

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.290 OF 2003

1. Colgate-Palmolive (India) Ltd.,
B-14/10, MIDC, Waluj,
Industrial Area, Aurangabad.
2. Dinesh Castellino,
Deputy Company Secretary and
Authorized Signatory,
Colgate Palmolive (I) Ltd.,
age 30 yrs, Occ. Service,
R/o Colgate Research Centre,
Hiranandani Gardens,
Powai, Mumbai 400 076. Applicants.

VERSUS

1. State of Maharashtra,
2. Inspector of Legal Metrology,
Gangapur Division,
17, Godavari Colony,
Gangapur, Dist. Aurangabad.
3. Union of India. (deleted). Respondents

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Mrs C.S. Deshmukh, Advocate for Applicants.
Mr. A R Kale, APP for Respondents.

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CORAM : V. K. JADHAV, J.

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**Date of Reserving the Judgment : 10.10.2016
Date of pronouncing the Judgment : 26.10.2016**

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JUDGMENT :-

1. Being aggrieved by the seizure of goods under

receipt dated 8.5.2002, notice dated 11.5.2002, and a complaint dated 18.10.2002 and the order of the Judicial Magistrate First Class, Aurangabad dated 19.10.2002 issuing thereby process against the applicants, the applicants prefers this application under section 482 of the Code of Criminal Procedure for quashing the same.

2. Brief facts, giving rise to the present application are as under :-

a] The applicant No.1, is a Company registered under the Companies Act having its office at Mumbai. The company has a manufacturing Unit/Factory at Aurangabad and the company is engaged at aforesaid unit, in manufacturing, inter-alia, toilet soaps.

b] On 8.5.2002 respondent no.2 had inspected the toilet soap stored in the petitioner no.1's premises. It was noticed during the said inspection that the products of the company namely Palmolive Naturals Soap (with milk cream) and Palmolive Naturals Soap (Relaxing) have weighed lesser than the declared net

weight. Respondent No.2 in exercise of powers under Section 29 of The Standards of Weights and Measures Act, 1976 (hereinafter referred to as 'Standards Act') and under Section 31 of The Standards of Weights and Measures (Enforcement) Act, 1985, (hereinafter referred to as 'Enforcement Act'), seized the materials referring to the Rules 24, 25 and 26 of The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (Packaged Commodities Rules, 1977. Respondent No.2 had seized 80 sample of Palmolive Naturals (with milk cream) soap (75 grams net weight, when packed) with 10 empty wrappers thereof and 80 sample packages of Palmolive Naturals (Relaxing) soap (100 grams net weight, when packed) and 10 empty wrappers thereof and also 6,30,576 packages of Palmolive Naturals (with milk cream) soap and 1,08,864 packages of Palmolive Naturals (Relaxing) soap, aggregate costs of the seized material is Rs.71,67,656/-.

c] Respondent No.2 had thereafter sent a notice dated 11.5.2002 to the applicant alleging therein that after checking the net weight of the soap, weight of the

soap was found to be less and therefore, goods have been seized vide receipt dated 8.5.2002. It has also contended in the said notice that, prima facie the provisions of section 33 of the Standards Act and Rules 24, 25 and 26 of the Packaged Commodities Rules have been contravened. The applicants were called upon to give their explanation.

d] The applicants under letter dated 28.5.2002 tendered their explanation inter alia contending therein that, the toilet soaps as listed in the Fourth Schedule of Packaged Commodity Rules and as per Rule 11 (4) qualified by words “when packed” and accuracy requirement referred to time of manufacturing/packing. It has also brought to the notice of the respondents that, since the commodities are likely to undergo significant variations in net contents of the packages on account of the environmental and other conditions, the relevant provisions of the Act and rules allowed the declaration of quantity in relation to the commodities sold by weight or volume to be clarified by words “when packed”. It has also brought to the notice of the

respondent that as per the record, net weight at the time of manufacture of the soaps showing that net weight of the soaps is in conformity with the Rule 24 of the Packaged Commodities Rules. Accordingly, it was requested to release seized goods and to grant personal hearing in case further clarification or explanation is sought. Even, the applicants constrained to write again to the respondents reiterating the same facts.

