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

+ W.P.(CRL) 1404/2011 and CRL.M.A. 12154/2011

COLORPLUS FASHIONS LTD.

..... Petitioner

Through: Mr. Dileep Poolakkot, Advocate.

versus

THE CONTROLLER OF LEGAL METROLOGY & ANR.

..... Respondents

Through: Mr. Rahul Mehra, Standing
Counsel (Crl.) and Mr. Jamal
Akhtar, Advocate for the State.
Mr. V.K. Ahuja, HC, W&M
Deptt., in person.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

11.08.2016

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1. The petitioner has preferred the present writ petition to seek a writ of certiorari to quash and set aside the summoning order dated 01.02.2011 passed by Sh. Subhash Kumar Mishra, MM, Patiala House Courts, New Delhi in complaint case No.387/11/WM. The petitioner also seeks quashing and setting aside of the proceedings in the complaint case No.387/11/WM. The petitioner seeks a direction to the respondents to hear and decide its appeal dated 23.12.2010 on merits.

2. The petitioner is engaged, *inter alia*, in manufacture and sale of premium range of clothing for men and is also manufacturing accessories

like genuine leather hand bags, hand braided belts, shoes and scarves. Respondents No.1 & 2 are the Controller of Legal Metrology and the Inspector of Legal Metrology functioning under the Legal Metrology Act, 2009. At the relevant time, i.e. in August 2010, the Standards of Weights and Measures Act, 1976 was in force. The rules were framed under the said Act, namely the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and the Standards of Weights and Measures (Enforcement) Act, 1985, were also in force.

3. On 25.08.2010, the Inspector, Legal Metrology Mr. V.K. Ahuja along with Zonal Officer (South West) inspected the premises of the petitioner at Shop No.118, Ground Floor, DLF Promenade Mall, Nelson Mandela Road, Vasant Kunj, New Delhi. The packages which were inspected, inter alia, included a pack containing underwear having following declarations as required under rule 6 of the Standard of Weights & Measures (Packaged Commodities) Rules, 1977 – Manufactured by M/s Color Plus Fashion Ltd., C-10, Ambattur Industrial Estate, Ambattur, Chennai – 600058, Month & Year of Manufacturing 08/2009 MRP (inclusive of all taxes) Rs.295/-, CC No. 044-42180040, **Waist Size 85 cm. The Size of the underwear was measured on the spot and was found as 58 cm i.e. 27 cm shorter than the declared size.** (emphasis supplied)

4. On the premise that the same constituted contravention of Section 33 of the Standards of Weights & Measures (Enforcement) Act, 1985 read with Section 51(2) thereof, the petitioner was booked for violation of Section 33 read with Section 51(2) of the Standards of Weights & Measures (Enforcement) Act, 1985.

5. The Inspector, Legal Metrology also inspected a pack containing a belt. The said pack allegedly did not bear the declaration of size in proper manner as defined under the provisions of Section 11 read with Section 41 of the Standards of Weights & Measures (Enforcement) Act, 1985. Accordingly, prosecution was booked against the petitioner for violation of the provision of Section 11 & 33 punishable under Section 41 & 51(1) respectively of the Standards of Weights & Measures (Enforcement) Act, 1985.

6. According to the respondent, the petitioner did not appear on the designated dates of hearing, i.e. 19.11.2010 and 15.12.2010. Consequently, the appeal was not considered and the complete original case was referred to the Court of Sh. Subhash Kumar Mishra, MM, Patiala House Courts, New Delhi for further necessary action. As already noted above, the learned MM took cognizance and summoned the petitioner, which has led to filing of the present petition.

7. I may observe that so far as the allegations qua the packaging of the belt are concerned, the same have no force since the said product was not even seized. A perusal of the inspection report/ memo dated 25.08.2010 prepared by Mr. V.K. Ahuja, Inspector, Legal Metrology shows that qua the packaged belt, all that was noticed was that the “*size not mentioned in proper manner on the tags violation found u/s 35/51 and Non-std. size*”. The inspection report further states that the package of the undergarments was seized and left in the custody of the Store-in-charge. However, in relation to the packaged belt, no such action was taken.

8. The submission of learned counsel for the petitioner qua the packaged belt is that the respondents have wrongfully assumed the same

to fall within the definition of pre-packaged as defined by Standards of Weights & Measures (Packaged Commodities) Rules, 1977, whereas the belt is neither a packaged or pre-packaged commodity. Other submissions have also been made in that respect. However, since the packaged belt was not seized and the inspection report/ memo itself is vague inasmuch, as, it only mentions that the size was not mentioned in “proper manner” – without disclosing as to what is meant by the said expression, the proceedings against the petitioner qua the packaged belt, in any event, appear to be unsustainable.

