REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **WRIT PETITION (CIVIL) NO. 14929 OF 2006**

Reserved on : 12TH August, 2009.
% **Date of Decision** :31st August 2009.

M/S. REEBOK INDIA COMPANY ….Petitioner.
Through Mr. Sachit Kumar Sahjipal, Mr.Rakesh Kumar Singh, Mr.Rakesh Kumar Shukla, advocates.

VERSUS

UNION OF INDIA & OTHERS …..Respondents

Mr. Dalip Mehra, Mr. Rajiv Ranjan Mishra, advocates for UOI.

Ms. Zubeda Begum, advocate for respondents 3 and 4.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES.
3. Whether the judgment should be reported in the Digest ? YES

SANJIV KHANNA, J.:

1. The petitioner, M/s.Reebok India Company has filed the present Writ Petition for declaration that the provisions of Standards of Weights and Measures Act, 1997 (hereinafter referred to as SWM Act, for short) and Standards of Weights and Measures (Packaged Commodities) Rules, 1977 (hereinafter referred to as SWM Rules, for short) are not applicable to them. The petitioner has also prayed for

direction to release goods seized for the alleged violation of SWM Act and SWM Rules vide seizure memo dated 17th July, 2006. By the aforesaid seizure memo, the respondent no.3-Inspector of Legal Metrology, Government of NCT of Delhi had seized a pair of footwear with the label which did not mention that the maximum retail price was inclusive of all taxes. By another notice the petitioner was asked to inform whether they would like the offence of incorrect labeling to be compounded under Section 65 of the SWM Act. The said footwear was imported by the petitioner from Vietnam and was being sold in one of the shops of the petitioner in Delhi. The contention of the respondents is that the label was not as per the SWM Act and SWM Rules.

2. The petitioner submits that the provisions of the SWM Act and the SWM Rules can apply only when there is a specific notification in respect of footwear or garments under Section 1(3) of the SWM Act It is submitted that there is no such notification. Section 1(3) of the SWM Act reads as under:-

> "1(3). It shall come into force on such date as the Central Government may, by notification, appoint, and different dates may be appointed for different-
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> (a) provisions of this Act,
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> (b) areas,
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> (c) classes of undertakings,
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> (d) classes of goods,
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> (e) classes of weights and measures, or

(f) classes of users of weights and measures,

and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision in such areas, or in respect of such classes of undertakings, goods, weights and measures or users of weights and measures in relation to which this Act has been brought into force:…"

3. I do not agree that Section 1(3) of the SWM Act requires a specific notification under clauses (a) to (f) in respect of a class of goods, footwear, garments etc. in the Official Gazette, for the SWM Act to apply. Section 1(3) of the SWM Act requires a notification to be issued by the Central Government in the Official Gazette for the enforcement of the Act. Various sub-clauses of Section 1(3) of the SWM Act empowers the Central Government to issue separate notifications and appoint different dates for enforcement of (a) different sections/sub sections of the SWM Act (b) areas to which the SWM Act will be applicable, (c) classes of goods to which the SWM Act will be applicable and (d) classes of weights and measures or users of weights and measures to which the SWM Act will be applicable. Thus the Central Government in view of various sub-clauses of Section 1(3) of the SWM Act can fix different dates for enforcement of different Sections of the Act, classes of goods and users and the areas to which the SWM Act will apply. However, Section 1(3) does not endure a notification for individual or specific goods. A

general notification is not barred or prohibited. Section 1 (3) clauses (a) to (e) are permissive clauses which permit partial enforcement but does not prohibit issue of general notification(s). It is not necessary that there should be a specific notification in respect of footwear or garments under Section 1(3) of the SWM Act before it can be enforced or a separate notification specifying the specific area in which the SWM Act will be enforced.

