(2003) 02 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6547 of 1997

Eureka Forbes Limited APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-02-2003

Acts Referred:

Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 2, 23
Standards of Weights and Measures Act, 1976 — Section 39

Citation : AIR 2003 AP 275 : (2003) 2 ALD 742

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M.S. Srinivasa Iyengar, for the Appellant; S.R. Murthy, SC for Central Government for Respondent Nos. 1 and 2 and Government Pleader for Civil Supplies for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner is a company incorporated under the Indian Companies Act, 1913. It has its Registered Office at Calcutta and Branch Offices all over the country. It is engaged in manufacture and marketing of vacuum cleaners and electrical consumer goods. The company represented by its Branch Manager at Hyderabad filed the writ petition seeking a Writ of mandamus declaring that the provisions of Standards of Weights and Measures Act, 1976 (Central Act No.60 of 1976) (hereinafter called the Act), and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter called, the Rules) are not applicable to vacuum cleaners manufactured/marketed by the company.

2. The circumstances leading to filing of the writ petition may be briefly noticed. The direct sales division of the petitioner deal in vacuum cleaners under trade mark "Euroclean 2000". The main unit and the accessories are purchased by the petitioner from various other manufacturers and they are placed in cartons and

warehouses. The salesmen visit the prospective customers at their houses to market the product. A demonstration of the product is given to the customers who themselves handle the product so as to test the performance. It is up to the customer to purchase the product with standard accessories and with or without optional accessories. If the customer is satisfied after demonstration the vacuum cleaner is sold by single piece and not by number. The vacuum cleaner being a consumer durable and electrical equipment cannot be sold in packaged form. So as to protect the product during transportation, handling and storage, the product is put in a cardboard box or a carton. The outer case box or carton is not a "package" as defined in the Act and the Rules. The package is not sealed and it is not intended to be a sealed package. Customer is entitled to remove the product from the cardboard box, inspect and handle, and then test the performance before buying the same. Even if the customer decides to purchase vacuum cleaner, it is up to him to take the product along with cardboard box or take the product he tested in the office of the company. In the bill/invoice the main unit price and the price of standard accessories are shown separately from the optional accessories. Therefore, vacuum cleaner delivered in carton or box for protective purpose, is not "commodity in packaged form". They are not sold by weight, measure, or number at all and they are only sold as single piece.

3. The fourth respondent, namely, Senior Inspector, Legal Metrology in the Department of Weights and Measures, Government of Andhra Pradesh visited the petitioner on 9.10.1996 and seized five boxes containing five Euroclean vacuum cleaners alleging that the petitioner has contravened the provisions of Section 39 of the Act read with Rules 23(6) and 23(7) of the Rules. The petitioner received notice on 31.1.1997 informing that prosecution would be launched if the offence is not compounded u/s 73 of the Act. The petitioner sent a reply explaining that the Act and the Rules have no application to vacuum cleaners and requested for personal hearing. The respondents indicated that they are not accepting the stand of the petitioner and informed that charge sheet would be filed in criminal case against the petitioner. The Branch Manager was requested to furnish the names of the Directors of the petitioner-company to prosecute them under the provisions of the Act read with various Rules. Therefore, the writ petition is filed seeking declaration as noticed hereinabove.

4. The Deputy Controller (Headquarters), Department of Legal Metrology filed a counter-affidavit on behalf of respondents to the following effect. The fourth respondent seized five packages of vacuum cleaners from the premises of the petitioner on 28.1.1997 which were intended to be sold. The packages sealed are "packaged commodity" within the meaning of the Rules and it is not necessary that the package should be sealed or closed. The package in question answers the description of prepackaged commodity as defined in Rule 2(1) of the Rules. Mere opening of the package for the purpose of testing and demonstration does not change the nature of the prepackaged commodity. The packages seized have markings on the packages which answer the description of the combination package as defined in Rule 2(c) of the Rules. The package consists one carpet

