IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 819 of 2019

M/s. Flemingo Duty Free Shop Pvt. Ltd. & Ors.

Vs

Shri Kaushik Bhattacharya & Anr.

For the Petitioners	:	Mr. Krishna Raj Thakker, Mr. Anurag Bagaria, Mr. Pawan Kr. Gupta, Ms. Riya Debnath, Mr. D. Santhalia.
For the Opposite Parties (State)	:	Mr. Bibaswan Bhattacharya.
Hearing concluded on	:	13.03.2024
Judgment on	:	24.04.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding in Case No. C- 163 of 2016 under Section 36(1) the Legal Metrology Act, 2009 read with Rule 32 (3) of the Legal Metrology (Packaged Commodities) Rules, 2011 pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas, West Bengal.

2. The Petitioner No.1 is a company within the meaning of the provisions of the Companies Act, 2013 and engaged in the business of operation of Duty Free Shops to deal in Duty Free Goods at Netaji Subhash Chandra Bose International Airport, Kolkata and at other 9 airports and 6 seaports in India. The Petitioner No.2 is an erstwhile officer of the Petitioner No.1. The Petitioner No. 3 is presently employed with the petitioner no.1 at its office at NSCBI Airport, Kolkata.

3. Case no. C-163 of 2016, has been initiated on the basis of complaint filed by the opposite party before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas, alleging commission of offences by the petitioners punishable under Section 36(1) the Legal Metrology Act, 2009 read with Rule 32 (3) of the Legal Metrology (Packaged Commodities) Rules, 2011.

4. The allegations leveled in the said petition of complaint are to the effect that:-

a) That the Complainant visited the retail premises of the petitioner no.1 on 30th October 2015 at N.S.C.B.I. Airport (S.H.A. International) PS N.S.C.B.I. Airport, Kolkata – 700 052, Security Hold Area, International Departure Zone and disclosed his identity to the petitioner no. 2 who was present there.

b) The Petitioner no.2 was asked to produce five numbers of group package of Marlboro cigarettes for inspection.

c) On inspection of the five packages produced by the petitioner no.2, the complainant detected deficiency/defects in the packages as follows:-

i. Name and address of the manufacturer, packer and importer was not mentioned in the package.

ii. Maximum Retail Price was not mentioned in the packages.

iii. Consumer Complaint Address was not mentioned in the packages.

d) The complainant seized the packages and kept the same in the official custody of the petitioner no.2 under Bond of Custody.

e) It is alleged that the use of the packages contravenes the provisions of Rule 6 (i) (a) and (e), Rule 6 (2), Rule 18 (i) of the Legal Metrology (Packaged Commodities) Rules, 2011 read with Sections 1 and 18 (1) the Legal Metrology Act, 2009 and punishable under Section 36 (1) the Legal Metrology Act, 2009 read with Rule 32(3) of the Legal Metrology (Packaged Commodities) Rules, 2011.

5. The discharge application filed by the petitioners was dismissed by the trial Court vide order dated 05.11.2018 without recording any reason on the merits of the application and on the ground that the proceedings cannot be dropped at the stage of plea.

6. Hence the revision.

7. It is stated by the petitioners that upon a perusal of the afore-mentioned complaint, it would transpire that the instant case is based on the allegation that the packages sold by the Petitioner No. 1 at the duty free shops situated in the International Airport, contravenes the provisions of Rule 6 (i) (a) and (e), Rule 6 (2), Rule 18 (i) of the Legal Metrology (Packaged Commodities) Rules, 2011 read with Sections 1 and 18(1) the Legal Metrology Act, 2009. These offences are punishable under Section 36 (i) of the Legal Metrology Act, 2009 read with Rule 32(3) of the Legal Metrology (Packaged Commodities) Rules, 2011.

8. It is also stated that the Petitioner No. 1 has been granted the necessary approvals by the Foreign Investment Promotion Board to carry on the business of duty free shops all over India.

