal.

6. Sri M. Naga Raghu, Learned Counsel for the Appellant, would submit that since there is no manufacturing process involved and betel nuts remain as such even after they are cut into pieces, the order of the CESTAT, setting aside the order of the Commissioner and confirming the order of the Assistant Commissioner, is liable to be set aside. Referring to several judgments of the Supreme Court and the High Courts in *Panchalingal Carbonic Gas Pvt. Ltd. and Another Vs. State of Andhra Pradesh and Others*, , *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, , *Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another*, , *Krishna Chandra Dutta (Spice) Pvt. Ltd. v. Commercial Tax Officer 1994(70) ELT 501 (SC)*; *Shyam Oil Cake Ltd. v. Collector of Central Excise, Jaipur, 2004 (8) Sup 473*, *Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Jaipur*, , *Hyderabad Industries Ltd. and Another Vs. Union of India (UOI) and Others*, , *Collector of Central Excise, Chandigarh vs. Steel Strips Ltd. 1995 (77) SLT 248(SC)*, *Aman Marble Industries Pvt. Ltd. Vs. Collector of C. Ex.*, , *The Collector of Central Excise, Hyderabad, Vs. M/s. Bakelite Hylam Ltd.*, , *G.S. Auto International Ltd. v. Collector of Central Excise, Chandigarh 2003 (152) ELT 31*, *Divisional Deputy Commissioner of Sales Tax v. Bherhaghat Mineral Industries, 2000 (119) ELT 271 (SC)*. *Collector of Central Excise Vs. Technoweld Industries*, and *M/s. Poulouse and Mathen Vs. Collector of Central Excise and another*, , Learned Counsel would submit that since no manufacturing process is involved, the products of the Appellant, are not eligible to excise duty. Learned Counsel would also submit that the difference of opinion between CESTAT and the Commissioner, and the question whether the products of the Appellant undergo a process of manufacture give rise to substantial questions of law.

7. Learned Assistant Solicitor General raises preliminary objections on the maintainability of present appeal and would submit that:

(1) Challenge to the validity of classification, and the order of the CESTAT in this regard, could only be by way of an appeal to the Supreme Court u/s 35-L of the Central Excise Act and not u/s 35G; and

(2) Section 35G of the Central Excise Act provides for an appeal to this Court only on a substantial question of law, and not on a mere question of fact or law.

Dispute relating to classification of goods-Appeal against the Appellate order of CESTAT - Whether lies to the High Court u/s 35G or to the Supreme Court under 35-L

7-A. To examine this question, it is necessary to refer to Section 35G and Section 35-L of the Central Excise Act which read as under:

35-G. Appeal to High Court:

(1) An appeal shall lie to the High Court from every order passed in appeal by

the Appellate Tribunal on or after the 1 st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.

(2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this Sub-section shall be-

(a) file within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) file within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in Sub-section (1)

(7) When an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority if any, of such judges.

(8) Where there is no such majority, the Judges shall state the point of law upon which they defer and the case shall then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(9) Save as otherwise provided in this Act, the provisions of the CPC 1908 (5 of

1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section 35-L. Appeal to Supreme Court - An appeal shall lie to the Supreme Court from -

(a) any judgment of the High Court delivered-

(i) in an appeal made u/s 35G; or

(ii) on a reference made u/s 35G by the appellate Tribunal before the first day of July, 2003;

(iii) on a reference made u/s 35-H,

In any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b) any order passed by the appellate Tribunal relating to, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment.

8. u/s 35G(1), an appeal lies to the High Court, against every order passed in appeal by the appellate Tribunal, other than an order, relating among other things, to the determination of any question having relation to the rate of duty of Excise, (emphasis supplied), or to the value of the goods for the purpose of assessment, since these are matters specifically brought under Section 35-L, wherein an appeal lies to the Supreme Court, from any order passed by the appellate Tribunal, relating, among other things, to the determination of any question having relation to the rate of duty of excise (emphasis supplied), or to the value of the goods for the purpose of assessment.

9. Learned Asst. Solicitor General would contend that since the dispute in the present case is whether the goods of the appellant fall under sub-heading 0801.00 in Chapter-8 or sub-heading 2107.00 in Chapter-21 of the Central Excise Tariff Act, it is a dispute relating to the determination of a question having relation to the rate of duty and as such an appeal lies only to the Supreme Court u/s 35-L of the Central Excise Act and not to the High Court u/s 35G. Reliance is placed on the judgment in Navin Chemicals Mfg. and Trading Co. Ltd. Vs. Collector of Customs, .

10. Learned Asst. Solicitor General would submit that the judgments of the Supreme Court, relied on by the Appellant, in Shyam Oil Cake Ltd. (5 supra); Hindustan Zinc Ltd. (6 supra); Steel Strips Ltd. (8 supra); Aman Marble Industries Pvt. Ltd (9 supra); G.S. Auto International Ltd. (11 supra); Bherhaghat Mineral Industries (12 supra); Technoweld industries (13 supra), are all matters, wherein an appeal had been preferred directly to the Supreme Court against the order of the Tribunal which itself establishes that the present appeal before this Court u/s 35G of the Central Excise Act is not maintainable.