9. So far as the violation in relation to the underwear is concerned, the manner in which the respondents and, in particular, Inspector V.K. Ahuja has proceeded and his superiors have mindlessly endorsed his action, shocks the conscience of the Court. It particularly dismays this Court that, even the Judicial Officer, namely MM Subhash Kumar Mishra, while passing the order dated 01.02.2011 acted in a most callous and casual manner without due application of mind while summoning the petitioner.

10. The reason for the anguish of this Court is the complete absurdity of the charge against the petitioner – that the underwear, which was claimed to be for a waist size of 85 cms., was found to be only 58 cms., when measured. It was, thus, allegedly found short by 27 cms., allegedly resulting in violation of Section 33 & 51 of the Standards of Weights & Measures (Enforcement) Act, 1985. Obviously, the Inspector conveniently forgot – for reasons not difficult to imagine, that the underwear comes with an elastic – which holds the same on the waist of the wearer, and it is only upon the elastic being stretched, that the same

would comfortably fit the disclosed waist size and hold the underwear in position. Obviously, when the elastic is not stretched, the size of the elastic would be less than the waist size that the underwear would fit. Pertinently, it was not the respondents case that during inspection the underwear in question was found not to fit a person with waist size 85 cms. The complaint in question is not even premised on the complaint of a customer/ actual user, that the underwear did not fit the waist size of 85 cms. If the alleged violation in respect of the underwear, as found by the respondents, is treated as violation of the aforesaid Act and Rules, I dare say that not a single underwear being sold anywhere in the market would meet the criteria, and all manufacturers and traders would fall foul of the law. The action taken against the petitioner in the present case smacks of *mala fides* and corruption.

11. As noticed above, the conduct of V.K. Ahuja smacks of *mala fides*, and it is not difficult to fathom the reasons for such conduct on his part. Personal appearance of V.K. Ahuja before the Court was directed vide order dated 10.08.2016. The learned Standing Counsel was asked to ensure presence of V.K. Ahuja in Court. He remained present in Court yesterday when the matter was taken up, and is also present today as per the direction of the Court. He has no explanation to offer for his conduct, and he only seeks pardon for his conduct. He has been asked, as to in how many other cases he has taken such action. He states that this was the only solitary case where he had taken this action. This raises further suspicion against him, that he did not act bona fide in the discharge of his duties.

12. So far as Inspector V.K. Ahuja is concerned, it is clear that he is

personally and directly responsible for the action taken against the petitioner on the aforementioned absurd basis. Consequently, I direct the respondents to pay costs of Rs.50,000/- to the petitioner. The said costs shall be recovered from the salary of the Inspector V.K. Ahuja.

13. V.K. Ahuja informs that he is presently serving as Head Clerk in the Office of the Registrar of Cooperative Societies. The Vigilance Department, Government of NCT of Delhi as well as the Registrar, Cooperative Societies are directed to examine the aforesaid conduct of V.K. Ahuja and take appropriate action as may be called for in the matter.

14. However, the superiors of V.K. Ahuja should also take the blame for acting in the most mechanical and mindless manner. It is obvious that neither of them even bothered to examine the nature of violation that was reported by V.K. Ahuja. Had they examined the same, and applied their mind, they would have seen for themselves the absurd manner in which V.K. Ahuja had proceeded in the matter.

15. Consequently, an advisory and a warning shall also be issued to the superiors of V.K. Ahuja, who were instrumental in filing of the complaint against the petitioner, so that in future they conduct themselves in a more responsible manner, and the public at large is not exploited and put to unnecessary harassment.

16. When the matter went to the Court of the learned MM, at least he should have applied his mind before observing that there is sufficient material on record to summon the accused under Section 33/51(1), 33/51(2) and 11/41 of the Standards of Weights & Measures (Enforcement) Act, 1985. It is clear that the learned MM has also not

bothered to read the complaint and apply his mind while summoning the petitioner. A Judicial Officer has even greater responsibility – to function with due application of mind, and in a judicious manner. He cannot get away with such mindless and mechanical functioning in the discharge of his judicial duties.

17. In these circumstances, the complaint against the petitioner and the summoning order dated 01.02.2011 are hereby quashed.

18. A copy of this order shall also be placed for its information before the Inspection Committee responsible for writing the Annual Confidential Reports in respect of Sh. Subhash Kumar Mishra (who was functioning as MM, Patiala House Courts, New Delhi on 01.04.2011).

19. The petition stands disposed of in the aforesaid terms.

20. Dasti.

VIPIN SANGHI, J

AUGUST 11, 2016

B.S. Rohella