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**SooperKanoon Citation :** [sooperkanoon.com/430281](http://sooperkanoon.com/430281)

**Court :** Andhra Pradesh

**Decided On :** Feb-19-2008

**Reported in :** AIR2008AP188; 2008(3)ALT265; 2009(234)ELT434(AP)

**Judge :** C.Y. Somayajulu, J.

**Acts :** [Standards of Weights and Measures Act, 1976](#) - Sections 1, 1(3), 2, 3, 20, 30, 31(b), 39, 43(2), 54, 63, 67, 69, 70, 71, 72, 73 and 74, 78 and 83; [Prevention of Food Adulteration Act, 1954](#); Standards of Weights and Measures (Packaged Commodities) Rules 1977 - Rules 4, 6, 6(1) 11, 12(2), 23 and 23(1)

**Appeal No. :** Writ Petition No. 3241 of 2003

**Appellant :** Lion Dates Pvt. Ltd.

**Respondent :** Controller, Legal Metrology (Weights and Measures) Department and anr.

**Advocate for Def. :** G.P. for Civil Supplies

**Advocate for Pet/Ap. :** G. Dhananjai, Adv.

**Disposition :** Petition allowed

## **Judgement :**

### **ORDER**

#### **C.Y. Somayajulu, J.**

1. This petition is filed questioning the seizure of the goods belonging to the petitioner under the provisions of the [Standards of Weights and Measures Act, 1976](#) (the Act) and the Standards of Weights and Measures (Packaged Commodities) Rules 1977 (the Rules) made thereunder.

2. The case, in brief, of the petitioner is that it gets the date fruits plucked from the palm trees and gets the seed removed there from and repacks and sells seedless dates through distributors throughout India and that the Inspector, Legal Metrology (Weights and Measures Department), Sathenapally (2nd respondent) had on 10.01.2003 seized its product from M/s. Balaji Sweets, Sathenapally on the ground of violation of Section 39 of the Act and Rules 4, 6(1)(a) and 23(1) of the Rules, on the ground that the seized packets do not bear the declaration of the name and address of the manufacturer as required by the Act and the Rules. After coming to know about the said seizure, its representative approached the 2nd respondent and informed him that the provisions of the Act and Rules do not apply to the product being marketed by it as they are not covered by the definition of 'packaged commodities' and as no notification as regards Dates, as required by Clause (d) of Sub-section (3) of Section 1 of the Act was issued but he did not agree with the said contention and hence the writ petition to quash the proceedings dated 10.01.2003 of the 2nd respondent.

3. On behalf of the respondents the in charge Regional Deputy Controller (Head Quarters), Legal Metrology, filed his counter affidavit inter alia contending that inasmuch as the petitioner admits that it is getting the Date fruits plucked from palm trees and is processing them, it is but a 'process of manufacturing', and so the name and address of the manufacturer has to be declared on the packages of seedless Dates fruits being marketed by it, as goods are packed and not re-packed as claimed by the petitioner. As notification vide GSR No. 620 (E), dated 26.09.1977, covering fruits was issued, the contention that no notification under

Section 1(3)(d) was issued covering dates is not correct. As all kinds of fruit packages come under the purview of the Rules, as specified in Schedule 4 and 5, packages being marketed by the petitioner under the head 'Lion Seedless Dates' have to bear the prescribed declaration and as the products seized do not contain such declaration, petitioner is not entitled to the relief sought.

4. The main contention of the learned Counsel for the petitioner is that since no notification under Section 1(3)(d) of the Act showing that Dates, which are nature's bounty are also covered by the Act and the Rules is issued, and as the dates will have to be plucked from the trees at various places in the country, it is not humanly possible to note, on the package, the names of the trees and places from where they are situated at the time of plucking, on the packets marketed by the petitioner, question of the petitioner violating any of the provisions of the Act or Rules does not arise by placing strong on Titan Watches Limited v. the Senior Inspector, Legal Metrology, Weights and Measures Department, Mehboobnagar W.P. No. 9205 of 1993 etc., dated 7-1-2003 where it is held that unless and until specific notifications as regards a particular class of goods and area is issued, sale or distribution of such goods cannot be brought under the purview of the Act and the Rules.

5. The contention of the learned Government Pleader is that inasmuch as the Central Government through GSR 620(E) notified 26.09.1977 as the date on which Sections 1, 2, 3, 20, 30, 31(b), 39, 43(2), 54, 63, 67, 69, 70, 71, 72, 73 and 74, 78 and 83 come into force, the contention that the Act and Rules did not come into force with regard to 'dates', which are also fruits, is not correct because Item 8 of Schedule IV is fruits and so Rules 4 and 11 of the Rules would apply to the product being marketed by the petitioner also, and as the petitioner did not comply with the provisions contained in Rules 4, 6(1)(a) and 23 of the Rules, it is not entitled to the relief sought. It is his contention that Titan Watches Limited case W.P. No. 9205 of 1993 etc., dated 7-1-2003 relied on by the learned Counsel for the petitioner has no application to the facts of this case.