11. Navin Chemical's (15 supra), Was a case u/s 129-D of the Customs Act.

Section 129-C(3) of the Customs Act provides for an appeal, against a decision or an order relating, among other things, to the determination of any question, having a relation to the rate of duty of customs, to be heard by a Special Bench. Section 129-D of the Customs Act relates to the powers of the Central Board of Excise and Customs and the Collector of Customs to call for and examine the record of any proceedings before subordinate authorities. u/s 129-D, the provisions of Section 129-D are held not to apply to any decision or order in which determination of any question having relation to the rate of duty is in issue. Explanation-C, thereunder, provides that for the purpose of Section 129-D determination of a rate of duty, in relation to any goods, includes determination of a question whether any goods fall under a particular heading or subheading of the 1st schedule or the 2nd Schedule to the Customs and Tariff Act. The statutory definition of the said expression indicates that it has to be read to limit its application to cases where, for the purpose of assessment, questions arise directly and proximately as to the rate of duty or to the value of goods. Though this explanation was expressly confined to Sub-section 5 of Section 129-D, the Supreme Court in Navin Chemicals (15 supra) held that it was proper that the said expression, used in other parts of the Customs Act, should be interpreted similarly, as questions relating to the rate of duty are questions that squarely fall within the meaning of the said expression, and classification of goods relates directly and proximately, to the rate of duty applicable thereto, for the purpose of assessment.

12. Explanation-(d) of Section 35-E of the Central Excise Act provides that, for the purpose of that Sub-section, determination of the rate of duty, in relation to any goods includes the determination of a question whether any goods are excisable goods or whether any goods fall under a particular heading or sub-heading of the First Schedule of the Central Excise Tariff Act, 1957. Explanation (c) to Section 129-D of the Customs Act is in pari materia to Explanation (d) to Section 35-E of the Central Excise Act. Applying the expression, used in Explanation (d) of Section 35-E, to other parts of the Central Excise Act, and since the dispute in the present case regarding classification of goods, relates directly and proximately to the rate of duty applicable thereto, an appeal would lie only to the Supreme Court, (against an order passed by the CESTAT), u/s 35-L of the Central Excise Act.

13. Applying the law laid down by the Apex Court in Navin Chemical's (15 supra), we hold that, as an appeal lies, against the order of the Tribunal, in a dispute relating to the classification of goods, only to the Supreme Court u/s 35-L, an appeal before this Court, u/s 35G of the Central Excise Act, is not maintainable.

Does a substantial question of law arises for consideration in the present appeal?

14. While the learned Assistant Solicitor General would submit that no substantial question of law arises for consideration in the present appeal and the question, whether or not the Appellant's products come under a particular

chapter entry in the Schedule to the Tariff Act, is not a substantial question of law, Sri M. Naga Raghu, learned Counsel for the appellant, in support of his submission that the present appeal, filed before this Court u/s 35G of the Central Excise is maintainable, places reliance on *The Assistant Commercial Taxes Officer v. Ramesh Leather Stores* (1982)49 STC 79. *Kota Steel Re- Rolling Mills Pvt. Ltd. v. The Commercial Tax Officer* (1982) 49 STC 80 (Rajasthan Division Bench), and *Polar Marmo Agglomerates Ltd. Vs. Union of India (UOI)*, Rajasthan Division Bench). Learned counsel, placing reliance on the judgment of a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao Vs. Noony Veeraju and Others*, , contends that if there is room for reasonable doubt or difference of opinion on a question, it would be a substantial question of law. Learned counsel would submit that the difference of opinion, between the Commissioner of Central Excise (1st appellate authority) and the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Bangalore has, by itself, resulted in a substantial question of law and therefore the present appeal, filed before this Court u/s 35G of the Central Excise Act, is maintainable. Learned Counsel would further submit that the question, whether or not the products of the appellant undergo a process of manufacture, is a substantial question of law and since it is the case of the appellant that no manufacturing process is involved, in cutting betel nut into pieces, determination of this substantial question of law can only be in an Appeal before this Court u/s 35G of the Central Excise Act.

15. *Ramesh Leather Stores* (16 supra) arose u/s 15(3-A) of the Rajasthan Sales Tax Act and the Division Bench of the Rajasthan High court held that the question, whether certain goods fall within a particular entry or not, was a question of law. Similarly *Kota Steel Re-Rolling Mills* case (17 supra) was a case arising u/s 15(2) of the Rajasthan Sales Tax Act and the Division Bench of Rajasthan High Court following its earlier judgment in *Ramesh Leather Stores* (16 supra) held that the question, whether certain goods fall within a particular entry or not, is a question of law. Section 35G of the Central Excise Act provides for an appeal to a High Court, not on a mere question of law, but only in cases where substantial questions of law arise for consideration. In *Polar Marmo Agglomerates* (18 supra), a writ petition was filed before the Rajasthan High Court questioning the show cause notice issued by the Central Excise authorities. The Division Bench of the Rajasthan High Court held that the question, whether certain goods fall within a particular entry or not, was a question of law. Proceedings under Article 226 of the Constitution of India, whereunder the power of Judicial review is not circumscribed and is wide in its amplitude, are far wider in scope than proceedings u/s 35G of the Central Excise Act, whereunder the scope is extremely limited and the jurisdiction of the High Court can be invoked only in the limited category of cases which satisfy the conditions prescribed thereunder. None of the aforesaid judgments, referred to by the learned Counsel for the Appellants, arise u/s 35G of the Central Excise Act nor has it been held in any of these judgments that the question, whether goods should be classified under a particular entry or not, give rise to a substantial question of law.

