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Court : Andhra Pradesh

Decided On : Oct-24-2008

Reported in : 2009(1)ALT243; 2009CriLJ1470

Judge : V.V.S. Rao, J.

Acts : [Standards of Weights and Measures Act, 1976](#) - Sections 1 to 3, 3(1), 28, 29, 31 to 46, 48(2), 54, 63, 65, 67, 69, 70 to 74, 78 and 83; Companies Act; [General Clauses Act, 1897](#) - Sections 13(2); Central Excise Act - Sections 4A, 4A(1) and 4(2); Standards of Weights and Measures (Packaged Commodity) Rules, 1977 - Rules 2, 2A, 2(1), 2(I), 3, 4, 6, 6(1), 18 to 31, 34, 39 and 39(1); Drugs (Price Control) Order, 1995

Appeal No. : Writ Petition No. 11936 of 2001

Appellant : Tvs Electronics Limited and anr.

Respondent : Union of India (Uoi), Civil Supplies and ors.

Advocate for Def. : A. Rajashekar Reddy, Assistant Solicitor General for Respondent No. 1 and ;G.P. for Civil Supplies for Respondent Nos. 2 to 5

Advocate for Pet/Ap. : C. Kodanda Ram, Adv.

Judgement :

ORDER

V.V.S. Rao, J.

1. M/s. TVS Electronics Limited (TVS Electronics, for brevity) and their General Manager filed instant writ petition questioning communications of respondents 4 and 5 (Inspectors of Legal Metrology, Tenali and Vijayawada respectively) informing that petitioners have committed offences under Section 39 of the Standards of Weights and Measures Act 1976 (for brevity, the Act) and Rule 23(1) of the Standards of Weights and Measures (Packaged Commodity) Rules 1977 (hereafter, Package Rules) punishable under Section 67 and Rule 39(1) of Package Rules. By impugned communication, petitioners were also informed that alleged offence is compoundable under Section 73 of the Act. If petitioners so desire, it was advised; they may pay necessary compounding fee within fifteen (15) days. Petitioners contend that the Act and Package Rules have no application to electronic printers (inkjet/laser/DOT Matrix printers etc) manufactured and marketed by them and that impugned communications are without authority or jurisdiction. Thus the case involves an interesting question as to whether electronic printers manufactured and marketed by TVS Electronics are 'packaged commodities' within the meaning of Package Rules and for non-compliance with Rules and specifications, TVS Electronics has committed compoundable offence as contended by Department of Legal Metrology, Government of Andhra Pradesh.

2. The following brief fact of the matter is necessary to appreciate the question involved. TVS Electronics (a company registered under the Companies Act 1956) is engaged in the business of import, manufacture, distribution and sale of computer peripherals like inkjet printers, DOT Matrix printers, printer cartridges etc., which are marketed in various States including Andhra Pradesh. Printers which are imported and/or assembled in their manufacturing unit in Tamil Nadu are distributed through their marketing outlets in various States, to retail dealers who sell them to needy customers through their sales staff. Electronic printers are fragile and are sensitive. Therefore they are protected by keeping in bubble fill covers, packing in well-insulated material to protect from damage. A consumer

cannot readily use electronic printers. Computer compatible software drivers are to be installed before electronic printers are made useable. Just buying a printer from a retail dealer of TVS Electronics without proper installation of software is futile. They are ordinarily not sold 'off the shelf' and are marketed as a single unit and not in lots of more than one piece.