4. The Bombay High Court in the case of ***Subash Arjandas Kataria versus State of Maharashtra and Others*** [Writ Petition No.120/2004] AIR 2006 Bom 293 has observed:

> "5. We have heard learned Counsel for the parties. It may be pointed out that by Notification dated 26th September, 1977 the Central Government under Section 3(1)(sic) of the Act appointed 26th September, 1977 as the appointed date for enforcing the provisions of sections mentioned therein particularly Sections 1, 2 and 3 and Sections 39 and 83. Under Section 83 of the Act, the Central Government is empowered to make Rules in respect of packaged commodities. Accordingly, Rules have been made dated 26th September, 1977 covering all packaged commodities.
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> Section 1(3) of the Act sets out that it shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different (a) provisions of this Act, (b) areas, (c) classes of undertakings, (d) classes of goods, (e) classes of weights and measures, or (f) classes of users of weights and measures. In other words what it implies is that the provisions of the Act may be made applicable by notification on one day and/or different dates may be fixed for different provisions of the Act to come into force for various areas, classes of undertakings, etc., as set out earlier. In

> the instant case the Notification dated 26th September, 1977 has brought into force the various provisions as set out therein viz. Sections 1, 2, 3 and 39 as also 83. Once those sections have come into force, there is no requirement that there must be a different notification specifying the different dates for different provisions of the Act to be brought into force for various areas, etc. The submission, therefore, made on behalf of the petitioner that different dates have to be notified for various areas, classes of undertakings, etc., is devoid of merit considering the notification. All prepackaged commodities covered by the Act and the Rules, will be governed by the sections which have been brought into force to the extent applicable. This is made further clear by the Rules. Rule 2-A of the Rules makes it clear that the provisions of the Chapter II applies to all pre-packed commodities except in respect of grains and pulses containing a quantity of more than 15 Kg. Rule 3 sets out that the provisions of the Chapter shall apply to the packages intended for retail sale and the expression 'package', wherever it occurs in this Chapter, shall be construed accordingly. To that extent the first submission as advanced on behalf of the petitioner must be rejected. …….” (emphasis supplied)

5. Similar view has been taken by the Andhra Pradesh High Court in the case of ***TVS Electronics Limited and another versus Union of India, Civil Supplies and Others*** [Writ Petition No.11936/2001] 2009 (1) ALT 243= 2009 Crl.LJ 1470 wherein it was observed as under:

> “8. It is well accepted legislative practice that sometimes legislation after its enactment is not brought into force immediately. The power to bring the legislation into force is entrusted to the executive Government (and it is not considered as delegation of legislative power). It is absolutely within the

discretion of executive Government to bring into force an enactment and Mandamus cannot be issued to Government to enforce the statute or provision. A legislation more often than not confers wide ranging power on executive Government to enforce an enactment either wholly or partly applicable to the entire territory or part of the territory. Such power may also include power to apply the enactment in a phased manner with reference to territorial areas, persons covered and subject matter with which the legislation deals. If legislation confers power on Government to bring the law into force by issuing an order notifying the date when the Act shall come into force, and when such notification is issued bringing all the provisions of the Act into force, nothing more is required. The entire law/enactment is enforceable. This situation remains unalterable notwithstanding the fact that the provision conferring power on executive Government gives discretion to appoint different dates for bringing into force different provisions of the Act or persons/subject matters to which such Act applies.

9. A perusal of Sub-section (3) of Section 1 of the Act as above would show that Central Government is given power to bring into force the provisions of the Act. It also confers power to appoint different dates for enforcement of the Act for different areas, classes of undertakings, classes of goods, classes of weights and measures or classes of users of weights and measures. The legislative choice to use the word 'OR' after end of Section 1(3)(e) of the Act would clinchingly show that a notification appointing the date for the purpose of enforcing the provisions of the Act takes within its fold all other aspects of the matter. So to say, when once notification is issued bringing into provisions of the Act, there need not be separate notification with

reference to the areas, classes of undertakings, classes goods etc.

