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Protection of Consumers from Dual Maximum Retail Prices (MRP) with Reference to The Legal Metrology Act 2009 and The Legal Metrology (Packaged Commodities) Rules 2011

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ABSTRACT

Department of Legal Metrology, Government of India is implementing the provisions of the Legal Metrology Act, 2009 and Rules made thereby standardizing the weighing and measuring instrument, used in Trade & Commerce with an object of ensuring public guarantee from the point of view of the security and accuracy of the weighments measurements and prices on the packaged commodities.

National Dispute Redressal Commission, pointed out that "there cannot be two MRP, except in accordance with law" which is the contravention of The Legal Metrology Act 2009 and The Legal Metrology (Packaged Commodities) Rules 2011. As far as the remark of the National Consumer Dispute Redressal Commission that "there cannot be two MRPs except in accordance with law", is concerned, it is pertinent to mention that the Hon'ble National Consumer Dispute Redressal Commission had held in the petition that it has neither

decided whether there is an unfair trade practice on the part of the manufacturer nor any fault can be attributed by them. Further that the decision of the Hon'ble National Disputes Redressal Commission has been challenged under SPL No. 12773/2016 and the same is sub-judice before the Hon'ble Supreme Court.

The manufacturer, packer, and importer of the packaged commodities were shocked and surprised to see the allegation in the communication that they would like to state that a responsible corporate is involved in the practice which is not in accordance with the law. Whereas there are no specific and exact provisions of the Legal Metrology Act 2009 and the Legal Metrology (Packaged Commodities) Rules 2011 which show the violation of the dual MRP allegations, and the manufacturer, packer, and importer are not aware of any legal provisions, including under the Act and Rules have been violated by them. As such that they prejudiced their ability to make an effective defense against the allegations. Which prohibits having dual or different retail prices for identical products for different consumers. It is a well-settled principle of law that unless there is a specific prohibition on some things, it is to be taken as permissible, as such the different MRP for the same product. The legality of the principle upholds by various courts, including the Hon'ble Supreme Court.

Key Words

Legal Metrology
Packaged Commodities
Dual MRP
Consumer Protection

DUAL MAXIMUM RETAIL PRICES ON PACKAGED COMMODITIES

In response to the subject which is communicated to the consumers with reference to the Legal Metrology (Packaged Commodities) Rules 2011, the manufacturer of the packaged commodities takes advantage for profit-making and also cheating the consumers of different categories.

It is observed by the National Consumer Disputes Redressal Commission that some manufacturers of the packaged commodities have different MRPs for the same packaged commodities and it is against the consumer. The National Consumer Dispute Redressal Commission find out in the revised petition no. 2038 of 2015 against the order dated 26/05/2015 in appeal no. 284/2015 of the state commission of Rajasthan with

Big Cinemas & others Jaipur Rajasthan versus Manoj Kumar S/o Shri Bajaranglal, R/O Jaipur Rajasthan before the Hon'ble Mr. Justice J.M. Malik presiding member and Hon'ble Dr. S.M. Kantikar, member of National Dispute Redressal Commission. The Commission pointed out that "there can not be two MRP, except in accordance with law" which is the contravention of The Legal Metrology Act 2009 and The Legal Metrology (Packaged Commodities) Rules 2011.

The manufacturer, packer, and importer of the packaged commodities were shocked and surprised to see the allegation in the communication that they would like to state that a responsible corporate is involved in the practice which is not in accordance with the law. Whereas there are no specific and exact provisions of the Legal Metrology Act 2009 and the Legal Metrology (Packaged Commodities) Rules 2011 which show the violation of the dual MRP allegations, and the manufacturer, packer, and importer are not aware of any legal provisions, including under the Act and Rules have been violated by them. As such that they prejudiced their ability to make an effective defense against the allegations. Which prohibits having dual or different retail prices for identical products for different consumers. It is a well-settled principle of law that unless there is a specific prohibition on some things, it is to be taken as permissible, as such the different MRP for the same product. The legality of the principle upholds by various courts, including the Hon'ble Supreme Court.

I further observed that the retail price of the product under packaged commodities is under question, i.e. the products under the packaged commodities rules are not fixed or regulated by any law time being in force. The manufacturer, importer, or packer are free to fix different retail sale price which is depends on various factors, and hence it cannot be held manufacturer that they are printing the excess retail price on their products. There are a number of decisions of various courts including the Hon'ble Supreme Court, which clearly recognize and agree with the concept of having dual MRPs for the same products. As such on the basis of the fundamental assumption that the dual pricing is not permissible in law, which assumption, unfortunately, does not have support any statute or law, and hence it is not legally sustainable.

So far as the remark of the National Consumer Dispute Redressal Commission that "there cannot be two MRPs except in accordance with law", is concerned, it is pertinent to mention that the Hon'ble National Consumer Dispute Redressal Commission had held in the petition that it has neither decided whether there is an unfair trade practice on the part of the manufacturer nor any fault can be attributed by them. Further that

the decision of the Hon'ble National Disputes Redressal Commission has been challenged under SPL No. 12773/2016 and the same is sub-judice before the Hon'ble Supreme Court.

Here, it is also important to note that in the Revision Petition, the Director of Legal Metrology Shri B. N. Dixit, filed an affidavit dated January 19, 2016, wherein it was stated on oath that under the Act, the manufacturer must amongst other requirements, declare the MRP of the packaged commodities, and traders should not sell over and above MRP printed on the product. Further throughout the proceedings before the Hon'ble National Consumer Dispute Redressal Commission as well as the affidavit by the Hon'ble Director of the Legal Metrology that there was no allegation against a manufacturer that by having differential MRPs for the same product, and the manufacturers were in contravention either by Act or by Rules or any other provision of law. On the contrary in the same affidavit, reliance has been placed on the provisions like Section 4A of the Central Excise Act, which recognize the concept of different MRPs. In any case, the decision of the National Consumer Redressal Commission operates in the realm of consumer law. As such foe, the purpose of application of Legal Metrology laws the matter needs to be examined independently and relying on the judgment without application of mind would cause grave injustice to the manufacturers, packers, and importers.

As such it is in complete compliance with the aforesaid observation of the Hon'ble National Consumer Dispute Redressal Commission in as much as fixation of dual MRPs on the packaged commodities products is in accordance with the law. It is sufficient to say that there is no non-compliance with the aforesaid direction of the Hon'ble National Consumer Dispute Redressal Commission.

Further, it will incorrect to suggest that the consumer is being cheated by dual MRP practice in as much as the admittedly MRP is printed clearly itself and while purchasing the products, the consumer is making an informed decision. Hence there is no question of the concerned public being cheated or misled by the manufacturer.

With reference to the above subject that the dual MRPs on the same product (packaged commodities), The Hon'ble Director of Legal Metrology, New Delhi directed to refer above cited subject and stated that it has come to the notice that the same packaged commodities that have different MRP, such practice is against the

consumer and may cause the exploitation to the consumers. Also, National Consumer Dispute Redressal Commission informs that there cannot be two MRPs except in accordance with law.