e] The Respondents by letter dated 26.8.2002 informed the applicants that they have violated Section 33 of the Standards Act and they are liable for the prosecution, however, the opportunity was extended to the applicants to compound the offence at the departmental level, if desired. The applicants have replied to the said letter immediately pointing out the position as stated in the earlier explanation and further pointing out that there has been a compliance with the provisions of law and there has been no violation of the provisions of Standards Act, Enforcement Act and Packaged Commodities Rules and further expressed their inability with regard to the inquiry in relation to

the alleged offences. On 30.9.2002 the respondent has communicated a decision to the applicants for lodging of complaint in the Court. Thus, on 18.10.2002 respondent no.2 had lodged a complaint under Rules 24, 25 of the Packaged Commodity Rules read with section 33 and 51 of the Enforcement Act, against the applicants. The learned Judicial Magistrate First Class, Aurangabad was pleased to issue process against the applicants for the aforesaid offences by order dated 19.10.2002. Hence, this Criminal Application.

3. The learned counsel for the applicants submits that, the allegations made in the complaint and the order issuing process by the Magistrate are not proper, correct and legal as it ignored the fact that toilet soap contain moisture, and it is a known, well recognized phenomenon that environmental conditions cause loss of moisture, which in turn results loss of the weight of the soap. Learned counsel submits that, the relevant provisions of the Act therefore, provides for and makes allowance for such phenomenon and permits the manufacturer or packer of such commodities to qualify

the declaration as to its net contents/weight by the use of the words “when packed”. The learned counsel submits that, the package commodity Rules prohibits declaration of quantity of a packaged commodity to be qualified by the words “when packed” where the commodity in package is not likely to undergo any variation in weight or measure on account of environmental conditions and that quantity declared on the package shall correspond to the net quantity to be received by the consumer. However, the Packaged Commodity Rules provides for qualification of declaration of quantity, by words “when packed” of the commodities specified in IV th Schedule since they are likely to undergo significant variations of weight or measure on account of environmental or other conditions. The learned counsel submits that, said words “When Packed” denotes the net weight of the commodity at the time of manufacturing/packing, and thereby making it clear that weight is likely to change and vary subsequently on account of environmental/climatic conditions. The complaint as such does not take above facts into consideration and

thus the complaint is without any basis and the allegations do not make out any case under the said Act and Packaged commodity Rules. Learned counsel submits that, the complaint and the order issuing process thus are liable to be quashed and set aside on this count alone.

4. The learned counsel submits that, it was incumbent and imperative that respondent no.2 should have weighed the toilet soap of the applicants at the time of manufacture or packing, to inspect and see, whether there is compliance of the Rules framed in relation to the said products. Learned counsel submits that, as a matter of fact, the applicants had requested the respondent no.2 to weigh the toilet soaps at the time of manufacture and packing, however, respondent no.2 has not responded to it. Learned counsel submits that, the action of respondent no.2 in weighing and seizing the goods after a noticeable gap of time after event of manufacture and packing of the said soaps is contrary to the purpose for which the powers can be exercised by him under the Standards Act, Enforcement Act and

Package Commodity Rules.

5. The learned counsel submits that, the Ministry of Civil Supplies, Consumer Affairs and Public Distribution Weights and Measures by letter dated 8.7.1994 issued a clarification regarding the Standards of Weight and Measures (Packaged Commodities) Rules, 1977 and informed to All India Management Association that according to the provisions of Rules 11 (4), net quantity declaration of toilet soap and other commodities listed in the Fourth Schedule, may be qualified by the words “when packed” as the commodities are likely to undergo significant variations in weight or measures on account of environmental or other conditions. The implication of these provisions is that, in respect of the commodities listed in the Fourth Schedule the accuracy requirement would apply only at the time of manufacturing/packing. In this connection, the attention is also drawn to the provisions of the Proviso appended to Rule 26 (3). Learned counsel submits that, in view of the said clarification, the implication of Rule 11 (4) is that, the commodities listed in the Fourth Schedule, the accuracy

requirement would apply only at the time of manufacturing/packing.

