

Union Of India vs Godrej - Ge Appllences Ltd on 9 April, 2008

Equivalent citations: AIR 2008 (NOC) 2894 (KER.)

Author: K.T.Sankaran

Bench: H.L.Dattu, K.T.Sankaran

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WA.No. 218 of 2003(B)

1. UNION OF INDIA,
... Petitioner
2. THE DIRECTOR OF LEGAL METROLOGY,

Vs

1. GODREJ - GE APPLLENCES LTD.,
... Respondent
2. CONTROLLER OF LEGAL METROLOGY,
3. INSPECTOR OF -DO- -DO-, KAKKANAD.

For Petitioner :SRI.P.PARAMESWARAN NAIR,ASG

For Respondent :GOVERNMENT PLEADER

The Hon'ble the Chief Justice MR.H.L.DATTU
The Hon'ble MR. Justice K.T.SANKARAN

Dated :09/04/2008

O R D E R

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.NOS. 218 OF 2003, 1098 OF 2003, 1217

OF 2003,1268 OF 2003, 1287 OF 2003, 291

OF 2004 AND O.P.NOS.12058 OF 1993,
16410 OF 1993, 17873 OF 1993, 15944 OF
1994, 11776 OF 1998, 16411 OF 1998, 18575
OF 1998, 21869 OF 1998, 5157 OF 1999,
9544 OF 1999, 17181 OF 1999, 21390 OF
1999, 21966 OF 1999, 27234 OF 1999, 29816
OF 1999, 2074 OF 2000, 7575 OF 2000,
11318 OF 2000, 32784 OF 2000, 12395 OF
2001, 13446 OF 2001, 16338 OF 2001, 19313
OF 2001, 24323 OF 2001, 17675 OF 2002
AND 1656 OF 2003.

Dated this the 9th April, 2008

JUDGMENT

K.T.SANKARAN, J.

This batch of Writ Appeals and Writ Petitions are disposed of by a common judgment since common questions relating to interpretation of the provisions of the Standards of Weights and Measures Act, 1976 (hereinafter referred to as "the Standards Act"), the Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as "the Enforcement Act") and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as "the Rules") are involved in these cases.

2. W.A.Nos.218 of 2003 and 1098 of 2003 arise out of O.P.No.16488 of 1998. The Original Petition was filed by Godrej/GE Appliances Limited, first respondent in the Writ Appeals. These Writ Appeals are being dealt with at first so that the decision herein can be followed, to the extent possible, in other cases.

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 2 ::

3. O.P.No.16488 of 1998 was filed for the following reliefs:

"(a) for an order and declaration of this Hon'ble Court that the provisions of Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and the Standards of Weights and

Measures (Enforcement) Act, 1985 do not apply to the products manufactured and marketed by the petitioner;

(b) for an order and declaration of this Hon'ble Court that Section 33 of the Standards of Weights and Measures (Enforcement) Act, 1985 is ultra vires the Constitution of India and is void and liable to be struck down;

(c) for a writ of certiorari, or a writ in the nature of certiorari, or any other appropriate writ, order or direction of this Hon'ble Court calling for the records of the case and, after perusing the same, to quash and set aside all actions initiated against the petitioner including Exts.P1, P3 and P5 of 3rd Respondent;

(d) for a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction of this Hon'ble Court restraining the Respondents by themselves, their officers, servants and agents, from taking any action whatsoever against the petitioner pursuant to or in implementation of any of the provisions of the Standards of Weights and Measures Act, 1976, the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, and the Standards of Weights and Measures (Enforcement) Act, 1985 in respect of the manufacture, sale, storage, packing and distribution in the petitioner's products including by launching and/or initiating any legal proceedings, civil or criminal whatsoever against the petitioner or the Directors, servant and agents of the petitioner;"

4. The petitioner in the writ petition, namely, Godrej/GE Appliances Limited, manufactures refrigerators, air-conditioners and washing machines. They filed the writ petition when show cause notices were issued on the ground that the statutory declarations as laid down under Rule 6(1)(c), (f) and Rule 12(5) W.A.NO.218 OF 2003 AND CONNECTED CASES :: 3 ::

(f) of the Rules are not made on the package containing refrigerators. According to the petitioner, the products manufactured and despatched by them in corrugated boxes are so despatched primarily and essentially for the purpose of protecting the goods while in transit from the factory to the warehouse and thereafter from warehouse to the dealers' shops. Thermocole and polythene covers are used to protect the devices or equipments. The goods do not satisfy the definition of commodity in packaged form or pre-packed commodity. The products would be displayed in the shops after opening from the package. The customer would inspect the product and, if satisfied, would place an order and the product would be supplied to him. It was contended that the products manufactured by the petitioner do not come within the ambit of the aforesaid Rules of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The learned Single Judge allowed the Original Petition. It was held thus:

"By reason of Standards of Weights and Measures (Enforcement) Act 1985, the former is made applicable for intra State trade as well. Therefore the provisions

therein are applicable only in respect of the trade or commerce by weight, measure or number. A stereo set or a refrigerator is not sold in weight or by measure or by number. It will be sold only in single number. There is no case before me by the respondents that such equipments or devices are sold in packets containing more than one.

..... As already mentioned above, these equipments are sold, with freedom for the customer to inspect and satisfy regarding its appearance and functioning. Therefore it cannot be taken that it is a commodity sold in package. Nobody is purchasing equipments like refrigerator or devices like Television sets, stereo sets etc., in packed form. Any purchaser will first get satisfied of its appearance and functioning. Then alone one will buy such articles. Therefore on any count it cannot be taken that
W.A.NO.218 OF 2003 AND CONNECTED CASES :: 4 ::

such equipment or devices are packaged commodity to come under the definition in Sec.2(b) of the 1976 Act.

9. When those are not packaged commodities, restrictions contained in Sec.39 of 1976 Act cannot be made applicable to such commodities. Naturally, there cannot be any violation to be proceeded against the petitioners including by prosecution."

However, the learned single Judge held that the specifications of the equipments or devices are to be shown on the polythene or hardboard cover. It was held thus:

"In such circumstances, it is only appropriate, when equipments or devices are so covered, though not covered by Section 39 of the 1976 Act, to show specification of the concerned equipments or devices as the case may be."

5. The contention that Section 33 of the Enforcement Act ultra vires the Constitution of India, void and is liable to be struck down was not apparently argued before the learned Single Judge. The learned counsel for the first respondent (petitioner in the Original Petition) did not raise that contention in the Writ Appeal as well.