With reference to the letter received from the Hon'ble Director of Legal Metrology, New Delhi, the Controller of Legal Metrology, Maharashtra State, Mumbai, arrange the special campaign regarding the dual price of the same product at different places, and with reference to the campaign, the inspection carried out by me as Legal Metrology Officer, Nagpur on 06/10/2016 for the same packaged commodities of dual MRPs at different places in Nagpur. While inspection and surprise visit at M/S Rajesh Provision, near Law College Square, Nagpur, Sapphire Foods India Pvt. Limited, Eternity Mall, Sitabuldi, Nagpur and M/S Sai General Stores, Panchashil Square, Nagpur for the packaged drinking water AQUAFINA, purity guaranteed, Net Quantity 1l, having customer care number 1800224020, manufactured by Pepsico India Holding Pvt. Ltd. Medak, Telengana and SMV Beverages Pvt. Ltd. Saoner Nagpur. It is observed that at the promises of M/S Sapphire Foods India Pvt. Ltd. Eternity Mall Sitabuldi, Nagpur, MRP mention on Aquafina Purity Guaranteed packaged drinking water from PEPSICO is Rs. 40/- and in other places for the same package for the same quantity of the Aquafina packaged drinking water from PEPSICO is Rs. 20/-, and hence why the original price of PEPSICO Aquafina packaged drinking water, should be treated as the original retail sale price is a question. Thus it is beyond doubt the manufacturer printing excess retail sale price of Aquafina packaged drinking water from PEPSICO for the mall.

Whereas in the High Court of Judicature at Bombay Ordinary Original Civil Jurisdiction with Writ Petition (L) No. 685 of 2017 from the Pepsico India Private Limited versus Union of India through Secretary and others in the coram of Hon'ble Justice V. M. Kanade and P. R. Bora, JJ passed the interim order that on by the Hon'ble Court by orders dated 20th March 2017 directed the respondents not to take coercive action against petitioners.

Whereas a lot of amendments takes place in the Legal Metrology (Packaged Commodities) Rules 2011 but the problems of the duel MRPs are still pending with the central governments and consumers in different places are steel cheated.

In the following case Appeal No.1478/2011 Date of Filing:05.05.2011 Date of Disposal:07.02.2022 Before the Karnataka State Consumer Disputes Redressal Commission Bengaluru on the 7th Day of February 2022 in the presence of Hon'ble Justice Haluvadi G Ramesh

APPEAL NO.1478/2011

1. M/s PepsiCo India Holdings Pvt. Ltd., 101/1, "A" Road, MIDC, Dhattav Roha,

Raigarh-402 116, Maharashtra, Rep/by its Director.

2. M/s PepsiCo India Holdings Pvt. Ltd., 34th KM Stone, NH-4, Teppadabegur,

Nelamangala, Bangalore-562 123, Karnataka, Rep/by its Director.

3. M/s Aradhana Foods & Juices Pvt. Ltd., NH-9, Mumbai Highway, Pothireddipallaya

The village, Sangareddy, Medak District-95. Andhra Pradesh, Rep/by its Director.

… Appellants

(By Sri/Smt. A.Murali, J.Sagar Associates)

-Versus

1. Sri. Adithya Banavar, S/o R.B.Krishna, Aged 21 years, R/at; 206/1, 25th Cross,

5th Main, 3rd Block, Jayanagar, Bangalore-11.

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2. Shri. Abhimanyu Kampani, S/o Arun Kampani, Aged 21 years, R/at:Room No.206, Ganga Hostel, National Law School of India University, Bangalore-42.

3. Sri. Aubrey Lyngdoh, S/o ricky Sootinck, Aged 22 years, R/at:Room

No.201, Ganga Hostel, National Law School of India University, Bangalore-42.

4. Smt. Lakshmi Nair, D/o K.Gopalkrishnan Nair, Aged 19 years, R/at: Room

No.101, New Mess Block, National Law School of India University, Bangalore.

5. Smt. Ashwini Obulesh, S/o S.Obulesh, Aged 20 years, R/at:Room No.201, Nilgiris Hostel,

National Law School of India University, Bangalore-42.

6. Palatte, Mantri Square, Sampige Road, Bangalore-5 Rep/by Manager.

..Respondents

1. This is an Appeal filed by the appellant/Opposite parties No.2 to 4, aggrieved by the order passed by I Addl. District 3 Appeal No.1478/2011 Consumer Disputes Redressal Forum, Bangalore in CC-155/2011 on 01.04.2011 (for short District Forum/Commission and the parties as arrayed in Consumer Case).

2. The Brief facts are: Complainants went to Mantri Mall and purchased a one-liter water bottle of Aquafina, a 330 ml Pepsi Tin and a 350 ml bottle of Nimbooz, which costs them at the rate of Rs.20, Rs.50/- and Rs.50/-, respectively in O.P.No.1-Palette Mantri Square, whereas the same things were costs at Rs.15/-, Rs.25/- and Rs.15, respectively from Food World Super Market. It is the case of the complainants that, the MRP at the O.P.No.1 for these things is different from the MRP marked on the identical products at Food World. There is no warning either on the product or separate warning on the bill that certain identical product is available at a much cheaper rate at other retail shops, which amounts to deficiency in service and unfair trade practice. It is alleged by the complainants that, such variations have been done at the manufacturer's level. Contrary, Ops appeared before the Commission below and contended that there is no legal impediment to providing different MRPs for the same commodity. It is contended that, fixation of different

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MRPs on the same packaged commodity is even provided under the Central Excise Act, 1944. This is evident from Section 4A of the Central Excise Act which provides for the valuation of excisable goods with reference to the retail sale price. Explanation II (C) of Sub-Section-4A envisages different retail sale prices on different packages for the sale of any excisable goods in packaged form. After inquiry, the Commission below recorded an affirmative finding in favor of complainants and directed OPs to stop printing different MRPs to the same quantity of water bottles, Pepsi Cans or bottles, and Nimbooz bottles of the same quantity and print only one MRP for all the things of equal quantities, apart from directing OPs to submit compliance report before the District Commission and awarding Rs.5,000/- compensation and Rs.2,000/- litigation costs.

3. Aggrieved by the said Order, Appellants/O.P.No.2 to 4 preferred this appeal, on the grounds that, the impugned order is contrary to law and facts, and liable to be set aside.

4. Commission heard learned counsel appearing on behalf of appellants/O.P.No.2 to 4 and perused the impugned order passed by Commission below in CC-155/2011, dated

01.04.2011 and perused the records. Now Commission has to decide whether the impugned order passed by the Forum below is contrary to the facts and law as appealed.

