

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 4975/2006

Date of decision: February 25, 2008

ITC LTD.

..... Petitioner

Through Mr. Sidharth Luthra, Sr. Advocate with
Ms. Jasleen Oberoi and Ms. Rajni Gupta,
Advocates.

versus

STATE NCT OF DELHI & ORS.

..... Respondents

Through Mr. Pawan Behl, APP.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in Digest? | Yes |

Dr. S. Muralidhar, J. (open court)

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of Complaint No. 528 of 2004 pending in the Court of the Special Metropolitan Magistrate ('SMM'), Shahdara, Delhi under Section 33 of the Standards Weights and Measures (Enforcement) Act, 1985 ('1985 Act').

2. The facts in brief are that an inspection was carried out on 4th December, 2003 in a shop M/s. Roshan Traders No. 19/2006, Sarai Basti, Delhi of Shri Pritam. The report of inspection states as under:

“Packages of Gold Flake, 2001 in 10's manufactured by
ITC Ltd. 37, J.L. Nehru Rd, Kolkata not bearing MRP

inclusive of all Taxes on the pack.”

3. On the basis of the above inspection Complaint No. 528 of 2004 was filed in the court of the SMM against Shri Pritam Kumar Jain the proprietor of M/s. Roshan Traders.

4. On 7th July, 2006 Shri Pritam was present before the SMM and disclosed that the Petitioner here, i.e. ITC Limited was the manufacturer of the commodity in question and was therefore liable for the offence. Thereupon the SMM passed the following order:

“7/7/2006

Present: Pritam Kumar Jain-the accused present.

He states that he has not committed any offence and further states that ITC Ltd., the manufacturer, is liable for the commission of offence, if any. The Complainant has not impleaded the accused, ITC Ltd. as an accused and I take cognizance, and as such ITC Ltd., be also summoned as an accused.

On the request of accused, Pritam Jain are adjourned to 22.8.2006

Sd/xxxx
Spl. MM
7/7/2006.”

5. It is submitted by Mr. Sidharth Luthra, learned Senior counsel for the Petitioner that in the first place the relevant statute is The Standards of Weights and Measures Act, 1976 (‘1976 Act’) and not the 1985 Act. He submits that the package which was found to be in contravention of the 1976 Act read with the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (‘1977 Rules’) was in fact a wholesale package

which contained 10 retail packages of 20 cigarettes each. Each of the retail packages did satisfy the requirement of the 1976 Act and the 1977 Rules. In fact the wholesale package also satisfied the requirements of Rule 29 of the 1977 Rules. He relies on the judgment of the Supreme Court in *Jayanti Food Processing (P) Ltd. v. Commissioner of Central Excise, Rajasthan (2007) 8 SCC 34* to contend that a wholesale package need not contain the information that is required to be contained on a retail package.

6. Mr. Behl, learned APP for the State does not dispute that the inspection report refers to a wholesale package. However, he submits that the question whether the package conformed to Rule 29 or not can be left for determination by the trial court and that this Court should not interfere in exercise of its powers under Section 482 CrPC.

7. The facts are not in dispute. The inspection report makes it abundantly clear that the package in question are wholesale packages. The question is whether a wholesale package was required to display the maximum retail price (MRP) as mentioned in the inspection report and whether the failure to do so resulted in the contravention of the 1976 Act and the 1977 Rules.

8. The expression ‘wholesale package’ has been defined under Rule 2 (x) of the 1977 Rules as under:

“2 (x) ‘wholesale package’ means a package containing-

(i) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to an intermediary and is not intended for sale direct to a single consumer;
or

(ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in smaller quantities; or

(iii) packages containing ten or more than ten retail packages provided that the retail packages are labeled as required under the rules;”

This is distinct from a retail package which is defined under Rule 2 (x) of the 1977 Rules. The Scheme of the Rules also indicates that what applies to retail package is indicated in a separate Chapter i.e. Chapter II and that applicable to the wholesale packages is set out in Chapter III. The requirement in Rule 6 as to what should be specified on a retail package is not the same as specified in Rule 29 in relation to wholesale packages. Rule 6 requires retail packages to mention inter alia, the net quantity, the month and the year in which the commodity is manufactured and the retail sale price of the package. Rule 29, on the other hand, requires wholesale packages to mention the name and address of the manufacturer, the identity of the commodity contained in the package, the total number of retail packages contained therein and the net quantity in terms of standard units etc. There is no requirement of mentioning the MRP. It is not in dispute that each of the retail packages in the wholesale package in question did comply with the requirement of Rule 6 of 1977 Rules. The only question is whether the requirement of Rule 6 also applies to wholesale packages.

9. The judgment in *Jayanti Food Processing Private Ltd.* provides the answer to this question. There the Supreme Court held that packages covered by Rule 29 would be “outside the purview of retail sale as under that Rule retail prices are not required to be mentioned on the package.” In

para 20 of the said judgment it was observed as under:

“When we read these Rules along with provisions of Section 4-A of the Act, it would be clear that where there is a general exemption like Rule 34 under the SWM (PC) Rules such goods and/or packages of such goods shall not be covered by Sections 4-A(1) and (2) of the Act. However, all such packages which are covered under Chapter II, more particularly under Rule 6(1) (f), Rules 15,16 and 17, would be governed under Section 4-A as such packages are required to declare the retail sale price on the packages. **The packages covered by Rule 29 would be outside the purview of the retail sales as under that Rule retail prices are not required to be mentioned on the package.** However, again those packages which enjoy the exemption under Rule 34 shall also be outside the scope of Section 4-A of the Act as the Rules do not apply to the said packages.”

10. In view of the above settled position in law, it is clear that the prosecution in the instant case is misconceived as there was no requirement for the wholesale package in question to mention the maximum retail price.

11. Accordingly, Complaint Case No. 528 of 2004 and all proceedings consequent thereto vis-à-vis the Petitioner hereby stand quashed.

12. The petition is accordingly allowed with no order as to costs.

S. MURALIDHAR, J

FEBRUARY 25, 2008

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