6. The Standards Act is 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. The Standards Act is divided into parts I to VIII. Part IV deals with "inter-State trade or commerce in weight, measure or other goods". Section 2(b) of the Standards Act defines "commodity in packaged form" thus:

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 5 ::

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

Section 31 of the Standards Act reads as follows:

"31. Part IV to apply to inter-State trade or commerce only:- The provisions of this Part shall apply to --

(a) every weight or measure which is, or is intended to be, --

- (i) made or manufactured for the purpose of inter-State trade or commerce,
- (ii) used, sold, distributed, delivered or otherwise transferred in the course of inter-State trade or commerce;

(b) goods which are, or are intended to be, sold,

distributed, delivered or otherwise transferred by weight, measure or number in the course of inter-

State trade or commerce;

(c) every service which is rendered by weight, measure or number in relation to, or in the course of, inter-State trade or commerce."

Section 39 of the Standards Act provides for declaration of quantities and origin of commodities in packaged form. Sub-sections (1) to (3) of Section 39 read as follows:

"39. Quantities and origin of commodities in packaged form to be declared:-- (1) No person shall, --

- (a) make, manufacture, pack, sell, or cause to be packed or sold; or
- (b) distribute, deliver, or cause to be distributed or delivered; or

W.A.NO.218 OF 2003 AND CONNECTED CASES

:: 6 ::

(c) offer, expose or possess for sale,

any commodity in packaged form to which this Part applies unless such package bears thereon or on a label securely attached thereto a definite, plain and conspicuous declaration, made in the prescribed manner, of --

- (i) the identity of the commodity in the package;
- (ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
- (iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
- (iv) the unit sale price of the commodity in the package; and
- (v) the sale price of the package.

Explanation:-- In this sub-section, the expression "unit sale price" means the price according to such unit or weight, measure or number as may be prescribed.

(2) Every package to which this Part applies shall bear thereon the name of the manufacturer and also of the packer or distributor.

(3) Where the package of a commodity to which this Part applies or the label thereon bears a representation as to the number of servings, of the commodity contained therein, such package or label shall also bear a statement as to the net quantity (in terms of weight, measure or number) of each such serving."

Section 83 provides that the Central Government may, by notification, make rules for carrying out the provisions of the Standards Act.

7. The Standards of Weights and Measures (Packaged Commodities) W.A.NO.218 OF 2003 AND CONNECTED CASES :: 7 ::

Rules, 1977 were framed by the Central Government in exercise of the powers conferred by Section 83 of the Standards Act. The Rules shall apply to the commodities in the packaged form which are, or are intended or likely to be (i) sold, distributed or delivered or offered or displayed for sale, distribution or delivery, or (ii) stored for sale or for distribution or delivery, in the course of inter- State trade and commerce (Vide: Rule 1(3)). The expression "pre-packed commodity" is defined in Rule 2(l), thus:

"(l) "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 predetermined 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;

Explanation [1]:-- 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.

Explanation II:-- Where a commodity consists of a number of components and these components are packed in one, two or more units for sale as a single commodity, such commodity shall be deemed for the purpose of these rules, to be a pre-packed commodity;"

Rule 2(r) defines "retail sale price" as follows:

"(r) "retail sale price" means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and where such price is mentioned on the W.A.NO.218 OF 2003 AND CONNECTED CASES :: 8 ::

package, there shall be printed on the packages the words Maximum or Max, retail prices ... inclusive of all taxes or in the form MRP Rs.... inclusive of all taxes.

Explanation:-- For the purpose of the clause "maximum price" in relation to any commodity in packaged form shall include all taxes local or otherwise, freight, transport charges, commission payable to dealers, and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be;"

Chapter II of the Rules relates to "Provisions applicable to packages intended for retail sale". Rule 3 provides that the provisions of Chapter II shall apply to packages intended for retail sale and the expression "package", wherever it occurs in the said Chapter shall be construed accordingly. Rule 4 stipulates that on and from the commencement of the Rules, no person shall pre-pack, or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under the rules. Rule 6 provides that every package shall bear thereon or on a label securely affixed thereto, a definite, plain and conspicuous declaration as to the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer; the common or generic names of the commodity contained in the package; the net quantity, in terms of the standard unit of weight or measure, of the commodity contained in the package or where the commodity is packed or sold by number, the number of the commodity contained in the package; the month and year in which the commodity is manufactured or pre-packed; the sale price of the package etc. W.A.NO.218 OF 2003 AND CONNECTED CASES :: 9 ::

Rule 12 provides the manner in which declaration of quantity shall be expressed. As per Rule 12(5), additional information about the commodity contained in a package shall also appear on the same panel in which the other information, as required by the rules have been indicated. Illustrations are provided in sub-rule (5). Illustration (f) therein states that in the case of electrical or electronic appliances, the voltage and wattage and also the output of such electrical or electronic appliances shall be mentioned. Rule 13(5) states that when any commodity is packed by number, such number shall be expressed on the package in international form of Indian numerals and every package intended to be sold by number shall be packed in the manner specified in the Sixth Schedule. The Sixth Schedule states that where any commodity is packed by number, such packing shall be made in the manner indicated therein. Clause (a) provides that where the number is less than ten, it shall be by the integral number. Rule 23 deals with the provisions relating to wholesale dealer and retail dealers. Rule 23 reads as follows:

"23. Provisions relating to wholesale dealer and retail dealers:-- (1) No wholesale dealer or retail dealer 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.

(2) No retail dealer or other person including manufacturer, packer and wholesale dealer shall make any sale of any commodity in packaged form at a price exceeding the retail sale price thereof.

Explanation:-- For the removal of doubts, it is hereby declared that a sale, distribution or delivery by a wholesale dealer to a retail dealer or other person is a 'retail sale' within the meaning of this sub-rule.

