

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.10.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10570 of 2013
and MP.No.1 of 2013

Amco Batteries Limited,
Addison Building, 1st floor,
803, Anna Salai,
Chennai - 600 002.

... Petitioner

-Vs-

- 1.The Director of Legal Metrology,
Legal Metrology Department,
Department of Consumer Affairs,
Ministry of Consumer Affairs, Food & Public Distribution,
Government of India,
461-A, Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi - 110 001.
2. Inspector of Legal Metrology,
Office of the Inspector of Legal Metrology,
Pune 4th Division, Pune District,
892, Cinegog Road, Mazda Ice Factory,
Pune - 411 001,
Maharashtra State.
3. Assistant Controller of Legal Metrology,
Pune Region,
Barrack No.16, Near Gurjan Cinema,
Yerwada, Pune - 411 001,
Maharashtra State.
4. Deputy Controller of Legal Metrology,
Pune Region,
Barrack No.16, Near Gurjan Cinema,
Yerwada, Pune - 411 001,
Maharashtra State.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus, calling for the records relating prosecution show cause notice No.ILM/Pune 4th/ Comp.Notice/13/31 dated 02/03/2013 issued by the 2nd respondent and quash the same and direct the respondents herein not to take any further proceedings pursuant to the said notice under the provisions of the Legal Metrology

Act, 2009 read with Legal Metrology (Packaged Commodities) Rules, 2011.

For Petitioner : Durga Bhatt for Arun C.Mohan

For Respondents : No appearance

O R D E R

The show cause notice dated 02.03.2013, issued by the second respondent is under challenge in this writ petition.

2. The writ petitioner states that the petitioner is a Company and the impugned show cause notice has been issued by the Inspector of Legal Metrology by invoking the provisions of the Legal Metrology Act, 2009 and the legal Metrology (Packaged Commodities) Rules 2011.

3. It is contended that during the inspection / surprise visit on 21.02.2013 to M/s.Goodrich Auto Components Private Limited, shop No.1 & 2 Gopikrishan apartment 521, Rasta peth, Pune-11 where 3 packages of "Amco Battery" marketed by writ petitioner company and manufactured by M/s. TAFE Power Source, Maramalai Nagar, Pin - 603 209 which is kept for sale on which one package bears the declaration regarding packing date on additional sticker & other two package bears the declaration regarding quantity, M.R.P., Packing date, Contents, on additional sticker.

4. The packages are detailed as below:

'Three Packaged Commodities of "Amco Battery"

These package(s) contravenes the provisions of the above said Act and the Legal Metrology (Packaged Commodities) Rules, 2011 as detailed above.

Hence for as such all the false packages found in possession of have been seized and detained under the above said act and rules.

Hence, this is violation of the section 18(1) of the Legal Metrology Act 2009 read with rules 18(1) of the Legal Metrology (Packaged Commodities) rules 2011 and so attracts for relative penal section 36(1) and rule(s) of the said Act'.

5. It is contended in the impugned show cause notice that the above irregularities found during the inspection was in violation of the provisions of the Legal Metrology Act, 2009 and the Rules. Further, it is informed that before the complaint against the writ petitioner company is filed in the appropriate Court of Law, the petitioner was informed that the alleged

offences are compoundable under Section 48 of the Standards Legal Metrology Act, 2011 by the Deputy Controller of Legal Metrology by virtue of powers vested in him. By setting out all the allegations and quoting the provisions of law, the impugned show cause notice has been issued to the writ petitioner stating that the petitioner is directed to submit their reply within 15 days from the date of receipt of the notice, failing which further actions will be initiated as per law. In stead of submitting objections / explanations, in respect of the show cause notice, the petitioner has chosen to file the present writ petition.

6. The main ground raised in the writ petition is that the impugned notice has been issued based on certain incorrect facts and allegations. It is further contended that the contentions set out in the notice are entirely based on presumptions, conjectures, surmises and there is no legal or factual basis. The further grounds raised in the writ petition is in relation to the merits of the case of the writ petitioner.

7. This Court is of an opinion that all the merits and the demerits of the allegations or the counter allegations can never be adjudicated in the present writ petition. In view of the fact that the writ petitioner has challenged the very same show cause notice itself. The show cause notice was issued based on the surprise inspection and by invoking the powers provided under the Act. Thus, the writ petitioner should submit his merit documents and other relevant materials to the authorities competent, enabling them to consider the case on merits and in accordance with law.

8. Thus, the grounds raised on merits deserves no consideration from the hands of this Court. All such merits are to be pleaded before the authorities competent, who issued the show cause notice based on the inspections conducted in the premises of the Distributor.

9. No writ proceedings can be entertained against the show cause notice in a routine manner. The judicial review against the show cause notice is certainly limited. A show cause notice can be challenged, if the same has been issued by an incompetent authority having no jurisdiction or competency or if an allegation of malafides are raised or if the same is in violation of the statutory rules in force. Even in case of raising an allegation of malafides, the authority against whom such an allegations are raised is to be impleaded as party respondent in his personal capacity in the writ proceedings. In the absence of any one of these legal grounds, no writ proceedings can be entertained against the show cause notice.

10. Intermittent intervention in statutory proceedings are not desirable. Such intermittent interventions will cause prejudice to the completion of the statutory proceedings initiated by the competent authorities by invoking the provisions of the Act. Unless there is a legal ground to interfere, the High Courts must allow the authorities competent to proceed with the enquiry and conclude the same by providing opportunity to all the persons concerned. This being the scope of the proceedings, the High Courts must be cautious while entertaining the writ against the show cause notice. Stalling the statutory proceedings on the show cause notice will certainly affect the effective and efficient implementation of the Statutes concerned. Thus, in the absence of any established legal grounds, no writ proceedings shall be admitted against the show cause notice. The Hon'ble Supreme Court also time and again emphasized that writ against the show cause notice cannot be entertained in a casual manner.

11. Thus, the writ petitioner is at liberty to submit his explanations / objections before the competent authorities and prove their innocence or otherwise by submitting documents and by adducing evidences.

12. This being the principles to be followed, this Court is of an opinion that the contentions raised in the present writ petition on merits deserves no consideration at all. All such merits are to be adjudicated by the competent authorities while conducting an enquiry under the provisions of the Act.

13. Under these circumstances, the writ petitioner has not made out any acceptable legal grounds so as to interfere with the impugned show cause notice issued against the writ petitioner. In view of the fact that the writ petition is pending for long time, the respondents are bound to conduct an enquiry without any further lapses of time and the writ petitioner is also at liberty to submit his explanation / objections and co-operate for the conclusion of the proceedings by following the procedures contemplated under the Act and Rules.

14. The writ petition stands dismissed with the above observations. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.
pns/sk

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1. The Director of Legal Metrology,
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NM(CO)
sM:19.11.2018

W.P.No.10570 of 2013

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