10. The Government of India vide their notification No. G.S.R.620(E), dated 26.09.1977 appointed the said date as the date on which Sections 1 to 3, 28, 29, 31(b), 39, 48(2), 54, 63, 67, 69, 70 to 74, 78 and 83 shall come into force. They also issued another notification No. G.S.R.193(E), dated 01.04.1980 appointing the said date as the date on which Sections 76 and 77 shall come into force. About a year thereafter, again on 01.07.1987 notification No. G.S.R.617(E), was issued appointing the said date as the date on which almost all the provisions came into force. It is very interesting to notice that all the three notifications were issued in exercise of powers conferred under Section 1(3) which only means they cover all aspects found in Section 1(3) and not extracted (sic. restricted) to any of them. The submission of learned Counsel for petitioners, therefore, cannot be accepted.

11. Learned Counsel for petitioner relied on Titan Watches Limited v. Senior Inspector Legal Metrology, W&M Department (supra), in which this Court took a view that in the absence of notification under Section 1(3)(d) of the Act, the Act has no application to wrist watches. It appears this Judgment of learned single Judge is in appeal being W.A. No. 1448 of 2004. Therefore, the same is not helpful to petitioners. In Subash Arjandas Kataria v. State of Maharashtra (supra), the view of Andhra Pradesh High Court was not accepted by Division Bench of Bombay High Court. The Division Bench considered a question that when once a notification under Section 1(3) of the Act is issued, appointing the date or the dates for enforcing various provisions of the Act, there is no requirement of issuing notification/notifications specifying dates with reference to other

classes under Section 1(3) of the Act."
(emphasis supplied)

6. The ratio expressed in the decisions of ***Subash Kataria*** (supra) and ***TVS Electronics*** (supra) is acceptable in view of the language of Section 1(3) of the SWM Act. Section 1(3) gives option to the Government to appoint different dates for enforcement of the SWM Act in respect of the provisions, the area to which the Act will apply, class of goods, weights and measures, class of users, etc. It is an empowering provision which entitles the Central Government to partly enforce the provisions of the Act in relation to sections, users, area, goods and weights. It is not couched in a negative language which requires specific notification for class of goods and bars general notification for enforcement of the SWM Act. The Central Government has been empowered to enforce the SWM Act partially or in a limited or phased manner, in relation to sections, different parts of the country, class of goods, undertakings, weights and measures and users of weights and measures. As a result of the Notification dated 28th September, 1977, Sections 1, 2, 3, 28, 29, 37(b), 39 48(2), 54, 63, 67, 69, 70-74, 78 and 83 had come into force. Thereafter by the notification dated 1st April, 1980, Sections 76 and 77 came into force and by the notification dated 1st July, 1987 the entire enactment has been enforced. The effect of these Notifications is that full play must be given to the provisions of the Act including the definition clauses. If

a commodity is covered by a definition clause or provisions of an Act, the statutory provision has to be complied with. Section 1(3) of the SWM Act does not require a goods specific or an area specific notification, once the provisions of the SWM Act are applicable and the commodity is regulated and covered by the SWM Act. It is not mandatory for the Central Government to issue specific notifications identifying the commodity, user, area, etc., to enforce the Act. A general notification without reference to individual goods, user or area is not prohibited. Thus, the Central Government is equally empowered to make the entire Act or part thereof applicable. The SWM Act does not require issue of specific notification for class of goods or stipulate that general notification is not permissible or barred. In view of the aforesaid position in law, I do not agree with the view expressed in the case of ***Titan Watches Ltd. versus Senior Inspector, Legal Metrology Weight and Measures Department*** (2003) 4 ALT 29 and some other cases. It may be noticed here that the decision of Andhra Pradesh High Court in the case of ***Titan Watches*** (supra) was not accepted in the case of ***TVS Electronics*** (supra).

7. The Karnataka High Court in the Writ Petition Nos. 173-174/2006 decided on 31st January, 2009, copy of which has been downloaded from internet has rejected a similar contention of the petitioner relying upon Section 1(3) of SWM Act.

