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Government of Jharkhand
Department of Health, Medical Education & Family Welfare

File No- 16/ Khadya(Vividh)/12-06/2017 ...05(16.).....Health, Ranchi, Date: 12-01-2022

ORDER

1. WHEREAS, there is an overwhelming evidence of harms from using pan masala and pan masala mixed with magnesium carbonate, tobacco and nicotine, inter-alia causing Acute Hyper Magnesia, Cancerous and Non-Cancerous Diseases. As per the Global Adult Tobacco Survey of 2017, Gutka and Pan Masala with tobacco are prevalent forms of tobacco products available and consumed in the State of Jharkhand.
2. AND WHEREAS, report indicates a strong association between chewing tobacco usage and incidence of oral, esophageal, stomach, pancreatic, throat (pharynx and larynx) and renal cancers. In addition to cancer, the studies also show a close association between smokeless tobacco usage and different type of periodontal diseases, hypertension & cardiovascular diseases, nervous system diseases, metabolic abnormalities, adverse effects on reproductive health of both men and women including increased risk of fetal loss and higher incidence of pre-term and low birth babies.
3. AND WHEREAS, the Food Safety and Standards Act, 2006 (FSS Act, 2006) has been enacted with the objective to consolidate the laws relating to food and for laying down standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.
4. And WHEREAS, the Central and the State Governments and the Food and Drugs administration are required to follow certain principles under Chapter III of Food Safety and Standards Act, 2006, which includes an endeavor to achieve the appropriate level of protection of human life and health [(Sec. 18)(1)(a)] and, therefore, the conduct of these authorities is supposed to be always guided to take all the measures to safeguard human life;
5. AND WHEREAS, under Section 26 of the FSS Act, 2006 it's the responsibility of every food business operator to ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale and there is no sale or distribution of article of food which is unsafe or which is misbranded or sub-standard or contains any extraneous matter.

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6. AND WHEREAS, Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, enacted under the FSS Act, 2006, in exercise of the powers conferred by Section 92 read with Section 26 of the Food Safety and Standards Act, 2006, prohibits the sale of articles of food in which tobacco and nicotine are used as ingredients, as they are injurious to health.
7. AND WHEREAS, Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, prohibits the manufacture and sale of Gutkha and Pan Masala containing tobacco and nicotine.
8. AND WHEREAS, the State of Jharkhand vide notification dated 25.07.2012, has prohibited the manufacture and sale of Gutkha and Pan Masala (with tobacco and nicotine), in compliance with Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011.
9. And WHEREAS, the Hon`ble Supreme Court of India in Central Areca-nut Marketing Corporation & Others Vs Union of India & Ors (Transfer Case (C) 1 of 2010) in its order dated 23.09.2016 observed, to circumvent the ban on the sale of Gutkha or Pan Masala with tobacco and nicotine, the manufacturers are selling Pan Masala with flavoured chewing tobacco in separate sachets but often conjoint and sold together as twin packs 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. The Supreme Court of India further directed, the concerned statutory authorities of the Central and State Governments to comply with the mandate of law of Regulation 2.3.4 and ensure total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine.
10. AND WHEREAS, the Ministry of Health & Family Welfare, Government of India, has issued a letter dated 05.12.2016, requesting the State Governments to pass necessary orders in compliance of the Hon`ble Supreme Court direction/order dated 23.09.2016 in Central Areca-nut Marketing Corporation & Others Vs Union of India & Ors (Transfer Case (C) 1 of 2010) and ensure that the manufacture, storage, distribution or sale of Gutkha and Pan Masala(containing tobacco or nicotine) and any other products marketed separately to constitute as Gutkha or Pan Masala(containing tobacco or nicotine) as final product, by whatsoever name called, whether packaged or un-packaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer is prohibited.