5. Learned counsel appearing on behalf of appellants/O.P.No.2 to 4 would contend that the sale made at the premises of the Respondent No.6 at a beverage restaurant outlet in the food court area is not a 'retail sale', but an 'institutional sale' to the service industry. It is contended by appellants/Ops that, Commission below, without considering the legal aspect that, fixation of the price at which the goods are to be sold is a prerogative of the manufacturer as per Section-4A of the Central Excise Act. It is submitted by the OPs that, though there is a prohibition under the Standards of Weights and Measures Act that one cannot sell packaged commodity over and above the MRP declared on the said packaged commodity, they have paid the excise duty as contemplated under section-4A of the Central Excise Act on the commodities in question and hence prayed for allowing the appeal. Contrary, to such contention the Respondents/complainants contended that appellants/Ops mark different MRPs for different consumers, thereby misleading them as to the price at which the product is.

ordinarily sold in the market. It is also contended by the Respondents/complainants in their written arguments that, they are not a service industry such as a hotel, airways, railways, etc., but are just students or customers who bought the said goods while they visited the mall. While the outlet 'Pepsi' in the Food Court 'Palette' may be an institutional consumer, when they resell it to others over a counter, the sale becomes a retail sale and therefore the Legal Metrology (Packaged Commodities) Rules, 2011 would be applicable to the appellants herein. The Respondents/complainants in their written arguments contended that the Central Excise Act, 1944 cannot in any manner govern unfair trade practice and does not permit manufacturers to mark different MRPs for the same quantity and quality of goods, nor does it make it legal. It is also contended that the Law governs only what would be the price on which excise duty would be calculated should there be different retail prices marked, depending on different geographical areas, and in the present case, marking

off different MRPs is being done in the same city, being Bangalore, and not in different geographical area and without any relevance to excise duty, which amounts to unfair trade practice and

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deficiency in service as it materially misleads the public on the price at which such goods are otherwise available. Under such a situation, the only issue which shall be decided by this Commission is whether appellants/OPs are at liberty to print different MRPs as per Section-4A of the Central Excise Act. To decide the same, it is necessary to reproduce Section-4A of the Central Excise Act, which reads thus:

"Section 4. Valuation of excisable goods for purposes of charging of duty of excise -

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that the price-cum-duty of the

excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if

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any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods."

From the above, it is clear that the said provision cannot in any manner permit manufacturers to mark different MRPs for the same quantity and quality of goods. No doubt it only governs what would be the price on which excise duty would be calculated should there be different retail prices marked, depending on different

geographical areas. It is important to note here that, though the appellants/Ops contended that, they have paid the excise duty as contemplated u/s-4A of the Central Excise Act on the commodities in question, but have utterly failed to prove the same with cogent and reliable evidence. The decisions relied upon by the appellants/Ops do not come to their help. The appellants/Ops cannot go beyond the provisions contemplated under the Standard of Weights and Measures Act, 1976 and Legal Metrology (Packaged Commodities) Rules, 2011, under the guise of the Central Excise Act, 1944, that too, in the absence of there being any acceptable evidence regarding

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whether the sale was a retail sale or institutional sale and whether they have paid any excise duty to the concerned regarding the products.

6. In view of the above circumstances, we do not find any error/omission in the order passed by the District Forum and there is no scope to interfere in the impugned order passed by the forum below, and the same is dismissed with cost of Rs.10,000/- to be payable to Respondents herein.

7. Provide a copy of this order to the District Commission and parties to the appeal.

Himjal Case:

In the Hon'ble High of judicature at Hyderabad for the state of Telangana and the state of Andhra Pradesh with Writ Appeal No. 985of 2018 Between The State of Telangana, Rep. by its Principal Secretary, Food & Civil Supplies Department, Secretariat, Hyderabad, and two others. .. Appellants v. M/s. Himjal Beverages Private Limited. The State of Telangana and three others .. Appellants v. $ M/s. Himjal Beverages Private Limited .. Respondent! Counsel for the appellant's Government Pleader (Civil Supplies) ^ Counsel for the respondent: Sri A. Sudarshan Reddy < GIST: > HEAD NOTE: CASES REFERRED: 1 (2015) 15 SCC 783 2 (2010) 4 SCC 240 3 (2017) 5 SCC 465 4 (2009) 6 SCC 735 5 (2014) 9 SCC 772 6 1972 (1) of England reports 145 7 (2018) 2 SCC 674 8 (2007) 2 SCC 230 9 (1997) 9 SCC 132 10 (2015 Law Suit (SC) 546 C/15 3 HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN AND HON'BLE SRI JUSTICE S.V.BHATT WRIT APPEAL No.985 OF 2018 JUDGMENT: (Per the Hon'ble Sri Justice S.V.Bhatt) Heard Smt.G.Jyothi Kiran, learned Government Pleader (Civil Supplies) for appellants, Sri K.Lakshman, learned Assistant Solicitor General for Union of India and Sri A.Sudarshan Reddy, learned senior counsel for the respondent. The

respondents in W.P.No.18242 of 2018 are the appellants. The instant appeal examines the nature, scope, and object of Sections 18 and 52 of the Legal Metrology Act, 2009 and Rule 6 (2) of the Legal Metrology (Packaged Commodities) Rules, 2011 (for short, 'the Act and the Rules' respectively). The learned Single Judge, through the order dated 11.07.2018 in W.P.No.18242 of 2018 under appeal, allowed the writ petition, set aside the order of 2nd appellant in Appeal No.751/T/2018 dated 30.04.2018, held that the requirement under Rule 6(2) of the Rules is complied with; the seizure of Kinley Water Bottles through panchanama dated 24.04.2018 is illegal, and further directed release of the seized stock. This Court, keeping in view the importance of the question for decision and also the implication in the working of the Act and the Rules, issued notice to Sri K.Lakshman, the Assistant Solicitor General of India, who has accepted notice on behalf of the Union of India and made 4 submissions on the stand of the Union on the interpretation, scope and the extent of the operative provisions. The circumstances leading to litigation are not in dispute and are stated thus. For convenience, the parties are referred to, as arrayed in the writ petition. The petitioner prayed for Mandamus declaring the order dated 26.05.2018 passed by the Controller of Legal Metrology, Hyderabad, Telangana State/2nd respondent in Appeal No.751/T/2018, confirming the seizure made by the 3rd respondent under panchanama dated 24.04.2018, as illegal, arbitrary and violative of Article 19(1)(g) of the Constitution of India. The petitioner prays for a direction to release the stock seized under panchanama dated 24.04.2018. The petitioner is a company incorporated under the Companies Act, 1956, and an authorized contract packer of M/s Hindustan Coca-Cola Beverages Private Limited. The petitioner, among other activities, is into the business of packaged drinking water in the State of Telangana. The petitioner under authorization from the Coco-Cola Company, USA and its bottler M/s Hindustan Coco-Cola Beverages Private Limited prepares packaged beverages in authorized containers under the trademark of Coco-Cola Company and sells under the Kinley® brand name. It is the case of the writ petitioner that the packaged commodity/Water Bottle is governed by the Act and the Rules. The petitioner asserts that it is fully compliant with the laws of the land and for the purpose of this writ petition, the petitioner asserts that the packaged commodity conforms in letter and spirit to the 5 requirements of the Act and the Rules. Stated in other words, the petitioner's activity viz., manufacture, package, and distribution of Water Bottles at Pashamylaram, Patancheru is fully compliant with the requirements of law. On 24.04.2018 at 04.30 P.M, the officers of the Legal Metrology Department/Respondents inspected the petitioner's plant at Pashamylaram, Patancheru Mandal, Medak District, and informed the petitioner that the officers have come to verify the compliance status of the Act and the Rules by the petitioner company. The 3rd respondent collected samples of one and two litre(s) Kinley Water Bottles. The 3rd respondent informed the alleged non-compliance of the requirement under Rule 6(2) of the Rules the employees of