6. As Violation complained of in this case relates to Section 39 of the Act and Rules 4, 6(1)(a) and 23(1) of the Rules, I feel it relevant to extract that section and

those Rules:

Quantities and origin of commodities in packaged form to be declared

(1) No person shall-

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

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

(c) offer, expose or possess for sale,

any commodity in packaged form which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of-

i. the identity of the commodity in the package

ii. the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;

iii. where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;

iv. the unit sale price of the commodity in the package; and

v. the sale price of the package.

Explanation: In this sub-section, the expression 'unit sale price' means the price according to such unit of weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall also bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving.

(4) The statement on a package or label as to the net weight, measure or number of the contents thereof shall not include any expression which tends to qualify such weight, measure or number:

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words 'when packed'. Explanation: The words 'when packed' shall not be used in any case except a case to which the proviso to Sub-section (4) applies.

(5) Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number in which any commodity is, or reasonably comparable commodities are, being packed for sale, distribution or delivery and such undue proliferation impairs in the opinion of that government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that government may direct the manufacturers and also the packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as may be prescribed.

(6) Whenever the retail price of a commodity in packaged form to which this Chapter applies is stated in any advertisement, there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and retail unit sale price thereof.

(7) No person shall sell, distribute or deliver for sale a package containing a commodity which is filled less than the prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to--

(a) giving protection to the contents of such package, or

(b) meeting the requirements of machines used for enclosing the contents of such package.

(8) The Central Government may, by rules, specify such reasonable variation in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure which may be undergone by such commodity after it has been introduced in trade or commerce.

(9) The Central Government may, by rules, specify the classes of commodities or packages in relation to which all or any of the provisions of this section shall not apply or shall apply with such exceptions or modifications as may be specified therein.

#### Rule 4:

Regulation for prepacking and sale, etc. of commodities in packaged form:

On and from the commencement of these rules, no person shall pre-pack, or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under these rules.

#### Rule 6

Declarations to be made on every package

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

(a) the name and address of the manufacturer, or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer. Explanation I: If any name and address of a company is declared on the label without any qualifying words 'manufactured by' or 'packed by', it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined

accordingly;

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

Explanation III: In respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the [Prevention of Food Adulteration Act, 1954](#) (37 of 1954) and the rules made thereunder shall apply.

Rule 23: Provisions relating to wholesale dealer and retail dealer:

(1) No wholesale dealer or retail dealer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies within all respects, the provisions of the Act and these rules.

7. In view of the notification produced by the respondents, the contention of the petitioner that the Act does not apply to repacking of 'Dates' which are also fruits cannot be accepted.

8. The materials seized which were marketed by the petitioner are affixed with labels containing the following notings:

LION Seedless Dates

Gives you Calcium, Iron,

Vitamins, Protein & Minerals.

Repacked by:

Lion Dates P. Ltd.

4A/2, Cauvery Road,

Trichy - 620 002. INDIA.

Visit us at [www.Lion dates.com](http://www.Lion dates.com)

Net Wt: 500 g.

Packed on Oct. 2002

Maximum

Retail Price: Rs. 32.50

(inclusive of all taxes)

Batch No. LSD/49428.

(BEST BEFORE FOUR MONTHS  
FROM PACKAGING)

NATURAL FOOD - CONTAINS

CALCIUM, PHOSPHATE, IRON,

VITAMINS, PROTEIN & MINERALS

9. As Dates, which admittedly are fruits are grown on trees and are nature's bounty, question of noting the name of the manufacturer of the Dates on the package does not arise. In view of Rule 12(2) read with entry 8 in the Fifth Schedule which relates to 'all kinds of fruits' if weight of the product in the package is noted it is sufficient compliance with the Rules. Net weight, in terms of standard unit of weight and unit sale price of the commodity in the package are found on the product seized by the second respondent. So Rule 4 of the Rules is complied with by the petitioner. As seeds from the Dates are taken away, and those Dates are treated as packed by the petitioner, petitioner might have thought that it is 'repacking' the dates plucked, and mentioned its name as repacker. As the packages contain the name of the petitioner as the repacker it cannot be said that there is any violation of either Rule 6(1)(a) of the Rules or Section 39 of the Act.

10. For the above reasons petitioner is entitled to the relief sought and so proceedings of seizure of goods belonging to the petitioner is liable to be and hence is quashed. So respondents have to release the articles seized to the petitioner or its agent/dealer from whom they were seized.

11. As the seizure seems to have been made with an ulterior motive by the officer who seized the products of the petitioner, the costs of the petition have to be paid by that officer in his individual capacity.

12. The writ petition is accordingly allowed with costs to be paid by the officer that made the seizure in his individual capacity.

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