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 10 ::

(4) Where, after any commodity has been pre-packed, for sale, any tax payable in relation to such commodity is revised, the retail dealer or any other person shall not make any retail sale of such commodity at a price exceeding the revised retail sale price, communicated to him by the manufacturer, or where the manufacturer is not the packer, the packer and it shall be the duty of the manufacturer or packer as the case may be, to indicate by not less than two advertisements in one or more newspapers and also by circulation of notices to the dealers and to the Director in the Central Government and Controllers of Legal Metrology in the States and Union Territories, the revised prices of such packages but the difference between the price marked, on the package and the revised price shall not, in any case, be higher than the extent of increase in the tax or in the case of imposition of fresh tax higher than the fresh tax so imposed:

Provided that publication in any newspaper, of such revised price shall not be necessary where such revision is due to any increase in, or in imposition of, any tax payable under any law made by the State Legislatures:

Provided further that the retail dealer or other person shall not charge such revised prices in relation to any packages except those packages which bear marking indicating that they were pre-packed in the month in which such tax has been revised or fresh tax has been imposed or in the month immediately following the month aforesaid:

Provided also that where the revised prices are lower than the price marked on the package the retail dealer or other person shall not charge any price in excess of the revised price, irrespective of the month in which the commodity was pre-packed.

(5) Nothing in sub-rule (4) shall apply to a package which is not required under these rules to indicate the month and the year in which it was pre-packed.

(6) No retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer, as the case may be, on the package or on the label affixed thereto.

(7) The manufacturer or packer shall not alter the price on the wrapper once printed and used for packing."

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 11 ::

Rule 39 provides that if any person contravenes the provisions of rule 6, or tampers with, obliterates or alters any declaration made on any package, he shall be punished with fine, which may extend to Rs.2,000/-.

8. The Standards of Weights and Measures (Enforcement) Act, 1985 was enacted to provide for the enforcement of the standards of weights and measures established by or under the Standards of Weights and Measures Act, 1976, and for matters connected therewith and incidental thereto. The Enforcement Act extends to the whole of India. It shall come into force in a State on such date as the State Government may, by notification, appoint. The Enforcement Act came into force in the State of Kerala in the year 1992, by a notification issued by the State Government on 24.7.1992. Section 33 of the Enforcement Act occurring in Chapter IX reads as follows:

"33. Provisions of the Standards Act and the rules made thereunder relating to commodities in packaged form to apply to commodities in packaged form sold or distributed within the State: -- (1) The provisions of the Standards Act and the rules made thereunder, as in force immediately before the commencement of this Act, with regard to commodities in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State as if the provisions aforesaid were enacted by, or made

under, this Act subject to the modification that any reference therein to the "Central Government", "Standards Act" and the "Director" shall be construed as references respectively, to the "State Government", "this Act" and the "Controller".

(2) The State Government may make rules, not inconsistent with the Standards Act or any rule made thereunder, to regulate the packaging of any commodity intended to be sold or distributed, within the State in packaged form, or to regulate the sale or distribution, within the State, of any commodity in W.A.NO.218 OF 2003 AND CONNECTED CASES :: 12 ::

packaged form.

Explanation:- For the purposes of this section, "commodity in packaged form" shall have the meaning assigned to it in the Standards Act and shall include a pre-packed commodity."

Section 51 of the Enforcement Act provides for penalty for contravention of Section 33.

9. W.A.No.218 of 2003 is filed by respondents 1 and 2 in the Original Petition No. 16488 of 1998 while W.A.No.1098 of 2003 is filed by respondents 3 and 4. Sri.P.Parameswaran Nair, learned Assistant Solicitor General of India and the learned Government Pleader appearing for the appellants submitted that the finding of the learned single Judge that a stereo set or a refrigerator is not sold by weight or by measure or by number is not correct in view of the provisions of the Standards Act and the Rules. Learned counsel also submits that simply because the customer has the freedom to inspect and satisfy regarding appearance and functioning of the refrigerator, it cannot be taken that it is not a commodity sold in package. The finding of the learned single Judge that refrigerators or stereo sets are not packaged commodities is also being questioned by the learned counsel for the appellant.

10. Sri.A.M.Shafiq, learned senior counsel appearing for the first respondent/writ petitioner submits that the Standards Act and Rules and the Enforcement Act do not apply to the manufacture and sale of refrigerators as it W.A.NO.218 OF 2003 AND CONNECTED CASES :: 13 ::

does not satisfy the definition of "packaged commodity" of "pre-packed commodity". He submitted that the decision of the learned single Judge is correct, in the light of the various provisions in the Standards Act and Rules.

11. We also heard Senior Advocate Sri.Chacko George, Sri.Jaju Babu, Senior Advocate Sri.S.V.Balakrishna Iyer and other counsel appearing for the parties in the connected writ petitions, who made submissions in the connected cases and touched upon the various aspects of the Standards Acts and Rules.

12. The Honourable Supreme Court in India Photographic Co. Ltd. v. H.D.Shourie ((1999) 6 SCC 428), considered the question whether it was necessary to print the price on the package of films

manufactured by Kodak. A complaint was filed by a consumer before the District Consumer Disputes Redressal Forum for the issuance of appropriate directions to protect the interests of the consumers. The complainant contended that it was mandatory to print the price on the package. The District Forum directed the manufacturer to display the sale price of the film on the package. The decision of the District Forum was confirmed by the State Consumer Disputes Redressal Commission and the National Consumer Disputes Redressal Commission. The National Commission held that the cartons containing large numbers of film rolls sold on wholesale basis shall be affixed with a sticker indicating the price at which film roll may be sold in retail and that in the case of retail sales, each packet containing a single roll of film should bear a sticker showing the price of the film W.A.NO.218 OF 2003 AND CONNECTED CASES :: 14 ::

roll. The Honourable Supreme Court dismissed the appeal filed by the manufacturer against the decision of the National Commission. The Supreme Court in that context dealt with the provisions of the Consumer Protection Act, 1986 and the Standards Act and Rules framed thereunder and held as follows:

"4. The Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of the consumers by making provisions for the establishment of consumer councils, other authorities for the settlement of consumer disputes and for matters connected therewith. The Act was enacted as a result of widespread consumer protection movement. On the basis of the report of the Secretary General on Consumer Protection dated 27-5-1983, the United Nations Economic and Social Council recommended that the world Governments should develop, strengthen and implement a coherent consumer protection policy taking into consideration the guidelines set out therein. Each Government was obliged to set its own priorities for the protection of consumers in accordance with the economic and social conditions of the country keeping in view the needs of its people and bearing in mind the costs and benefit of the proposed legislation. The Governments were to further provide adequate infrastructure including the bodies as well as financial facilities to develop, implement and monitor consumer protection policies. The introduction of new products in the developing countries was to be assessed in relation to the local conditions having regard to the existing production, distribution and consumption patterns of the country or region concerned. The various enactments such as the Contract Act, the Standards of Weights and Measures Act, the Motor Vehicles Act, the Monopolies and Restrictive Trade Practices Act, the Food Adulteration Act etc. were found to be inadequate in providing the relief to the consumers. In discharge of the international obligations and to protect the interest of the consumer in the country, the Consumer Protection Act, 1986 was enacted (hereinafter called "the 1986 Act"). With reference to the consumer movement and the international obligations for protection of the rights of the consumer, provision has been made herein with the object of interpreting the relevant law in a rational manner and for achieving the objective set forth in the Act. A rational approach and not a technical approach is the mandate of law."