the petitioner company. The persuasion of employees of the petitioner of due compliance with the requirement of Rule 6(2) of the Rules did not persuade the 3rd respondent. We prefer to advert to the alleged infraction complained against the petitioner and the requirement of Rule 6(2) of the Rules at the appropriate stage of consideration in the order. The 3rd respondent under panchanama dated 24.04.2018 taking note of the breach of Rule 6 (2) seized 21889 (Two liters) packages/bottles and 75926 (One litre) packages/bottles. The seizure through pancahanama dated 24.04.2018, it is urged, is contrary to the mandate of the Act and the Rules. In the first instance, the petitioner filed W.P.No.15467 of 2018 challenging the panchanama dated 24.04.2018 and on 27.04.2018, the writ petition was disposed of by giving liberty to the petitioner to avail the remedy of appeal under the Act before 2nd respondent. The appeal was filed before 2nd respondent and taken on file in Appeal 6 No.751/T/2018. The Appeal was dismissed vide order dated 26.05.2018. Hence, the writ petition. The petitioner contends that the impugned orders suffer from nonapplication of mind and ex facie contrary to the Act and the Rules. The seizure under panchanama dated 24.04.2018 is illegal and arbitrary. The petitioner contends that without disputing any of the details stated in the panchanama dated 24.04.2018, there is sufficient compliance with Rule 6(2) of the Rules, and a consumer who is aggrieved or has a complaint against the product, has sufficient details to lodge a complaint to petitioner company. Thus, there is sufficient compliance with Rule 6(2). The orders of the appellate authority and the order of 3rd respondent are erroneous and unsustainable, for they are contrary to Rule 6(2). Rule 6 (2) gives an option to the manufacturer to disclose the name, address, and telephone number of the person or the office which can be contacted in case of consumer complaints and the declaration already made on the packaged/water bottle is compliant of the applicable Rule. Therefore, the petitioner prayed for setting aside the orders impugned in the writ petition. The 3rd respondent filed a counter affidavit and admits inspection of petitioner company on 24.04.2018 and recorded the following declaration on the packaged/water bottle attracting alleged omission under Rule 6(2) of the Rules: The declaration furnished by the petitioner is as follows: 2L bottle: 1L bottle: i) Manuf. By: M/s Himajal Beverages Pvt. i) Manuf. By: M/s Himajal Beverages Pvt. Ltd. Plot No.7, Phase. II IDA Ltd. Plot No.7, Phase. II IDA Pashamylaram, Patancheru Pashamylaram, Patancheru 7 ii) MRP Rs.35/- MRP Rs.19/- iii) Date of packing: 20.4.2018 21.4.2018 iv) Consumer Helpline 1800-208-2653 same v) E-mail.indiahelpline@coca-cola According to respondents, the petitioner has not declared the name, address, telephone number, E-mail address of the person who can be or the office which can be contacted in case of complaint as required under Rule 6(2) of the Rules. Therefore, the seized property suffers from the defective declaration of details and cannot be sold in the market against the Rules. The seized water bottles are non-standard packages. Possessing non-standard packages by the petitioner is an offence. The 3rd respondent

registered a case against the petitioner for violation of Sections 18 and 36 of the Act and the Rules. According to respondents, under Section 18 of the Act, "no person shall manufacture, pack, sell, etc. unless such package is in such standard quantity and bears such declaration as are prescribed". Under Section 36 and Rule 4, a person affixes a label securely with such declaration as is required to be pre-packed, etc. Rule 6(2) of the Rules mandates that every package shall bear the name, address, telephone number, and E-mail address of the person who can be or the office which can be contacted in case of complaints. It is further submitted that the petitioner herein is one of the manufacturers of packaged/water bottles on behalf of Coco-Cola which has so many units manufacturing pan India. According to 3rd respondent, the toll-free number or E-mail address given on the package does not pertain to the petitioner company. The disclosed details of the toll-free number/E-mail address are not sufficient in compliance with Rule 6(2) of the Rules. According to 3rd respondent, if the manufacturing 8 address and the address of the toll-free number, it is one and the same, the petitioner has to indicate the same effect on the packages. The petitioner, as is evident from the declaration noted in panchanama, failed in furnishing the declaration under Rule 6(2). The consumer helpline does not belong to the petitioner company and the consumer helpline appears to be a general number of the control unit of Coco-Cola company and declared as a detail for all the manufacturing units of Coco-Cola. Such insufficient declarations by manufacturers of packaged commodities result in hardship to end users. Therefore, according to 3rd respondent, the seizure of goods under panchanama is legal and the seized stock contravenes Rule 6(2) of the Rules. According to respondents, mere providing a toll-free number and E-mail address for a consumer helpline does not satisfy the requirement of Rule 6(2) of the Rules. The omission in declaring the name of the person and officer who could be contacted in the event of a complaint, is an offence under Rule 32 (A) read with Section 36(1). According to respondents, the purpose or object of the amendment of Rule 6(2) through GSR No.385(E) dated 14.05.2015 is to provide on the packaged bottle the name of the person or office address and other details to facilitate consumers for immediate redressal of their complaints or grievances. The admitted details satisfy old provisions i.e., unamended Rule and not the mandate of amended Rule 6(2) of the Rules. According to respondents, the petitioner did not provide the independent address for consumer redressal, as no consumer care address is provided, or at least declared that the details provided are intended to cover Rule 6 (2) as well. The seizure, according to respondents, is in accordance with the law of inspection/seizure and no exception could be pointed out. Therefore, according to respondents, 9 of the orders impugned in the writ petition are valid, made in the public interest, and for ensuring due compliance with the provisions of the Act and the Rules. The respondents prayed for dismissing the writ petition. The learned Single Judge framed the following point for decision: "whether the order passed by 2nd respondent on 26.05.2018 dismissing

petitioner's Appeal No.751/T/2018 confirming the action of seizure of products by 3rd respondent under panchanama dated 24.04.2018 warrants any interference by this Court in the exercise of its power under Article 226 of the Constitution of India? The summary of consideration or conclusions recorded by the order under appeal is that in the case on hand, the details as recorded in the panchanama satisfy the declaration mandated by Rule 6(2) of the Rules. Rule 6(2) gives the option to mention the name of a person who can be or the office that can be contacted in case of consumer complaints. In the case on hand, the declaration on details of the manufacturer, etc., are provided and these details would suffice the requirement of Rule 6(2). Once the address is available, it is concluded by the order under appeal that it pre-supposes that that address is also the office of the manufacturer for further redressal. Therefore, it is not necessary for the petitioner to indicate/mention on packages that the address already mentioned (manufacturing address) is also the address for consumer complaints. The learned Judge also records that "maybe it would have been better if the petitioner had also mentioned on the package that its address is also the address where the consumer complaints can be lodged. But the absence of such endorsement on the package cannot be said to disable a consumer in any way to sue the petitioner in the event of a grievance or a complaint". Hence, it is held that the details disclosed are conforming to the 10 requirements of Rule 6 sub-rules (1) & (2). The above conclusion is founded on purposive interpretation of Rule 6 and thereafter it is held that the seizure under panchanama dated 24.04.2018 is unsustainable and illegal. Hence, the appeal at the instance of respondents/Department. Smt.Jyothi Kiran contends that the order under appeal is unsustainable inasmuch as through the order impugned and through judicial interpretation of a provision of law, a requirement, otherwise mandatory in law, is substantially rendered directory through purposive interpretation. According to her, the order impugned suffers from contradictions in findings, because the learned Single Judge having accepted that the petitioner would have done better if the name of the person/official address for consumer complaints is provided on the package/bottle ought not to have held the declaration on a packaged commodity is sufficient compliance of Rule 6(2). She draws the attention of the Court to the unamended and amended Rule 6(2) and contends that the rule-making authority both from experience and also to achieve efficacy to the objects of the Act deleted the words "if available" from Rule 6(2). The deletion of the words 'if available" by way of amendment ought to be kept in mind while interpreting the amended Rule. According to her, the Court examines the legislative history and the improvement introduced to the language in a Section or Rule while interpreting the section or the statute. The interpretation now adopted by the learned Single Judge, according to respondents, re-introduces the element of discretion or option in furnishing the declaration by the manufacturer, packer, etc., under the Act. According to her, the 11 statements of objects and reasons together with the long title