3. It appears that on 16.8.2000 fifth respondent inspected M/s. Elite Electronic Industries Limited, Labbipet, Vijayawada (hereafter, Elite Electronics). He found one retail package of MSP 245 9 wire 136 columns DOT Matrix printer manufactured by TVS Electronics without marking of sale price and therefore he issued a show cause notice dated 16.11.2000 calling upon first petitioner to submit explanation as to why action should not be taken for violation of Rules 4 and 6(1)(f) of Package Rules and Section 39 of the Act. Fifth respondent again inspected Elite Electronics on 04.12.2000 with two witnesses (panchas) and issued notice dated 09.1.2001 alleging that one retail package of Lexmark 211 color jet printer was being sold and that said package does not contain name and address of importer and retail sale price. He therefore issued another show cause notice dated 10.4.2001. First petitioner was asked to inform name, age, father's name and designation of person responsible for offence committed under Rule 33 read with Rule 23(1) of Package Rules. At or about same time, fourth respondent, namely, Inspector of Legal Metrology, Tenali, inspected premises of M/s. Surya Systems, Tenali, on 23.5.2001 and found two packages of TVS Electronics 'Smart Mouse' without details on package with regard to sale price, manufacturer and year of packing. Therefore, fourth respondent issued notice informing that offence under Sections 39 and 33 of the Act and Rules 6(1)(f) and 6(1)(d) of Package Rules is compoundable under Section 73 read with Section 65 of the Act. Petitioners sent reply to notices but by a letter dated 10.4.2001, fifth respondent rejected contentions of petitioners and informed decision not to drop action for alleged contravention of the provisions of the Act and Package Rules.

4. Union of India, first respondent, filed counter affidavit opposing writ petition. The contents thereof are as follows. Personal Computers (PCs), Printers and Printer accessories marketed and distributed by petitioners in pre-packed form, attract provisions of Package Rules. The products are manufactured in one State and

sold throughout country. Therefore they come under inter-State transactions. Petitioners require to comply with provisions of the Act and Rules. Even if petitioners' products are sold as a single piece, they attract provisions of the Rules. Therefore it is necessary to make declaration on the package with regard to name and address of manufacturer, name of commodity, quantity, month and year of package as well as retail sale price in the form of MRP inclusive of all taxes. Petitioners have not complied with provisions of Rules 4 and 6 of Package Rules and therefore action initiated against them is legally valid. The PCs and printers of petitioners fall under the definition of 'prepacked commodity' as per Rule 2(1) of Package Rules. Non-compliance with provisions of the Act attracts penal provisions. Third respondent filed counter affidavit. Various averments therein are similar to counter averments of first respondent and therefore it is not necessary to re-summarise, except referring them at appropriate place whenever necessary.

Rival submissions

5. Learned Counsel for petitioners Sri C. Kodanda Ram made following submissions. (1) In the absence of notification under Section 1(3)(d) of the Act notifying Computer inkjet/DOT Matrix printer as 'commodity in packaged form', the Act and the Rules cannot be applied to these goods manufactured by petitioners; (2) Inkjet/DOT Matrix printer is not a 'commodity' and it cannot be treated as a 'commodity in packaged form'; and (3) Electronic printers are fragile and sensitive and therefore they are offered for sale protecting them in package form with proper insulation. Even though electronic printers are kept in well-insulated packages, they cannot be treated as 'commodity in packaged form' or packaged commodities because a person who buys them cannot readily use without installation of software printer drivers in PCs with which printers are intended to be used. Learned Counsel placed reliance on Titan Watches Ltd. v. Senior Inspector Legal Metrology, W&M; Dept : 2003(2)ALD577 , Eureka Forbes Limited v. Union of India : AIR 2003 AP275 , Titan Industries Ltd. v. Union of India : AIR2006 Bom336 and Subash Arjandas Kataria v. State of Maharashtra 2006 (5) MHLJ 361 (Bom.) : AIR 2006 Bom. 570 (D.B.).

6. The contentions and submissions made by learned Government Pleader for Civil Supplies, Sri W.B. Srinivas, are as follows. (1) The Government of India issued notification dated 26.9.1977 under Section 1(3) of the Act appointing 26.9.1977 as day on which certain provisions of the Act shall come into force and therefore no further notification is necessary under Section 1(3)(d) of the Act; (2) Electronic printer is 'commodity in packaged form' as per Section 2(b) of the Act and fall within definition of 'pre-packed commodity' as per Rule 2(1) of the Rules; (3) Section 39(9) of the Act and Rule 34 of the Rules provide for exempting specified goods from provisions of the Act, and in the absence of exemption given to electronic printers manufactured by petitioners they cannot escape applicability of provisions of the Act and Rules; and (4) As per Rule 33 of Package Rules all prepacked commodities imported into India shall have to carry declaration and details as specified. The colour inkjet/DOT Matrix printers supplied by TVS Electronics to retailers do not comply with provisions of Rules 2(1) and 2(p) of Package Rules and therefore petitioners are liable. Learned Government Pleader relies on ITC Ltd. v. Commissioner of Central Excise : 2004(171)ELT433(SC) , Titan Industries Ltd. (supra) and Whirlpool of India Ltd. v. Union of India 2008 (3) SCJ 295 : 2008 (1) ALD 105 (SC).

