A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) Nos.6107 of 2026
CNR No-ODHC010138442026
Along with
W.P.(C) Nos.8849, 11468, 11505 & 11510 of 2026

(In the matter of applications Articles 226 & 227 of the Constitution of India).

(In W.P.(C) No. 6107 of 2026)

Gopal Aromatic Private Limited, Cuttack	**....**	***Petitioner(s)***
	-versus-	
State of Odisha	**....**	***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s) : *Mr. C.S. Vaidyanathan, Sr. Adv.*
Mr. Vivek Kohli, Sr. Adv.
Mr. Nalin Talwar, Adv.
Mr. Manoj Gupta, Adv.
Ms. Yeshi Rinchhen, Adv.
Mr. Prashanta Kumar Nayak, Adv.
Mr. Avijit Patnaik, Adv.

For Opposite Party (s) : *Miss Gayatri Patra, ASC*
Smt. Pratima Nayak, CGC

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-06.08.2026
DATE OF JUDGMENT:-21.08.2026

Dr. Sanjeeb K Panigrahi, J.

1. Since the writ petitions arise out of the same impugned Notification and involve common questions of law and fact, they are being dealt with together by this common judgment, with W.P.(C) No.6107 of 2026 being treated as the lead matter.

2. The Petitioners in the present writ petitions challenge Notification No.2065/H&F.W. dated 21.01.2026 issued by the Health and Family Welfare Department, Government of Odisha, insofar as it is sought to be applied to chewing tobacco, with or without additives, flavours and scents.

I. FACTUAL MATRIX OF THE CASE:

3. The brief facts of the case are as follows:

(i) The Petitioner in W.P.(C) No.6107 of 2026, Gopal Aromatic Private Limited, is a company incorporated under the Companies Act, 2013 and is engaged in the business of manufacturing and selling chewing tobacco under the brand name "GOPAL".

(ii) On 21.01.2026, the Health and Family Welfare Department, Government of Odisha issued Notification No.2065/H&F.W. prohibiting the manufacture, processing, packaging, storage, transportation, distribution or sale of all food products containing tobacco or nicotine as ingredients in the State of Odisha. The prohibition was extended to food products, whether chewable or otherwise, which are flavoured or scented or mixed with additives, as well as products going by the name or form of gutkha, pan masala, flavoured or scented food products or chewable food products, by whatsoever name called. The Notification, inter alia, refers to Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, which prohibits the use of tobacco and nicotine as ingredients in any food product. It also refers to the order dated 23.09.2016 passed by the Supreme Court in ***Central Arecanut Marketing Corporation & Ors. v. Union of India***[1] and the clarification dated 17.08.2022 issued by the Food Safety and Standards Authority of India stating that tobacco has not been excluded from the definition of "food" under Section 3(1)(j) of the Food Safety and Standards Act, 2006.

(iii) Thereafter, vide clarification dated 29.01.2026, the Health and Family Welfare Department clarified that pan masala not containing tobacco or nicotine was not covered by the prohibition imposed under the Notification dated 21.01.2026.

(iv) On 30.01.2026, the Joint Commissioner, GST & Central Excise, Rourkela Commissionerate issued a letter to the concerned Assistant Commissioners referring to the Notification dated 21.01.2026 and the clarification dated 29.01.2026, requesting examination of the registrations of taxpayers engaged in the manufacture and/or trading of food products containing tobacco or nicotine and, wherever found violating, cancellation thereof after affording due opportunity of hearing. Thereafter, notices/show-cause notices dated 05.02.2026 were issued to certain manufacturers in connection with the proposed cancellation of their GST registrations.

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[1] 2016 SCC OnLine SC 1941.

(v) On 13.02.2026, the petitioner submitted a representation to the Commissioner-cum-Secretary, Health & Family Welfare Department, Government of Odisha seeking clarification that there was no prohibition on the manufacture and sale of chewing tobacco. According to the Petitioner, no response was received to the said representation.

(vi) Being aggrieved by the Notification dated 21.01.2026, the Petitioner has approached this Court by way of the present writ petition. The challenge is confined to the Notification in so far as it brings chewing tobacco, with or without additives, flavours and scents, within its ambit.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

4. The learned Senior Counsel Mr. C.S. Vaidyanathan appearing for the Petitioners made the following submissions in support of their contention:

(i) It was submitted that the impugned Notification No.2065/H&F.W. dated 21.01.2026, insofar as it brings chewing tobacco within its ambit, travels beyond the statutory framework of the Food Safety and Standards Act, 2006 (hereinafter referred to as the "FSSA") and the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011. Chewing tobacco, it was submitted, is specifically recognised as a scheduled "tobacco product" under Section 3(p) read with the Schedule to the Cigarettes and Other Tobacco Products (Prohibition of

Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as "COTPA"). According to the Petitioners, Parliament has consciously enacted COTPA as a special legislation governing cigarettes and other tobacco products and the essential character of chewing tobacco continues to remain that of a tobacco product.

(ii) It was further submitted that Regulation 2.3.4 itself maintains a distinction between "tobacco and nicotine", on the one hand, and a "food product", on the other, since it provides that tobacco and nicotine shall not be used as ingredients in any food product. According to the Petitioners, what is prohibited by Regulation 2.3.4 is the act of adding or mixing tobacco or nicotine as an ingredient in food and not tobacco or nicotine per se. It was contended that treating chewing tobacco simultaneously as "food" under Section 3(1)(j) of the FSSA and as an "ingredient" prohibited from being added to food under Regulation 2.3.4 would be internally inconsistent and would render the distinction between "food" and "ingredient" under Section 3(1)(y) of the FSSA otiose.

(iii) It was submitted that the addition of flavours, scents or other additives to chewing tobacco does not alter the essential character of the product. Reliance was placed upon the definition of "food additive" under the FSSA to contend that an additive is treated distinctly from food and that, even after addition of additives, it is tobacco which imparts the essential character to the final product. According to the Petitioners, the product itself remains chewing tobacco and cannot, merely by reason of the presence of such additives, be converted into "food" for the purposes of the FSSA.

(iv) It was further submitted that the definition of "food" under Section 3(1)(j) of the FSSA, employing the expressions "means" and "includes", is exhaustive in character and cannot be enlarged beyond its statutory content by administrative interpretation. The Petitioners emphasised that, apart from specifying the articles expressly included and excluded, the proviso to Section 3(1)(j) itself empowers the Central Government to declare, by notification and having regard to its use, nature, substance or quality, any other article as "food" for the purposes of the Act. It was therefore contended that chewing tobacco, which is neither food in its ordinary meaning nor expressly included in the statutory definition, could not be brought within the definition merely on the basis of an administrative clarification. Reliance in this regard was placed on ***Black Diamond Beverages v. Commercial Tax Officer***[2], ***P. Kasilingam v. P.S.G. College of Technology***[3], ***West Bengal Warehousing Corporation v. M/s***

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[2] AIR 1997 SC 3350.

[3] 1995 Supp (2) SCC 348.

Indrapuri[4] and ***Mahalakshmi Oil Mills v. State of Andhra Pradesh***[5].

(v) It was further submitted that reliance upon Regulation 2.3.1 of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011 to treat chewing tobacco as "food" was misplaced, since the entire provision was substituted by Notification dated 24.12.2018 and the substituted Regulation no longer refers to chewing tobacco as "food".

(vi) It was further submitted that COTPA constitutes a comprehensive statutory scheme specifically dealing with cigarettes and other tobacco products. Attention was drawn to the Schedule to COTPA, which expressly includes chewing tobacco, gutkha, snuff, pan masala containing tobacco and other specified tobacco products. Learned counsel contrasted Sections 4 to 6 of COTPA, which impose defined prohibitions upon particular activities, with Sections 7 to 10, which regulate matters relating to trade, packaging, labelling and statutory warnings. According to the Petitioners, the legislative scheme thereby demonstrates that Parliament consciously prohibited specified activities concerning tobacco while otherwise adopting a regime of regulation rather than an across-the-board prohibition of the tobacco products themselves.

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[4] (2010) 14 SCC 285.

[5] AIR 1989 SC 335.