and the Act make it clear that the Parliament has made the Act with a view to regulating weight, measure, unit standards of weights, measures on packaged goods, etc., and the Act is intended for public interest or good and protection of rights of consumers. She refers to Sections 18 and 52 of the Act and also Rule 6(2) of the Rules and submits that in consumer interest the manufacturer, packer, etc., of the pre-packaged commodity must satisfy the requirement of declarations on such pre-packaged commodity as prescribed in the Rules. Rule 6(2) makes it mandatory for the manufacturer to disclose the name, address, telephone number, and E-mail address of the person who can be or the office which can be contacted in case of consumer complaints. According to her, every package shall bear the name, address, telephone number, and E-mail address of the person who can be or office which can be contacted in case of consumer complaints. Juxtaposing the said requirement with the details recorded in panchanama, she contends that the petitioner has not furnished the details of the person-in-charge or office address for the consumer complaint. As already noted, we prefer to excerpt again the details on the label of the seized stock: 2L Package (sic. bottle): 1L Package(sic. bottle): i) Manufactured by Himajal Beverages Pvt. Ltd Himajal Beverages Pvt. Ltd Plot No.7, Phase. II IDA Plot No.7, Phase. II IDA Pashamylaram, Patancheru Pashamylaram, Patancheru Sangareddy District, Telangana Sangareddy District, Telangana Consumer Helpline 1800-208-2653 Consumer Helpline 1800-208-2653 E-mail:indiahelpline@coca-cola E-mail:indiahelpline@coca-cola MRP 35/- inclusive of all taxes MRP 19/- inclusive of all taxes Packed 20/4/2018 Packed 20/4/2018 12 According to her, the details given admittedly on the seized stock refer to manufacture etc., but cannot be equated to satisfying the requirement of Rule 6(2), which provides avenue to consumer in the event of a complaint against packaged commodity. The intention of the petitioner, if is that the details already given are also the details for Rule 6(2), the same could have been separately declared by grouping all of them together. According to her, the interpretation of Rule 6 in the order under appeal, if is allowed to remain in force, the department could not discharge the functions and duties assigned to it in protecting the consumer interest. She relies on the following decisions: 1) COMMISSIONER OF CENTRAL EXCISE, VADODARA v. INDIAN PETROCHEMICALS CORPORATION 1 2) M.NIZAMUDEEN v. CHEMPLAST SANMAR LIMITED AND OTHERS2 3) AJITSINH ARJUNSINH GOHIL v. BAR COUNSEL OF GUJARAT AND ANOTHER3 4) RAM DEEN MAURYA (DR). V STATE OF UP AND OTHERS 4 5) STATE (NCT OF DELHI) v. SAJNAY5 Mr.Lakshman contends that the Act prescribes standard weights and measures for packaged commodities for manufacture and sale in the country. The declarations from their very nature are intended for public good and avoid exploitation of consumer by the manufacturer or packer of a pre-packaged commodity. He contends that Section 18 mandates that declarations as prescribed are made on a prepackaged commodity. The Central Government in exercise of power under Section 52 of the Act, made the Rules.

1 (2015) 15 SCC 783 2 (2010) 4 SCC 240 3 (2017) 5 SCC 465 4 (2009) 6 SCC 735 5 (2014) 9 SCC 772 13 This Court ought to have literally interpreted the words “used by the Legislature and the rule making authority” instead of searching for the purpose or intent of the Parliament or Central Government particularly when the language of Rule 6(2) is clear or unambiguous. According to him, the meaning of the words employed in the section or rule if are given the literal meaning, it would appreciate purpose and consequence of breach of the requirement. According to him, under the scheme of the Act/Rules, there is definite purpose for each one of the statutory requirements. The Act regulates and also provides for penal consequences in case of breach and, therefore, the declaration under Rule 6(2) is mandatory in nature. He substantially supports the department and contends that the learned Single Judge ought not to have given purposive interpretation, but applied the cardinal rule viz., the literal construction. According to him, by amendment to Rule 6(2), the syntax Rule 6(2) is polished and removed ambiguity or discretion vested in manufacturer packer etc., otherwise allowed by unamended Rule. According to him, at the hands of the Court the discretion given by unamended Rule ought not to be re-introduced. He submits that the details of declaration now furnished on the label of seized stock cannot be treated as satisfying the avenue provided for consumer complaint. He submits that the petitioner, if desired that the details of manufacturer and the details of person/office for redressal of complaint are one and the same, the same ought to have been grouped as facilitated by the Rules themselves. Then a different examination on the declaration – whether the declaration is true or false or general information is given etc., is examined by department on case to case basis. The toll free consumer helpline or E-mail ID now declared cannot be treated as 14 complying with the requirement of furnishing the E-mail address of the person who can be or the office which can be contacted in case of consumer complaints. He prays for setting aside the order under appeal. Mr.A.Sudarshan Reddy contends that the petitioner has complied with the requirement of Rule 6(2) of the Rules and the respondents are reading too much into Rule 6(2). He relies on the reply dated 25.04.2018 issued by petitioner to 3rd respondent which reads as follows: “We once again reiterate that there is no violation of Rule 6(2) of the packaged Commodities Rules, 2011 and we have complied with the same by giving full particulars of the office and have printed on the labels the following declaration. “MFD BY HIMAJAL BEVERAGES PVT. LTD, PLOT No.7, PHASE-III, IDA PASHAMYLARAM, PATANCHERU (M) SANGAREDDY, TELANGANA FOR AND ON BEHALF OF HINDUSTAN COCA-COLA BEVERAGES PVT., LTD., B-91, MAYAPURI INDUSTRIAL AREA, PHASE-I, NEW DELHI110 064. CONSUMER HELPLINE NUMBER 1800-208-2653 EMAIL: indiahelpline@coco-cola.com to contend that the declaration made is substantial compliance with Rule 6(2). Rule 6(2) of the Packaged Commodities Rules, 2011 clearly provides whereby every package shall bear name, address, telephone number of the person who can be or the office which can be contacted in case