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 15 ::

The Supreme Court also held that:

"A perusal of Rule 6(1) of the rules clearly shows that the stress of the sub-rule is upon the package and not upon the person manufacturing or selling the package. The provisions of sub-rule (2) apparently appear to be in addition to the obligations cast upon the manufacturer and the dealer under sub-rule (1) of Rule 6 of the rules."

Learned counsel for the manufacturer/writ petitioner relied on the Single Bench decision of the Andhra Pradesh High Court in Eureka Forbes Limited v. Union of India (AIR 2003 ANDHRA PRADESH 275) and the Division Bench decision of the Bombay High Court in Titan Industries Ltd., Mumbai v. Union of India and others (AIR 2006 BOMBAY 336). In Titan Industries Ltd.'s case the Bombay High Court dealt with the question whether in the case of sale of watches the provisions of the Standards Act and Rules of 1977 would apply. It was contended by the manufacturer that the watches are kept for display and sale in showrooms and outlets and are sold by the piece. The customers insist upon inspection/checking. It was contended that the goods by their very nature are such that they cannot be sold in a packaged form, but have to be allowed to be handled and inspected and even worn by the customer before sale. The Bombay High Court accepted the contention of the manufacturer and held, after referring Section 2(b) of the Standards Act and Rule 2(l) of the Rules, thus:

".. From a reading of the Rule, what emerges is that the pre-packed commodity must be placed in a package of whatever nature without the purchaser being present. The product in the package must have a pre-determined value, which value cannot be altered without the package or its lid or cap, as the case may W.A.NO.218 OF 2003 AND CONNECTED CASES :: 16 ::

be, being opened or the product undergoing a perceptible modification. In other words on the package being opened or its lid or cap being opened, the pre-determined value of the commodity must stand altered or undergo a perceptible modification. These two requirements, therefore, have to be met, for it to be a pre-packed commodity and the expression package is to be construed as a package containing pre-packed commodity. In other words the stress is on the package containing the pre-packed commodity.

..... A proper reading or consideration, can only mean those commodities which intrinsically require to be packed and without being packed they cannot be sold, and merely because they are removed from the package for testing will not cease to be pre-packed commodity. It does not mean that a package, merely because it is packed for protection or safety in the course of conveyance by virtue of the explanation becomes prepacked commodity. The test would be whether by the very nature of the goods, whether it can be sold without being pre-packed. If the intention of the Legislature or the Rule-making Authority was to include every commodity which was

packed then there would have been no need to provide for the explanation. The Rule itself could have produced that every commodity which is packed or in other words comes to the retailer in a packed form will be a pre-packed commodity. That not being the intention, by the explanation only some pre-packed commodities which by the very nature of the product, require to be packed before sale, have been included by the explanation to fall within the expression pre-packed commodity."

The decision of the Madras High Court in Philips India Limited v. Union of India (2002 Writ LR 140), dealing with electronic items like TV was followed by the Bombay High Court. The decision of the learned single Judge of the Andhra Pradesh High Court in Eureka Forbes Limited v. Union of India (AIR 2003 ANDHRA PRADESH 275) was also followed by the Bombay High Court.

13. In Eureka Forbes Limited v. Union of India (AIR 2003 ANDHRA W.A.NO.218 OF 2003 AND CONNECTED CASES :: 17 ::

PRADESH 275), the Andhra Pradesh High Court held that the Act and Rules do not apply to all commodities. It was held thus:

"16. Therefore, Rule 3 read with the definition of pre- packed commodity in Rule 2(1) of the Rules as well as the definition of commodity in packaged form as defined in Section 2

(b) of the Act would lead to a conclusion that unless the manufacturer, packer or retailer intends to sell commodity in a packaged form as a pre-packed commodity or commodity in packaged form the Act and the Rules have no application."

Dealing with Rule 13(5) of the Rules read with Sixth Schedule, it was held in Eureka Forbes Limited v. Union of India (AIR 2003 ANDHRA PRADESH 275) thus:

"19. Rule 13(5) of the Rules read with Sixth Schedule is important to construe the Rules insofar as this case is concerned. Rule 13(5) of the Rules commence with the words "when any commodity is packed by number". When the commodity is packed by number as per Sixth Schedule, if the number is less than ten a declaration shall be made by integral number. A vacuum cleaner is sold as a single piece and when the customer visits the office of the petitioner it is not in a pre-packed commodity nor can it be packed, be deemed as commodity in packaged form. Therefore, Rule 13(5) of the Rules and the Sixth Schedule have no application. Even otherwise, as one piece is sold, I fail to understand how it can be expressed by integral number of one. This is a strong circumstance to show that when a vacuum cleaner is sold as single piece without any package, the Act and the Rules have no application."

14. With respect, we find ourselves unable to agree with the view taken by the Bombay High Court and the Andhra Pradesh High Court. The view taken by the Bombay High Court that, if the intention

of the Legislature or the Rule making Authority was to include every commodity which was packed, such a W.A.NO.218 OF 2003 AND CONNECTED CASES :: 18 ::

provision could have been made in the Rules, does not appear to us to be a correct view. The question is whether the commodity in question satisfy the definition of "commodity in packaged form" in Section 2(b) of the Standards Act and the definition of "pre-packed commodity" in Rule 2(l) of the Rules. The ingredients of the definition of "pre-packed commodity" in Rule 2(l) are the following:

- a) The commodity is placed in a package;
- b) It was placed without the purchaser being present;
- c) The package may be of whatever nature;
- d) The quantity of the product contained in the package has a pre-determined value;
- e) 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.