(vii) The Petitioners further invoked the declaration under Section 2 of COTPA by which the Parliament took the tobacco industry under the control of Union Government and contended that COTPA, read with Entry 52 of List I and Entry 33 of List III, occupies the field concerning trade and commerce, production, supply and distribution of the scheduled tobacco products. It was, therefore, submitted that an executive notification issued under the FSSA could not be employed to prohibit the manufacture and trade of chewing tobacco when Parliament had specifically dealt with that very product under COTPA and had chosen the extent and manner of its regulation under the said legislative instrument.

(viii) It was also submitted that the enactment of the FSSA did not expressly or impliedly repeal COTPA. Emphasis was placed on Section 97 of the FSSA, whereby Parliament expressly repealed a number of specified enactments and orders relating to food while leaving COTPA untouched. According to the Petitioners, the express repeal of identified enactments strengthened the presumption against any implied repeal or displacement of COTPA. Reliance was placed on the settled tests governing implied repeal, namely, whether there exists a direct conflict between the enactments, whether the later law was intended to constitute an exhaustive code replacing the earlier law and whether both laws occupy the same field. It was submitted that the two enactments had continued to operate simultaneously and that no legislative intention to repeal or displace COTPA could be inferred.

(ix) The Petitioners further submitted that Section 89 of the FSSA did not alter the aforesaid position. According to them, the overriding provision could operate only to the extent of an inconsistency arising within the field governed by the FSSA and could not be expanded so as to displace a separate parliamentary enactment specifically governing tobacco and tobacco products. It was submitted that COTPA and the FSSA must therefore be construed in a manner which preserves their respective statutory fields rather than permitting an executive action under the latter to render the legislative scheme of the former otiose.

(x) In the alternative, it was contended that COTPA is, in relation to the scheduled tobacco products, a special enactment, whereas the FSSA generally regulates food and food products. The principle *generalia specialibus non derogant* was accordingly invoked to submit that a later general enactment could not, in the absence of an express legislative intention, derogate from an earlier special statutory regime. Reliance was placed, inter alia, upon ***R.S. Raghunath v. State of Karnataka***[6], ***LIC v. D.J. Bahadur***[7] and ***Maharaja Pratap Singh Bahadur v. Man Mohan Dev***[8].

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[6] (1992) 1 SCC 335.
[7] (1981) 1 SCC 315.
[8] AIR 1966 SC 1931.

(xi) It was further submitted that the order dated 23.09.2016 passed by the Supreme Court in ***Central Arecanut Marketing Corporation (supra)*** does not support a blanket prohibition on chewing tobacco as an independent product. According to the Petitioners, the order was concerned with ensuring compliance with Regulation 2.3.4 in the context of gutkha and pan masala containing tobacco or nicotine and the practice of selling pan masala and flavoured chewing tobacco separately in a manner facilitating their subsequent mixing by consumers. It was contended that the inability of the authorities to prevent such mixing cannot enlarge Regulation 2.3.4 so as to prohibit chewing tobacco itself. In support of the this contention, the Petitioners referred to the order dated 01.09.2023 of the Supreme Court staying the judgment of the Delhi High Court in LPA Nos.742 of 2022 and 748 of 2022, which had dealt with chewing tobacco under the FSSA. It was pointed out that the stay continued to operate and reliance was placed on the same to dispute the construction sought to be placed on chewing tobacco as both "food" and a prohibited ingredient.

(xii) It was submitted that the impugned Notification expressly purports to have been issued in exercise of power under Section 30(2)(d) of the FSSA. According to the Petitioners, Section 30(2)(d) merely requires the Commissioner of Food Safety to ensure efficient and uniform implementation of the standards and other requirements specified under the Act and to maintain objectivity, accountability, practicability, transparency and credibility. The provision, it was contended, does not confer an independent prohibitory power on the Commissioner.

(xiii) It was further contended that the specific power to prohibit the manufacture, storage, distribution or sale of an article of food in the interest of public health is contained in Section 30(2)(a) of the FSSA. Even that power, according to the Petitioners, is confined to an "article of food" and is expressly limited to a period not exceeding one year. It was therefore characterised as a temporary or emergency power which cannot be invoked to impose an absolute or permanent prohibition on chewing tobacco, which, according to the Petitioners, is not an article of food.

(xiv) It was further contended that the statutory limitation of one year under Section 30(2)(a) cannot be circumvented by issuing successive prohibitory notifications from year to year. According to the Petitioners, such a course would enable the executive to achieve indirectly a continuing prohibition which the provision itself permits only for a limited period.

(xv) The Petitioners further submitted that exercise of power under the FSSA is subject to the general principles contained in Section 18 thereof. According to them, the requisite risk assessment, risk analysis or risk-management exercise contemplated under the Act was not undertaken before issuance of the Notification and no material, scientific assessment or objective criteria were disclosed to justify the drastic measure of complete prohibition.

It was consequently submitted that the decision-making process suffered from non-application of mind and procedural ultra vires.

(xvi) It was also submitted that no opportunity of participation or hearing was afforded to persons engaged in the affected trade before issuance of the Notification. According to the Petitioners, the impugned administrative action substantially affected their business and, therefore, failure to consult or hear affected stakeholders was also violative of the principles of natural justice.

(xvii) It was submitted that Section 2 of the FSSA contains the declaration contemplated under Entry 52 of List I whereby Parliament has taken the "food industry" under Union control. According to the Petitioners, the expression "food industry", for the purpose of determining the constitutional field so assumed, must be understood in its ordinary and constitutional sense and cannot itself derive its amplitude from the subsequently enacted statutory definition of "food" in Section 3(1)(j). It was reiterated that legislative competence determines the permissible field of legislation and cannot, conversely, be enlarged by the manner in which Parliament thereafter chooses to define an expression while exercising such competence. Reliance in this regard was placed on ***India Cement Ltd. v. State of Tamil Nadu***[9], ***State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.***[10] and

[9] 1990 (1) SCC 12.
[10] 1959 SCR 379.

Synthetics & Chemicals Ltd. v. State of U.P.[11] In support of the ordinary and common-parlance meaning of "food", it was further submitted that the expression connotes substances consumed for nourishment, growth, repair or maintenance of the body and possessing nutritive, restitutive or promotive qualities. Reliance was placed, inter alia, upon ***S. Samuel, M.D., Harrisons Malayalam v. Union of India***[12], ***Gulati & Co. v. Commissioner of Sales Tax***[13], ***CCE v. Parle Exports***[14], ***Shah Ashu Jaiwant v. State of Maharashtra***[15] and ***Ramavatar Budhaiprasad v. Assistant Sales Tax Officer***[16]. It was further emphasised that tobacco had been judicially distinguished from "foodstuff" in the context of Entry 33 of List III. On that basis, it was submitted that the declaration concerning the "food industry" under Section 2 of the FSSA could not be construed so as to subsume the independently recognised tobacco industry.

(xviii) The impugned Notification was also assailed under Article 14 of the Constitution. It was submitted that it created an artificial distinction between smokeless tobacco, including chewing tobacco, and smoking tobacco such as cigarettes and bidis, although all of them are scheduled tobacco products regulated under COTPA. According to the Petitioners, there is no

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[11] 1990 (1) SCC 109.
[12] 2004 (1) SCC 256.
[13] 2014 (14) SCC 286.
[14] 1989 (1) SCC 345.
[15] 1976 (2) SCC 99.
[16] AIR 1961 SC 1325.

intelligible differentia having a rational nexus with the object sought to be achieved which would justify a complete prohibition upon chewing tobacco while smoking tobacco continues to remain outside the reach of the impugned Notification.

(xix) The Petitioners further contended that the State had selectively relied upon the Report on Tobacco Control in India, particularly the statistics relating to the prevalence of smokeless tobacco use, while overlooking the material in the same Report concerning deaths attributable to smoking tobacco. It was therefore submitted that the selective targeting of smokeless tobacco lacked a rational or scientific basis.

