

RESERVED ON : 10.07.2026
PRONOUNCED ON : 09.10.2026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF OCTOBER 2026

BEFORE

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT APPEAL NO.3658 OF 2012 (GM-RES)

BETWEEN:

- 1 . STATE OF KARNATAKA,
REPRESENTED BY ITS
CHIEF SECRETARY,
VIDHANA SOUDHA,
BANGALORE - 560 001.
- 2 . THE CONTROLLER OF
LEGAL METROLOGY,
NO.1, ALI ASKAR ROAD,
BANGALORE - 560 052.
3. THE INSPECTOR OF
LEGAL METROLOGY,
METROLOGY DEPARMENT,
HUBLI SUB - DIVISION-1,
HUBLI.

... APPELLANTS

(BY SMT. PRATHIBA R.K., AGA)

AND:

M/s. BHARATI AIRTEL LTD.,
NO.55, DIVYASHREE TOWERS,

BANNERGHATTA MAIN ROAD,
BANGALORE - 560 029,
REPRESENTED BY ITS
AUTHORIZED SIGNATORY-
SRI. PRASHANTH N.

...RESPONDENT

(BY SRI. SARAVANA S., ADVOCATE)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF KARNATAKA HIGH COURT ACT 1961, PRAYING TO SET-ASIDE THE ORDER PASSED IN WRIT PETITION NOS.11486/2007 C/W 1744/2008 (GM-RES) DATED:08.01.2010 AND ALLOW THIS WRIT APPEAL BY DISMISSING THE WRIT PETITION.

THIS WRIT APPEAL HAVING BEEN RESERVED FOR JUDGMENT COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/ PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER : HON'BLE MR. JUSTICE T.M. NADAF)

This intra-Court appeal under Section 4 of the Karnataka High Courts Act, 1961, by State of Karnataka and its instrumentalities calling in question the order dated 08.01.2010 passed by the learned Single Judge in W.P.No.11486/2007 C/w W.P.No.1744/2008.

2. Under the impugned order, the learned Single Judge by allowed the Writ Petitions and quashed Annexures-B and E in the respective Writ Petitions.

3. The parties are referred to as per their rankings before the learned Single Judge.

4. The brief factual matrix are as under:

AS PER THE PETITIONER:

4.1 The petitioner is a Company incorporated under the Companies Act, 1956 and is a licensee under the Indian Telegraphs Act. The petitioner is authorized to operate Cellular Mobile Telephone Services within the State of Karnataka and the Karnataka Telecom Circle.

4.2 The petitioner provides various types of telephone services to its subscribers including a GSM Mobile Phone Service, which is activated by the use of a Subscriber Identification Module Card¹, which is an electronic chip. The petitioner also provides GSM Fixed

¹ Hereinafter referred to as 'SIM Card'

Wireless Phone Services². The SIM Card and the FWP are enabling devices supplied by the petitioner to its subscribers, so as to enable the subscriber to access the services provided.

- 4.3 It is the case of the petitioner that neither of these devices are supplied at a cost to the subscriber, but are retained as the property of the petitioner and are only provided to the subscribers in order to enable them to avail the services which are contracted for in an agreement. The petitioner has two kinds of billing systems viz., prepaid and post-paid. Prepaid is a service where a subscriber can avail the services after payment of a certain amount for a specified time and usage. Whereas in post-paid the subscriber pays the service charges after availing the services. Under both these schemes, the petitioner is collecting service tax in respect of the services provided. In the first instance, the activation of device is charged. Even for this,

² Hereinafter referred to as 'the FWP'

service charges are collected and other than this, there are no additional charges collected towards the provision of the SIM Card or the GSM FWP. The reason being without activation, neither the SIM Card nor the GSM FWP would have any value and are totally useless.

4.4 The subscriber requires executing mandatorily a subscriber agreement form expressly provided that the devices would continue to be the property of the petitioner and in the event the subscriber wishes to discontinue the services, these devices would have to be returned to the petitioner. The petitioner has dealers and franchisees across the State of Karnataka, through whom the subscribers forward their applications and services are provided by the activation and charging of the devices.

4.5 The devices stated supra requires to be carried by the retail outlets where the subscribers can procure these services and in order to safeguard these devices from

moisture or damage on account of handling, they are kept in a packed condition.

4.6 It is the main case of the petitioner that the third respondent, an authority under the Standards of Weights and Measures Act, 1976³, inspected the premises of one of the agents of the petitioner namely, M/s.Soft-Ed Solutions India Private Limited, Koppikar Road, Hubli, on 13.03.2007 and had seized a box containing GSM FWP and had issued a notice regarding registration of a case for violation of the provisions of the SWM Act and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977⁴, calling upon the said agent to compound the offence, failing which legal proceedings would be initiated before the jurisdictional Magistrate for the violation of provisions of SWM Act and PC Rules 1977.

³ Hereinafter referred to as, 'the SWM Act'

⁴ Hereinafter referred to as, 'the PC Rules'

- 4.7 As per the petitioner, this act of the third respondent was possible on account of the third respondent proceeding under the impression that the provisions of SWM Act are made applicable on the devices i.e., the GSM FWP as the same comes within the definition of a packaged commodity and would amount to sale.
- 4.8 The petitioner further contended that the issue as to, whether such devices stated above provided by the telephone service providers for activation of services, would amount to sale or not for purposes of the Sales Tax Act, was raised before the three Judge Bench of the Supreme Court in ***BHARAT SANCHAR NIGAM LIMITED AND ANOTHER Vs. UNION OF INDIA*** in ***WRIT PETITION (CIVIL) 183/2003***. By order dated 02.03.2006 the Bench has formed an opinion that imposition of Sales Tax for any facilities of telecommunication services is untenable in law, as there is no element of sale, and remanded the matter

for a fresh consideration to the jurisdictional Commissioner of Commercial Taxes.

