

(2024) 04 TEL CK 0002

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 9985 Of 2008

Pepsico India Holdings Private
Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: April 3, 2024

Acts Referred:

- Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 2006 - Rule 6
- Standards of Weights and Measures (Packaged Commodities) Rules, 1977 - Rule 6(1)(a), 39
- Standards of Weights and Measures Act, 1976 - Section 33, 39, 51, 63, 72, 83

Hon'ble Judges: Alok Aradhe, CJ; Anil Kumar Jukanti, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. Mr. N.Naveen Kumar, learned counsel for the petitioner appeared through video conferencing.

Mr. P.Govind Reddy, learned counsel for the respondents No.6 to 8 and 11.

2. In this writ petition, the petitioner has assailed the validity of the action of the respondents in seeking to enforce and initiate proceedings for prosecution against the petitioner for violation of Rule 6(1)(a) of the Standards of Weights and Measures (Packaged Commodities) Amendment Rules, 2006, in respect of the package material used by the petitioner prior to 31.12.2007 on the ground that the same is illegal, arbitrary and unconstitutional. The petitioner has prayed for a consequential direction to the respondents not to take any action against the petitioner in respect of the package material used prior to 31.12.2007 in consonance with the directions issued by the Central Government dated 05.07.2007.

3. In order to appreciate the grievance of the petitioner, relevant facts need mention which are stated infra.

4. The petitioner is a company incorporated under the provisions of the Companies Act, 1956, and is a manufacturer of non-alcoholic carbonated beverages, packaged drinking water and packaged edibles such as potato chips and markets the products in India including in the State of Andhra Pradesh. The petitioner supplies its products to various consumers through distribution channels of wholesalers and retailers.

5. The petitioner is under an obligation to manufacture, prepare and package its products in consonance with the provisions of the Prevention of Food Adulteration Act, 1954, the Standards of Weights and Measures Act, 1976 (hereinafter referred to as "the Act"), the Standards of Weights and Measures (Enforcement) Act, 1985, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 as amended in 2006, and the Fruit Products Order, 1955.

6. In exercise of powers under Section 83 of the Act, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as "the 1977 Rules") have been framed. Chapter II of the said Rules deals with provisions applicable to packages intended for retail sale. Rule 6 provides for declaration to be made on every package. Rule 6(1)(a) was amended with effect from 14.01.2007. Rule 6(1)(a) reads as under:

"6. Declaration to be made on every package:-

(1) Every package shall bear thereon or on a label securely affixed thereto, a definite, plain and conspicuous declaration, made in accordance with the provisions of this Chapter as to,-

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer.

Explanation I.- If any name and address of a company is declared on the label without any qualifying words "manufactured by" or "packed by", it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly;

Explanation II.- If the brand name and address of the brand owner appear on the label as a marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III.- In respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply."

7. The Central Government on 12.01.2007 issued guidelines for implementation of the 1977 Rules. The relevant portion of the aforesaid guidelines is extracted below for the facility of reference:

"As the amendment provide for some new provisions, to enable smooth transition in implementation, the following guidelines are being issued.

1) Efforts may be made to give wide publicity to these changes so as to spread awareness amongst manufacturers/wholesalers/retailers.

2) The initial enforcement steps may only be in the nature of investigational surveys. Any deficiency noticed should be brought to the notice of the concerned. This is being suggested to provide an opportunity to manufacturers to update their label declarations and the seller to put in place an appropriate weighing equipment. This approach may be continued upto 30th April 2007 and it is expected that in this initial period there would be no prosecution.

3) Manufacturers may be permitted to affix individual sticker to declare the details of consumer care cell upto 30th June, 2007, so as to utilize the existing packaging materials.

The industries while welcoming the amended provisions which are consumer friendly, have sought clarification on certain provisions through representations made to the Government and during deliberations held to discuss the issue. The queries and the response thereto is Annexed herewith.