6. Learned counsel submits that the procedure is prescribed in Rule 24 of the Packaged Commodities Rules for examination of and determination of quantity and error in packages at the premises of the manufacturer or packer. In terms of sub-rule (4) of Rule 24 the clause ©, if any such package shows an error in deficiency greater than twice the maximum permissible error, then, the Director or the authorized person shall, if for good and sufficient reason, requested by the manufacturer or packer or his authorized agent, so to do, take out as soon as may be practicable, fresh samples and carry out fresh tests in accordance with the provisions of these rules. Learned counsel submits that, in the explanation tendered by the applicants and even thereafter, the request is made to the respondents to take samples from the running line at the time of manufacture to ascertain that whether the applicants are complying with all the laid down rules and regulations. Even, the applicant has also annexed with

their application a statement containing the details of net weight of the toilet soap in question taken while the same was being manufactured or packed. At least 80 samples were taken from each batch and none of the sample at the time of same being manufactured or packed showed weight less than the weight declared on the package. This conclusively establishes that the product in question strictly complied with the applicable provisions regarding 'net weight' contained in the Packaged Commodities Rules.

7. It is also brought to the notice of the respondents that there is significant gap of time between the date of manufacture and samples were drawn. Learned counsel submits that, though the petitioners for good and sufficient reasons requested the respondents to take out fresh samples and carry out fresh tests in accordance with the provisions of these rules, said request was not adhered to, causing non-compliance of the mandatory provisions of sub-rule (4) of Rule 24 of the Packaged Commodities Rules, 1977.

8. Learned counsel submits that, as per the net content checking data sheet, it is erroneously recorded that sample fails in all three criteria as per Rule 24 sub-rule (4) a,b and c so far as Palmolive Naturals soap (relaxing) is concerned.

9. Learned counsel submits that, the allegations made in the complaint do not make out any case under the provisions of the 'Standards Act' and 'Packaged Commodities Rules' and the complaint and the order of issuance of process thereto are liable to be quashed and set aside.

10. Learned counsel in order to substantiate her contentions, placed her reliance on following three judgments :-

1. The Manager, M/s Asian Paints (I) Ltd., Vs. The Inspector of Legal Metrology reported in 2002 Cri.L.J. 3869.
2. K.P.Varghese Vs. Income Tax Officer, Ernakulam and others reported in AIR 1981 SUPREME COURT 1922.
3. State of T.N. Vs. Mahi Traders and others reported in AIR 1989 SUPREME COURT 1167.

11. The learned APP submits that, as per Rule 24 of the Packaged Commodities Rules the samples were drawn from the batches as per Schedule IX and tests were carried out. The product Palmolive Natural (with milk cream) was 75 grams was manufactured on 3.5.2002 and tests were carried out on 8.5.2002. Said test was carried out at the time of manufacturing.

The another package of another Palmolive natural soap (relaxing), the samples were taken randomly and as per rule 24 net content was checked. It was weighing less than twice the maximum permissible error. The learned APP submits that, as per rule 27 of the Packaged Commodities Rules, the maximum permissible error in relation to the commodities specified in the First Schedule shall be such as indicated in the corresponding entries in that Schedule against concerned commodity and the maximum permissible error in relation to any commodity not specified in the First Schedule, shall be such as specified in the Second Schedule. The learned APP submits that, the maximum permissible error is

prescribed for toilet soap considering the factors like moisture content, climate etc. The maximum permissible error prescribed for toilet soap is 3% as mentioned in Schedule I of the Packaged Commodities Rules. The average net content of the Palmolive naturals (Relaxing) soap was found 92.86 grams which is less in weight by 7.14 grams. Thus, the ultimate customer who is paying for 100 grams is infact getting very much less than 100 grams. Even accepting double of maximum permissible error i.e.6 grams, the deficiency is more than six grams. The learned APP submits that, there is clear violation of the Rule 25 of the Packaged Commodities Rules. Thus, by taking into account, the above factors department has not allowed to draw samples from the running line at the time of manufacturing.

12. The learned APP submits that, the respondent has given opportunity to compound the offence at the department level by issuing a letter dated 11.5.2002 and 26.8.2002 and on 30.9.2002. However, the applicant company has not shown any response to compound the

case at department level. Thus, respondent no.2 has filed the complaint before the Judicial Magistrate First Class who has rightly issued the process against the applicants.

13. The learned APP further submits that, in the instant case, determination of the net quantity of the soap packages was done at the applicant's manufacturers premises. It is clear from the data checking sheet that, on completion of the examination and test carried out, the statistical average of the net quantity of soap packages drawn at sample is lesser than quantity declared on the package. A copy of the report is also furnished to the applicant. At that time the applicant had to request respondent no.2 for carrying out fresh test in accordance with the provisions of these rules. In terms of provisions of Rule 24 (3) of Packaged Commodities Rules, if fresh samples are to be drawn, the petitioner should have preserved other packages from the same batch from which he had drawn the packages for determination of net quantity and which were selected as samples. The petitioner had

made such a request on 8.7.2002 which is inconsistent with the proviso of Rule 24 (3) of the Packaged Commodities Rules.

