

(2010) 07 KAR CK 0013
In the Karnataka High Court
Case No : Writ Petition No. 21369 of 2010

Manoj Gupta Sales Executive

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Standards of Weights and Measures (Packaged Commodities), Rules, 1977 — Rule 2P, 6, 6 (1A)

Citation : (2011) ILR (Kar) 113 : (2011) 1 KarLJ 399 : (2010) 4 KCCR 2671

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Harish. N.N., for Aaren Assts, for the Appellant; Narendra Prasad, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—Petitioner has sought for quashing the proceedings in CC. No. 5280/2009 pending on the file of 7th Additional Chief Metropolitan Magistrate, Bangalore.

2. The records reveal that the Inspector of Legal Metrology, Yeshwanthpur Sub-division (Inspector) visited the premises of M/s. Sarkar Sewing Spares and seized two packages of industrial sewing machine needles imported and distributed by GBA on the ground that the packages did not carry declaration as required under Rules 6 and 6(1A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short "the Rules"). It is not in dispute that the two packaged seized do not bear the declaration as required under Rules 6 and 6(1A) of the Rules.

3. Learned Counsel for the petitioner submits that the packages were ultimately meant for selling to the industrial consumers; chapter 2 of the Rules are inapplicable if the package commodities are meant for selling to industrial consumers; he relied upon the definition of retail package found in Rule 2(p) to contend that if the packages in question are intended to be sold to the industrial

consumers by retail shop owner, Rule 6 may not be applicable.

4. It is not in dispute that the two packages were seized in a retail shop. According to the petitioner, the spare parts which are contained in the two packages were meant for industrial consumers and not for retail consumers. Hence, the provisions of Rule 6, found in Chapter 2 of the Rules are totally inapplicable to the facts of this case.

5. The above said submission cannot be accepted. In this context, it is relevant to note the definition of retail package as defined in Rule 2(p) of the Rules which reads thus:

"retail package" means the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein and includes the imported packages.

It is also relevant to note the provisions of Rule 2(A) and 3 of the Rules, which read thus:

2A. Applicability of the Chapter: The provisions of this chapter shall not apply to

- a) Packages of commodities containing quantity of more than 25 kg or 25 litre excluding cement and fertilizer sold in bags upto 50 Kgs. and
- b) Packaged commodities meant for industrial consumer or institutional consumers.

Explanation. -For the purpose of this rule:

- a) Institutional Consumer.- Means those consumers who buy packaged commodities directly from the manufacturers/packers for services industry like transportation (including airway, railways), hotel or any other similar service industry.
- b) Industrial consumer. - Means those consumers who buy packaged commodities directly from the manufacturers/packers for using the product in their industry for production, etc.

3. Chapter to apply to packages (sic) for retail sale: The provisions of this Chapter shall apply to packages intended for retail sale and the expression "package", wherever it occurs in this Chapter shall be construed accordingly.

Chapter 2 deals with the applicability of certain provisions to packages intended for retail sale. Rule 2(A) reveals that the provisions of Chapter 2 shall not apply to the packaged commodities meant for industrial consumers or institutional consumers. Explanation to Rule 2(A) further clarifies that the industrial consumer means those consumers who buy packaged commodities directly from the manufacturers/packers for using the product in their industry for production etc.

6. Careful and harmonious reading of these provisions would clearly reveal that the industrial consumer means the consumer who buy packaged commodities

directly from the manufactures. If an industrial consumer purchases the packaged commodities directly from the manufacturers., requirements as found in Rule 6, such as declaration relating to name and address of the manufacturer, the net quantity, the month and year in which the commodity is manufactured etc. need not be declared on the package, inasmuch as the industrial consumer will buy directly from the manufacturer. He will be knowing as to who is the manufacturer, what is the rate and what is the quality and what is the weight of the product etc. He may even negotiate with the manufacturer with regard to the rates. Under such circumstances, declarations as found in Rule 6 are exempted in respect of the products, which are meant for industrial consumers.

7. Rule 2(p) of the Rules defines retail package, as the packages which are intended for retail sale to the ultimate consumer for the purpose of consumption of the commodity contained therein. Proviso to Rule 2(p) further clarifies that the ultimate consumer shall not include industrial or institutional consumers, which means retail package means the packages which are intended for retail sale and which are not meant for industrial or institutional consumers. The packages in question are seized from a retail shop which prima facie means the packages were meant for retail sale to a retail consumer. If the definition of "retail package" is read with the provisions of Rule 2(A) and 3 of the Rules, it is amply clear that in case if the packaged commodities are meant for industrial consumers who buy packaged commodities directly from the manufacturers need not contain the declaration as per Rule 6 of the Rules.

8. In the matter on the hand, as aforementioned, the packages were seized in the retail outlet. Industrial consumers will have to buy the packaged commodities directly from the manufacturers or packers for using their products in the industry, only then the provisions of Rule 6 is exempted. Hence, the provisions of Rule 6 are applicable to the matter on hand. In view of the same, this Court does not find any ground to quash the proceedings.

Petition fails and the same is dismissed.