
(2007) 10 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 223 of 2007

Hindustan Lever Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 15,
16, 17, 17(1), 17(2)

Citation : (2012) 276 ELT 500

Hon'ble Judges : S.P. Kukday, J;P.V. Hardas, J

Bench : Division Bench

Advocate : Sunil Manohar, for Joydeep Chatterji, for the Appellant; N.H. Borade, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.V. Hardas, J.—This petition under Article 226 of the Constitution of India prays for issuance of a writ of Mandamus or appropriate Writ for quashing and setting aside the impugned order dated 19-1-2007 passed by the Controller of Legal Metrology, Maharashtra State, in Appeal No. LM-14/Appeal/HLL(2)07/679. The petitioner vide prayer clause (C) has also prayed for quashing and setting aside the impugned seizure recorded under Seizure Memo No. 74893 dated 22nd August, 2006.

2. Facts in brief as are necessary for the decision of this petition may briefly be stated thus :

The second respondent who is Inspector of Legal Metrology visited the warehouse of carrying and forwarding agents of the petitioner company at Aurangabad on 22-8-2006 and seized 247 boxes containing multipiece packs of "Pears - pure and gentle" and "Pears - complete care" bathing bars on the allegations that the impugned packages did not comply with the provisions of Rule 17(2) of the Standards of Weights and Measures (Packaged Commodities)

Rules, 1977 inasmuch as the petitioner herein had not imprinted on the individual soaps contained inside the packages a declaration "not for loose sale" The aforesaid seizure of 247 boxes containing the bathing bars is made vide seizure memo No. 74893 dated 22nd August, 2006. According to the petitioner, the petitioner replied to the seizure of the said bathing bars by its letter dated 24-8-2006 pointing out that as per Rule 17, the declaration is required to be given on the outer multipiece package and not on individual pieces inside the multipiece pack. The petitioner thereafter filed an appeal under the provisions of the Standards of Weights and Measures (Enforcement) Act, 1985 before the Controller of Legal Metrology, Maharashtra State, i.e. respondent No. 2 herein. The said appeal was heard on 9-1-2007 and then reserved for orders. Ultimately, in the first week of March, 2007 the petitioner received a copy of the order dated 19-1-2007 dismissing the appeal filed by the petitioner.

3. The appellate authority came to the conclusion that it was incumbent for the petitioner herein to have declared on each individual piece that it was not intended for retail sale and such a declaration on the outer pack would not amount to sufficient compliance of the statutory provision. The appellate authority therefore dismissed the appeal.

4. Notice of this petition had been issued to the respondents and the respondents have filed the affidavit of Kiran Hirasingh Rathod, Deputy Controller of Legal Metrology, Aurangabad Region, Aurangabad. In the affidavit in reply, the contention of the appellate authority are reiterated by stating that it was incumbent for the petitioner to have made the declaration in accordance with Rule 17(2) on each individual bars of soap contained in multipiece pack. It is also submitted that the second respondent has filed a Criminal case, viz. S.C.C. No. 140 of 2007 on 22-2-2007 and the said criminal case is pending.

5. Before we advert to the submissions advanced before us by Mr. Sunil Manohar, learned Counsel appearing on behalf of the petitioner and Mr. Borade, learned A.P.P. appearing on behalf of the respondents No. 1 and 2, it would be useful to refer to Rule 17(2). Rule 17(2) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 reads thus :

17. Additional declarations to be made on the multipiece packages :

(1) Every multi-piece package shall bear thereon, in addition to the declaration required to be made under any other provisions of these rules, a declaration of -

(a) the number of individual pieces contained therein;

(b) the retail sale price of the multi-piece package :

Provided that where individual pieces contained in a multi-piece package are packaged or labelled separately and are capable of being sold separately each piece shall bear thereon a declaration as to the quantity and the retail sale price thereof.

(2) If individual pieces contained in the package do not carry retail sale price, it shall carry a declaration that they are not intended for retail sale.