"Quantity" is defined in Rule 2(n). Explanation I to Rule 2(l) makes the position clear that even on opening of a package no alteration is caused to the value, quantity, nature or characteristic of the commodity, such commodity shall also be deemed, for the purpose of the Rules, to be a pre-packed commodity. A reading of the definition along with the explanation makes it clear that the expression "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" in the definition is not a decisive ingredient to determine whether the commodity is a pre-packed commodity. It is not that, to constitute a pre-packed commodity, the pre-determined value should alter by opening the package or the package undergoing a perceptible modification. On the other hand, the meaning is that W.A.NO.218 OF 2003 AND CONNECTED CASES :: 19 ::

the pre-determined value of a pre-packed commodity cannot be altered without opening the package or its lid or cap. The thrust is on the impossibility of the pre-determined value being changed without opening the package or its lid or cap. In other words, it cannot be said that, in order to constitute a pre-packed commodity, the pre-determined value must necessarily get altered if the package, lid or cap is opened. The view taken by the Bombay High Court that the package being opened or its lid or cap being opened, the pre-determined value of the commodity must stand altered or must undergo a perceptible modification, does not appear to be a correct interpretation. The expression "perceptible modification" does not relate to the product, but to the package, lid or cap.

15. The test is not whether a testing is necessary as in the case of an electric bulb or fluorescent tube or any other commodity where such a testing is required. Even if such testing is required for the consumer to purchase it, it does not cease to be a packaged commodity. The thrust is on the quantity of the product which has a pre-determined value being placed in a package without the presence of the purchaser. The purchaser should be told as to the nature of the content in the package and that is achieved by the declaration under Rule 6 bearing on the package or on a label securely affixed thereto. By seeing the label and declaration therein, the consumer must be in a position to ascertain whether he should purchase it. All the necessary specifications and the value of the commodity should be made known to the consumer. W.A.NO.218 OF 2003 AND CONNECTED CASES :: 20 ::

16. Rule 13(5) of the Rules reads as follows:

"(5) When any commodity is packed by number, such number shall be expressed on the package in international form of Indian numerals, and every package intended to be sold by number shall be packed in the manner specified in the Sixth Schedule:

Provided that the Central Government may, if it is satisfied that for any technical or mechanical reason it is not possible to prepack any commodity in the standard quantities specified in the sixth Schedule, authorise the pre-packing of such commodities in such numbers as it may specify."

The Sixth Schedule appended to the Rules provides the manner in which commodities intended to be sold by number shall be packed. It is stated in the Sixth Schedule that where any commodity is packed by number, such packing shall be made, unless otherwise provided in the Rules, in the manner indicated therein. Clause (a) therein states that where the number is less than ten, by the integral number. Clauses (b) to (e) of the Sixth Schedule also provides the manner in which the package shall be made where the number exceeds ten but does not exceed one hundred, where the number exceeds 100 but does not exceed 500, where the number exceeds 500 but does not exceed 1000 and where the number exceeds 1000. The contention of the writ petitioner is that in the package containing refrigerator, which is primarily intended for the protection of the commodity, only one piece would be packed and, therefore, it is not a commodity packed by number as provided in Rule 13(5). The counsel argues that Rule 13(5) read with Sixth Schedule would apply where more than one item W.A.NO.218 OF 2003 AND CONNECTED CASES :: 21 ::

of commodity is packed in a single package. Learned single Judge accepted the contention of the writ petitioner that a refrigerator will be sold only in a single number and, therefore, the Enforcement Act may not apply. With respect, we do not agree with the view taken by the learned single Judge. Even if the number of the commodity is only one in a package, it cannot be said that such commodity is not packed by number. It cannot also be said that clause (a) of the Sixth Schedule would not apply to such commodity and package. Even if the number of commodity is one, the package shall contain the integral number. Therefore, we reject the contention of the writ petitioner that the Standards Act and Rules and the Enforcement Act would not apply to a case where the package contains only one piece and sale of that

commodity is effected after opening the package.

17. Rule 2(j) defining "multi-piece package" and Rule 2(g) defining "group package" would also support the above finding. "Multi-piece package" as defined in Rule 2(j) means a package containing two or more individually packaged or labelled pieces of the same commodities of identical quantity, intended for retail sale, either in individual pieces or the package as a whole. Illustration thereunder mentions a package containing five toilet soap cakes.

"Group package" means a package intended for retail sale, containing two or more individual packages, or individual pieces, of similar, but not identical (whether in quantity or size) commodities. The definition of "multi-piece package" and "group package" would also lead us to the conclusion that even if W.A.NO.218 OF 2003 AND CONNECTED CASES :: 22 ::

the number of the commodity is one, it would satisfy the definition of a pre- packed commodity or commodity in packaged form.

18. The definition of "pre-packed commodity" in Rule 2(l) was amended and a new definition is substituted with effect from 13.1.2007. The amended definition reads as follows:

"(l) "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;"

Explanations to Rule 2(l) were omitted and the definition was re-cast. It does not appear that the substitution of Rule 2(l) was to change the definition of pre- packed commodity" altogether but to streamline the definition to avoid different interpretations.

19. Rule 12 of the Rules provides that the declaration of quantity shall be expressed in terms of such unit of weight, measure or number of a combination of weight, measure or number as would give an accurate and adequate information to the consumer with regard to the quantity of the commodity contained in the package. Sub-Rule (2) provides that except in the cases of commodities specified in the Fifth Schedule, the declaration of quantity shall be in terms of the unit of mass, length, area, volume or number. The Fifth Schedule contains various items which includes ready made garments and tyres and W.A.NO.218 OF 2003 AND CONNECTED CASES :: 23 ::

tubes. Sub-rule (4) of Rule 12 states that where the declaration of quantity by weight, measure or number alone is not sufficient to give to the consumer full information with regard to the dimensions or number of commodity contained in the package, such declaration shall be accompanied by a declaration of the dimensions or number, or both, where necessary, of the commodity contained in the package. Illustrations are also provided therein. The provisions of the Standards Act and the Rules would

unmistakably indicate that even if a commodity is taken out of the package at the retail outlet and sold to the consumer with the package or without the package, that does not absolve the necessary declarations to be made on the package.