brush, flexible hosepipe telescopic extension tube, floor brush etc., and therefore it is a combination package. As vacuum cleaner is sold along with these accessories it is a prepackaged commodity and the package is retail package. As seen from the markings on the packages seized they contain accessories of vacuum cleaners and therefore it is governed by the provisions of the Act and the Rules. The accessories are wrapped separately with declaration of sale price as required under Rule 15 of the Rules. The vacuum cleaner is sold by piece and the same is nothing but a single article or part or portion of anything. The piece comes within the description of "number", as the package consists of one number of vacuum cleaner, one number of carpet brush, one number of flexible hosepipe etc. These items should be deemed to be sold in terms of number and markings on the package confirm this aspect. The package containing vacuum cleaner''s accessories in carton or box for the purpose of protection does not cease to be pre-package commodity as long as it answers the description intended for sale either in retail or wholesale trade. The seizure is justified and the writ petition is not maintainable as the petitioner is entitled to raise all the pleas before the Criminal Court.

5. The learned Counsel for the petitioner, Sri M.S.Srinivasa Iyengar, submits that the Act and the Rules are not applicable to vacuum cleaners manufactured and marketed by the petitioner. The vacuum cleaners are not "commodity in packaged form" within the meaning of the term in Section 2(b) of the Act. The commodity in packaged form is salable only in packaged form and not otherwise. Vacuum cleaner is always sold by piece and not by way of measure or numbers, and they are kept in paper boxes or cartons only to protect them from dirt or dust during transit and while storing and handling. As the product is not covered by the Act or the Rules, the company is not obliged to comply with the provisions of Section 39 of the Act. The petitioner''s salesmen demonstrate the vacuum cleaners to a prospective customer either at the latter''s home or at the petitioner''s office. A customer will buy the produce without optional accessories and when the product is delivered he might take without outer wrapper, carton or box or may like to take home altogether different wrapper carton according to his convenience. Vacuum cleaners are always displayed in the petitioner''s office openly and they can be sold as such. Hence, it is not "commodity in a packaged form". He would contend that the seizure of vacuum cleaners by the respondents and the threat of launching prosecution is illegal, arbitrary and without jurisdiction. The learned Counsel placed reliance on an unreported judgment of High Court of Judicature at Madras in Philips India Ltd. v. Union of India, Writ Petition Nos.7695 and 7696 of 1991 dated 31 -7-2001, and another unreported judgment of this Court rendered by Hon''ble Sri Justice 5. Ananda Reddy in Pieco Electronics and Electricals Ltd. v. Union of India, Writ Petition No.1 1966 of 1991, dated 5-9-2002.

6. Learned Government Pleader, for Civil Supplies while reiterating the various contentions raised in the counter-affidavit submits that the vacuum cleaner and standard accessories are sold as one unit. These are kept in cardboard box and

therefore they come within the definition of commodity in packaged form. She also submits that when the commodity is sold by number, the manufacturer/ dealer is required to comply with the requirements of law, especially when the product is sold and delivered in a package.

7. In the background of rival submissions, the only question that arises for consideration is whether vacuum cleaners manufactured and marked by the petitioner-company are covered by the Standards of Weights and Measures Act, 1976, and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

8. The Standards of Weights and Measures Act, 1976 is intended to establish standards of weights and measures, and to provide for other related matters. It is also intended to regulate inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, besides establishing standards of weights and measures length, area, volume, mass, temperature, force, pressure, energy and power etc. The Act also lays down the modalities of manufacturing, packing and/ or selling commodity in a packaged form. The Act applies to commodities in packaged form and the commodities which are not sold in packaged form, but not all products which are sold in non-packaged form are covered by the Act and the Rules. Being a regulatory law made by the Parliament in exercise of police power of the State, it needs strict interpretation of the provisions, especially when the law has a tendency to confront free exercise of fundamental right under Article 19(1)(g) of the Constitution of India.