9. The Petitioner No.1 operates a Duty-free Shop at the Netaji Subhash Chandra Bose International Airport for which it has signed a license agreement with the Airport Authority of India.

10. The petitioner No. 1 has been granted License by the jurisdictional Commissioner of Customs under Section 58 of the Customs Act, 1962 to operate Duty Free Shops at the said Airport and the license has been renewed from time to time. Petitioner No. 1 presently operates 2

Duty Free Shops at the said Airport under valid and subsisting licenses.

11. The Petitioners further state that the goods imported by the Petitioner are stored in the special warehousing licenses from where the goods are brought for sale to the custom area for sale to the eligible person i.e. international passenger arriving or departing from India. The goods brought in by Petitioner No. 1 and sold at the Duty Free Shops do not qualify as imports for home consumption and are for the purpose of export only. These goods do not attract any customs duty.

12. The Petitioners state that the relevant customs regime and its **business operations** can be summarized as follows:-

a) *The Products which are destined to be sold at duty free shop at International Airports and Seaports are not "imported" into the Indian Market. The products sold in the duty free shops which are situated outside the custom frontiers of India and are not meant for domestic sale i.e. home consumption. Further, the access to duty free shop is restricted to bona fide international passengers only, having valid travel documents departing from India or arriving into India.*

b) *Sales to international passengers are generally made against payment in foreign currency. Every sale is covered by a sales voucher, which is deemed to be the Shipping Bill or Bill of entry under Section 68 or 69 of Customs Act, 1962 (as the case may be) and these transactions are carried out according to the guidelines issued by the Customs Department from time to time. The final destination of the* *products sold at departure zones therein could be anywhere in the world but Indian Market. In case of the Petitioners Arrival at the duty free shop, the property of the Products passes to the international passenger before the Products crosses the customs frontier of India and is treated as accompanied baggage which is classified under the prevailing Baggage Rules.*

c) *All duty free shops in India are Customs Area as defined under Section 2(11) of the Customs Act, 1962. According to the said definition, 'Customs Area' is the area of a customs station and it includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities.*

d) *The products which are brought from foreign suppliers are kept in Custom bonded/special warehouses and they are transferred to duty free shops situated at the said Airport as and when the stock of goods lying at the duty free shops exhaust. The Petitioners submit that this activity is also carried out under the strict supervision of Customs Authorities and the Petitioners have no access to the Products without the leave of the Customs Authority.*

e) *The Petitioner No.2 does not file the green Bill of Entry for home consumption. Such bill of entry is issued when the goods are to be consumed as it is in India. The Petitioners file the bill of entry for warehousing ("yellow Bill of Entry").*

f) *The petitioner no. 1 is merely a trader. The packaging of the goods is done by the foreign manufacturers / packers. It is not possible for the petitioner no.1 to change the packing of any goods. It is submitted that when the Products are kept in the special warehouses, the products are deemed to have not crossed the customs frontier of*

India and are for the purpose of "export" as per the bill of entry.

g) *Further, the price are priced in US Dollars and the Rupees equivalent thereof would vary every day with the fluctuation in the rate of foreign currency. For this reason, it is not possible to indicate the MRP on the goods.*

13. The Petitioners further states that the Legal Metrology Act, 2009 extends to India and has been made applicable to goods imported into India and sold in India. The Petitioner No. 1 is not indulging in the act of importation of any goods into India as the goods sold by the petitioner no.1 do not cross the customs frontier prior to being sold at the duty free shops. When the goods are lying at the bonded warehouse, they are deemed to have been kept outside the customs frontiers of India. These goods are then sold at the duty free shops which are also deemed to be outside the customs frontier of India.

14. The Petition of Complaint filed by the State before the trial Court states that the complainant is a legal Metrology Officer (in the rank of Inspector of Legal Metrology) of unit No. 26B having his jurisdiction over Nimta, Dumdum, Airport and N.S.C.B.I. Airport Police Station.