7. Points for determination

(1) Whether provisions of the Act and Rules made thereunder including Package Rules can be applied and enforced even in the absence of any specific notification under Section 1(3)(d) of the Act?

(2) Whether electronic printers manufactured, distributed and marketed by TVS Electronics or their retail dealers can be treated as 'commodities in packaged form' and/or 'pre-packed commodities' for the purpose of the Act and Package Rules?

7-A. Whether the Act has come into force with reference to electronic printers? The ingenuous argument of petitioners that the Act cannot be enforced in respect of electronic printers imported and/or manufactured by them draws strength and support from Section 1, especially Section 1(3) of the Act. The provision reads as under.

1. Short title, extent and commencement

(1) This Act may be called the [Standards of Weights and Measures Act, 1976](#).

(2) It extends to the whole of India

(3) It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different:

(a) provisions of this Act,

(b) areas,

(c) classes of undertakings,

(d) classes of goods,

(e) classes of weights and measures, or

(f) classes of users of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such areas, or in respect of such classes of undertakings, goods, weights and measures or users of weights and measures in relation to which this Act has been brought into force.

(Proviso omitted)

8. It is well accepted legislative practice that sometimes legislation after its enactment is not brought into force immediately. The power to bring the legislation into force is entrusted to the executive Government (and it is not considered as delegation of legislative power). It is absolutely within the discretion of executive Government to bring into force an enactment and Mandamus cannot be issued to Government to enforce the statute or provision. A legislation more often than not confers wide ranging power on executive Government to enforce an enactment either wholly or partly applicable to the entire territory or part of the territory. Such power may also include power to apply the enactment in a phased manner with

reference to territorial areas, persons covered and subject matter with which the legislation deals. If legislation confers power on Government to bring the law into force by issuing an order notifying the date when the Act shall come into force, and when such notification is issued bringing all the provisions of the Act into force, nothing more is required. The entire law/enactment is enforceable. This situation remains unalterable notwithstanding the fact that the provision conferring power on executive Government gives discretion to appoint different dates for bringing into force different provisions of the Act or persons/subject matters to which such Act applies.

9. A perusal of Sub-section (3) of Section 1 of the Act as above would show that Central Government is given power to bring into force the provisions of the Act. It also confers power to appoint different dates for enforcement of the Act for different areas, classes of undertakings, classes of goods, classes of weights and measures or classes of users of weights and measures. The legislative choice to use the word 'OR' after end of Section 1(3)(e) of the Act would clinchingly show that a notification appointing the date for the purpose of enforcing the provisions of the Act takes within its fold all other aspects of the matter. So to say, when once notification is issued bringing into provisions of the Act, there need not be separate notification with reference to the areas, classes of undertakings, classes goods etc.

10. The Government of India vide their notification No. G.S.R.620(E), dated 26.09.1977 appointed the said date as the date on which Sections 1 - 3, 28, 29, 31(b), 39, 48(2), 54, 63, 67, 69, 70 - 74, 78 and 83 shall come into force. They also issued another notification No. G.S.R.193(E), dated 01.04.1980 appointing the said date as the date on which Sections 76 and 77 shall come into force. About a year thereafter, again on 01.07.1987 notification No. G.S.R.617(E), was issued appointing the said date as the date on which almost all the provisions came into force. It is very interesting to notice that all the three notifications were issued in exercise of powers conferred under Section 1(3) which only means they cover all aspects found in Section 1(3) and not extracted (sic. restricted) to any of them. The submission of learned Counsel for petitioners, therefore, cannot be accepted.