6. Mr. Sunil Manohar, learned Counsel appearing on behalf of the petitioner has urged before us that the word "it" in sub-rule (2) refers to the outer package i.e. multi-piece package and not the individual pieces. Therefore, according to the learned Counsel for the petitioner, a declaration on the outer package that the individual pieces contained in the multi-piece package are not intended for retail sale would amount to sufficient compliance of Rule 17 of the Rules. The learned A.P.P. appearing on behalf of the respondents has submitted before us that sub-rule (2) of Rule 17 relates to the individual pieces of commodity contained in the multi-piece package, and therefore, it was incumbent for the petitioner to have made a declaration on the individual pieces contained in the multi-piece package that the individual pieces were not entitled for retail sale.

7. Perusal of Rule 17 shows that every multi-piece package shall bear certain declarations in addition to the declarations which are required to be made under any other provision of the Rules. The declarations which are required to be made in addition to the other declarations on the multi-piece package are (i) the number of individual pieces of the commodity contained in the package and (ii) the sale price of the multi-piece package. The proviso to sub-rule (1) of Rule 17 states that in cases where the individual pieces contained in the multi-piece package are packaged or labelled separately and are thus capable of being sold separately as each individual piece, the individual piece shall bear a declaration regarding the quantity and the sale price. Thus, sub-rule (1) and the proviso contemplated a situation where the individual pieces contained in a multi-piece package are packaged or labelled and are capable of being sold separately, they should bear a declaration regarding the quantity and the retail price.

8. In the present case, the multi-piece package contains three individual pieces of bathing bars which are wrapped in a transparent polythene to protect it from deterioration. The individual soap bars in the multi-piece package are not either packaged or labelled separately and consequently are not capable of being sold individually. The individual bathing bars in the multi-piece package which are wrapped in the transparent polythene cover also do not bear any retail price. This inevitably follows that these individual pieces packaged in a multi-piece package are incapable of being sold individually. Sub-Rule (2) of Rule 17 contemplates that in case individual pieces contained in the package do not carry any retail price, the outer cover should carry a declaration that the individual pieces are not intended for retail sale. The word "it" would refer to the multi-piece package i.e. outer cover of the multi-piece package and the word "they" would refer to the individual packages. As pointed out by us above, since the individual pieces in the multi-piece package are neither packaged or labelled or are capable of being sold individually, sub-rule (2) of Rule 17, according to us, mandates the imprinting of a declaration that the individual pieces are not intended for retail sale.

9. The proviso to sub-rule (1) states that in the event the multi-piece packages are capable of being sold separately and are packaged and labelled accordingly they should bear the requisite declaration regarding the quantity and the retail price. Sub-rule (2) contemplates a situation where the individual pieces in the multi-piece package are neither packaged or labelled nor are capable of being sold individually, the outer cover should contain a declaration that the individual pieces are not meant for retail sale. Undisputedly, in the present case, the outer cover of the multi-piece package contains a declaration that the individual units of the multi-piece pack are not for loose sale. Since the individual pieces in the multi-piece pack are neither packaged nor labelled, so as to render the individual sale possible, a declaration on the outer wrapper that the individual units are not meant for retail sale, according to us, would be compliance of sub-rule (2) of Rule 17. In our considered opinion, therefore, declaration on individual pieces particularly when the individual pieces are neither packaged or labelled or are being capable of being sold separately, is not necessary to be printed. A declaration to that effect on the outer cover of the multi-piece pack would amount to compliance of sub-rule (2) of Rule 17.

10. The learned Counsel for the petitioner has brought to our notice a Notification dated 17-7-2006. By virtue of this notification, provisions of Rules 15, 16 and 17 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 stand deleted with effect from 13-1-2007. Thus, sub-section 17(2) of the said Rules stands deleted with effect from 13-1-2007.

11. In the light of what has been held by us above, according to us, this petition deserves to succeed. We accordingly make the Rule absolute in terms of prayer clauses (B) and (C). We further direct the respondents to deliver the seized articles to the petitioner company within a period of four weeks from today. In the circumstances, there will be no order as to costs.