(xx) A further Article 14 challenge was raised on the ground that an expansive construction of Section 30(2)(a) would permit the Commissioner of Food Safety in one State to impose a blanket prohibition on tobacco products while the same products might lawfully be traded in another State. According to the Petitioners, such a consequence would result in similarly situated persons being treated differently depending upon the exercise of power by individual State authorities and constituted an additional reason for construing Section 30(2)(a) as not extending to products governed by COTPA.

(xxi) It was further submitted that Regulation 2.3.4 itself employs the expression "tobacco and nicotine" without qualification or limitation. According to the Petitioners, if that expression were to be understood with reference to the pre-existing statutory treatment of tobacco products under COTPA, there was no textual basis for restricting its operation exclusively to smokeless tobacco while excluding cigarettes, bidis, cigars, pipe tobacco and other forms of tobacco. It was therefore contended that the construction adopted by the State introduced, through executive interpretation, a distinction that was not apparent from the language of the Regulation itself.

(xxii) It was further submitted that, once a prima facie case of differential treatment within the class of tobacco products was demonstrated, the burden lay upon the State to establish an intelligible differentia having a rational nexus with the object of the measure. According to the Petitioners, the mere circumstance that one form of tobacco is chewed while another is smoked could not, without adequate material establishing the relevance of such distinction to the statutory object, justify complete prohibition of the former while permitting regulated trade in the latter. Reliance was placed, inter alia, upon ***D.S. Nakara v. Union of India***[17], ***B. Prabhakar Rao v. State of Andhra Pradesh***[18], ***State of Maharashtra v. Manubhai Pragaji Vashi***[19], ***R.C. Cooper v. Union of India***[20], ***Kallakkurichi Taluk Retired Officials Association v. State of Tamil Nadu***[21] and ***State of Gujarat v. Ambica Mills Ltd***[22].

[17] 1983 (1) SCC 305.
[18] 1985 Suppl. SCC 432.
[19] 1995 (5) SCC 730.
[20] 1970 (1) SCC 248.
[21] 2013 (2) SCC 772.
[22] 1974 (4) SCC 656.

(xxiii) It was further submitted that the complete prohibition imposed on the Petitioners' trade infringes the right guaranteed under Article 19(1)(g) of the Constitution and cannot be sustained as a reasonable restriction under Article 19(6). Learned counsel contrasted the impugned blanket prohibition with the legislative scheme of COTPA, which imposes calibrated restrictions concerning, inter alia, advertisement, sale to persons below eighteen years of age and sale in the vicinity of educational institutions. It was submitted that a wholesale prohibition upon the trade in chewing tobacco was disproportionate to the object sought to be achieved.

(xxiv) It was alternatively submitted that, if Section 30(2)(a) of the FSSA or Regulation 2.3.4 were construed as conferring an unrestricted power to prohibit scheduled tobacco products, they would have to be read harmoniously with COTPA so as to preserve the legislative scheme governing such products. According to the Petitioners, the prohibitory power cannot be construed as extending to tobacco products without giving rise to an unreasonable restriction on the right to trade under Article 19(1)(g).

(xxv) It was submitted that, during the Constituent Assembly Debates concerning the provision which ultimately became Article 47, a proposal specifically seeking the inclusion of "tobacco" alongside intoxicating drinks and drugs was moved but was not accepted. According to the Petitioners, the subsequent legislative approach reflected in COTPA similarly consisted of regulating the production, trade, supply, distribution, advertisement and sale of tobacco products rather than prohibiting the products themselves.

(xxvi) It was further contended that tobacco was not treated by the Supreme Court as *res extra commercium* and that Article 47 could not, by itself, confer upon an executive authority a prohibitory power which the governing statute did not otherwise provide. Reliance was placed on ***Godawat Pan Masala Products (P) Ltd. v. Union of India***[23] to contend that trade in tobacco products was not outside the protection of Article 19(1)(g). The Petitioners accordingly submitted that the Directive Principle contained in Article 47 could inform the interpretation and exercise of an existing statutory power but could not be employed to enlarge that power or to substitute an executive assessment for the regulatory policy embodied by Parliament in COTPA.

(xxvii) The Petitioners also invoked Article 21 of the Constitution, contending that the complete prohibition affects the livelihood of persons dependent on the trade, including employees, wholesalers and small-scale retailers. It was further pleaded that the Notification exposes the Petitioners and their personnel to the threat of coercive and criminal proceedings and thereby affects their liberty and livelihood.

[23] (2004) 7 SCC 68.

(xxviii) It was further submitted that the consequential proceedings initiated by the GST authorities demonstrate the immediate and cascading effect of the impugned Notification. The communication dated 30.01.2026 issued by the Joint Commissioner, GST & Central Excise, Rourkela Commissionerate, as well as the subsequent notices issued to manufacturers for cancellation of GST registrations, expressly refer to the impugned Notification. The Petitioners therefore disputed the stand that such GST proceedings were wholly independent of the Notification and contended that they were consequences flowing directly therefrom.

(xxix) The Petitioners in W.P.(C) Nos.11468 and 11505 of 2026 additionally submitted that the impugned Notification was represented in certain newspaper reports as imposing a blanket prohibition upon all tobacco products, whereas, according to them, Regulation 2.3.4 only prohibits tobacco or nicotine being mixed with food products. It is contended that such publications had caused prejudice to their business, reputation and livelihood and had thereby infringed their rights under Articles 19(1)(g) and 21 of the Constitution.

(xxx) The Petitioners further invoked the doctrine of proportionality and contended that the action failed to balance the asserted public-health objective with the economic contribution, employment, export earnings and tax revenue generated by the tobacco industry. They also alleged that the State had failed to consider what they described as the Central Government's policy of regulating rather than altogether banning tobacco trade.

(xxxi) On the aforesaid basis, the Petitioners in W.P.(C) Nos.11468 and 11505 of 2026 sought, inter alia, a clarification that the Notification does not operate as a blanket ban on tobacco products and that the prohibition applies only to tobacco mixed with food items in terms of Regulation 2.3.4. They also sought corrective directions in respect of allegedly misleading publications and protection against coercive action in the absence of a prima facie infringement of the applicable Regulations.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTY:

5. Per contra, the learned counsel for the Opposite Party Ms. Gayatri Patra, Additional Standing Counsel for the State earnestly made the following submissions:

(i) It was submitted that the challenge proceeds on an incorrect understanding of the source of power under which the impugned Notification has been issued. Notification No.2065/H&F.W. dated 21.01.2026 expressly invokes Section 30(2)(d) of the Food Safety and Standards Act, 2006 and not Section 30(2)(a), as contended by the Petitioners. According to the State, Section 30(2)(d) empowers the Commissioner of Food Safety to take measures necessary for carrying out and ensuring efficient and uniform implementation of the standards and other requirements under the FSSA. Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales)

Regulations, 2011, constitutes one such statutory requirement. It was therefore submitted that the limitations sought to be imported from Section 30(2)(a), including the one-year limitation, do not govern the impugned Notification.

(ii) It was further submitted that Regulation 2.3.4 expressly provides that tobacco and nicotine shall not be used as ingredients in any food product and that carries the force of law. The impugned Notification, according to the State, gives effect to the said statutory prohibition and to the directions issued by the Supreme Court in ***Central Arecanut Marketing Corporation (supra)***, wherein the Court took note of the practice of selling pan masala and flavoured chewing tobacco separately for subsequent mixing and directed the concerned statutory authorities to ensure compliance with Regulation 2.3.4.

(iii) It was submitted that chewing tobacco falls within the definition of "food" under Section 3(1)(j) of the FSSA. Emphasis was placed upon the wide and inclusive language of the provision, which covers articles intended for human consumption and expressly includes chewing gum. According to the State, the express inclusion of chewing gum demonstrates that actual swallowing or ingestion into the digestive system is not an essential requirement and that articles placed in the oral cavity for human consumption may fall within the statutory definition. It was further pointed out that chewing tobacco does not fall within any of the categories expressly excluded from Section 3(1)(j).

Reliance was placed upon ***Pyarali K. Tejani v. Mahadeo Ramchandra Dange***[24] in support of the wide construction of the expression "food".