14. The learned APP further submits that, in rule 24 and 25 of the Packaged Commodities Rules, the detailed procedure for examination and determination of the quantity and error in packages at the premises of the manufacturer or packer and action to be taken on completion or examination of the packages at the premises of the manufacturer or packer is specified. In both these rules provision for packages qualified by words “when packed” or the like is not specified. In terms of Rule 26 of the Packaged Commodities Rules the action to be taken with regard to the packages examined at the premises of the wholesale dealer or retail dealer is specified and, therefore, as per the provision of sub-rule (3) of rule 26, no punitive action regarding net quantity is taken in case the package bears legend “when packed”.

15. The learned APP submits that, rule 24 of the Packaged Commodities Rules specified the procedure for examination and determination of the quantity and error in packing at the premises of the manufacturer or packer. In this Rule, time to take sample is not specified but how to draw the samples and to take weights of packages and other procedure is specified in schedule IX and X respectively. The learned APP further submits that, action is to be taken on completion of the examination of packages at the premises of the manufacturer or packer is specified in rule 25 (1) of the Packaged Commodities Rules and as per this rule, the action is to be taken only if :-

- (a) The statistical average of the net quantity contained in the packages drawn as samples under that rule is less than the quantity declared on the packages are on the labels affixed thereto, or
- (b) The number of packages, showing and error in deficiency greater than the maximum permissible error, is more than (the number specified in column 3 of the table in the Ninth Schedule, or)
- (c) Any such package shows an error in deficiency greater than twice the maximum permissible error, or
- (d) Any such package does not bear thereon or on a label affixed thereto the declarations to be made under these rules.

16. The learned APP submits that, the data sheet made by respondent no.2 clearly indicates that statistical average of the net quantity of the seized product is less than the declared quantity. There is no provision to deduct the maximum permissible error from the statistical average of the net quantity. The term maximum permissible error is referred in relation with the number of packages in the batch under examination showing an error in deficiency greater than the specified permissible error. The learned APP submits that there is no substance in this Criminal Application and Criminal Application is thus liable to be dismissed.

17. The learned APP submits that, in the given facts of allegations, case is made out against the applicants and considering the same, the learned Magistrate has rightly taken cognizance and issued the process against the applicants for having committed an offence punishable under sections 33/51 of Standards of Weights and Measures (Enforcement) Act, 1985 read with Rules 24 and 25 of the Standards of Weights and Measures

(Package Commodity) Rules, 1977. There is no substance in the criminal application and thus the criminal application is liable to be dismissed.

18. The learned counsel for the applicants submits that, the Packaged Commodities Rules provided for qualification of declaration of quantity by words “when packed” of the commodity specified in Fourth Schedule since they are likely to undergo significant variations of weight or measures on account of environmental or other conditions. Learned counsel also submits that Rule 11 (4) of the Packaged Commodities Rules clearly establishes that accuracy requirement of the content would apply only at the time of manufacturing and packing. The same is also evident from the clarification dated 8.7.1994 issued by the Ministry of Civil Supplies, Consumer Affairs and Public Distribution Weights and Measures.

19. Rule 11 sub-rule (4) of the Packaged Commodities Rules which is relevant for the present discussion is reproduced herein below :-

11.General Provisions relating to declaration of quantity :-

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4. The declaration of quantity in relation to commodities specified in the Forth Schedule, that is to say, commodities which are likely to undergo significant variations in weight or measure on account of environmental or other conditions may be qualified by the words “when packed” [****]

Rule 11 of the Packaged Commodity Rules prescribed the provisions relating to declaration of quantity and sub rule (4) (prior to amendment w.e.f. 1.5.2008) speaks about declaration of the quantity in relation to the commodities specified in the Fourth Schedule, which likely to undergo significant variations in weight or measure on account of environmental and other conditions, may be qualified by the words “when packed”. In sub rule (4), the reference is given to the commodities specified in Fourth Schedule. Fourth Schedule as provided in Rule 11 Sub Rule (4) only the relevant entry sr no.14 is reproduced herein below :-