20. The view taken by the Andhra Pradesh High Court in Eureka Forbes Ltd.'s case that unless the manufacturer, packer or retailer intends to sell the commodity in packaged form as a pre-packed commodity or commodity in packaged form, the Act and Rules have no application. With respect, we are unable to subscribe to the view taken by the Andhra Pradesh High Court. The intention of the manufacturer, packer or retailer is hardly relevant in construing the various provisions of the Standards Act and the Rules and the Enforcement Act. If the various provisions in the aforesaid Acts and Rules would mandate that a commodity should be treated as a pre-packed commodity or a commodity in a packaged form, the intention of the manufacturer is absolutely irrelevant. To our mind, interpretation of the provisions of the aforesaid Acts and Rules is to be made from the point of view of the consumer and keeping in mind the object W.A.NO.218 OF 2003 AND CONNECTED CASES :: 24 ::

sought to be achieved by the enactment of the Acts and the framing of the Rules under the Standards Act. Viewed in that angle, it is abundantly clear that the intention of the manufacturer, packer or retailer is hardly relevant in construing the various provisions of the Acts and Rules.

21. The writ petitioner has raised ground (G) in the Writ Petition in support of the contention that the sale price of the commodity need not be shown on the carton containing the commodity. The said ground reads as follows:

"G) It is respectfully submitted that out of the five declarations required to be made by Section 39 of the said Act and the eight declarations required to be made by Rule 6 of the said Rules, the only declaration which is likely to be subject to change between the date of manufacture of the products and their sale, is the sale price of the package. It is respectfully submitted that the sale price of the package is dependent upon several factors particularly differential rates of local taxes, budgetary changes in excise and other Central Taxes, Costs of freight, direct and indirect taxes or all or any of the aforesaid factors. It is respectfully submitted that in a given case by reasons of the change in direct and indirect taxes or by reason of change in rates of freight, etc., the consumer may either have to pay more or less for the said package. These changes are not changes which could be envisaged by any manufacturer or dealer at the time either of manufacture or purchase. To expect any manufacturer or dealer to do so would in fact be unduly harsh and unreasonable."

This contention is dealt with in paragraph 11 of the counter affidavit filed by respondents 1 and 2 in the Writ Petition, which reads as follows:

"11. Manufacturers of similar commodities are already making the declaration in respect of MRP and month and year of packing on their packages in compliance with

the requirement of the Rules and in the interest of the consumers. The petitioner
W.A.NO.218 OF 2003 AND CONNECTED CASES :: 25 ::

cannot claim any exemption. In case of variation in the taxes etc., the Rules have laid certain procedures for collection of the additional amount as detailed in Rule 23(4). However, when the rates of freight etc. or for that matter, the cost price, goes up, then the manufacturer is required to charge the revised price only on the products to be packed thereafter and undue advantage should not be taken for products in the "Pipe line' or at the retail counter. Therefore, alteration of the retail sale price is permitted only at the manufacturers level and that too by obliterating the earlier declaration (if already made) and reprinting the new rate. It is reiterated that increase in the tax should be collected while selling the package after adopting the procedure laid down in Rule 23(4) of the said Rules. Upward revision of the price printed due to variation in the cost price etc. is not envisaged under the Rules, in the interest of the consumers..."

22. Rule 23 of the Rules is relevant in this context. We have already quoted Rule 23 in paragraph 7 above. In view of the provisions of Rule 23, we are of the view that the aforesaid contention raised by the writ petitioner is without any substance. Rule 23 is intended to protect the consumer. The increase in tax is taken care of by Rule 23. At the same time, increase in the price by the manufacturer subsequent to the movement of the commodity to the retailer cannot be added to the price indicated in the declaration on the package. The consumer is entitled to purchase the commodity at the value shown on the declaration contained on the package except with the variation as mentioned in Rule 23.

23. Inter-State trade or commerce in weight, measure or other goods which are sold or distributed by weight, measure or number is dealt with under the Standards Act. The Enforcement Act, 1985 provides for the enforcement of the standards of weights and measures established by or under the Standards of W.A.NO.218 OF 2003 AND CONNECTED CASES :: 26 ::

Weights and Measures Act, 1976 in respect of intra-State trade or commerce. Section 33 of the Enforcement Act provides that the provisions of the Standards Act and the rules thereunder with regard to commodities in packaged form shall, as far as may be, apply to every commodity in packaged form which is distributed, sold, or kept, offered or exposed for sale, in the State. Sub-section (2) of Section 33 empowers the State Government to make rules, not inconsistent with the Standards Act or any Rule made thereunder, to regulate the packaging of any such commodity. The Standards Act and the rules thereunder and the Enforcement Act are intended for the protection of the rights of the consumer. Interpretation of the provisions of the Acts and the Rules shall be in a rational manner keeping in mind the objects sought to be achieved by the enactments and Rules. A too technical interpretation as is sought to be made by the writ petitioner, if accepted, would not advance the protection of the rights of the consumer. Section 3 of the Standards Act states that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any

enactment other than the Act or in any instrument having effect by virtue of any enactment other than the Act. Section 4 of the Enforcement Act provides for similar overriding effect except regarding anything inconsistent therewith contained in the Standards Act.

24. The aforesaid findings lead us to the inevitable conclusion that the writ petitioner is not entitled to the reliefs prayed for in the Writ Petition. The Writ Appeal Nos.218 of 2003 and 1098 of 2003 are allowed and the judgment of the W.A.NO.218 OF 2003 AND CONNECTED CASES :: 27 ::

learned single Judge in O.P.No.16488 of 1998 is set aside and the Writ Petition is dismissed. No order as to costs.

25. Now, we shall dispose of the rest of the cases in the following manner:

W.A.No.1287 of 2003: This Writ Appeal is filed by the third respondent in O.P.No.14701 of 1994. The Original Petition was filed by the petitioner, M/s.Pieco Electronics & Electricals Ltd.. The petitioner Company is engaged in the manufacture, sale and distribution of electrical and electronic equipments and components. The Original Petition was disposed of by the learned single Judge along with O.P.No.16488 of 1998 (from which W.A.Nos.218 of 2003 and 1098 of 2003 arose). For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, this Writ Appeal is allowed, the judgment of the learned single Judge is set aside and the Original Petition is dismissed. No order as to costs.

W.A.No.291 of 2004:- This Writ Appeal is filed by respondents 3 and 4 in O.P.No.12855 of 1995. The petitioner in the Original Petition, Electronic Research Limited, is engaged in the production, sale and distribution of various electronic items including Satellite Receivers. The Original Petition was allowed by the learned single Judge, following the judgment in O.P.No.16488 of 1998 (from which W.A.Nos.218 of 2003 and 1098 of 2003 arose). For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, this Writ W.A.NO.218 OF 2003 AND CONNECTED CASES :: 28 ::

Appeal is allowed, the judgment of the learned single Judge is set aside and the Original Petition is dismissed. No order as to costs.

