

**Wipro Limited Represented by Its Legal Manager Shri Vishal Mittal and Vs. Union of India (Uoi), Represented by Its Secretary, Department of Consumer Affairs and ors.**

**Wipro Limited Represented by Its Legal Manager Shri Vishal Mittal and Vs. Union of India (Uoi), Represented by Its Secretary, Department of Consumer Affairs and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/844272](http://sooperkanoon.com/844272)

**Court :** Karnataka

**Decided On :** Aug-21-2009

**Judge :** Ajit J. Gunjal, J.

**Acts :** Standard of Weights and Measures Act, 1976 - Sections 39, 39(1), 39(4), 63, 83 and 83(2); Standard of Weights and Measures (Packaged Commodities) (Amendment) Rules, 2006 - Rules 8 and 18; Standard of Weight and Measures (Packed Commodities) Rules, 1977 - Rules 2, 6, 11, 11(4) and 26; [Constitution of India](#) - Articles 14, 19(1) and 21

**Appeal No. :** Writ Petition No. 11596 of 2008

**Appellant :** Wipro Limited Represented by Its Legal Manager Shri Vishal Mittal And; Mr. Vishal Mittal

**Respondent :** Union of India (Uoi), Represented by Its Secretary, Department of Consumer Affairs and ors.

**Advocate for Def. :** N.B. Vishwanath, AGA and; Unnikrishnan M., CGSC for R1 and R2

**Advocate for Pet/Ap. :** Rajesh Chandra Kumar, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

Ajit J. Gunjal, J.

1. The petitioners in this petition are seeking for declaration that Rule 8(b) and 18 of the Standard of Weights and Measures (Packaged Commodities) Amendment Rules 2006 is ultra vires of Articles 14, 19(1)(g) and 21 of the [Constitution of India](#). They would also seek a declaration that it is being ultra vires of the provisions of Section 39(4) and 83 of Standard of Weights and Measures Act, 1976.

2. The matter arises in the following manner:

1 The first petitioner is engaged in the manufacture of toilet and bathing soaps. According to them, moisture is an essential ingredient of such soaps, inasmuch as, it acts as a binder. The moisture contained in the soaps is subject to evaporation, which results in loss in weight of the soap. According to the petitioner, it is equally accepted that there is no scientific method to determine the exact weight vis-a-vis loss of moisture. According to the petitioner, Section 39 of the Act mandates that the declaration of net weight is required to be specified on the package of the commodities. By virtue of the said provision, the net weight of the soap was required to be stated on the package. But however, proviso to Section 39(4) recognises that if there is any variation due to climatic conditions 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'. The

Explanation says that the words 'when packed' shall not be used in any case, except a case to which the proviso to Sub-section (4) applies. Government has framed the Standard of Weight and Measures (Packed Commodities) Rules, 1977. Rule 11(4) provides for implementation of provisions of Section 39(4) by allowing the weight of commodities specified in the Fourth Schedule to be stated in the packages with qualification 'when packed'. The Fourth schedule at serial Nos. 12 and 14 recognises all kinds of soaps and toilet soaps as commodities on which weight will be qualified with the words 'when packed'. The case of the petitioner is that the first petitioner and other manufacturers of such soaps have been stating the net weight of soap on the package with the qualification 'when packed', inasmuch as, the weight of the soap at the time of ultimate sale to consumer would be less than the weight when packed due to loss in moisture. Indeed, according to them, this practice is in vogue for the last couple of decades. The grievance of the petitioner is that pursuant to the Amendment, Sub-rule 4 of Rule 11 and the Fourth Schedule stands omitted. Hence, in these circumstances, the petitioners are before this Court inter alia contending that keeping the main statute, inasmuch as, proviso to Section 39(4) on the statute book, Rule 11(4) which compliments the proviso to Section 39(4) could not have been omitted. So also First Schedule and Fourth Schedule. Fourth Schedule would relate to declaration of quantity in relation to commodities which may be qualified by the words 'when packed' and First Schedule would relate to the maximum permissible errors in relation to the quantity contained in the individual package. Thus, according to them, having regard to the benefit which is extended to the manufacturers of soaps when declaring the rate, when packed, the same having been taken away by omission of Sub-rule (4) of Rule 11 is ultra vires.

