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

+	W.P.(C) 2994/2014 & CM APPL. Nos.6209/2014, 30763/2019

INDIAN OIL CORPORATION LIMITED AND ORS
..... Petitioners

Through	Mr. Sachin Dutta, Sr. Adv. with Mr. Amit Meharia, Tannishtha Singh, Mr. Abinash Agarwal, Ms. Gargi Bharkakti, Advs.

versus

DIRECTOR OF LEGAL METROLOGY AND ORS
..... Respondents

Through	Mr. Arun Bhardwaj, CGSC with Mr. Nikhil Bhardwaj, Advs. for R1&4.
Mr. K. M. Natraj, Addl. Solicitor General with Mr. M. Srinivas R. Rao, Mr. Abid Ali Beeran. P, Sarath Janardhanan, Mr. Sarath Nambiar, Advs for R2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

%	**24.07.2019**

<u>VIBHU BAKHRU, J</u>

1. The petitioners are Oil Marketing Companies and have filed the present petition seeking several prayers. However, the petitioners have

restricted the relief sought in the present petition to seek orders declaring that the petitioners are not, (a) dealers within the meaning of Section 2(b) of the Legal Metrology Act, 2009 (hereafter 'the Act'); (b) that they are not 'manufacturers' within the meaning of Section 2(i) of the Act; and (c) that the petitioners are not required to seek registration as 'importer' under Section 19 of the Act. The petitioners have also prayed that the directions be issued to the respondents to refund the compounding fees of ₹2,04,00,000/- along with interest.

2. The controversy in the present petition relates to the fuel dispensing units (also referred to as DUs) used by the petitioners for dispensing fuel at various outlets.

3. The petitioners had imported certain fuel dispensing equipment from M/s Dresser Wayne Fuel Equipment (Shanghai) Co. Ltd. and M/s Tatsuno for use at various outlets. The said units were imported without obtaining the registration under Section 19 of the Act.

4. The petitioners are aggrieved by various letters sent by the respondents calling upon the petitioners to ensure that they are registered under Section 19 of the Act. The petitioners claim that they are not dealing in DUs. They had imported the same for their self-use and, therefore, cannot be compelled to seek registration as an importer under Section 19 of the Act.

5. The respondents (Legal Metrology Department) had seized certain DUs used by the petitioners on account of violation of the provisions of the Act. In particular, the allegation is that the models being used by the

petitioners were not approved as required under Section 22 of the Act.

6. The petitioners had settled the case with the Legal Metrology Department and the petitioners paid a compounding fee at the rate of ₹2,00,000/- per retail outlet – in all, the petitioners had paid a sum of ₹2,04,00,000/- in respect of 101 outlets. The petitioners now seek refund of the said amount, as they claim that no such fee was payable by them.

7. It is seen from the averments made by the respondents that the issue regarding violation of the Act had been found, as certain DUs were being operated through remote control devices. The respondents are of the view that this was a violation, as no such automation devices for controlling the DUs had been approved. It was also apprehended that the use of such devices would permit the operators to manipulate the dispensing units, which was not in public interest.

8. According to the respondents, DUs had been imported by the petitioners and they were, thus, required to get themselves registered under Section 19 of the Act.

9. Petitioner no. 2 had also filed a writ petition before the Andhra Pradesh High Court, *inter alia*, impugning the action of the respondents in seizing the dispensing units. In that petition, it was further prayed that directions be issued to the respondents to allow resumption of sales and operation of the dispensing units which were seized.

10. Concededly, the said writ petition (being W.P.(C) 5238/2014) was unconditionally dismissed as withdrawn by an order dated 20.03.2014.

11. Mr Sachin Dutta, learned senior counsel appearing for the petitioners had advanced contentions on, essentially, two fronts. First, he submitted that the petitioners were not required to obtain any registration under Section 19 of the Act. He submitted that the petitioners had complied with Sections 20 and 24 of the Act inasmuch as, they have not imported any measure that did not conform to the standards as set by the respondents and further they had obtained the necessary verification as required under Section 24 of the Act, before putting the said dispensing units to use. He submitted that there was also no requirement for the petitioners to obtain approval of the models under Section 22 of the Act, as such approval had already been obtained by the manufacturer.

