

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th May, 2012

+ W.P.(Crl.) No. 572/2004

% M/S KOKUYO CAMLIN LIMITED
(Formerly known as Camlin Limited) & Anr. Petitioners
Through: Mr. U.A. Rana, Mrs. Swigin M.
George & Ms. Prarthna Kedia, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents
Through: Mr. Ruchir Mishra, Adv. for R-1.
Mr. B.V. Niren, CGSC with Mr. Manav
Gupta, Adv. for R-2.

CORAM :-
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

1. The petition impugns Rules 13(5) and 13(6) and Schedule VI of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and axiomatically seeks quashing of the proceedings initiated by the respondent no.1 i.e. Office of the Controller of Legal Metrology, Weights & Measures Department of the Govt. of NCT of Delhi against the petitioner. Notice of the petition was issued and vide order dated 12th April, 2004 the proceedings i.e. the prosecution against the petitioner pending before the Trial Court were stayed. Rule DB was issued and interim order continued till the disposal of the writ petition. Counter affidavit has been filed by the respondent to which rejoinder has been filed by the petitioner. The counsels

have been heard.

2. The petitioner is a manufacturer and dealer in various types of art material and stationery articles under the brand names “Camlin” and “Camel”, including packages containing coloured pencils, poster colours wax crayons, oil pastels, water colours, sketch pens etc. It is the case of the petitioner that it has all along packed its colour pencils, poster colours, crayons, sketch pens etc. in multiples of three and four, in accordance with well accepted international custom, standard and practice, based on scientific theories of basic colours and which practice also fulfills the user’s need, convenience and budget. It is further the case of the petitioner that in the year 1987 the Weights & Measures Authority of the State of Gujarat seized a package of the petitioner, containing 12 assorted shades of oil pastels on the ground of the same being in violation of Rule 13(5) r/w Schedule VI of the Rules (supra) and issued show cause notice to the petitioner; however on response/representation of the petitioner the Ministry of Food & Civil Supplies issued clarifications dated 10th May, 1987 and 9th June, 1987 to all the Controllers of Weights & Measures in the States and the Union Territories to the effect that Rule 13(5) r/w VIth Schedule (supra) are not attracted in the case of items which are of different assorted shades and thus there was no violation in the case of packages of coloured pencils, wax crayons containing 12 items of different shades.

3. At this stage, it is apposite to re-produce Rules 13(5)&(6) and the VIth Schedule of the said Rules, which are as under:-

“13. Statement of Units of Weight, Measures or Number.-(1) The units of weight, measure or number shall be

specified in accordance with the units specified in sub-rule(2) or sub-rule(3), as the case may be.

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(5) When any commodity is packed by number, such number shall be expressed on the package in international form of Indian numerals, and every package intended to be sold by number shall be packed in the manner specified in the Sixth Schedule:

[Provided that the Central Government may, if it is satisfied that for any technical or mechanical reason it is not possible to prepack any commodity in the standard quantities specified in the Sixth Schedule, authorize the pre-packing of such commodities in such numbers as it may specify.]

(6) No number called the dozen (12), score (20), gross (144), great gross (1728) or the like shall be specified or indicated on any package.

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THE SIXTH SCHEDULE

[See Rule 13(5)]

The manner in which commodities intended to be sold by number shall be packed.

Where any commodity is packed by number, such packing shall be made unless otherwise provided in these rules in the following manner, namely –

- (a) where the number is less than ten, by the integral number:
- (b) where the number exceeds ten but does not exceed one hundred, in multiples of five;
- (c) where the number exceeds one hundred but does not exceed [five] hundred, in multiples of ten:
- [(d)] where the number exceeds five hundred but does not exceed one thousand, in multiples of fifty:

[(e)] where the number exceeds one thousand, in multiples of one hundred.”

4. It is further the case of the petitioner that notwithstanding the clarification aforesaid, the petitioner was issued a notice dated 16th April, 2002 again of contravention of Rule 13(6) (supra) for selling packed Camel student's poster colours containing 12 different shades in bottles, this time by the respondent no.1. The petitioner, in response to the said show cause notice invited attention of the respondent no.1 to the clarifications dated 10th May, 1987 and 9th June, 1987 aforesaid and further represented that package of assorted colours containing non-identical products i.e. different shades, must be treated as one unit. The petitioner in this regard also made a representation to the respondent no.2 Ministry of Consumer Affairs, Department of Weights & Measures Units of the Union of India. The respondent no.2 also however took a stand that a package containing 12 different colours was a group of package and violated the provisions of Rules and the Schedule thereto aforesaid; however on further representation of the petitioner, the respondent no.2 informed the petitioner that it proposed to refer the matter to the Standing Committee for review of the provisions.

5. The respondent no.1 however filed a complaint against the petitioner in the Court of Metropolitan Magistrate, Delhi under Section 63 of The Standards of Weights and Measures (ENF) Act, 1985 and under Section 72 of the Standards of Weights & Measures Act, 1976, of violation of Rules and Schedule aforesaid by sale aforesaid and summons of which complaint were issued to the petitioner. The petitioner after obtaining bail filed a criminal writ petition, first before the Bombay High Court and on dismissal

thereof owing to lack of jurisdiction, filed the present petition. It is the contention of the petitioner that it has not violated the Rules/Schedule aforesaid and if the Rules & Schedule aforesaid are to be read in the manner suggested by the respondents, then the same are arbitrary and unreasonable and *ultra vires* Article 19 (1)(g) and 14 of the Constitution of India. It is further pleaded that the expression “packed by number” is not applicable to individual packages containing assorted shades and the like.

6. The respondent no.1 Director (Legal Metrology) of the Department of Consumer Affairs has in the counter affidavit pleaded that all pre-packed commodities including colours, pencils etc. are covered by Rule 2(1) of the Rules aforesaid; it is however pleaded that Rule 13(5) has since been deleted and Rule 13(6) has been suitably amended w.e.f. 17th July, 2006 and the amended Rules address the primary concern of the petitioner and thus the reference to the un-amended Rules is obsolete and irrelevant at this juncture. It is further clarified that the underlying intent of the subject Rules is the implementation of Section 13(2) of The Standards of Weights and Measures Act, 1976 which prescribes that “every numeration shall be made in accordance with the decimal system”. It is further pleaded that the validity of the Rules has been upheld by the Supreme Court. It is yet further pleaded that the present petition is not maintainable in as much as the petitioner had the remedy of appeal under Section 69 of The Standards and Weights and Measures (Enforcement) Act, 1985.

7. The counsel for the petitioner also has today informed that there is no other complaint against the petitioner and the petitioner is in compliance of the existing Rules.

8. In the aforesaid facts, when the respondent no.2 had earlier issued a clarification in favour of the petitioner and when on the representation of the petitioner, the Rules have since been amended and of which the petitioner is not in violation and to which there is no challenge now, we do not deem it expedient to adjudicate on the question raised in the writ petition and further deem it expedient to quash the criminal complaint filed by the respondent no.1 against the petitioner and proceedings wherein are lying stayed now for the last eight years. In view of the changed situation and considering the nature of the offence of which the petitioner was charged with, it is not in the interest of justice to allow the said complaint to languish or to allow the time and resources of the Court to be spent thereon. Though there is merit in the contention of respondents that the petitioner had a remedy of appeal, but this petition having been entertained and having remained pending for last eight years, it is now not deemed proper to relegate the petitioner to the remedy of appeal.

9. The petition is allowed to the aforesaid extent, quashing the criminal complaint aforesaid lodged by the respondent no.1 against the petitioner.

No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MAY 10, 2012

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