2. On notice, the Central Government has entered appearance and filed the statement of objections.

3. The main contention of Mr. Rajesh Chandra Kumar, learned Counsel appearing for the petitioner is that Rule 8(b) and Rule 18 of the amendment Rules which provide for omission of Rule 11(4) and Fourth schedule respectively are ultra vires of Section 39(4) of the Act. According to him, Section 39(1)(c)(ii) prohibits any person from distributing any commodity in packaged form unless it bears a declaration of the net quantity of the commodity in the package.

4. Elaborating this contention, he submits that the proviso to Section 39(4) creates a right in the manufacturer of the commodities which undergoes significant loss in weight due to environmental conditions to qualify the declaration of weight with words 'when packed'. Thus there is a statutory obligation on the Central Government to specify such commodities. Hence, it is not open for the Central Government to omit the fourth Schedule or Rule 11(4) which gives effect to the legislative policy contained in the provisions of Section 39(4) and its proviso.

5. The second contention is that Rule 8(b) and Rule 18 of the amendment Rules are also ultra vires Section 83 of the Act, inasmuch as, Section 83 of the Act confers power on the Central Government to make rules for carrying out the provisions of the Act. Sub-clause) of Section 83(2) further provides that rules may be made by Central Government in relation to the manner of declaration of contents of the package and specification of unit of weight shall be declared on the package.

6. The sum and substance of the contention of the learned Counsel appearing for the petitioner is that Rule 11(4) having been omitted and the provisions of Section 39(4) is to remain in the statute book, an incongruous situation is created, inasmuch as, the words 'when packed' is taken away by the deletion of Sub-Rule (4) but continues to remain on the statute. The omission of First Schedule and Fourth Schedule from the schedule also would run contrary to the main provision under Section 39(4) and its proviso.

7. Learned Counsel appearing for the Central Government would contend that Section 39 is to be read with Section 83(2)(r) and (u). Indeed, according to him Rule 2(i) speaks of 'maximum permissible error' and so also Rule 6 wherein a declaration is required to be made on the package. According to him, deletion of Sub-rule (4) of Rule 11 and also deletion of the First schedule and Fourth schedule is not detrimental to the interest of the petitioner, inasmuch as, if there is any loss of percentage in the moisture, that is taken care of by the Second

## Schedule

8. To appreciate these contentions, one is required to look into the provisions of the Act itself. Before looking into the provisions, it is necessary to note as to why these enactments were brought about. The concept of consumerism has assumed great significance in recent times in the developing countries. Almost always the consumer movements are poorly financed, usually unpaid and often not very impressive in their presentation of facts and conclusions, they nevertheless are able to encounter a generally sympathetic public with confidence and the movement has slowly and steadily gathered momentum. From the business community consumer movement has met with the fiercest opposition, a posture which still exists to some extent even today. Even so, the demand for urgent reforms became irresistible at making products safer and curbing the most outrageous exploitation of parttime buyers by full time sellers, and dealing with a host of questionable marketing practices that were successful only because of consumer gullibility or economic illiteracy. The consumer protection was never a serious concern of even governments which had a duty under the Constitution for the welfare of the people as a whole. The principle 'caveat emptor or buyer beware' was the slogan. Nevertheless, the consumers were always at the receiving end. Hence, the consumers are always taken for granted and most of the time, were completely ignored. Caveat emptor; qui ignorare non debuit quod just alienum emit, a maxim meaning 'Let a purchaser beware; who ought not to be ignorant that he is purchasing the rights of another. Hence, in these circumstances, the Act came into force. It is necessary to look into what is the statement of objects and reasons of the Bill culminating in to the Act. It would clearly indicate that pursuant to the adoption of international system of units of weights and measures being a party to the General Conference of Weights and Measures and the International Organisation of Legal Metrology, India had to revise the standard of weights and measures. Indeed, the object of the Act is that it provides the consumers with a protection in respect of packaged commodities by providing in pursuance of the recommendations of the International Organisation of Legal Metrology, for the proper indication on the package of net quantity by weight, measures or number, the identity of the commodity contained therein, name of the manufacturer and what is very important, the price of the package. The scientific evaluation of the performance accuracy and dependability of weights, measures etc., would enable the consumer to buy his requirements with greater confidence about accuracy and also give industries the facility to use more accurate measuring instruments in their production control and enable the scientists to measure accurately the quantities involved in the researches.

