

(2012) 07 MAD CK 0064

Madras High Court

Case No: Writ Petition No. 11672 of 2005 and W.P. M.P. No. 12734 of 2005

Colorplus Fashions Ltd.

APPELLANT

Vs

Controller of Legal Metrology,
Office of the Controller of Legal
Metrology, I.T.O., New Delhi

RESPONDENT

Date of Decision: July 9, 2012

Citation: (2012) 6 MLJ 475

Hon'ble Judges: C.T. Selvam, J

Bench: Single Bench

Advocate: S. Thanka Sivan, for the Appellant; P. Rajalakshmi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.T. Selvam, J.

The petitioner seeks to quash the impugned order dated 1.3.2005 and the consequential order dated 1.4.2005 passed by

the respondent authority and consequently, direct the respondent authority, to permit the petitioner company to continue its sale of packed wallets

by displaying the cost of materials in the label permanently affixed to the packing as permitted u/s 39(3) of the Standards of Weight and Measures

Act, 1976. The petitioner informs of being a manufacturer of premium quality readymade garments and accessories like wallets, belts, etc. under

the trade name/mark ""Colorplus"" and of effecting sale thereof both in and outside India. The petitioner was served with a notice dated 1.3.2005 by

the respondent informing that a trader of packs of wallets and other accessories manufactured by the petitioner, was found selling packages

bearing "maximum retail price (inclusive of all taxes)" rate on stickers. This was informed to be in violation of the Standards of Weights and

Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as ""Rules""). The petitioner was informed that it was guilty of offence

punishable u/s 63 of the Standards of Weights and Measures Act, 1976 (hereinafter referred to as ""Act"")) and that as the same was compoundable

u/s 65 of the said Act, the petitioner may call on the respondent at the place, date and time mentioned therein. The petitioner under communication

dated 14.3.2005 inter alia informed that the maximum retail price had been clearly mentioned in the label permanently affixed to the package and

that such action was in conformity with Section 39(3) of the Act. Informing that there was no violation on their part, the petitioner sought dropping

of any further proceedings pursuant to notice dated 1.3.2005. Thereafter, the first respondent issued a further notice on 1.4.2005 referring to the

same violation, but informing that the breach committed by the petitioner was one u/s 33 compoundable u/s 51 of the Standards of Weights and

Measures (Enforcement) Act. Again, it was informed that the offence was compoundable and hence, the petitioner may call on the respondent at

the place, date and time mentioned therein. Challenging the action of the respondent, the petitioner has moved the present petition.

2. Heard learned counsel for the petitioner and learned counsel for the respondent and also perused the papers.

3. Learned counsel for the petitioner submits that Section 39 of the Act, dealing with quantities and origin of commodities in packaged form to be

declared as also Section 6(1) of the Rules permitted secured affixture of a label informing the particulars called for by way of declaration. The

action of the petitioner in affixing labels which informed requisite particulars including the maximum retail price (inclusive of all taxes) was in order.

4. On perusal of both provisions referred to by learned counsel for the petitioner, this Court finds that indeed the same, in Section 39 of the Act

and Section 6(1) of the Rules, do permit the secured affixture of a label informing the particulars called for by way of declaration. The respondent

has relied on Rules 6(1-B) and 6(1-C) of the Rules.

5. Rules 6(1-A), 6(1-B) and 6(1-C) as presently in force read as follows:

(1-A) Every package shall bear the name, address, telephone number, E-mail address, if available, of the person who can be or the office which can be, contacted, in case of consumer complaints.

(1-B) It shall not be permissible to affix individual stickers (labels) on the package for altering or making declaration required under these rules:

Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the

same should not cover the MRP declaration made by the manufacturer or the packer, as the case may be, on the label of the package.

(1-C) It shall be permissible to use stickers for making any declarations other than the declaration required to be made under these rules.

6. However, this Court finds that the above rules have come into force only with effect from 13.1.2007. Thus, the application of the said rules

cannot be sought to be made in respect of the alleged misconduct of the petitioner which relates to the year 2005.

7. For the aforesaid reasons, this Writ Petition shall succeed and the impugned order dated 1.3.2005 and the consequential order dated 1.4.2005

shall stand quashed. No costs. Consequently, the connected miscellaneous petition is closed.

8. Before parting with the case, this Court may inform that there are certain contradictions between rules 6(1-A), 6(1-B), 6(1-C) and Section

39(1) of the Act and Rule 6(1). This Court has reproduced herein above Rules 6(1-A) to 6(1-C). This Court may reproduce Section 39(1) of the

Act and Section 6(1) of the Rules as under:

39. Quantities and origin of commodities in packaged form to be declared.- (1) No person shall -

(a) make, manufacture, pack, sell, or cause to be packed or sold; or

(b) distribute, deliver, or cause to be distributed or delivered; or

(c) offer, expose or possess for sale, any commodity in packaged form to which this Part applies unless such package bears thereon or on a label

securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of-

(i) the identity of the commodity in the package;

- (ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
- (iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
- (iv) the unit sale price of the commodity in the package; and
- (v) the sale price of the package.

6. Declarations 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 thereunder shall apply;)

(b) the common or generic names of the commodity contained in the package (and in case of packages with more than one product, the name and

number or quantity of each product shall be specified on the package.)

Explanation.- Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt,

sodium chloride is the generic name;

(c) the net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is

packed or sold by number, the number of the commodity contained in the package;

(d) the month and year in which the commodity is manufactured or pre-packed [or imported]:

Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules

made thereunder shall apply:

Provided further that nothing in this clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of

the Seeds Act, 1966 (54 of 1966) and the rules made thereunder:

Provided also that a manufacturer may indicate the month and year using a rubber stamp without overwriting;

(f) the retail sale price of the package;

(g) where the sizes of the commodity contained in the package are relevant, the dimensions of the commodity contained in the package and if the

dimensions of the different pieces are different, the dimensions of each such different piece;

(h) such other matters as are specified in these rules:

Provided that -

(A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on -

(vi) any package containing bidis or incense sticks;

(vii) any domestic liquefied petroleum gas cylinder of 14.2 kg. or 5 kg., bottled and marketed by a public sector undertaking;

(B) where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted

during that month, such packaging material may be used for pre-packing the concerned commodity produced or manufactured during the next

succeeding month and not thereafter, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during

the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer, as the case may be, extend the time during

which such packaging material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated

thereon, the packaging material intended to be used during the next succeeding month may be used for pre-packing the concerned commodity:

Provided that the said provision shall not apply to the packages containing food products, where the ""Best before or Use before"" period is ninety

days or less from the date of manufacture or packing;

(C) no declaration as to the retail sale price shall be required to be made on -

The commodities mentioned at (i) to (vi) where retail sale price has not been mentioned by the manufacturer or packer on the package, the retail

dealer shall display prominently at a conspicuous place of the premises in which he carries on his retail sale, the retail sale price of the package for

the information of consumer.

(vii) any package containing bidis.

(iii) any domestic liquefied petroleum gas cylinder of which the price is covered under the Administered Price Mechanism of the Government.

Explanation I. - The month and the year in which the commodity is pre-packed may be expressed either in words, or by numerals indicating the

month and year, or by both.

Explanation II. - Liquid milk does not include condensed milk.

If the provisions of Rule 6(1-B) of the Rules which does not permit affixture of individual stickers/labels on the package except in so far as the

proviso thereto allows, then the same directly would run contra to the provisions of Section 39 and Rule 6(1) which permits affixture of labels. That

the rules cannot go beyond the provisions of the Act also is to be taken note of.