(iv) The State also relied upon the clarification dated 17.08.2022 issued by the FSSAI stating that tobacco had not been excluded from the definition of "food" under Section 3(1)(j) of the FSSA. Reliance was further placed upon the decision of the Delhi High Court in ***Commissioner (Food Safety), GNCTD v. Sugandhi Snuff King Pvt. Ltd.***[25], wherein the definition of "food" under the FSSA was construed widely and chewing tobacco was held not to stand excluded therefrom. Reliance was also placed upon ***Dhariwal Industries Ltd. v. State of Maharashtra***[26], wherein the Bombay High Court treated the expression "any substance which is intended for human consumption" under the FSSA as wider than the corresponding definition under the Prevention of Food Adulteration Act and held that the mere circumstance that a product is chewed and thereafter discarded does not necessarily take it outside the statutory definition of food. The said decisions were relied upon by the State as persuasive authority.

(v) The State further disputed the reliance placed on the communication dated 10.10.2012 issued by the Deputy Director

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[24] (1974) 1 SCC 167.

[25] 2023 SCC OnLine Del 2003.

[26] 2012 SCC OnLine Bom 1370.

(Enforcement), FSSAI. It was submitted that the said communication was an earlier administrative correspondence which stood superseded by the subsequent clarification dated 17.08.2022 issued by the Regulatory Compliance Division of the FSSAI expressly recording that tobacco was not excluded from the definition of "food" under the FSSA.

(vi) Learned counsel for the State also disputed the contention that tobacco cannot simultaneously fall within the definition of "food" under Section 3(1)(j) and be prohibited as an "ingredient" under Regulation 2.3.4. It was submitted that Section 3(1)(j) is a definitional provision which determines the reach and applicability of the FSSA, whereas Regulation 2.3.4 lays down a substantive food-safety restriction. According to the State, there is no legal or logical inconsistency in a substance being regarded as food for the purposes of the regulatory framework while its use as an ingredient in another food product is simultaneously prohibited. According to her, a food product containing tobacco or nicotine as an ingredient which is squarely covered by the prohibition under Regulation 2.3.4.

(vii) It was further submitted that the substitution of Regulation 2.3.1 of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011 on 24.12.2018 does not affect the validity of the impugned Notification. According to the State, Regulation 2.3.1 does not constitute the operative source of the prohibition, which is founded upon Regulation 2.3.4 read with

Section 30(2)(d) of the FSSA. Reliance was placed on ***State of Karnataka v. Muniyalla***[27] for the proposition that mere reference to an incorrect provision would not invalidate an action where the authority otherwise possesses power under another applicable provision of law.

(viii) As regards the reliance on the communication dated 16.03.2024 and the orders passed by this Court in W.P.(C) No.34274 of 2023, it was submitted that the said proceedings pertained to the earlier Notification No.367/H dated 03.01.2013 and to the issue of consent to establish. The said Notification has since been expressly superseded by the impugned Notification dated 21.01.2026. It was therefore submitted that the earlier clarification and orders neither adjudicated the validity of the present Notification nor precluded the State from subsequently exercising statutory power upon an independent legal and factual foundation.

(ix) The State disputed the contention that COTPA which occupies the entire field so as to exclude the operation of the FSSA in relation to chewing tobacco. It was submitted that COTPA regulates, inter alia, advertisement, packaging, labelling, sale and trade-related aspects of tobacco products, whereas the FSSA operates in relation to food safety and consumable products. According to the State, the existence of COTPA does not confer any vested or indefeasible right to manufacture, store, transport,

[27] (1985) 1 SCC 196.

distribute or sell a product otherwise prohibited under a valid food-safety regime. Reliance was placed upon ***Bihar Distillery & Anr. v. Union of India***[28] to contend that a declaration under Entry 52 of List I does not, in every circumstance, exclude concurrent regulation of trade, commerce, production, supply and distribution of the products of the controlled industry.

(x) It was further submitted that Section 89 of the FSSA gives overriding effect to the provisions of the enactment in the event of inconsistency with another law. The State nevertheless maintained that no irreconcilable conflict arises in the present case because COTPA and the FSSA operate in distinct, though overlapping, statutory fields. According to the State, the two enactments are therefore capable of simultaneous operation and COTPA cannot be construed as excluding the application of Regulation 2.3.4 to food products containing tobacco or nicotine.

(xi) The counsel for the State further submitted that the reliance placed on ***ITC Ltd. v. Agricultural Produce Market Committee***[29] is totally misplaced. According to the State, the observation therein that tobacco was "admittedly not a foodstuff" was made in the context of the constitutional distribution of legislative powers under the Seventh Schedule, particularly while determining the competence of State Agricultural Produce Market legislation following enactment of the Tobacco Board

[28] (1997) 2 SCC 727.
[29] (2002) 9 SCC 232.

Act, 1975. It was submitted that the said decision did not arise under any food-safety or food-adulteration legislation and cannot be construed as a pronouncement on whether tobacco or tobacco-containing products constitute "food" under Section 3(1)(j) of the FSSA.

(xii) As regards the challenge under Article 14 of the Constitution, it was submitted that the distinction between smokeless or chewing tobacco and smoking tobacco is based on an intelligible differentia having a rational nexus with the object sought to be achieved. According to the State, cigarettes and bidis are products of combustion which are inhaled through the respiratory system and do not fall within the definition of "food" under the FSSA, whereas chewing and smokeless tobacco products are placed in the oral cavity for human consumption and are amenable to regulation under the food-safety framework. The State further relied upon the Odisha-specific Global Adult Tobacco Survey data referred to in the Notification, according to which more than 42% of the adult population in Odisha uses smokeless tobacco, as well as the IARC material classifying smokeless tobacco as a Group-I carcinogen. It was therefore submitted that the classification is rational, scientifically grounded and directly connected with the public-health object of the Notification.

(xiii) With regard to Article 19(1)(g), the State submitted that the right to carry on trade or business is subject to reasonable restrictions in the interest of the general public under Article 19(6). It was submitted that the impugned measure is supported by the public-health material referred to in the Notification, including the IARC/WHO classification of the concerned smokeless tobacco products as carcinogenic and the Odisha-specific GATS (Global Adult Tobacco Survey) data recording a high prevalence of smokeless tobacco use in the State. The State further relied on the constitutional obligation under Article 47 to improve public health and contended that the restriction bears a rational and proportionate relationship with the public-health object sought to be achieved.

(xiv) As regards Article 21 of the Constitution, it was submitted that the business interests asserted by the Petitioners cannot prevail over the right to health and preservation of life of the consuming public. Reliance was placed on ***Consumer Education and Research Centre v. Union of India***[30] and ***Parmanand Katara v. Union of India***[31] for the proposition that the right to health and medical care forms an integral facet of Article 21 and that the State is under a constitutional obligation to preserve life and public health. The State further relied on Article 47 of the Constitution and submitted that the Petitioners' plea of trade or livelihood must be examined in the light of the State's obligation to protect public health, particularly where the impugned

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[30] (1995) 3 SCC 42.

[31] (1989) 4 SCC 286.

Notification records scientific material concerning the carcinogenic or hazardous nature of smokeless tobacco and its prevalence in the State of Odisha.

(xv) With regard to the apprehension of punitive or criminal proceedings, the State submitted that such consequences arise from the enforcement of the applicable statutory prohibition and do not establish any illegality in the Notification itself. Reliance was placed on ***State of Maharashtra v. Sayyed Hassan Sayyed Subhan***[32], wherein the State contended that the Supreme Court had recognised that violation of prohibitory orders under the FSSA may also attract criminal prosecution under the applicable penal provisions.

(xvi) It was further submitted that the challenge is based on Section 18 of the FSSA and the principles of natural justice is misconceived. According to the State, Section 18 lays down general principles governing administration of the enactment and does not create a mandatory requirement of an individual pre-decisional hearing to every manufacturer or trader before issuance of a general public-health notification. It was further submitted that the impugned Notification was centered around scientific, regulatory and public-health material, including the IARC/WHO classification, GATS data, directions and clarifications of the concerned Central authorities and the order of the Supreme Court in ***Central Arecanut Marketing***

[32] (2019) 18 SCC 145.