15. That in course of an Inspection Program on 30.10.15 at 3.40 p.m., the complainant above named entered into the retail premises of M/s. Flemingo Duty Free Shop Pvt. Ltd. at N.S.C.B.I. Airport (S.H.A. International) P.S. N.S.C.B.I. Airport, Kolkata – 700 052 in Security Hold Area International Departure Zone, and disclosed his identity to

Sri Bishal Sarkar, location cum Retail Manager of M/s Flemingo Duty Free Shop Pvt. Ltd., Kolkata Regional Office, who was Present there.

16. That, Sri Bishal Sarkar, was asked to produce Five (05) nos. of Group Package of Marlboro Filter Cigarettes (200/20 each having Batch no. 1) CN -11432221, 2) CN – 11432301, 3) CN-11432222, 4) CN-11432222, 5) CN – 11432222 for necessary inspection.

17. That in course of the Inspection of the said Package following findings were found:–

Description of the Packaged Commodity	Finding/Deficiency/Defects
1. Five (05) nos. of Group Package of Marlboro filter Cigarettes (200/20 each) having batch **1.** CN-11432301 **2.** CN-11432221 **3**. CN-11432222 **4.** CN-11432222 **5.** CN-11432222	**1.** Name and address of the Manufacturer, Packer & Importer is not mentioned in the Packages. **2.** Maximum Retail Price is (M.R.P.) not mentioned in the Packages. **3**. Consumer Complaint Address is not mentioned in the packages.

18. It is further stated in the complaint that, such using of Packaged commodities during transaction (selling) contravenes the Provisions of Rule 6(1)(a), Rule 6(1)(e), Rule 6 (2), Rule 18(1) of the Legal Metrology

(Packaged Commodities) Rules 2011 read with Section (1) and Section 18(1) of the Legal Metrology Act, 2009.

19. By way of a **supplementary affidavit,** the petitioner has filed documents, being:-

a) A copy of license no. 34/2015 dated 26.02.2015 valid till 11.03.2016 for the private Bonded warehouse.

b) Bill of entry for warehousing showing storage of "Cigarettes" at Cochin Special Economic Zone.

c) The **supplier name and address is given as**:–

BOMMIDALA ENTERPRISES PVT. LTD.

PLOT NO. 17, FIRST FLOOR, UNIT III, COCHIN SPECIAL ZONE KAKKANAD – COCHIN – 683037, KERALA INDIA.

20. The State/Opposite party has filed an Affidavit in opposition stating therein that:–

a) The Petitioner No. 1 herein has a warehouse for the purpose of stocking imported items, duly licensed as per the provisions of Section 58 of the Customs Act, 1962.

b) That as per Section 2 (n)(ii) of the Legal Metrology Act, 2009 (hereinafter referred to as "t*he said Act"),* the definition of *"premises" inter alia* includes a warehouse, godown, or other place, where any weight or measure or other goods are stored or exhibited, wherein, as per the powers vested under Section 15 of the said Act, the Opposite Party No. 1 herein was well within his authority to conduct inspection and seizure in apprehension of commission of any offence punishable under the provisions of the said Act, which has evident relevance in the instant case.

c) That the present Petitioners are involved in the retail sale of goods imported by them to international passengers, whereas Rule 18 of the Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred to as "*the said Rules*") clearly imposes a restriction upon every wholesale dealer or retail dealer or importer from selling, distributing, delivering displaying or storing for sale any commodity in the packaged form unless the said package complies with in all respects, the different provisions of the said Act and the Rules, infringement of which is punishable under the various provisions of the said Act and the corresponding Rules.

d) That although the present Petitioners have intently endeavoured to insinuate that the various products sold by them are "*not imported into the Indian market*", yet the very document marked as "Annexure – P-6" to the said Petition, purportedly documenting 'Bill of Entry for Warehousing' clearly describes the Petitioner No. 1 herein as the "*Importer*" under the heading of "*Importer's Name*", which in turn goes on to entirely negate and repudiate the case of the present Petitioners.