Reliance placed on the judgment of the Full Bench of Madras High Court in R. Subba Rao (supra) is also of no avail to the Appellants. While it is true that where there is room for reasonable doubt or difference of opinion, it could give rise to a substantial question of law, the Full Bench of Madras High Court in R. Subba Rao(19 supra) also held as under:

...This, however, does not mean that every question of law as between the parties is a substantial question of law. In the paraphrase by the Privy Council the word "substantial" again occurs in addition to the phrase "as between the parties". It has been held time and again and we have not come across any authority to the contrary, that any question of law is not as such a substantial question of law if it arises between the parties....

...The only answer to the question that we can usefully give is that any question of law affecting the rights of parties would not by itself be a substantial question of law. An important or difficult question would of course be a substantial question; but even if a question is not important or difficult, if there is room for reasonable doubt or difference of opinion on the question then it is would be a substantial question of law....

16. The proper test for determining whether a question of law, arising in a given case, is substantial or not would be whether it is of general public importance and whether it directly and substantially affects rights of parties and if so whether it is either an open question in the sense that it is not finally settled by the Supreme Court or this Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law (Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., . It is not within the domain of this Court to investigate the grounds on which the findings were arrived at by the CESTAT which is the final Tribunal of fact. The High Court cannot substitute its opinion, for the opinion of the Tribunal, unless it is found that the conclusions drawn were erroneous being contrary to the mandatory provisions of law or its settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at without evidence. If the question of law, termed as a substantial question, stands already decided by this Court or by the Supreme Court, its mere wrong application on the facts of the case would not be termed to be a substantial question of law. Mere appreciation of facts, documentary evidence, meaning of entries and the contents of the document cannot be held to have raised a substantial question of law (Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others, . Where the Tribunal is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference u/s 35G of the Central Excise Act.

17. The contention of Sri M. Naga Raghu, learned Counsel for the Appellant, that

the difference of opinion, between the Commissioner of Central Excise (first appellate authority) and the CESTAT, has, by itself, resulted in a substantial question of law is palpably absurd and is liable to be rejected at the threshold. Accepting this farfetched contention would mean that every case, where an appellate authority reverses an order of the original authority, would give rise to a substantial question of law.

18. We are unable to accept the submission that the question, whether a process of manufacture is involved or not, would by itself, and nothing more, give rise to a substantial question of law. This question, as to whether or not the Appellants carry on a manufacturing process, is a mixed question of fact and law, and since the CESTAT, as the final fact finding Tribunal, has, in the present case, exercised its discretion in a judicial manner, and its conclusions are not contrary to the mandatory provisions of law, no substantial questions of law can be said to have arisen necessitating exercise of this Court's jurisdiction u/s 35G of the Central Excise Act.

19. In *Collector of Customs, Bombay v. Swastic Woolens (P) Ltd.* 1988 (Supp.) SCC 796, the Supreme Court held:

...We are, however, of the view that if a fact finding authority comes to a conclusion within the above parameters honestly and bona fide, the fact that another authority be it the Supreme Court or the High Court may have a different perspective of that question, in our opinion, is no ground to interfere with the finding in an appeal from such a finding. In the new scheme of diction to decide the question involving determination of the rate of duty of excise or of the value of goods for purposes of assessment, an appeal has been provided to this Court to oversee that the subordinate tribunals act within the law. Merely because another view might be possible by a competent court of law is no ground for interference u/s 130E of the Act though in relation to the rate of duty of customs or to the value of goods for purposes of assessment, the amplitude of appeal is unlimited. But because the jurisdiction is unlimited, there is inherent limitation imposed in such appeals. The Tribunal has not deviated from the path of correct principle and has considered all the relevant factors. If the Tribunal has acted bona fide with the natural justice by a speaking order, in our opinion even if superior court feels that another view is possible, that is no ground for substitution of that view in exercise of power under Clause (b) of Section 130E of the Act.

In the facts and in the circumstances, in our opinion, the Tribunal has acted within jurisdiction. The Tribunal has taken all relevant and material facts into consideration. The Tribunal has not ignored any relevant and material facts. The Tribunal has not applied any wrong principles of law. Therefore, the decision of the Tribunal is unassailable even in the appeal before this Court.

20. The dispute, in the present appeal relates to classification of goods, which the CESTAT, on appreciation of the facts and the documentary evidence on

record, has held to fall within Chapter Section 11 No. 2107.00. The CESTAT has exercised its discretion in a judicial manner and its conclusions are not contrary to law. We, therefore, hold that no substantial question of law arises for consideration in the present appeal necessitating its being entertained u/s 35G of the Central Excise Act.

