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**(2008) 04 KAR CK 0032**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 9051 of 2005**

Khaitan Electricals Ltd.

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 02-04-2008

**Acts Referred:**

Standards of Weights and Measures (Packaged Commodities), Rules, 1977 — Rule 39, 6 (1) (d), 83 (2) (zd)

**Citation :** AIR 2008 Kar 168 : (2011) 267 ELT 185 : (2008) ILR (Kar) 3370 : (2009) 2 KarLJ 64 : (2008) 3 KCCR 1616

**Hon'ble Judges :** A.S. Bopanna, J

**Bench :** Single Bench

**Advocate :** Khaitan Electrical Ltd, for the Appellant; N. Devhadass and CGSC for R1 and R.B. Sathyanarayana Singh, HCGP for R-2, for the Respondent

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## Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking for issue of writ of certiorari to quash the compounding notices in case No. 61687 dated 20.1.2005 and 18.2.2005 which are impugned at Annexure-A and Al. The petitioner has also sought for a writ to declare Rule 6(1)(d) of Standard Weights and Measures(package and commodities) Rules 1977 ("the Rules" for short) as ultravires of the Standard Weights and Measures (package and commodities) Act, 1976 ("the Act" for short).

2. The case of the petitioner is that they are engaged in selling ceiling fans all over the country including Andhra Pradesh and Karnataka. The petitioner packs the ceiling fans in two separate packages. The main motor with rod and shackles etc is packed in one package without the blades. The blades are packed separately. The main motor with top and bottom canopies are packed in square corrugated box package. The base area of package is left blank. All the four side areas of the package has been reserved for principal display area wherein the petitioner's name, address, description of fan, manufacturing date (month and year), model number, serial number, the MRP, the contents of the box etc are declared by printing and by labels. All these information are said to be clearly

visible in a plain and conspicuous manner. The petitioner therefore contends that the declaration on the package is totally in conformity with the rules. On 11.1.2005 the second respondent is said to have seized one pre-packed package of Khaitan fan on the ground, declaration of manufacturing month and year is affixed by a separate sticker on the package of ceiling fans. Accordingly, compounding notice dated 20.1.2005 was issued intimating registration of case for violation of the provisions of the Act and Rules. Though the petitioner is said to have explained the compliance of requirements, the second respondent indicated that further action would be initiated. The petitioner therefore questions the action of the second respondent not only on the ground that the notice is not sustainable, since the petitioner had in fact complied with the requirements but also questions the very applicability of the Act and also the validity of Rule 6(1)(d) under which the requirement for display of month and year is indicated.

3. The second respondent would attempt to justify the action initiated against the petitioner since according to the second respondent there is violation of Rule 6(1)(d) of the Rules inasmuch as the month and year has not been displayed as required therein. With regard to the applicability of the provisions of the Act and the validity of the Rule in question both the respondents No. 1 and 2 seek to justify the same. The specific provisions of the Act, Rules and also the legal position referred to and relied on by the petitioner as well as the respondents would be adverted to while analysing the case on its merits.

On the said rival contentions I have heard Sri M.G. Kumar, learned Counsel for petitioner, Sri N. Devadass, learned Senior Counsel for first respondent and Sri Sathyanarayana Singh learned Government Advocate for the second respondent.

4. Before adverting to the correctness or otherwise of the notice dated: 20.1.2005 and 18.2.2005 issued to the petitioner, it would be appropriate to consider the contention with regard to the applicability of the Act and the validity of the Rules framed there under. The learned Counsel for the petitioner would place reliance on the decision rendered by the Andhra Pradesh High Court in the case of Titan Watches Limited Vs. Senior Inspector Legal Metrology, Weights and Measures Dept. and Others, to contend that the provisions of the Act do not come into force until a specific notification is issued in this regard. Learned Counsel would also refer to Section 1(3)(d) of the Act to contend that only if there is a notification issued specifying the classes of goods, the Act would become applicable to such of those goods notified. It is therefore contended that no specific notification has been issued and as such at the outset, the Act itself is not applicable to the product manufactured and sold by the petitioner. It is further contended that even otherwise the Rule 6(1)(d) of the Rules is invalid since Section 39 of the Act does not provide for display of the month and year in which the product is manufactured. Therefore, even though Section 83 of the Act provides the power to make rules, the same does not indicate power to frame rule as in the nature of Rule 6(1)(d) and even Clause (zd) of Sub-section (2) to

Section 83 of the Act cannot come to the aid of the Rule making authority since Section 39 of the Act itself does not contemplate such requirement.