e) It is the further contention of the state, that contrary to the various assertions made in the said Petition, Section 2(r) of the said Act defines "*sale*", with its grammatical variations and cognate expressions, to mean the transfer of a property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by installments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods, which manifestly encompasses the series of activities irrefutably carried on by the present Petitioners, thereby naturally dragging it within the ambit of the said Act and its corresponding Rules, which as per Section 1 of the said Act is applicable to the whole of India; moreover, if the present Petitioners are allowed to carry on their usual trade and business with the international passengers, that too in an unfettered manner, in gross violation of the various statutory provisions, as per their free will and wishes, the same will most definitely amount to a mockery of the various statutory provisions, thereby resulting in being detrimental and damaging to the overall goodwill of India as a nation.

f) That Section 2(11) of the Customs Act, 1962, defines a *"Customs Area"* to mean the area of a custom station or a warehouse, including any area in which imported goods or exported goods are ordinarily kept before clearance by the Customs Authorities and hence, contrary to the inaccurate and ambiguous interpretation as advanced on behalf of the present Petitioners, it does not routinely include Duty Free Shops.

g) That although in order to evade its accountability, the Petitioner No. 1 herein has described itself as "merely a trader", yet Section 18(1) of the said Act categorically imposes a liability upon every person who manufactures, packs, sells, imports, distributes, delivers, offers, exposes or possesses for sale any pre-packaged commodity, to ensure that such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed therein, while Rule 18(1) of the said Rules imposes an accountability upon all wholesale dealers or retail dealers or importers to sell, distribute, deliver, display or store for sale any commodity in such packaged form, which complies with in all respects, the provisions of the said Act and the corresponding Rules, which are mandatory and binding and hence, must be strictly adhered to while conducting its business.

h) That additionally, contrary to the various affirmations made in the said Petition, Rule 2 (m) of the said Rules clearly defines "*retail sale price*" to mean the maximum price at which the commodity in packaged form may be sold to the consumer and the price shall be printed on the package in the following manner : Maximum or Max. Retail Price: Rs/……….. inclusive of all taxes or in the form MRP: Rs/……… inclusive of all taxes, after taking into account the fraction of less than 50 paise to be rounded off to the preceding rupees and fraction of above 50 paise and up to 95 paise to be rounded off to 50 paise and Rule 18(6) of the said Rules, clearly specifies that the manufacturer or packer or the importer shall not alter the price on the wrapper once printed and used for packing.

i) That although the term "*Customs Frontier*" has been recurrently used in the said Petition, it is interesting to note that the same has nowhere been explicitly defined in the Customs Act, 1962. Section 2(11) of the Act of 1962, has defined the jurisdictional area of Customs as "Customs Area" which means the area of a customs station or a warehouse and includes any area in which imported goods or exported goods are ordinarily kept before clearance by the Customs Authorities. On the other hand, Section 2(n)(ii) of the said Act of 2009, defines the term "*premises*" to inter alia *include* a warehouse, godown or other place where weight or measure or other goods are stored or exhibited; under such circumstances, it is fair and reasonable to conclude that the purported misinterpreted notion that when the goods are lying at the bonded warehouse, they are deemed to have been kept outside the Customs Frontier of India and the same when sold in Duty Free Shops, the same are also deemed to be outside the Customs Frontier of India is absolutely vague and elusive in nature and not only contradicts the provisions of the said Act, but also that of the Customs Act, 1962.

j) That as per the claims of the present Petitioners, the goods which are kept in the Retail Shop of Petitioner No.1 herein and comes from the private bonded warehouse of the Petitioner No. 1 herein, as declared by the Customs Authorities, are imported and are meant for supply to the Duty Free Retail Shops for the purpose of sale to the ultimate consumer in the security hold area of International departure. Although the present Petitioners had tried their level best to describe their business transactions as a "*Separate types of transaction*" and the goods sold by Petitioner No.1 herein as "*separate type of goods*", yet the term "*transaction*" has been defined in unambiguous terms in Section 2(u)of the said Act, to mean : (i) any contract, whether for sale, purchase, exchange or any other purpose, or (ii) any assessment of royalty, toll, duty or other dues, or (iii) the assessment of any work done, wages due or services rendered, which coupled with the definitions of the term "*retail sale*" in Section 2(1) of the said Rules in relation to a commodity, to mean the sale, distribution or delivery of such commodity, through Retail Sales Shops, agencies or other instrumentalities for consumption by an individual or a group of individuals or any other consumer and the term "*pre-packaged commodity*" as defined in Section 2(1)of the said Act to mean 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 predetermined quantity, leaves no doubt whatsoever that the contended nature of goods concerned, when kept for retail sale purposes, do not in any manner qualify to be "*a separate class of goods*", distinct from the goods sold to the general public within the territory of India.

