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

WRIT PETITION NO.2444 OF 2014

Maruti Suzuki India Limited .. Petitioners.
V/s
State of Maharashtra and ors. .. Respondents.
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Mr. Aspi Chinoy, Sr. Counsel a/w Mr. Mahesh Londhe, and Mr. Nishant Vyas i/b M/s Sanjay Udeshi & Co., for petitioners.
Mr. D.A. Nalavade, Govt. Pleader, for respondent Nos. 1 and 2.
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CORAM : SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.
DATE : FEBRUARY 05, 2015

JUDGMENT (Per Smt. Vasanti A. Naik, J.)

Rule. Rule made returnable forthwith.

The petition is heard finally with the consent of the learned counsel of the parties.

The petitioner- Maruti Suzuki India Limited, challenges the orders of the Deputy Controller of Legal Metrology and the Controller of Legal Metrology, directing the 12 directors of the petitioner-company and the company to pay the compounding fees.

A challan was issued to the petitioner-company under Section 18(1) of the Legal Metrology Act, 2009, read with Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011, as the prices of the goods were not rounded off. After panchnama, it was found that though a fraction of less than fifty paise was to be rounded off to the preceding rupee and the fraction above 50 paise and upto 95 paise was to be rounded off to fifty paise, the petitioner-company did not round off the prices as per Section 18 of the Act read with Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011. It was informed to the petitioner-company by the notice dated 02.01.2014 that the respondents were prima facie of the view that there was a contravention of the provisions of Section 18 of the Act read with Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 and the contravention is compoundable. The petitioner intimated the respondent that it was ready for compounding of the offence by paying the compounding fees.

Though there are 12 directors on the board of directors of the petitioner company, the petitioner-company had nominated the Director under Section 49(2) of the Act. The Director of the Legal Metrology had also certified the nomination of Shri Kazahiko Ayabe as the Director under Section 49(2) of the Act. Under Section 49(2) of the Act, when an offence under the Act was committed by the Company, a person, who has been nominated under Section 49(2) and where no such person is nominated, every person who is at the time of the commission of the offence in charge and responsible for the conduct of the business of the company is deemed to be guilty of the offence and is liable to be proceeded against and punished alongwith the company.

According to the learned senior counsel for the petitioner-company, since the petitioner-company had nominated the Director, the company expected the Deputy Controller of Legal Metrology to direct the nominated Director and the Company to pay the compounding fees, especially when under Section 49(1) of the Act, only the nominated Director and the Company are deemed to be guilty of the offence and could have been proceeded against and punished. It is stated that admittedly, Shri Kazuhiko Ayabe was nominated under Section 49(2) of the Act and the said nomination was certified by the Director of the Legal Metrology. It is stated that only the nominated Director could have been proceeded against and punished alongiwth the Company and while compounding the offence under Section 48 of the Act, the compounding fees could not have been directed to be paid by the other Directors of the Company. It is stated by referring to the provisions of Section 48(1) of the Act that the compounding of offence is permitted either before or after the institution of the prosecution and if the prosecution could have been instituted only against the nominated Director, there was no question of directing the other Directors to pay the compounding fees while compounding the offence under Section 48 of the Act.

The counsel for the respondents supported the orders of the Authorities and submitted that all the directors were liable to pay the compounding fees. It is stated that under the provisions of Section 49(4) of the Act, where an offence is proved to have been committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, not being a person nominated under sub-section (2), such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The Learned Counsel sought for the dismissal of the writ petition.

On hearing the learned counsel for the parties and on a perusal of the provisions of The Legal Metrology Act, 2009, it appears that the Authorities were not justified in directing all the Directors of the petitioner-company to pay the compounding fees, specially when the petitioner-company had nominated the Director under Section 49(2) of the Act. It is rightly submitted on behalf of the petitioner-company that when only the director nominated under Section 49(2) of the Act and the Company could have been proceeded against and punished under Section 49(1) of the Act, there was no propriety in seeking the compounding fees from all the Directors of the petitioner-company,. Under Section 49(1) of the Act, only the nominated Director and the Company is deemed to be guilty of the offence and is liable to be proceeded against and punished. Since, the petitioner-company had nominated the Director under Section 49(2) and since, the nomination was certified by the Director of the Legal Metrology, only the nominated Director and the Company could have been proceeded against and punished. If, the other Directors could not have been proceeded against under Section 49(1) after the nomination of the Director under Section 49(2), the imposition of the compounding charges on the other Directors of the Company was not justified. The Appellate Authority-Deputy Controller of Legal Metrology could not not have held that all the Directors of the petitioner-company were liable to pay the compounding fees, as the provisions of Sections 48 and 49 of the Legal Metrology Act, 2009 are distinct and separate. If only the nominated Director of the Company and the Company could have been proceeded against and punished, the other Directors of the Company could not have been directed to pay the compounding fees. The provisions of Section 49(4) of the Act cannot be relied on, for supporting the impugned order, as it is not the case of the respondents that the offence was committed with the consent or connivance of, or is attributable to the neglect on the part of, any director, manager, secretary or other officer, not being a person nominated under sub-section (2) of Section 49 of the Act. In the absence of any allegation in regard to the commission of the offence by any director, manager, secretary or other officer, not being the person nominated under Section 49(2) of the Act, it cannot be said that the compounding charges should have been paid by all the Directors of the Company. Also, if compounding is permissible after the institution of the prosecution and if the prosecution could have been instituted only against the nominated Director, there was no propriety in directing all the Directors of the Company to pay the compounding fees.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned orders are modified. The compounding fees are liable to be paid by the petitioner-company and the nominated Director only. Rule is made absolute in the aforesaid terms. No order as to costs.

[C.V. BHADANG, J.] [VASANTI A. NAIK, J.]