8. The second contention raised by the petitioner is that the goods of the petitioner are not covered by the provisions of the SWM Act as they are not "commodities in packaged form" under Section 2(b) of the SWM Act.

9. Section 2(b) of the SWM Act reads as under:

> "S.2(b). "commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail."

10. I do not agree with the petitioner that the aforesaid definition requires that there should be a link between the commodity or unit by reference to packaging i.e. the packaging should make the unit suitable for sale and only when the unit is not suitable for sale unless packaged, the goods are "commodity in packaged form". "Commodity in packaged form" means any commodity which is packed. The definition elucidates that the packaging can be in any form i.e. in a bottle, tin container, wrapper or otherwise. All forms and types of packaging are covered. The intention of the legislature is to expand the scope and cover any and every type of packaging. The intention is not to restrict the definition of the term "commodity in packaged form" to specific type of packing. Use of the word "otherwise" in the end, expands and widens the scope and does not restrict the definition to a particular type of packaging. Reason and cause why packing is done or whether packing is essential and required for sale is irrelevant. No link

between the commodity or unit by reference to packing is required. The last portion of the definition clause states that the commodities may be packed in units which are suitable for sale whether in wholesale or in retail trade. Thus a packed commodity in unit for sale whether for retail or wholesale trade is covered by the definition "commodity in packaged form".

11. The Supreme Court in the case of ***Whirlpool of India Limited versus Union of India and others*** (2007) 14 SCC 468 had considered the aforesaid definition of the term 'commodity in packaged form" with reference to refrigerators and a similar contention raised by the manufacturer/seller was rejected, inter alia, holding as under :-

> "**5.** It was not disputed before the High Court and also before us that the appellant manufacturer has to sell the refrigerators which are packed in polythene cover, thermocol, etc. and placed in hardboard cartons. In fact the appellant had so pleaded before the High Court in para 3 to which a reference has been made by the High Court. Once that position is clear, then the refrigerator clearly becomes a commodity in the packaged form. The use of the term "or otherwise" in the definition would suggest that a commodity if packed in any manner in units suitable for sale, whether wholesale or retail, becomes a "commodity in packed form"……"
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> (emphasis supplied)

12. In these circumstances, it is not possible to accept the contention of the petitioner that the pair of shoes sold were/are not "commodity in packaged form" as defined in Section 2(b) of the Act.

13. The next question which arises for consideration is whether Section 39 of the Act applies in the case of the petitioner. Section 39 of the Act reads as under:-

> "**39. Quantities and origin of commodities in packaged form to be declared.** (1) No person shall-
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> (a) make, manufacture, pack, sell, or cause to be packed or sold; or
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> (b) distribute, deliver, or cause to be distributed or delivered; or
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> (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-
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> (i) the identity of the commodity in the package;
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> (ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;
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> (iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;
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> (iv) the unit sale price of the commodity in the package; and
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> (v) the sale price of the package.

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

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

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

(4) The statement on a package or label as to the net weight, measure or number of the contents thereof shall not include any expression which tends to qualify such weight, measure or number:

Provided that the Central Government may, by rules, specify the commodities, the weight or measure of which is likely to increase or decrease beyond the prescribed tolerance limits by reason of climatic variations; and it shall be lawful for the manufacturer or packer of the commodity so specified to qualify the statement as to the net content of such commodity by the use of the words "when packed".

Explanation.-The words "when packed" shall not be used in any case except a case to which the proviso to sub-section (4) applies.

(5). Where the Central Government has reason to believe that there is undue proliferation of weight, measure or number, in which any commodity is, or reasonably comparable commodities are, being-packed for sale, distribution or delivery and such undue proliferation impairs in the opinion of that Government, the reasonable ability of the consumer to make a comparative assessment of the prices after considering the net quantity or number of such commodity, that Government may direct

the manufacturers and also the packers or distributors to sell, distribute or deliver such commodity in such standard quantities or number as' may be prescribed.