5. On behalf of the respondents, it is contended that the decision of the Andhra Pradesh High Court need not bind this Court and in any event, the said decision has not correctly appreciated the position of law. On the other hand the respondents placed reliance on the judgment of a Division Bench of the Bombay High Court in the case of Subash Arjandas Kataria Vs. State of Maharashtra and Others, Therefore, in that background, it is contended that considering the fact that a notification dated 26.9.1977 is issued bringing into force the provisions of Sections 1, 2, 3, 39, and 83, the said notification is sufficient to bring into force the Act and as such the petitioner has to comply with the requirements. The contention that the classes of goods should be notified separately is too far fetched considering the wide range of products that are manufactured and available in the market. Even with regard to the validity of Rule 6(1)(d) of the Rules, it is contended that Section 39 is wide enough to cover the requirement to display the month and year of manufacture since the month and year is also one of the requirement to identify the product with reference to its life span and the freshness of the product. Even otherwise, the object of the Act requires to be considered when it is enacted for the benefit of the consumers. In this background, Clause (zd) to Sub-section (2) to Section 83 of the Act provides the power to make rules relating to any other matter which is required to be made or may be prescribed. It is further contended that while interpreting the provisions of the Act, the interpretation so as to reduce the legislation to futility should be avoided as held by the Hon"ble Supreme Court in the case of State of Rajasthan Vs. Om Prakash, .

6. Having considered the contentions put forth in this regard, a perusal of the notification dated 26.9.1977 would indicate that the Central Government by the said notification has appointed the 26th Day of September 1977 as the day on which the provisions of the Act indicated therein would come into force. Among the provisions indicated therein, the provisions relevant for the purpose of this case are Sections 1, 2, 3, 39 and 83 and among them more particularly, Section 1 which has been notified and brought into force is relevant in the context of the contention advanced on behalf of the petitioner. When the entire Section 1 has been brought into force, the contention that there should be a separate notification in respect of each of the clauses mentioned in Sub-section (3) to Section 1 cannot be countenanced. In any event, the argument that there should be a separate notification indicating the classes of goods to which the Act is applicable though may appear attractive, cannot be accepted, for the reason that it is not only impracticable, but the very purpose of die Act cannot be achieved, if such a narrow interpretation is made. This is so because, if that was the intention, one cannot expect the issue of fresh notification as and when new classes of products are manufactured and sold in the market more so in the present day of continued innovations. Once the provision of the Act is clear that the pre-packed goods should display certain information on the packed material,

the said information is required to be furnished on such package. Therefore, I am not persuaded to accept the view taken by the learned Single Judge of the Andhra Pradesh High Court. On the other hand, on this very aspect the Division Bench of the Bombay High Court in Subhash Arjandas Kataria's case (cited supra) has noticed the very notification dated 26.9.1977 enforcing the provisions of Sections 1, 2, 3, 39 and 83 and a similar argument addressed on behalf of the petitioner had been rejected. As such I am of the view that the opinion expressed in the said case by the Division Bench of the Bombay High Court, is the appropriate decision and therefore, I am of the considered view that the provisions of the Act would be applicable even without any other specific notification regarding the classes of goods as contended and as such the Act would be applicable to the product manufactured by the petitioner as well.

