



Need for clarity as to what constitutes 'pre-packaged commodity'

The Legal Metrology Act, 2009 (hereinafter referred to as the "2009 Act") was passed by the Indian Parliament in order to repeal and replace The Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985. The 2009 Act was brought into force w.e.f April 1, 2011 with the aim of protecting consumer interests while simultaneously keeping the industry free from unnecessary interference.

However, the 2009 Act has failed in this regard, as the definition of the word 'pre-packaged' which was a point of contention under The Standards of Weights and Measures Act, 1976, has continued to create confusion among manufacturers, retailers, wholesalers, etc. as no clarity exists on which commodities qualify as a pre-packaged commodity. Due to the confusion created, the matter has been argued before Indian Courts and the matter is currently pending before a three judge bench of the Supreme Court in **State of Maharashtra v. Subhash Arjundas Kataria (Civil Appeal No. 1117 of 2010)**.

Definition of Pre-Packaged Commodities

Section 2(l) of The Legal Metrology Act, 2009 defines the term as follows:

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

What Qualifies as Pre-Packaged Commodity

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The question as to whether a particular commodity qualifies as a pre-packaged commodity or not has been discussed by various High Courts as well as the Supreme Court. The High Courts of Madras, Andhra Pradesh, Bombay and Kerala have considered matters on various commodities such as vacuum cleaners, wristwatches, refrigerators, sunglasses, radios, tape recorders and VCRs. The Madras, Andhra Pradesh and Bombay High Courts have held that commodities that are packaged only for the purpose of transporting and packaging is meant for the convenience of consumers are not a pre-packaged commodity.

The Supreme Court and the Kerala High Court, on the other hand, have taken an adverse position on the issue. The Madras High Court in **Phillips India Ltd. v. Union of India [(2002) 1 Mad L.W (Cri.) 211]** while discussing whether televisions, video and audio players or speakers can be classified as a 'packaged commodity' had observed that such products would not fall within the definition of pre-packaged commodity as the products were packed only for the convenience of the consumers for safe transportation and for protection during storage and handling.

The Andhra Pradesh High Court in **Eureka Forbes Ltd. v. Union of India [AIR 2003 AP 275]** had observed that a product cannot be deemed to be a packaged good and put within the purview of the Standards of Weights and Measures Act, 1976 simply by virtue of the fact that the manufacturer or seller prints certain data on the product or places them in a box for the purpose of storage and transportation.

The Bombay High Court in para 10 of its judgment in **Titan Industries Ltd. v. Union of India and Ors. [AIR 2006 Bom 336]** laid a twin test to determine whether a package is pre-packed. The Bombay High Court had observed that:

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“The test would be firstly whether by the very nature of the commodity it requires to be packed before it can be sold. Secondly, in the event a package is opened does it undergo any perceptible change or reduction in value? If these twin tests are met, then only can it be said that the package contains a pre-packed commodity. Merely because the commodity is packed for protection during conveyance or otherwise or in the fancy package, would not result in the package becoming a pre-packed commodity. The Rule, therefore, along with the explanation aims to include only those Pre-packed commodities which by the very nature are required to be packed before they are sold.”

The Bombay High Court had observed that watches are removed from their package and displayed so that the customers can see them and try them and they do not lose any value because the package is opened. The Bombay High Court, therefore, found that watches cannot be considered a pre-packaged commodity and as a result, the provisions of the Standards of Weights and Measures Act, 1976 will not apply on them.

The Supreme Court had a different interpretation altogether as in **Whirlpool of India Ltd. v. Union of India [(2007) 14 SCC 468]**, a three-judge bench of the Supreme Court held that refrigerator is covered under the term pre-packed commodity. In para 6, it was observed that:

“Even if the package of the refrigerator is required to be opened for testing, even then the refrigerator would continue to be a "pre-packed commodity". There are various types of packages defined under the Rules and ultimately Rule 3 specifically suggests that the provisions of Chapter II would apply to the packages intended for "retail sale" and the expression "package" would be construed accordingly”.

The Supreme Court, therefore, found that refrigerators, were a pre-packaged commodity and it



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did not matter if a refrigerator's packaging is opened for display and testing. The refrigerator would continue to be a pre-packaged commodity and the provisions of the Standards of Weights and Measures Act, 1976 would be applicable.

The Kerala High Court also ruled on the lines of the judgment of the Supreme Court in Whirlpool as in **Union of India v. Godrej-GE Appliances Ltd. [2009 (235) ELT 435 (Ker.)]**, the Kerala High Court in para 19 observed that:

“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”.

This interpretation of the Kerala High Court, therefore, is that the definition of pre-packaged commodities includes commodities that are packaged only for the purpose of storage and transportation too.

The definition of pre-packaged commodity was once again discussed by the Supreme Court in **State of Maharashtra and Ors. v. Subhash Arjundas Kataria [2012 3 AWC 2765 SC]**. The respondent had originally filed a suit in the Bombay High Court claiming that sunglasses cannot be classified as pre-packaged commodities. The Bombay High Court had upheld his contention and ruled in favour of the respondent. The State government was aggrieved by the order and filed the present suit in the Supreme Court. The Supreme Court in para 9 observed that:

“it is clear that the expression "pre-packed commodity" would be applicable to commodities which are packed and the commodity packaged has a pre-determined value and that value



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cannot be altered without the package sold being opened at the time of sale or the product undergoes a modification on being opened. We are also of the view that the Explanation I to Rule 2(l) of the Rules is not attracted because the package is not opened for the purpose of testing as in the case of electric bulbs. We fully agree that the sun glasses are tested by the buyer for his suitability, and therefore, sun glasses, whether it be a frame or glass is not a pre-packed commodity within the definition of the expression "pre-packed" under Rule 2(l) of the Rules, hence, the High Court is fully justified in quashing the notice and allowing the writ petition filed by the Respondent”.

But keeping in mind the decision of the three judge bench, the Supreme Court held that the issues with regards to the definition of pre-packaged commodity should be dealt with by a larger bench and directed that the matters be placed before the Chief Justice of India for listing before a higher bench.

Conclusion

It can be argued that the Court should decide what qualifies as a packaged commodity by the nature of the goods because if the legislation had planned to include every packed commodity it would have done so. It would be relevant to point out that at this time the law with regards to packaged commodities is far from established. In view of the judgments passed by various High Courts and the Hon’ble Supreme Court, there is an ambiguity in the definition of ‘pre-packaged commodity’ and the applicability of Legal Metrology Rules and the said issue is still under consideration before a three-judge bench of the Hon’ble Supreme Court in the Civil Appeal No. 1117/2010 titled as State of Maharashtra & Ors. Vs. Subhash Arjundas Kataria.