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Court : Mumbai

Decided On : Jul-13-2001

Reported in : 2001ALLMR(Cri)2009

Judge : S.S. Parkar, J.

Acts : Standards of Weights and Measures (Enforcement) Act, 1985 - Sections 33, 33(1), 51, 51(1) and 53; Standards of Weights and Measures (Packaged Commodities) Rules, 1977 - Rules 2, 6 and 6(1); Copyright Act - Sections 52A and 52A(2); Consumer Protection Act, 1986 - Sections 2; Central Excise Act; Transfer of Property Act - Sections 106; Kerala General Sales-Tax Act

Appeal No. : Criminal Application Nos. 2027 and 2028 of 1992, 259 and 260 of 1993 and 577 and 578 of 1994

Appellant : indus Videotronics and anr.

Respondent : Digambar M. Badodkar and anr.

Advocate for Def. : P. Janardhanan, Addl. Adv. General and ;D.S. Mhaispurkar, A.P.P.

Advocate for Pet/Ap. : N.K. Thakore, Adv.

Disposition : Petitions dismissed

Judgement :

S.S. Parkar, J.

1. This group of six petitions is filed for quashing the prosecutions lodged against the petitioners under the provisions of the Standards of Weights and Measures (Enforcement) Act, 1985 and the Rules made thereunder in the Metropolitan Magistrates Courts in Greater Mumbai. Since in all the petitions common question of law is raised in the backdrop of similar facts, they were heard together and are being disposed of by this common judgment

2. Out of the above six petitions in five petitions the petitioners have been selling film video cassettes and the petitioner in Criminal Application No. 578 of 1994 has been selling toys. When the Inspectors of Legal Metrology inspected some shops they found a large number of packages of video cassettes and toys bearing the names of the petitioners which did not comply with the conditions laid down under the provisions of the Weights and Measures Act and the Rules by not giving particulars on the packages like price, month and year, size and time or length of the picture and, therefore, the video cassettes and the packages of toys were seized and the prosecutions were lodged in the Metropolitan Magistrates' Courts in Mumbai. After the complaints were filed under the provisions of the Standards of Weights and Measures (Enforcement) Act, 1985 and the Rules made thereunder, process was issued against the petitioners. By these petitions the petitioners seek to challenge the process issued againstthem in the Metropolitan Magistrates' Courts, Mumbai. The above prosecutions have been lodged under Section 33(1) of the Standards of Weights and Measures (Enforcement) Act, 1985 and Rule 6(1)(c), (d) and (f) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 punishable under Section 51(1) of the aforesaid Act of 1985

3. Mr. Thakore, the learned counsel appearing on behalf of the petitioners contended that the aforesaid provisions are not applicable as the petitioners are not manufacturers or the producers of the said cassettes. He argues that blank cassettes arc manufactured by one company and the film is produced by the producer of the film and what the petitioners have done is only to transmit the film produced by the producer of the film on blank cassette manufactured by the

manufacturer of the blank video cassette and, therefore, bringing together of blank video cassette and a film by the petitioners would not amount to manufacture or production by the petitioner and, therefore, the provisions of the Act would not be attracted and no offence can be said to have been committed by the petitioners. He tried to show the meanings of the words 'manufacture' and 'produce' from the dictionaries and the definitions and the said words from other Acts and contended that the role played by these petitioners in respect of these video cassettes does not amount to either manufacture or production to attract the provisions of the Act and the Rules thereunder. According to him these petitioners have obtained licence and copyright from the producers of the film under the provisions of the Copyright Act, 1957 which is mentioned on those cassettes and, therefore, these petitioners are not legally bound to give or mention the particulars of the price, size, duration and the month and year of the manufacture on the video cassettes. Me further contended that the provisions of the above Act are applicable in case they are sold to consumers which means that the cassette must be meant to be consumed by the borrower. Citing the meaning of the word 'consume' he contended that these cassettes were not capable of destruction or becoming non-existent when they are purchased by the purchasers but they are used only for the purpose of seeing and, therefore, these items like video cassettes and toys are not consumable items. He further argued that the use of the word 'make' appearing in clause (h) of Rule 2 of the Rules of 1977 has to be read in the context of the other two words used viz. 'manufacture' and 'produce' and cannot be read in isolation to mean other than manufacture or production. I am not impressed by the aforesaid contentions raised by Mr. Thakore on behalf of the petitioners

