

**LANDMARK JUDGMENTS OF THE HON'BLE HIGH COURT OF KERALA  
RELATING TO LEGAL METROLOGY**

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HON'BLE THE CHIEF JUSTICE Mr. JUSTICE H.L. DATTU  
&  
HON'BLE Mr. JUSTICE K.T. SANKARAN  
9<sup>TH</sup> APRIL 2008/20<sup>TH</sup> CHAITHRA 1930

OP No. 5157 of 1999(L)

1. WHIRLPOOL INDIA LIMITED v. UNION OF INDIA AND THREE OTHERS

This batch of Writ Appeals and Writ Petitions are disposed of by a common judgement since common questions relating to interpretation of the provisions of the Standards of Weights and Measures Act, 1976 (here in after referred to as "the Standards Act") , the Standards of Weights and Measures (Enforcement) Act, 1985 (herein after referred to as "the Enforcement Act") and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (herein after 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 here in can be followed, to the extent possible, in other cases.

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

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 3<sup>rd</sup> 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) 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 dealer's 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 such equipment or devices are packaged commodity to come under the definition in Sec.2(b) of the 1976 Act.

(g). 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:

“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
- (b) distribute, deliver, or cause to be distributed or delivered, or
- (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
- iv) 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 (interms 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) 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(1) thus,

‘(1) “pre- packaged 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 such commodity shall be deemed, for the purpose of these rules, to be 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 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 prepack or cause or permit to be prepacked any commodity for sale, distribution or delivery unless the package in which the commodity is prepacked 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 there to 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. 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 dealer :- (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 declare 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.

(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.

Rule 39 provides that if any person contravenes the provisions of rule 6, or tampers with 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 packaged form.

Explanation: For the purpose 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 or 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 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 or refrigerators as it does not satisfy the definition of "packaged commodity" of "pre-packaged 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 Advocates 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. Vs. 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 roll. The Honourable Supreme Court dismissed the appeal filed by 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 wide spread consumer protection movement. On the basis of the report of the Secretary General on Consumer Protection dated 27.05.1983, 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 consumer's 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 herewith 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".

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(1) 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 be, being opened or the product under going a perceptible modification in other words on the package being opened or its lid of rap 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 pre-packed 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 LP 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 PRADESH 275) the Andhra Pradesh High Court held that the Act and Rules do not apply to all commodities. It was held thus:

“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 in so far 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 packed 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 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(1) of the Rules. The ingredients of the definition of “Pre-packed commodity” in Rule 2(1) 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 of cap as the case may be being opened or undergoing a perceptible modification.

“Quantity is defined in Rule 2(n) Explanation 1 to Rule 2(1) 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 the pre-determined value of a pre-packed commodity cannot be altered without opening the package or its lid or cap. The trust 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.

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 pre-pack any commodity in the standard quantities specified in the Sixth Schedule, authorize the pre-packing of such commodities in such number 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 of commodity is packed in a single package. Learned single judge accepted the contention of the writ petitioner that a refrigerator will be sold 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 labeled pieces of the same commodities of identical quantity, intended for retail sale, either in individual pieces or the package as a whole. Illustration there under 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 the number of the commodity is one, it would satisfy the definition of a pre packed commodity in packaged form.

18. The definition of "pre-packed commodity" in Rule 2(1) was amended and a new definition is substituted with effect from 13.01.2007. The amended definition reads as follows:

"(1) '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(1) were omitted and the definition was re-cast. It does not appear that the substitution of Rule 2(1) was to change the definition of pre-packaged commodity altogether but to streamline the definition to avoid different interpretations,

19. Rule 12 of the Rules provides that the declaration or 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 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 commonly 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 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.

“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 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 manufacturer’s 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 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 there under 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 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 judgement of the 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 judgement in W.A.nos 218 of 2003 and 1098 of 2003, this Writ Appeal is allowed, the judgement 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 judgement 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 judgement in W.A.Nos.218 of 2003 and 1098 of 2003, this Writ Appeal is allowed the judgement 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 OP.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 protecting 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 connected proceedings initiated against the petitioner are without jurisdiction. For the reasons stated in the judgement 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 judgement 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, AudioSystems, Refrigerators, Washing Machines etc. The prayer in the Original petition 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 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 1988 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 1988

are claimed. The petitioners also prayed to set aside all actions initiated as per Exts. P1, P2, P5 and P8 show cause notice and Ext. P11 order issued by the Controller of Legal Metrology, Thiruvananthapuram. 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 reason 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.

**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 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 Ropers 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.21966 of 1999 O.P.No.16410 of 1993 and 17873 of 1993** : In these Original Petitions, the commodities involved for consideration are ready-made garments, sarees, dothies, shirts, trousers, kerchiefs, neck-ties and similar textile items in packets.

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 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 reason 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. 27234 of 1999** The petitioner, M/s. Falcon Agencies Private Limited, is an authorized 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 petitioner, 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 rubberized 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.

**O.P.No.18575 of 1998** Amco Batteries Ltd, 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 an 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. Manfold Paints Private Limited, is the manufacturer of paints. On inspection in the trade premises of a 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 responent 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.

## **2. THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE Mr. JUSTICE M.SASIDHARAN NAMBIAR**

**19<sup>TH</sup> AUGUST 2009/28<sup>TH</sup> SRAVANA 1931**

**CrI.MC. No. 1940/ 2009**

**CC 794/2006 of JUDL.MAGISTRATE OF FIRST CLASS-I, ALUVA  
BADUSHA and Six others V. STATE OF KERALA**

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**CrI. M. C. No. 1947 of 2009**  
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### **ORDER**

Petitioners are the accused in C.C. No, 794/2006 on the file of Judicial First Class Magistrate's Court-I, Aluva. This petition is filed under Section 482 of Code of Criminal Procedure to quash the proceedings. Learned Magistrate took cognizance of the offences on Annexure- A1 complaint filed by the second respondent, Inspector of Legal Metrology. Allegation in Annexure – A1 complaint is that on 17.7.2001, second respondent, along with

Assistant Controller of Legal Metrology (Flying Squad), Ernakulam, inspected the trade premises of M/s. Blayees Duty Paid Shop, Vazhakkala and detected that first accused had stored and exhibited for sale packages, which did not bear the declarations as required under Rule 6(1) of Standards of Weights and Measures (Packages Commodities) Rules, 1977 read with Section 39 of Standards of Weights and Measures Act, 1976 and Section 33 of Standards of Weights and Measures (Enforcement) Act, 1985 and there is violation of Rules 4, 6(1) and 23(1) of Standards of Weights and Measures (Packaged Commodities) Rules 1977.

