
(2012) 02 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23471 of 2001

V. Guard Industries Ltd.

APPELLANT

Vs

Controller of Legal Metrology and Others

RESPONDENT

Date of Decision : 17-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Evidence Act, 1872 — Section 105

Penal Code, 1860 (IPC) — Section 40, 80

Citation : (2012) 02 AP CK 0003

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

Advocate : Chacko George for C.R. Sridharan, for the Appellant;

Final Decision : Dismissed

Judgement

Samudrala Govindarajulu, J.—The petitioner viz., V-Guard Industries Limited is a company having its registered office at Kochi of Kerala State. The petitioner is engaged in the business of purchase/manufacture and sale of consumer products like electronic voltage stabilisers, pump sets etc. There is no dispute that the petitioner deals with goods which are either manufactured by it or procured by purchase from S.S.I. units; and all these goods are marked with registered trade mark V-GUARD over which the petitioner holds exclusive right of user. According to the petitioner, it has arrangements with 48 independent S.S.I. units spread over in different States of Kerala, Tamilnadu, Karnataka, Andhra Pradesh and Maharashtra for manufacture and supply of voltage stabilisers as per the petitioner's formulation and design and specifications resulting in proto type products; and proto type packaging is also designed, made and supplied by the petitioner to manufacturing units. In the similar fashion, the petitioner deals with pump sets as well as electronic voltage stabilisers manufactured by S.S.I. units. Ultimately all the goods reach the market for sale with registered trade mark of V-Guard. There is no much dispute between the parties on this aspect of the case. While so, the respondents 2 to 9 who are Inspectors of Legal Metrology at

Tenali of Guntur District, Mahabubabad of Warangal District, Kadapa of Kadapa District, Madhira of Khammam District, Gajuwaka of Visakhapatnam District, Sattenapalli of Guntur District, Nandyal of Kurnool District and Kandukur of Prakasam District booked 9 separate and independent cases against the petitioner, after making inspection of shops in the respective places, on the ground that electrical voltage stabilisers and pump set which were kept for sale in those shops do not contain name of manufacturer of the respective goods and that there was no disclosure of manufacturer's name on the goods being sold by printing the same on the respective packages of those goods. The respondents 2 to 9 gave separate notices to the petitioner in 8 cases alleging contravention of Section 39 /33 of the Standards of Weights and Measures Act, 1976 (in short, the 1976 Act)/the Standards of Weights and Measures (Enforcement) Act, 1985 (in short, the 1985 Act) and Rule 6(1)(a) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (in short, the Rules). In one case, notice was given alleging contravention of Section 39 of the 1976 Act/ Section 33 of the 1985 Act and Rules 6(1)(a) and 6(1)(f) of the Rules, inasmuch as two electronic voltage stabilisers did not contain declaration as to month and year of manufacture. The respondents 2 to 9 issued the said notices to the petitioner-Company as well as the retail shop owners in whose shops inspections were made. In the said notices, while setting out details of facts and provisions relating to the contraventions, the petitioner and the retailer were given option to pay compounding fees as the offence is compoundable, within specified time or otherwise prosecution will be launched in the Court of law. The petitioner without complying with the said notices by paying compounding fees, has chosen to approach the 1st respondent/Controller of Legal Metrology, Hyderabad by way of 9 representations respectively. The 1st respondent considered the said representations of the petitioner as appeals and after giving opportunity to the petitioner of being heard through Counsel, passed the impugned orders dated 29.9.2001 respectively in all the 9 matters and disposed of the appeals holding that the appeals are devoid of any merits and did not make out any case to set aside the decisions taken by the respondents 2 to 9 in the respective notices. Questioning the said 9 orders of the 1st respondent, the petitioner approached this Court with this single writ petition under Article 226 of the Constitution of India seeking a writ of certiorari for quashing 9 orders dated 29.9.2001 passed by the 1st respondent; and also writ of mandamus directing the respondents 2 to 8 to desist from prosecuting the petitioner u/s 51(1) of the 1985 Act read with Rule 6(1)(a) and (d) of the Rules in respect of the offences alleged in the notices.