THE FOURTH SCHEDULE

(Rule 11 (4) of the Packaged Commodities Rules)

Declaration of quantity in relation to commodities (sold by weight or volume) which may be qualified by the words "when packed" and the additional information which the package or the label affixed thereto shall bear on it

S.No.	Name of commodity	Additional information to be stated on the package
14.	Toilet Soap.	[*****]

20. Sub-Rule (2) of Rule 11 of the Packaged Commodities Rules speaks about the commodity in a package which is not likely to undergo any variation in weight or measure, on account of the environmental conditions, and sub rule (3) of rule 11 speaks about a commodity in a package likely to undergo variation in weight or measure on account of the environmental conditions and such variation is negligible. In both the categories as mentioned in sub-rule (2) and (3) of Rule 11 of the Packaged Commodities Rules the package shall not be qualified by the words "when packed" or the like. However, in sub rule (4) of Rule 11 of the Packaged Commodities Rules, the commodities as specified in the Fourth Schedule are likely to undergo significant variations in weight or measure on account of environmental or other conditions required to be

qualified by the words “when packed”.

21. It is thus clear that, at serial no.14 the product toilet soap is mentioned in Fourth Schedule and thus in terms of sub-rule (4) of Rule 11 of the Packaged Commodities Rules, the declaration of quantity of a toilet soap may be qualified by the words “when packed”. It is to be noted here that, rule 11 of Packaged Commodities Rules prescribed the general provisions relating to declaration of quantity.

22. Rule 24 and 26 of the Packaged Commodities Rules prescribes the procedure for examination of and determination of the quantity and error in packages. Rule 24 prescribes a procedure for examination of and determination of quantity and error in packages at the premises of the manufacturer or packer, whereas, Rule 26 of the Packaged Commodities Rules prescribes procedure and action to be taken with regard to the packages examined at the premises of the wholesale dealer or retail dealer. Rule 25 of the Packaged Commodities Rules speaks about action to be taken on

completion of examination of packages at the premises of the manufacturer or the packer. Sub Rule (3) and (4) of Rule 24 are relevant in the present discussion and thus reproduced herein below :-

24. Procedure for examination of and determination of quantity and error in packages at the premises of the manufacturer or packer :-

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(3) On the completion of the examination and tests carried out under sub-rule (1), the Director or the authorized person shall make a report indicating therein his findings with regard to the declarations required to be made under these rules and as to the net quantity actually contained in the sample packages and the extent of error, if any, noticed by him and furnish a copy of such report to the manufacturer or the packer, as the case may be.

(4) If it appear from the report referred to in sub-rule (3) that-

(a) the statistical average of the net quantity contained in the packages drawn as samples is lesser than the quantity declared on the packages or on the labels affixed thereto; or

(b) the number of packages, showing an error in deficiency greater than the maximum permissible error, is more than [the number specified in Column 3 of the Table in the ninth Schedule,]

(c) any such package shows an error in deficiency greater than twice the maximum permissible error,

the Director or the authorized person shall, if for good and sufficient reason, requested by the manufacturer or packer or his authorized agent, so to do, take out as soon as may be practicable, fresh samples and carry out fresh tests in accordance with the provisions of these rules and where fresh tests made, the Director or the authorized person, as the case may be, shall collect by way of reimbursement, from the manufacturer or packer, such sum, not exceeding rupees [five thousand] as is, in his opinion, commensurate with the services so rendered:

Provided that where fresh tests are carried out, no packages contained in the batch, which was previously tested under this rule, shall be sold or distributed by the manufacturer or packer, as the case may be, unless the provisions of sub-rule (5) or as the case may be, sub-rule (6), are complied with.