of consumer complaints, accordingly we have complied with the same". According to him, where the manufacturer and packer is one and the same, the Act provides for grouping all the details under one head or at one place. According to him, the department can initiate action, if the seized stock does not bear declarations, but not when declaration as noticed is made, in matter and purpose the declaration satisfies Rule 15 6(2). He submits that the construction placed by respondents is firstly pedantic and does not achieve the purpose or object of the Act/Rules, except burdening the manufacturer or packer. The petitioner since has reported compliance with the requirements of the Act and the Rules, he submits that the purposive interpretation placed on Rule 6(2) by the learned Single Judge is tenable. He reiterates the citations which were referred to and considered by the order under appeal, and prays for dismissing the appeal. We have perused the record and noted the submissions of the learned counsel appearing for the parties and also Mr.K.Lakshman, Assistant Solicitor General. The learned Single Judge set aside the order dated 30.04.2018 of 2nd respondent on the ground that the circumstances in the case on hand and the omissions pointed out by the respondents, by purposive interpretation of Rule 6(2) satisfy the legal requirement of declarations given by manufacturer, packer etc., the seizure ordered by respondents is therefore illegal and unsustainable. The argument of respondents on the other hand is that the application of purposive interpretation firstly is incorrect and secondly, while adopting purposive interpretation the very purpose of the Act and the Rules is firstly omitted from consideration and the conclusion in the order under appeal defeated the object of the Act and the Rules. According to respondents, the Act and the Rules regulate weights and measures, uniform standards of weights and measures remove the anomalies in the existing law and implement technological innovation etc. The other side of the legislation intends protection of public interest and also prevent unnecessary interference 16 from Department. The respondents vehemently contended that the interpretation now accepted by the order under appeal, renders the declarations required under Rule 6(2) completely discretionary or optional to the manufacturer or packer of packaged commodity. The respondents contend that the Rule ought to have been interpreted by looking at the change i.e., amendment by deletion of words "if available" introduced through G.S.R. 385 (E) dated 14.05.2015 with effect from 01.01.2016. The centric argument of both sides is on the scope and object of amended Rule, therefore we will be, at appropriate stage, incorporating the amended and un-amended Rule to appreciate the pre and post amendment requirement of the Rule. The improvement of language of a Section or a Rule is made by legislature or rule making authority to remove difficulties perceived or improve the expression to accomplish the purpose of legislature. One of such ways is amendment by addition of words or deletion of words. In this exercise the Legislature or rule making authority is guided by practical experience or wisdom gained in the implementation of the statute. In all expressions, brevity is, of

course, the soul of wit, but economy should never be carried to such an extent as to sacrifice clarity. We quote - Hores "I laboured to be brief and become obscure". The amendment by deletion of words ought not to result in obscurity. Therefore, the Legislature and rule making authority take stock of working of an enactment and improve the expression for accomplishing the objects of enactment. The famous French Poet Boileau to achieve good results from a sentence advises thus: "Polisez le sans Cescse, et le repolitssez; Ajoutez quelquefois, et souvent effacez." 17 "Polish it without ceasing and polish it again; add occasionally, and more often rub out" Such effort results in a simple and compact sentence. In the instant case, the rule making authority had taken a cue from the above quote while amending Rule 6. The un-amended and amended Rules read thus: Un-amended Amended 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." Every package shall bear the name, address, telephone number, e-mail address of the person who can be or the office which can be contacted, in case of consumer complaints. It is evident that the amendment by deletion omitted the words "if available" in Rule 6(2). The contest between parties is on application of purposive interpretation, on the one hand, and on the other cardinal rule of interpretation i.e., literal construction of Rule 6 of the Rules. The subtle distinction of these two interpretative tools is noted by Lord Ree in Jones v. Secretary of State6 and held that "in very many cases it cannot be said positively that one construction is right and the other wrong. Much may depend on ones approach. If more attention is paid to meticulous examination of the language used in the statute the result may be different from that Rule by paying more attention to the apparent object of the statute so as to adopt that meaning of the words under consideration which best accords with it. 6 1972 (1) of England reports 145 18 In Macquarie Bank Limited v. Shilpi Cable Technologies Limited7, the Apex Court in paras 27 to 30, while dealing with literal and purposive interpretation held as follows: 27. Equally, Dr. Singhvi's argument that the Code leads to very drastic action being taken once an application for insolvency is filed and admitted and that, therefore, all conditions precedent must be strictly construed is also not in sync with the recent trend of authorities as has been noticed by a concurring judgment in Eera v. State (NCT of Delhi) decided on July 21-7- 2017. In this judgment, the correct interpretation of Section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012 arose. After referring to the celebrated Heydon's case, and to the judgments in which the golden rule of interpretation of statutes was set out, the concurring judgment of R.F. Nariman, J., after an exhaustive survey of the relevant case law, came to the conclusion that the modern trend of case law is that creative interpretation is within the Lakshman Rekha of the Judiciary. Creative interpretation is when the Court looks at both the literal language as well as the purpose or object of the statute, in order to better determine what the words used by the draftsman of

the legislation mean. The concurring judgment then concluded: “127. It is thus clear on a reading of English, U.S., Australian and our own Supreme Court judgments that the ‘Lakshman Rekha’ has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of Heydon, where the Court must have recourse to the purpose, object, text, and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in Heydon’s case, which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid 1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in Heydon’s case.” 28. In dealing with penal statutes, the Court was confronted with a body of case law which stated that as penal consequences ensue, 7 (2018) 2 SCC 674 19 the provisions of such statutes should be strictly construed. Here again, the modern trend in construing penal statutes has moved away from a mechanical incantation of strict construction. Several judgments were referred to and it was held that a purposive interpretation of such statutes is not ruled out. Ultimately, it was held that a fair construction of penal statutes based on purposive as well as literal interpretation is the correct modern day approach. 29. However, Dr. Singhvi cited Raghunath Rai Bareja v. Punjab National Bank and relied upon paragraphs 39 to 47 for the proposition that the literal construction of a statute is the only mode of interpretation when the statute is clear and unambiguous. Paragraph 43 of the said judgment was relied upon strongly by the learned counsel, which states (SCC p.244) “43.In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn., pp. 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection.” 30. Regard being had to the modern trend of authorities referred to in the concurring judgment in Eera, we need not be afraid of each Judge having a free play to put forth his own interpretation as he likes. Any arbitrary interpretation, as opposed to fair interpretation, of a statute, keeping the object of the legislature in mind, would be outside the judicial ken. The task of a Judge, when he looks at the literal language of the statute as well as the object and purpose of the statute, is not to interpret the provision as he likes but is to interpret the provision keeping in mind Parliament’s language and the object that Parliament had in mind. With this caveat, it is clear that judges are not knighterrants free to roam around in the interpretative world doing as each Judge likes. They are bound by the text of the statute, together with the context in which the statute is