2. The causes of action i.e., contraventions noticed by the respondents 2 to 9 who are located in 8 different places of this State are totally different and independent of each other. The respondents 2 to 9 gave 9 different and independent notices relating to contraventions noticed by them in 8 different shops located in 8 different towns. As against the said 9 individual notices given by the respondents 2 to 9, the petitioner filed 9 different representations/appeals before the 1st respondent; and all the said 9 representations/appeals were

disposed of by the 1st respondent on 29.9.2001 by way of 9 different proceedings. Even though the proposed accused viz., the petitioner is common in all 9 different matters, the petitioner has chosen to file this single writ petition combining all the causes of action emanated at different places on different dates and noticed by different Inspectors of Legal Metrology viz., the respondents 2 to 9. The petitioner should have filed 9 independent writ petitions questioning 9 independent orders passed or proceedings issued by the 1st respondent disposing of 9 different representations/appeals filed by the petitioner. In my opinion the said irregularity may not go to root of the matter in order to non-suit the petitioner and the said irregularity can be cured by directing the petitioner to pay 8 more Court fees payable on a writ petition.

3. It is contended by the Senior Counsel appearing for the petitioner that on the electronic voltage stabilisers in question as well as pump set in question, label of V-GUARD is affixed/printed and that it was also disclosed that the said item is "Packed & Marketed by: V-GUARD INDUSTRIES LTD. Regd. Office: LFC ROAD, KALOOR, COCHIN-682 017" and that the said disclosure on the voltage stabilisers or pump set put up for sale to the customer, is sufficient compliance of the 1985 Act and the Rules.

4. Section 33 of the 1985 Act makes provisions of the 1976 Act and the Rules applicable with regard to commodities in packaged form, even in the case of distribution, sale or keeping, offering or exposing for sale in the State as if the said provisions were enacted by or made under the 1985 Act. In spite of the 1976 Act was passed to regulate interstate trade and the Rules were made in exercise of power conferred by Section 83 of the 1976 Act, Section 33 of the 1985 Act makes all of them applicable in the case of a transaction which is not interstate trade but is intrastate trade i.e., a transaction within the State. Therefore, in order to find out as to what constitutes commodity in packaged form, one can go through the definitions contained not only in the 1985 Act but also in the 1976 Act and the Rules framed thereunder.

5. Section 2(b) of the 1976 Act defines commodity in packaged form as follows:

(b) "commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail;

Section 39 of the 1976 Act makes it incumbent that any commodity in packaged form shall bear certain declaration on the package. Sub-sections (1) and (2) of Section 39 read as follows:

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.

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

6. Rule 2(1) of the Rules define prepacked commodity as follows:

(1) "international prototype of the kilogram" means the prototype sanctioned by the First General Conference on Weights and Measures held in Paris in 1889, and deposited at the International Bureau of Weights and Measures;

Rule 6(1) of the Rules makes it incumbent that every package shall bear either on it or on a label securely affixed thereto, a definite, plain and conspicuous declaration as to certain details specified in clauses (a) to (h) thereof. Clause (d) relates to month and year of manufacture of the packaged commodity whereas clause (a) relates to name and address of the manufacturer, packer etc.,

Section 33(1) of the 1985 Act which is relevant for our purpose reads as follows:

33. Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State.--(1) The provisions of the Standards Act and made the rules made thereunder, as in force immediately before the commencement of this Act, with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively, to the "State Government", "this Act" and the "Controller."

Section 33(1) does not make provisions of the 1976 Act and the rules framed thereunder apply as they stand on the date of the alleged contravention, but apply "as in force immediately before commencement of this Act" i.e., the 1985 Act. It is provided in Section 1(3) of the 1985 Act that the said Act comes into

force in a State on such date as the State Government may by notification appoint. In the State of Andhra Pradesh, the 1985 Act came into force with effect from 21.4.1988. Therefore, in view of Section 33 of the 1985 Act, provisions of the 1976 Act and the rules made thereunder are applicable to transactions in the State as they stood on 21.4.1988.

7. Rule 6(1)(a) changed its language three times. Originally in the year 1977 when it was enacted, Rule 6(1)(a) was as follows:

6(1)(a) the name and address of the manufacturer, or where the manufacturer is not the packer, of the packer or with the written consent of the manufacturer, of the manufacturer;

The said provision stood as such upto 5.7.1999. It was substituted by G.S.R. 246(E) dated 5.4.1999 with effect from 6.7.1999 to the following effect:

(a) the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer.

Again, by G.S.R. No. 425(E), dated 17.7.2006, Rule 6(1)(a) was substituted with effect from 13.1.2007 as follows:

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer.

In view of the language employed in Section 33 of the 1985 Act, for the purpose of applying Rule 6(1)(a) to a transaction within the State (and not interstate), the rule which stood as on 21.4.1988 shall be taken up for consideration i.e., the rule which stood prior to 5.7.1999.

