

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: December 11, 2015

+ W.P.(C) 4784/2014 and CM No.9529/2014 (Stay)

M/S IMS MERCANTILES PVT. LTD.

..... Petitioner

Through: Mr.Bharat Gupta with Mr.Saurabh
Mehta and Mr.Varun Tyagi, Advs.

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr.Sanjay Jain, ASG with Mr.Ajay
Digpaul, Ms.Noor Anand Chawla and Ms.Aastha
Jain, Advs. for UOI.

Ms.Nikhita Khetrapal, Adv. for Ms.Nidhi Raman,
Adv. for R-2 and 3.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **G.ROHINI, CHIEF JUSTICE**

1. The petitioner is a registered trader who carries on sale of imported rechargeable LED flash lights. This writ petition is filed aggrieved by the notice issued by the respondent No.3 purportedly in exercise of the power conferred under Section 48 of the Legal Metrology Act, 2009, compounding the alleged offence punishable under Section 36(1) of the said Act on payment of compounding fee of Rs.25,000/-. The prayer in the writ petition is as follows:

“(i) Issue a writ, order or direction quashing sub-rule 3 of Rules 32 of the Legal Metrology (Packaged Commodities) Rules, 2011 in so far as it is inconsistent with the provisions of the Legal Metrology Act, 2009 and is ultra – vires the Act;

(ii) Issue a writ, order or direction thereby clarifying that Rules issued by Respondent No.1 will be applicable to inter-state trade and commerce and those issued by Respondent No.2 will be applicable to intra-state trade and commerce;

(iii) Issue a writ, order or direction thereby direction Respondent No.3 to compound the offence of the petitioner by accepting compounding fee as laid down in Rule 25 of the Delhi Legal Metrology (Enforcement) Rules, 2011. ”

2. As could be seen from the material available on record, the petitioner's premises was inspected by the team of the Legal Metrology, Government of NCT of Delhi on 22.11.2013 and it was found that one of the packets containing rechargeable LED flash lights did not bear the word 'Rs./₹'. In other words, the MRP shown on the package was not prefixed with symbol 'Rs./₹' but it was merely shown 'MRP 299.00'. Accordingly an inspection report/memo dated 22.11.2013 was issued by the respondent No.3/Asst. Controller of Legal Metrology. On 05.12.2013, the petitioner made a representation stating that the omission of the word 'Rs./₹' was only on account of a minor printing error and there was no malafide intention as was apparent from the fact that the mistake was found on only one packet among many packets searched by the inspection team. However, the respondent No.3 chose to initiate proceedings for compounding under Section 48 of the Legal Metrology Act, 2009 and issued the impugned notice calling upon the petitioner to appear before the Controller/Assistant Controller on 09.01.2014 for compounding the alleged offence of contravention of provisions of the Legal Metrology (Packaged Commodities) Rules, 2011.

3. In response to the said notice, the petitioner appeared before the respondent No.3 and sought for compounding on payment of Rs.2,500/- in terms of Rule 25 of the Delhi Metrology (Enforcement) Rules, 2011. However, the respondent No.3 did not agree and insisted on payment of Rs.25,000/- towards compounding fees. Hence, the present writ petition.

4. Before advertng to the contentions advanced on behalf of the parties, it is necessary for us to notice the relevant statutory provisions.

5. The Legal Metrology Act, 2009 has been enacted by the Parliament to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto. Section 18(1) of the Legal Metrology Act, 2009 (for short 'the Act') provides that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declaration and particulars in such manner as may be prescribed. Under Section 36(1) of the Act whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale which does not conform to the declarations on the packet as provided in the Act shall be punished with fine which may extend to Rs.25,000/-, for the second offence with fine which may extend to Rs.50,000/- and for the subsequent offence with fine which shall not be less than Rs.50,000/- but which may extend to Rs.1,00,000/- or with imprisonment for a term which may extend to one year or both. Section 48 of the Act provides that any offence punishable under Section 25, Sections 27 to 39 and Sections 45 to 47 may either before or after the institution of

the prosecution be compounded on payment for credit to the Government of such sum as may be prescribed.