Does the Appellant's Product Undergo A Process of Manufacture?

21. Since the matter has been argued extensively on merits, we do not propose to dismiss the appeal only on the ground of its not being maintainable u/s 35G of the Central Excise Act, though we are in complete agreement with the learned Assistant Solicitor General on both counts viz., (1) the dispute, relating to classification of entries under the Central Excise Tariff Act and the order passed in this regard by CESTAT, can only be questioned by way of an appeal to the Supreme Court u/s 35-L of the Central Excise Act; and (2) No substantial question of law arises for consideration in the present case and the appellant is therefore not entitled to invoke the jurisdiction of this Court u/s 35G of the Central Excise Act.

22. Before us, Sri Naga Raghu, learned Counsel for the Appellant, would contend that "manufacture" is a process through which an altogether new product, from the point of utility, marketability and commercial value, is brought about and a mere change of form cannot be treated as a process of manufacture. Learned counsel submits that since the Appellants were merely breaking betel nuts into small pieces and were adding small ingredients thereto, no different product had emerged and that betel nuts continued to remain as such. Learned counsel would submit that in the absence of any process of manufacture or new product being brought into existence, the products of the Appellants could not be classified under Chapter 21 of the Tariff Act.

23. The judgments relied upon by the learned Counsel for the Appellants, shall now be examined.

24. In *Sterling Foods* (3 supra) it was held that the test which has to be applied for the purpose of determining, whether a commodity, subjected to processing, retains its original character and identity, is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade, the same as the original commodity, and that processed and frozen shrimps, prawns and lobsters could not be regarded as a distinct commodity from raw shrimps, prawns and lobsters. In *Shyam Oil Cake Ltd.* (5 supra), it was held that raw edible oil even after refining remained edible oil and no manufacture can be said to have taken place. In *Hyderabad Industries Ltd.* (7 supra), it was held that asbestos fibre removed from the parent rock was in every respect the asbestos that was embedded in it and that no process of manufacture could be said to have been employed nor a new or distinct commodity realized therefrom. In *Aman Marble Industries Pvt.Ltd.* (9 supra), it was held that cutting of marbles

blocks into slabs neither resulted in a new substance coming into existence nor did it amount to manufacture. In *Bakelite Hylam Ltd.* (10 supra) cutting or punching holes in electrical insulators was held as not amounting to manufacture. In *Pio Food Packers* (2 supra) conversion of pine apple fruit into pineapple slices, for being sold in sealed cans, was held as not amounting to manufacture since the commodity continued to possess its original identity notwithstanding the removal of inedible portions, the slicing and thereafter canning it or adding sugar to preserve it. In *Bherhaghat Mineral Industries* (12 supra) crushing of dolomite lumps into chips and powder was held as not amounting to a process of manufacture which brings about a new commercial commodity. In *Technoweld Industries* (13 supra), the process of drawing wires from wires rods was held as not amounting to manufacture since both wire rods and wires continued to remain the same product. In *Krishna Chander Dutta (Spice) Pvt Ltd.* (4 supra), whole black and white pepper and pepper powder were held to be the same goods. Similarly, whole turmeric and turmeric powder were held to be the same goods and as not amounting to manufacture.

25. Relying on the aforesaid judgments, Sri M. Naga Raghu, Learned Counsel would submit that, since betel nuts, even after their being cut into pieces, continued to remain betel nuts and are understood as such in commercial parlance, no process of manufacture is involved irrespective of the fact that it is considered as involving a process of manufacture under chapter notes of the Central Excise Tariff Act, and that they are to be classified under Chapter 8 and not under Chapter 21.

26. Learned counsel would further contend that the burden was on the department to prove that the process of manufacture had resulted in emergence of a commercially distinct commodity. *Steel Strips* (8 supra), that classification of goods is to be determined by its commercial identity, that goods must be classified as to how they are referred to in the market by those who deal with them, be it for the purpose of selling, purchasing or otherwise (*G.S. Auto International Ltd.* 11 supra), and where two opinions are possible, the assessee should be given the benefit of doubt and the opinion favourable to it should be given effect to, (*Poulose and Mathen* -14 supra).

27. On the other hand, Learned Asst. Solicitor General would contend that the judgments, referred to by the learned Counsel for the appellant, in *PIO Food Packers* (2 supra); *Sterling Goods* (3 supra); and *Krishna Chander Dutta (Spice) Pvt. Ltd.* (4 supra), which arise under Sales Tax Enactments, are inapplicable, as the word "manufacture" is defined under the Central Excise Act. Learned Counsel would place reliance on the judgment of the Full Bench of this Court, in *Panchalingal Carbonic Gas Pvt. Ltd. Panchalingala (V)*, *Panchalingal Carbonic Gas Pvt. Ltd. and Another Vs. State of Andhra Pradesh and Others*, wherein it was held that the word "manufacture" unless defined by the concerned statute (emphasis supplied) shall be taken to mean the process through which an altogether new product from the point of utility, marketability and commercial

value, is brought about and mere change of form by itself cannot be treated as a process of manufacture. Learned Assistant Solicitor General would submit that since the Central Excise Act defines "manufacture", these judgments which arise under Sales Tax enactments are of no avail.