2. Prosecution case is that petitioners prevented and obstructed second respondent and other officers of Legal Metrology from seizing the false packages and prevented them from exercising the powers and discharging the functions conferred under the provisions of Standards of Weights and Measures Act, 1976 and Standards of Weight and Measures (Enforcement )Act 1985 and thereby committed the alleged offences. Case of the petitioners is that in respect of the very same incident, Crime No. 151/2001 of , Thrikkakara Police Station was registered for the offences under Sections 143, 147, 342, 294(b) and 353 read with section 149 of Indian Penal and as seen from Annexure-A2 final report in that case and the allegations in the complaint are identical. It is contended that though petitioners were tried by Judicial First Class Magistrate-I, Aluva on Annexure – A2 final report, under Annexure – A3 judgment, they were acquitted and therefore, continuation of proceedings in respect of the same incident and that too on the same allegations is only an abuse of process of the court and is to be quashed.

3. Learned Counsel appearing for the petitioners and learned Prosecutor were heard.

(1) Argument of the learned Counsel appearing for the petitioners is that police submitted Annexure- A2 charge sheet on identical facts in respect of the same incident and under Annexure- A3 judgment, whereby petitioners were acquitted by the learned Magistrate, even if petitioners are to be tried in C.C.No. 794/2006, there is no chance of a successful conviction and in such circumstances, it is only an abuse of process of the court and is to be quashed.

5. Learned Public Prosecutor pointed out that the offences, taken cognizance by the learned Magistrate on the basis of Annexure- A1 complaint, are only offences provided under Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act, 1985 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and petitioners were not tried for the said offences in C.C.No.1836/2002 and therefore, for the reason that petitioners were acquitted under Annexure- A3 Judgment the case cannot be quashed.
- (2) On hearing the learned counsel appearing for the petitioners and learned public prosecutor, I cannot agree with the submissions of the learned counsel that for the reason that petitioners were tried and acquitted in C.C.No.1836/2002, the proceedings in C.C.No. 794/2006 is to be quashed. If the ingredients of the offences tried by the learned Magistrate in C.C.No.1836/2002 and the ingredients of the offences being tried in C.C. No. 794/2006 are the same, it could have been said that continuation of the proceedings in C.C.No.794/2006 is an abuse of process of the court or that when petitioners, on the very same set of facts, were acquitted under Annexure-A3 judgment, there is no possibility of a conviction even if petitioners are to be tried in C.C.No.794/2006 and therefore, this court has to invoke the extraordinary inherent power under Section 482 of Code of Criminal Procedure. But, that is not the case herein. Petitioners were tried for the offences under sections 143, 147, 342, 294(b) and 353 read with section 149 of Indian Penal Code. Though learned counsel appearing for the petitioners submitted that ingredients of the offence under Section 353 of Indian Penal Code and ingredients of the offences being tried in C.C.No.794/2006 are the same, I cannot agree with the submission.
7. An offence under Section 353 of Indian Penal Code is attracted only if petitioners have assaulted or used criminal force to any person being a public servant in execution of his duty as a public servant or with intent to prevent or deter that person from discharging his duty as a public servant or in consequence of any thing done or attempted to be done by such person in the lawful discharge of his duty as a public servant. Therefore, if there is no evidence to establish assault or use by criminal force, petitioners could only be acquitted for the offence under Section 353 of Indian Penal Code.
8. Section 50 of Standards of Weights and Measures (Enforcement) Act, 1985 provides penalty for contravention of sections 30 and 31. Under Section 50, whoever prevents the Controller or any officer authorized by the Controller from searching any premises or prevents any Inspector from making any seizure of any weight, measure, packaged commodity, goods, documents, records or label shall be punishable for the said offence. Therefore, even if there was no use of criminal force or assault, if the Controller or any officer authorized by the Controller was prevented from searching or making seizure, the offence is attracted. Therefore, the ingredients are different. Hence for the reason that petitioners were acquitted for the offence under Section 353 of Indian penal Code, it cannot be said that petitioners shall, necessarily, be acquitted for the offence under Section 50 of the Act. Whether there are evidence to convict the

petitioners or not is to be looked into by the Magistrate at the time of trial. But, for the reason that petitioners were earlier tried and acquitted for the offences under the provisions of Indian Penal Code, prosecution for the offences under Standards of Weights and Measures Act, 1976 and Standards of weights and Measures (Enforcement) Act, 1985 cannot be quashed as sought for.

Petition is dismissed. Petitioners are entitled to take up all the contentions raised herein before the learned Magistrate.

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3. IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE M.SASIDHARAN NAMBIAR

6<sup>TH</sup> AUGUST 2009/15<sup>TH</sup> SRAVANA 1931

Op. No.12540 of 2003 (P)

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M/s.ALFA ELECTRONICS V. UNION OF INDIA and 3 others

JUDGMENT

This petition is filed under Article 226 of Constitution of India for a writ of certiorari to quash Exhibit P1 notice issued by the Inspector of Legal Metrology to show cause why prosecution shall not be initiated against the petitioner under Sections 29 and 35 of Standards of Weights and Measures Act, 1976, 23 and 28 of Standards of Weights and Measures (Enforcement) Act, 1985, punishable under Sections 54 and 58 of the said Act and to declare that Rules 3(1) and 23 of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 are ultra virus of Standards of Weights and Measures Act, 1976 and for a writ of mandamus or direction restraining respondents from taking further action for implementing the provisions of Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act, 1985 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977 and to declare that provisions of Standards of Weights and Measures (enforcement) Act, 1985 and Standards of Weights and Measures (Packaged Commodities) Rules, 1977 do not apply to the products distributed by the petitioner.

The Contentions canvassed by the petitioner are squarely covered by the Division Bench decision of this Court dated 9.4.2008 in O.P.No. 7575/2005 and connected cases (M/s. Paragon Rubber Industries V. Union of India and others). The Division Bench held that Standards Act and Rules and the Enforcement Act even apply to a case where the package contains only one piece and sale of that commodity is effected after opening the package. Items manufactured by the petitioner attract the provisions of Standards Act, Enforcement Act and the Rules and therefore, the order passed by the Controller of Legal Metrology, granting sanction for prosecution, cannot be quashed and the officers cannot be restrained from initiating any legal proceedings and all the original petitions were dismissed. It was made clear that dismissal of the original petitions will not stand in the way of respective petitioners from raising appropriate defence in the prosecution, if any and also will not be a bar for compounding the offences alleged against them. In the light of the said decision, this original petition can only be dismissed.

The original petition is, therefore, dismissed. It is made clear that dismissal of the original petition will not be a bar to raise all the available contentions before the Magistrate or seeking compounding of the offences.

4. IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS.JUSTICE K. HEMA

30<sup>TH</sup> SEPTEMBER 2009/8<sup>TH</sup> ASWINA 1931

CrI. MC. No. 2031 of 2007

BATA INDIA LIMITED V. STATE OF KERALA

ORDER

This petition is filed under section 482 Cr.PC to quash Annexure D complaint filed by the first respondent against the petitioners, alleging that an article of footwear manufactured and sold by first petitioner-company through the distributors and dealers did not contain the declaration with regard to the maximum retail price as envisaged under Rule 6 (1)(b) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. The second and third petitioners are Senior Manager and Depot Manager of the Company.

The main contention raised in this petition is that the footwear is not a packaged commodity. It is only if the footwear is a packaged commodity, the alleged offence can be said to have been committed. Learned Public Prosecutor referred to a decision of the Division Bench of this Court reported in 2008(3) KLT 694 UNION OF INDIA VS. GODREJ GE APPLIANCES LTD., and argued that the footwear is a packaged commodity, as held by this Court in the said decision. It was submitted that certain paragraphs are deleted while reporting the judgement. But in OP No. 27234/99 which relates to the footwear, relying upon the principle laid down in above said decision the said OP was also dismissed. In the light of the above judgment, it is submitted that the petitioner's contentions will not be sustainable.

Learned counsel appearing for petitioners submitted that the decision can be distinguished on the facts. According to him, before a customer purchases footwear, he tries them and then only, purchase the article. For other reasons also the footwear can be treated as a packaged commodity and no offence will lie, it is argued.

On hearing both sides, I find that I need not go into the merits of the case since the issue to be resolved in this case involves mixed questions of facts and law. So, a conclusion can be made only on the basis of evidence to be adduced. On hearing both sides and going through the judgment referred to by learned Public Prosecutor, I do not find any ground to quash the complaint on the ground urged. If the petitioner can distinguish the decision on facts, he may do so, at appropriate stage.

This petition is dismissed

5. IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE Mr.JUSTICE  
S.S. SATHEESA CHANDRAN,

=====

W.P.(C) 10917/2011 & 20384/2011

20387/2011 &

Crl.M.C. No. 951, 1607, 1608 of 2011

=====

Dated this the 13<sup>th</sup> day of March, 2013

### J U D G E M E N T

The above Writ Petitions and Crl. M.Cs are filed by the accused persons who are being prosecuted on a complaint filed by the Inspector of Legal Metrology, Circle-1, Irinjalakkuda. Imputing against them violation of Rule 6 (1A) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, hereinafter referred to as the 'PC Rules' and thus contravention of section 39 of the Standard of Weights and Measures Act, 1976 hereinafter referred to as Standards Act, petitioners are prosecuted for the offence under section 63 of the above Act.

2. Cognizance taken of the offence imputed in the complaint and process issued, the case numbered as S.T.No.6367 of 2010 now awaits enquiry before the judicial First Class Magistrate, Irinjalakuda.

3. The accused persons some of them joining together and one of them separately, have filed the Crl.M.C.s and writ petitions. Accused persons ranked 9 to 14 have filed Crl. M.C.No.951 of 2011 and W.P.(C) No. 10917 of 2011, accused person ranked 1 to 7, Crl. M.C. 1608 of 2011 and W.P.(C) No.20384 of 2011 and accused No.8, Crl.M.C.No. 1607 of 2011 and W.P.(C) No. 20387, of 2011. They have filed the Crl.M.C.s to quash the Complaint invoking the inherent powers of this court contending that Criminal proceedings initiated against them are an abuse of process of the Court. Writ petitions are filed challenging the constitutional validity of sub-rule (IA) of Rule 6 of the PC Rules contending that it is beyond the rule making power vested with the Central Government under Section 39 read with Section 83 of the 'Standards Act, and for striking down that rule by a writ of certiorari or other appropriate writ, order or direction and also to quash the complaint filed against the writ petitioners imputing violation of that rule.

4. Though challenges raised in the Crl.M.C.s and writ petitions stand on different footing, indisputably, criminal proceedings initiated against the petitioners arraying them as accused on the complaint of the Inspector, Legal Metrology imputing violation of Rule 6 (1A) of the PC Rules by them has given rise to both the proceedings before this court. In the Crl.M.C.s prosecution proceedings launched against the petitioners/accused is impeached as an abuse of process of the court setting forth a challenge that the newly added sub-rule, sub-rule (1A) to Rule 6 of the PC Rules cannot have application over intrastate sale of packaged goods if a true and correct interpretation is given to the words "as in force immediately before the commencement of this Act" in sub section (1 section 33 of the Standards of Weights and

Measures (Enforcement) Act, 1985 for short the 'Enforcement Act'. In the writ petitions challenge raised is over the rule making power of the Central Government to incorporate sub-rule (1A) to Rule 6 of the PC Rules impeaching its competency and authority to do so. Striking down of Sub-rule (1A) to Rule 6 of the PC Rules on the challenge as aforesaid and quashing of the complaint giving rise to prosecution of the writ petitioners is canvassed in the writ petitions invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5 Since the questions to be resolved in the CrI. M.C. s and writ petitions primarily rest upon the interpretation to be placed over one or other provisions of Standards Act, the PC Rules and also the Enforcement Act, and the fulcrum on which the prosecution under the complaint rests on the alleged violation of a Rule under the PC Rules, all petitions were heard together.

6. I heard learned senior counsel Sri.Chacko George, who appeared for the petitioners in the CrI. M.C.s and writ petitions, the learned Additional State Prosecutor Sri.K.I.Abdul Rasheed, who appeared for the respondent/complainant and also Assistant Solicitor General Sri.P.Parameswaran Nair for Central Government.

7. Inspector of Legal Metrology, Circle-I, Irinjalakuda on 18.07.2008 conducted an inspection over the retail trade premises of M/s. Lan Mark Shops (I) Private Limited, Thalore, Thrichur. On such inspection he seized two items of packages, three each in number which were stored, displayed and exposed for sale without conforming to the PC Rules and the Standards Act. One among the two items of packages relating to a product voltage stabilizer manufactured by a concern, namely, V-Guard Industries Limited is the subject matter of the complaint. The packets, three in number containing the product and printed V-Guard Voltage Stabilizer did not bear the statutory declaration regarding the name, address, telephone number and E-mail address of the person who can be or office which can be contacted in case of consumer complaints, is the gist of the accusation to impute violation of PC Rules and provisions of the Standards Act, to prosecute the accused persons. Among the accused, accused No.1 is the Managing Director and accused Nos. 2 to 7 are the Directors of M/s. Lan Mark Shops (I) Private Limited, the retail dealer of the aforesaid packages. Accused No.9 is the Managing Director and accused Nos. 10 to 14 are the Directors of M/s. V-Guard Industries, Kochi, the manufacturer of the aforesaid packages. After issuing show cause notice to the above persons, and explanation offered by them found to be not satisfactory, complaint was filed before the magistrate of competent jurisdiction to prosecute them.