Corporation (supra). It was, therefore, contended that the Notification could neither be characterised as unsupported by relevant material nor invalidated merely because individual traders were not consulted before its issuance.

(xvii) As regards the order dated 01.09.2023 passed by the Supreme Court in the proceedings concerning the Delhi prohibition, it was submitted that the said order is interlocutory and confined to the Delhi High Court judgment and the Delhi Government Notification which formed the subject matter of those proceedings. According to the State, it neither creates a pan-India restraint on similar notifications nor does it amount to a final declaration that tobacco falls outside the scope of the FSSA. Reference was also made to the order dated 25.04.2023 staying the judgment of the Madras High Court concerning the Tamil Nadu prohibition. It was therefore submitted that the legal issue continues to remain sub-judice and that the interlocutory order passed by the Delhi High Court cannot govern the validity of the present Odisha Notification.

(xviii) As regards the proceedings initiated by the GST authorities, it was submitted that the communication dated 30.01.2026 and the show-cause notices dated 05.02.2026 constitute independent proceedings under the applicable GST laws and contemplate due opportunity of hearing. According to the State, the Petitioners must raise their objections before the competent authority in those proceedings and the initiation of such proceedings cannot, by itself, furnish a ground for quashing the impugned Notification.

(xix) On the aforesaid grounds, it was submitted that the impugned Notification constitutes a lawful public-health measure issued for implementation of Regulation 2.3.4 under the FSSA and that the writ petitions, being devoid of merit, are liable to be dismissed.

IV. COURT'S REASONING AND ANALYSIS:

6. Heard learned counsel for the parties and perused the material placed on record.

7. Upon consideration of the rival submissions, the following issues arise for determination in the present writ petitions:

(i) Whether chewing tobacco falls within the statutory ambit of "food" under Section 3(1)(j) of the FSSA?

(ii) Whether Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 is confined to the use of tobacco or nicotine as an ingredient in another food product or extends to chewing tobacco as a product itself?

(iii) Whether the impugned Notification, which invokes Section 30(2)(d) of the FSSA, is within the scope of the power conferred under that provision?

(iv) Whether the regulation of chewing tobacco under COTPA excludes or restricts the application of the FSSA to such products?

8. Section 3(1)(j) defines "food" to mean any substance, whether processed, partially processed or unprocessed, which is intended for human consumption. The definition includes, inter alia, primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum and any substance, including water, used into the food during its manufacture, preparation or treatment. It excludes animal feed, live animals unless prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, and narcotic or psychotropic substances.

9. The Petitioners contend that the expression "food", understood in its ordinary and common-parlance sense, refers to a substance consumed for nourishment, growth, repair or maintenance of the human body and which possesses nutritive, restitutive or promotive qualities.

10. The statutory language employed in Section 3(1)(j), however, is wider. The controlling words are "any substance… which is intended for human consumption". The Legislature has not qualified those words by stipulating that, in order to constitute "food", the substance must possess nutritive value or must be consumed for nourishment, growth or maintenance of the human body. To import such a requirement into the provision would be to introduce a limitation which the Legislature itself has not enacted. The inquiry under the statutory definition must, therefore, remain confined to whether the substance in question is intended for human consumption.

11. The express inclusion of "chewing gum" lends support to the same construction. Chewing gum is ordinarily placed in the mouth, chewed and thereafter discarded, yet Parliament has specifically included it within the definition. The statutory scheme thus indicates that swallowing the entirety of an article, or its assimilation into the digestive system, is not an indispensable requirement for bringing the article within the scope of Section 3(1)(j). The expression "human consumption" must accordingly be understood in the setting of the definition enacted by Parliament rather than by reference to a narrower nutritional understanding of food or its meaning in common parlance. The circumstance that chewing tobacco is ordinarily chewed and thereafter discarded would, by itself, therefore not place it beyond the ambit of Section 3(1)(j).

12. In this context, reference may be made to the observations of the Supreme Court in ***Pyarali K. Tejani (supra)***, where the Court, while considering the definition of "food" under the Prevention of Food Adulteration Act, 1954, emphasised the width of the statutory definition and observed as follows:

> *"14. … In the field of legal interpretation, dictionary scholarship and precedent-based connotations cannot become a universal guide or semantic tyrant, oblivious of the social context subject of legislation and object of the law. The meaning of common words relating to common articles consumed by the common people, available commonly and contained in a statute intended to protect the community generally, must be gathered from the common sense understanding of the word. The Act defines "food" very widely as covering any article used as food and every*

component which enters into it, and even flavouring matter and condiments. It is commonplace knowledge that the word "food" is a very general term and applies to all that is eaten by men for nourishment and takes in subsidiaries. Is supari eaten with relish by men for taste and nourishment? It is. And so it is food. Without tarrying further on this unusual argument we hold that supari is food within the meaning of Section 2(v) of the Act."

13. The Supreme Court in ***Godawat (supra)*** also considered whether pan masala and gutka fell within the ambit of "food" under Section 2(v) of the PFA Act. Relying upon the Constitution Bench judgment in ***P.K. Tejani (supra)***, the Court held that since pan masala, gutka and supari are eaten for taste and nourishment, they are articles of food within the meaning of the said provision.

14. The Supreme Court in ***State of T.N. v. R. Krishnamurthy***[33] while considering the ambit of "food" as defined under Section 2(v) of the Prevention of Food Adulteration Act, 1954, made the following observations:

> *"7. According to the definition of "food" which we have extracted above, for the purposes of the Act, any article used as food or drink for human consumption and any article which ordinarily enters into or is used in the composition or preparation of human food is "food". It is not necessary that it is intended for human consumption or for preparation of human food. It is also irrelevant that it is described or exhibited as intended for some other use. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food. It is notorious that there are, unfortunately, in our vast country, large segments of population, who, living as they*

[33] (1980) 1 SCC 167.

do, far beneath ordinary subsistence level, are ready to consume that which may otherwise be thought as not fit for human consumption. In order to keep body and soul together, they are often tempted to buy and use as food, articles which are adulterated and even unfit for human consumption but which are sold at inviting prices, under the pretence or without pretence that they are intended to be used for purposes other than human consumption. It is to prevent the exploitation and self-destruction of these poor, ignorant and illiterate persons that the definition of "food" is couched in such terms as not to take into account whether an article is intended for human consumption or not. In order to be "food" for the purposes of the Act, an article need not be "fit" for human consumption; it need not be described or exhibited as intended for human consumption; it may even be otherwise described or exhibited; it need not even be necessarily intended for human consumption; it is enough if it is generally or commonly used for human consumption or in the preparation of human food. Where an article is generally or commonly not used for human consumption or in the preparation of human food but for some other purpose, notwithstanding that it may be capable of being used, on rare occasions, for human consumption or in the preparation of human food, it may be said, depending on the facts and circumstances of the case, that it is not "food". In such a case the question whether it is intended for human consumption or in the preparation of human food may become material. But where the article is one which is generally or commonly used for human consumption or in the preparation of human food, there can be no question but that the article is "food". Gingelly oil, mixed or not with groundnut oil or some other oil, whether described or exhibited as an article of food for human consumption or as an article for external use only is "food" within the meaning of the definition contained in Section 2(v) of the Act."

15. The aforesaid decisions were rendered under the PFA Act, and the definition considered therein is not identical to that contained in Section 3(1)(j) of the FSSA. They nevertheless remain relevant to the extent that they demonstrate the manner in which a statutory definition of "food" is to be construed, particularly where the statutory language is of wide amplitude.