11. Learned Counsel for petitioner relied on Titan Watches Limited v. Senior Inspector Legal Metrology, W&M; Department (supra), in which this Court took a view that in the absence of notification under Section 1(3)(d) of the Act, the Act has no application to wrist watches. It appears this Judgment of learned single Judge is in appeal being W.A. No. 1448 of 2004. Therefore, the same is not helpful to petitioners. In Subash Arjandas Kataria v. State of Maharashtra (supra), the view of Andhra Pradesh High Court was not accepted by Division Bench of Bombay High Court. The Division Bench considered a question that when once a notification under Section 1(3) of the Act is issued, appointing the date or the dates for enforcing various provisions of the Act, there is no requirement of issuing notification/notifications specifying dates with reference to other classes under Section 1(3) of the Act.

12. The following passage may be beneficially extracted.

It may be pointed out that by Notification dated 26th September, 1977, the Central Government under Section 3(1) of the Act appointed 26th September, 1977 as the appointed date for enforcing the provisions of sections mentioned therein particularly Sections 1, 2 and 3 and Sections 39 and 83. Under Section 83 of the Act, the Central Government is empowered to make Rules in respect of packaged commodities. Accordingly, Rules have been made dated 26th September, 1977 covering all packaged commodities. Section 1(3) of the Act sets out that it shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different (a) provisions of this Act, (b) areas, (c) classes of undertakings, (d) classes of goods, (e) classes of weights and measures, or (f) classes of users of weights and measures. In other words, what it implies is that the provisions of the Act may be made applicable by notification on one day and/or different dates may be fixed for different provisions of the Act to come into force for various areas, classes of undertakings, etc., as set out earlier. In the instant case the Notification dated 26th September, 1977 has brought into force the various provisions as set out therein viz., Sections 1, 2 and 3 and Sections 39 and 83. Once those sections have come into force, there is no requirement that there must be a different notification specifying the different dates for different provisions of the Act to be brought into force for various areas, etc.

The submission, therefore, made on behalf of petitioners that different dates have to be notified for various areas, classes of undertakings, etc., is devoid of merit considering the notification. All prepackaged commodities covered by the Act and the Rules, will be governed by the sections which have been brought into force to the extent applicable.

(emphasis supplied)

13. Whether electronic printer is a commodity? If the answer is 'yes' for this question, can it be considered as a prepacked commodity, in which event the Act would be applicable to electronic printers? Though commodity is not defined, as per Section 2(b) of the Act, 'commodity in package form' means 'commodity packaged in a bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail'. The ordinary dictionary meaning of 'commodity' is 'a raw material or primary agricultural product that can be bought and sold, or a useful or valuable thing' (see The New Oxford Dictionary of English: Indian Edition 2002) but Parliament has used the meaning in a broader sense. All valuable things, which are offered for sale are commodities for the purpose of the Act. Chapter IV of Part IV the Act (only Section 39) deals with commodities in packaged form intended to be sold in course of inter-state trade or commerce. Section 39(1) of the Act prohibits manufacturing, packaging and/or selling any commodity in packaged form unless such package bears label to identify the commodity in the package, net quantity in terms of standard unit of weight or measure of the commodity in package, the accurate number of commodities in the package, the unit sale price and the like. Sub-section (9) of Section 39 of the Act empowers Central Government to exempt classes of commodities or packages from all or any of the provisions of Section 39 of the Act. Other subsections of Section 39 of the Act provide that every package shall contain the name of manufacturer or packer and also other details. As per heading of Chapter IV Section 39 of the Act applies only to commodities in packaged form sold during the course of inter-State trade or commerce. This is explicitly laid down in Section 31 of the Act, which inter alia provides that part IV (dealing with inter-State trade or commerce) shall apply to goods, which are intended to be sold, distributed, delivered or otherwise transferred by weight, measure or number in course of inter-State trade or

commerce.