(6). Whenever the retail price of a commodity in packaged form to which this Chapter applies is stated in any advertisement there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and, retail unit sale price thereof.

(7) No person shall sell, distribute or deliver for sale a package containing a commodity which is filled less than the, prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to-

(a) giving protection to the contents of such package, or

(b) meeting the requirements of machines used for enclosing the contents of such package.

(8) The Central Government may, by rules, specify such reasonable variations in the net contents of the commodity in a package as may be caused by the method of packing or the ordinary exposure Which may be undergone by such commodity after it has been introduced in trade or commerce.

(9) The Central Government may, by rules, specify, the classes of commodities or packages in relation to which all or any of the provision of this section shall not apply or shall apply with, such exceptions or modifications as may be specified therein."

14. It was contended by the petitioner that the pair of footwear, sports wear, accessories or garments sold by the petitioner in the retail packaging are neither sold by weight or measure or counting and these products are sold

as an individual item by their description i.e. size, colour, quantity and user friendliness. It was accordingly submitted that Section 39 of the Act is not applicable as it requires sale by weight, by measure or by counting. This contention of the petitioner is to be rejected. Even a single or an individual item amounts to sale by measure or by count. Measure or count does not require more than one item. A single item or single commodity when packed will be coved by Section 39 as the said commodity will be sold by count or measure. It is not necessary that the count should be more than one and not one. There is no such requirement in Section 39. Once Section 39 of the SWM Act applies then the provisions and stipulations therein have to be complied with. Section 39(1) of the SWM Act prohibits manufacturing, packaging or selling of any commodity in packed form unless the package bears the label to identify the commodity in it, net quantity in terms of standards of weights and measures in the packaged commodity, adequate numbers of commodities in the package, unit sale price and the like.

15. Similar view has been taken by the Andhra Pradesh High Court in the case of ***TVS Electronics Ltd*** (supra) and by the Karnataka High Court in ***Reebok India Company thr. Executive Director (Finance and Operations/Chief Financial Officer) versus Union of India*** [Writ Petition nos. 17373-17374/2006, decided on 31st January, 2009]

16. Learned counsel for the petitioner made reference to Rule 2(l) of the SWM Rules and relying upon the judgments in the cases of ***Phillips India Ltd versus Union of India*** 2002 WLR 140; ***Pieco Electronics and Electricals Ltd. versus Union of India*** [Writ Petition No.11966/1991 decided on 5th September, 2002]; ***Eureka Forbes Limited versus Union of India*** 2003 (2) ALD 742 and decision of the Bombay High Court in ***Subash Arjandas Kataria*** (supra) submitted that the openable card board box in which the footwear was packed cannot be regarded as a pre-packed commodity under Rule 2(l) and therefore Rule 6 of SWM Rules is not applicable. The Rule 2(l) reads:-

> "Rule 2(l). 'pre-packed commodity' with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification, and the expression 'package', wherever it occurs, shall be construed as a package containing a pre-packed commodity;
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> *Explanation I.*- Where, by reason merely of the opening of a package, no alteration is caused to the name, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these Rules, to be a pre-packed commodity, for example, an electric bulb or flurescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity.

Explanation II- Not relevant."

17. These judgments do support the contention of the petitioner but cannot be considered to be good law in view of the subsequent decision of the Supreme Court in ***Whirlpool of India Ltd.*** (supra). In the said case, Rule 2(l) was also examined and it was observed as under:-