23. Rule 25 speaks about action to be taken on completion of the examination of the packages at the premises of the manufacturer or packer and rule 26 deals with the action to be taken with regard to the packages examined at the premises of the wholesale dealer or retail dealer. Sub-Rule (1) of Rule 25 and sub rule (2) and (3) of Rule 26 of the Packaged Commodities Rules which are relevant for the present discussion are reproduced herein below in a comparative table :-

Rule 25. Action to be taken on completion of examination of packages at the premises of the manufacturer or the packer.-	Rule 26. Action to be taken with regard to packages examined at the premises of the wholesale dealer or retail dealer.-
(1). If it appear from the report referred to in sub-rule (3) of Rule 24 that- (a) the statistical average of the net quantity contained in the packages drawn as samples under that rule is lesser than the quantity declared on the packages or on the labels affixed thereto, or (b) the number of packages, showing an error in deficiency greater than the maximum permissible error, is more than [the number specified in Column 3 of the Table in the Ninth Schedule, or] (c) any such package shows an error in deficiency greater than twice the maximum permissible error, or (d) any such package does not bear thereon or on a label affixed thereto the declarations to be made under these rules, the director or the authorized person shall take punitive action in accordance with the provisions of the Act, against the manufacturer, or as the case may be, the packer[***]: Provided that no such punitive action shall be taken if fresh tests are carried out under sub-rule (4) of Rule 24, but if after such fresh tests any such error or omission as is referred to in this sub-rule is detected, the Director or the authorized person shall take appropriate punitive action in accordance with the provisions of the Act against the manufacturer or, as the case may be, the packer.	(2) Where any test is carried out in pursuance of the provisions of sub-rule (1), the Director or the authorized person shall verify whether the quantity contained in the package corresponds to the quantity declared on such package or any label affixed thereto, and whether the quantity contained in the package is less than the declared quantity, whether the deficiency is more than twice the maximum permissible error in relation to that commodity. (3) Whether the Director or the authorized person finds on a test carried out under this rule that the error in deficiency in any package kept or stored for sale, distribution or delivery at the premises of the retail or wholesale dealer, is more than twice the maximum permissible error in relation to that commodity he shall seize such package and take appropriate action against the retail dealer or the wholesale dealer, as the case may be, in accordance with the provisions of the Act: Provided that where the package bears the legend "when packed", no punitive action shall be taken against the retail dealer or wholesale dealer if the Director or the authorized person is satisfied after necessary tests, that the deficiency in the quantity contained in the package is due to environmental conditions.

24. In all the aforesaid relevant portion of the Rules the phrase 'maximum permissible error' is referred in respect of an error in deficiency. Rule 2 clause (i) defines the term "maximum permissible error." It reads as under :-

2 (i) "Maximum permissible error" :-

"maximum permissible error", in relation to the quantity [including the quantity declared to be given free by the manufacturer/packer] contained in an individual package, means an error in deficiency or excess which, subject to the provisions of these rules, does not exceed-

- (i) In relation to the commodities specified in the First Schedule, the limits of error specified in that Schedule;
- (ii) In relation to commodities not specified in the First Schedule, the limits of error specified in the Second Schedule;

25. It thus appears from the above definition 'maximum permissible error' is prescribed as per the limits of error specified in First Schedule or Second Schedule. So far as the product toilet soap is concerned, said product is mentioned in First Schedule at Sr. no.17 and in toilet soap in all quantities maximum permissible error prescribed as 3.0%. It is thus clear that, if any such package examined by the authorities shows an error in deficiency greater than twice the maximum permissible error, the director or the authorized person

can take a punitive action in accordance with the provisions of the Act against the manufacturer or as the case may be. However, in terms of the provisions of rule 26 sub-rule (2) and (3) of the Packaged Commodities Rules, even though, it is found that, error in deficiency is more than twice the maximum permissible error in relation to that commodity, in terms of the proviso to sub rule (3) of rule 26, where the package bears legend “when packed”, no punitive action can be taken against the retail dealer or wholesale dealer if the director or authorized person is satisfied after necessary tests, that the deficiency in the quantity contained in the package is due to environmental conditions. Obviously, such exemption is not prescribed in case of action to be taken on completion of examination of the packages at the premises of the manufacturer or packer in terms of rule 25 clause (c) if any such package shows an error in deficiency greater than twice the maximum permissible error.

26. So far as the letter dated 8.7.1994 issued by the Ministry of Civil Supplies, Consumer Affairs and Public

Distribution Weights and Measures, it appears that, the same is misconstrued by the applicants. By referring the provisions of Rule 11 (4) of the Packaged Commodities Rules, it is stated that, in the said letter that implications of these provisions is that in respect of the commodities listed in the fourth Schedule accuracy requirement would apply only at the time of manufacturing and packing. Therefore, in the last paragraph of the said letter, the attention is drawn to the provisions of the proviso appended to Rule 26 (3) of the Packaged Commodities Rules. Thus, the conjoint reading and cumulative effect of all the aforesaid rules would establish that, in case of the action to be taken on completion of the examination of the packages at the premises of the manufacturer or packer in terms of the report referred to in sub rule (3) of Rule 24, clauses (a) to (d) of Rule 25 of the Packaged Commodities Rules attract and the Directors or authorized person can take punitive action against the manufacturer or as the case may be, the packer, in accordance with the provisions of law.

