HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1005667 of 2014

Pidilite Industries Ltd. Thru Spl.Attorney Sri Sachin Sharma .....Petitioner(s)

Versus

State Of U.P. Thru Prin. Secy. Deptt. Of Legal Metrology Andor .....Respondent(s)

Counsel for Petitioner(s)	:	Gaurav Mehrotra
Counsel for Respondent(s)	:	C.S.C.

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Gaurav Mehrotra, learned Senior Advocate assisted by Ms. Shhreiya Agarwal, learned counsel for the petitioner as well as learned Standing Counsel for the respondents.

2. It has been submitted by learned counsel for the petitioner that the petitioner company manufactures a product known as "M-Seal Phataphat" and the said product has two parts - i) Resin and ii) Hardener and parts are sold together in a single packet.

3. It is next submitted that the aforesaid product is available in different weights like 12, 15, 25 grams and 1 Kg and same comprises of two separate packages within the main package having equal quantity of resin base and hardener. In a 25gm pack of the aforesaid product, within the main package there are two separate packages having resin base 12.5 gm and hardener 12.5gm.

4. It has been further submitted that the proceedings in the present case have arisen on account of the fact that the Senior Inspector of Legal Metrology Department, Jhansi on 06.08.2023 inspected a shop namely M/s Abhilabh Iron Store, Sipri Bazar, Jhansi in the presence of proprietor of the retailer Firm Shivpal Das and allegedly found that the product manufactured by the petitioner company namely "M-Seal Phataphat" which is available in local market of Jhansi for sale, although bears net weight 25gm (12.5gm resin and 12.5gm hardener) (maximum retail price Rs.10 and having manufacturing date 4/2013), however the weight of resin base is zero which is violative of Rule 18(2) of the Legal Metrology (Packaged Commodity) Rules, 2011 (*hereinafter referred to as "the Rules, 2011"*) and Legal Metrology Act, 2009 (*hereinafter referred to as "the Act, 2009"*) , and initiated proceedings against the petitioner.

5. It is submitted on behalf of petitioner that notice was received by him on 14.08.2013 levelling aforesaid allegations and sought response from the petitioner. The petitioner duly responded to the said notice denying the allegations levelled therein and same was submitted to the Inspector, Legal Metrology Department, wherein he has stated that the Inspector has not followed the procedure as prescribed in Rule 21 of the Rules, 2011 which provides for inspecting quantity and error in packages at the premises of whose sale dealer or retail dealer/retail outlet.

6. It is submitted that similar notices were received by various other officers of the petitioner. After receiving the reply of the petitioner, the respondent passed order on 18.01.2014 by the Legal Metrology Department, Jhansi, rejecting the reply of the petitioner and stated that proceedings under the Act, 2009 would be initiated against the manufacturer and not against the retailer.

7. Against order dated 18.01.2014, the petitioner filed an appeal before the appellate authority under Section 50(1)(d) of the Act, 2009, which has also been rejected by means of impugned order dated 29.05.2014.

8. In the aforesaid circumstances, the petitioner preferred present writ petition assailing validity of orders dated 14.08.2013, 18.01.2014 and 29.05.2014.

9. It has been submitted by learned counsel for the petitioner that manner of inspection of a product has been provided for in the Rules, 2011. It is submitted on behalf of petitioner that undisputedly under Rule 18 of the Rules, 2011 it is provided that no wholesale dealer or retail dealer or importer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with in all respects, the provisions of the Act and these rules.

10. Procedure for inspection has been provided under Rules 19 and 21 of the Rules, 2011. Rule 19 of the Rules, 2011, for ready reference is quoted herein below :-

"***19. Inspection of quantity and error in packages at the premises of the manufacturer or packer.—***

(1) With a view to ascertaining whether any package or lot of packages complies with provisions of these rules in all respects, the Director, Controller or any Legal Metrology Officer empowered to inspect under section 15 of the Act (hereafter referred to as in these rules as the "authorized person") may examine the packages and carry out the tests at the premises of the manufacturer or where the manufacturer is not the packer, of the packer and when he carries out such examination or tests, he shall draw samples from such lot of packages, in such manner and in such number as are specified in the Fifth Schedule and the tests aforesaid shall be carried out in accordance with the method specified in the Sixth Schedule.