k) That Section 2(e) of the said Act along with Section 2(23) of the Customs Act, 1962 consistently define the term "*import*" along with its grammatical variations and cognate expressions, to mean bringing into India from a place outside India and Section 1 of both these statutes appear to extend both their applicability to the whole of India, thereby nullifying and quashing all suggestions that the provisions of the said Act are inapplicable and incompatible in the facts and circumstances of the instant case.

21. Both parties have filed their written notes of argument.

22. The Petitioners have relied upon the following Judgments:-

(i) Hotel Ashoka (Indian Tour. Dev. Cor. Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors., in Civil Appeal Nos. 2560 and 10404 -10412 of 2010, decided on 03.02.2012.

(ii) M/s. Flemingo Duty Free Shops Pvt. Ltd. vs The State of Karnataka & Ors., in WP No. 16296 of 2007 (GM-RES), decided on 22nd July, 2009.

23. The Opposite Party has relied upon a Notification dated 24th November, 2000 of the Government of India, Ministry of Commerce and Industry Department of Commerce Notification No. 44(RE2000)/1997-2002, New Delhi.

24. The Opposite Party has also relied upon a Trade notice no. 21/2018 issued by the office of the Commissioners of Customs, Cochin, wherein it is stated as follows:-

"This Trade Notice is specifically issued in relation to the operation of Special Warehouse at Airports and duty free shops within the jurisdiction of Commissioner of Customs, Cochin, Kerala.

(i) The DFS operator shall comply with the provisions of allied Acts and Rules, such as FSSAI. PQ, AQ, LM rules, packaged commodities rules etc, as amended time to time as applicable.

*(ii) The owner or the authorized representative of Duty Free Shop shall make an application is writing to the Assistant/ Deputy Commissioner **of Customs, Airport,** stating therein his intention to procure indigenous goods. **The Assistant/Deputy Commissioner of Customs shall grant the permission after causing such enquiries as he may deem fit.** The DFS operator should keep separate accounts for such items. They also required to comply with the GST Rules and Regulations wherever applicable.”*

25. From the materials on record it is evident that:-

i) The petitioners operate two duty free shops pursuant to approval granted by the Government of India, Ministry of Finance, Department of Economy Affairs, FIDD Unit dated 29th August, 2006 and the Special License for Private Bonded Warehouse under Section 58A of the Customs Act, 1962 granted by the Commissioner of Customs, Kolkata, read with the Special Warehouse Licensing Regulations, 2016.

ii) **The duty free shops of the petitioners are thus deemed to be outside the territory of India.** Only passengers coming into India from foreign destination and passengers going to foreign destinations are eligible to purchase goods at the duty free shops. **As such the goods sold at the duty free shops are deemed to have taken place outside the territory on India [Section 2 (11), (25), (43) and (44) of the Customs Act, 1962].**

iii) The Legal Metrology Act and the rules framed thereunder are only applicable to/in India which is clear from Section 1 (2) of the Act of 2009.

iv) The instant Case has been initiated in respect of goods being sold in a duty free shop at the Airport in an area beyond the territory of India.

