

RESEARCH PAPER ON –“THE NEW DEFINITION OF PRE-PACKAGED COMMODITY UNDER THE LEGAL METROLOGY ACT”

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INTRODUCTION

The regulation of pre-packaged commodities had its origin with the enactment of the Standard Weights and Measures Act 1976. The Act provided a definition of ‘commodities in the packaged form’. It also mentioned a few regulations regarding packaging and penalties for non-compliance.

To provide the complete regulations regarding pre-packaged commodities, the Standard weights and Measures (Package Commodities) Rules, 1977 was passed. The rules provide a clear definition of pre-packaged commodities and provide in detail the requirements to be fulfilled by manufacturers of packaged commodities.

Despite the legislation the definition of pre-packaged commodity remained controversial largely owing to the additional duties arising from falling under the purview of the Standard Weights and Measures Act. The courts have had to repeatedly clarify issues regarding the definition of ‘pre-packaged commodities’.

With the objective of bringing in a stronger legislation on the subject, the Legal Metrology Act, 2009 was passed. It came into effect in 2011. The act was followed by the Legal Metrology (Packaged commodity) Rules, 2011 which provide the guidelines to be followed while packaging commodities classified as pre-packaged commodities.

This paper seeks to trace the changing definition of pre-packaged commodities in India and the relevant provisions regarding these commodities in the legal metrology act. Also analysed is section 4A of the central Excise Act, 1944 with reference to manufacturers of pre-packaged commodities. A comparison is made between the Indian law on the subject and US, UK and Australian Law. The result of the survey conducted by the researchers on ‘consumer awareness of product information’ is also provided.

STANDARD WEIGHTS AND MEASURES ACT, 1976

The standard weights and measures act was enacted in the year 1976. The declared objective of the act is as follows-

“An act to establish standards of weights and measures, to regulate inter-state trade or commerce in weights, measures and other goods which are sold or distributed by weight, measure or number, and to provide for matters connected therewith or incidental thereto”²

The act was primarily meant for regulating the inter-state trade and commerce in goods sold or distributed by weight. It does not apply to goods meant to be sold within the state. It also at the time, override all laws inconsistent with its provisions during the time.

The act defines a commodity in packaged form-*“means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail.”³*

The act primarily dealt with goods both wholesale and retail goods meant for inter-state trade or commerce. Section 39 of the act clearly states that no person shall transact in these packaged goods without including in its label the information to be printed as mandated by that section.

STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) RULES, 1977

Subsequent to the act, The Standard of weights and Measures (Packaged commodities) Rules, 1977 was enacted. The rules were enacted in pursuance of the power conferred on the central government by section 83 of the Standard Weights and Measures Act to make rules regarding specific provisions. These rules were intended to apply to packaged commodities that are likely to be sold, delivered or distributed or offered or stored for the same. ⁴

The rules provide a definition for pre-packaged commodity-

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 pre-determined 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.⁵

Rule 4, under chapter 2 of the act clearly establishes that from the commencement of these rules no person shall pre-pack goods without a label with the declarations as are mentioned in the rules. Several amendments were made to these rules and the Standard weights and measures Act over the years. An amendment to the Standard Weights and Measures Act passed in the year 2006 changed the definition of pre-packaged commodities. The new definition provided by the amendment-

Pre-packed commodity", means a commodity, which without the purchaser being present is placed in a package of whatever nature, whether sealed or opened, so that the commodity contained therein has a pre-determined value and includes those commodities which could be taken out of the package for testing or examining or inspecting the commodity.

LEGAL METROLOGY ACT, 2009

The Legal Metrology Act 2009 was enacted with a view to bring in a stronger legislation to regulate legal metrology. Section 57 of the act clearly states that the Standard weights and measures act, 1976 and the Standard of weights and measures (enforcement) rules, 1985 are repealed by the Legal Metrology Act.

The declared objective of the Legal Metrology Act is as follows-

*"An act to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto"*⁶

Unlike the Standard weights and measures Act, the Legal metrology Act does not restrict itself to inter-state commerce and trade. The legal metrology act also provides a clear definition of pre-packaged commodities-

*"Pre-packaged commodity means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-quantity"*⁷

There is a visible change in the definition and the importance given to it in the legal metrology Act. Unlike in the earlier act, the legal metrology act provides a definition of pre-packaged commodities in the act itself and not in the rules. There is also a marked change in the definition. The definition

no longer talks about the testing and examining of the commodity by taking it out of the pack. The earlier rules mandated that the product must have a pre-determined value while the new Act calls for a pre-determined quantity.

The Legal Metrology (Packaged Commodities) Rules, 2011 was enacted to provide the guidelines to be followed by the manufacturers of pre-packaged commodities. Section 36 of the Legal Metrology Act provides the penalty for selling of non-standard packages. According to the section, anyone who-*“manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale”*in non-compliance with the provisions of the act, shall be punished with a fine of twenty five thousand for the first offence and fifty thousand for the second offence. For subsequent offences, the fine will not be less than fifty thousand rupees, which may extend to one lakh rupees. The defaulter may also be imprisoned for a term which may extend to one year.

