

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 2028 OF 2014**

Superflo Private Limited & Ors.

.. Applicants

Versus

The State of Maharashtra & Anr.

.. Respondents

Mr. Pankaj Jagannath Das, Advocate for the Applicants.

Ms. Mahalaxmi Ganapathy APP for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****RESERVED ON : 18th DECEMBER, 2023.
PRONOUNCED ON : 24th JANUARY, 2024.****JUDGMENT [PER: SHYAM C. CHANDAK, J.]**

1) Present Petition is filed under Article 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, seeking to quash C.C.No.373/SS/2013 filed by the Respondent No.2 against the Petitioners for contravention of the provisions of Sections 18 (1) and 36 (1) of the Legal Metrology Act, 2009 read with Rules 9, 18 (6) of the Legal Metrology (Packaged Commodities) Rules, 2011 and committing an offence punishable under Section 36 of the said Act.

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2) Heard learned counsel for the Petitioners and Ms. Mahalaxmi Ganapathy APP for the Respondent-State. Perused the record and the Affidavit-in-Reply submitted for the Respondent No.2.

2.1) Record of the Petition reveals that Rule was issued and interim reliefs in terms of prayer clause (d) was granted on 22nd January, 2016.

3) The facts giving rise to this Petition are briefly stated as under:-

3.1) That on 15th September 2012, Mr. V.K. Pawar, Inspector of the Respondent No.2, visited at M/s.Ashok Enterprises, Shop No.155, Victoriya Road, Byculla (E), Mumbai-27 and inspected the goods there. Said inspection revealed that, on the packages of the goods 'Gistern fittings Accessories of Water Saver Dual Flush Fitting', the MRP was altered by smudging/rubbing and putting a rubber stamp of the MRP there, which was ambiguous. The Petitioners are the manufacturers of the said goods. Thus, the Petitioners have contravened the provisions of Sections 18 (1) and 36 (1) of the Legal Metrology Act, 2009 read with Rules 9, 18 (6) of the Legal Metrology (Packaged Commodities) Rules, 2011 and committed an offence punishable under Section 36 of the said Act. Hence, the Respondent No.2 filed the said C.C.No. 373/SS/2013 against the Petitioners. In turn, the learned Metropolitan Magistrate directed to issue process against the Petitioners for the said offence.

4) The Petitioners challenged the Order of the issue process in Criminal Revision Application No.1130/2013 before the Bombay City Civil & Sessions Court, at Mumbai. The said Revision came to be rejected. Therefore, the Petitioners have filed this Petition seeking to quash the complaint bearing C.C. No.373/SS/2013, the Order of issue process and the entire proceedings in this behalf pending before the Chief Judicial Magistrate, 15th Court Mazgaon, Mumbai.

5) The learned counsel for the Petitioners submitted that, the Petitioner No.1 manufactures, *inter alia*, sanitary fittings including cistern fittings such as side inlet valves, bottom inlet valves, push type outflow valves front lifting outflow valves, pull-type outflow valves, dual flush outflow valves and, also, *inter alia*, supplies the same in bulk to other sanitary ware companies who manufacture, market and trade in sanitary ware products, either for their consumption or for trade, based on the direct orders placed by such companies on Petitioner No.1. These companies either use the sanitary fittings supplied in bulk into the sanitary wares manufactured by them and thereafter market and sell such sanitary ware alongwith the fittings or sell only these sanitary ware fittings to their customers through dealers, retailers etc.

6.1) The Petitioner No.1 manufactures and supplies the Products to

M/s.Hindustan Sanitary ware and Industries Limited ('M/s.HSIL') based on a pre-negotiated price per Product. In any order which is received by Petitioner No.1 from M/s.HSIL, the MRP is not affixed or disclosed to the Petitioner No.1.

6.2) It is submitted that, present impugned proceedings against the Petitioners relate to Cistern fittings Accessories (item water saver dual flush fitting- "products"), which were manufactured by the Petitioner in bulk for the direct purchase order received from M/s. HSIL to supply the said products with accessories in quantity mentioned therein. As per the instructions of M/s. HSIL, the said products alongwith the accessories were placed in the cartons customized in accordance with the art work sent by M/s. HSIL to Petitioner No.1. Then, without packing or sealing and without putting MRP on the carton, the same were forwarded to M/s. HSIL's Trading division at Bibi Nagar, Hyderabad. Thereafter, the Petitioner No.1 was not concerned as to how the said customized cartons were ultimately dealt with by M/s. HSIL. The products supplied to M/s. HSIL through customized cartons by the Petitioner No.1 were not finished products ready for sale. They are either sold separately or assembled as a part of the sanitary ware. Additionally, the Petitioner No.1 has no control, nor any instructions, either to determine the MRP or of placing any MRP on the said Products. There is

no investigation as to whether the packages on which the MRP was smudged/rubbed and then the stamp of MRP was put, were prepared by the Petitioner No.1 or not. There is no material that the Petitioners were responsible for tampering the MRP as above. Therefore, the Petitioners cannot be prosecuted for the offence of smudging or rubbing the MRP and putting the rubber stamp of the MRP on the packages. As a result, C.C.No.373/SS/2013 alongwith the Order of rejecting the Criminal Revision Application No.1130/13 is liable to be quashed and set aside.

7) Per contra, the learned APP submitted that, considering the Petitioners are manufacturers of the subject product, they are liable for its packaging and the missing details on the package. Therefore, the Respondent No.2 has rightly lodged the impugned complaint against the Petitioners. As such, the question of quashing C.C.No.373/SS/2013 alongwith the Order of rejecting the Criminal Revision does not arise.

8) There is no dispute that the Petitioners are manufacturers of the subject product. Admittedly, the Respondent No.2 has filed three separate complaints about the alleged offence. One case is filed against the Petitioners and the other two against M/s.HSIL and M/s.Ashok Enterprises respectively. From these circumstances, it is evident that first; the subject product was sold to M/s.HSIL. Further; M/s.HSIL sold the said product to

M/s.Ashok Enterprises. However, the record does not indicate that, when the subject product was sold to M/s.HSIL by the Petitioners, at that time, the said product was finally packed at the production center of the Petitioners for marketing and selling purposes. Further, the subject complaint does not indicate that, the MRP on the packages of the said product was smudged/obliterated and the rubber stamp of the MRP was put thereon in the production unit of Petitioner No.1. That apart, no sample package, showing similar illegality in respect of the MRP, has been seized from the production center of the Petitioners. As such, there is no material against the Petitioners that, they only did the smudging/obliteration of the MRP and put the rubber stamp of the MRP on the packages or that the said illegality was committed by M/s.HSIL or M/s.Ashok Enterprises at the behest of the Petitioners. There is no investigation by Respondent No.2 as to whether the Petitioners were selling the subject product without packing it or in packages and whether the Petitioners were directly or indirectly connected with the packages on which the MRP of the goods was smudged/obliterated, as alleged.

9) In view thereof, it is safe to infer that, there is no *prima facie* case against the Petitioners having committed the offences alleged in the impugned complaint. Therefore, continuation of the CC No.373/SS/2013

against the Petitioner would be an abuse of process of law. Hence, said CC No.373/SS/2013 is liable to be quashed and is accordingly quashed and set aside.

10) Criminal Writ Petition is allowed in the aforesaid terms. Rule is made absolute.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)