8. Common challenge in all three CrI. M.Cs against the prosecution of petitioners, the accused in the complaint case, is that the newly made sub-rule (IA) of Rule-6 of P.C. Rules, violation of which is the basis for prosecution is inapplicable to the state of Kerala where Enforcement Act has been brought into force only with effect from 24.07.1992. That challenge is built on the premises that Section 33 of the 'Enforcement Act' which made applicable the provisions of Standards Act and the Rules thereunder to intra-state sale of packaged commodities sold or distributed, stipulates that provisions of the Standards Act

applicable to Interstate sale or distribution of commodities in packaged form as in force at the time when the Act was extended to the State to intra state sale or distribution alone can be applied to packaged commodities sold or distributed in the State. Sub-rule (IA) of Rule-6 of the Packaged Rules which was brought in by amendment and enforceable with effect from 13.01.2007 cannot have application to intra state sale of distribution of a packaged commodity, according to petitioners, since provisions of the Standards Act and the Rules as in force when the Enforcement Act was made applicable, that alone, will be applicable. Subsequent Amendments to the provisions of the Standards Act and rules cannot apply to intra state sale of distribution of packaged commodities, is the case canvassed giving emphasis to the clauses 'as in force immediately before the commencement of this Act' in sub section (1) of Section 33 of the Enforcement Act'. When that be the challenge in the Crl.M.Cs to assail the prosecution, in the writ petitions rule making power of the Central Government to include sub-rule (IA) of Rule-6 of the PC Rules is challenged contending that Section 39 read with Section 83 of the Standards Act does not empower the Central Government to make such a Rule. Section 39 of the Standards Act states what are the matters to be declared on the packaged commodity and as such any prescription by Rules with respect to such declaration should confine to the matters covered by that section, and that alone is the challenge. The manner in which the declarations to be made, that too with respect to the matters covered by Section 39 alone, can be prescribed under the Rules according to petitioners. Rule making power vested with the Central Government for carrying out the provisions of the Standards Act, covered under Section 83 of that Act has a specific provision, according to petitioners, with respect to the manner of declaration of the contents of a package. Rule making power under subsection (2)(r) of Section 83 of the Standards Act with respect to the declaration to be made under Section 39 of the Act is confined to the manner of making such declarations, that alone, and not addition of any matter which is not contemplated by Section 39, is the case projected to assail sub-rule (IA) of Rule 6 as beyond the rule making power of the Central Government. In short, Central Government is not empowered to make sub-rule (IA) of Rule-6 which takes within its purview declaration of new matters not covered by section 39 of the standards Act, and, the rule making power of the Central Government is confined to the manner of declaration of the matters covered by that section alone, is the case canvassed to strike down sub-rule (IA) of Rule -6 of the PC Rules as falling outside the rule making power vested with the Central Government, and on that ground to quash the complaint.

9. The questions posed for consideration in the Crl. M.Cs. and the writ petitions to assail the prosecution of petitioners can be formulated as indicated hereunder. In the Crl.M.Cs. the question arising for consideration is over the interpretation of the clause 'as in force immediately before the commencement of this Act' in sub section (1) of Section 33 of the Enforcement Act. Does the clause 'as in force immediately before the commencement of this 'Act' in Section 33 of the Enforcement Act in any way curtail or restrict the applicability of the provisions of Standards Act and Rules to intra state sale or distribution of packaged commodities as it existed when the Enforcement Act was brought into force in the state, or is it explanatory in nature that on the operation of Enforcement Act whatever provisions of the

Standards Act and Rules made thereunder shall have application over packaged commodities sold or distributed within the State? In the writ petitions the question for consideration is whether sub-rule (IA) of Rule-6 of the PC Rules is beyond the rule making power vested with the Central Government and thus, liable to be struck down.

10. First I shall advert to the challenge canvassed in the CrI.M.Cs to assail prosecution of petitioners. That challenge as already indicated is based on the clause “as in force immediately before the commencement of this Act” in sub section (1) of Section 33 of the Enforcement Act. The aforesaid sub section as a whole has to be reproduced to examine whether there is any merit in that challenge, which reads thus :

“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 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 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”.

Standards Act was enacted to establish standards of weights and measures to regulate inter-state trade or commerce in weights, measures and other goods and all incidental matters connected thereof. Enforcement Act was later enacted to provide for enforcement of the standards of weights and measures established by or under the Standards Act and the Rules thereof to intra-State trade or commerce. The aforesaid Enforcement Act was brought into force in State of Kerala with effect from 24.07.1992. At the most provisions of the Standards Act and the Rules there under ‘as in force’ when the Enforcement Act was made applicable to the State of Kerala, that alone, can be enforced in the State, and not any later amendment made in the Standards Act and Rules, is the challenge projected banking upon the clause ‘as in force immediately before the commencement of this Act’ in sub section (1) of Section 33 of the Enforcement Act.

11. The very purpose of the Enforcement Act as could be seen from the preamble of that Act is “for the enforcement of the Standards of weights and measures established by or under the standards of weights and measures Act, 1976 or incidental thereto” in trade or commerce in the States as well with effect from the date the State Government may by notification appoint with respect to the various provisions of the Standards Act, fixing classes of goods, areas etc. for its applicability. By virtue of sub section (1) of section 33 of the Enforcement Act the provisions of the Standards Act and the Rules there under relating to commodities in packaged form as applicable to interstate trade or commerce has been extended to intra-state trade or commerce of packaged products.

The clause ‘as’ in force immediately before the commencement of this Act appearing in sub section (1) Section 33 of the Enforcement Act no way permits of an interpretation that

when the Enforcement Act is brought into effect by notification by the State Government intra state trade or commerce of packaged commodities has to be governed by provisions of the Standards Act and the Rules thereof as it existed, that alone, when the Enforcement Act was brought into force in the State. On the contrary, whatever provisions of the Standards Act and Rules in force and continuing to be in force shall apply to the trade or commerce of packaged commodities in the State once the Enforcement Act is made applicable to the State. Any interpretation over the clause ‘as in force immediately before the commencement of this Act’ in the manner canvassed by the petitioners with respect to the applicability of the Standards Act and Rules there under over the trade or commerce of packaged commodities within the State is totally misconceived and not reflective of the legislative mandate covered by Section 33 of the Act. The clause ‘as in force immediately before the commencement of this Act’ has to be read only as a parenthetic clause, which does not in any way govern the principal clause spells out the legislative mandate over the applicability of the provisions of the Standards Act and Rules over intra state once the Enforcement Act is notified in the State.