enacted; and both text and context are Parliaments', and not what the Judge thinks the statute has been 20 enacted for. Also, it is clear that for the reasons stated by us above, a fair construction of Section 9(3)(c), in consonance with the object sought to be achieved by the Code, would lead to the conclusion that it cannot be construed as a threshold bar or a condition precedent as has been contended by Dr. Singhvi. (emphasis added) In Raghunath Rai Bereja v. Punjab National Bank8, the Apex Court held as follows: "In other words, once we depart from the literal rule, then any number of interpretations can be put to a statutory provision, each Judge having a free play to put his own interpretation as he likes. This would be destructive of judicial discipline, and also the basic principle in a democracy that it is not for the Judge to legislate as that is the task of the elected representatives of the people. Even if the literal interpretation results in hardship or inconvenience, it has to be followed (see G.P. Singh's Principles of Statutory Interpretations, 9th Edn. pp 45-49). Hence departure from the literal rule should only be done in very rare cases, and ordinarily there should be judicial restraint in this connection" The choice of tools of interpretation between purposive and literal construction must be made in a judicious way and as noted by Lord Cramberth that to adhere as closely as possible to literal meaning of the words used and from which if we depart, we launch into the sea of difficulties which is not easy to fathom. The applicability of decisions on whether Rule 6(2) is mandatory or discretionary in the case on hand arises upon consideration of the issue on hand from the perspective viz., whether the interpretation of Rule admits literal construction or should the Court resort to purposive interpretation and in the process appreciate legislative intent etc., on the language if is clear, the 8 (2007) 2 SCC 230 21 intention of legislature has to be gathered from the very language used in the statute and the purposive interpretation may not be available. Let us now turn to Legal Metrology Act 2009. The Parliament enacted the Legal Metrology Act, 2009 by repealing the previous of enactments governing the field, namely the Standards of Weights and Measures (Enforcement) Act, 1985 and the Standards of Weights and Measures Act, 1976. The judgment under appeal preferred purposive interpretation to Rule 6(2). Further Rule 6(2) has been exclusively considered without having regard to other applicable provisions under the Act and the Rules. There is no reference to the short and long title of the enactment; the statement of objects and reasons, functions and duties/powers; obligations on manufacturer, packer of packaged goods, the expectation of consumer on accuracy of details on declaration made on packaged commodity and in breach thereof, grievance redressal, opportunity, prosecution, etc. Therefore, before applying one or the other tools of interpretation, we refer to the history of subject legislation. The introduction, statement of objects and reasons to the legal Metrology Act, 2009 reads thus: "INTRODUCTION: In 1956 uniform standards of weights and measures based on metric systems were established, which were revised in 1976 with a view to give effect to the international system of units. Apart from it,

the Standards of Weights and Measures Act,1976 provides for the establishing Standards of Weights and Measures, regulation of inter-State trade or commerce in weights and measures and other goods which are sold by weight, measure or number. In 1985 the Standards of Weights 22 and Measures (Enforcement) Act was enacted for the enforcement of standards of weights and measures. Due to technological advancements it has become necessary to review the enactments and to get rid of the anomalies as well as to keep the regulations pragmatic to the extent required for protecting the interest of consumers, the Legal Metrology Bill was introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS:

1. In India, uniform standards of weights and measures based on the metric system, were established in the year 1956, which were revised in the year 1976 with a view to give effect to the international system of units. Apart from it, the Standards of Weights and measures Act, 1976 provides for establishing Standards of Weights and Measures, regulation of Inter-State trade or commence in weights and measures and other goods which are sold by weight, measure or number. In the year 1985, the Standards of Weights and Measures (Enforcement) Act, 1985 was enacted for enforcement of standards of weights and measures established by or under the 1976 Act.

2. the advancement of technology has necessitated the review abovementioned enactments to make them simple, eliminate obsolete regulations, ensure accountability and bring transparency.

3. It has become imperative to combine the provisions of the existing two Acts to get rid of anomalies and make the provisions simple. It has also become necessary to keep the regulation pragmatic to the extent required for protecting the interest of consumers and at the same time keep the industry free from undue interference. It has also become necessary to recognize certain “Government approved Test Centres” which will be empowered to verify prescribed weight or measure.

4. The Bill, inter alia, provides for.-

(a) regulation of weight or measure used in the transaction or for protection;

(b) approval of model of weight or measure;

(c)verification of prescribed weight or measure by Government approved Test Centre;

(d) prescribing qualification of legal metrology officers appointed by the Central Government or State Government;

(e) exempting regulation of weight or measure or other goods meant for export; 23

(f) levy of fee for various services; (

g) nomination of a Director by a company who will be responsible for complying with the provisions of the enactment;

(h) penalty for offences and compounding of offences;

(i) appeal against the decision of various authorities; and

(j) empowering the Central Government to make rules for enforcing the provisions of the enactment." The Act is in force with effect from 01.04.2011. The Sections relied on by the counsel for both sides are Section 2 (f); (l) & (o), Sections 15, 16, 18, 52 subsections (2) clause (j), and Rule 6(1)(a) & 6 (2), which reads thus: Section 2 (f):" label" means any written, marked, stamped, printed or graphic matter affixed to or appearing upon any pre-packaged commodity; Section 2)(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; Section 2 (o):" prescribed" means prescribed by rules made under this Act. Section 15. Power of inspection, seizure, etc. –

(1) The Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation,-

(a) enter at any reasonable time into any such premises and search for and inspect any weight, measure, or other goods in relation to which trade and commerce have taken place, or is intended to take place and any record, register, or other document relating thereto;

(b) seize any weight, measure or other goods and any record, register or other document or article which he has reason to 24 believe may furnish evidence indicating that an offence punishable under this Act has been, or is likely to be, committed in the course of, or in relation to, any trade and commerce.

(2) The Director, Controller, or any legal metrology officer may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall comply with such requisition.

(3) Where any goods seized under sub-section (1) are subject to speedy or natural decay, the Director, Controller, or legal metrology officer may dispose of such goods in such manner as may be prescribed.

(4) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches and seizures. Section 16. Forfeiture. –

(1) Every non-standard or unverified weight or measure, and every package made in contravention of section 18, used in the course of, or in relation to, any trade and commerce and seized under section 15, shall be liable to be forfeited to the State Government: Provided that such unverified weight or measure shall not be forfeited to the State Government if the person from whom such weight or measure was seized gets the same verified and stamped within such time as may be prescribed.

(2) Every weight, measure or other goods seized under section 15 but not forfeited under sub-section (1), shall be disposed of by such authority and in such manner as may be prescribed. Section 18. Declarations on pre-packaged commodities:-

(1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. 25 (2) Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed. Clause (j) of sub-section (2) of Section 52: (j) the standard quantities or number and the manner in which the packages shall bear the declarations and the particulars under sub-section (1) of section 18; Rule 6 (1) (a): 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 shall be mentioned. Rule 6 (2): Every package shall bear the name, address, telephone number, and E-mail address of the person who can be or the office which can be contacted, in case of consumer complaints. Sections 15 and 16 authorize the functionaries under the Act, to exercise the power of inspection, seizure, and forfeiture of pre-packaged commodities contravening the mandatory requirement of the law. Section 18 deals with the obligation of the person who is defined by Section 2(m) of the Act to manufacture, sell, etc., a pre-packaged commodity in accordance with the prescribed manner. Section 18 begins with the words “no person