4. Under Section 33(1) of the Act of 1985 the provisions of the Standard Act and the Rules made thereunder which were in force immediately before the commencement of the Act of 1985 with regards to the commodities in packaged form are made applicable under this Act to every commodity in packaged form which is distributed, sold or kept. The said Section is worded as follows :

'33. Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State,- (1) The provisions of the Standards Act and the rules

made thereunder, as in force immediately before the commencement of this Act. with regard to commodities in packaged form shall, as far as maybe, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made under, this Act subject to the modification that any reference therein to the 'Central Government'. 'Standards Act' and the 'Director' shall he construed as references respectively, to the 'State Government', 'this Act' and 'the Controller'.'

5. The provisions of the above Act are applicable to a commodity which is in packaged form which is distributed, sold or kept, offered or exposed for sale in the State. The sample of video cassette of film 'Janbaaz' tendered by Mr. Thakore mentions the name of the film, name of the company which has assembled or transmitted the said film on the video cassette. It also mentions the legal warning that the said video cassette is sold, rented out strictly for private viewing only etc. It further mentions the statutory declaration under Section 52A of the Copyright Act so also the censorship declaration that, 'this video cassette is an exact copy of the original censored celluloid film of the same title'. It is also mentioned on the cassette that all the rights are reserved with Bombino Video Pvt. Ltd. giving its address of Bandra, Bombay and authority is given to dealers and library owners to sell, rent out the video cassette on retail or hire for private exhibition (home viewirig) only. The said cassette is in packaged form as it is packed in a polythene paper. Thus the aforesaid cassette answers the requirements of Section 33 inasmuch as the cassette is in packaged form and is meant inter alia for distribution and sale and is exposed for sale, attracting the provisions of the Act

6. Mr. Thakore then contended that it is not a commodity, which is difficult to accept. He cited Oxford Dictionary according to which the word 'commodity' means any useful thing or article of trade and Contended that tape is not a commodity, which is again difficult to accept. According to the prosecution there is contravention of Rule 6(1)(c), (d) and (f) of the Rules of 1977. Under the aforesaid rule every package is required to bear thereon or on a label affixed thereto a conspicuous declaration as regards the quantity of the commodity contained in the package or the number of the commodity contained in the package under clause (c), the month and year in which the commodity is manufactured or pre-packed

under clause (d) and the retail sale price of the package under clause (f) of sub-rule (1) of rule 6 of the Rules of 1977. The contention of Mr. Thakore is that the cassettes were not manufactured, by the petitioners. He relies on the definition of the word 'manufacturer' in clause (h) of Rule 2 which is as under :

'(h) 'manufacturer', in relation to any commodity in packaged form, means a person who, or a firm or a Hindu undivided family which, produces, makes or manufactures such commodity and includes a person, firm or Hindu undivided family who or which puts, or causes to be put, any mark on any packaged commodity, not produced, made or manufactured by him or it, and the mark claims the commodity in the package to be a commodity produced, made or manufactured, by such person, firm or Hindu undivided family, as the case may be.'