6. Section 52 of the Act empowers the Central Government to make Rules by notification for carrying out the provisions of the Act. Power has been conferred on the State Governments also under Section 53 of the Act to make rules after consultation with the Central Government to carry out the provisions of the Act.

7. In exercise of the power conferred under Section 52, the Central Government made the Rules called the Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred to as 'the Packaged Commodities Rules'). Rule 6 of the Packaged Commodities Rules provides for the declarations to be made on every package and as per Clause (e) of Rule 6(1), every package shall bear thereon the retail sale price of the package. The word 'retail sale price' has been defined under Rule 2(m) as under:-

“2 (m) “retail sale price” means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and the price shall be printed on the package in the manner given below;

‘Maximum or Max. Retail price Rs...../ ₹..... inclusive of all taxes or in the form of MRP Rs...../ ₹..... incl., of all taxes after taking into account the fraction of less than fifty paise to be rounded off to the preceding rupee and fraction of above 50 paise and up to 95 paise to the rounded off to fifty paise;”

8. Rule 32 of the Packaged Commodities Rules which provides for penalty for contravention of the Rules may also be reproduced hereunder for ready reference:-

“32. Penalty for contravention of Rules – (1) Whoever contravenes the provisions of rules 27 to 31, he shall be punished with fine of four thousand rupees.

(2) Whoever contravenes any other provision of these rules, for the contravention of which no punishment has been provided either in the Act or in the rules, he shall be punished with fine of two thousand rupees.”

9. It is relevant to note that by Notification dated 06.06.2013, the Packaged Commodities Rules have been amended by inserting sub-Rule (3) to Rule 32 prescribing the sum of compounding amount for various contraventions. Sub-Rule (3) of Rule 32, as inserted by amendment dated 06.06.2013, reads as under:-

“(3) Sum of compounding offences – The sum of compounding offences committed under the said Act shall be as specified in the following Table, namely:-

Sr. No.	Offence	Compounding amount	
(1)	(2)	(3)	
		If the application for compounding is by retailers or wholesale dealers.	If the application for compounding is by manufacturers or importers
1.	Contravention of Section 29	Rupees two thousand	Rupees Ten Thousand
2.	Contravention of sub-Section (1) of Section 36	Rupees five thousand	Rupees Twenty Five thousand
3.	Contravention of sub-Section (2) of Section 36	Rupees Ten thousand	Rupees Fifty thousand
4.	Selling of products for more than the maximum retail price	Rupees two thousand	Rupees five thousand.

10. As already mentioned, under Section 53 of the Act, the State Governments are also empowered to make Rules and in exercise of the power so conferred, the Government of NCT of Delhi made the Rules called the Delhi Legal Metrology (Enforcement) Rules, 2011 (hereinafter referred to as 'the State Rules'). Rule 25 of the State Rules provides that the fee for compounding of offences committed under the Act shall be as prescribed in Schedule XI. As per the said Schedule, the compounding fees for the offence under Section 18(1) of the Act shall be Rs.2,500/-.

11. In the case on hand, the allegation is that Rule 6 of the Packaged Commodities Rules has been contravened by the petitioner. It is not in dispute that the same is punishable under Section 36 of the Act. In terms of Section 48 of the Act, the said offence may be compounded either before or after the institution of the prosecution on payment of such sum as may be prescribed. The word 'prescribed' has been defined under Section 2(o) of the Act as prescribed by Rules made under the Act. As noticed above, rules have been made by both the Central Government and the Government of NCT of Delhi and there are specific provisions prescribing the compounding fees under both the sets of Rules.