W.A.No.1268 of 2003: Respondents 1 to 3 in O.P.No.15175 of 1993 are the appellants in this Writ Appeal. The petitioner in the Original Petition, namely, M/s.Godrej & Doyce Mfg. Co. Ltd., is a manufacturer of Typewriters. The Original Petition was allowed by the learned single Judge. The judgment in O.P.No.16488 of 1998 was also relied on by the learned single Judge. Following the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, this Writ Appeal is allowed, the judgment of the learned single Judge is set aside and the Original Petition is dismissed. No order as to costs.

W.A.No.1217 of 2003: Respondents 1 and 2 in O.P.No.14239 of 1993 have filed the Writ Appeal, challenging the judgment of the learned single Judge in the Original Petition. The petitioner in the Original Petition, namely, M/s.Premier Mills Limited, is a manufacturer of wide range of Dhothies under different brand names, namely, Chakravarthy, Primeking, Chalukya, etc. The petitioner contended that the Dhothies cut into standard dimensions in the mill are distributed to various wholesale dealers. The wholesale dealers would, thereafter send the pieces to retail dealers. The Dhothies are placed in polythene bags only for the purpose of preventing the commodity from getting soiled. It was contended that Dhoty is not a packaged commodity. The learned single Judge allowed the Original Petition and held that Ext.P2 and other W.A.NO.218 OF 2003 AND CONNECTED CASES :: 29 ::

connected proceedings initiated against the petitioner are without jurisdiction. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, this Writ Appeal is allowed, the judgment of the learned single Judge is set aside and the Original Petition is dismissed. No order as to costs.

O.P.No.5157 of 1999: This Original Petition is filed by Whirlpool Of India Ltd., for identical reliefs as claimed in O.P.No.16488 of 1998 discussed above. The petitioner is the manufacturer of Refrigerators and Washing Machines. On 15.2.1999, the Inspector of Legal Metrology, Tirur inspected the trade premises of M/s.United Business Corporation, Tirur and confiscated a Refrigerator of 165 litres, manufactured by the petitioner Company on the allegation that the package did not contain the declaration and retail sale price as required under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977.

In the Original Petition there is also a prayer to quash Ext.P5 under which the commodity was seized. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.29816 of 1999: The petitioner, M/s.Videocon International Limited, is engaged in the manufacturing and marketing of television sets, Audio Systems, Refrigerators, Washing Machines, etc. The prayer in the Original is for a declaration that the Standards Act, Enforcement Act and the Rules do not apply to the products manufactured by the petitioner and for other incidental W.A.NO.218 OF 2003 AND CONNECTED CASES :: 30 ::

reliefs. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.2074 of 2000: The petitioner is carrying on the business under the name and style "Akai India" and is engaged in the manufacturing and marketing of various products like, Television sets, Audio Systems, Video Systems etc. Similar prayers as made in O.P.No.16488 of 1998 have been made in this Original Petition as well. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the

Original Petition is dismissed. No order as to costs.

O.P.No.9544 of 1999: The petitioner, "BPL Sanyo Ltd.", is engaged in the manufacture and distribution of Cassette Recorders, Video Cassette Players, Rechargeable Lanterns and Push Button Telephones. Similar reliefs as claimed in O.P.No.16488 of 1998 are claimed in this Original Petition as well. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.11776 of 1998: In this Original Petition filed by BPL Telecom Limited, BPL Sanyo Technologies Limited and BPL Limited, similar reliefs as claimed in O.P.No.16488 of 1998 are claimed. The petitioners also prayed to set aside all actions initiated as per Exts.P1, P2, P5 and P8 show cause notices and Ext.P11 order issued by the Controller of Legal Metrology, Thiruvananthapuram. W.A.NO.218 OF 2003 AND CONNECTED CASES :: 31 ::

As per Ext.P11, the third respondent has granted sanction to file complaint against the first petitioner and others. Following the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.12395 of 2001: The petitioner is engaged in the business of distribution of electronic spares and accessories. The goods distributed by the petitioner include amplifiers, cables, capacitors, plugs and sockets, cords and connectors, cable T.V. equipments, meters, diodes and leads, eliminators, headphones, micro-motors, circuit boards, radios, soldering materials, loud speakers, stabilizers, switches, decks, cassette players, VCD Players, etc. More or less similar prayers as in O.P.No.16488 of 1998 are made in this Original Petition as well. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.13446 of 2001: The first petitioner Company, namely Xerox Modicorp Ltd., is engaged in the manufacturing and marketing of Copier machines, Faxes, Printers etc. Apart from claiming similar reliefs as claimed in O.P.No.16488 of 1998, the petitioners have sought for the issuance of a writ of certiorari to quash various notices issued by the Senior Inspector, Legal Metrology, Ernakulam. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 32 ::

O.P.No.24323 of 2001: The petitioner, Jeyemjay Techno Forms, a partnership firm, is engaged in the manufacture of computer stationery. During the course of inspection in the trade premises of M/s.Koluthara Systems Pvt. Ltd., Edappally by the Inspector of Legal Metrology, it was detected that certain packets of computer

paper manufactured by the petitioner and kept for sale did not bear the mandatory declarations as envisaged in the Standards of Weights and Measures (Packaged Commodities) Rules. The packages were seized. Prosecution was initiated against the petitioner and others. The contention of the petitioner is that the firm supplies computer stationery for the use of different parties as per their orders. The orders are being placed on the basis of tender/ quotation. The quantity, quality and size may vary from customer to customer. The products of the petitioner are not generally displayed or stored in any shop. The computer papers are supplied as per the requirement of the customer. Therefore, the products cannot be termed as packaged commodity within the meaning of the Act. In the counter affidavit filed on behalf of respondents 3 and 4, these averments are disputed. According to the respondents, the packages containing computer paper were kept for sale.

The petitioner prayed for a declaration that the products manufactured and marketed by the petitioner do not attract the Standards Act, the Enforcement Act and the Rules. There is also a prayer for a writ of mandamus restraining the respondents from initiating any legal proceedings against the petitioner. Since disputed questions of fact are involved in the Original Petition and in view of the W.A.NO.218 OF 2003 AND CONNECTED CASES :: 33 ::

pendency of the prosecution against the petitioner, the Original Petition is closed leaving open all the contentions of the petitioner.

