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

% *Date of decision: 24th July, 2023*

+ CRL.M.C. 3348/2018 and CRL.M.A. 12127/2018 (stay)

H&M HENNES & MAURITZ RETAIL PVT. LTD..... Petitioner

Through: Mr.N.Hariharan, Senior Advocate
with Ms.Seema Salwan and Mr.Rahul
Sharma with Ms.Punya Rekha
Angara, Mr.Prateek Bhalla,
Ms.Sharian Mukherji, Mr.Varun
Deswal, Mr.Siddharth S.Yadav,
Mr.Muneed and Mr.Vaibhav Sharma.

versus

LEGAL METROLOGY DEPARTMENT

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr.Pradeep Gahalot, APP for State.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. By way of the present petition, the petitioner seeks quashing of:-
 - (i) Criminal Complaint No. 32/1W/16 and the proceedings emanating therefrom and,
 - (ii) setting aside the summoning order dated 2nd May, 2016.
2. Brief facts leading to the filing of the present petition are as under:
 - i. An inspection was carried out at the retail store of the petitioner situated at Select Citywalk, District Centre, Saket by an Inspector of the Legal Metrology Department. As per the inspection report, the

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size of a cardigan was not converted into meters and therefore it is alleged that the petitioner company committed an offence under Rule 13(3)(b) of the Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter 2011 Rules).

- ii. Based on the inspection, an undated notice was sent to the petitioner on 31st January, 2016, alleging violation of Rule 13(3)(b) of the 2011 Rules and the petitioner was directed to pay a penalty as well as fees of Rs.2000/- in terms of Section 32 of the Legal Metrology Act, 2009.
 - iii. On 24th February, 2016, the petitioner made a representation to the Secretary, Consumer Affairs, seeking clarification that the aforesaid 2011 Rules are not applicable to the products sold by the petitioner, which are sold in open condition.
 - iv. On 2nd May, 2016, a complaint was filed by the respondent, on the basis of which the summons against the petitioner were issued on 2nd May, 2016.
3. Reply to the present petition as well as the rejoinder thereto have been filed.
 4. Senior counsel appearing on behalf of the petitioner submits that the products of the petitioner company are not 'pre-packaged commodities' and therefore, the 2011 Rules are not applicable.
 5. He further places reliance on an advisory dated 31st March, 2017, issued by the Ministry of Consumer Affairs, Legal Metrology Division, wherein it has been stated that loose garments which are sold would not constitute a 'pre-packaged commodity' in terms of the Legal Metrology Act, 2009.

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6. I have heard the counsels for the parties and perused the material on record.

7. At the outset, reference may be made to the definition of ‘pre-packaged commodity’ as provided in the Legal Metrology Act, 2009:

“2. Definitions.—In this Act, unless the context otherwise requires,—

(l) “pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity;”

8. A reference may also be made to Rule 13(3)(b) of the 2011 Rules, which is set out below:

“13. Statement of units of weight, measure or number.-

...

(3) When expressing a quantity of equal to or more than-

...

(b) one metre, the unit of length shall be the metre and any fraction of a metre shall be expressed in terms of decimal of sub-multiples of the metre or in terms of centimetre;”

9. A reading of the Rules would also make it evident that the aforesaid Rules are only applicable in respect of ‘pre-packaged commodities’.

10. In paragraph 7 of the reply filed on behalf of the respondent, it has specifically been admitted that the mandatory labelling requirement for ‘pre-packaged commodities’ is not applicable to garments sold in loose form. Paragraph 7 of the reply is set out below:

“That in response to para J-K of the petition it is submitted that the mandatory labelling required for pre-packaged commodities are not applicable to garments sold in loose forms however it must contains, (i) Name/Description of the product, (ii) Size Internationally recognizable size indicators - S, M. L. XL etc. along with details in metric notation in terms

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of cm or m as the case may be, (iii) MRP & (iv) Name, full address and Customer Care of the manufacturer.”

11. Even in the advisory issued on 31st March, 2017, by Legal Metrology Division, Ministry of Consumer Affairs, it has been stated as under:

“(i) A loose garments which is sold after consumer sees them for Style/Design, tries them for fit and touches them for feel of the Fabric/Fibre etc. is not a pre-packaged commodity, if the same garment is delivered to the consumer.”

12. It cannot be disputed that the goods of the petitioner company are sold in a loose form and would therefore not fall into the category of the ‘pre packaged commodity’.

13. In ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335, it has been held as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and



accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

xxx

xxx

xxx

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused...

14. In ***Pepsi Foods Ltd. And Anr. v. Special Judicial Magistrate And Ors.***, (1998) 5 SCC 749, it has been held as under:

*“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. **The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.** It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

15. In view of the aforesaid elucidation of law and after considering the rival submissions of the parties and perusing the material on record, I am satisfied that no ingredients of the offence under Section 13(3)(b) of the 2011 Rules are made out in the present case.

16. The impugned summoning order has been issued in a mechanical

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manner without examining the relevant provisions of law in relation to the complaint. The impugned summoning order fails to appreciate that the goods of the petitioner company are sold as loose articles and the customers are free to try or inspect the same. Thus, they would not fall within the ambit of the 2011 Rules and no proceedings can be initiated thereunder.

17. In my view, the continuation of the present proceedings would be an abuse of the process of law and the complaint deserves to be quashed in the interest of justice.

18. Accordingly, the petition is allowed. The summoning order dated 2nd May, 2016, is set aside and the Criminal Complaint No. 32/1W/16 and the proceedings arising therefrom are hereby quashed.

AMIT BANSAL, J.

JULY 24, 2023

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