7. The conditions imposed under Rule 6, inter alia, are applicable to a manufacturer defined under clause (h) of Rule 2 quoted above. Under clause (h) a manufacturer, inter alia, is a person or firm which produces,makes or manufacturers such commodity in packaged form and includes a person or a firm who or which puts, or causes to be put, any mark on any packaged commodity though not produced, made or manufactured by him or it and the mark claims the commodity in the package to be a commodity produced, made or manufactured by such person or firm. In the present case it is not in dispute that the video cassettes in question are in packaged form. It cannot also be disputed that on these cassettes the name of the petitioners is put which claims the commodity in the package to be commodity made by the petitioners. Mr. Thakore has given two video cassettes, one of movie 'Janbaaz' and another of 'Dil Apna aur Preet Parai'. Mr. Thakore fairly concedes that the cassettes which are seized by the prosecuting agency are identical to the ones which he produced in Court for my perusal as the prosecuting agency did not produce seized cassettes. The cassettes in bold letters give the name of the movie which is transmitted on the video cassette. It gives the legal warning stating that, 'This video cassette is sold/rented out strictly for private exhibition (home viewing) only.' Next there is statutory declaration under Section 52A of the Copyright Act, 1957 giving the name of the makers and states that, 'we have obtained the necessary licence and

consent from the owners of the Copyright for making this video cassette.' it is further mentioned that the makers of this video cassette confirm that, 'this video cassette is an exact copy of the original censored celluloid film of the same title.' Then there is mention that all rights are reserved with the firm and authority is given to the dealers/library owners to sell/rent out the video cassette tape to buyer/hirer for private exhibition (home viewing) only

8. The statutory declaration and the reservation rights on the cassettes mention the name of the maker of the video cassette. The statutory declaration made under Section 52A of the Copyright Act is very significant under which it is mentioned that the firm with whom the rights are reserved in respect of such video cassettes have obtained the necessary licence and consent from the owners of the copyright (i.e., of the film) for making the video cassette. Thus it indicates that the persons like the petitioners who have the copyright have made those video cassettes which were seized by the prosecuting agency for not complying with the conditions under the provisions of the Standards of Weights and Measures Act and the rules in that behalf. Reference to Section 52A of the Copyright At is also relevant at this stage. Sub-section (2) of Section 52A of the Copyright Act provides that no person shall publish a video film in respect of any work unless the particulars mentioned in three clauses of that sub-section are displayed on the video cassette or other container thereof. Those particulars are firstly, in case of cinematography film, of the certificate granted by the Board of Film Certification in respect of such film. Secondly the name and address of the person who has made the video film and a declaration by him that he obtained the necessary licence or consent from the owner of the copyright in such work of making such video film and thirdly, the name and address of the owner of the copyright in such work. Thus clause (b) of sub-section (2) of Section 52A refers to such video cassettes having been mode and the copyright is granted to him for making such video film

9. The contention of Mr. Thakore is that the petitioners cannot be said to be either the manufacturers or producers or makers of these videocassettes as referred to in the definition of the word 'manufacturer' in clause (h) of rule 2 of the Rules of 1977. According to him the role played by these petitioners cannot be said to be of manufacturing or producing or making the video cassettes. Mr. Thakore places

reliance on the decision of the Supreme Court in the case of Union of India v. Delhi Cloth and General Mills. The aforesaid judgment was dealing with the provisions of the Central Excises and Salt Act and considering the chargeability of the substance to excise duty which was chargeable on the manufacture of goods and not on the sale of goods. In para 14 of the said judgment, on which reliance was placed by Mr. Thakore. It is observed that the word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance' however minor in consequence the change may be. In the said paragraph, to bring about the distinction between manufacture and production a quotation was taken from Permanent Edition of Words and Phrases. Volume 26 from an American Judgment which runs thus

' 'Manufacture' implies a change but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.'

Relying on the aforesaid paragraph of the Supreme Court judgment Mr. Thakore contends that in this case no new article has come into existence. According to him using the blank cassette manufactured by one agency these petitioners have only transmitted a movie produced by another agency on the blank cassette and thus according to him there is no transformation or no new and different article has emerged having distinctive name, character or use. Secondly Mr. Thakore also relied on the judgment of the Supreme Court in the case of Allenbury Engineering v. S. R. K. Dalmia,2. This was a case where the Supreme Court was considering the words 'manufacturing processes' under Section 106 of the Transfer of Property Act. In paragraph 8 of the said judgment the dictionary meanings of the word 'manufacture', were considered according to which 'manufacture' implies change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation but something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use. In the said paragraph the Supreme Court had also quoted the words of Abbott C. J. In R. v. Wheeler.3 who had observed that

the word manufacture 'has been generally understood to denote, either a thing made which is useful for its own sake and vendible as such . . . and ultimately producing some other known substance but producing it in a cheaper or more expeditious manner or of a better or more useful kind . . .'