9. Indeed, one is required to examine the contentions urged by both the counsel keeping in background the intention of the legislature in bringing about this enactment. With this preface, the provisions of the Act are required to be examined.

10. Section 39 is in Chapter-4 of Part-IV which would relate to commodities in packaged form intended to be sold or distributed in the course of inter-state trade or commerce. Section 39 speaks of quantities and origin of commodities in packaged form to be declared. The relevant provision for our purpose would be Section 39(4) proviso. Section 39(4) would read as under:

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'.

11. Rule 11 of the Rules would relate to general provisions relating to declaration of quantity. Rule 11 of the Rules would read thus:

11. General provisions relating to declaration of quantity: (1) In declaring the net quantity of the commodity contained in a package, the weight of wrappers and materials other than the commodity shall be excluded:

Provided that where a package contains a large number of small items of confectionery, each of which is separately wrapped the net weight declared on the package containing such confectionery or on the label thereof may include the weight of such immediate wrappers, if and only if, the total weight of such immediate wrapper does not exceed-

(i) eight per cent, where such immediate wrapper is a waxed paper or any other paper with wax or aluminium foil under strip, [or]

(ii) six per cent in the case of any other paper, of the total net weight of all the items of confectionery contained in the package minus the weight of immediate wrapper.

(2) Where a commodity in a package is not likely to undergo any variation in weight of measure, on account of the environmental conditions, the quantity declared on the package shall correspond to the net quantity which will be received by the consumer and the declaration of quantity of such package shall not be qualified by the words 'when packed' or the like.

(3) save as otherwise provided in Sub-rule (4), where a commodity in a package is likely to undergo variation is negligible, the declaration of quantity in relation to such package shall be made after taking into account such variation so that the consumer may receive not less than the net quantity of the commodity as declared on the package, and the declaration of quantity on such package shall not also be qualified by the words 'when packed' or the like.

(4) the declaration of quantity in relation to commodities specified in the Fourth Schedule, that is to say, commodities which are likely to undergo significant variations in weight or measure on account of environmental or other conditions may be qualified by the words 'when packed'.

Stress was laid regarding omission of Sub-rule (4) which would speak about declaration of quantity in relation to the commodities specified in the Fourth schedule that is to say, commodities which are likely to undergo significant variations in weight or measure on account of environmental or other conditions may be qualified by the words 'when packed'. The grievance of the petitioners is twofold. According to the petitioners, bath soap or toilet soap consists of perfumes and other ingredients which make it into a toiletry soap which is usable. According to the petitioner, the binding of all the ingredients is done by a factor which is called moisture binding. As and when the manufactured goods leave the factories and go to the retailers and from the retailers to the market a considerable period is lost and there is every possibility that the excess moisture which is added for binding in effect loses its efficacy by the time the soap reaches the consumers. Hence, according to the petitioners, the word 'when packed' assumes importance, inasmuch as, once the binding factor i.e., the moisture is introduced into the product and leaves the manufacturing unit, and the proviso to Section 39(4) takes care of diminishing of moisture. Indeed, as observed, the introduction of this enactment was to see that whenever a consumer gets the product in his hands, inasmuch as, he is the end user, what is printed on the package regarding the net weight when packed should continue to be there when he takes it home for usage. In this regard, one can refer to Rule 2 and 6 of the Rules which would take care of the loss of moisture by the time it reaches the shelves of the shop or in the hands of the consumer. Rule 2(i) would relate to what is the maximum permissible error which would be in relation to the quantity including the quantity declared to be given free by the manufacturer/packer contained in an individual package, means an error in deficiency or excess which, subject to the provisions of these rules, does not exceed, in relation to the commodities specified in the first schedule, the limits of error specified in that schedule and in relation to commodities not specified in the First schedule; the limits of error specified in the second schedule, which would necessarily mean that the maximum permissible error will be in relation to the second schedule insofar as we are concerned.