9. Which are the products/ commodities covered/governed by the Act and the Rules ? As we are concerned with the commodity which is essentially sold by number, that too by a single number, it is not necessary to refer to various other provisions of the Act and the Rules. Suffice to refer to only relevant provisions of the Act and the Rules.

10. Section 2(b) of the Act defines "commodity in packaged form" as to mean commodity packaged whether in any bottle, tin wrapper or otherwise, in units suitable for sale, whether wholesale or retail. Section 2(n) of the Act defines "label" as any written, marked, stamped, printed, or graphic matter affixed to, or appearing upon, any commodity or package containing any commodity. Section 39 of the Act, on which emphasis is laid by both the learned Counsel, is the only Provision which appears in Chapter-IV which applies to commodities in packaged from. It provides that a person who makes, manufactures or sells any commodity in packaged form, to which Section 39 of the Act applies shall have to do so by attaching a label in the prescribed manner. The label has to disclose the identity of the commodity in the package, quantity in terms of weight or measure of the commodity in the package, and if the unit is sold by number the accurate number of the commodity contained in the package. Each package shall bear the name of the manufacturer, and also of the packer or distributor. Sub-sections 1 to 4 of Section 39 of the Act are relevant and they read as under.

39. Quantities and origin of commodities in packaged form to be declared : - (1) No person shall-

(a) make, manufacture, pack, sell, or cause to be packed or sold; or

(b) distribute, deliver, or cause to be distributed or delivered; or

(c) offer, expose or possess for sale,

any commodity in packaged form to which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of-

(i) the identity of the commodity in the package;

(ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;

(iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;

(iv) the unit sale price of the commodity in the package; and

(v) the sale price of the package.

Explanation :--In this sub-section, the expression "unit sale price" means the price according to such unit of weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall also bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on a package or label as to the net weight, measure or number of the contents thereof shall not include any expression which tends to quality such weight, measure or number:

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words "when packed".

Explanation :--The words "when packed" shall not be used in any case except a case to which the proviso to Sub-section (4) applies.

Yet another relevant provision is Section 32 of the Act which reads as under:

32. Use of weights only or measures only in certain cases :--(1) The Central

Government may, by rules made in this behalf, direct that in respect of the class of goods or undertakings or users specified therein, no transaction, dealing or contract shall be made or had except by such weight, measure or number as may be specified in the said rules.

(2) Any rule made under Sub-section (1) shall take effect in such area, from such future date and subject to such conditions, if any, as may be specified therein.

11. Section 32 of the Act as seen from above empowers the Central Government to make Rules in that behalf directing that no transaction shall be made except by weight, measure or number as may be specified in the Rules in respect of closed goods or undertakings or users specified in the Rules.

12. Delegated legislation in terms of the power u/s 83 of the Act covers the field of packaged commodities. These Rules define pre-packed commodity in terms of Rule 2(1) as under.

2(1) "pre-packed commodity" with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification, and the expression "package" wherever it occurs, shall be construed as a package containing a pre-packed commodity;

Explanation (I) :--Where, by reason merely of the opening of a package, no alteration is caused to the name, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these rules, to be a prepacked commodity, for example, an electric bulb or fluorescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity.

Explanation (II) :--Where a commodity consists of a number of components and these components are packed in one, two or more units for sale as a single commodity, such commodity shall be deemed, for the purpose of these rules, to be a pre-packed commodity.

13. The terms combination package, group package, multi-piece package are also defined by Rule 2(c), 2(g) and 20) respectively, to which a reference may be made at appropriate place. Be that as it is, pre-packaged commodity is a commodity which without the purchaser being present is placed in a package so that the quantity of the product contained therein has predetermined value and such value cannot be altered without the package or its lid or cap being opened or undergoing a perceptible modification. The expression ''package'' shall be construed as a package containing a pre-packed commodity. Explanation (I) of Section 2(1) of the Act further elaborates that even though the package

containing the commodity is opened for testing commodity and even if no alteration is caused to the name, quantity, nature or characteristic of such commodity, it is treated as pre-packed commodity, eg., electric bulb or fluorescent tube. Explanation (II) elucidates that a commodity consisting of number of components and packed in one, two or more units for sale as a single commodity is also deemed as pre-packed commodity.