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11. AND WHEREAS, the Food Safety and Standards Authority of India (FSSAI), has issued a letter dated 09.10.2017, requesting the Food Commissioners of all States/UT's to effectively implement the ban on manufacture, sale and distribution of Pan Masala with tobacco as ingredient in compliance with Regulation 2.3.4 and the Hon'ble Supreme Court of India order and direction dated 23.09.2016.
12. AND WHEREAS, the State of Jharkhand vide notification dated 24.07.2017, has prohibited the manufacture, storage, distribution and sale of Gutkha and Pan Masala containing tobacco or nicotine as ingredients by whatsoever name called, in compliance with Regulation 2.3.4 and the Hon'ble Supreme Court order and direction dated 23.09.2016.
13. AND WHEREAS, food and its additives in the form of scent/flavoring are also extensively used as ingredient in the manufacture or preparation of chewing tobacco. The addition of the said additives particularly flavouring or scenting ingredients to tobacco significantly increases their allure, as raw tobacco is appealing in taste or texture.
14. AND WHEREAS, the State of Jharkhand vide notification dated 18.12.2018, has prohibited the manufacture, sale, storage and transportation of chewing tobacco mixed with food or food additives, in compliance with Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011.
15. AND WHEREAS, several samples of Pan Masala on testing were found to contain prohibited ingredient magnesium carbonate which leads to Acute Hyper Magnesia. The State of Jharkhand vide notification dated 08.05.2020, has prohibited the manufacture, storage, distribution or sale of Pan Masala brands, namely, (1) Rajnigandha Pan Masala (2) Raj Niwas Pan Masala (3) Pan Parag Pan Masala (4) Sikhar Pan Masala (5) Dilruba Pan Masala (6) Musafir Pan Masala (7) Madhu Pan Masala (8) Vimal Pan Masala (9) Bahar Pan Masala (10) Sohrat Pan Masala (11) Pan Parag Premium Pan Masala, for containing Magnesium Carbonate.
16. AND WHEREAS, the Hon'ble Jharkhand High Court in PIL No. 954/2019, vide its order dated 16.10.2020 and 04.12.2020, has observed that the State Government has come up with a notification extending the prohibition on the manufacture, storage, sale and distribution activities of Gutkha and Pan Masala containing tobacco and nicotine as ingredients, to restrict the people from using tobacco and/or nicotine mixed Pan Masala or Gutkha due to the health hazard it imposes. However, since both gutkha and tobacco are openly being sold

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separately by the same shop at each and every corner of the State, it is impossible for the ban to become successful.

17. AND WHEREAS, the Ministry of Health & Family Welfare, Government of India, vide D.O. No. P-16012/14/2017-TC, dated 21st September 2017, has requested State Governments to develop a mechanism to provide permission/authorization through Municipal/Local Authority to the retail shops of tobacco products with a condition/provision in the authorization that the shops authorized for selling tobacco products cannot sell non-tobacco products such as food articles.

18. AND WHEREAS, though the State of Jharkhand through several notifications has banned the sale of Pan Masala containing Magnesium Carbonate, sale of Chewing Tobacco containing food additives and sale of twin packs of Pan Masala with adulterant Chewing Tobacco (chotu), they are still transported, stored, distributed and sold in the State at the cost of public health.

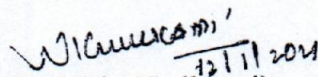
19. AND WHEREAS, it is one of the primary duties of the State, inter alia, to improve public health, as a matter one of the directive principles as enshrined in the article 47 of the Constitution of India;

20. In view of the above, there is imperative need to take strict action against sale of chewing Tobacco containing food additives and sale of twin packs of Pan Masala with adulterant Chewing Tobacco (chotu), in compliance with the notifications/orders of the State of Jharkhand and directions of the Hon'ble Supreme Court and High Court of Jharkhand and therefore ensure the following:

- a. There is no sale of chewing tobacco products which is flavoured or scented or coloured by the use of food or food additive such as spices, saffron, kewda, menthol, lime, water, oil etc for one year from the date of issuance of the order.
- b. There is no sale of twin packs of Pan Masala with adulterant Chewing Tobacco(chotu), though packaged separately but conjoint and sold from the same shop by the same vendor to circumvent Gutkha ban for one year from the date of issuance of the order.
- c. There is no transport, storage, distribution and sale of Pan Masala and Tobacco Products without genuine e-way bills and invoices for one year from the date of issuance of the order.

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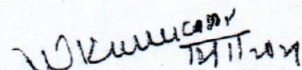
d. There is no sale of tobacco products without authorization/license issued under the Jharkhand Municipal Corporation Act of 2011 for one year from the date of issuance of the order. Further the terms and condition of license shall also envisage that tobacco products will not be sold with food articles including Pan Masala and shall comply with the tobacco control provisions envisaged under the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulations of Trade and Commerce Production, Supply and Distribution) Act 2003 and Rules, the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Food Safety & Standards Act, 2006 and its Regulations.


(Dr Nitin Kulkarni)
Principal Secretary-cum-
Commissioner of Food Safety,
Jharkhand

Ranchi, Date: 12.01.2021

Memo No- 05716)

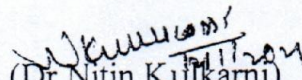
Copy to:- Director, IPRD Jharkhand for information and requested to publish this order in Regional and National Newspapers (Hindi & English) for consecutive one week for the information of general public.


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Copy to :- Deputy Secretary to Chief Secretary, Govt. of Jharkhand/ Director General of Police, Jharkhand/ All Deputy Commissioners, Jharkhand/ All SSPs/SPs Jharkhand state/ All Sub Division officer-cum Designated Officer, Jharkhand/ All Food Safety Officers, Jharkhand/ Executive Director, Socio Economic and Educational Development Society (SEEDS), Jharkhand/ for information and necessary action


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