12. Rule 6 is in respect of declaration to be made on every package which envisages that every package is required to contain label securely affixed thereto a definite, plain and conspicuous declaration made in accordance with the provisions of the Rule 6(c) would relate to the net quantity, in terms of the standard unit

of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package. The fact that Sub-rule (4) of Rule 11 is omitted pursuant to the amendment, to my mind, does not in any way put the petitioners into jeopardy which would warrant prosecution. Indeed, the powers of the Central Government to make rules is to be found in Section 83 of the Act. Indeed, Sub-section (2)(r) and (u) of Section 83 of the Act were pressed into service by the learned Counsel for Central Government. Section 83 would speak about the powers of the Central Government by notification make such rules for carrying out the provisions of the Act. Sub-section 2(r) is in respect of the declaration of the contents on a package and specification of the unit of weight, measure or number in accordance with which the retail sale price shall be declared on the package. Sub-section 2(u) would relate to the reasonable variations in the net contents of a packaged commodity which may be caused by the method of packing or ordinary exposure. Stress in Section 83(2)(u) is on ordinary exposure which would necessarily mean whether the product is taken care of from the vagaries of weather. Indeed, an analogy was given by the learned Counsel for the petitioner, inasmuch as, if the product is sold in Northern India during the winter and monsoon seasons, there would not be much of variations. But however, if the same toiletry soap is sold either in places like Maharashtra or Chennai, where the environment is such that whatever extra moisture which is sought to be added when packed, would evaporate much early. Indeed, this aspect is taken care by schedule II under Rule (2)(i)(ii). Schedule II would relate to maximum permissible error which is not specified in first schedule. The maximum permissible error or net quantity declared by weight or volume is relatable to permissible error in excess or in deficiency, in the net quantity by weight or volume of any commodity not specified in the first schedule. The Maximum permissible errors or net quantity is declared by weight or volume is given in a tabular form. If the product weighs up to 50 gms, the percentage of declared quantity is 9. There is no maximum permissible error in excess or in deficiency. But however, if the declared quantity is between 50 gms to 100 gms the maximum permissible error is shown as 4.5, so on and so forth. Thus, the manufacturer is taken care of if there is any loss of moisture thus reducing the net weight when packed. Indeed, it is always open for the manufacturer to add a little more moisture so as to maintain the weight when packed and it would remain constant when the product ultimately reaches the hands of the consumers. The petitioners, in the circumstances, cannot be heard to say that pursuant to the amendment and deletion of Sub-rule (4) of Rule 11 and deletion of first schedule and fourth schedule are detrimental to their interest. Ultimately, the avowed act as observed earlier was enacted for the purpose of benefiting the consumer.

13. Two more provisions were pressed into service by the learned Counsel for the petitioner, inasmuch as, if there is a contravention of Section 39 of the Act, Section 63 of the Act would come into play, inasmuch as, the petitioners would be saddled with a fine of Rs. 5,000/- or with an imprisonment for a terms which may extend to 5 years and also with fine. Rule 26 of the rules is also to the same effect. Indeed, if there is a contravention of the statute, Section 63 and Rule 26 will certainly be applicable. The fact that Sub-rule 4 of Rule 11 is taken away does not necessarily mean that the manufacturer would be at a disadvantage, inasmuch as, schedule II takes care of it.

Consequently, I am of the view that there is no merit in this petition. Petition stands rejected.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**