14. The Rules contain as many as IX Schedules. These deal with maximum permissible errors in relation to quantity contained in the individual package, the specified quantities with which the commodities are packed and method of declaration to be made on the package as required u/s 39 of the Act. There are corresponding Rules which deal with these aspects. As observed by me supra the Act and the Rules do not apply to all the commodities. Indeed, Rule 3 of the Rules in Chapter II of the Rules stipulates that the provisions applicable to packages intended for retail sale and expression package wherever it occurs shall be construed accordingly.

15. Therefore, Rule 3 read with the definition of pre-packed commodity in Rule 2(1) of the Rules as well as the definition of commodity in packaged form as defined in Section 2(b) of the Act would lead to a conclusion that unless the manufacturer, packer or retailer intends to sell commodity in a packaged form as a pre-packed commodity or commodity in packaged form the Act and the Rules have no application. There are internal aids in the Legislature to support this conclusion. In interpreting a law which includes delegated legislation the statute should be read as a whole, then chapter by chapter, Section by Section and words by words. When there is ambiguity, obscurity or inconsistency in the statute or provision, an effort must be made to give effect to all the parts of the statute and no word or no provision can be treated as surplusage. There is a presumption in law that Legislature would not use the words which are superfluous or surplusage. The intention of the Legislature can best be deduced by reading the statute as a whole and the language used keeping in view the objects for which the law has been enacted. While doing so, plain meaning of the words cannot be ignored. They should be ordinarily interpreted without adding, altering or modifying words and without stretching the meaning of the plain words used in the statute. (See Bhavnagar University v. Palitana Sugar Mills Pvt Ltd 2002 AIR SCW 4939.)

16. Yet another settled principle of interpretation of statutes is that while interpreting plain language of a statute, the text and context need to be the basis. A reference may be made to Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others, It was held by the Apex Court:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

17. Rule 13 of the Rules deals with Units of Weight, Measure or Number. As per Sub-rule (5) thereof when a commodity is packed by number, such number shall be expressed on the package in international form of Indian numerals, and every package intended to be sold by number shall be packed in the manner specified in the Sixth Schedule. Sixth Schedule to the Rules reads as under.

Where any commodity is packed by number, such packing shall be made, unless otherwise provided in these rules, in the following manner, namely-

(a) where the number is less than ten, by the integral number;

(b) where the number exceeds ten but does not exceed one hundred, in multiplies of five;

(c) where the number exceeds one hundred but does not exceed five hundred in multiplies of ten;

(d) where the number exceeds five hundred but does not exceed one thousand, in multiplies of fifty;

(e) where the number exceeds one thousand, in multiplies of one hundred.

18. Rule 13(5) of the Rules read with Sixth Schedule is important to construe the Rules insofar as this case is concerned. Rule 13(5) of the Rules commence with the words "when any commodity is packed by number...". When the commodity is packed by number as per Sixth Schedule, if the number is less than ten a declaration shall be made by integral number. A vacuum cleaner is sold as a single piece and when the customer visits the office of the petitioner it is not in a pre-packed commodity nor can it be packed, be deemed as commodity in packed form. Therefore, Rule 13(5) of the Rules and the Sixth Schedule have no application. Even otherwise, as one piece is sold, I fail to understand how it can be expressed by integral number of one. This is a strong circumstance to show that when a vacuum cleaner is sold as single piece without any package, the Act and the Rules have no application.