shall manufacture, pack, sell, etc. for sale any pre-packaged commodity unless such package is in such standard quantities or numbers and bears thereon such declarations and particulars in such manner as may be prescribed". Therefore, the section imposes a mandatory obligation on the person to print the declarations 26 as prescribed by the Rules. Section 52(2) (j) authorizes the Central Government to make Rules for the standard quantities or numbers in the manner in which the packages shall bear the declarations and particulars under sub-section (1) of Section 18. In exercise of rule-making power under Section 52 (2) (j), the Legal Metrology (Packaged Commodities) Rules, 2011 were made and notified under Section 52 (2) (j) and (o). Rule 6 sub-rule (1) prescribes that every package shall bear thereon or on a label securely affixed thereto a definite claim on the conspicuous declaration made in accordance with the provisions of this chapter i.e., Chapter No.2. Clause (a) of Rule 6 (1) deals with the name and address of the manufacturer or in case the manufacturer is not the packer, the name and address of the manufacturer and packer; in case of the imported package, the name and address of importer shall be mentioned. Rule 6(2) as it stands today prescribes that every package shall bear the name, address, telephone number, and e-mail address of the person who can be or of the office which can be contacted in case of consumer complaints. At this stage, we remind ourselves of the quote of Lord Ree in Jones's case (supra) that the close attention and intensity with which the words under construction are examined would change the approach. In Section 18 as well as Rule 6, the word "declarations" is used by the Parliament and the Central Government in a plural sense to mean that the obligation to furnish details encompasses more than one situation. These situations in many a case could be distinct warranting separate declarations. From the reading of various Rules in the Legal Metrology (Packaged Commodities Rules, 2011, it is further clear that the manufacturer or packer of a pre-packed commodity is under obligation to declare measures, place of 27 manufacture, person, or office which can be contacted in case of grievance. Therefore, Rule 6 sub-rule (1) obligates giving the details of manufacturer, packer, importer and whereas under sub-rule (2) the name and address of the person or the office which can be contacted in the case of consumer complaints are required to be furnished. Therefore, on the detailed examination and interpretation of the relevant and applicable Sections, we are of the view that the literal construction of sub-rule (2) of Rule 6 is the correct tool for interpreting Rule 6(1) & (2). Let us next examine the conclusion arrived at in the order under appeal viz., that by purposive interpretation the declaration made as noted through panchanama dated 24.04.2018 would satisfy the requirement of sub-rule (2) of Rule 6. The Act deals with measurement by quantity, weight, length, etc., and provides for a standard followed in commercial parlance. The manufacture, sale, etc., of pre-packaged commodities, is also accepted by the Act. The Court, while interpreting the provisions made in the public interest or intended for the benefit, interprets by keeping in view the

entire conspectus of the statutory scheme. Let us hasten to add that there exists a distinction between measurement of quantity in the presence of a buyer and the other acceptance of quantity, date of the pack, etc., based on the declaration made on the pre-packaged commodity and buying the commodity by accepting those details. Rules 2011 deal with the sale of the pre-packaged commodity. Therefore, in this context, we need to take judicial notice of hordes of pre-packaged commodities flooding the markets and the need for complete compliance with the Rules. The Rules prescribe a few declarations required to be made by the manufacturer or packer. The 28 declarations referred to in sub-rule (2) of Rule 6 deals with the consumers' right to complain to a person or office if he has a grievance. The details under sub-rule (1) of Rule 6 which substantially deal with manufacturer, packer etc., if are treated as complying with sub-rule (2) of Rule 6, we are of the view that such interpretation defeats the purpose of the Act and the Rules. Therefore, in our view the situation directly admits literal interpretation and for interpreting the Rule, this Court does not prefer purposive interpretation. The next question is whether the requirement under sub rule (2) is mandatory or directory is determined by interpreting whether the Rule allows discretion to the subject or the person on whom it is binding in while operating Rule. The extent of obedience between the mandatory enactment and the directory enactment can be stated thus the mandatory enactment must be obeyed or fulfilled exactly and it is sufficient if a directory enactment be obeyed or fulfilled substantially. (i) The directory requirement falls under two heads those are substantially complied with to make an Act valid. (ii) Those who even if have not at all complied with, have no effect on the Act complained. We are aware that the language alone is not decisive always, but the Court keeps regard to the context of subject matter and object of the statutory provisions in question in determining whether the provision is mandatory or directory. It is also well settled principle of interpretation of statute that plain language employed in a Section or Rule must be given its plain and ordinary meaning (see Mohan Singh v. International Airport Authority of India9. 9 (1997) 9 SCC 132 29 Therefore, we conclude that the declarations prescribed by Section 18 of the Act read with Rule 6(1) & (2) are mandatory and the manufacturer etc., is under legal obligation to comply with the requirements. The order under appeal finds that the petitioner failed to indicate the details required by Rule 6(2) of the Rules and that if those details are given, the petitioner could have done better. The order under appeal relies on the decision of the Apex Court in Nirma Limited v. State of Punjab10, which considered Rule 32 of the Prevention of Food Adulteration Rules, 1955. In our view reliance on a decision rendered under the Prevention of Food Adulteration Rules ought not to have pari materia application to the scheme of Act and the Rules, to hold that the provision under interpretation as noted above is directory. Further, the order proceeds on the ground that by equating the details furnished under Rule 6(1) as satisfying the requirement under Rule 6(2) could be sufficient for the purpose of giving

declaration, is substantially complied with, is untenable, in view of our consideration and conclusions recorded above. The omission to take note of deletion of words through GSR No.385 (E) has resulted in the findings recorded in the order under appeal. As already noted Sections 18, 52 (2) (j) read with Rule 6 provide for declarations i.e., more than one. The declarations are also in different context and for different purposes. The omission pointed out against the petitioner is that it has not given the declaration of name etc., of person or office who can be contacted in case of complaints. The Rule, if literally read, reads as follows: 10 (2015 Law Suit (SC) 546 30 1) Every package shall bear the name, address, telephone number, e-mail address of the person who can be contacted in case of consumer complaints. 2) Every package shall bear the name, address, telephone number, e-mail address of office which can be contacted in case of consumer complaints. In the above analysis, this Court is of the view that the requirement of sub-rule (2) of Rule 6 is mandatory and in the case on hand, admittedly the details given in compliance with the requirement of Rule 6(1) are treated as satisfying the requirement of 6(2) as well, hence are untenable and are accordingly set aside. The respondents through panchanama dated 24.04.2018 have seized stock nearly worth Rs.2.4 crores. The shelf life of the stock is stated as 12 months i.e., 20/21-4-2018. Section 15(3) authorizes 2nd and 3rd respondents to order disposing of such goods in such manner as may be prescribed. As the shelf life is 12 months from 20th April, 2018, the 2nd and 3rd respondents consider ordering disposal of seized goods within three days from today, subject to conforming to sub-rule (2) of Rule 6 as a special case. The disposal of goods is without prejudice to all other issues being considered in accordance with law by both parties. The Learned G.P is given liberty to communicate the operative portion of the order to 2nd and 3rd respondents forthwith. For the above reasons, we hold that the order under Appeal is liable to be set aside and accordingly the writ appeal is allowed by setting aside the order under appeal. The W.P fails and is dismissed. 31 As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

Whereas for the protection of consumers from Dual MRP issues The Legal Metrology (Packaged Commodities) 2011 amended the rule vide GSR No. 779 (E) dated 2nd November 2021, the subrule 2A of rule 18 of The Legal Metrology (Packaged Commodities) provides that " Unless otherwise specifically provided any other law, on manufacturer or packer or importer shall declare different maximum retail prices on an identical pre-packaged commodity by adopting restrictive trade practices or unfair trade practices as defined under close (c) close (nnn) and close (r) respectively of section 2 of The Consumer Protection Act 1986 (68of 1986) and clause (41) and (47) of section 2 of The Consumer Protection Act 2019 (35 of 2019)". Substituted and amended vide GSR 629(E) dated 23rd June 2017 and come into force with effect from 01/01/2018. Also,

corrected vide GSR 1373 (E) dated 07/11/2017 and substituted vide GSR 779 (E) dated 2nd November 2021. Even though it is very difficult to protect consumers from Dual MRPs instead of proper laws are provided for the specific purpose and The Legal Metrology (Packaged Commodities) Rules 2011 is unable to protect consumers without specific provisions even after a lot of amendments in the rules with the help of Consumer Protection Act 2019, there is a lacuna in the legislation with respect to the Dual MRPs on identical pre-packaged commodities with unfair trade practices.

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