

THE STATE OF MAHARASHTRA AND ORS.

V.

RAJ MARKETING & ANR.

(Civil Appeal No. 1119 of 2010)

AUGUST 26, 2011

[P. Sathasivam and H.L. Gokhale, JJ.]

[2011] 10 SCR 722

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal by State of Maharashtra is directed against the judgment and order dated 08.12.2006 passed by the High Court of Judicature at Bombay in Writ Petition No. 2982 of 2006 whereby the High Court allowed the writ petition of the 1st respondent herein.

2. The issue involved in this appeal is whether Candy man, Minto-Fresh, Kitchens of India, Badam Halwa and Ashirvaad Atta etc. can be considered as a “*wholesale package*” within the definition of the expression “*wholesale package*” under Rule 2(x) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as “the Rules”).

3. Brief facts:

a) The respondent is a firm carrying on the business of buying and selling various products and they used to store these products in their godown at Gali No.8, Senior Tyre Compound, N.S.S. Road, Narayan Nagar, Ghatkopar (W) Mumbai.

b) On 31.10.2006, the second appellant/Inspector of Legal Metrology, Mumbai visited the first respondent's godown and seized various packages of packed commodities such as Candy man, Minto-Fresh, Kitchens of India, Badam Halwa and Ashirvaad Atta etc. vide seizure memo bearing Nos. 0114769 and 0114770 dated 31.10.2006. The reason for seizure, according to him, is that on the wholesale packets, the details regarding the name and addresses of the manufacturer, cost, month, year etc. has not been declared

and also the retail sale price was not mentioned which is in violation of the Rules.

c) A show cause notice dated 06.11.2006 has been issued by the appellant to the respondent for the violation of Section/Rule 33 and 39 read with Rule 23(1) and 6 of the Rules. It was mentioned in the said notice that the offence is compoundable as per Section 73 of the Standards of Weights and Measures Act, 1976 and Section 65 of the Standards of Weights and Measures (Enforcement) Act, 1985.

d) On 18.11.2006, the respondents, vide their letter, replied to the notice dated 06.11.2006.

e) On 28.11.2006, the respondents filed Writ Petition being W.P. No. 2982 of 2006, inter alia, for quashing the seizure memo dated 31.10.2006 and notice dated 06.11.2006.

4. The High Court, by impugned order dated 08.12.2006 allowed the writ petition by holding that the packages containing Candy man, Minto-Fresh, Kitchens of India, Badam Halwa and Ashirvaad Atta are not wholesale package within the definition of the expression "*wholesale package*" under Rule 2(x) of the Rules.

5. Questioning the said order of the High Court, the State filed the above appeal by way of special leave.

6. Heard Mr. Chinmoy Khaladkar, learned counsel for the appellant-State and Mr. Ravinder Narain for respondent No.1.

7. Rule 2(x) of the Rules define "*wholesale package*" to mean:

"(x) "*wholesale package*" means a package containing-

(i) a number of retail packages, where such first mentioned package is intended for sale, distribution or delivery to a intermediary and is not intended for sale direct to a single consumer; or

(ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or deliver such commodity to the consumer in smaller quantities; or

(iii) packages containing ten or more than ten retail packages provided that the retail packages are labeled as required under the rules.”

8. Rule 29 of the Rules read as under:

“29. Declaration to be made on every wholesale package.- Every wholesale package shall bear thereon a legible, definite, plain and conspicuous declaration as to,-

(a) the name and address of the manufacturer or where the manufacturer is not the packer, of the packer;

(b) the identity of the commodity contained in the package; and

(c) the total number of retail packages contained in such wholesale package or the net quantity in terms of standard units of weights, measures or number of the commodity contained in wholesale package:

Provided that nothing in this rule shall apply in relation to a wholesale package if a declaration similar to the declaration specified in this rule, is required to be made on such wholesale packages by or under any other law for the time being in force.”

9. In order to attract violation of the Rules referred above, the package seized must fall within the expression “*wholesale package*”. A package used merely for protection during conveyance or safety would not be pre-packed commodity for the purpose of the Act and the Rules. As rightly observed by the High Court that for the package to be treated as a wholesale package, the package must not be a secondary package. In that event, we have to find out whether the secondary package is only for safety, convenience or the like. As demonstrated before the High Court, the counsel appearing for the 1st respondent placed all the above-mentioned products before us i.e. both the wholesale package as well as the retail package. The Department’s only

contention was that the secondary package in which the wholesale package was packed does not contain the said information. In the light of the provisions which we have referred above and on verification of the products which were shown to us, we are of the view that the secondary outer packing for transportation or for safety of the goods being transported or delivered cannot be described as a wholesale package.

10. On going through the statutory provisions which we have adverted to in the earlier paras and on verification of the products which were shown to us during the course of argument, we fully agree with the conclusion arrived at by the High Court. Consequently, the appeal fails and the same is dismissed with no order as to costs.



JUDGMENT