

Supreme Court in Baidyanath on Classification of Commodity in Indirect Tax & Res Judicata (Consistency):

"The primary object of the Excise Act is to raise revenue for which various products are differently classified in New Tariff Act. In the circumstances, resort should be had to popular meaning and understanding attached to such products by those using the product and not to be had to the scientific and technical meaning of the terms and expressions used (i.e. trade parlance should be referred to). The approach of the consumer or user towards the product, thus, assumes significance.

What is important to be seen is how the consumer looks at a product and what his perception is in respect of such product. The user's understanding is a strong factor in determination of classification of the products."

"45. Before we part with the case, we may address to the plea of res judicata raised by the learned Senior Counsel for the Department. Mr. K. Radhakrishnan pressed into service few legal maxims in this regard. It is true that maxim *Nemo debet bis vexari pro una et eadem causa* is founded on principle of private justice as it states that no man ought to be twice put to trouble if it appear to the court that it is for one and the same cause. The maxim *Interest reipublicae sit finis litium* concerns the State that law suits be not protracted. This maxim is based on public policy. In our opinion, these maxims cannot be applied as a rule of thumb in the taxation matters.

In the matters of classification of goods, the principles that have been followed by the courts which we endorse - are that there may not be justification for changing the classification without a change in the nature or a change in the use of the product; something more is required for changing the classification especially when the product remains the same.

Earlier decision on an issue inter parties is a cogent factor in the determination of the same issue. The applicability of maxim *Res judicata pro veritate occipitur* in the matters of classification of goods has to be seen in that perspective"