28. Before these contentions are dealt with, it is necessary to refer, in brief, to the scheme and provisions of the Central Excise Act, the Central Excise Tariff Act and the rules and chapter notes of its First Schedule.

29. The duty of excise is leviable, under Entry 84 of List I of the VIIth Schedule, on goods manufactured, or produced. That is why the charge, u/s 3 of the Excise Act is, on all, "Excisable goods", produced or "manufactured". The expression "excisable goods " has been defined by Clause (d) of Section 2 to mean, "goods" specified in the Schedules. Rates of excise duty are specified in the First Schedule to the Central Excise Tariff Act, 1985. The First Schedule is commonly referred to as the Central Excise Tariff and contains 96 Chapters grouped in 20 Sections. It is selectively aligned with the Harmonised System of Nomenclature (HSN), an International Nomenclature adopted by more than 130 countries including India for international trade between the member countries. Explanatory Notes to HSN have a persuasive value where chapters and entries in the Tariff have been fully or broadly aligned with HSN; otherwise not. (M/s. Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat, Bakelite Hylam Ltd. (10 supra) The scheme in the Schedule is to divide the goods in two broad categories - one, for which rates are mentioned under different entries and other the residuary.

30. For classification of goods, the Central Excise Tariff contains Rules for Interpretation of the Schedule. These are Statutory Rules. Besides this, there are "Section Notes" and "Chapter Notes" which explain the scope of each Section and Chapter of the Excise Tariff. They assist in determining the classification of goods under a particular Heading or sub-heading. Section Notes and Chapter Notes are also part of the statutory Tariff, and have an overriding effect on the headings or sub-headings inasmuch as they some times expand and sometimes restrict the scope of the headings and sub-headings. If the wording of the heading/sub-heading, read with Section Notes and Chapter Notes, if any, are not clear enough to conclude the issue, resort has to be made to the Rules for Interpretation of the Schedule. For the purpose of classification, rules of interpretation contained in Chapter Notes would be given effect to in preference to the general rules of interpretation.

31. While the goods specified in the Schedule are excisable goods, whether such goods can be subjected to duty would depend on whether they were produced or manufactured by the person on whom duty is proposed to be levied. The duty of excise being on production and manufacture, which means bringing out a new commodity, it is implicit that such goods must be useable, moveable. saleable and marketable. (Moti Laminates Pvt. Ltd. v. Collector of Central Excise, Ahmedabad 1975 (76) ELT 241 (SC)). Although the duty of excise is on

manufacture or production of the goods, the entire concept of bringing out a new commodity etc. is linked with marketability. An article does not become goods in common parlance unless by, production or manufacture, something new and different is brought out which can be bought and sold. To become "goods" an article must be something which can ordinarily come to the market to be bought and sold (Union of India (UOI) Vs. Delhi Cloth and General Mills,). Therefore any goods, to attract excise duty, must satisfy the test of marketability. The tariff schedule, by placing the goods in specific and general categories, does not alter the basic character of leviability. The duty is attracted, not because an article is covered in any of the items or it falls in the residuary category, but as it has been produced or manufactured and is capable of being bought and sold. The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use.

32. The duty is levied on goods, and since the expression "goods" has not been defined, either in the Acts or the rules made thereunder, the legislature must be taken to have used that word in its ordinary, dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold. (South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, . A.P. State Electricity Board Vs. Collector of Central Excise, Hyderabad, . M/s. Hindustan Polymers Vs. Collector of Central Excise,). The essential ingredient is that there should be manufacture of goods. The goods being articles, which are known to those who are dealing in the market, having their identity as such. Marketability, is an essential ingredient in order to be dutiable under the Schedule to Central Excise Tariff Act, 1985. (Bhora Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay, . Collector of Central Excise, Baroda Vs. M/s. Ambalal Sarabhi Enterprises (P) Ltd.,).

Importance, of Chapter Notes and the Rules of Interpretation, in Classification of Goods

33. Section 11 of the First Schedule classifies vegetable products and Section IV classifies prepared foodstuffs, beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes. While Chapter 8 in Section II relates to "Edible fruit and nuts; peel of citrus fruits or melons". Chapter 21 in Section IV relates to "Miscellaneous edible preparations" Chapter 21 contains Notes 1 to 5 and supplementary notes 1 to 6. Notes 4 and 7 of Chapter 21 of the First Schedule to the Central Excise Tariff Act read thus:

Note-4

In this Chapter "Betel nut powder known as supari" means any preparation containing betel nuts but not containing any one or more of the following ingredients, namely lime katha (catechu) and tobacco, whether or not containing any other ingredients such as cardamom, copra and menthol.

Note-7

In relation to products of this Chapter, labeling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

33-A. In order to decide which is the more appropriate classification it is also necessary to refer to Rules of Interpretation prescribed under the New Tariff Act.

