

Date of Filing :05.05.2011
Date of Disposal:07.02.2022

**BEFORE THE KARNATAKA STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, BENGALURU (PRINCIPAL BENCH)**

DATED THIS THE 07th DAY OF FEBRUARY-2022

PRESENT

HON'BLE Mr. JUSTICE HULUVADI G RAMESH : PRESIDENT

Mr. K.B.SANGANNANAVAR : JUDICIAL MEMBER

MrsM.DIVYASHREE : LADY MEMBER

APPEAL NO.1478/2011

1. M/s PepsiCo India Holdings Pvt. Ltd.,
101/1, "A" Road, MIDC, Dhattav Roha,
Raigarh-402 116, Maharashtra,
Rep/by its Director.
2. M/s PepsiCo India Holdings Pvt. Ltd.,
34th KM Stone, NH-4, Teppadabegur,
Nelamangala, Bangalore-562 123,
Karnataka, Rep/by its Director.
3. M/s Aradhana Foods & Juices Pvt. Ltd.,
NH-9, Mumbai Highway, Pothireddipallaya
Village, Sangareddy, Medak District-95.
Andhra Pradesh, Rep/by its Director.

... Appellants

(By Sri/Smt. A.Murali, J.Sagar Associates)

-Versus-

1. Sri. Adithya Banavar,

2. Shri. Abhimanyu Kampani,

3. Sri. Aubrey Lyngdoh,

4. Smt. Lakshmi Nair,

5. Smt. Ashwini Obulesh,

6. Palatte, Mantri Square,
Sampige Road, Bangalore-5
Rep/by Manager.

..Respondents

(By Sri/Smt.J.Kothari, Advocate)

ORDER

HON'BLE Mr. JUSTICE HULUVADI G RAMESH : PRESIDENT

1. This is an Appeal filed by the appellant/Opposite parties No.2 to 4, aggrieved by the order passed by I Addl. District

Consumer Disputes Redressal Forum, Bangalore in CC-155/2011 on 01.04.2011 (for short District Forum/Commission and the parties as arrayed in Consumer Case).

2. The Brief facts are: Complainants went to Mantri Mall and purchased one litre water bottle of Aquafina, a 330 ml Pepsi Tin and 350 ml bottle of Nimbooz, which costs them at the rate of Rs.20, Rs.50/- and Rs.50/-, respectively in O.P.No.1-Palatte Mantri Square, whereas the same things were costs at Rs.15/-, Rs.25/- and Rs.15, respectively from Food World Super Market. It is the case of the complainants that, the MRP at the O.P.No.1 for these things are different from the MRP marked on the identical products at Food World. There is no warning either on the product or separate warning on the bill that certain identical product is available at much cheaper rate at other retail shops, which amounts to deficiency in service and unfair trade practice. It is alleged by the complainants that, such variations have been done at the manufacturer's level. Contrary, OPs appeared before the Commission below and contended that, there is no legal impediment for providing different MRPs for the same commodity. It is contended that, fixation of different

MRPs on the same packaged commodity is even provided under the Central Excise Act, 1944. This is evident from Section-4A of the Central Excise Act which provides for valuation of excisable goods with reference to retail sale price. Explanation II (C) of Sub-Section-4A envisages different retail sale price on different packages for the sale of any excisable goods in packaged form. After enquiry, the Commission below recorded affirmative finding in favour of complainants and directed OPs to stop printing different MRPs to the same quantity water bottles, Pepsi Cans or bottles and Nimbooz bottles of the same quantity and print only one MRP for all the things of equal quantities, apart from directing OPs to submit compliance report before the District Commission and awarding Rs.5,000/- compensation and Rs.2,000/- litigation costs.

3. Aggrieved by the said Order, Appellants/O.P.No.2 to 4 preferred this appeal, on the grounds that, the impugned order is contrary to law and facts, liable to be set aside.

4. Commission heard learned counsel appearing on behalf of appellants/O.P.No.2 to 4 and perused the impugned order passed by Commission below in CC-155/2011, dated

01.04.2011 and perused the records. Now Commission has to decide whether impugned order passed by the Forum below is contrary to the facts and law as appealed ?

5. Learned counsel appearing on behalf of appellants/O.P.No.2 to 4 would contend that, the sale made at the premises of the Respondent No.6 at a beverage restaurant outlet in the food court area is not a 'retail sale', but an 'institutional sale' to service industry. It is contended by appellants/Ops that, Commission below, without considering the legal aspect that, fixation of price at which the goods are to be sold is a prerogative of the manufacturer as per Section-4A of the Central Excise Act. It is submitted by the OPs that, though there is a prohibition under Standards of Weights and Measures Act that one cannot sell packaged commodity over and above the MRP declared on the said packaged commodity, but they have paid the excise duty as contemplated under section-4A of the Central Excise Act on the commodities in question and hence prayed for allowing the appeal. Contrary, to such contention the Respondents/complainants contended that, appellants/Ops marking different MRPs for different consumers, thereby misleading them as to the price at which the produce is

ordinarily sold in the market. It is also contended by the Respondents/complainants in their written arguments that, they are not a service industry such as a hotel, airways, railways, etc., but are just students or customers who bought the said goods while they visited the mall. While the outlet 'Pepsi' in the Food Court 'Palette' may be an institutional consumer, when they resell it to others over a counter, the sale becomes a retail sale and therefore the Legal Metrology (Packaged Commodities) Rules, 2011 would be applicable to the appellants herein. The Respondents/complainants in their written arguments contended that, the Central Excise Act, 1944 cannot in any manner govern unfair trade practice and does not permit manufacturers to mark different MRPs for the same quantity and quality of goods, nor does it make it legal. It is also contended that, the Law governs only what would be the price on which excise duty would be calculated should there be different retail prices marked, dependant on different geographical area and in the present case, marking of different MRPs is being done in the same city, being Bangalore, and not in different geographical area and without any relevance to excise duty, which amounts to unfair trade practice and

deficiency in service as it materially misleads the public on the price at which such goods are otherwise available. Under such situation, the only issue which shall be decided by this Commission is whether appellants/OPs are at liberty to print different MRPs as per Section-4A of Central Excise Act?. To decide the same, it is necessary to reproduce Section-4A of the Central Excise Act, which reads thus:

“Section 4. Valuation of excisable goods for purposes of charging of duty of excise. -

(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall -

(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;

(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.

Explanation. - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if

any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.”

From the above, it is clear that the said provision cannot in any manner permit manufacturers to mark different MRPs for the same quantity and quality of goods. No doubt it only governs what would be the price on which excise duty would be calculated should there be different retail prices marked, dependant on different geographical areas. It is important to note here that, though the appellants/Ops contended that, they have paid the excise duty as contemplated u/s-4A of the Central Excise Act on the commodities in question, but have utterly failed to prove the same with cogent and reliable evidence. The decisions relied upon by the appellants/Ops do not come to their help. The appellants/Ops cannot go beyond the provisions contemplated under the Standard of Weights and Measures Act, 1976 and Legal Metrology (Packaged Commodities) Rules, 2011, under the guise of Central Excise Act, 1944, that too, in the absence of there being any acceptable evidence regarding

whether the sale was retail sale or institutional sale and whether they have paid any excise duty to the concerned regarding the products.

6. In view of the above such circumstances, we do not find any error/omission in the order passed by the District Forum and there is no scope to interfere in the impugned order passed by forum below and the same is dismissed with cost of Rs.10,000/- to be payable to Respondents herein.

7. Provide copy of this order to the District Commission and parties to the appeal.

Lady Member

Judicial Member

President

J