Accordingly, you may instruct the enforcement authorities of your State for due compliance of the above guidelines."

8. However, according to the respondents, it was noticed that the petitioner was violating the provisions of Rule 6(1)(a) of the 1977 Rules. Therefore, notices dated 25.06.2007, 03.07.2007, 04.07.2007, 05.07.2007, 09.07.2007, 31.07.2007 as well as 01.08.2007 were issued to the petitioner informing it about the contravention of the provisions of Section 39/33 of the Act and Rule 6(1)(a) of the 1977 Rules. Thereafter, the proceedings dated 12.10.2007 was issued by the Inspector, Legal Metrology (Weights & Measures), Hindupur, by which it was stated that the petitioner may prefer an appeal to the Controller, Legal Metrology, Weights & Measures Department, Hyderabad. Thereafter, a notice dated 18.10.2007 was issued by the Inspector, Legal Metrology (Weights & Measures), Nalgonda, to the petitioner by which the petitioner was informed that a case has been registered against it for the offences under Section 63/51 of the Act and under Rule 39 of the 1977 Rules on 25.06.2007. The petitioner thereafter was served with summons on 15.03.2008 issued by the learned Judicial First Class Magistrate, Hindupur, for offences under

Section 72 of the Act. In the aforesaid factual background, this writ petition arises for consideration.

9. A Bench of this Court, by an interim order dated 01.05.2008 granted interim stay of all further proceedings.

10. Learned counsel for the petitioner submitted that the petitioner has been exempted from the requirement of compliance with Rule 6(1)(a) of the 1977 Rules and therefore, the notices as well as the prosecution which was initiated against the petitioner is non est and has no sanctity in the eye of law.

11. On the other hand, learned counsel for the respondents No.6 to 8 and 11 has pointed out that the order dated 12.01.2007 issued by the Central Government is in the nature of guidelines and has no statutory sanction. Therefore, the contention urged by the petitioner that the petitioner is exempted from the requirement of compliance with Rule 6(1)(a) of the 1977 Rules, is misconceived.

12. We have considered the rival submissions made on both sides and have perused the record.

13. Admittedly, under Rule 6(1)(a) of the 1977 Rules, a manufacturer is required to mention on every package the name, address, telephone number, e-mail address of the person or the office that can be contacted in case of a consumer complaint. The power to grant exemption from a provision of law has to emanate either under the relevant Act or the relevant Rules. In the instant case, none of these statutory provisions either under the Act or under the 1977 Rules have been brought to our notice which empower the Central Government to exempt a manufacturer from operation of the provision of the Rule. The provisions of the Act were amended, which was notified with effect from 17.07.2006. Therefore, the Central Government has issued the guidelines to ensure smooth transition in implementation of the 1977 Rules, as by way of amendment, new provisions were incorporated. The aforesaid guidelines only provide that efforts may be made to give wide publicity to the changes made in the 1977 Rules so as to spread awareness amongst manufacturers/wholesalers/retailers. It was also stated in the guidelines that initial enforcement steps may only arise in the nature of investigational surveys and the deficiencies noticed should be brought to the notice of the concerned manufacturer so that they can update their label declarations and the seller may put in place an appropriate weighing equipment. The said steps were directed to be taken till 30.04.2007 and it was expected that in the said initial period there would be no prosecution. The order dated 12.01.2007 is not an order granting exemption to the petitioner from requirement of compliance of Rule 6(1)(a) of the 1977 Rules. Therefore, the contention that the petitioner is exempted from complying with Rule 6(1)(a) of the 1977 Rules is misconceived.

14. However, it is pertinent to note that after issuance of one of the notices, prosecution has already been launched against the petitioner in one of the cases.

However, in the remaining notices to which the petitioner has responded, action is yet to be taken. The concerned authorities are therefore directed to bear in mind the guidelines issued by the Central Government dated 12.01.2007 before proceeding further with the matter.

15. Accordingly, the writ petition is disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.