IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 993 OF 2012

Exide Industries Limited ..Petitioner

v/s.

The Union of India & Ors. ..Respondents

Mr.V.R.Dhond, Sr. Adv. a/w.Zal Andhyarjuna i/b. Dhuri & Co. for the Petitioner.
Ms. G.R.Shashtri, Addl. G.P. for the Respondent.

CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : FEBRUARY 13, 2015.

P.C.

1. Heard Mr. Dhond, learned Sr. Counsel for the petitioner and Ms. Shashtri for the Union.

2. Rule. Rule is made returnable forthwith.

3. Since the point involved is short, by consent of both the parties, the petition is taken up for final hearing.

4. By this petition the petitioner is seeking quashing of the impugned action of the respondent including in particular the

Proforma A dated 20.12.2010 and 20.03.2011 and all actions taken pursuant thereto.

5. The petitioner is a company incorporated under the Companies Act, 1956. The respondent no.1 is the Union of India. The Respondent No.2 is the State of Maharashtra and the rest of the respondents are the officers from the Legal Metrology Department.

6. The respondent no.5, Inspector of Legal Metrology Department visited the petitioners Premises at Mazgaon on 14.12.2010 and thereafter issued Proforma “A” on 20.12.2010 to the petitioner alleging violation of Section 22, 24 and 47 of the Standards of Weights and Measures Enforcement Act, 1985.

7. On 7.1.2011 the petitioner gave reply to the said Proforma pointing out to the respondent nos.4 and 5 that there is no violation of the provisions of Section 22 and 24 of the Standards of Weights and Measures Enforcement Act, 1985. Despite this, another proforma was issued by the respondent no.5 on 20.3.2011 and thereafter the complaint being CC.No.364/SS/2011 came to be filed in the Court of the Metropolitan Magistrate's 15th Court, at Mazgaon , Mumbai.

8. It is the petitioners' case that the old and used batteries are

received at their premises and are subsequently sold as scrap batteries to their registered smelters, and the sale of such scrap batteries to the smelters is by unit and not by weight. It is further the case of the petitioner that the weighing machine is used for ascertaining the weight of scrap/used batteries for ordering transporting trucks for the appropriate tonnage. In the above facts the petitioner contends that the provisions of Section 22 and Section 24 is not violated. Proforma A dated 20.12.2010 and 20.3.2011 are illegal and therefore complaint cannot stand scrutiny.

9. Ms. Shashtra, learned AGP opposed the petition vehemently. She relied upon the provisions of Section 22 and 24 of the said Act and submitted that the petitioner having contravened the provisions of the said section was rightly issued Proforma A and therefore complaint filed is perfectly maintainable. She lastly submitted that the petition is devoid of substance and deserves to be dismissed.

10. Having considered the rival submission and having gone through the Proforma A dated 20.12.2010 and 20.3.2011 along with the relevant provisions of the said Act we find merit in the case. Section 22 talks about prohibition of sale or use of unstamped weight

or measures and Section 24 speaks about the verification and stamping by weights or measures for the ready reference. Section 47 is for contravention of the provisions of Section 24. For a ready reference provisions of Section 22, 24 and 47 are reproduced herein below:

> "**22. Prohibition of sale or use of unstamped weights or measures**. No weight or measure shall be sold, or offered, exposed or possessed for sale, or used or kept for use in any transaction or for industrial production or for protection unless it has been verified and stamped:
>
> Provided that nothing in this section shall apply to any weight or measures which have been initially verified and stamped with a special seal referred to in sub-section (3) of Section 41 of the Standards Act.
>
> **24. Verification and Stamping of Weights or Measures**.
> (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or likely to be, used by him in any transaction for industrial production or for protection, shall, before putting such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed.
> (2) Every weight or measure referred to in sub-section (1) shall be re-verified at such periodical intervals as may be prescribed.
> (3) Every Inspector shall, for the purpose of verification of any weight or measure, attend the specified place (with the local limits of this jurisdiction) at a specified time and

verify every weight or measure which is brought to him at such place and within such time and shall, if he is satisfied that such weight and measure conforms to the standards established by or under the Standards Act, put his stamp thereon;

Provided that where any weight or measure is such that it cannot, or should not be moved from its location, the Inspector shall take such steps for the verification of such weight or measure at the place of its location as may be prescribed.

(4) Where any verification has been made under Sub-section (3), the Inspector shall grant to the person referred to in sub-section (1) a certificate in the prescribed form indicting therein the particulars of the weight or measure verified and stamped by him.

(5) Where the Controller is of opinion that by reason of the size or nature of any weight or measure, it is not desirable or practicable to put a stamp lateron, he may, by an order in writing, direct that instead of putting a stamp on such weight or measure, a certificate may be issued to the effect that such weight or measure conforms to the standards established by or under the Standards Act and every weight or measure so certified shall be deemed to have been duly verified and stamped under this Act on the date on which such certificate was issued.

47. Penalty for contravention of Section 24. Whoever, being required by Section 24 to present any weight or measure verification or re-verification, omits or fails, without any reasonable cause to do so, shall be punished with one which may extend to five hundred rupees, and, for the second or subsequent offence, with imprisonment for a term which may extent to one year and also with fine."

11. Perusal of Section 22 makes it abundantly clear that no weight or measures shall be sold or offered, exposed or possessed for sale, or used or kept for use in any transaction or for industrial production or for protection unless it has been verified and stamped.

12. Perusal of the above section makes it abundantly clear that these two sections are applicable in case weight or measures is used or kept for use or likely to be used in any transaction or for industrial production or for protection.

13. We have perused both the proformas mentioned above. Having perused Proforma A referred herein above we find that same are extremely vague. The proforma does not allege that petitioner is using the weight and measures or likely to use the measure in any transaction or industrial production or protection. In the absence of such allegation in the proforma it cannot be said that the petitioner has contravened the provisions of Section 22 or 24 of the said Act. Section 47 is a penal section and that comes into picture only in case of contravention of the provisions of Section 24. Respondent no.5, on the basis of the vague proforma which does not disclose that the

petitioner is using or likely to use measure in any transaction or for industrial production or for protection, could not have initiated criminal proceeding by filing complaint in the Magistrate court.

14. In the above circumstances, the impugned proforma cannot stand scrutiny of law. Consequently, the complaint filed by the respondent no.4 is also not maintainable as the same does not disclose any contravention of provisions of Section 22 and 24 of the said Act. The petition therefore succeeds.

15. Rule is made absolute in terms of prayer clause (a).

16. Impugned proforma dated 20.12.2010 and 20.3.2011 as well as the proceeding of criminal case no. 364/SS/2011 stands quashed.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**