16. The reliance on ***ITC Ltd. (supra)*** does not lead to a different conclusion. In the said case, the Supreme Court observed as follows:

> *"63. The subject-matter of the issue here is about the interpretation of Entry 52 in List I of the Seventh Schedule. It requires Parliament to make a declaration by law identifying an industry, the control of which by the Union is expedient in the public interest. Under the said entry only an "industry" can be declared as an industry, the control whereof by the Union is regarded as expedient in public interest. It is, therefore, implicit that if an activity cannot be regarded as industry, Entry 52 will have no applicability to that activity. The question is about the concept of "industry" in Entry 52 of List I. As already stated, the entries in the legislative list have to be construed in the widest sense cannot be disputed but it has also to be borne in mind that such construction should not make other entries totally redundant. The meaning of the word "industry" in various dictionaries, reliance on which was placed by Mr Shanti Bhushan, is not of any assistance while considering the constitutional meaning of the said term. There may not be any embargo or limitation on the power of Parliament to enact the law in respect of activities other than manufacturing activities but that power is non-existent in Entry 52 of List I. It may be elsewhere. Reference in this regard can be made to Entry 33 of List III including in its ambit foodstuff and*

certain raw materials. Tobacco, however, is admittedly not a foodstuff."

17. The Supreme Court was principally concerned with the scope of Entry 52 of List I and the respective legislative competence of Parliament and the State Legislatures in relation to the tobacco industry, particularly the sale and purchase of raw tobacco. The Court was not construing Section 3(1)(j) of the FSSA or examining whether tobacco falls within the definition of "food" under that provision. The observation made in that context cannot, therefore, be treated as determinative of the meaning of "food" under the FSSA, which contains its own statutory definition.

18. The scheme of Section 3(1)(j) also does not suggest that tobacco has been excluded from its operation as a class. The Legislature has expressly identified the articles which are to remain outside the definition of "food", and tobacco does not find place among those exclusions. The proviso to Section 3(1)(j), which empowers the Central Government to declare any other article as food having regard to its use, nature, substance or quality, does not alter the position. The proviso enables such a declaration where an article does not otherwise fall within the principal part of the definition. It cannot be read as requiring a separate declaration in respect of an article which is already covered by that definition.

19. The communication dated 10.10.2012 relied upon by the Petitioners cannot govern the interpretation of Section 3(1)(j). An administrative communication relating to licensing cannot alter, enlarge or curtail the meaning of a statutory provision. The FSSAI clarification dated 17.08.2022, stating that tobacco has not been excluded from the definition of "food", reflects the understanding of the statutory authority; nevertheless, the meaning of Section 3(1)(j) must ultimately be ascertained from the language used by the Parliament.

20. For the reasons aforesaid, this Court finds that manufactured or processed chewing tobacco intended for human consumption by chewing is not excluded from the definition of "food" under Section 3(1)(j) of the FSSA.

21. The next question is whether Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 extends to chewing tobacco as a product in itself or whether its operation is confined to cases where tobacco or nicotine is used as an ingredient in some other food product.

22. Regulation 2.3.4 provides that tobacco and nicotine shall not be used as ingredients in any food products. The Petitioners contend that the expression "as ingredients in any food products" necessarily contemplates the existence of a food product distinct from tobacco or nicotine, into which tobacco or nicotine is introduced as an ingredient. On that basis, it is argued that the Regulation prohibits the addition of tobacco or nicotine to another food product, but does not extend to chewing tobacco marketed and sold as a product in itself.

23. The term "ingredient" is defined in Section 3(1)(y) of the FSSA in the following terms:

> *"(y) "ingredient" means any substance, including a food additive used in the manufacture or preparation of food and present in the final product, possibly in a modified form;"*

A plain reading of the aforesaid provision shows that the definition does not prescribe any quantitative threshold. There is also nothing in the definition to suggest that an ingredient must necessarily be a minor or subsidiary component of the final product.

24. This construction is also consistent with Section 48(1), which, while dealing with food rendered injurious to health, recognises the use of "any article or substance as an ingredient in the preparation of the food". When Section 48(1) is read with Section 3(1)(y), the statutory emphasis is upon the use of a substance in the manufacture or preparation of food and its presence in the final product, rather than upon the extent to which such substance constitutes the final product.

25. Regulation 2.3.4 must be understood in the light of these provisions. It declares that tobacco and nicotine "shall not" be used as ingredients in any food products and does not distinguish between a product in which tobacco constitutes the predominant component and one in which tobacco is present in a lesser proportion. In the case of manufactured chewing tobacco, where tobacco is used in the manufacture or preparation of the product and remains present in the final product, the fact that tobacco constitutes the predominant component does not take it outside the statutory definition of "ingredient" in Section 3(1)(y).

26. Reliance has also been placed upon the order dated 23.09.2016 passed by the Supreme Court in ***Central Arecanut Marketing Corporation & Ors. (supra)***. In the said order, the Supreme Court noted that Regulation 2.3.4 had not been stayed and directed the authorities to ensure compliance therewith. However, that order did not finally decide whether chewing tobacco sold as an independent product falls within Regulation 2.3.4. The issue must, therefore, be determined on the language of the FSSA and the Regulations framed thereunder.

27. For the reasons stated above, this Court finds that manufactured chewing tobacco is not excluded from the operation of Regulation 2.3.4 merely because tobacco constitutes the predominant component of the product.

28. The next issue for the consideration of this Court is whether the impugned Notification, which invokes Section 30(2)(d) of the FSSA, falls within the scope of the power conferred under that provision.

29. The Petitioners contend that Section 30(2)(d) does not confer an independent power upon the Commissioner to prohibit the manufacture, storage, distribution or sale of an article of food. According to them, such power is specifically conferred by Section 30(2)(a), which permits a prohibition in the interest of public health for a period not exceeding one year, and the statutory limitation contained in clause (a) cannot be circumvented by recourse to clause (d).

30. In this regard, clauses (a) and (d) of Section 30(2) read as follows:

"(2) The Commissioner of Food Safety shall perform all or any of the following functions, namely:—

(a) prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such period, not exceeding one year, as may be specified in the order notified in this behalf in the Official Gazette;

xxx xxx xxx

(d) ensure an efficient and uniform implementation of the standards and other requirements as specified and also ensure a high standard of objectivity, accountability, practicability, transparency and credibility"

31. A reading of the two clauses shows that they operate in distinct situations. Clause (a) empowers the Commissioner to impose a prohibition, in the interest of public health, upon the manufacture, storage, distribution or sale of an article of food, subject to the temporal limitation stipulated therein. Clause (d), in contrast, concerns the implementation of standards and other requirements already specified under the FSSA. The validity of the impugned Notification must, therefore, be examined by first identifying the nature and source of the prohibition which it seeks to enforce.

32. Regulation 2.3.4 already declares that tobacco and nicotine shall not be used as ingredients in any food products. The prohibition, therefore, does not originate in the impugned Notification. The Notification dated 21.01.2026 itself refers to Regulation 2.3.4 and states that it has been issued for giving effect to the prohibition contained therein. The question is thus not whether Section 30(2)(d) may be invoked to create a prohibition which finds no support elsewhere in the statutory scheme, but whether that provision may be used for securing implementation of an existing regulatory requirement.

33. In the present case, the Notification neither seeks to substitute Regulation 2.3.4 nor seeks to create a prohibition independent of that Regulation. Its operation is founded upon the prohibition already contained therein. The exercise undertaken by the Commissioner is one of implementing an existing regulatory prohibition rather than imposing a fresh prohibition under Section 30(2)(a). The one-year period prescribed in Section 30(2)(a) governs a prohibition imposed in exercise of the power conferred by that clause and cannot be read as limiting the continued operation of Regulation 2.3.4 itself.

34. The contention relating to successive notifications must be considered in the same statutory context. A repeated exercise of the power under Section 30(2)(a) for continuing a prohibition beyond the period prescribed therein would stand on a different footing. The present Notification, however, proceeds upon the basis of the prohibition already contained in Regulation 2.3.4 and seeks to secure its implementation. The Notification must, at the same time, remain confined to the prohibition which it seeks to implement.

35. Section 30(2)(d) does not authorise the Commissioner to enlarge the scope of Regulation 2.3.4 beyond its own terms. The expressions used in the Notification concerning manufacture, processing, packaging, storage, transportation, distribution and sale must accordingly be understood in relation to products which fall within the FSSA and attract the prohibition contained in Regulation 2.3.4. The Notification cannot operate as a general prohibition upon tobacco or tobacco products falling outside the statutory field of the FSSA. When read in this manner, the impugned Notification remains confined to securing implementation of the prohibition already contained in Regulation 2.3.4 and falls within the scope of Section 30(2)(d). The limitation prescribed in Section 30(2)(a) applies to a prohibition imposed in exercise of the power under that clause and does not render the impugned Notification invalid.