12. Learned senior counsel has relied on a decision rendered by a learned single Judge of Andhra Pradesh High Court in V-Guard Industries Ltd. V. Controller of Legal Metrology and Others (2012(2) KHC 853) where the interpretation placed over the clause “as in force immediately before commencement of this Act” in sub section (1) of Section 33 of the Enforcement Act has been accepted to hold that provisions of the Standards Act and the Rules made there under as it existed when Enforcement Act was notified and made applicable to the State will govern intra state trade or commerce of Packaged Commodities. No reasoning has been given in the decision to hold that the above mentioned clause in Section 33 has to be interpreted in the manner stated. With respect I may state that learned single Judge has interpreted Section 33 of the Enforcement Act as if it is governed by the clause “as in force immediately before the commencement of this Act”, but not analyzing that clause in the scheme of that Section itself under the Act and the mischief that is sought to be taken care of by the legislation with respect to intra state sale of packaged goods making the provisions of the Standards Act and the Rules there under applicable to such sale. In the back drop that the legislation over weights and measures was earlier in the state list but to bring about countrywide uniformity not only the enforcement procedures but also the legal control of Weights and Measures the above subject has been brought into concurrent list under 42<sup>nd</sup> amendment to the Constitution, the above said clause “as in force immediately before the commencement of this Act” under sub section (1) Section 33 of the Enforcement Act, has to be examined and interpreted. In the context the mandate covered under section 4 of the Enforcement Act also assumes much significance. That Section reads thus:-

1. Provisions of this Act to override the provisions of any other law except the Standards Act. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act and the Standards Act or in any instrument having effect by virtue of any enactment other than this Act or the Standards Act.”

The provisions of the Enforcement Act shall have overriding effect over laws other than that Act and, the Standards Act. So the provisions of the Enforcement Act even if it is inconsistent with provisions of any other Act shall prevail, but, other than the Standards Act. If the clause “as in force immediately before the commencement of such narrow interpretation placed is shown to be militating against the mischief that is sought to be avoided by the legislation. It is an elementary rule that construction of a section is to be made of all arts together and not of one part only by itself and if at all there is inconsistency to ascertain the meaning the whole section should be read together and also an attempt should be made to reconcile both the parts. A sound interpretation and meaning of the statute is with a view taking note of the enacting clause and proviso all of them taken together. A sincere attempt should be made to reconcile the enacting clause with any clause which by itself may give rise to a different meaning to avoid repugnancy between the two. Where narrower of the interpretation would fail to achieve the manifest purpose of the legislation the established rule of construction based on the view parliament would legislate only for the purpose of bringing about an effective result. Manifest absurdity or futility, palpable injustice this Act is interpreted as suggested to hold that in respect of intra state sale of packaged commodities the provisions of the Act and the Rules under the Standards Act as it existed when the Enforcement Act was notified and brought into force in that state alone would apply, then, whatever later provisions brought or changes made by repeal or amendment would not have any applicability at all to intra state sale or distribution of packaged goods. A provision which existed earlier, but later repealed or amended in the standards Act and the Rules thereunder, to avoid or rectify a mischief noticed, may have to be applied in the state if the aforesaid clause is interpreted as suggested, over intrastate sale of packaged goods.

13. It is a settled principle of construction that to ascertain the legislative intend all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself. Too much significance cannot be attached to a particular clause where any brought into force on different dates, and it depended upon the issue of a Notification by the respective State Government. Section (1) (3) of the Enforcement Act also makes it clear that the State Government is empowered to issue Notification fixing different dates for the applicability of different provisions under the Act. That also has to be taken note in interpreting the clause “as in force immediately before the commencement of the Act” in sub section (1) of Section 33 of the Act. Whatever be the Rules made in respect of packaged commodity under the Standards Act competency and empowerment of the Central Government to bring in amendment, modification, changes etc. to such Rules is not open to doubt. So much so if any amendment to such Rules is made, normally, it will have only prospective operation. Applicability of that amended Rule and relevant provisions of the Standards Act and other Rules thereunder in relation to the Enforcement Act depend upon the Notification issued by the State Government. In a State where notification over the or absurd inconvenience or anomaly is to be avoid in interpreting a Statute is highlighted by Maxwell in ‘Interpretation of Statutes’. Craies on ‘Statute law’ has

stated that every clause of a statute should be construed with reference to the context or the other clauses of the Act. So far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

14. The clause 'as in force immediately before commencement of this Act' in sub section(1) Section 33 of the Enforcement Act if it is interpreted in the manner suggested by the learned counsel the provisions of the Standards Act and the Rules as on the date when Enforcement Act was notified in a state have to be applied with respect to intra state sale of packaged goods in the state that would result in absurdity and negate the very purpose for which the Standards Act and the Rules have been made applicable to intra state sale/or distribution of packaged commodities. In different States the Enforcement Act has been Enforcement Act by the State Government is after such an amendment, definitely, the amended Rule will have to be applied. However, in respect of a transaction in intra state sale of packaged goods before the amendment came into force, in a State where Enforcement Act has already been brought into force by Notification, then, existing provisions of the Standards Act and the Rules alone would apply to such transaction. A meaningful and purposeful interpretation to advance the legislative intent covered by Section 33 of the Act reading the section as a whole would clearly demonstrate that the clause 'as in force immediately before the commencement of this Act' has impact to the applicability of the Standards Act and the rules thereunder in respect of intra state sale of packaged goods with reference to the date of transaction, and not in the manner canvassed by counsel that the provisions of the Standards Act and the Rules as existed when brought into and enforced by Notification of the Government. Such narrow interpretation canvassed by petitioners over the clause "as in force immediately before the commencement of this Act" in sub section(1) of Section 33 would defeat the very purpose for which section 33 has been brought into the statute. Clause as in force immediately commencement of this Act' in sub section (1) of Section 33 of the Enforcement Act is only explanatory in nature and it no way interdict the applicability of the standards Act and the provisions as in force on the date of transaction of packaged commodities in intra state sale. Challenge canvassed by petitioner/accused persons to assail their prosecution on the basis of interpretation sought to be placed over the aforesaid clause has no merit.
15. In the Writ Petitions challenge is over the rule making power of the Central Government to set down sub rule (IA) of Rule 6 of PC Rules on the premise that Section 39 of the Standards Act govern matters over which prescription by rules can be made, and what is prescribed under Rule (IA) of Rule 6 of PC Rules is outside the rule making power. The relevant sections and rules have to be taken note of in considering the challenges raised in the Writ Petitions as aforesaid.
16. Chapter IV in the Standards Act deal with commodities in packaged form intended to be sold or distributed in the course of inter-state trade or commerce. Section 39(2) in that Chapter reads thus:-

“39. Quantities and origin of commodities in packaged Form to be declared –

(1) .....