> "**6.** A glance at this provision and more particularly to Explanation I would suggest that the refrigerator is covered under the term "pre-packed commodity". Even if the package of the refrigerator is required to be opened for testing, even then the refrigerator would continue to be a "pre-packed commodity". There are various types of packages defined under the Rules and ultimately Rule 3 specifically suggests that the provisions of Chapter II would apply to the packages intended for "retail sale" and the expression "package" would be construed accordingly.
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> **7.** It is not disputed before us that the sale of the refrigerator is covered under the "retail sale". Once that position is clear Rule 6 would specifically include the refrigerator and would carry along with it the requirements by that Rule of printing certain information including the sale price on the package. Thus it is clear that by being sold by the manufacturer in a packaged form, the refrigerator would be covered by the provisions of the SWM Act and the SWM (PC) Rules and it would be imperative that MRP has to be printed in terms of Rule 6 which has been referred to above.
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> **8.** The High Court has also made a reference to Rule 2(*l*) and more particularly, the Explanation to which we have referred to earlier. In our view the reliance by the High Court on Rule 2(*l*) is correct. Learned counsel tried to urge that every customer would like to open the package before finalising to purchase the refrigerator. He would at least get it tested and for that purpose the package would be destroyed. That may be so but it does not change the position as rightly observed by the High Court."

18. The Punjab and Haryana High Court in ***M/s. Whirlpool of India Limited versus Union of India and another*** 2001 (3) PLR 385 had referred to Rule 2(l) of SWM Rules and observed:

> "The illustration of an electric bulb as contained in the explanation is clearly indicative of the legislative intent. Admittedly, an electric bulb is merely wrapped in a sheet of corrugated paper. It can be taken out and tested. Every buyer does so, yet, it is treated as a pre-packed commodity. In our view, a Refrigerator is not different in any manner.
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> It is undoubtedly true that a customer who goes to a dealer to buy a Refrigerator shall check it before he pays the price. He might even test it. For this purpose, the dealer shall have to necessarily remove, the packing. However, this is of no consequence. The act postulates that the goods can be inspected by the Director or any person authorized by him even while the goods are lying "in any premises or are in the course of transportation from one State to another." A specific provisions in this behalf is contained in Section 29. Section 30 further provides for forfeiture."

19. Section 2(l) of the SWM Act defines "pre-packed commodity" to mean a commodity or an article which was packed before the purchaser was present. Rule 2(l) requires that the quantity of the product contained in the package should be of a pre-determined value and such value cannot be altered without the packing or the lid or the case of the container being opened or the commodity undergoing a perceptible modification. Admittedly in the present case, the packaging of the footwear or the apparels is done when

the purchaser is not present. After packaging, the products are then shifted to the retail counters where they are examined by the purchasers. The packaged products have a pre-determined value and their value cannot undergo any change without the packaging being opened or without perceptible modification. Explanation (1) to Rule 2(l) clarifies that mere testing/examination of the pre-packed commodity by the purchaser before purchase does not make any difference. Mere fact that the pre-packed commodity has to be opened to be shown to the customer at the retail counter and even tested by the customer before sale is inconsequential.

20. The Andhra Pradesh High Court in the case of ***TVS Electronics*** (supra) observed as under:-

> "20. Thus an electronic printer which is packed (may be for the purpose of insulation and protection from damage) in the absence of customer, after it is removed it undergoes perceptible modification, and therefore, it falls within the category of pre-packed commodity Secondly, as admitted in the affidavit filed by second petitioner, first petitioner imports electronic printers, electronic parts and markets the printers and printer parts after assembling them in the facility of Tamil Nadu. It is certainly marketed in different parts of the country in course of inter-State trade or commerce and therefore, all provisions of the Act and Package Rules would apply. Merely because only one unit is packed in one package, the same does not take electronic printers out of the purview of the Act and the Rules. As per Section 13(2) of General Clauses Act, 1897, in law when

> statute uses plural, it also means singular and vice versa."