12. The question that requires consideration is whether the contravention of Rule 6 of the Packaged Commodities Rules is compoundable on payment of compounding fees of Rs.25,000/- as prescribed under the Packaged Commodities Rules made by the Central Government or on payment of Rs.2,500/- as prescribed under the State Rules.

13. It is contended in the writ petition that the compounding fees prescribed under Rule 32(3) of the Packaged Commodities Rules is applicable only in case of inter-State trade and commerce in terms of

Section 13 of the Act whereas the provisions of the State Rules are applicable in case of intra-State trade and commerce in terms of Section 14 of the Act. It is pleaded by the petitioner that since the petitioner's registered office is situated in Delhi and the goods were displayed in Delhi, it is a case of intra-State commerce and, therefore, the State Rules alone are applicable. It is also contended that the Central Government has exceeded the rule making power conferred on it in having prescribed Rs.25,000/- as compounding fees under sub-rule (3) of Rule 32 of the Packaged Commodities Rules since the same is in contravention of sub-section (3) of Section 52 of the Act which lays down that the penalty shall not exceed Rs.5,000/-. Thus, it is contended that Rule 32(3) of the Packaged Commodities Rules, being *ultra vires* the Act, is liable to be struck down.

14. The Director, Legal Metrology filed a counter affidavit raising a preliminary objection as to the maintainability of the writ petition on the ground that the petitioner failed to exhaust the alternative remedy of appeal provided under Section 50 of the Act. On merits of the case, it is contended that since the petitioner has committed an offence punishable under Section 36(1) of the Act, insistence upon payment of the compounding fees of Rs.25,000/- cannot be held to be illegal on any ground whatsoever. It is also contended that the "compounding fees" under Section 48 of the Act and the "fine for breach" under Section 52(3) of the Act are two distinct issues and the contention that there is conflict between the Act and Rules is without any basis.

15. We have heard the learned counsel for both the parties. Sections 18, 36 and 48 of the Act which are relevant for the purpose of the present case are as under:-

“18. Declarations on pre-packaged commodities. – (1)

No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.

(2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.”

36. Penalty for selling, etc., of non-standard packages.

– (1) Whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

(2) Whoever manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity, with error in net quantity as may be prescribed shall be punished with fine which shall not be less than ten thousand rupees but which may extend to fifty thousand rupees and for the second and subsequent offence, with fine which may extend to one lakh rupees

or with imprisonment for a term which may extend to one year or with both.

48. Compounding of offences. - (1) Any offence punishable under section 25, sections 27 to 39, sections 45 to 47, or any rule made under sub-section (3) of section 52 may, either before or after the institution of the prosecution, be compounded, on payment for credit to the Government of such sum as may be prescribed.

(2) The Director or legal metrology officers as may be specially authorised by him in this behalf, may compound offences punishable under section 25, sections 27 to 39, or any rule made under sub-section (3) of section 52.

(3) The Controller or legal metrology officer specially authorised by him, may compound offences punishable under section 25, sections 27 to 31, sections 33 to 37, sections 45 to 47, and any rule made under sub-section (3) of section 52:

Provided that such sum shall not, in any case, exceed the maximum amount of the fine, which may be imposed under this Act for the offence so compounded.

(4) Nothing in sub-section (1) shall apply to person who commits the same or similar offence, within a period of three years from the date on which the first offence, committed by him, was compounded.

Explanation. - For the purposes of this sub-section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.

(5) Where an offence has been compounded under sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded.

(6) No offence under this Act shall be compounded except as provided by this section.”

16. As is evident from the above provisions, the offence punishable under Section 36 is compoundable under Section 48 on payment of such sum as may be prescribed. It is also clear that the Director or Legal Metrology Officer as may be specifically authorized by him as well as the Controller or Legal Metrology Officer specifically authorized by him are competent under Section 48 to exercise the power of compounding the offence under Section 36.