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

Section 83 deals with the power to make rules under the Standards Act by the Central Government Section 83 (2) (r ) deals with the rule making power of the Central Government with respect to the manner of declarations of the contents and other details made over a package of good. That sub section reads thus:

83. Power to make rules –

(1) .....

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, Namely :-

(a) .....

(r ) the manner of declaration of the contents of a package and specification of the unit of weight, measure or number in accordance with which the retail sale price shall be declared on the package:

Packaged rules framed under section 83 of the Standards Act deal with various provisions over the sale, distribution or delivery of packaged commodities. Petitioners are being prosecuted alleging violation of Rule 6(1A) of the above Rules. That Rule reads thus:-

“6. Declaration to be made on every package-

(1) .....

(IA) Every package shall bear the name, address, telephone number, E-mail address, if available, of the person who can be or the office which can be contacted, in case of consumer complaints.”

Rule 6 (1A) has been brought in by amendment under a Notification G.S.R. 425(E) dated 17.7.2006. Several other changes have been brought in the packaged rules under the aforesaid notification with which we are not concerned, laying down that the amended rules would come into effect immediately on expiry of 180 days from the date of its publication in the official gazette. Transaction over the packaged goods in the present case covered by the WritPetitions, admittedly, took place after the above Rule 6(1A) of the Packaged Rules came into force.

17. Learned senior counsel for the writ petitioners argued before me that Rule 6(1) of the packages rules takes within its ambit whatever is legitimately comprehended under section 39(2) read with section 83 of the Act in respect of which prescription by way of Rules could be made. What is mandated under section 39(2) of that Act is only that every package should bear the name of the manufacturer and also the packer or distributor is pointed out by the counsel to contend that the Rule 6(1) framed, in exercise of the rule making power under section 83(2) (r ) of the Act takes care of the prescription over the declaration to be made in the packaged commodity Rule 6(1A) which causes an additional sub standard obligation to be performed by the manufacturer or packer, that too by way of statutory declaration is beyond the rule making power covered by section 83 of the Act and further it transgresses the scope and limit under section 39(2) of the Act, is the submission of the counsel. Such a Rule [Rule 6 (1A)] can be brought into effect only after amending section 39(2) of the Act by proper legislation, is the further submission of the counsel.
18. The question is whether Rule 6(1A) brought in by amendment is beyond the rule making power of the Central Government and does it transgress or violate the provisions covered by Section 39 (2) and section 83 of the Standards Act. Section 39(2) of the above Act, quoted above only directs furnishing the name of the manufacturer and also of the packer and distributor in the package. Rule making power of the Government under Section 83 (2) (r ) of the Act, enables only framing of rules over the manner in which the declaration of the contents of a package and specification of the unit of weight, measure or number is to be made on the package, is the submission of the counsel for petitioners. What is dealt under section 83 (2) (r ) referred, to above is something which falls under sub section (1) and not under subsection (2) of section 39 of the Act mandating that the packaged good shall bear the name of the manufacturer and also the packer or distributor. So reliance placed on section 83(2) (r ) of the Act by the learned counsel for petitioners to impeach the rule making power of the Government to frame Rule 6(1A) of the Packaged Rules has no merit. Now, coming to the rule making power of the Government also, it is to be noticed that what is given under sub section (2) of Section 83 of the Act in framing of Rules are only illustrative for giving effect to the Act and not exhaustive. Without prejudice to the generality of the rule making power of the government, it is stated, the rule framed may provide for all or any of the matters illustrated. None of the matters spelt out under Rule (2) curtail the rule making power of the government to frame such rules as may be necessary for the purpose of carrying out the provisions of the Act. That is all the more visible from the last clause provided as rule (2) (zd) stating that rule making power of the government extends to any other matter which is required to be, or may be, prescribed. Prescribed has been defined under section 2(s) of the Act thus :-

" S.2 Definitions – In this Act, unless the context otherwise requires -

- (a) .....
- (s) “prescribed” means prescribed by rules made under this Act and “prescribed authority” means Such authority as may be specified by such rules

What could be prescribed in exercise of the rule making power under Rules to give effect and enforce the provisions of the Act cannot at all be whittled down by placing too much significance on illustrative matters provided under sub section (2) of Section 83(2) of the Act in framing Rules. A reading of sub section (2) of section 83 of the Act providing the illustrations over which rules may be made it can be seen that clauses (r) to (v), five illustrations, alone have nexus with packaged commodities. If the argument of the senior counsel is accepted, then, only with respect to those five matters covered under sub section (2) of Section 83 alone the Government can frame rules over packaged commodities. Packaged rules as already indicated was brought into regulate the sale, distribution or delivery of packaged commodities in interstate trade and commerce. Now, by virtue of Section 33 of the Enforcement Act, such rules are applicable to intra state trade and commerce also. Section 39 (2) of the Standards Act specifically mandated furnishing of the name of the manufacturer and also of the packer and distributor of a packaged commodity, no way limits the rule making power of the Government to prescribe under Rules the manner in which the declaration has to be made. No amendment to that section is required to empower the government when it enjoys the Rule making power to frame whatever rules necessary for giving effect and enforcing the Standards Act including any matter how the declaration is to be made in a packaged good by the manufacturer, packer or distributor. What is prescribed under Rule 6 (1A) of P. C. Rules brought in by amendment is a mandatory requirement that every package shall bear the name, address, telephone number, E-mail address, if available of the person who can be contacted or the office which can be contacted in case of consumer complaints. For redressing any complaint from a consumer of a packaged goods, it is evidently clear such a declaration with particulars specified on the package is insisted in the new rule. A consumer purchasing the packaged good if he has any complaint thereof can immediately contact the person or the office, if necessary information thereof is shown in the package. Insistence for such declaration rather furnishing of information on the packaged commodity which is intended to give effect to the provisions of the Act and Rules and also to safeguard the interest of the consumers, cannot be impeached on the ground that the government do not have the rule making power to prescribe such a rule. The rule making power of the government to frame such a rule insisting upon the manufacturer, packer or distributor to furnish the details as mandated in the packaged commodity has to be examined with reference to the provisions of the Act and the empowerment of the government to frame rules for carrying out the provisions of the Act. When that is so examined, there is absolutely no merit in the challenge canvassed that Rule 6(1A) brought in by amendment to the Packaged Rules is beyond the Rule making power of the Government. There is no merit in the challenge canvassed to assail Rule 6(1A) of Packaged Rules as falling outside the rule making power of the Central Government.

Writ petitions and Crl. M.Cs. are devoid of any merit and all petitions are dismissed.

