

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(CRL) No.695/2013**

Date of Reserve: 09.09.2015

Date of Decision: 23.09.2015

BRIDGESTONE INDIA PVT. LTD. Petitioner

Through: Mr.Wills Mathews,
Mr.M.P.Upadhyay and Mr. Amit
Kumar Pathak, Advocates.

versus

UOI & ORS. Respondents

Through: Mr.Manoj Kumar, Advocate for UOI.
Mr.Rahul Mehra, Standing Counsel
(Crl.) with Mr.Amrit Singh, Mr.Jamal
Akhtar and Mr.Mayank Mikhail
Mukherjee, Advocates. Mr.Umesh
Kumar, Department of Weights &
Measures.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J.

1. The petitioner, which is a company registered in India under the Companies Act, 1956, has challenged through the District Sales Manager of the company, the notice under Section 251 of the Code of Criminal Procedure (for short 'Cr.P.C.') issued by the learned Metropolitan Magistrate on 23.4.2012 in CC No.599/11/WM.
2. The notice under Section 251 of the Code of Criminal Procedure reads hereunder:-

*I, Sheetal Chaudhary, MM, Patiala House Courts, do
hereby serve notice u/s 251 of the Cr.P.C. upon you M/s*

*Bridgestone India Pvt. Ltd., B-100, Naraina Industrial Area,
Phase-I, New Delhi-110028 through Sh.Gurmeet Singh.*

*It is alleged against you that on 18.08.2010, the inspection
was conducted by the complainant at the above place and a
packet of tube packed by M/s Bridgestone India Pvt. Ltd.
Plot No.12, Kheda Growth Centre, Pithanpur, Distt. Dhar
(M.P.) PIN-454774 bearing packing date as 6/10, net size
1.467m and customer care No.022-42496400 was found
with mutilated MRP.*

*Thereby committed offence u/s 33/51 & 39/63 of Standards
of Weights and Measures (Enforcement) Act, 1985 and
Packaged Commodities Rules, 1977.*

*The above offences are within my cognizance and I hereby
direct that you be tried by this Court.*

(Sheetal Chaudhary)
MM/PHC/ND/23.04.2012

*Notice has been read over and explained to the accused and
questioned as under:*

Q. Do you plead guilty or claim trial?
Ans. I do not plead guilty and claim trial.

RO&AC

(Sheetal Chaudhary)
MM/PHC/ND/23.04.2012

3. On 18.8.2010, Inspector, Legal Metrology visited the office/CNF premises of the petitioner company and seized an empty packet of tube manufactured by the petitioner company.

4. The inspection report/memo dated 18.8.2010 reads as hereunder:-

“Inspected a packet of tube manufactured by M/s.Bridgestone India Pvt Ltd, Plot No.12, Kheda Growth Centre, Pithanpur, Distt. Dhar, 454774 (CC No.022-42496400, size 1.467 m, net content 1 tube manufacturing date June 2010, valve shot, key features PC 145/70 R 12. MRP was mutilated and rewritten wrong as Rs.320 (inclusive of all taxes). Empty packet seized and attached violation under Section 33/51. It is an offence as per the available record.”

5. A show cause notice was thereafter issued to the company by the Controller/Assistant Controller, Legal Metrological department of NCT of Delhi alleging that the petitioner has committed a breach of Section 33/39 of the Packaged Commodities Rules, 1977/Standards of Weights and Measures (ENF) Enforcement Act, 1985 and, therefore, is guilty of offence punishable under Section 51/63 of the Act.

6. The show cause notice dated 11.10.2010, further made it clear that Section 65 of the aforesaid Act provides for compounding of offence on payment for credit to the Government of such amount as may be specified by the Controller/Assistant Controller/Legal Controller, Metrology.

7. By the above notice, the petitioner was asked to, in case it wished to compound the offence, to visit the office of the Controller/Assistant Controller along with all documents. In case of non response by the specified date and time, it was further made clear that the case would be referred to the Court of law for trial in accordance with the rule in that regard.

8. The petitioner filed the reply to the aforesaid notice on 2.11.2010 stating that in the month of June, 2000 i.e. on the

manufacturing date, the MRP of the product (tube) was Rs.320 only. The said tube was manufactured and packed in the factory premises in the month of June, 2010 and the MRP of the said tube on such manufacturing date was Rs.320 only which also appears on the package seized. Along with the show cause reply, a copy of the price list of the company for the said product which was effective from 26th April, 2010 was enclosed.

