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Court : Kolkata

Decided On : Jun-07-1982

Reported in : AIR1982Cal520

Judge : M.M. Dutt and ;Monoj Kumar Mukherjee, JJ.

Acts : West Bengal Standards of Weights and Measures (Enforcement) Rules, 1959 - Rule 24

Appeal No. : A.F.O.O. No. 70 of 1978

Appellant : Avery India Ltd.

Respondent : Controller, Weights and Measures, Govt. of West Bengal and ors.

Advocate for Def. : Amaresh Chakraborty and ;P. Bose, Adv.

Advocate for Pet/Ap. : S. Roychoudhury, ;T. Banerjee and ;S.P. Mazumdar, Adv.

Disposition : Appeal allowed

Judgement :

M.M. Dutta, J.

1. In this appeal the appellant, Avery India Limited, has challenged the propriety of the judgment of a learned single Judge of this Court whereby the learned Judges discharged the rule nisi obtained by the appellant on its application under Article 226 of the Constitution.

2. The principal question that is involved in this appeal is whether the appellant is liable to disclose in the fortnightly returns that are submitted by him under the West Bengal Standards of Weights and Measures (Enforcement) Act, 1958, the sets of component parts which if assembled, would make complete weighing machines. In this connection, we may refer to the provision of Sub-section (2) of Section 9 of the Act which provides that no weighing instrument or measuring instrument shall be sold or delivered or used in any transaction unless it has been verified or revived in accordance with the rules made under the Act and stamped with a stamp of verification in such manner as may be prescribed. Rule 24 of the Rules framed under the Act provides that every manufacturer or repairer of, or dealer in weights, measures, weighing instruments or measuring instruments shall maintain such records in such form and submit such returns as the Controller may direct.

3. In the fortnightly returns submitted by the appellant during the period from 1st April 1964 to 28th Feb. 1965, it was stated by the appellant that it had produced only 466 weighing instruments. But in the application dated 19th Mar. 1965 for the renewal of the manufacturing licence, the appellant stated that during the said period the appellant had produced 7,344 sets of components of weighing instruments.

4. A show cause notice dated Aug. 13, 1965 was served by the Controller of Weights and Measures, West Bengal upon the appellant calling upon it to show cause why the renewal of the manufacturing license of the appellant for the year 1965-66 should not be refused under Rule 23 (3) of the West Bengal Standards of Weights and Measures (Enforcement) Rules, 1959 for the appellant's failure to comply with the provisions of Rule 24 of the Rules.

5. The appellant had shown cause to the said notice. The case of the appellant was that it had not, as a matter of fact, manufactured 7,344 weighing instruments,

but the figure 7,344 represented the component parts of weighing instruments before they were assembled. Indeed, in the application for renewal it has been stated by the appellant that it had manufactured 7,344 sets of components of weighing machines. The Controller of Weights and Measures by his Memo No. 7237 dated Oct. 22, 1965 refused to renew the manufacturing licence of the appellant for the year 1965-66 under Rule 23 (3) of the Rules, and by Memo No. 7246 of the same date directed the seizure of all stocks of weights, measures, weighing instruments and measuring instruments in the factory of the appellant. Thereafter, the appellant moved this Court under Article 226 of the Constitution and, as stated already, a Rule Nisi was issued on the said application.

6. The learned Judge, however, could not accept the contention of the appellant that the component parts before they were assembled could not constitute weighing machines and, as such, the appellant had violated the provision of Rule 24 of the Rules. In that view of the matter, the learned Judge discharged the Rule Nisi. Hence, this appeal.

7. It is true that Rule 24 does not refer to component parts but to weighing instrument or measuring instrument. A complete instrument comes into existence after the component parts are assembled. But that is of little significance. In our opinion, for the purpose of Rule 24 when the component parts of a complete instrument are manufactured, the appellant will have to disclose the same in the fortnightly returns as complete instruments. Unless that is done, a manufacturer may never assemble the component parts and would be in a position to circumvent the provision of Rule 24.

8. It is, however, contended by Mr. Subrata Roy Chowdhury, learned counsel appearing on behalf of the appellant that if component parts before they are assembled are considered as complete instruments and disclosed as such in the fortnightly returns, in that case, the authority would insist on their being stamped under Section 9(2) of the Act, and the appellant will have to pay charges therefor even if they are not sold or delivered in West Bengal. We do not think that there can be any justification for this apprehension of the appellant. Under Section 9(2) of the Act, so long as the weighing machines or instruments are not sold or

delivered or used in any transaction they are not required to be stamped. It is the case of the appellant that the component parts are sent to its depots in Bihar and after the same are assembled they are sold and delivered in Bihar in accordance with the corresponding Bihar Act. There can be no doubt that before selling any instrument in Bihar the appellant has to get the instrument stamped under the Bihar Act and pay the necessary charges therefor. In our opinion, Section 9(2) contemplates sale and delivery of any instrument in the State of West Bengal and not to any other place outside the State, for the Act only extends to the whole of West Bengal. If the appellant wants to sell a weighing machine outside West Bengal, we do not think that it can be insisted that the machine should be stamped here in West Bengal.

9. In our opinion, on a proper construction of Rule 24 read with Memo No. 2035 (60) dated Oct. 28, 1960 whereby a form of return has been prescribed, a complete set of component parts of a weighing machine will be considered as the weighing machine and is required to be disclosed in the fortnightly return. It seems that on a misconception of the provision of Rule 24 read with Memo No. 2035 (60) dated Oct. 28, 1960, the appellant did not disclose the said 7,344 sets of component parts in its fortnightly returns. The Controller of Weights and Measures should not have taken such a drastic measure against the appellant by not renewing its licence. The appellant should have been given a chance to rectify the returns.

10. In the circumstances, we set aside the impugned orders of the Controller as contained in the said Memos Nos. 7237 and 7246; both dated Oct. 22, 1965 and make the Rule Nisi absolute. The Controller of Weights and Measures, West Bengal is directed to renew the manufacturing licence of the appellant with effect from 1st April, 1965 within a month from date subject to the compliance by the appellant of all formalities in that regard. Let appropriate writs in the above terms issue. It is made clear that the appellant shall henceforth disclose in the fortnightly returns the number of sets of component parts which, if assembled, will constitute weighing machines or instruments.

11. The order of the learned Judge is set aside and the appeal is allowed.

12. There will, however, be no order as to costs.

13. It appears that pursuant to the order of this Court dated April 20, 1978 a sum of Rs. 1,68,000 has been deposited by the appellant with the United Bank of India in the name of Sandersons & Morgans, the Advocates on record for the appellant. The said sum with interest thereon may be withdrawn from the said Bank after four weeks from date and, upon such withdrawal, the same may be made over to the appellant. Till the licence is renewed, the appellant will be entitled to continue its manufacturing operations of the weighing machines in accordance with the provisions of the Act and the Rules.

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