ITEM NO.51 COURT NO.8 SECTIONs. XVIA/IX/X/XI/XV/IVA/PIL(W)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Case (Civil) No(s). 1/2010

CENTRAL ARECANUT MARKETING COPN.& ORS. Petitioner(s)

VERSUS

UNION OF INDIA Respondent(s)
WITH
T.C.(C) No. 6/2010
T.C.(C) Nos. 12-14/2014
T.C.(C) No. 15/2014
T.C.(C) No. 16/2014
W.P.(C) No. 344/2011
W.P.(C) No. 330/2011
(With Interim Relief and Office Report)

T.C.(C) No. 95/2012
(With appln.(s) for impleadment)

T.C.(C) No. 10/2014
T.C.(C) No. 11/2014
W.P.(C) No. 141/2011
(With appln.(s) for permission to file additional documents and Office Report)

W.P.(C) No. 354/2011
(With appln.(s) for amendment of the petition and interim relief and Office Report)

W.P.(C) No. 572/2013
(With office report)

W.P.(C) No. 289/2011
(With appln.(s) for directions and intervention and Office Report)

W.P.(C) No. 69/2011
(With appln.(s) for directions and impleadment and Office Report)

T.C.(C) No. 9/2014

SLP(C) No. 16308/2007
(With appln.(s) for directions and impleadment and interim directions and intervention and urging addl. grounds and Interim Relief and Office Report)

Signature Not Verified
Digitally signed by SUSHIL KUMAR RAKHEJA
Date: 2016.09.24 12:36:42 IST
Reason:

SLP(C) Nos. 19467-19469/2007
(With appln.(s) for clarification and clarification/direction and exemption from filing O.T., impleadment and permission to file affidavit and seeking permission to raise additional grounds and interim Relief and Office Report)

SLP(C) No. 16314/2007
(With appln.(s) for exemption from filing c/c of the impugned judgment and Interim Relief and Office Report)

CONMT.PET.(C) No. 348/2011 In SLP(C) Nos. 19467-19469/2007

SLP(C) No. 16317/2007
(With appln.(s) for exemption from filing c/c of the impugned judgment and Interim Relief and Office Report)

CONMT.PET.(C) No. 37/2012 In SLP(C) No. 16308/2007
CONMT.PET.(C) No. 288/2011 In SLP(C) No. 16308/2007
CONMT.PET.(C) No. 236/2011 In SLP(C) No. 16308/2007
(With Office Report)

CONMT.PET.(C) No. 356/2011 In SLP(C) No. 16308/2007

W.P.(C) No. 304/2011
(With appln.(s) for Amendment of the petition and Office Report)

T.C.(C) No. 4/2010

T.C.(C) No. 18/2014
SLP(C) Nos. 4165-4166/2013
(With Office Report)
T.P.(C) No. 144/2015

T.C.(C) No. 21/2014
T.C.(C) No. 22/2014

T.C.(C) No. 8/2016
T.C.(C) No. 7/2016
T.C.(C) No. 6/2016
T.C.(C) No. 5/2016

T.C.(C) No. 2/2010
T.C.(C) No. 3/2010
W.P.(C) No. 131/2011
(With Office Report)

SLP(C) No. 32162/2012
(With Interim Relief and Office Report)

W.P.(C) No. 147/2013
(With appln.(s) for stay and Office Report)

SLP(C) No. 32163/2012
(With Office Report)

T.C.(C) No. 5/2010

T.C.(C) No. 25/2010
(With appln.(s) for clarification and Stay)
T.C.(C) No. 20/2014
T.C.(C) No. 38/2014
T.C.(C) No. 36/2014
T.C.(C) No. 37/2014
T.C.(C) No. 19/2014
T.C.(C) No. 34/2014
T.C.(C) No. 33/2014
T.C.(C) No. 35/2014