v) A seizure was made by the Opposite Party No.1 herein, being the Inspector of Legal Metrology, Unit No. 26B, Barrackpore, North 24 Parganas for violation of **Rules 6(1) (a) and (e), Rule 6(2) and Rule 18(1) of the Legal Metrology (Packaged Commodities) Rules, 2011,** as detected on **OCTOBER 30, 2015** at their premises in the Departure Terminal. Consequently, Prosecution Case C-163 of 2016 was launched under **Section 36(1) of the Legal Metrology Act, 2009 read with Rule 32(3) of the Legal Metrology (Packaged Commodities) Rules, 2011,** before the Court of the Learned Additional Chief Judicial Magistrate at Barrackpore, North 24 Parganas.

vi) As per **SECTION 46** of the Customs Act, 1962, on entry of goods on importation, the importer of any goods, other than goods intended for transit or trans-shipment, *inter alia* shall make entry thereof by presenting to the proper concerned Officer a Bill of Entry for Home Consumption or Warehousing. In the said Bill of Entry for Warehousing of the present Petitioners, an endorsement appears as "Importer" it prima facie proves that they are importers of the concerned goods, as contended by the opposite parties.

vii) The Opposite Party's further case is that as per power vested **under Section 15 of the Legal Metrology at 2009,** he has the authority to conduct inspection and seizure in apprehension of commission of any offence punishable under the case as instituted.

viii) **SECTION 2(n)(ii)** of the Legal Metrology Act, 2009.

The definition of "**premises"** *inter alia includes a warehouse, godown, or other place, where any weight or measure or other goods are stored or exhibited.*

ix) It is the case of the Opposite Party that upon getting clearance from the Customs Authority the present Petitioners, as per the provisions of **SECTIONS 47 and 68** of the Customs Act, 1962 take out the imported warehoused goods to their Duty Free Shops and as a Retail

Dealer (Retailer), sell the same to the International Passengers, without complying with the formalities, as prescribed under the different provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 made under the Legal Metrology Act, 2009.

x) The Complainant herein is the State represented by the Legal Metrology Officer, Unit No. 26B, Government of West Bengal.

xi) Section 1(2) of the Legal Metrology Act, 2009 states that the Act extends to the **whole of India**.

xii) The Supreme Court in ***Hotel Ashoka (Indian Tour. Dev. Cor. Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors., in Civil Appeal Nos. 2560 and 10404 - 10412 of 2010, decided on 03.02.2012,*** has held as follows:-

> *"…………….. Held, before the goods were imported in the country, they had been sold at the duty free shops of the Appellant. It was very clear that no tax on the sale or purchase of goods can be imposed by any State when the transaction of sale or purchase takes place in the course of import of goods into or export of the goods out of the Territory of India. That the goods sold at the duty free shops, owned by the Appellant, would be said to have been sold before the goods crossed the Customs Frontiers of India, as it was not in dispute that* ***the duty free shops*** *of the Appellant situated at the International Airport of Bengaluru* ***were beyond the Customs Frontiers of India,*** *i.e. they were not within the Customs Frontiers of India. Looking to the provisions of Article 286 of the Constitution, the*

State of Karnataka would have no right to tax any such transaction which would take place at the duty free shops owned by the Appellant which were not within the Customs Frontiers of.

12. *On the other hand, learned senior counsel Shri Bhat and Shri Sharma, assisted by learned counsel Shri Qadri appearing for the respondent-State, mainly submitted that the orders passed by the learned Single Judge as well as by the Division Bench of the High Court are just and proper. They submitted that the High Court rightly did not entertain the petition as the appellant had not challenged the validity of the order before the appellate authority appointed under the Act. They submitted that the Act has set up appellate authorities and according to the provisions of the Act, an order passed by the assessing officer should be first challenged before the first appellate authority and only after all the remedies under the Act are exhausted, the appellant should have approached the High Court. As the statutory remedies had not been exhausted by the appellant, according to the learned counsel, the High Court had rightly dismissed the appeal by confirming the order passed by the learned Single Judge.*