Rules 1, 2, 3 and 4 thereof read as follows:

1. The title of Sections and Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the provisions hereinafter contained.

2 (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles contained in Rule 3.

3. When by application of Sub-rule (b) of Rule 2 or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description....

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

34. In terms of the Rules of Interpretation of the Excise Tariff Schedule, classification has to be determined according to the terms of the headings and relative Section or Chapter Notes and the Rules of interpretation come into play and can be invoked only if the classification cannot be determined according to the terms of the headings and any relative Section or Chapter Notes and provided such headings or Notes do not otherwise require. In other words if the headings, read in the light of the Section or Chapter Notes, are clearly determinative of the classification, the Rules for Interpretation cannot be invoked.

35. The interpretative rules are required to be considered keeping in view the chapter(s) of the Tariff Act. Rule 1, of the Rules for the Interpretation of the First Schedule, states that the titles of sections and chapters are provided for ease of reference only. However, for legal purposes, the classification is to be determined according to the terms of the headings. The subject-matter of the heading is important. Once a particular subject-matter falls within the specified classification, the determination of valuation for the purpose of imposition of duty must be done according to the terms of the heading and any relative section or chapter notes unless such headings or notes otherwise do not require. The rule of interpretation, as contained in the chapter notes, would therefore be required to be given effect to for the purpose of classification in preference to the general rules of interpretation. The relevant headings in the Tariff have to be interpreted and applied in the light of the Chapter Notes which are statutory and binding like the headings themselves. These Chapter Notes sometimes expand and sometimes restrict the scope of certain headings. In other words, the scheme of the Tariff Act is to determine the coverage of the respective headings in the light of Chapter Notes. In this sense, the Chapter Notes have an over-riding effect over the respective heading,

36. Section 2(f) of the Central Excise Act defines manufacture to include any process:

- (i) incidental or ancillary to the completion of a manufactured product;
- (ii) which is specified in relation to any goods in the section or Chapter notes of (The First Schedule) to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to (manufacture; or)
- (iii) which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labeling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer, and the word "manufacture" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

37. Products, referred to in the notes under the Chapters in the Schedule to the Central Excise Tariff Act, amount to "manufacture" as a consequence of the new

inclusive definition of "manufacture", u/s 2(f) of the Excise Act whereunder activities, which otherwise do not amount to "manufacture", are treated as "manufacture" and made liable to duty. (O.K. Play (India) Ltd. Vs. Commissioner of Central Excise-II, New Delhi, .

38. The definition "manufacture" u/s 2(f) is an inclusive definition. Clause (ii) of Section 2(f) creates a legal fiction in the sense that goods, specified in the Chapter Notes as amounting to manufacture, are deemed to fall within the definition of "manufacture" u/s 2(f). It is well settled that full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The purpose and object of creating a legal fiction is well known. Once a fiction is created, upon imagining a certain state of affairs, the imagination cannot be permitted to be boggled when it comes to the inevitable corollaries thereof. (Dipak Chandra Ruhidas Vs. Chandan Kumar Sarkar, . ITW Signode India Ltd. Vs. Collector of Central Excise, , and Ashok Leyland Ltd. Vs. State of Tamil Nadu and Another, . It is also well settled that in interpreting a provision, creating a legal fiction, the court must assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction. When the law requires that an imaginary state of affairs should be treated as real, then unless prohibited from doing so, one must also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. As Lord Asquith in East End Wellings Co. Ltd. v. Finsbury Borough Council 1951 (2) All E.R. 587 at p.589, observed that having done so, you must not cause; or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs (The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others,).

39. Learned Assistant Solicitor General would contend that a process, which is specified in relation to any goods in the Section or Chapter notes of the First Schedule to the Central Excise Tariff Act, would amount to manufacture and fall within the definition of "manufacture" u/s 2(f)(ii) of the Central Excise Act. Learned Counsel refers to Notes 4 and 7 of Chapter 21 of the Tariff Act and places reliance on the judgment of the Supreme Court in O.K. Play (India) Ltd. case (32 supra) in this regard.

40. A process may be specified, either in the Section or Chapter Notes or in the Tariff Entry, as amounting to manufacture. For the deeming provision in Section 2(f), to come into play it must be specifically stated, in the chapter notes that a particular process amounts to manufacture. (M/s Shyam Cakes Ltd. (5 supra)).

40-A. "Betel nut powder known as supari" is defined, under Note-4 of Chapter-21, to mean any preparation containing Betel nuts, whether or not containing any other ingredients such as cardamom, copra and menthol.

41. The classification, in the present case, is required to be determined having

regard to the Chapter Notes. The product of the appellant falls, within the expression "Betel nut powder known as supari", as defined in Note-4 of Chapter-21, since it is not in dispute that the product is a preparation containing Betel nut. Under note 7 of Chapter-21 adoption of any other treatment to render the product marketable to the consumer is held as amounting to manufacture. In the case on hand, since Note 4 of Chapter 21 specifically states that the process indicated amounts to manufacture, the deeming provision in Section 2(f)(ii) of the Central Excise Act would apply. The products of the appellant would consequently be deemed to have undergone a process of manufacture and would be eligible to duty under sub-heading 2107-00 of Chapter 21 of the First Schedule to the Central Excise Tariff Act. The classification, of the produce in question, as provided in Rule 1 of the Rules of Interpretation of the Central Excise tariff, is determined in terms of the Chapter Notes, and thus the other Rules of Interpretation will not come Into play.