36. The final issue in the present case is whether the regulation of chewing tobacco under COTPA excludes or restricts the application of the FSSA to such products.

37. The Petitioners contend that COTPA constitutes a comprehensive special enactment governing tobacco products and that an executive authority acting under the FSSA cannot convert the legislative policy of regulation embodied in COTPA into one of prohibition.

38. There is no dispute that chewing tobacco is expressly included in the Schedule to COTPA. COTPA was enacted as a comprehensive measure for tobacco control in the public interest and for the protection of public health. It prohibits the advertisement of cigarettes and other tobacco products and regulates their trade and commerce, production, supply and distribution, while also imposing restrictions concerning smoking in public places, sale to persons below eighteen years of age and within specified areas, and packaging and statutory warnings.

39. It is upon this statutory scheme that the Petitioners found their contention that COTPA occupies the field relating to tobacco products and that the FSSA cannot be invoked for imposing a prohibition inconsistent with the legislative policy reflected in COTPA. The Petitioners have placed reliance upon the decision in ***Godawat (supra)***. The Supreme Court therein examined notifications issued by the State Food (Health) Authorities under Section 7(iv) of the Prevention of Food Adulteration Act, 1954 prohibiting the manufacture, sale, storage and distribution of pan masala and gutka. Upon consideration of Section 7(iv), Sections 23 and 24 and the relevant State Rules, the Court held that Section 7(iv) was not an independent source of power for the State authority. It further held that the source of power of the Food (Health) Authority lay in the valid Rules framed under Section 24, and that such power was transitory in character, intended to deal with local emergencies and capable of operating only for a short period while the emergency continued. The Supreme Court also held that the power to prohibit an article of food, or an article used as an ingredient of food, on the ground that it is injurious to health, appropriately belonged to the Central Government under Section 23 of the PFA Act. In relation to COTPA, the Court held that it was a special enactment dealing particularly with tobacco and tobacco products and that it overrode Section 7(iv) of the PFA Act with regard to the power to prohibit the sale or manufacture of tobacco products specified in its Schedule.

40. The decision in ***Godawat (supra)*** was not founded solely upon the absence of power in the State Food (Health) Authorities under the PFA

Act. The Supreme Court also considered the legislative scheme of COTPA and noticed that, although Parliament had enacted a comprehensive law dealing with tobacco and tobacco products, it had not imposed a general prohibition upon their manufacture or sale. The Court further observed that the products specified in the Schedule to COTPA could have been subjected to a total prohibition had Parliament so intended, whereas the enactment imposed only the restrictions provided therein.

41. The present issue, however, arises under a statutory framework enacted after COTPA. The PFA Act was repealed and replaced by the FSSA in 2006, and Regulation 2.3.4 framed under the FSSA provides that tobacco and nicotine shall not be used as ingredients in any food products. The prohibition relied upon by the State thus derives from the Regulation and not from the impugned Notification.

42. Section 89 of the FSSA expressly provides that the provisions of the FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the FSSA. The effect of this provision was considered by the Supreme Court in ***Ram Nath v. State of Uttar Pradesh***[34]. It was observed:

> *"27. …The title of the Section indeed indicates that the intention is to give an overriding effect to FSSA over all "food-related laws". However, in the main section, there is no such restriction confined to "food-related laws", and it is provided that provisions of FSSA shall have effect*

[34] 2024 INSC 138.

notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the section indicates that an overriding effect is given to the provisions of FSSA over any other law.

28. The settled law is that if the main section is unambiguous, the aid of the title of the section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature.

29. Therefore, the main Section clearly gives overriding effect to the provisions of FSSA over any other law insofar as the law applies to the aspects of food in the field covered by FSSA. In this case, we are concerned only with Sections 272 and 273IPC. When the offences under Sections 272 and 273IPC are made out, even the offence under Section 59 FSSA will be attracted. In fact, the offence under Section 59 FSSA is more stringent."

The Supreme Court accordingly held that the substantive language of Section 89 is unambiguous and cannot be restricted by reference to its title or marginal note. On that basis, the Court held that Section 59 of the FSSA would override Sections 272 and 273 of the IPC. ***Ram Nath (supra)*** did not concern COTPA and therefore does not directly resolve the present issue. It nevertheless establishes that the overriding effect of Section 89 must be determined from the language of the provision itself and is not confined merely by the description contained in its marginal heading.

43. It is neither necessary nor appropriate, however, to hold that COTPA stands displaced in its entirety. No such consequence follows either from Section 89 or from the scheme of the FSSA. The two enactments are capable of substantial concurrent operation. COTPA continues to govern tobacco products in relation to the matters entrusted to it, while the FSSA operates where a product falls within its statutory field and the requirements of the Act and Regulations are attracted. Section 89 assumes significance only to the extent that an actual inconsistency remains which is incapable of being reconciled.

44. The contention based on Section 97 of the FSSA also does not lead to the conclusion urged by the Petitioners. The fact that Parliament repealed certain food laws while leaving COTPA untouched shows that COTPA was intended to continue in force. It does not automatically follow that tobacco products covered by COTPA are thereby excluded from the operation of the FSSA. Where both enactments are capable of being given effect within their respective statutory fields, there is no need to infer an implied repeal.

45. The Petitioners have also invoked the principle *generalia specialibus non derogant* to contend that COTPA, being the special enactment governing tobacco products, must prevail over the FSSA. The application of that principle, however, depends upon the subject matter in relation to which the competing statutes are compared. As recognised by the Supreme Court in ***Life Insurance Corporation of India (supra)***, an enactment may be special in one respect and general in another. COTPA is undoubtedly a special legislation in relation to the regulation of tobacco products whereas the FSSA is a special legislation governing food safety and articles intended for human consumption. The issue cannot, therefore, be resolved merely by attaching the labels of "special" and "general" to the two enactments. The question is whether the provisions can operate harmoniously and, only if an irreconcilable conflict remains, which statutory rule of priority governs that conflict.

46. The Petitioners have also relied on the declaration under Section 2 of the FSSA read with Entry 52 of List I, with the contention that the expression "food industry" must be understood independently of the statutory definition subsequently enacted in Section 3(1)(j). There can be no dispute with the proposition that Parliament cannot enlarge its legislative competence merely by defining an expression in a statute. The present case, however, does not concern any encroachment by a State Legislature upon a field occupied by Parliament. COTPA and the FSSA are both enactments of Parliament, and the impugned Notification is an executive measure issued under the latter enactment. The impugned measure also does not amount to an exercise of control over the tobacco industry. It seeks to enforce a food-safety prohibition upon the use of tobacco or nicotine as ingredients in products falling within the FSSA. The mere fact that such regulation may incidentally affect a product of a controlled industry does not make it a measure concerning control of the tobacco industry.

47. The decision in ***Bihar Distillery & Anr. (supra)*** is relevant in this context. The Supreme Court recognised that a declaration under Entry 52 of List I, whereby control of an industry is assumed by the Union, does not necessarily exhaust every legislative field concerning the products of that industry. Trade and commerce in, and the production, supply and distribution of, the products of such controlled industry fall within Entry 33(a) of List III and may therefore be regulated by both

Parliament and the State Legislatures, subject to Article 254 and to the extent the field has not otherwise been occupied by Union law.

48. Section 2 and Section 3(1)(j) form part of the same enactment and must be read together. Section 2 does not assign to the expression "food" any narrower nutritive or common-parlance meaning so as to limit the definition expressly provided in Section 3(1)(j). The declaration contained in Section 2, therefore, cannot be used to restrict the scope of that definition.

49. The Petitioners have also challenged the impugned measure under Article 14. It is contended that the distinction drawn between smokeless or chewing tobacco on the one hand and cigarettes, bidis and other smoking tobacco products on the other is arbitrary and that all products falling within the Schedule to COTPA must receive identical treatment under the FSSA. This contention, however, overlooks the manner in which Regulation 2.3.4 operates. The Regulation does not prohibit tobacco simpliciter. It prohibits tobacco and nicotine when used as ingredients in food products.