10. In my view the wide meaning given to the word manufacture, referring to the dictionaries, by the Apex Court in the aforesaid twojudgments, it may include the role played by the petitioners in making these video cassettes. Surely the blank cassette has been transformed by the petitioners by transmitting on it the movie in respect of which the petitioners had copyrights and a new and different article has emerged having a distinctive use. A blank video cassette cannot be equated to a cassette with a movie transmitted on it which has a different character as mentioned in paragraph 14 of the judgment of the Supreme Court in Delhi Cloth and General Mill's case (supra). Similarly a cassette with a movie is a thing made which is useful for its own sake and vendible as such and is different from the blank cassette within the meaning given to the word 'manufacture' as referred to in para 8 of the judgment of the Supreme Court in the case of Allenbury Engineers v. S.R.K. Dalmia (supra)

11. Mr. Thakore then contended that the transmission of a film on the blank cassette by these petitioners cannot fall within the meaning of the word 'produce'. He cited the judgment of the Supreme Court, in the case of the Deputy Commissioner of Agricultural Income-tax and Sales Tax v. M/s. Palampadam Plantations Ltd. The Apex Court was considering in that case the provisions of Kerala General Sales-Tax Act and the meaning of the word 'produced'. The Supreme Court had to consider whether the trees which have grown spontaneously and without any plantation can be regarded, as having been produced by agriculture or horticulture. In the context in which the word 'produced' appeared in the Kerala General Sales-tax Act, the Supreme Court held that in spontaneous growing of a tree there was no element of volition and effort involving the employment of some process for bringing into existence the goods and since the respondents in that case had not been found to have done anything towards the production of the trees they could not possibly be regarded as persons having produced the trees by means of agriculture or horticulture or otherwise. In this

case it cannot be denied that the petitioners had employed some process whereby the blank video cassette became a video cassette with a movie transmitted on it. The reliance by Mr. Thakore on the decision of the Supreme Court in the case of Collector of Central Excise v. M/s. Protein Products of India Ltd. also, in my view, would not be of any assistance to the petitioners in these matters. In that case the Apex Court was considering about the exemption from excise duty claimed by the respondents therein under the Central Excise and Salt Act, The Apex Court held that the expression 'bone products' include Ossein and Gelatine which was extracted from bones by chemical process and. therefore did not involve production but it was only a case of extraction from bones

12. In my view even if it is held that the petitioners cannot be said to have manufactured or produced these video cassettes, the activity of the petitioners would amount to making of these video cassettes within the meaning of Rule 2(h) quoted above. The word make or making is not defined either in this Act or Rules thereunder nor is it pointed out to me whether the above words are defined in any other enactment. Fromthe use of the expression 'made the video film' and 'work of making such video film' in clause (b) of sub-section (2) of Section 52A of the Copyright Act, the activity of the persons like the petitioners who have transmitted the film on blank video cassette is said to be making such video film and, therefore, in my view, would be covered by or fall under clause (h) of rule 2 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977

13. Referring to the word 'consumer' in rule 2(r) of the Rules of 1977 which defines 'retail sate price', Mr. Thakore contends that the cassettes arc not firstly meant for sale and secondly that these cassettes when sold cannot be said to have been consumed by the buyer. The sample cassettes tendered by Mr. Thakore in respect of two films 'Janbaaz' and 'Dil Apana aur Preet Parai' made by Bombino Video Pvt. Ltd., use the words 'sell' and 'sold'. Firstly in the legal warning it is mentioned that, 'this video cassette is sold/rented out strictly for private viewing only'. Secondly under the head Authority it is mentioned, 'dealers/library owners are hereby authorised to sell/rent out this video cassette tape to buyer /hirer for private exhibition (home viewing) only.' Thus these cassettes expressly are meant not only for hire but also for sale and, therefore, the first limb of Mr. Thakore's