12. Second, he submitted that the petitioners had paid the compounding charges under coercion and threat of closure of their retail outlets and thus, the amount paid by them is required to be refunded.

13. Mr. K. M. Natraj, learned Additional Solicitor General appearing for the respondents had countered the aforesaid submissions. He submitted that the issue regarding whether the petitioners were required to obtain registration under Section 19 of the Act is academic since the petitioners had applied for such registration and the same was granted.

14. Insofar as Section 22 of the Act is concerned, he submitted that although the model of DUs had been approved, no approval was granted with respect to the remote control/automation device. He also pointed out that thereafter, the respondents had issued a letter dated 12.03.2014 clarifying that if the remote-control devices and other electronic facilities

installed were been provided by the original equipment manufacturer as a part of the dispensing unit, the same would be treated as a part of the approved model.

15. Insofar as the claim regarding compounding fees is concerned, he submitted that the same had been paid voluntarily and the necessary compounding orders have been passed. He submitted that in these circumstances, the petitioners' claim for refund of the said amount is unmerited.

16. The first and foremost question to be examined is whether the petitioners are required to obtain any approval under Section 22 of the Act. Section 22 of the Act is set out below:-

> "**22. Approval of Model**.–Every person, before manufacturing or importing any weight or measure shall seek the approval of model of such weight or measure in such manner, on payment of such fee and from such authority as may be prescribed:
> Provided that such approval of model may not be required in respect of any cast iron, brass, bullion, or carat weight or any beam scale, length measures (not being measuring tapes) which are ordinarily used in retail trade for measuring textiles or timber, capacity measures, not exceeding twenty litre in capacity, which are ordinarily used in retail trade for measuring kerosene, milk or potable liquors:
> Provided further that the prescribed authority may, if he is satisfied that the model of any weight or measure which has been approved in a country outside India conforms to the standards established by or under this Act, approve

such model without any test or after such test as he may deem fit."

17. It is clear from the plain language of Section 22 of the Act that the approval of model is required before manufacturing and importing of the same. Clearly, once a manufacturer obtains the approval with regard to a model, it is not necessary for the importer to once again obtain the same. The object of requiring an approval of a model is to enable the respondents to examine the model of such weight and measure in order to ensure that the same conforms to the requisite standards. This is necessary to ensure that the persons transacting on the basis of such weights and measure are not short charged. The learned counsel appearing for the respondents does not dispute that multiple approvals for the same model are not be required. Once the manufacturers have secured approval of a Model of weight and measure, there would be no necessity for a person importing the same for self-use to once again seek this approval. He had pointed out that the issue had arisen only in the context of remote control devices which were not a part of the Models of the DUs that were approved.

18. As noticed above, the issue had already been clarified that if such devices are part of the Model provided by the original manufacturer – in other words, such equipment was subject to approval as a part of the model – no further approval would be required. Mr Dutta concurred that in view of the above, the controversy relating to Section 22 of the Act does not survive, since it is the petitioners' case that Models of DUs (including the remote control/automation devices) imported by them have

been approved by the respondents.

19. The next question to be examined is whether the petitioners are required to be registered under Section 19 of the Act. Section 19 of the Act is set out below:-

> "**19. Registration for importer of weight or measure.**–No person shall import any weight or measure unless he is registered with the Director in such manner and on payment of such fees, as may be prescribed.

