

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE S.V. BHATT
W.A.Nos.1448 of 2004 & 1598 of 2005

COMMON ORDER: *(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)*

These writ appeals are directed against the common order dated 02.01.2003 passed in W.P.Nos.9205 of 1993, 12356 of 1994 and 14473 of 1997, whereby all the writ petitions, including the writ petitions filed by respondent No.1 in the appeals, were allowed and the impugned notices 04.02.1993 and 27.04.1993 issued by the respondents and the seizure effected on 02.01.1993 were quashed and set aside.

On 28.12.1992, the Senior Inspector of Legal Metrology, Weights and Measures Department, Mahabubnagar, A.P., inspected the shop of respondent No.1/writ petitioner and on finding that various specifications as to the date of manufacture, price etc., had not been printed on the pack, he seized certain watches and issued show cause notice alleging contravention of Section 39 of the Standards of Weights and Measurements Act, 1976 (for short 'the Act'). The show cause notice indicates contraventions alleged against respondent No.1 and invited attention to Section 73 of the Act under which the offence was compoundable. On receipt of the notice, respondent No.1/writ petitioner submitted its reply dated 08.01.1993. In reply, the main contention raised by respondent No.1 was that the provisions of the Act and Rules do not apply to the watches, for the reason that they do not come within the definition of packaged commodities and no notification as regards watches was issued, as required under clause (d) of sub-section (3) of Section 1 of the Act. This contention was not accepted and proceedings were initiated under the provisions of the Act and the Rules framed thereunder.

The learned Single Judge, after considering the provisions contained in Section 1 of the Act, in the concluding paragraphs, observed thus:

"From a reading of the same it is evident that the application of the provisions of the Act whether as regards the area, or classes of undertakings, or the classes of goods would depend on the issuance of notification by the competent authority in this regard. The items themselves are also versatile that a notification in respect of an area per se does not bring into the fold of the Act, all classes of goods manufactured in that area. Similarly, a notification as regards the classes of goods does not make the provisions of the Act and rules applicable all over the country. Unless and until specific notifications as regards a particular class of goods and area issued, the sale or distribution of such goods cannot be brought under the purview of the Act and Rules. The net result is that the first respondent can be said to have been vested with the power to initiate prosecution against the petitioner, if only there existed a notification under Sec.1(3)(d) of the Act which covers the watches also. The respondents are not able to place before this Court any such notification. Further, no such notification or provision was cited or mentioned in the show cause notice or the final order. In the absence of any such notification, the very initiation of the proceeding cannot be justified. Therefore, the petitioner is entitled to be extended the relief as prayed for in the writ petitions."

Hence, the appeal.

Sub-section (3) of Section 1 of the Act clearly provides for issue of notification appointing different dates for different classes of goods as contemplated by clause (d) of sub-Section (3). In view thereof and having considered the specific contention raised by respondent No.1, the learned Single Judge observed that unless and until specific notification as regards a particular class of goods and area is issued, the sale or distribution of such goods cannot be brought under the purview of the Act and Rules. In other words, the appellants can initiate prosecution against a person, such as respondent No.1 only if there exists a notification under Section 1(3) (d) of the Act covering watches. The appellants did not and could not place before the learned Single Judge any such notification and in view thereof, he allowed the writ petitions.

When we heard the appeals on the last date of hearing, we asked learned counsel appearing for the appellants whether he can produce the notification contemplated under Section 1(3)(d) of the Act and he sought

time. Today, he submits that he could not lay his hand on the notification contemplated under this provision. He submitted that such notification is not necessary. Having regard to the provisions contained in Section 39 of the Act, we are unable to accept this submission in view of the provisions contained in sub-section (3) of Section 1 of the Act providing for issue of notification appointing different dates for different classes of goods. We have perused the schedule appended to the Act and we did not find “watches” as one of the commodities brought under the purview of this Act. Hence, we do not find any merit in the appeals.

Writ Appeals are dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 03.09.2015

Stp/Lrkm