

WHIRLPOOL OF INDIA LTD.

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v.

UNION OF INDIA AND ORS.

NOVEMBER 2, 2007

[ASHOK BHAN, H.S. BEDI AND V.S. SIRPURKAR, JJ.]

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*Central Excise Act 1944—s. 4 A (1) and (2)—Notification under— One of the conditions for inclusion of the goods in the Notification that it should be ‘packaged good’—Inclusion of Refrigerator in the Notification—Challenged only on the ground that it is not a ‘packaged good’—Held: Refrigerator is a ‘packaged commodity’ under Standards of Weights and Measures Act and Rules framed thereunder—Hence its inclusion in Notification not wrong on this ground, unless validity of the Notification is challenged otherwise—Standards of Weights and Measures Act, 1976—s. 2(b)—Standards of Weights and Measures (Packaged Commodities) Rules, 1977—rr. 2(1), 3 and 6.*

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**By Notification No. 9 of 2000 dated 1.3.2000 under section 4A (1) and (2) of Central Excise Act, the goods mentioned in Column 5 of the Notification were to be valued on the basis of Maximum Retail Price which was required to be printed on the packages of such goods. Few of the Conditions for inclusion of the goods in the Notification was that the goods should be such as were sold in the package and there should be requirement in the Standards of Weights and Measures Act, 1976 or the Rules framed thereunder or any other law to declare the price of such goods relating to their retail price on the package. Appellant (manufacturer of Refrigerator) was aggrieved by inclusion of Refrigerator in the Notification on the ground that it should not be required to declare the MRP on the refrigerators as the same cannot be termed as a ‘packaged commodity’ and the provisions of Standards of Weights and Measures, Act, 1976 or the Rules made thereunder were not applicable to it. Appellant filed Writ Petition challenging the**

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A **Notification to this limited extent. High Court dismissed the Writ Petition. Hence the present appeal.**

**Dismissing the appeal, the Court**

B **HELD: 1. It was not disputed that the appellant-manufacturer has to sell the Refrigerators which are packed in polythene cover, thermocol, etc., and placed in hard board cartons. Once that position is clear, then the Refrigerator clearly becomes a commodity in the packaged form. [Para 4] [873-D, E]**

C **2. The use of the terms “or otherwise” in the definition of ‘Commodity in packaged form’ u/s 2 (b) of Standards of Weights and Measures Act would suggest that a commodity if packed in any manner in units suitable for sale, whether wholesale or retail, becomes a “commodity in packaged form”. Even if the package of the Refrigerator is required to be opened for testing, even then the Refrigerator would continue to be a “pre-packed commodity”. There are various types of packages defined under the Rules and ultimately Rule 3 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 specifically suggests that the provisions of Chapter II would apply to the packages intended for “retail sale” and the expression “package” would be construed accordingly. Once the position that the Refrigerator is not covered under the ‘retail sale’ is clear, Rule 6 would specifically include the Refrigerator and would carry along with it the requirements by that Rule of printing certain information including the sale price on the package. Thus it is clear that by being sold by the manufacturer in a packaged form, the Refrigerator would be covered by the provisions of the Act and the Rules and it would be imperative that the MRP has to be printed in terms of Rule 6. [Para 4] [873-E, F; 874-C, D, E, F]**

G **3. Even if the MRP would be different depending upon the area in which it is being sold, that cannot absolve the manufacturer from displaying the price, i.e., the MRP on the package in which the Refrigerator is packed. A Refrigerator is a “packaged commodity” and thus is covered under the Act and the Rules and therefore, the notification dated 1.3.2000 cannot be faulted on that ground. The**

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**appellant has not otherwise challenged the validity of the Notification on any other ground. Once the Notification included the Refrigerator, unless the validity of the notification was challenged, the appellant cannot get out of the scope of the notification. The notification cannot be faulted merely because the appellant feels that the Refrigerator is not a packaged commodity. [Paras 5 and 6] [875-A, B, C]**

*Jayanti Food Processing (P) Ltd. v. Commissioner of Central Excise, Rajasthan, (2007) 10 SCALE 223, relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7417 of 2001.