20. A plain reading of the language indicates that import of any weight or measure is proscribed unless the person importing the same is registered with the Director of Legal Metrology. However, Rule 15 of the Legal Metrology (General) Rules, 2011 indicates that such registration is only required by a manufacturer or dealer of weights or measure. Rule 15 of the said Rules is set out below:-

> "**15. Registration of Importer.** - (1) Every manufacturer or dealer of weight or measure who intends to import any weight or measure shall apply to the Director, through the Controller of the State in which he carries on such business, for registration of his name as importer in the form specified in Tenth Schedule.
> (2) Every application received by the Controller under sub-rule (1) shall be forwarded by him to the Director with a report as to the antecedents and technical capabilities of the applicant.
> (3) Nothing in this rule shall take away or abridge the right of any person referred to in sub-rule (2) to carry on the business of importing of any weight or measure until he has been informed by the Director in writing that he

cannot be registered as an importer, and on receipt of such letter he shall stop forthwith the import of any weight or measure:

PROVIDED that registration of a person carrying on, at the commencement of these rules, the business of importing weights or measures shall not be refused except after giving him a reasonable opportunity of showing cause against the proposed action.

(4) Every application for the registration of an importer shall be submitted to the Director, in the manner aforesaid, together with the fee specified in Twelfth Schedule, at least one month before the date on which import is proposed to be made.

(5) The registration of a person as an importer shall remain effective for a period of five years from the date of such registration.

(6) On the expiry of the period of registration as an importer, the Director may, on the application of the registered importer and on payment of the prescribed fee, renew registration for a like period.

(7) The registration or renewal of the registration of a person as an importer may be suspended or revoked before the expiry of the period of validity thereof, if the Director is satisfied after an enquiry, and after giving to the person concerned a reasonable opportunity of being heard, that any statement made by such personal in the application for registration or renewal of registration was false or incorrect in material particulars or that such person has contravened any provision of the Act or rules made there under or any term or condition of such registration.

21. Rule 15(1) of the Legal Metrology (General) Rules, 2001 expressly

provided that an application for registration shall be made by "*every manufacturer or dealer of weight or measure*".

22. At this stage, it would be relevant to refer to the definition of a "dealer". The said term is defined under Section 2(b) of the Act in the following words:-

> "2(b) "dealer", in relation to any weight or measure, means a person who, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration; and includes a commission agent, an importer, a manufacturer, who sells, supplies, distributes or otherwise delivers any weight or measure manufactured by him to any person other than a dealer;"

23. The plain language of the said definition leave no room for doubt that a person who is not in the business of buying, selling, supplying or distributing any weights or measures, and merely a purchaser of such weights and measures for self-use, cannot be termed as a "dealer".

24. In this case, the petitioners are not manufacturers of the DUs imported by them. As noticed above, the petitioners are also not 'dealers' since they do not deal in sale and purchase of the DUs; concededly, the DUs are imported by the petitioners for their own use.

25. At this stage, it is also relevant to refer to the Tenth Schedule to the said Rules which prescribes the forms for the application for registration of an importer of weights and measures. The said form is reproduced

below:-

"TENTH SCHEDULE

APPLICATION FORM FOR REGISTRATION OF IMPORTER OF WEIGHTS AND MEASURES

[See rule 5]

To

The Director of Legal Metrology,

Government of India,

New Delhi.

Sir,

I/We* hereby apply for registration of my/our* name(s) as importer of weights and/or measures.

Particulars with regard to items specified in the table below are given against each such item. The registration fee of Rs. .... has been paid in the treasury at.......................... vide Chalan No. .... dated................. enclosed.

1. Name and full address :

2. Whether individual/undivided Hindu family/registered firm :

3. Income-tax registration No. (if any):

4. Date of registration as manufacturer/dealer; registration No. and name of registering authority :

5. Date & No. of the licence to carry on the business of weights and measures; the name of authority by whom the licence was issued/renewed :

(a) buying and selling, or

(b) manufacturing.

6. Item(s) of weights and measures in relation to which the applicant has been registered as manufacturer and/or dealer:

7. Items of weights and measures for which application is being made for registration as—

(a) exporter,

(b) importer.

8. Items, if any, exported/imported during the period of two years immediately preceding the year in which the application is made :

9. Remarks :

Signature"

26. It is clear from the particulars required at Serial No. 4, 5 and 6 of the said form that it is applicable only to persons who are either manufacturing weights and measures and/or dealing with the same.