50. Cigarettes and bidis are intended for combustion and inhalation, whereas the manufactured chewing tobacco products under consideration are intended for oral consumption. The circumstance that both categories fall within the Schedule to COTPA does not render them similarly situated for the purposes of the FSSA. The words "as ingredients in any food products" employed in Regulation 2.3.4 furnish the relevant statutory distinction.

51. The Notification also refers to material concerning the prevalence and harmful effects of smokeless tobacco in the State of Odisha. The Petitioners contend that smoking tobacco entails equally serious health consequences. Even if that contention is accepted, Article 14 does not require every form of tobacco-related harm to be addressed through an identical statutory mechanism.

52. In ***Ambica Mills Ltd. (supra)***, the Supreme Court recognised that a classification does not become unconstitutional merely because the Legislature does not address every aspect of a problem at the same time. The Legislature may proceed one step at a time and confine the measure to the phase of the problem which appears most acute, provided the classification bears a rational relation to the object sought to be achieved. In the present case, the distinction is connected with the reach of the food-safety regime itself.

53. The further contention that similar products may be treated differently in different States also does not make Regulation 2.3.4 discriminatory. The Regulation is a Central regulation, and differences in the manner or degree of its enforcement by individual States cannot alter its legal content or make its implementation in Odisha unconstitutional. This Court, therefore, finds no violation of Article 14 in the application of Regulation 2.3.4 to the manufactured chewing tobacco products under consideration.

54. The Petitioners have also challenged the impugned measure as an unreasonable restriction upon their right to carry on trade or business under Article 19(1)(g) of the Constitution. In this regard, in ***Godawat (supra)***, the Supreme Court did not treat trade in tobacco as *res extra commercium*. It was observed:

> *"53. Is the consumption of pan masala or gutka (containing tobacco), or for that matter tobacco itself, considered so inherently or viciously dangerous to health, and, if so, is there any legislative policy to totally ban its use in the country? In the face of Act 34 of 2003, the answer must be in the negative. It is difficult to accept the contention that the substance banned by the impugned notification is treated as res extra commercium. In the first place, the gamut of legislation enacted in this country which deals with tobacco does not suggest that Parliament has ever treated it as an article res extra commercium, nor has Parliament attempted to ban its use absolutely. The Industries (Development and Regulation) Act, 1951 merely imposed licensing regulation on tobacco products under Item 38(1) of the First Schedule. The Central Sales Tax Act, 1956 in Section 14(ix) prescribes the rates for Central sales tax. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 prescribes the additional duty leviable on tobacco products. The Tobacco Board Act, 1975 established a Tobacco Board for development of tobacco industries in the country. Even the latest Act i.e. the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, does not ban the sale of tobacco products listed in the Schedule except to minors. Further, we find that in the Tariff Schedule of the Central Sales Tax Act there are several entries which deal with tobacco and also pan masala. In the face of these legislative measures seeking to levy restrictions and control the manufacture and sale of tobacco and its allied products as well as pan masala, it is not possible to accept that the article itself has been treated*

> *as res extra commercium. The legislative policy, if any, seems to be to the contrary. In any event, whether an article is to be prohibited as res extra commercium is a matter of legislative policy and must arise out of an Act of legislature and not by a mere notification issued by an executive authority."*

The restriction must, therefore, be tested on the touchstone of Article 19(6).

55. The object sought to be achieved is the protection of public health from tobacco and nicotine used as ingredients in products intended for human consumption. Regulation 2.3.4 has a direct nexus to that object, and the impugned Notification refers to material concerning both the harmful effects and the prevalence of smokeless tobacco.

56. The Petitioners contend that regulation rather than prohibition would constitute a less restrictive alternative. This contention cannot be accepted once Regulation 2.3.4 is held applicable as the Regulation itself provides that tobacco and nicotine shall not be used as ingredients in food products. The Commissioner cannot prescribe a permissible quantity of tobacco, or substitute a lesser restriction, where the Regulation itself does not contemplate such a course. The restriction must, however, remain within the boundaries of the Regulation. As already observed, the Notification cannot extend to articles falling outside the FSSA or to products which do not attract Regulation 2.3.4. When confined in that manner, the measure cannot be said to impose a restriction greater than that contemplated by the statutory framework.

57. The reliance placed upon the Constituent Assembly Debates concerning Article 47 does not alter this conclusion. The fact that a proposal specifically referring to tobacco was not accepted cannot be understood to mean that the Parliament is precluded from regulating tobacco-containing products in the interest of public health. Article 47 may support such regulation, but the source of the power must nevertheless be found in the statute. Accordingly, the challenge under Article 19(1)(g) read with Article 19(6) cannot be sustained.

58. The Petitioners have also invoked Article 21 on the ground that the impugned measure adversely affects the livelihood of manufacturers, distributors, wholesalers, retailers and persons employed in the trade. The right to livelihood has been recognised as an integral facet of the right to life under Article 21. That right, however, does not confer an absolute entitlement to continue a particular trade or business irrespective of a valid regulatory law. In the present case, having found that the impugned measure is authorised by the FSSA and that the restriction upon the trade satisfies Article 19(6), the consequential impact upon livelihood does not, in the absence of any distinct infirmity under Article 21, furnish an independent ground for invalidating the Notification.

59. The Petitioners have further contended that the impugned Notification is vitiated by non-compliance with Section 18 of the FSSA and the principles of natural justice.

60. Section 18 lays down the general principles to be followed by the authorities while implementing the Act, including the protection of human life and health and the adoption of appropriate risk management measures. In the present case, however, the Commissioner was not formulating the substantive prohibition through the Notification dated 21.01.2026. Regulation 2.3.4 already prohibits the use of tobacco and nicotine as ingredients in food products, and the impugned Notification seeks to secure enforcement of that existing prohibition. In such circumstances, the Commissioner cannot be required to undertake afresh the exercise which preceded the framing of the Regulation itself. The absence of a separate pre-notification hearing does not, therefore, invalidate the impugned Notification. This conclusion, however, does not dispense with any procedural safeguard prescribed by the FSSA or by any other applicable law where individual action, including suspension or cancellation of licence, adjudication, prosecution or other coercive proceedings, is initiated.

61. It is further noted that both sides have referred to interlocutory orders passed by the Supreme Court in proceedings concerning similar measures in Delhi and Tamil Nadu. Those orders do not constitute declarations of law under Article 141 of the Constitution. In the absence of a final pronouncement of the Supreme Court on the precise controversy arising in these petitions, the matters must be decided on the governing statutory provisions and the binding precedents applicable thereto.

62. This Court may now consider the challenge relating to the communication dated 30.01.2026 and the subsequent show-cause notices issued by the GST authorities. These proceedings undoubtedly refer to the impugned Notification. They, however, arise under a separate statutory framework, and their validity on grounds peculiar to the GST enactments does not fall for determination in the present writ petitions. All objections available to the concerned Petitioners in those proceedings are, therefore, left open to be considered independently by the competent authorities in accordance with law.

63. The grievance concerning newspaper publications likewise has no bearing upon either the validity or the scope of the impugned Notification. Its legal effect must be determined from its own terms read with the statute and Regulations under which it has been issued, and cannot be altered by the manner in which it may have been reported or described elsewhere.

64. In view of the discussion made hereinabove, this Court is of the considered view that Notification No.2065/H&F.W. dated 21.01.2026 does not warrant interference in exercise of jurisdiction under Article 226 of the Constitution of India.

65. It is, however, clarified that the impugned Notification shall be understood and enforced as a measure implementing Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 read with the relevant provisions of the FSSA. It shall not be construed as an independent prohibition upon tobacco or tobacco products dehors the statutory requirements contemplated under the FSSA and the said Regulation.

66. Any action taken pursuant to the Notification shall conform to the requirements of the applicable law. The GST proceedings shall be determined independently, and all objections available to the concerned Petitioners therein are left open to be considered in accordance with law.

67. Accordingly, the above-mentioned Writ Petitions stand **dismissed**.

68. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 21st August, 2026/