14. A submission was made that Sections 31 and 39 of the Act have no application to the electronic printers distributed and sold by first petitioner. A perusal of the affidavit accompanying writ petition does not warrant any such conclusion. Admittedly first petitioner imports electronic printers in knocked down condition, assembles/manufactures electronic printers and transfers them to distribution center/office in Hyderabad, who in turn sell through a network of retail dealers. According to learned Counsel, transfer of electronic printers from Tamil Nadu to Hyderabad office does not amount to inter-State trade or commerce. The submission is misconceived. In case of marketing strategy as adopted by first petitioner, even though there was no consideration paid by Hyderabad office to first petitioner's manufacturing facility at Tamil Nadu, sale price consequently goes to first petitioner and it can be presumed that the invoice raised by Hyderabad office would be invariably in the name of first petitioner. Though a retail dealer pay sale price to Hyderabad office of TVS Electronics, ultimately it is intended to reach their office at Chennai. This satisfies description of inter-State trade or commerce, as defined in Section 2(m) of the Act, which reads as under:

2(m) 'inter-state trade or commerce', in relation to any weight or measure or other goods which are bought, sold, supplied, distributed or delivered by weight, measure or number, means the purchase, sale, supply, distribution or delivery which,:

(i) occasions the movement of such weight, measure or other goods from one State to another, or

(ii) is effected by a transfer of documents of title to such weights, measure or other goods during its movement from one State to another.

Explanation I: Where any such weight or measure is, or other goods are, delivered to a carrier or other bailee for transmission, the movement of such weight, measure or other goods shall, for the purposes of Sub-clause (ii), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation II: Where the movement of any such weight, measure or other goods commences and terminates in the same State, it shall not be deemed to be a movement of such weight, measure or other goods from one State to another merely by reason of the fact that in the course of such movement it passes through the territory of any other State;

15. In view of the above, this Court has no doubt to conclude that when first petitioner distributes electronic printers in Andhra Pradesh through their office at Hyderabad, there is inter-State trade and commerce. Hence, if electronic printers can be considered as 'commodities in packaged form' and/or 'pre-packed commodities', Section 39 read with Section 31 applies.

16. Pre-packed commodity means 'a commodity placed in a package when the purchaser is not present, so that the commodity placed in package can be taken out for testing or examining or inspecting the commodity' (Section 2(1) of Package Rules). The commodities in packaged form and pre-packed form are used interchangeably. Package Rules shall apply only to commodities in packaged form. It may be noticed that Sections 39(1), 39(6), 39(8), 39(9), 48(2), 63 and 65 of The Act use the phrase 'commodity in packaged form'. The said phrase is also used in Rules 2(n), 2(o), 2(p), 2(r), 2(u), 2(w), 6(b), 9(2), 11 and 12 of the Rules. Rules 18 to 31, 34 and 39 employ the word 'package'. As part IV including Chapter IV of the Act apply to commodities in packaged form sold and distributed in course of inter-State trade or commerce, and Package Rules apply only to commodities in packaged form, it becomes clear that Package Rules are applicable to commodities in packaged form sold and distributed during the course of inter-State trade or commerce. Be that as it is, as per Rule 2A of Package Rules, Package Rules have no application to packages intended for retail sale, if such packages contain commodities more than 25 kg or 25 litres excluding cement and fertilizer sold in bags of 50 kg. Package Rules also have no application to packaged commodities meant for industrial consumers and institutional consumers. The Rules in Chapter II stipulate conditions or requirements subject to which pre-packed commodities can be sold. These include the display of quantity in terms of standard unit of weight or measure, the month and year of manufacturing and the like. Any contravention of the Package Rules attract penalties under Rule 39 of

Package Rules. Rule 34 of Package Rules, on which considerable reliance is placed by learned Government Pleader grants immunity to package containing a commodity weighing ten grams or 10 milliliters or less, if sold by weight or measure, any package containing fast food items packed by restaurants/hotels, agricultural farm produce in packages of above 50 kg and drug formulations covered under the Drugs (Price Control) Order, 1995. All the provisions of the Act and the Rules, however, would be relevant only when the electronic printers involved in this case can be considered as commodities in packaged form and/or pre-packed commodities.