Harmonised System of Nomenclature HSN)

42. Since the controversy in this appeal is whether or not the products, of the appellants, undergo a process of manufacture, it is necessary to refer to what has been stated by the appellants themselves, in their letter dated 17-7-1997, addressed to the Assistant Commissioner, which is extracted hereunder:

The betel nuts purchased from the market will be dried in the sun and graded quality wise. Then the betel nuts will be crushed into pieces by machine and the pieces will be sieved by different sizes of sieves. By the process of crushing & sieving, big pieces, medium pieces and small pieces, along with powder will be obtained. The big pieces so obtained will be crushed again into small pieces and sieved. The screened pieces will be coated with some sweetener and dried again in the sun. Then oil, perfumes, menthol, sweetener, borneol will be added along with spices to the small pieces of nut in the mixing machine. After the mixing operation is completed, it will be taken out and packed into different sizes by way of Form-fill Sealing Machine and then it will go for manual packing into unit containers declared. For preparation of nut power without sweet, the procedure is same as that for sweet supari mentioned above, except that no sweetener coating will be given and dried....

43. Appellants contend that this process does not amount to "manufacture" and that mere crushing of betel nut into small pieces does not bring into existence a different commodity with distinct character and use, that betelnut can also be chewed with the same effect and that the additives viz., menthol, sweetener, spices etc, will not alter the character of betel nuts. Relying on the judgment of the Supreme Court in Delhi Cloth Mills (26 supra), and Hyderabad Industries Ltd. (7 supra), appellants contend that the concept of "manufacture" is not satisfied in their case, that there is no change in the nature of the product, i.e., betel nuts, that the betel nut pieces retain their identity and that no new product emerges as a result of the process that they are undertaking.

44. Relying on the judgment of the Supreme Court in "Moti Laminates Pvt. Ltd. (25 supra), appellants contend that even if their goods figure in the Tariff Schedule, such goods cannot be subjected to duty unless they are produced or manufactured. Appellants further contend that in the Central Excise Tariff Act and its Schedule there are special definitions indicating certain cases that would amount to manufacture, that in the case of Chapter 21 there is no specific definition in relation to betel nut powder and that betel nuts split into pieces would rightly fall under ch.8 of the Schedule for which the rate of duty is nil, that cut supari is not considered as a manufactured product to fall under Ch. S.II No. 2107.00, since, to fall under Ch.S.II. No. 2107.00 and for levying duty, supari must be in the form of powder.

45. Mr. M.Naga Raghu, learned Counsel for the appellant, contends that since HSN, has been expressly acknowledged to be the basis of the structure of the Central Excise Tariff Act and the tariff classification made therein, in case of any doubt, HSN serves as a guide for ascertaining the true meaning of any expression used in the Act and that the goods of the appellant, on the basis of the classification prescribed under the HSN, would not fall under Chapter-21. It is contended that "betel nuts" were classified under Chapter 8 of the Central Excise Tariff Act, 1985 which tariff was based on the explanatory notes to HSN. In terms of the Chapter notes at Chapter-8 of the HSN, fruits and nuts of the said chapter may be whole, sliced, chopped, shredded, stoned, pulped, grated, peeled or shelled. It is contended that following the HSN and Chapter Notes laid down therein, betel nut pieces cut into small pieces and added with non-essential oil/essential oils, spices, menthol etc., additives, which do not alter the basic character and use of the raw material i.e., betel nut, also merit classification under Chapter subheading No.0801.00 of the Tariff.

46. To understand the importance of the Harmonised System of Nomenclature (HSN) it is necessary to refer to the statement of objects and reasons of the Central Excise Tariff Bill 1985 which led to the Central Excise Tariff Act, 1985 being enacted. The statement of objects and reasons read as under:

Central Excise duty is now levied at the rates specified in the First Schedule to the Central Excises and Salt Act, 1944. The Central Excises and Salt Act, 1944 originally provided for only 11 items. The number of items has since increased to 137. The levy, which was selective in nature, to start with, acquired a comprehensive coverage in 1975, when the residuary Item 68 was introduced. Thus, barring a few Items like opium, alcohol, etc., all other manufactured goods now come under the scope of this levy.

1. The Technical Study Group on Central Excise Tariff, which was set up by the Government in 1984 to conduct a comprehensive inquiry into the structure of the Central excise tariff has suggested the adoption of a detailed central excise tariff based broadly on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised system) with such contractions or modifications thereto as are

necessary to fall within the scope of the levy of central excise duty. The Group has also suggested that the new tariff should be provided for by a separate Act to be called the Central Excise Tariff Act.