Anyone who “manufactures or packs or imports or causes to be manufactured or packed or imported, any pre-packaged commodity” with an error in the quantity as declared on the pack shall be punished with a fine ranging from ten thousand to fifty thousand rupees for the first offence and a fine which may extend to one lakh rupees for the second offence and/ or imprisonment which may extend to a term of one year.⁹

The penalty in the present act for first offences is higher than in the Standard Weights and Measures Act where a fine of five thousand rupees is imposed. For second and subsequent offences, however, the Standard Weights and Measures Act provides for imprisonment for a term which may extend to five years and fine. The standard weights and measures Act also does not provide for separate penalties for general offences and offences related to the wrong declaration of quantity.¹⁰ The Legal Metrology Act clearly provides a more balanced approach in terms of penalties imposed. The Standard weights and measures Act contains a section specially dedicated to the declarations to be made on a pre-packaged commodity.¹¹ The legal Metrology Act has no such provision.

The legal Metrology (Packaged commodity) Rules, 2011 provides the guidelines to be followed by manufacturers of pre-packaged commodities.

The definition of pre-packaged commodities has remained controversial since the enactment of the standard weights and measures act. The courts have had to repeatedly clarify issues related to the act. In the following pages, the paper will trace a few of these landmark judgments in order to understand the reasons for the change in the definition of pre-packaged commodities and also gain greater clarity on what the definition entails.

A great amount of confusion created regarding the definition of pre-packaged commodities is due to misunderstanding of the nature of package that the legislation is referring to. One such case was *AMA Hospitality Private Limited v. GNTC of Delhi and another*¹² in which the plaintiffs were sellers of baked goods. The outlet they were running provided consumers with the option of eating at the outlet or ‘take away’. The inspector of Legal Metrology on visiting the outlet found that the take away packets did not provide the information needed to be published under the Standard weights and Measures (Packaged commodity) Rules, 1977 for packaged commodities.

Two notices were served on the plaintiffs who then filed a writ petition challenging them. The Delhi High court in this remarked that ‘package’ is defined neither in the act nor in the rules. The court referred to the definition of ‘retail package’-“The packages meant for retail sale to the ultimate

consumer for the purpose of consumption of the commodity contained therein” The courts remarked that ‘package’ in this case was in reference to something of a durable nature and would have to preserve the commodity for a longer period of time. As fast food is meant to be consumed shortly after being bought, the take away cannot in this case be considered a packaged commodity.

In the case of *Whirlpool of India Limited v. Union of India and others*¹³, the issue was brought by Whirlpool in response to the central government issuing a notification classifying refrigerators under section 4A of the Central Excise Act. The plaintiffs sought to challenge the classification of refrigerators as pre-packaged commodities. The argument of the council was that refrigerators though packed during sale, are almost always inspected by the customer before buying. The court in deciding the case referred to the definition of pre-packaged commodity under the Standard weight and Measures (Packaged commodity) Rules, 1977 in order to rule that refrigerators are in fact pre-packaged commodities and will continue to be taxed under section 4A as the manufacturers will be required to print the MRP on the package.

CONCLUSION

Through the course of this paper, the changing definition of pre-packaged commodities has been analyzed. The central excise act, in particular, section 4A of the act has analysed with reference to manufacturers of pre-packaged commodities. Case analysis was done regarding violations of the Standard weights and Measures act and the Legal Metrology Act my manufacturers to avoid coming under the purview of the section 4A.

This paper suggests the inclusion of the relevant provisions from the Seeds Act, Food Safety and Standards Act, Drugs and cosmetics Rules into the legal metrology Act in order to make it easier for manufacturers. While this paper acknowledges the positive steps made by the Legal Metrology Act in this regard, it recommends that there be greater differentiation of liabilities for violations with regard to the degree of the violation. This must be done especially keeping in mind the possibility of imprisonment for subsequent violations.

There also needs to be special provisions mandating that quantity be published along with MRP on the front of the pack. The same should also be provided in the local language along with English.

(Endnotes)

- 1 * B.A. LLB (5th Year);UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
- 2 Preamble, Standard Weight and Measures Act, 1976.
- 3 Sec. 2, Standard Weights and Measures Act, 1976.
- 4 Rule. 1, Standard of weights and Measures (Packaged Commodities) Rules, 1977.
- 5 Rule. 2, Standard of weights and Measures (Packaged Commodities) Rules, 1977.
- 6 Preamble, Legal Metrology Act, 2009.
- 7 Sec 2, Legal Metrology Act, 2009.
- 8 Sec. 36, Legal Metrology Act, 2009.
- 9 Sec 36, Legal Metrology Act, 2009.
- 10 Sec 63, Standard Weights and Measures Act, 1976.
- 11 Sec 39, Standard Weights and Measures Act, 1976.
- 12 *AMA Hospitality Private Limited v. GNTC of Delhi and another*, 2011 (176) DLT 474 (Delhi High Court).
- 13 *Whirlpool of India Limited v. Union of India and others*, AIR 2008 SC 397 (Supreme Court).