21. The provisions of SWM Act and the SWM Rules have been enacted for the benefit of and to safeguard interest of the consumers. They have a salutary objective and purpose behind them. The SWM Act and the SWM Rules have to be interpreted in a manner that the object behind the provisions is not frustrated and rendered superfluous but promoted and protected. The Supreme Court in the case of ***M/s. India Photographic Company Ltd. versus H.D. Shourie*** JT 1999 (5) 333 observed :

> "It is contended that sub-rule (2) of Rule 6 alone was applicable in the case because the goods in the form of Kodak films were being sold by the distributor and not by the manufacturer. It is further contended that sub-rule (1) of Rule 6 is applicable to the manufacturers alone. We are not satisfied with such submission. Accepting such a plea would result in frustrating the provisions of the 1986 Act and thereby encourage the retailers or distributors of foreign made goods to charge prices according to their convenience without letting the consumer know the actual price of the commodity. 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. We are also not impressed with the argument of the learned counsel for the appellant

> that before its amendment on 8-8-1986, sub-rule (2) as it then stood cast such an obligation to display the price but not thereafter. By amendment provisions of sub-rules (2) and (3) appear5s to have been incorporated in sub-rule (2) only by deleting sub-rule (3). The superfluous and additional words existing in sub-rule (2) before its amendment were rightly deleted in view of the specific provisions of Chapter II comprising rule 3, 4, 5 and 6 as noted herein earlier. The dealers are therefore, obliged to comply with the provisions of sub-rule (1) of Rule 6 of the Rules notwithstanding the confusion if any conceived by them under Rule 6(2) before its amendment."

21. The Karnataka High Court in the case of ***Reebok India Company*** (supra) referred to the judgment of the Supreme Court in the case of ***Ramesh Mehta versus Sanwal Chand Singhvi*** (2004) 5 SCC 409 wherein it has been observed that subordinate legislation should be read in a meaningful manner so as to give effect to the provisions of the statute. If two constructions are possible to adopt, a meaning which would make the provision workable and in consonance with the statutory scheme should be preferred. Referring to definition of "pre packed commodity" in Rule 2(l), it was observed that Explanation (1) contains an illustration and the definition should be given a meaningful interpretation. It was held:-

> "13. The definition of 'prepacked commodity' in Rule 2(1) is exhaustive while the explanation I also contains illustration,

when read in the context of the definition 'commodity in prepackaged form in Section 2(b) of the Act. The definition of the phrase 'commodity in the packaged form' in Section 2(b) of the Act though not exhaustive, cannot be read in isolation, but with the legislative history of the Act. Keeping in mind the purport and object of the Act and what it seeks to subserve, the definition of the phrase in Rule 2(1) must be given a meaningful application, with a view to make the Act workable. The consequences are that as long as the commodity in a prepackaged form, is a package, and the commodity contained therein has a predetermined value, which cannot be altered on being opened or on undergoing a perceptible modification. In the circumstances, the definition in Rule 2(1) a subordinate legislation, cannot be said to override the principal legislative definition of the phrase in Section 2(b) of the Act, or that the Rule controls the Act.

14. In the admitted facts of this case, the shoe packed in a carton is in single unit meant for retail sale. It may be that the pair of shoe is opened from the package so that the customer tests it but having regard to the Explanation (1) to Rule 2(1), it is amply clear that the petitioner's product falls within the definition of the term 'pre-packed' commodity. In that view of the matter, I am not persuaded to accept the view taken by the Division Bench of the Bombay High Court in Kataria's case holding that sun glasses exposed for retail sale after being removed from the cartons would not fall within the definition of the term 'pre-packed' commodity.

15, In the light of Rule 2A making Chapter-II applicable to all pre-packed commodities while Rule 3 makes the chapter applicable to packages intended for retail sale meant for consumption by individual or group of individuals or any other customer, the

> petitioner's products placed for retail sale in package of single units, cannot escape from the applicability of the Act and the PC Rules. Rule 6 requires every package to make certain declarations including retail sale price. There is also no dispute that the declaration was partly made on the package by printing Maximum Retail Price (M.R.P.) without printing the price inclusive of taxes. No exception can be taken to the action of the authorities under the act and Rules, and the notices impugned cannot but be said to be valid and legal."

23. In view of the aforesaid discussion, I do not find any merit in the present Writ Petition and the same is dismissed. No costs.

(SANJIV KHANNA)
JUDGE

AUGUST 31, 2009.
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