argument is, on the fact of it, not maintainable. Secondly the word 'consumer' in the definition of 'retail sale price' in rule 2(r) of the Rules is used to mean a buyer. According to Mr. Thakore the consumer means the person who buys for the purpose of consumption in the sense that the article or commodity becomes non-existent like edible items which disappear after having been eaten. In my view such argument is ridiculous. He relics on the Oxford Dictionary defining the word 'consume' to mean to completely destroy or reduce to nothing, or to tiny particles which is quoted in ground (g) of paragraph 5 of the petition. Meaning of the word 'consumer' is also quoted in the said ground as follows

' 'Consumer'. A person who consumes especially one who uses a product, purchaser of goods or services.'

Thus the meaning of the word 'consumer' itself shows that consumer is a person who is purchaser of goods or services and uses the product. Surely the purchaser of a video cassette is a purchaser of goods and uses the video cassette. Thus the meaning of the word 'consumer' quoted in the petition itself makes it clear that consumer means a buyer of the goods or commodities. Reference may be made in this connection to the definition of the word 'consumer' given in section 2(d) of the Consumer Protection Act, 1986. According to the said definition a consumer is a person who buys any goods for a consideration or hires or avails of any services for a consideration. Thus the said definition of the word consumer given in the Consumer Protection Act. 198G would even cover a case of giving a commodity on hire for use.

14. Mr. Thakore next contended that these video, cassettes cannot be said to be a commodity. He relies on the meaning of the word 'commodity' in Oxford Dictionary as a useful thing of article of trade and contends that tape is not a commodity and, therefore, the above rules cannot apply to the video cassettes. It cannot be denied that the video cassettes are 'useful things as they are played on video for the purpose of seeking a movie and since it is meant for sale it is an article of trade Thus video cassette is a commodity within the meaning of clause (h) of rule (2) of the Rules of 1977

15. The petitioners are being prosecuted under the penal provision of Section 51(1) of the Act. The said provision is applicable not only to Ihe manufacturers of a commodity in packaged form not conforming to the provisions of the Act and rules but also to the persons who distribute, pack, sell or keep for sale or offer or expose for sale, or have in their possession for sale any commodity in packaged form in contravention of Section 33(1) of the Act. Thus the petitioners, even if they can be said to be distributors and not manufactures, are liable to be punished under Section 51 of the Act for any contravention under the Act or Rules. Even Section 33 of the Act provides that the provisions of the Standards Act and the Rules made thereunder shall apply to every commodity in packaged form which is distributed, sold or kept or exposed for sale in contravention of the Rules. Thus in order to attract the penal provisions of this Act and Rules, it is not necessary that a person should be a manufacturer but even distribution of such packaged commodities not conforming to the standards laid down under the Act and the Rules is made punishable

16. No other contention was raised by Mr. Thakore and he expressly confined his arguments to the points discussed above. The learned Addl. Advocate General Mr. Janardhanan produced before me one audio cassette of songs named 'Lambi Judai' in a packaged form which conforms to the conditions laid down in the Act and Rules. The said cassette mentions even the price of the cassette

17. The prosecution which concerns the toys is also covered by the aforesaid provisions of the above Act and Rules thereunder. The toys are admittedly in packaged form and meant for sale and bear the mark of the petitioners claiming the commodity in the package to be a commodity made by the petitioners and under Section 51 of the Act a person who packs or distributes or sells or keeps for sate or offers or exposes for sale or has in his possession for sale any commodity in packaged form is liable to be punished

18. In the result these petitions are dismissed and the rule is discharged in all the above petitions. The interim relief granted earlier at the time of issuing rule shall stand vacated. In view of the fact that the prosecution was delayed in all these cases because of the pendency of these petitions in this Court and the interim stay

granted therein, the trial in all the cases, which are subject matter of the above petitions, is expedited

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