19. In the affidavit the petitioner has disclosed that they have method of direct marketing and when the sales executives visit the residence of the prospective customers the vacuum cleaner is not taken in a packaged form. It is

demonstrated as a machine and carried as such. This is not denied by the respondents. Therefore, the conclusion is irresistible that the commodity manufactured and marketed by the petitioner, i.e., vacuum cleaner not being a pre-packed commodity, did not comply with the standards set out in the Act and the Rules. I may, however, hasten to add that this does not, however, mean that whenever a commodity is sold as a single piece it is totally excluded from the ambit of the Act and the Rules. Explanations-I and II to Rule 2(1) of the Rules (pre-packed commodity) would not lead to such interpretation. Be that as it may, when once the commodity is offered for sale in only packaged form, the manufacturer or retailer has to comply with the Act and the Rules, and not otherwise.

20. Yet another circumstance to arrive at the conclusion is that the vacuum cleaner to a common man is a machine intended to be used for various chores of cleaning and dusting. It is not possible to infer that machine requires packing. When we speak of vacuum cleaner, we are not only speaking hand-held vacuum cleaner, and there could be vacuum cleaners with huge capacity and it will not be possible to construe such all machines require packing. It should not be forgotten that though schedules 1 to 5 enumerate various commodities, vacuum cleaner is conspicuous by absence.

21. In Philips India Ltd. v. Union of India (supra) the Madras High Court considered the question whether televisions, video and audio players or speakers manufactured by Philips India Limited are covered by the provisions of the Act and the Rules and whether the said products fall outside the purview of the Act and the Rules. On examining various provisions of the Act and the Rules, the Court pointed out that the Act and the Rules are applicable to commodities which are incapable of sale in any manner other than packaged form and that the law in question has no application to packages which are packed only for the convenience of the customers for the purpose of safe transportation and for protection during storage and handling. It was held:

The rule applies to commodities in packed form or are intended or likely to be sold, distributed or delivered or offered or displayed for sale, distribution or delivered or stored. The expression "pre-packed commodity", in my considered view, would mean and include a commodity which is placed in a package of whatever nature so that the quantity or product contained therein has a pro-determined value and contents of such carton cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification.

22. This Court in Pieco Electronics and Electricals Ltd. v. Union of India (supra) considered the question as to whether the Act and the Rules apply to the products manufactured and sold with trade mark ''philip'' and ''philivision''. Following the judgment of the Madras High Court in Philips India Ltd. v. Union of India (supra) this Court held:

All the manufactured goods of the petitioner-company are not pre-packed, as contemplated under the provisions of the Act and the Rules. In fact, the Act is not intended to cover all the manufactured goods kept in the packages, but limited to the packaged commodity, which are being sold by weight, or measure, or numerals, which are being sold in the packed form without unpacking such packaged commodity at the time of sale.

23. These two precedents support the view taken by me that a vacuum cleaner though is provided a protective cover during transportation and handling and even for delivery to the customer after purchase, cannot be treated as ''pre-packed commodity'' or ''package'', it is not required to be sold in packed form. The prospective customer is at liberty to see the product and its demonstration and then buy the same with or without accessories. The mere fact that the petitioner prints the description of the product and its technical data does not make the Euroclean as a commodity in packed form or pre-packed commodity.

24. The contention of the respondents that vacuum cleaner falls within the definition of ''combination package'' as defined in Rule 2(c) of the Rules and therefore covered by the provisions of the Act and the Rules is devoid of any merit. As per Rule 2(c) of the Rules ''combination package'' means a package intended for retail sale, containing two or more individual packages, or individual pieces, of dissimilar commodities. When a vacuum cleaner is purchased, standard accessories form part of the unit. They are inseparable pails of the vacuum cleaner without which the utility of the machine will be nil. Vacuum cleaner with its standard accessories is sold as one single unit and it cannot be treated as ''combination package'' or ''group package''.

25. In the result, for the above reasons, the Writ Petition is allowed as prayed for, without any order as to costs.