2. The Tariff suggested by the Study Group is based on an internationally accepted nomenclature, in the formulation of which all considerations, technical and legal, have been taken into account. It should, therefore, reduce disputes; on account of tariff classification. Besides, since the tariff would be on the lines of the Harmonised System, it would bring about considerable alignment between the customs and central excise tariffs and thus facilitate charging of additional customs duty on imports equivalent to excise duty. Accordingly, it is proposed to specify the Central Excise Tariff suggested by the Study Group by a separate Tariff Act instead of the present system of the tariff being governed by the First Schedule to the Central Excises and Salt Act, 1944.

3. The main features of the Bill are as follows:

(i) The tariff included in the Schedule to the Bill has been made more detailed and comprehensive, thus, obviating the need for having a residuary tariff Item. Goods of the same class have been grouped together to enable parity in treatment.

4. The Bill seeks to achieve the above objects.

47. It is significant, as expressly stated, in the Statement of Objects and Reasons, that Central Excise Tariffs are based on the HSN and the internationally accepted nomenclature of HSN was taken into account to "reduce disputes on account of tariff classification". Accordingly, for resolving any dispute relating to tariff classification, a safe guide is the internationally accepted nomenclature emerging from the HSN. This being the expressly acknowledged basis of the structure of the Central Excise Tariff in the Act and the tariff classification made therein, in case of any doubt the HSN is a safe guide for ascertaining the true meaning of any expression used in the Act. Any dispute relating to tariff classification must, as far as possible, be resolved with reference to the nomenclature indicated by the HSN unless there be an express different intention indicated by the Central Excise Tariff Act, 1985 itself. (*Bakelite Hylam Ltd.* 10 *supra*). For the interpretation of the Tariff Entries, harmonized system of nomenclature and its explanatory notes are relevant. (*Bakelite Hylam*); *Collector of Customs, Bombay Vs. Business Forms Ltd.* Thr. O.L., . The same expression used in the Act must, as far as practicable, be construed to have the meaning which is expressly given to it in the HSN when there is no indication in the Indian Tariff of a different intention. (*Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd.*,).

48. Placing reliance on the explanatory notes to HSN, whereunder fruits and nuts of the said Chapter may be whole, sliced, chopped, shredded, stoned, pulped, peeled or shelled, it is contended that betel nuts cut into pieces and added with non-essential and essential oils, spices etc., continue to remain nuts under

Chapter-8.

49. The explanatory notes to HSN are of no assistance to the appellant herein. If betel nuts had merely been cut into pieces, without anything more, it may have been possible to contend that in view of the explanatory notes to HSN, betel nut pieces continued to remain betel nuts. In the case on hand, however, the process detailed by the appellants themselves, in their letter addressed to the Assistant Commissioner on 17-7-1007, would reveal that:

- (1) betel nuts are dried in the sun.
- (2) It is then crushed into pieces by a machine.
- (3) It is thereafter sieved by different sizes of sieves.
- (4) the sieved pieces are coated with sweetener and dried in the sun,
- (5) then oil, perfumes, menthol, sweetener, borneol are added along with spices to the small pieces of nuts in the mixing machine;
- (6) On completion of the mixing operation, the product is packed into different sizes by way of a Form-fill sealing machine; and
- (7) then manually packed into unit containers.

50. Since betel nuts are not merely cut into pieces, but undergo an elaborate process wherein several additives are mixed thereto, it is clear that the explanatory notes to HSN have no application to the case on hand. As rightly held by the CESTAT, the end product of the process is different from the original material and a new and distinct product known as "supari powder" has emerged. We agree with the Tribunal, that on subjecting the raw material to a process of manufacture it is not necessary that there should be a transmutation since supari powder would have the character of betel nut and it cannot be said that there is no manufacture for the reason that betel nuts remain as such. The CESTAT rightly held that, while it may remain so, when other ingredients are added to it, it cannot be said that this process did not bring into existence a new and distinct commodity, that if one asked for betel nut the shop keeper would not give supari and that, in other words, betel nut was different from supari powder. The CESTAT, while holding that note 4 in Chapter 21 could not be disregarded, relied on several judgments including those of the Madhya Pradesh High Court in *S.N. Sunderson (Minerals) Ltd. Vs. Suptd. (Preventive), C. Ex.*, , the Allahabad High Court in *Kothari Chemicals Vs. Union of India (UOI)*, , and the Karnataka High Court in *Sree Ramakrishna Soapnut Works Vs. Superintendent of C. Ex.*, .

51. In a catena of judgments of the Supreme Court, referred to above it has been held that, goods to attract excise duty, must satisfy the test of marketability. For articles to be goods, these must be known in the market as such. As rightly held by the CESTAT, if a person asks for betel nut, the shopkeeper would not give him "supari powder". Marketability is essentially a question of fact (*Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Jaipur*, . The CESTAT,

as the final fact finding Tribunal, has held that betel nut known as "supari" is a marketable commodity distinct from betel nuts. We also find considerable force in the submission of the learned Asst. Solicitor General that the Appellants, themselves, had paid duty prior to 1997, treating the products manufactured by it as involving a process of manufacture, under Ch. Sub-heading No. 2107 of Chapter 21. The order of the CESTAT does not call for any interference, by this Court, even on merits.

52. The appeal fails and is accordingly dismissed.