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6. IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT:  
THE HONOURABLE Mr.JUSTICE N.K.BALAKRISHNAN

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Crl. A. No.782 of 2002  
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Dated this the 17<sup>th</sup> day of November 2012

J U D G E M E N T

This appeal was filed by the State Challenging the verdict of acquittal rendered by the learned Magistrate in favour of accused Nos.1 and 2 in S.T.Case No.663/2000. The complaint was filed alleging violation of Rule 4, Rule 6(1) and Rule 23(1) of Standards of Weights and Measures (Packaged Commodities) Rules, 1977 which are punishable under Section.63 of 1976 Act and Section.51 of 1981 Act and Rule 39 of Packaged Commodities Rules.

2. The allegation is that PW1, the Legal Metrology Inspector had inspected the business premises of the first accused on 6.11.1998 at about 1 PM. Two items of properties, MO1 series and MO2 series according to the complainant were not labeled as required under the Rules as mentioned earlier. Mahazar was prepared for that purpose. Those two items, MO1 series and MO2 series were seized 2<sup>nd</sup> accused is stated to be the distributor of those items. A3 was stated to be the manufacturer. A3 appeared before court and pleaded guilty, it is submitted.

3. The complaint was filed before court on 5.7.1999. The case was detected o 6.11.1998. A petition was filed by the complainant under Section 473 of Cr.P.C. for condonation of delay in filing the complaint. Even though no specific order was passed on that petition, the learned Magistrate took cognizance and issued process against the accused. Therefore, according to the prosecution, the delay occurred in filing the complaint must be deemed to have been condoned by the Magistrate. Not only that the order taking cognizance was not challenged by the accused before the superior courts.

4. The complainant was examined before court on 21.5.2002 as PW1. Exts.P1 and P2 were marked. MO1 series and MO2 series were also identified and marked. The learned Magistrate acquitted the respondents/accused contending that the allegations made in the complaint are not proved and also on the ground that the complaint was filed beyond the period of 6 months. Since the punishment prescribed for the offence is only fine, the limitation prescribed is 6 months as provided under Section. 468 of Cr.P.C. Hence on the aforesaid ground the accused/respondents were acquitted.

5. Learned Public Prosecutor submits that since the petition to condone delay was filed along with the complaint and cognizance was taken by the learned Magistrate, the complainant cannot be found fault with since it has to be assumed that the learned Magistrate has condoned the delay in filing the complaint. At any rate, when the learned Magistrate took cognizance of the case, delay must be deemed to have been condoned. Here, the successor

Magistrate found fault with the cognizance already taken by his predecessor Magistrate and held that the complaint is barred by limitation. The cognizance taken by the learned Magistrate was not challenged before the superior court. Hence that finding is unsustainable.

6. The other ground projected by the learned Magistrate to non suit the complainant is that though in the complaint it was stated that the labels as required under the Rules mentioned earlier were not affixed, during cross examination it was stated by PW1 that there were stickers affixed on MO1 series and MO2 series. It seems the learned Magistrate did not even bother to go through the mahazar and MO1 and MO2 series. It was specifically mentioned in the mahazar that the labels found on MO1 series were not in accordance with the Rules. Similar was the statement pertaining to MO2 series. It was specifically stated that at the place where the retail price was to be mentioned a small sticker was seen affixed which was not in accordance with the Rules. Therefore, the complainant contended that there was violation of Rules 6(1) and 23(1) of Packaged Commodities Rules etc.

7. It was pointed out that on the particular date when the evidence of PW1 was recorded, the learned APP was not present. Therefore, the prosecution could not be properly conducted. In a case of this nature, the learned Magistrate ought to have given opportunity to the prosecution to let in evidence. It is only the Prosecutor who can give assistance to the complainant as to what all are the documents to be produced and how the prosecution case is to be established. After PW1 was examined he was stated to have told the court that he is not interested in examining the remaining witnesses. That observation also cannot be correct since it is for the learned Prosecutor to decide as to who are the witnesses to be examined to establish the charge against the accused. It seems, the learned Magistrate was perturbed by the absence of the Prosecutor on that particular day and thus the case was disposed of post haste. By disposing the case in that line, actually the respondents are also to suffer now. There was no fault on the part of the complainant in producing the necessary evidence. The fault was in fact committed by the court below by not allowing the prosecution to have a proper culmination. It is observed in paragraph 10 of the judgment of the court below that the manufacturer was not included in the array of the accused. But, it is pointed out that the manufacturer (A3) has already pleaded guilty and that was why the case was proceeded only against A1 and A2. Since there is failure of justice in having the case disposed of without permitting the complainant to examine other witnesses and also because the learned Magistrate did not verify MO1 series and MO2 series with reference to the Rule quoted in the complaint, the verdict of acquittal is to be set aside. As said earlier, the finding that the complaint is barred by limitation and so on that ground the accused is to be acquitted is also cannot be sustained.

In the result, this CrI.R.P. is allowed. The verdict of acquittal against the respondents is set aside. The respondents will cause appearance before the learned Magistrate on 5.12.2012. Since the physical presence of the respondents may not be required they can be allowed to be represented by the counsel under Section. 205 Cr.P.C. if application is filed and on such

condition as may be imposed by the learned Magistrate. Both sides are to be given opportunity to adduce evidence.

7. IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT:  
THE HONOURABLE Mr.JUSTICE S.S. SATHEESA CHANDRAN,

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W.P.(C).No.27915 OF 2009

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Dated this the 20<sup>th</sup> day of March, 2013

J U D G E M E N T

Petitioners are the accused in a pending case on the file of the Judicial First Class Magistrate Court – II, Aluva. They are being prosecuted on a complaint filed by 2<sup>nd</sup> respondent, Inspector of Legal Metrology, Circle II, Aluva for offences punishable under Section 39 of the Standards of Weights and Measures Act, 1976, hereinafter referred to as the “Standards Act” and Rules 6(1)(a), (f), 23 and 39 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, for short, the “PC Rules” and Sections 31 and 33 of the Standards of Weights and Measures (Enforcement) Act, 1985, for short, the “Enforcement Act”. Ext.P5 is copy of the complaint. Petitioners have filed the above writ petition for quashing Ext. P5 complaint and all further proceedings arising there from contending that prosecution proceedings initiated against them are thoroughly vitiated and without jurisdiction and liable to be quashed exercising the extraordinary jurisdiction of this Court.

2. Prosecution case as disclosed by Ext. P5 complaint is that on 07.02.2006 the 2<sup>nd</sup> respondent, Inspector of Legal Metrology Circle II, Aluva inspected the trade premises of a firm the 1<sup>st</sup> petitioner/1<sup>st</sup> accused and thereupon detected packages containing “Benvara Marble Tiles” exhibited for sale without bearing the label having MRP, packing date etc, as mandated by the Standards Act, and the Rules thereunder. He prepared Ext.P1 Mahazar over such packages but it is alleged that he was prevented from seizing the packages by the 4<sup>th</sup> accused who was then present in the trade premises. 4<sup>th</sup> accused also refused to attest in the mahazar and seizure receipt. After conducting further enquiries and ascertaining who are all the Directors of the Firm and issuing show cause notice to them, and replies furnished found not satisfactory, complaint was filed before magistrate to prosecute the firm and its Directors, petitioners for the offences stated supra. Cognizance taken of the offences and process issued against the petitioners/accused, the case now awaits further steps for trial.