O.P.No.15944 of 1994: The petitioner is a partnership firm engaged in the business of wholesale distribution and sale of paper and paper boards. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.21966 of 1999: The petitioner in the Original Petition, namely, Garware-Wall Ropes Limited, is engaged in the manufacture and distribution of different types of synthetic ropes, polypropylene, multifilament yarn twines, etc. The Inspector of Legal Metrology seized package containing synthetic ropes kept for sale on the ground that the package does not contain the statutory declarations. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.12058 of 1993, O.P.No.1656 of 2003, O.P.No.16338 of 2001, O.P.No.16411 of 1998, O.P.No.16410 of 1993 and 17873 of 1993: In these Original Petitions, the commodities involved for consideration are ready-made garments, sarees, dhothies, shirts, trousers, kerchiefs, neck-ties and similar textile items in packets.

W.A.NO.218 OF 2003 AND CONNECTED CASES :: 34 ::

It cannot be said that ready-made garments do not come within the purview of the Standards Act, the Enforcement Act and the Rules. Item 21 in the Fifth Schedule is the entry relating to ready-made garments. The Fifth Schedule is provided with reference to Rule 12(2) of the Rules. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

In O.P.No.1656 of 2003, V-Star Creations Pvt. Ltd., and another have intervened as additional respondents 5 and 6. Respondents 5 and 6 deal with churidar sets. The contentions of the interveners are left open to be considered in appropriate proceedings.

O.P.No.21390 of 1999: The petitioner, Samrat Sanitary Saturation, is engaged in the manufacture of sanitary items like gate valve, foot valve, shower, soap dish etc. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.21869 of 1998: The petitioner, Usha International Limited, is engaged in the business of distribution of fans, sewing machines, air- W.A.NO.218 OF 2003 AND CONNECTED CASES :: 35 ::

conditioners, etc. The Senior Inspector of Legal Metrology seized an air- conditioner on the ground that the necessary statutory declarations were absent on the package. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.11318 of 2000: The first petitioner, Protech Appliances Private Limited, is a manufacturer of home soda makers. On inspection in the trade premises of the retailer, the Inspector of Legal Metrology found that the necessary statutory declarations are not shown on the package. The contentions put forward by the petitioners are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.17181 of 1999: The petitioner, namely, T.T.K. Prestige Limited, is engaged in the manufacturing and marketing of pressure cookers, pressure pans, cook wear, non-stick cook wear etc. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original

Petition is dismissed. No order as to costs. W.A.NO.218 OF 2003 AND CONNECTED CASES :: 36 ::

O.P.No.27234 of 1999: The petitioner, M/s.Falcon Agencies Private Limited, is an authorised distributor of footwear items manufactured by 25 companies mentioned in the Original Petition. The contention of the petitioner is that the package containing footwear does not attract the provisions of the Standards Act, the Enforcement Act and the Rules. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.7575 of 2000: The petitioners, namely, M/s. Paragon Rubber Industries and another, are manufacturers of Hawaii Chappels in the brand name "Paragon". The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.19313 of 2001: The petitioner, namely, Duroflex Limited, is engaged in the manufacture of rubberised coir mattresses and pillows under the brand names of "Duroflex" and "Duro". The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs. W.A.NO.218 OF 2003 AND CONNECTED CASES :: 37 ::

O.P.No.18575 of 1998: Amco Batteries Limited, the petitioner in the Original Petition, is the manufacturer of lead acid storage battery. The contention of the petitioner is that battery does not come within the scope of the Standards Act, the Enforcement Act and the Rules. The contentions put forward by the petitioner are similar to the contentions raised in W.A.Nos.218 of 2003 and 1098 of 2003. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.17675 of 2002: The first petitioner, Safana Cosmetics & Perfumes, is a manufacturer of soaps. The contention of the petitioner is that the soap manufactured by the petitioner does not attract the provisions of the Standards Act, the Enforcement Act and the Rules. The soap is an item specifically referred to in Schedule III of the Rules. Schedule III relates to the commodities to be packaged in specified quantities. The III Schedule is related to Rule 5 of the Rules. Rule 5 provides that on and from the commencement of the Rules, no person shall pre-pack, or cause or permit to be pre-packed, any commodity for sale, distribution, or delivery except in such standard quantities as are specified in relation to that commodity in

the Third Schedule. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

O.P.No.32784 of 2000: The first petitioner, M/s.Marigold Paints Private Limited, is the manufacturer of paints. On inspection in the trade premises of a W.A.NO.218 OF 2003 AND CONNECTED CASES :: 38 ::

dealer, it was detected that the packages containing the paint did not bear the declarations as envisaged in the Rules. The reliefs prayed for in the Original Petition is to quash Ext.P4 order passed by the Controller of Legal Metrology, granting sanction for prosecution and to restrain the respondent from initiating any legal proceedings. Paint is an item in serial number 20 of the III Schedule appended to the Rules. It cannot be said that the items manufactured by the petitioner do not attract the provisions of the Standards Act, the Enforcement Act and the Rules. For the reasons stated in the judgment in W.A.Nos.218 of 2003 and 1098 of 2003, the Original Petition is dismissed. No order as to costs.

It is made clear that the disposal of the Writ Appeals and the Original Petitions as per this common judgment would not stand in the way of the respective petitioners in the Original Petitions from raising appropriate defence in the prosecution, if any, initiated against them. This judgment would not be a bar for compounding the offence alleged against the petitioners.

Pending interlocutory applications, if any, are also dismissed.

(H.L.DATTU) Chief Justice (K.T.SANKARAN) Judge ahz/ H.L.DATTU, C.J.& K.T.SANKARAN, J.

----- W.A.NOS. 218 OF 2003, 1098 OF 2003, 1217 OF 2003, 1268 OF 2003, 1287 OF 2003, 291 OF 2004 AND O.P.NOS.12058 OF 1993, 16410 OF 1993, 17873 OF 1993, 15944 OF 1994, 11776 OF 1998, 16411 OF 1998, 18575 OF 1998, 21869 OF 1998, 5157 OF 1999, 9544 OF 1999, 17181 OF 1999, 21390 OF 1999, 21966 OF 1999, 27234 OF 1999, 29816 OF 1999, 2074 OF 2000, 7575 OF 2000, 11318 OF 2000, 32784 OF 2000, 12395 OF 2001, 13446 OF 2001, 16338 OF 2001, 19313 OF 2001, 24323 OF 2001, 17675 OF 2002 AND 1656 OF 2003, JUDGMENT 9th April, 2008