17. In the case on hand, the inspection was conducted by the Assistant Controller. However, the offence alleged is contravention of Rule 6(1)(e) of the Packaged Commodities Rules made by the Central Government in exercise of the powers conferred under Section 52(2) of the Act. By the date of the inspection in question, sub-rule (3) of Rule 32 of the Packaged Commodities Rules has already been inserted by amendment dated 06.06.2013 prescribing the compounding amount for the offences specified therein including contravention of Section 36(1) of the Act for which the compounding amount shall be Rs.25,000/-.

18. The alleged offence being contravention of the provisions of the Packaged Commodities Rules made by the Central Government, it appears to us that the respondents are justified in applying Rule 32(3) of the Packaged Commodities Rules for fixing the compounding fees. It may be

added that the Controllers are appointed by the State Government under Section 14 of the Act for exercising the powers and discharging the duties conferred on them under the Act in relation to intra-State trade and commerce. It is not in dispute that the Act as well as the Packaged Commodities Rules empower both the Director and the Controller to inspect the premises and effect seizure for enforcement of provisions of the Packaged Commodities Rules. Section 48 of the Act further empowers both the Director and Controller to exercise the power of compounding. We have also observed that the Delhi Legal Metrology (Enforcement) Rules, 2011 made by the Lieutenant Governor of the National Capital Territory of Delhi in exercise of the powers conferred by Section 53(2) of the Act prescribed the procedure for verification of the weights and measures, licensing of manufacturer, repairers and dealer of weights and measures and the matters relating to offences and penalties for use of non-standard weight or measures. The said Rules do not contain any provision regarding declarations on pre-packaged commodities much less that penalty for sale of the pre-packaged commodity which does not conform to the declarations on the package.

19. As we could see, the Packaged Commodities Rules alone dealt with the declaration on pre-packaged commodities and the penalty for contravention. Hence, the compounding fees prescribed under Rule 32(3) of the said Rules has been rightly applied by the Respondents.

20. It is no doubt true that Schedule XI of the Delhi Legal Metrology (Regulation) Rules, 2011 includes the offence of non-compliance of declaration in respect of pre-packaged commodity by manufacturer or dealer under Section 18(1) of the Act. However, in the absence of any provision in

the said Rules providing for such declaration on pre-packaged commodity and non-compliance thereof, the said Rules cannot be made applicable for compounding the offences of contravention of Packaged Commodities Rules, particularly after insertion of a specific provision for compounding under Rule 32(3) of the Packaged Commodities Rules.

21. The further contention of the petitioner is that Rule 32(3) of the Packaged Commodities Rules is ultra vires the Act since the same is in contravention of sub-section (3) of Section 52 of the Act. Section 52(3) reads as under:

“In making any Rule under this Section, the Central Government may provide that a breach thereof shall be punishable which may extend to Rs.5000/-.”

22. Apparently, sub-section (3) Section 52 of the Act provides for fine but not the compounding fees, whereas the impugned Rule 32(3) of the Packaged Commodities Rules provides for compounding amount. In fact, the upper limit of the compounding fees has been provided by Section 48 of the Act itself inasmuch as the proviso states that the compounding amount shall not in any case exceed the maximum amount of the fine which may be imposed under the Act for the offence so compounded.

23. Under Section 36 of the Act, the fine prescribed for the first offence is Rs.25,000/-, for the second offence Rs.50,000/- and for the subsequent offence not less than Rs.50,000/- which may extend to Rs.1,00,000/- or with imprisonment for a term which may extend to one year or with both. The compounding fees prescribed as Rs.25,000/- under Rule 32(3) of the Packaged Commodities Rules is thus in conformity with the Act.

24. Thus, Rule 32(3) of the Packaged Commodities Rules is not in conflict with the parent Act. The conflict, as being contented by the petitioner, is purely imaginary and non-existent and appears to be result of misreading of the provisions.

25. For the aforesaid reasons, the writ petition is devoid of any merit and the same is accordingly dismissed. No costs.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

DECEMBER 11, 2015

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