3. I heard counsel for petitioners and also learned Government Pleader. Learned counsel for petitioners assailed Ext. P5 complaint and further proceedings taken against petitioners/accused contending that the entire prosecution proceedings are thoroughly vitiated and, further no offence under the Standards Act and Rules thereunder or Enforcement Act is prima facie disclosed by the allegations imputed. Adverting to Ext.P1 mahazar, learned counsel contended that search, if any, conducted was totally in violation of the provisions of Section 102 of the Code of Criminal Procedure for short, the ‘Code’ and it is thoroughly illegal. Referring to Ext. P7 copies of invoices which are alleged to have been seized from

the trade premises during the inspection by the Inspector of Legal Metrology, learned counsel contended that granite and marble tiles are not sold in packaged form but only on area wise measurement, as could be seen from the above invoices. The allegation imputed that such marble/granite tiles were kept in packaged form which is the basis for violation of PC Rules and thus, the offences under the Standards Act, in the facts of the case, would not lie, is the further submission of the counsel. Lastly, it is contended that there is no whisper of allegation in Ext.P5 complaint as to who among the directors were present when inspection was conducted nor who among them was in charge of that firm. Referring to Section 74 of the Standards Act and Section 62 of the Enforcement Act learned counsel for petitioners contended that the company/firm and the person who was in charge of the company or firm at the time the offence was committed alone is liable to be prosecuted and where Ext.P5 complaint is silent as to who among the petitioners 2 to 4, the directors of firm was/were in charge of the firm when the alleged inspection was conducted by the Inspector. Ext. P5 complaint and all proceedings commenced therefrom are liable to be quashed.

4. A copy of the seizure receipt prepared by Inspector on his inspection of the trade premises of 1<sup>st</sup> petitioner firm was made available for my perusal. The first item referred to therein is marble tiles (Benzwara) packets three numbers. When that be so, in Ext.P1 mahazar, seizure of such packets are not specifically spelt out cannot be given much significance and dispute canvassed by counsel for petitioners that marble/granite tiles are not sold in packets but only area wise with reference to its particulars shown in Ext. P7 invoices. If canvassed, is a matter that can be gone into only in trial of the case. Where seizure receipt prima facie indicates that marble packets were seized and allegation is that such packaged goods did not confirm to PC Rules, challenge canvassed that marble, granite tiles are not sold in packaged form cannot be accepted. Challenge canvassed to impeach the prosecution that search was not conducted by the Inspector of Legal Metrology in compliance with the mandatory requirements covered by Section 102 of the Code does not impress me. That challenge was canvassed on the premise that independent witnesses are not shown as attestors to Ext.P1 mahazar. In carrying out a search, what is insisted upon is that the searching officer should take steps to secure the presence of two independent witnesses and not that the search list prepared after search should be invariably attested to by such independent witnesses. There may be very many cases where searching officer despite his earnest efforts is not able to secure the presence of independent witnesses and search list prepared by him has to be attested by those who were present, which may include officials who assisted him. So much so, whether he made efforts to secure independent witnesses or not and search list was attested by others due to their non-availability are all matters that have to be considered in trial. Merely because Ext.P1 mahazar was not attested by independent witnesses, it cannot be stated that search/inspection conducted and seizure made was illegal. I also take note the submissions made by the Government Pleader that what was conducted was not a search but only inspection of the trade premises of petitioners, and then noticing violation of the PC Rules, some invoices and packaged goods were seized and there was obstruction by the person in charge, one among the petitioners herein. Whether there was inspection only or was it a case of search, is a matter that has to be gone into in trial. Challenge canvassed to

assail the prosecution contending that there was a search over the trade premises and it was illegal cannot be accepted, but, I leave it open to be considered by the magistrate if so canvassed in trial.

5. In Ext.P5 complaint, no specific allegation is imputed against any of the directors of 1<sup>st</sup> accused firm as to who among them obstructed the inspection and also who was in charge when such inspection was conducted has been canvassed by the counsel to impeach the merit of prosecution case. Section.74 of the Standards Act and also Section 62 of the Enforcement Act, both of them, spell out that not only the company/firm but the person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company/firm is liable to be proceeded against and punished for offences under the two Acts. We find identical provisions casting vicarious penal liability on such persons in charge or control of company or firm with the company/firm in other statutes like Negotiable Instruments Act, Drugs and Cosmetics Act and Prevention of food Adulteration Act. When such vicarious liability, that too penal liability is sought to be pinned upon a person for commission of an offence by a company or firm there must be a specific averment in the complaint that such person/persons who is/are proceeded with the company was/ were in charge of and responsible for the conduct of the business of the company. The Apex Court analyzing almost identical statutory provision, under Section 141 of the Negotiable Instruments Act, 1881 has held so in **S.M.S.Pharmaceuticals V. Neeta Bhalla (2007 (3) KLT 672 (SC))**.

In Ext.P5 complaint, there is no specific averment as to who among the directors of 1<sup>st</sup> petitioner firm proceeded as accused nos. 2 to 4 was in charge and responsible for the conduct of the business of the firm when the alleged offences were committed. However, the complaints with the annexures produced have to be considered in examining the offences imputed under the relevant Act and Rules. In the complaint there is allegation as to obstruction caused to inspection by person/persons in charge of the trade premises, and statement made in Ext.P1 Mahazar is that such obstruction was caused by 4<sup>th</sup> petitioner. When that be so, his prosecution as a director of 1<sup>st</sup> accused firm in charge or in control of the firm, when offences alleged were committed cannot be impeached invoking the extraordinary jurisdiction of this Court. So far as petitioners 2 and 3, the other two directors of the company taking note there is nothing to show or indicate that they too were in charge or control of the firm nor in any way of causing obstruction to inspection, I find criminal proceedings against them under Ext. P5 complaint are liable to be quashed.

6. I make it clear that none of the observations made in this judgment would stand in the way of compounding of the offences if so sanctioned under the aforesaid Act and Rules. Criminal proceedings against petitioners 2 and 3, accused Nos.2 and 3 in C.C.No.633 of 2008 on the file of Judicial First Class Magistrate Court II, Aluva, are quashed. Challenge raised by petitioners 1 and 4 (accused Nos.1 and 4) against the criminal proceedings are negative, and the case against them shall continue in accordance with law.

Subject to the above direction, writ petition is disposed of.