9. It was stated that the fact of MRP of said product being Rs.320/- in the month of June, 2010 could also be verified from the invoices raised for dispatch of products from the factory premises in the month of June, 2010 to various CNF agents at different locations. Copies of the invoices raised for different locations at MRP of Rs.320/- was also annexed along with the reply.

10. It was further stated by the company (petitioner) that the packing materials are always ordered in bulk which have printed MRP. As and when the MRP of the tube is revised, stock of unused packing material is used by blacking out the old printed MRP on such packing material and new MRP is printed besides the same. It was further clarified by the petitioner company that the bar on reprinting MRP operates only when the product leaves the factory premises. In the packet which was seized, new MRP was printed on the packing material in the factory premises and before the same was dispatched to CNF agents. The purpose of reprint was only to use the stock of packing material which remained unused. A request, therefore, was made by the petitioner to drop the proceedings and withdraw the aforementioned notice.

11. Not satisfied with such reply, a complaint was filed by the Inspector Legal, Metrology-33, Weights and Measures Department, South West Zone, Rewla, Khanpur, New Delhi on 1.2.2011 before the Court of the Metropolitan Magistrate, Patiala House Courts, New Delhi alleging commission of offences punishable under Rule 39/63 of Standards of Weights and Measures (Enforcement) Act, 1985. The complaint inter-alia stated that the opportunity which was given to the petitioner to have the offence compounded was not availed of by the petitioner. It was, therefore, prayed that the petitioner be tried for the offences alleged.

12. Pursuant to such a complaint, the impugned notice referred to above was issued by the learned Metropolitan Magistrate on 23.4.2012.

13. It is contended on behalf of the petitioner that even if the allegations in the complaint are taken on its face value, none of the ingredients of the offence alleged is made out as there is no allegation of any act of omission or commission for bringing home charges under the aforesaid offences. It is further contended that in case of the petitioner admitting the fact that the price which was rewritten was Rs.320/- which was the standard price, there was no need to try the petitioner for any offence.

14. The core contention of the petitioner has been that there has not been any unjust enrichment to the company or any loss to the prospective customer and there is complete absence of any malafide intention.

15. There is nothing on record to suggest violation of the object for which the special legislation was enacted.

16. It has been submitted that Section 95 of the IPC, which inter-alia states that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm, makes the present complaint not maintainable under law.

17. A further grievance has been made by the petitioner that the complaint, pursuant to which the impugned notice under Section 251 of the Cr.P.C was issued, was filed without date and seal and the same cannot be accepted as a complaint in the eyes of law. Learned advocate appearing for the petitioner company submitted that the contention of the respondent that no one appeared before the designated authority for compounding the offence is factually incorrect. The authorised representative of the company, it is stated, personally visited the office of the authority concerned on 18.10.2010 and sought time for replying to the notice. It has also been submitted that a similar complaint which was filed by the respondent against the petitioner company vide complaint case No.600/11/WM was dismissed on 27.1.2012 by the Court of learned M.M, Patiala House Courts, New Delhi.

18. A reference also has been made by the petitioner to the guidelines on Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules, 2011 (amended upto November,

2012) wherein vide notification No.SSR57B(E), dated 26.8.1993 it has been clarified that alterations mentioned in the rule pertain to pasting of additional label. There is no bar on the manufacturer to blank out the entire declaration and reprint the revised declaration, before packaging.

19. The notification regarding the above clarification is reproduced as below:-

“Kindly refer to your letter no.MS/A/93 dated 8/9/93 addresses to Mrs.Sathi Nair, Jt. Secretary seeking clarifications regarding amendment made to the Standards of Weights & Measures (Packaged Commodities) Rules, 1977 on 26th August, 1993.

In this regard, I am directed to clarify the points raised in your above said representation:

Point No.1:

Rule 4 of the packages Commodities Rules provide that “every package in which the commodity is pre-packed bears thereon or on a label securely affixed thereto, such declarations as are required to be made under the rules.” It means that putting a label on the carton of the package is allowed. This label should have a place for principal display panel as required under the rules and this panel should contain all the declarations.

Point No.2:

Alterations mentioned in the rule pertain to pasting of additional label. There is no bar on the manufacturer to blank out the earlier declaration and reprint the revised declaration, before packaging.

Point No.3:

Any registered newspaper of any language can be used to give the advertisement and the advertisement should be given by the manufacturer or packer.

Point No.4:

Bar-coded labels are treated at additional declarations. Marking of additional declarations like the name of the retail dealer, sale price of the package being less than or equal to MRP declared by the manufacturer are not prohibited. However, they cannot be used for upward revision of price.

You may circulate this to members of your Association.”