17. Electronic printers are commodities because they are manufactured, distributed and sold. The marketing strategies adopted by first petitioner for sale of these items, notwithstanding as a commodity it is sold and bought as a useful electronic item for sale consideration. The next intriguing question is whether it is pre-packed commodity because it is a commodity in packaged form. The purpose of the Act and the provisions in Part IV (Sections 31 - 46 of the Act) is to protect the economic interest of consumers as well as to regulate inter-State trade or commerce. The commodities in packaged form, which are not sold in the course of inter-State trade or commerce are also regulated by Package Rules and the intention of the provisions of the Act and the Rules is the same. A reference may be made to ITC Limited v. CCE (supra), wherein Supreme Court held as under: (para 40)

The SWM Act as well as the Packaged Commodities Rules have been enacted to protect the consumers who are entitled to pay only such price as has been printed thereon. The purpose of printing the MRP on cigarette packages is to achieve a standardisation of prices throughout the country and to inform consumers of the appropriate price of the product. There is no scope for 'underdeclaration' because the consumer can insist on the retailer abiding by the printed MRP. Provisions for penalties under the Act on the retailer ensure this. It is not open to the retailer who may be proceeded against for selling above the printed MRP to contend that it was incorrect or false, nor can the retailer defend any violation of the printed MRP by asking for an enquiry into its reasonableness. If adhering to MRP unreasonably narrows down the retailer's margins, the retailer can demand a reduction in the

price from the wholesaler or desist from selling the product. This applies similarly to the wholesaler, whose feedback to the manufacturer will either force the manufacturer to raise MRP or lose distributors. Given these serious economic consequences, the manufacturers cannot print a whimsical or fanciful figure as MRP. The result is a system of incentives and enforcement that begins with the consumer. When this system is properly enforced, levying tax on MRP according to the notification clearly does not lead to absurd consequences.

18. If an electronic printer can be sold providing necessary insulation in a cardboard box (so as to protect it from damage) can it be covered under the definition of 'commodity in packaged form' attracting Package Rules because it becomes prepacked commodity. The High Courts of Andhra Pradesh, Madras and Bombay considered such a question in relation to vacuum cleaners, wristwatches and electrical components/TV sets and VCRs, radios, tape recorders and sunglasses. 'Whether a commodity is incapable of sale in any manner other than in a packaged form' was the test applied by these High Courts while deciding the cases. Applying the test, Madras High Court in Philips India Limited v. Union of India (2002) 1 Mad.L.W. (Cri.) 211 held that television sets of Philips India, which are packed for the purpose of protection during storage, handling and safe transportation, for the convenience of the customers, are not prepacked commodities, and therefore, the Package Rules do not apply to the same. In Eureka Forbes Limited (2 supra), I considered the question as to which are the products/commodities covered/governed by the Act and the Rules. While observing that when commodity is offered for sale only in packaged form, the manufacturer or retailer has to comply with the Act and the Rules, it was held that when the commodities or goods are offered in a package with a view to safeguard from damage, the Act has no application. It was also held therein that 'though vacuum cleaner is provided in protective cover during transportation and handling, it cannot be treated as pre-packed commodity and that it is not a package required to be sold in a packaged form'. In Titan Watches Limited (1 supra), this Court held that in the absence of notification under Section 1(3)(d) of the Act covering watches, the Act would not apply. In Titan Industries (3 supra), a Division Bench of Bombay High Court applied the same test, when they observed, 'the test to see whether a commodity is pre-packed commodity would be - firstly whether by the

very nature of commodity, it requires to be packed before it can be sold (and) secondly in the event a package is opened, does it undergo any perceptible change or reduction in value'. Applying this test, Bombay High Court in *Subash Arjandas Kataria (4 supra)* held that sunglasses are not pre-packed commodities. Again the same test was applied.

19. The inkjet/DOT Matrix/Laser electronic printers manufactured and distributed, presumably displayed in electronic shops on shelves without package for the purpose of demonstration. When the same is sold, it is delivered in a pre-packed form along with necessary compact discs (CDs) which contain software for printer drivers. Unless and until printer drivers are installed in an electronic printer, same cannot be used. That is to say when once an electronic printer is removed, it would undergo a change before it becomes useful. In that view of the matter, it is certainly a prepacked commodity because it is not necessary always that the same piece, which is demonstrated to the customer either in the shop or at customer's residence is delivered to buyer. Here, the definition of pre-packed commodity in Rule 2(I) of Package Rules may be noticed.

