

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 509 OF 2013**

1. V-Guard Industries Limited,
a Public Company incorporated under
the Companies Act, 1956, having its
registered office at 33/2905 F,
Vennala High School Road,
Vennala P.O., Kochi – 682 028, Kerala.
Represented by its whole time Director,
V. Ramachandran
(Presently also nominee-director under
Section 49 of the Legal Metrology Act,
2009), son of S. Venketaraman,
aged 49 years, married, Indian National,
resident of Flat No. 16-A,
Mather Mason D'Or,
Panampilly Nagar, Ernakulam,
Kochi – 682 036, Kerala.
2. Dr. George Sleeba,
S/o late P.K. Sleeba,
aged 63 years, married,
Indian National, resident of
32/2595, Mamangalam,
Palarivattom, P.O.
Kochi – 682 025, Kerala.
(Presently Director, HR & Production
of Petitioner-1 company and formerly
Nominee-director, under Section 49 of
the Legal Metrology Act, 2009. ... Petitioners

Versus

1. Controller of Legal Metrology,
Government of Goa,
Rua Diogo de Couto Road,
Near Municipal Garden,
Panaji-Goa.

2. Inspector of Legal Metrology,
Opp. Eidgah Masjid,
Dattawadi, Mapusa-Goa.
3. Coltors Goa,
F-1A, Colvalcar Centaur,
Opp. Parade Ground, Campal,
Panaji-Goa.
By Proprietor,
Gauresh P. Prabhu Colvalcar,
Major in age.
4. Renz Marketing,
D-3/8, Mapusa Industrial Estate,
Dattawadi, Mapusa, Goa.
By Proprietor: Keith Alvaru,
Major in age.

... Respondents

Mr. Chacko George, Senior Advocate with Advocate H. Ramnam for the Petitioners.

Mr. D. Lawande, Government Advocate with Mr. P. Dangui, Addl. Government Advocate for the Respondents.

CORAM: M. S. SANKLECHA, J.
DATE: 28TH APRIL, 2015.

ORAL ORDER:

This petition under Article 226 of the Constitution of India assails the order dated 6/8/2013 passed by the Controller, Legal Metrology, Panaji-Goa under the Legal Metrology Act, 2009(“Said Act”). The impugned order holds that the petitioners have breached

the provisions of Section 18 (1) of the said Act read with Rules 6(1) (a) and (d) read with Rule 18(1) of the Legal Metrology (Packaged Commodities) Rules, 2011 (packaged rules). Consequently the impugned order dismissed an appeal filed under Section 50 of the said Act challenging the seizure dated 19 February, 2013 by the Inspector, Legal Metrology seizing V-Guard stabilizers for not bearing the declaration of the year and month of manufacture on the packing.

2. Briefly the facts leading to this petition are as under;

a) The petitioner is engaged in the business of bulk purchase of various V-Guard branded durable consumer goods, viz. Voltage stabilizers, UPS, electric water designs etc. These goods are manufactured according to petitioner's designs and specifications from various manufacturers all over India. These consumer goods including V-Guard branded goods are thereafter sold all over India through a pyramidical sales structure comprised of wholesale distributors and independent dealers.

b) On 19/2/2013, the respondent no.2 i.e the Inspector of legal Metrology, Mapusa upon visit to premises of petitioner's dealer found that V-Guard packaged voltage stabilizers did not bear the month and

year of the manufacture on the package. This led to issue of seizure memo dated 19/2/2013 seizing the offending goods for breach of Rule 6 of the Packaged Rules.

c) Being aggrieved the petitioners filed an appeal under section 50 of the Act to the Controller of Legal Metrology. The Controller after hearing the petitioners concluded that the petitioners packing of V-Guard stabilizers did not provide details with regard to month and year of manufacture. This was held to be in breach of Section 18 of the said Act read with of Rule 6 (1)(a); (d) and Rule 18(1) of the Packaged Rules. Resultantly, the appeal of the petitioner was dismissed.

3. The petitioners' primary contention before the authorities as well as in the petition is that the disclosure of the month and year of packing of the goods on the package containing the V- Guard branded Voltage stabilizer would completely meet the requirements of Section 18(1) of the Act r/w Rule 6(1) (d) of the Packaged Rules. Thus, it is submitted that mere non -mention of the month and year of manufacture on the package of V -Guard branded Voltage stabilizer would not render them in violation of Rule 6(1)(d) of the Rules, as the same provides in the alternative for mentioning the month and year of

manufacture or the month and year of the packing of the commodity packed.

4. At the very outset Mr. D. Lawande, learned Government Advocate appearing for the State submitted that the entire issue as raised in this petition is no longer res integra, in view of the decision of this Court in Writ Petition No.648 of 2013 “*Indian Oil Corporation Ltd. Vs. The Controller of Legal Metrology*” rendered on 31/1/2014. It is pointed out that on almost identical facts this Court in *Indian Oil Corporation Ltd. (supra)* had occasion to deal with the interpretation of Rule 6(1) (a) and (d) of the Packaged Rules has concluded that where a person is a manufacturer and also packages the goods, then the obligation of the manufacturer/packer is to declare the month and year of manufacture as well as the month and year of packing on the package. It is submitted that this Court should not entertain this petition, as in this case also for the purpose of the said Act the petitioner is both a manufacturer and packer.