28. It is true that the appellant had rushed to the High Court without exhausting equally efficacious alternative statutory remedy. *In our opinion, the learned Single Judge of the High Court was also right when he directed the appellant to move the statutory appellate authority.* ***In normal circumstances, even we would have expressed the same opinion*** *but looking to the fact that the special leave petition has already been admitted and the matter pertains to the assessment year 2004-2005, it would not be in the interest of the justice to relegate the appellant to the statutory authorities especially when the legal position is very clear and the law is also in favour of the appellant."*

26. Section 50 of the Legal Metrology Act, 2009 lays down:-

> ***"50. Appeals.—****(1) Subject to the provisions of sub-section (2), an appeal shall lie,—*
>
> *(a)from every decision or order under sections 15 to 20, section 22, section 25, sections 27 to 39, section 41 or any rule made under sub-section (3) of section 52 by the legal metrology officer appointed under section 13, to the Director;*
>
> *(b)from every decision or order made by the Director of Legal Metrology under sections 15 to 20, section 22, section 25, sections 27 to 39, section 41 or any rule made under sub-section (3) of section 52, to the Central Government or any officer specially authorised in this behalf by that Government;*
>
> *(c)from every decision given by the Controller of Legal Metrology under delegated powers of Director Legal Metrology to the Central Government;*
>
> *(d)from every decision given or order made under sections 15 to 18, sections 23 to 25, sections 27 to 37, sections 45 to 47 or any rule made under sub-section (3) of section 52 by any legal metrology officer appointed under section 14, to the Controller; and*
>
> *(e)from every decision given or order made by the Controller under sections 15 to 18, sections 23 to 25, sections 27 to 37, section 45 to 47 or any rule made under sub-section (3) of section 52 not being an order made in appeal under clause (d), to the State Government or any officer specially authorised in this behalf by that Government.*
>
> *(2)Every such appeal shall be preferred within sixty days from the date on which the impugned order was made:*
>
> *Provided that the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, permit the appellant to prefer the appeal within a further period of sixty days.*
>
> *(3)On receipt of any such appeal, the appellate authority shall, after giving the parties to the appeal, a reasonable*

> *opportunity of being heard and after making such inquiry as it deems proper, make such order, as it may think fit, confirming, modifying or reversing the decision or order appealed against or may send back the case with such direction as it may think fit for a fresh decision or order after taking additional evidence, if necessary.*
>
> *(4)Every appeal shall be preferred on payment of such fees, as may be prescribed.*
>
> *(5)The Central Government or the State Government, as the case may be, may on its own motion or otherwise, call for and examine the record of any proceeding including a proceeding in appeal in which any decision or order has been made, for the purpose of satisfying itself as to the correctness, legality or propriety of such decision or order and may pass such orders thereon as it may think fit:*
>
> *Provided that no decision or order shall be varied under this sub-section so as to prejudicially affect any person unless such person has been given a reasonable opportunity of showing cause against the proposed action."*

27. **The present proceedings** have been initiated under Section 36(1) the Legal Metrology Act, 2009 read with Rule 32(3) of the Legal Metrology (Packaged Commodities) Rules, 2011, by an Inspector of Legal Metrology (Legal Metrology Officer of the State).

28. The present proceeding has been initiated in **2016** and this criminal revision has preferred in the **2019.**

29. Thus the petitioner herein should have **first exhausted equally efficacious alternative statutory remedy as provided under the act** before approaching this Court ***(Hotel Ashoka (Indian Tour. Dev. Cor.***

Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors. (Supra)).

30. But keeping with the view taken by the Apex Court in ***Hotel Ashoka (Indian Tour. Dev. Cor. Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors. (Supra)*** and considering that **9 (nine) long years have passed,** the present revision is being disposed of on merit without directing the petitioners to move the statutory appellate authority, only in the interest of justice.