27. In the instant case, so far as the product Palmolive naturals Soap (with milk cream) is concerned, as per the net content checking data sheet dated 8.5.2002 manufacturing and year of packing of the said package is May 2002 i.e. 5/2002 and against net content of 75 grams, the average weight of 80 packages came to be recorded as 74.56 grams. Prima facie, there is evidence that average weight is less than the declared weight. It is clear from the letter given by the applicants to the Inspector of legal Metrology dated 28.5.2002 that date of manufacture of Palmolive Naturals (with milk cream) from the same batch is 3.5.2002. It is thus clear that said package was examined within five (05) days of the date of its manufacture. Prima facie, it appears that, clause (a) of rule 25 of the Packaged Commodities Rules stands attracted.

28. So far as Palmolive Naturals (Relaxing) net weight 100 grams is concerned, as per the admitted position, the date of manufacture is 5.11.2001. As per net content checking data sheet of this package, the average weight came to be recorded as 92.86 grams. Prima

facie, it suggests that error in deficiency is greater than twice the maximum permissible error.

29. The learned counsel for the applicant submits that, considering the significant gap between the date of manufacture of said package Palmolive Naturals Soaps (Relaxing) and its date of examination, the soap is bound to loose moisture over which the petitioner has no control. Also the impact of the environmental conditions is irrespective whether the soap is stored within the premises or outside.

30. As discussed in the foregoing paragraphs, considering the same, in terms of clause (c) of Rule 25 of the Packaged Commodities Rules, an error in deficiency greater than twice the maximum permissible error is considered. So far as immunity granted to wholesale dealer or retail dealer in terms of the provisions of proviso appended to sub rule (3) of Rule 26 of the Packaged Commodities Rules is concerned, said immunity from prosecution is not extended to the manufacturer or packer.

31. It is well settled that first principle of interpretation of the statute in every system is the literal rule of interpretation. Purposive interpretation can only be resorted to when the plain words of statute are ambiguous. There is no ambiguity in Rule 25 of the Packaged Commodities Rules and, therefore, a literal interpretation must be resorted to.

32. It is submitted that, there was non-compliance of sub-rule (4) of Rule 24 of the Packaged Commodities Rules i.e. though the applicants had requested the complainant to take out a fresh sample and carry out fresh test in accordance with the provisions of these rules, said request was not considered. By the letter dated 11.5.2002 the complainant has called upon the applicants to tender its explanation in respect of deficiencies as noted during the course of the examination of the aforesaid products and in response to the said letter, the petitioner has tendered its explanation to the complainant on 28.5.2002 in writing.

33. On careful perusal of the said explanation dated 28.5.2002 I do not find that the applicant has requested the complainant in any manner to take fresh samples and carry out fresh tests in accordance with the provisions of the Rules. Even, at the time of examination of and determination of the quantity at the premises of the applicant's/manufacture on 8.5.2002, no such request was made by the applicants to the complainant when copy of net content checking data sheet was signed by the person authorized by the applicants on 8.5.2002, itself. It is for the first time in a letter dated 8.7.2002 such a request was made by the applicants. Said request is also not made in accordance with the provisions of sub-rule (4) of Rule 24 of the Packaged Commodities Rules, but, it is requested that samples from the running line at the time of manufacture may be taken for carrying out the test. Whether such a request is an after thought request or not is to be considered by the Trial Court during the course of the trial.

34. Thus, the allegations made in the complaint, in my considered opinion, is prima facie justifiable and based upon the adequate evidence in terms with the mandatory provisions of the Standards Act, Packaged Commodities Rules and Enforcement Act. In view of the above discussion, I proceed to pass the following order.

O R D E R

- I. Criminal Application is hereby dismissed.
- II. Rule discharged.
- III. The applicants shall appear before the Trial Court on **4.1.2017** and after appearance of the applicants, the Trial Court shall dispose off the case in accordance with law.

sd/-

(V.K. JADHAV)
JUDGE

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aaa/-