2(I) 'pre-packed commodity' with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification, and the expression 'package', wherever it occurs, shall be construed as a package containing a pre-packed commodity;

Explanation I - Where, by reason merely of the opening of a package, no alteration is caused to the name, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these rules, to be a prepacked commodity, for example, an electric bulb or fluorescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity.

Explanation II - where a commodity consists of a number of components and these components are packed in one, two or more units for sale as a single

commodity, such commodity shall be deemed, for the purpose of these rules, to be a pre-packed...commodity.

20. Thus an electronic printer which is packed (may be for the purpose of insulation and protection from damage) in the absence of customer, after it is removed it undergoes perceptible modification, and therefore, it falls within the category of pre-packed commodity Secondly, as admitted in the affidavit filed by second petitioner, first petitioner imports electronic printers, electronic parts and markets the printers and printer parts after assembling them in the facility of Tamil Nadu. It is certainly marketed in different parts of the country in course of inter-State trade or commerce and therefore, all provisions of the Act and Package Rules would apply. Merely because only one unit is packed in one package, the same does not take electronic printers out of the purview of the Act and the Rules. As per Section 13(2) of [General Clauses Act, 1897](#), in law when statute uses plural, it also means singular and vice versa.

21. In a recent Judgment in Whirlpool of India Limited (6 supra), Supreme Court considered the question whether Refrigerator is a packaged commodity. The question came to be considered in the light of Central Government Notification No. 9 of 2000, dated 01.03.2000 under Section 4A(1) and (2) of Central Excise Act, whereby refrigerators vide Entry 48 thereof invited valuation under Section 4A of Central Excise Act. As per the said provision, the goods shall be valued on the basis of Maximum Retail Price (MRP), which is required to be printed on packages of such goods. The contention raised by assessee was that refrigerators manufactured by them are not packaged commodities. It was also contended that the provisions of the Act and Package Rules are not applicable to refrigerators. The contention was repelled by High Court. While confirming the Judgment of Punjab and Haryana High Court, the apex Court interpreted the term 'pre-packed commodity' as defined under Section 2(1) of Package Rules and laid down as under.

A glance at this provision and more particularly to Explanation I would suggest that the Refrigerator is covered under the term 'pre-packed commodity'. Even if the package of the Refrigerator is required to be opened for testing, even then the

Refrigerator would continue to be a 'pre-packed commodity'. There are various types of packages defined under the Rules and ultimately Rule 3 specifically suggests that the provisions of Chapter II would apply to the packages intended for 'retail sale' and the expression 'package' would be construed accordingly. It is not disputed before us that the sale of the Refrigerator is covered under the 'retail sale'. Once that position is clear Rule 6 would specifically include the Refrigerator and would carry along with it the requirements that Rule of printing certain information including the sale price on the package. Thus it is clear that by being sold by the manufacturer in a packaged form, the Refrigerator would be covered by the provisions of The Act and SWM (PC) Rules and it would be imperative that the MRP has to be printed in terms of Rule 6 which has been referred to above. The High Court has also made a reference to Rule 2(I) and more particularly, the Explanation to which we have referred to earlier. In our view, the reliance by the High Court on Rule 2(I) is correct. Learned Counsel tried to urge that every customer would like to open the package before finalizing to purchase the Refrigerator. He would atleast get it tested and for that purpose the package would be destroyed. That may be so but it does not change the position as rightly observed by the High Court.

22. In view of the above dicta, this Court is not able to accept and apply the test used by various High Courts while deciding the question whether a particular commodity is commodity in packaged form/pre-packed commodity. The decision of Supreme Court is binding on this Court, and therefore, writ petition must be held as devoid of any merit.

23. The writ petition, for the above 'reasons, is dismissed. But in the facts and circumstances of the case, this Court is not inclined to pass any order as to costs.