(2) The Director, Controller or any Legal Metrology Officer shall enter in the Form set out in the Seventh Schedule, the detailed results of the tests carried out by him under subrule (1) and shall obtain, on the said Form, the signature of the manufacturer or, as the case may be, of the packer, or his authorized agent, or, in the absence of both, or on their refusal to affix such signature, the signature of a competent witness and copy of the data sheet containing the result shall be given to the manufacturer or packer, as the case may be.

(3) On the completion of the examination and tests carried out under sub-rule (1), the Director, Controller or any Legal Metrology Officer shall make a report indicating therein his findings with regard to the declarations required to be made under these rules and as to the net quantity actually contained in the sample packages and the extent of error, if any, noticed by him and furnish a copy of such report to the manufacturer or the packer, as the case may be.

(4) If it appears from the report referred to in sub-rule (3) that-

(a) the statistical average of the net quantity contained in the packages drawn as samples is lesser than the quantity declared on the packages or on the labels affixed thereto; or

(b) any such package shows an error in deficiency greater than the maximum permissible error, the Director, Controller or any Legal Metrology Officer shall, if for good and sufficient reason, requested by the manufacturer or packer or his authorized agent, so to do, take out as soon as may be practicable, fresh samples and carry out fresh tests in accordance with the provisions of these rules and where fresh tests are made, the Director, Controller or any Legal Metrology Officer, as the case may be, shall collect a fee of rupees two thousand five hundred for carrying out fresh test.

Provided that where fresh tests are carried out, no package contained in the lot, which was previously tested under this rule, shall be sold or distributed by the manufacturer or packer, as the case may be, unless the provisions of the sub-rule (5) or as the case may be, sub-rule (6), are complied with.

(5)(a) where, as a result of any test carried out under this rule, it is found that any package contained in the lot does not conform to all or any of the provisions of the Act or of these rules, the manufacturer or the packer shall make a cent per cent check of the packages contained in the lot and pick out from the lot the packages which conform to all the provisions of the Act and of these rules.

(b) When the Director, Controller or any Legal Metrology Officer is satisfied that the packages picked out by the manufacturer or packer conforms to all the provisions of the Act and of these rules, he shall authorize the sale, distribution or delivery of such packages.(c) Where, as a result of such cent per cent check by the manufacturer or packer, any package is found to be not conforming to all or any or of the provisions of the Act or of these rules, such package shall not be sold, distributed or delivered until it has been repacked, re-processed or relabeled, as the case may be, in accordance with the provisions of the Act and of these

rules.

(6) A lot of packages shall be approved for sale if, and only if, as a result of the tests carried out under this rule, it is found that-

(a) the statistical average of the net quantity contained in the sample packages is equal to, or more than, the quantity declared on the package or on the label affixed thereto.

(b) the extent of error in deficiency in none of such sample packages exceeds the maximum permissible error.

(c) each such package bears thereon or on a label affixed thereto- the declarations required to be made under these rules.

(7) The requirement of mandatory declarations on the packages shall be ensured either at the factory level or at the depot of the factory.

*(8) For non-compliance of the provisions of this rule, action may be taken after seizing five representative samples of the packages as evidence and the rest of the packages may be released *(once compliance is ensured) by the manufacturer or the packer, as the case may be. * Provision will stand amended wef 01.07.2012 vide GSR 748(E) dated 24.10.2011. The words within parenthesis will be replaced by "only after the compliance is completed"."*

11. It is noticed that where ever the goods have to be inspected at the premises of manufacturer or packer, procedure is provided under Rule 19 of the Rules, 2011, which provides that the Director, Controller or any Legal Metrology Officer empowered to inspect under Section 15 of the Act, 2011 the authorized person may examine the packages and carry out the tests at the premises of the manufacturer or where the manufacturer is not the packer, of the packer and when he carries out such examination or tests, he shall draw samples from such lot of packages, in such manner and in such number as are specified in the Fifth Schedule and the tests aforesaid shall be carried out in accordance with the method specified in the Sixth Schedule.