SLP(C) No. 28716/2012
(With Interim Relief and Office Report)
W.P.(C) No. 182/2011
(With Office Report)
T.P.(C) No. 143/2015
T.P.(C) No. 98/2015
(With Office Report)
T.P.(C) No. 21/2015
(With Office Report)
T.P.(C) No. 1919/2014
(With appln.(s) for stay and Office Report)
T.C.(C) No. 24/2014
T.C.(C) No. 25/2014
T.P.(C) No. 77/2015
(With appln.(s) for ex-parte stay and Office Report)
T.P.(C) No. 91/2015
(With appln.(s) for ex-parte stay and Office Report)
T.P.(C) No. 76/2015
(With appln.(s) for stay and Office Report)
T.P.(C) No. 111/2015
(With appln.(s) for stay and Office Report)

Date : 23/09/2016 These matters were called on for hearing today.

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UPON hearing the counsel the Court made the following

O R D E R

These matters have been heard *inter alia* on 1.9.2016, 7.9.2016, 15.9.2016, 16.9.2016, 20.9.2016 and 21.9.2016. In the course of submissions by the learned counsel, it has been stated today that longer time will be required in completing the hearing as more submissions are to be made by many learned counsel representing the parties. Thus, it may not be possible to conclude the hearing so as to enable this Bench to decide the matter within the time available.

In view of submission of the learned counsel for the parties and the learned Amicus Curiae, we direct that the matters be now listed for hearing on 9.11.2016 as first case.

At this stage, learned Amicus Curiae has invited the attention of the Court to the Order dated 3.4.2013 passed by this Court. The relevant part of the said order reads as follows:

> "Ms. Indira Jaising, learned Additional Solicitor General invited the Court's attention to notifications issued by the Government of 23 States and the Administrators of 5 Union Territories for imposing complete ban on Gutkha and Pan Masala with tobacco and/or nicotine and then stated that notwithstanding the ban, the manufacturers have devised a subterfuge for selling Gutkha and Pan Masala in separate pouches and in this manner the ban is being flouted.
>
> Ms. Indira Jaising also placed before the Court xerox copy of D.O.No.P.16012/12/11-Part I dated 27.08.2012 sent by the Special Secretary, Ministry of Health and Family Welfare, Government of India to the Chief Secretaries of all the States except the States of Madhya Pradesh, Kerala, Bihar Rajasthan, Maharashtra, Haryana, Chhatisgarh and Jharkhand and submitted that the Court may call upon the remaining States and Union Territories to issue necessary notifications.
>
> In view of the statement made by the learned Additional Solicitor General, we order issue of notice to the Chief Secretaries of the States and the Administrators of the Union Territories which have so far not issued notification in terms of 2006 Act to apprise this court with the reasons as to why they have not taken action pursuant to letter dated 27.08.2012.
>
> We also direct the Secretaries, Health Department of all the 23 States and 5 Union Territories to file their affidavits within four weeks on the issue of total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine."

Learned Amicus Curiae has also invited our attention to paragraph 21 of the Written Submissions on behalf of the Ministry of Health and Family Welfare, Government of India, in S.L.P. (C) No. 16308 of 2007, which reads as follows:

> **"21. It is most respectfully submitted that to circumvent the ban on the sale of gutkha, the manufacturers are selling pan masala (without tobacco) with flavoured chewing tobacco in separate sachets but often conjoint and sold together by the same vendors from the same premises, so that consumers can buy the pan masala and flavoured chewing tobacco and mix them both and consume the same. Hence, instead of the earlier "ready to consume mixes", chewing tobacco companies are selling gutkha in twin packs to be mixed as one"**

Learned Amicus Curiae has also pointed out that this Court has not granted any stay of Regulation 2.3.4 of the Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations, 2011 and the concerned authorities are duty bound to enforce the said regulation framed under Section 92 read with Section 26 of the Food Safety & Standards Act, 2006.

In view of the above, the concerned statutory authorities are directed to comply with the above mandate of law. We also direct the Secretaries, Health Department of all the States and Union Territories to file their affidavits before the next date of hearing on the issue of total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine.

(S. K. RAKHEJA)
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