5. As against the above, Mr. Chacko George, learned Senior Counsel appearing for the petitioners does not dispute that the decision of this Court in *Indian Oil Corporation (supra)* covers the

issue. However his submission is that the above decision requires re-consideration by larger bench of this Court. According to him, the decision in Indian Oil Corporation Ltd. (supra) did not notice the fact that Rule 6(1)(d) of the Packaged Rules requires the package to contain in the alternative the month and year of manufacture or the month and year of packing. Thus if any one of the two requirements are met the requirement of the law would be met. It is therefore submitted that the decision of this Court in Indian Oil corporation Ltd. (supra) be referred to a larger bench for consideration.

6. Before deciding with the rival contentions it may be useful to reproduce Rule 6 of the Package Rules around which the dispute revolves which reads thus:

6. Declarations to be made on every package. -

“(1) Every package shall bear thereon or on label securely affixed thereto, a definite, plain and conspicuous declaration made in accordance with the provisions of this chapter as to-

(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 shall be mentioned on every package.

Explanation I.- If any name and address of a company is mentioned on the label without any qualifying words 'manufactured by' or 'packed by', it shall be presumed that such name and address shall be that of the manufacturer and the

liability shall be determined accordingly;

(b) (c).....

(d) The month and year in which the commodity is manufactured or pre-packed or imported shall be mentioned in the package. Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act 1954 (37 of 1954) and the rules made there under shall apply; Provided further that nothing in this sub-clause shall apply in case of packages containing seeds which are labeled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made there under; Provided that a manufacturer may indicate the month and year using a rubber stamp without overwriting. Provided also that for packages containing cosmetics products, the provisions of the Drugs and Cosmetics Rules, 1945 shall apply.”

7. I find that the issue before this Court in Indian Oil Corporation Ltd. (supra) on facts admittedly was similar to the facts which arise before me. In both cases the petitioners were manufacturers and packers of the packaged commodities under the Act. This is also not disputed by the learned counsel for the petitioners. The issue which arose for consideration before the Court in Indian Oil Corporation Ltd. (supra) as is evident from the submission made on behalf of the petitioners was the proper interpretation of Rule 6 (1) (d) of the Packaged Rules. The submission of the petitioner therein was that the same provides for in the alternative and thus the obligation under the law would stand

discharged if either the year and month of manufacture or year and month of prepacking was mentioned on the package. This Court in Indian Oil Corporation (supra) considered this submission and inter alia observed as under in para 12, as under:

12..... In the present case, in my considered view,It cannot mean that there is option either to mention the month and year of manufacturing or the month and year of packing. The name and address and the month and year of manufacture will have to be mentioned in all cases except where the commodity is imported in which case the name and address of the importer and the month and year of import is to be mentioned. Where first limb of Rule 6(1)(d) of the rules is not applicable, the second limb thereof becomes applicable. By common sense, one can say that a consumer must know as to who manufactured or manufactured and packed the commodity and as to when the same was manufactured/packed. The month and year of manufacture need not be the same as the month and year of packing the commodity. There may be a time gap between the month and year of manufacture and the month and year of packing. Disclosure of month and year of packing is not equal to disclosure of the month and year of manufacture.

(emphasis supplied)

8. Moreover, as pointed out by Mr. Lawande, learned counsel for

the State that Rule 6(1)(d) of the Packaged Rules has provided the obligation in the alternative to cover cases where a person concerned is either only a manufacturer or only a prepacker or only an importer. However, where the person concerned is a manufacturer as well as prepacker then the obligation of the person concerned is to declare both the month and year of manufacture and also the month and year of prepacking on the package. This is the basis of the decision of this Court in Indian Oil corporation (supra) as it is very categorically observed that in the absence of the month and year of manufacture being mentioned would lead to time gap between manufacture and packing of which the consumer is not informed before purchasing the goods.

9. Further on independent examination also the alternative provided in Rule 6 (1) (d) of the packaged Rules is to take in cases where a person is performing a sole function of either manufacturer or packer. However, where the same person performs a dual function of manufacturer and packer, the obligation for that person is to declare both to the satisfaction of Rule 6 of the Packaged Rules.

10. To my mind the decision in Indian Oil Ltd. (supra) does not

require any reconsideration. It is not a decision rendered per incuriam or sub silentio. This is as Rule 6(1)(d) of the Packaged Rules was very much a subject of consideration alongwith the interpretation (now sought to be put) on the same viz. that disclosures to be made on the packing are in the alternative. Therefore issues arising in the present petition stand covered by the aforesaid decision. It may be pointed out that the aforesaid decision of this Court in Indian Oil Corporation Ltd. (supra) was challenged by way of Special Petition to the Supreme Court and the same was dismissed on 12/12/2014.

11. Respectfully following the decision of this Court in Indian Oil Corporation Ltd. (supra) there is no reason to interfere with the impugned order.

12. The petition is dismissed. No orders as to costs.

M. S. SANKLECHA, J.

Ap/-