12. With regard to inspection of quantity and error in packages at the premises of the wholesale dealer or retailer dealer the procedure is given in Rule 21 of the Rules, 2011. Accordingly, it is noticed that it is only in three conditions that the premises of the wholesale dealer or retailer dealer may be inspected and the condition prior to inspection is that a complaint is received by the Director or Controller of any Legal Metrology Officer who has reason to suspect that any package has been tampered with or that there has been any pilferage or leakage of the commodity contained in the packages and any package, or any label affixed thereto, does not bear thereon all or any of the declarations which

are required to be made under these rules.

13. Aforesaid provisions clearly indicate that aspect of inspection has been duly prescribed and if the premises of the manufacturer or packer are to be inspected then provisions of Rule 19 have to be adhered to, while in case premises of wholesale dealer or retail dealer are to be inspected then provisions of Rule 21 of the Rules, 2011 have to be adhered to.

14. In the present case this Court finds that according to the inspection report the Legal Metrology Department dated 06.08.2013, it is stated that he has inspected the shop of M.s Abhilabh Iron Store, Sipri Bazar, Jhansi and the inspection was done alongwith the owner of the shop Shivpal Das and it has only been stated that the product "M-Seal Phataphat" was found to be lesser in weight. This Court do not find any of the pre-conditions as provided for in Rule 21 of the Rules, 2011 having been followed, neither in any of the orders impugned nor in the counter affidavit, this Court finds any averment that there was any complaint having been filed with regard to the allegations of lesser weight in the product manufactured and sold by the petitioner company. No finding has been recorded by the Officer of the Legal Metrology Department to the effect that there was any tampering with the package or any reason to dispute that the declarations given on the said package were not correctly made.

15. The pre-conditions given in Rules 19 and 21 of the Rules, 2011 are mandatory in nature and have been made with a view to protect the manufacturer and retailer and to ensure that action is taken only against the persons who are guilty of violating the provisions of Legal Metrology Act, 2009.

16. In case the Inspector has found some infirmity while weighing the product manufactured by the petitioner company it was his duty to bring the said fact to the knowledge of the Director of the Metrology Department, who after due inquiry would have passed appropriate orders in terms of sub Rules (1), (2) and (3) of the Rule 21 of the Rules, 2011, before the said package is seized and proceedings have initiated against the manufacturer. Similar is the requirement under Rule 19 with regard to manufacturer where premises of the manufacturer or packer has to be inspected.

17. In the present case there is no material on record to show as to how the Officer of the Metrology Department has weighed the said package and came to the conclusion that it was under weight and this Court does not find any independent witness having accompanied the officer of the Legal Metrology Department, except the owner of the shop whose name has been mentioned by him.

18. Apart from the above, this Court finds that there is no statement of the owner of the shop having been recorded by any of the authorities before

returning finding against the petitioner. Accordingly, it can be said that none of the statutory requirements as provided for under the Act, 2009 were followed by the authorities before putting the petitioner under notice.

19. Further, perusal of appellate order indicates that the same suffers from abject non application of mind. Perusal of impugned order dated 29.05.2014, clearly indicates that grounds of appeal has taken by the petitioner have been recorded and thereafter, report of the Legal Metrology Officer which has been obtained by the appellate authority has been quoted and lastly it has been stated that the grounds taken by the petitioner are fond to be unacceptable. This Court finds that no reasons have been stated by the appellate authority while rejecting the appeal of the petitioner.

20. Whenever an appeal is preferred, the appellate authority is under mandate to take into account the grounds of the accused taken in such an appeal and after duly discussing the said grounds, it is open for him to either accept or reject the appeal after giving adequate reasons in support of his decision.

21. In the present case, not even lip service has been given as no reasons have been given by the appellate authority for rejecting the case of the petitioner, hence the appellate order is clearly illegal, arbitrary and without any application of mind.

22. For the reasons above, present writ petition is **allowed**. The impugned orders dated 14.08.2013, 18.01.2014 and 29.05.2014, are hereby set aside.

(Alok Mathur,J.)

July 10, 2026
A. Verma