20. Mr.Rahul Mehra, learned Standing Counsel appearing for the respondent submitted that a further clarification was sought by the department from the concerned Ministry regarding the clarification referred to above. The Government of India vide their letter No.WM-9(68/2014) dated 29.10.2014 has re-clarified as under:-

*“..... that the following provisions of sub Rule 7 of Rule 23 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 shall apply:-
The manufacturer or packer shall not alter the price on the wrapper once printed and used for packing.”*

21. It is, therefore, submitted on behalf of the State that the contention of the petitioner company about no bar on blanking out earlier declarations and re-printing revised declarations before packaging, was not sustainable.

22. The Standards of Weights and Measures (Enforcement) Act, 1985 (Act No.54 of 1985) (hereinafter called as the Act of 1985) was enacted to provide for enforcement of Standards and weights and measures established by or under the Standards of Weights and Measures Act, 1976 (hereinafter called as Act of 1976) and for matters connected therewith or incidental thereto. The Act of 1976 was

brought into Statute book for establishing standards of weights and measures, for regulating inter-State trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto.

23. Rule 23 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 which has been framed in exercise of powers conferred by Section 83 of the Act of 1976 reads as hereunder:-

“23. Provisions relating to wholesale dealer and retail dealers.-

(1) No wholesale dealer or retail dealer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with, in all respects, the provisions of the Act and these rules.

[(2) No retail dealer or other person including manufacturer, packer and wholesale dealer shall make any sale of any commodity in packaged form at a price exceeding the sale retail price thereof].

Comment

(1)[Explanation.- For the removal of doubts, it is hereby declared that a sale, distribution or delivery by a wholesale dealer to a retail dealer or other person is a "retail sale" within the meaning of this sub-rule.]

*[(3) ***](Omitted by GSR No.105 (E) dated 2-3-1995)*

[(4) Where, after any commodity has been pre-packed for sale, any tax payable in relation to such commodity is revised, the retail dealer or any other person shall not make any retail sale of such commodity at a price exceeding the revised retail sale price, communicated to him by the

manufacturer, or where the manufacturer is not the packer, the packer and it shall be the duty of the manufacturer or packer, as the case may be, to indicate by not less than two advertisements in one or more newspapers and also by circulation of notices to the dealers

(2)and to the Director in the Central Government and Controller of Legal Metrology in the States and Union Territories, the revised prices of such packages but the difference between the price marked on the package and the revised price shall not, in any case, be higher than the extent of increase in the tax or in the case of imposition of fresh tax higher than the fresh tax so imposed:

Provided that publication in any newspaper, of such revised price shall not be necessary where such revision is due to any increase in, or in imposition or, any tax payable under any law made by the State Legislatures:

Provided further that the retail dealer or other person, shall not charge such revised prices in relation to any packages except those packages which bear marking indicating that they were prepacked in the month in which such tax has been revised or fresh tax has been imposed or in the month immediately following the month aforesaid:

Provided also that where the revised prices are lower than the price marked on the package the retail dealer or other person shall not charge any price in excess of the revised price, irrespective of the month in which the commodity was pre-packed].

(5) Nothing in sub-rule (4) shall apply to a package which is not required, under these rules to indicate the month and the year in which it was pre-packed.

(6) No retail dealer or other person shall obliterate, smudge or alter [the retail sale price], indicated by the

manufacturer or the packer, as the case may be, on the package or on the label affixed thereto.

[(7) The manufacturer or packer shall not alter the price on the wrapper once printed and used for packing.]

24. The proviso to the rule categorically states that where the revised prices are lower than the price marked on the package, the retail dealer or other person shall not charge any price in excess of the revised price, irrespective of the month in which the commodity was packaged. Sub clause (6) of the Rule, further states that no retail dealer or other person shall obliterate, smudge or alter (the retail sales price) indicated by the manufacturer or the packer, as the case may be, on the package or on the label fixed thereto. Sub clause (7), however, reconfirms that the manufacturer or the packer shall not alter the price on the wrapper once printed and used for packing. (**Emphasis supplied**). What is prohibited by Rule 23 is that the customer ought not to be charged any price in excess of the revised prices even if the revised prices are lower than the price marked on the package. It is under this context that sub Clause (7) clarifies that the manufacturer or packer will not alter the price on the wrapper once printed and used for packing.

25. Clause (7) of Rule 23 does not bar alteration in the wrapper before packing the contents. Reading anything else into such clause would amount to negating the very concept and the trend of controlled market where prices of the contents/commodities are revised periodically. As has been stated earlier, the rule itself provides that in

case the marked price on the package is more than the revised price, a customer could not be charged in excess of the revised price, irrespective of the month in which the commodity was pre-packed. What is of importance here is that a customer is not to be charged over and above and in excess of the price prevailing in the market at the time of purchase.