From the final Judgment and Order dated 13.08.2001 of the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition No. 13697 of 2000.

Sanjeev Narula and Jay Kishor Singh (for Subramonium Prasad) for the Appellant.

K. Radhakrishnan, B. Sunita Rao, P.S. Narsimha and Ajay Sharma (for B. Krishna Prasad and B.V. Balaram Das) for the Respondents.

The Judgment of the Court was delivered by

**V.S. SIRPURKAR, J.** 1. The short but interesting question as to whether Refrigerator is a “packaged commodity” falls for consideration in this appeal. The appellant is engaged in manufacturing Refrigerators. The Central Government issued a Notification No.9 of 2000 dated 1.3.2000 under Section 4A(1) & (2) of Central Excise Act (for short “the Act”) and specified the goods mentioned in Column 3 of the said notification. Entry No.48 pertains to the refrigerators whereby the Refrigerators invited valuation under Section 4A of the Central Excise Act with the abatement of 40%. Section 4A(1)&(2) of the Central Excise Act require that any goods included in the notification shall be valued on the basis of the Maximum Retail Price (for short “MRP”) which is required to be printed on the packages of such goods. The five conditions for inclusion of the goods are:

“(i) The goods should be excisable goods;

- A (ii) They should be such as are sold in the package;
- (iii) There should be requirement in the SWM Act or the Rules made thereunder or any other law to declare the price of such goods relating to their retail price on the package.
- B (iv) The Central Government must have specified such goods by notification in the Official Gazette;
- (v) The valuation of such goods would be as per the declared retail sale price on the packages less the amount of abatement.”

C 2. The appellant felt aggrieved by the fact the Refrigerators were covered and included in the aforementioned notification dated 1.3.2000 as, according to the appellant, the Refrigerator is not such a commodity which is sold in a package. Significantly, the appellant is not aggrieved by its valuation of being under Section 4A(1)&(2) of the Act. The only complaint that the appellant made is that the appellant should not be required to print the MRP on the package of the Refrigerator manufactured by it. The appellant, therefore, filed a Writ Petition before the High Court of Punjab and Haryana praying, *inter alia*, for a writ of certiorarified mandamus restraining the authorities for taking any coercive measures against the appellant or its Directors, Officers, Servants or Agents for not declaring the MRP on the Refrigerators manufactured and cleared by the appellant from its factory. The notification dated 1.3.2000 was challenged to this limited extent only. Before the High Court the appellant pleaded that Refrigerator is not such a commodity which can be termed to be a “packaged commodity” and further the provisions of The Standards of D E F Weights and Measures Act, 1976 (for short “SWM Act”) or the Rules made thereunder are not applicable to the Refrigerator at all. It was, therefore, prayed that the notification was liable to be quashed only to the extent that it included the Refrigerator and the requirement of declaring MRP on the Refrigerator.

G 3. The Respondent Authorities, however, maintained that the Refrigerator was in fact sold in a package of polythene cover, thermocol, H hardboard cartons etc., and thus it falls in the category of “pre-packed commodity”. On that basis it was contended that since every packaged commodity was included in the SWM Act and the Rules made thereunder,

there can be no escape from printing the MRP on the package. The High Court rejected the contention and dismissed the petition filed by the appellant. Hence the present appeal before us. A

4. Learned counsel very vehemently contended that a Refrigerator, as a matter of fact, is not sold in a packaged form. The thrust of the argument is that even if it is sold in the packaged form, when it is displayed by the dealers, it is not in the packaged form and the customers can take the inspection of the Refrigerator and atleast for that purpose the package has to be opened and, therefore, there would be no question of the Refrigerator being included in the SWM Act or the Rules made thereunder. The submission is quite incorrect. When we see various provisions of the SWM Act and the Rules made thereunder, it is clear that Section 2(b) defines "commodity in packaged form". The definition says: B C

"commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail." D

It was not disputed before the High Court and also before us that the appellant-manufacturer has to sell the Refrigerators which are packed in polythene cover, thermocol, etc., and placed in hard board cartons. In fact the appellant had so pleaded before the High Court in para 3 to which a reference has been made by the High Court. Once that position is clear, then the Refrigerator clearly becomes a commodity in the packaged form. The use of the terms "or otherwise" in the definition would suggest that a commodity if packed in any manner in units suitable for sale, whether wholesale or retail, becomes a "commodity in packed form". In the year 1977 The Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (for short "SWM (PC) Rules"). Rule 2(l) defines "pre packed commodity" which is as under: E F

"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 or whatever nature, so that the quantity of the product contained therein has a pre-determined value and such value cannot be altered G H

A 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.”

B Explanation I- Where, by reason merely of the opening of a package no alteration is caused to the value, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these rules, to be a pre-packed commodity, for example, an electric bulb or fluorescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity.

C Explanation II Not relevant.”

D A glance at this provision and more particularly to Explanation I would suggest that the Refrigerator is covered under the term “pre-packed commodity”. Even if the package of the Refrigerator is required to be opened for testing, even then the Refrigerator would continue to be a “pre-packed commodity”. There are various types of packages defined under the Rules and ultimately Rule 3 specifically suggests that the provisions of Chapter II would apply to the packages intended for “retail sale” and the expression “package” would be construed accordingly. It is not disputed before us that the sale of the Refrigerator is covered under the “retail sale”. Once that position is clear Rule 6 would specifically include the Refrigerator and would carry along with it the requirements by that Rule of printing certain information including the sale price on the package.

E Thus it is clear that by being sold by the manufacturer in a packaged form, the Refrigerator would be covered by the provisions of SWM Act and SWM (PC) Rules and it would be imperative that the MRP has to be printed in terms of Rule 6 which has been referred to above. The High Court has also made a reference to Rule 2(1) and more particularly, the

G Explanation to which we have referred to earlier. In our view the reliance by the High Court on Rule 2(1) is correct. Learned counsel tried to urge that every customer would like to open the package before finalizing to purchase the Refrigerator. He would atleast get it tested and for that purpose the package would be destroyed. That may be so but it does

H not change the position as rightly observed by the High Court.

5. It was tried to be suggested that the MRP would be different depending upon the area in which it is being sold. That may be so, however, that cannot absolve the manufacturer from displaying the price, i.e., the MRP on the package in which the Refrigerator is packed. Whatever be the situation, it is clear that a Refrigerator is a “packaged commodity” and thus is covered under SWM Act and SWM (PC) Rules and therefore, the notification dated 1.3.2000 cannot be faulted on that ground. It is significant to note that the appellant has not otherwise challenged the validity of the notification dated 1.3.2000 on any other ground. All that is challenged is the applicability of the commodity like the Refrigerator.

6. Once the notification included the Refrigerator, unless the validity of the notification was challenged, the appellant cannot get out of the scope of the notification. The notification cannot be faulted merely because the appellant feels that the Refrigerator is not a packaged commodity. We have already shown that the Refrigerator is a “packaged commodity” and once it is included in the notification, unless the notification is faulted on any other ground, the effect of the notification would remain intact in so far as Refrigerator is concerned. On that ground also the appeal has to be rejected.

7. In fact the question regarding the assessment of the Refrigerator was considered by this Court in *Jayanti Food Processing (P) Ltd. v. Commissioner of Central Excise, Rajasthan*, (2007) 10 SCALE 223 where it was held that the Refrigerators have to be assessed under Section 4A of the Act and not under Section 4 of the Act. The present contention, however, was not raised in that case.

8. In the result the Judgment of the High Court is confirmed and the appeal is dismissed with costs.

K.K.T.

Appeal dismissed.