27. The learned counsel appearing for the respondents had contended that although the Rules may not provide for the registration of an importer, the language of Section 19 of the Act is clear and each person importing any weights and measures would be required to be registered. *Prima facie,* the said contention is not persuasive. The Legal Metrology (General) Rules, 2011 have been framed by the Central Government in exercise of powers under Section 52 of the Act which empowers the Central Government to make Rules for carrying

out the provisions of the Act. Thus, the Central Government is empowered to make provisions for implementing the Act.

28. In ***St. Johns Teachers Training Institute v. Regional Director, NCT: 2003 (3) SCC 321***, the Supreme Court had made the following observations:-

> "10. A regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and regulations are all comprised in delegated legislations. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limits of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details. The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of

> legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern-day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature. (See *Sukhdev Singh* v. *Bhagatram Sardar Singh Raghuvanshi* [(1975) 1 SCC 421 : 1975 SCC (L&S) 101 : AIR 1975 SC 1331] .)

29. Since the Rules made by the Central Government provide for an application for registration to be made by a manufacturer or a dealer, a person who is importing a weight and measure for his self-use is not required to obtain any registration under Section 19 of the Act.

30. It is not necessary for this Court to delve into this issue any further since the same is rendered academic. The petitioners have already been granted registration as importers under Section 19 of the Act and, therefore, the aforesaid question has also been rendered academic.

31. In so far as the claim made by the petitioners for the refund of the amount paid as compounding fees is concerned, the same cannot be entertained. The petitioners had voluntarily paid the amount to settle the controversy. The attention of this Court has been drawn to

the letter dated 12.03.2014 issued by petitioner no.1. The said letter is reproduced below:-

"SDO/RO/L&M Date: 12.03.2014

To
The Controller
Dept. of Legal Metrology
Hyderabad

Dear Sir,

Sub: Legal Metrology Department- Inspections conducted by the legal metrology officers' certain violations / Tatsuno & Dresser Wayne make Dispensing units

This has reference to the various panchanamas made during 15.2.14 to 17.2.14 and during first week of March 2014 at our Outlets for using M/s Tatsuno and M/s Dresser Wayne make dispensing units. Based on our request, you have permitted us to settle all the case departmentally by paying necessary compounding fee.

Based on the above, we have already paid compounding fee @ Rs. 2,00,000/-per Retail Outlet. To comply with the short comings recorded in the panchanamas, we require some time as it needs even clarification from Director Legal Metrology. New Delhi.

We therefore, request you to kindly grant us permission to continue operate the Dispensing units of make Dresser Wayne and Tatsuno. All the necessary corrective action wherever required as per provisions of Legal Metrology Act will be complied at the earliest.

Thanking you,

S/d

Yours faithfully,
For INDIAN OIL CORPORATION LIMITED
Chief Divisional Retail Sales Manager"

32. In view of the above, the petitioners cannot be heard to state that they had paid the compounding fees under coercion.

33. Section 48 of the Act contains specific provisions for compounding of offences. The respondents had also produced copies of orders passed under Section 48 of the Act accepting the compounding fees paid by the petitioners and compounding offenses. Mr Dutta submitted that the petitioners were not aware of any such orders passed for compounding the alleged offences.

34. Plainly, the said contention is bereft of any merit. Admittedly, the petitioners had paid the compounding fees. Petitioner no.2 had also withdrawn the writ petition filed before the Andhra Pradesh High Court, wherein the action of the respondents seizing the dispensing units had been challenged. It is, thus, clear that petitioner no.2 had withdrawn to challenge actions taken by the respondents and had voluntarily paid the compounding fees. Admittedly, there is no communication issued by the petitioners at the relevant time indicating that they were making the payments under coercion or under protest.

In this view, this Court does not consider to apposite to entertain any claim in this regard.

35. The petition is disposed of in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

JULY 24, 2019
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HIGH COURT OF DELHI
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