26. The reply to the show cause notice dated 11.10.2010 by the petitioner company makes it very clear that the wrapper with the same MRP of Rs.320/- was ordered in bulk which remained unused. A revised price is required to be printed before packing the contents. It was in this context and under such circumstances that the initial label which fortunately and incidentally contained the same MRP was blacked out and a separate MRP of Rs.320/- was printed. This fact stands buttressed by the invoices sent to the retailers throughout the country which was made part of the show cause notice. That apart, it is not the case of the respondent that the label was blacked out and printed separately by changing the MRP and after the packing of the contents.

27. Thus the clarification vide notification No.SSR57B(E) dated 26.8.1993 referred to above namely that there is no bar on the manufacturer to blank out the earlier declarations and reprint the revised declarations, before packaging is not in derogation of or inconsistent with sub Clause (7) of Rule 23.

28. Section 33 of the Act of 1985, provides for the Standards Act and the Rules made with regard to commodities in packaged form which has to apply to every commodity in a packaged form which is

distributed, sold or kept, offered or exposed for sale, in the State.

29. Section 39 of the Act of 1985 provides for penalty for keeping non standard weights and measures for use and for other contravention. Sections 33 and 39 of the Act of 1985 are reproduced as below:-

Section 33 - Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State

(1) The provisions of the Standards Act and the rules made there under, as in force immediately before the commencement of this Act, with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively, to the "State Government", "this Act" and the "Controller".

(2) The State Government may make rules, not inconsistent with the Standards Act or any rule made there under, to regulate the packaging of any commodity intended to be sold or distributed, within the State in packaged form, or to regulate the sale or distribution, within the State, of any commodity in packaged form.

Explanation.—For the purposes of this section, "commodity in packaged form" shall have the meaning assigned to it in the Standards Act and shall include a pre-packed commodity.

“Section 39 - Penalty for keeping non-standard weights or measures for use and for other contravention

(1) Whoever keeps any weight or measure other than the standard weight or measure in any premises in such circumstances as to indicate that such weight or measure is being, or is likely to be, used for any—

(a) weighment or measurement, or

(b) transaction or for industrial production or for protection,

shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

(2) Whoever,—

(i) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for and paid for, or

(ii) in rendering any service by weight, measure or number, renders that service less than the service contracted for and paid for, or

(iii) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for and paid for, or

(iv) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for and paid for,

shall be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.

(3) Whoever enters, after the commencement of this Act, into any contract or other agreement (not being a contract or other agreement for export) in which any weight, measure or number is expressed in terms of any standard other than the standard weight or measure, shall be punished with fine which may extend to two thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.”

30. Thus it cannot be assumed that the petitioner company packaged the content namely the tube and thereafter reprinted the label of price on the wrapper. Thus no offence under any one of the sections of the Act of 1985 can at all be said to have been made out.

31. It has been argued on behalf of the State/respondents that the complaint or the notice under Section 251 of the Cr.P.C ought not to be quashed as Section 65 of the 1985 Act provides for compounding of the offences specially offences under Sections 39 and 51 of the Act.

32. Learned counsel for the petitioner on the other hand submitted that Section 51 of the Act of 1985 which provides for the penalty for contravention of Section 33 of the Act, punishes the first offender/first offence with fine which may extend to Rs.5000/- but for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine. Learned counsel for the petitioner company therefore contends that the petitioner would be greatly prejudiced if it is asked to compound the offence even though no offence has been made out; for there is a possibility of reckless filing of another complaint by the designated authorities for the purpose of harassment.

33. Be it noted that the Standards of Weights and Measures

(Enforcement) Act, 1985 has been repealed with effect from 01.03.2011 vide Section 57 of the Legal Metrology Act, 2009. However, since the alleged offence is said to have been committed prior to the repeal, the provisions of the 1985 Act would apply.

34. On the above premised reason, this Court considers the charges against the company to be absolutely groundless and, therefore, the complaint (Complaint No. 600/11/WM) and the notice under Section 251 of the Code of Criminal Procedure by the Metropolitan Magistrate are hereby quashed.

35. The petition is allowed.

Crl.M.A No.5438/2013

1. In view of the petition having been allowed, no order is required to be passed in the instant application.
2. Dismissed as infructuous.

ASHUTOSH KUMAR, J

SEPTEMBER 23, 2015

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