8. In the light of the above position of law, it has to be seen whether the petitioner had complied with the declaration as to name of the manufacturer or packer in accordance with Rule 6(1)(a) of the Rules. Rule 2(h) of the Rules define manufacturer in relation to any commodity in packaged form as follows:

(h) "manufacturer" in relation to any commodity in packaged form, means a person who, or a firm or a Hindu undivided family which, produces, makes or manufactures such commodity and includes a person, firm or Hindu undivided family who or which puts, or causes to be put, any mark on any packaged commodity, not produced, made or manufactured by him or it, and the mark claims the commodity in the package to be a commodity produced, made or manufactured by such person, firm or Hindu undivided family, as the case may be;

If the above definition is analysed, it includes several types of persons within the category of manufacturer, viz., (1) a person who produces, makes or manufactures such commodity, (2) who puts or causes to be put any mark on any packaged commodity, not produced, made or manufactured by him, and (3) the mark claims the commodity in the package to be commodity produced, made

or manufactured by such person.

9. It is contended by the Senior Counsel for the petitioner that in view of the above definition of manufacturer contained in Rule 2(h) of the Rules, the petitioner who had put its mark of V-GUARD on the commodity in packaged form, be it electronic voltage stabiliser or pump set, the petitioner becomes a manufacturer within the said definition even though the commodity was not actually manufactured by the petitioner and manufactured by its S.S.I. unit. It is further contended that apart from putting mark, the petitioner had mark claim on the commodity and that the petitioner disclosed its address as V-Guard Industries Limited, Regd. Office: LFC Road, Kaloor, Cochin-682 017 on the packaged commodity even though the said address is described as the person who packed and marketed the commodity.

10. Rule 6(1)(a) as it stood as on 21.4.1988 (i.e., prior to amendment on 6.7.1999) contemplates declaration as to (i) name and address of the manufacturer, or (ii) where the manufacturer is not the packer, name and address of the packer or with the written consent of the manufacturer, of the manufacturer. Since in this case, the petitioner is not a manufacturer and since S.S.I. unit who is the manufacturer is not the packer, it is second limb of Rule 6(1)(a) which is applicable; and in such case, it is sufficient compliance of Rule 6(1)(a) if name and address of the packer is disclosed. Further, in a situation where the petitioner is only a packer and not manufacturer, it is optional to mention name of the manufacturer also in case the manufacturer gives its consent for doing so. Therefore, it is sufficient compliance of Rule 6(1)(a) of the Rules when the petitioner mentioned its name and address on the commodities disclosing the petitioner as the packer. I find that there is no contravention of Rule 6(1)(a) made by the petitioner in 8 cases booked by the respondents 2 to 9.

11. Secondly when the 2nd respondent inspected the shop at Tenali, he found no declaration of month and year of manufacture on one electronic voltage stabiliser. Therefore, the 2nd respondent booked case for violation of Rule 6(1) (d) of the Rules also. Display panel on electronic voltage stabiliser does not contain any column relating to month and year of manufacture. It contained only a column to the effect "packed on". It is contended that the said space in the display panel is intended for affixing label indicating month and year of manufacture. There was no column for specifying month and year of manufacture in the display panel on the electronic voltage stabiliser and the column is only for disclosing month and year of packing. Manufacture of the commodity/product and packing of the same commodity/product need not necessarily be in the same month and year. There may be time gap between the month of manufacture and the month of packing of the same commodity. Disclosing month and year of packing is no equal to disclosing month and year of manufacture. In any event, in that case there was no declaration as to date of packing also.

12. It is contended by the Senior Counsel for the petitioner that the above

omission is only a bona fide slip and that it squarely falls within general exception contained in Section 80 IPC read with Section 40 IPC, inasmuch as it is only an accidental slip. In my opinion, the general exception contained in Section 80 IPC is a matter which has to be proved by the accused in a prosecution by adducing relevant evidence in support thereof, as the burden to prove the same is on the accused vide Section 105 of the Evidence Act. The said general exception cannot be considered in a pre-prosecution notice issued by the 2nd respondent whereby facility is extended to the petitioner for compounding the contravention of Rules 6(1)(a) and (d). In the result, the writ petition is partly allowed in respect of notices issued by the respondents 2 to 9 to the petitioner for contravention of Section 39 of the Standards of Weights and Measures Act, 1976 read with section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985 and Rule 6(1)(a) of The Standards of Weights and Measures (Packaged Commodities) Rules, 1977; and the writ petition is partly dismissed in respect of notice issued by the 2nd respondent to the petitioner for contravention of Rule 6(1)(d) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. No costs. The writ petitioner is directed to pay deficit Court Fees of Rs. 800/- on this writ petition. The Registry is directed to prepare fair order, only on the petitioner depositing deficit Court Fees of Rs. 800/-.