31. In ***Hotel Ashoka (Indian Tour. Dev. Cor. Ltd.) vs Assistant Commissioner of Commercial Taxes and Ors. (Supra),*** the Supreme Court further held:-

> *"**30.** They again submitted that `in the course of import' means `the transaction ought to have taken place beyond the territories of India and not within the geographical territory of India'. We do not agree with the said submission. When any transaction takes place outside the customs frontiers of India, the transaction would be said to have taken place outside India. Though the transaction might take place within India but technically, looking to the provisions of Section 2(11) of the Customs Act and Article 286 of the Constitution, the said transaction would be said to have taken place outside India. In other words, it cannot be said that the goods are imported into the territory of India till the goods or the documents of title to the goods are brought into India. Admittedly, in the instant case, the goods had not been brought into the customs frontiers of India before the transaction of sales had taken place and, therefore, in our opinion, **the transactions had taken place beyond or outside the custom frontiers of India.***
>
> ***31.** In our opinion, submissions with regard to sale not taking effect by transfer of documents of title to the goods are absolutely irrelevant. Transfer of documents of title to the goods is one of the methods whereby delivery of the*

> *goods is effected. Delivery may be physical also. In the instant case,* ***at the duty free shops, which are admittedly outside the customs frontiers of our country, the goods had been sold to the customers by giving physical delivery.*** *It is not disputed that the goods were sold by giving physical possession at the duty free shops to the customers. Simply because the sales had not been effected by transfer of documents of title to the goods and the sales were effected by giving physical possession of the goods to the customers, it would not mean that the sales were taxable under the Act. Thus, we do not agree with the aforestated submissions made by the learned counsel appearing for the Revenue."*

32. In the present case:-

i. Admittedly, the goods seized were being sold in a duty free shop at an international Airport.

ii. The seizure of goods being sold, in a duty free shop at an international airport, as in this case, has thus taken place beyond or outside the customs frontiers of India.

iii. **Duty free shops are admittedly beyond/outside the customs frontiers of the country.**

iv. The present proceedings have been initiated under Section 36(1) the Legal Metrology Act, 2009 read with Rule 32(3) of the Legal Metrology (Packaged Commodities) Rules, 2011, by an Inspector of Legal Metrology (Legal Metrology Officer of the State).

v. Section 1(2) of the Legal Metrology Act, 2009 states that the Act extends to the **whole of India**.

33. Thus the complainant in this case did not have the authority to initiate the present proceedings against the petitioners in respect of the alleged offences which admittedly took place in a duty free shop at an international airport which is beyond/outside the custom frontiers of India.

34. Accordingly the proceedings in this case, being not in accordance with law and thus an abuse of the process of Court/law, is liable to be quashed.

35. **CRR 819 of 2019 is allowed.**

36. The proceedings in Case No. C- 163 of 2016 under Section 36(1) the Legal Metrology Act, 2009 read with Rule 32 (3) of the Legal Metrology (Packaged Commodities) Rules, 2011 pending before the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas, West Bengal, **is hereby quashed in respect of the petitioners herein.**

37. **Though the proceedings** in this case has been quashed, on the ground of lack of jurisdiction/authority on the part of the complainant, the offences alleged in the present case are of a very serious nature having an adverse effect on the consumers. The lack of details as required (para 17 in this judgment) is mandatory for the safety of the consumers/passengers.

38. **Such goods without label, M.R.P. etc. being sold in duty free shops and sold to international passengers also raises the question of safety of the passengers/customers.**

39. As per Section 2(11) of the Act of 1962, all duty free shops in India are in customs area, which includes a warehouse and customs station area.

40. The activities in such shops, warehouse and customs station are carried out under supervision of custom authorities, being the Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi.

41. As such, though the present proceedings has been quashed due to lack of jurisdiction of the complainant, the offences noted by the complainant remain on record. It is thus obvious that the appropriate authorities are not carrying out their duties diligently, leading to such non compliance of rules, which are to be stringent measures taken by the authority concerned. Such laches should not be over looked or ignored as this may lead to unfortunate casualties.

42. **Accordingly, let a copy of this judgment be also sent to the Commissioner of Customs, Kolkata and the Commissioner, Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi, for necessary action.**

43. All connected applications, if any, stand disposed of.

44. There will be no order as to costs.

45. Interim order, if any, stands vacated.

46. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

47. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)