7. With regard to the validity of Rule 6(1)(d) of the Rules, a perusal of the Rule would indicate that the said Rule states that the month and year in which the commodity is manufactured or pre-packed should be borne on every package or on a label securely affixed thereto. The said rule has been framed exercising the power available u/s 83 of the Act. No doubt, as contended by the learned Counsel for the petitioner, the specifics of the rule making power relating to the matters provided therein are stated at Sub-clause (a) to (zc) and the said sub-clauses does not indicate with regard to the month and year. However, Sub-clause (zd) indicates that the rule making power extends to any other matter which requires to be or may be prescribed. The learned Counsel for the petitioner however contends that the same does not provide the powers since, none of the sub-sections to Section 39 of the Act would specify with regard to the indication of month and year of manufacture. Though Section 39 of the Act does not indicate specifically with regard to the same, the identity of the product is required to be indicated. In my view, the phrase "identity of the product" is wide enough to include all the details with regard to the product to identify the same including the details to identify when exactly the product came into being. Even otherwise, the statement of objects and reasons for introducing the Act in question would indicate that the different facets of the bill were stated to and Clause 5 in the bill stated with regard to the details to be indicated, so that the same would provide for consumer protection in respect of packaged commodities while providing for the proper identification on the package. Among others it is also stated in the objects that indication of date of manufacture and date of expiry would also be marked for appropriate products. If such object of the law makers is kept in view, even in respect of the products manufactured by the petitioners herein since the fan is mechanically propelled and since metal is used, the time period after manufacture of the product is also an important aspect for the consumer to decide whether he should purchase the same or not and as such even with regard to such product, the month and year is an important aspect to be displayed. Therefore, even though Section 39 of the Act does not specifically provide with regard to the month and year but since it is wide enough, the said rule could be framed exercising the power available under Sub-clause (zd) to

Sub-section (2) of Section 83 of the Act. Even otherwise, Sub-section (2) itself would indicate that the power specified in Sub-clauses (a) to (zd) to make rules for carrying out the provisions of the Act is without prejudice to the generality of the foregoing power. As such, I am of the opinion that any rule framed to achieve the object of the Act as a whole cannot be said to be invalid. In this regard, I am also fortified by the decision rendered by the Hon''ble Supreme Court in the case of An Roy, Commissioner Of Police (cited supra), wherein the Hon''ble Supreme Court has stated with regard to the manner of interpretation of subsidiary rules. Hence the challenge to Rule 6(1)(d) is not sustainable and the same is accordingly to be rejected.

8. In so far as the notice issued to the petitioner which is impugned in this petition, a perusal of the same would indicate that the authorities have noticed that the declaration for manufacturing month and year is affixed by a separate sticker on the package held in question. In this regard, as contended by the learned Counsel for the petitioner, Rule 2(m) of the Rules provides with regard to the principal display panel which states that all the information could be grouped together and given at one place or the pre-printed information could be grouped together and given in one place. Further Sub-rule (1) of Rule 6 would provide that every package shall bear thereon or on a label securely affixed thereto a definite plain and conspicuous declaration made in accordance with the provisions. Therefore, Rule 2(m) and 6 would indicate the manner in which the display is to be made. In this background, the notice with regard to the violation would only indicate that the month and year is affixed by a separate sticker. Considering the nature of the said Rule and since violation of such Rule would visit the violator with penal consequences as well, the authorities should have been more specific in clearly bringing out the violation committed by the petitioner since a sticker is permissible unless it is not in conformity in any other manner which should have been specified. Therefore, without adverting to the other details of the matter, on the facts of this case the notices impugned in this petition cannot be sustained for want of clarity and not being specific with regard to the violation. Hence, in that view, the notices issued to the petitioner is not sustainable.

9. In the result, the following:

ORDER

(i) The Writ Petition is allowed in part and the notices dated 20.1.2005 and 18.2.2005 which are impugned at Annexure A and A. 1 are quashed.

(ii) The prayer in so far as questioning the validity of Rule 6(1)(d) of the Standard Weights and Measures(package and commodities) Rules, 1977 as ultravires of the Standard Weights and Measures(package and commodities) Act is rejected. Rule issued to that extent stands discharged.

(iii) Parties to bear their own costs.