4.9 Upon the remand, the jurisdictional Commissioner by his order dated 22.11.2006 held at Paragraph No.11 of the order that the SIM Cards cannot be treated as goods in the hands of the appellant who is a service provider and hence the levy of penalty by the respondent is required to be quashed and accordingly, the same was quashed. Though this legal and factual position has been brought to the notice of the third respondent, however the third respondent proceeded further and had proposed to initiate criminal proceedings.

4.10 Aggrieved by the Notice issued vide Annexure-B (in W.P.No.11486/2007) and the initiation of proceedings before the concerned jurisdictional Magistrate vide Annexure-E (in W.P.No.1744/2008), the petitioner was before the Writ Court.

4.11 Before the learned Single Judge, it was contended by the petitioner that the provisions of SWM Act and PC Rules 1977 are not applicable to the case as there is no element of sale as contemplated under the provisions of Section 39 of the SWM Act and Rules 4, 23(1) and 33 of the PC Rules.

4.12 It was contended that, in view of Subscriber Agreement which explicitly states that the SIM Cards and FWPs remain the sole property of AIRTEL, no ownership transfers or takes place.

4.13 Further it was also contended that, the legislation governs commodities intended to be sold independently by weight, measures, or count. The packaging of these specific items is entirely coupled with and incidental to availing telecom services and the hypothetical claim of the State that the hardware costs were hidden in the service charges, without there being a clear fact finding on the same by way of adjudication, not tenable in law.

4.14 The contention of the State that in view of definition provided under the PC Rules, a pre-packaged commodity defined under Rule 2(l) means, a Commodity, which without the purchaser being present, is placed in a package of whatever nature, whether sealed or opened, there must declaration, to be stated in the principal display panel, in terms of the provisions of the SWM Act and the PC Rules, when they are displayed in the shop, as the same attracts the provisions of the SWM Act and the PC Rules.

4.15 It was further contended by the State that, in the absence of any exemption contemplated under the Act and Rules and since admittedly the commodities were displayed at a retail outlet, the provisions of the SWM Act and the PC Rules would squarely apply, notwithstanding any declaration on the package to the effect – ‘Not for Sale’, ‘Packaging is only for production’, ‘Not to be sold along with the Package’, ‘Free Gift Package’, ‘Displayed only for advertisement’ etc, as the

same would not exempt the commodities from the rigour of provisions of the SWM Act and the PC Rules.

4.16 It was further contended that, importing any pre-packed commodities would require the Importer to get himself registered with the Government of India, Directorate of Municipal Metrology, New Delhi. Admittedly, the petitioner is not so registered. In that view of the matter, the petitioner has violated Rule 35 of the PC Rules, which is also punishable under the Act. In view thereof, any act of the party/the petitioner which is devised by means of so-called Schemes to camouflage the sale of the devices by contending that, it is the service which is provided and the devices are supplied to enable the subscriber to access the services, as the cost of the devices is certainly worked into the so-called service charges that are collected.

4.17 It was further argued that, in the event any theft or accident or physical damage caused to the device, there

is no declaration by the petitioner that they would replace the device free of costs, which should be the consequences of the petitioner's contention that, at all times device continues to be the property of the petitioner. In that view of the matter, it naturally follows that in order to replace the device, the petitioner would certainly impose a price which can be nothing but the sale price of the device and therefore, the same would have to be indicated as the sale price of the packed commodity, as required under the provisions of the SWM Act and the Rules there under.

4.18 It was further urged on behalf of the State/Revenue that, the provisions of the SWM Act and Rules there under are intended to safeguard the interest of the consumer and this laudable object is defeated if the devious schemes as one contended by the petitioner is to be accepted in respect of the aforesaid devices are concerned and accordingly, sought to dismiss the Writ Petition.

4.19 The learned Single Judge, declined to accept the contentions raised by the State Government stating that the hypothetical claim of the State that the petitioner has adopted devious method to evade tax, stating that the devices are nothing but the equipments used for providing service charges, are just mere allegation in the absence of any adjudication in that regard and there is no justification in the claim of the Revenue attributing such devious *modus operandi* on the part of the petitioner.

4.20 The learned Single Judge, relying on the law laid down by the Hon'ble Supreme Court in the case of **BHARAT SANCHAR NIGAM LIMITED AND ANOTHER VS. UNION OF INDIA**⁵, referring to the paragraphs extracted in Page Nos.15 to 17 of the order impugned, proceeded to allow the Writ Petition, quashed the impugned Notices at Annexures-B and E, stating that in terms of Clause 9 of the terms and conditions for

⁵ Writ Petition (Civil) No.183/2003, disposed of on 02.03.2006

providing services which clearly indicates that there is no transfer of the property in the goods and in the absence of any adjudicating mechanism provided under the Act, it does not afford an opportunity to entities, such as the petitioner to demonstrate that a particular commodity would not fall under the provisions of the Act or the Rules. In that view of the matter, the provisions of the SWM Act and the PC Rules are not made applicable as the emphasis under the provisions of the Act and the Rules is in respect of commodities which are intended for sale by themselves.

4.21 In view thereof, the learned Single Judge has given a finding, in view of the Clause stated supra, which has been extracted in the order impugned that, there is clearly an agreement by the subscriber to surrender the devices on termination of the contract, it cannot be said that there is any element of sale involved and on the same has held, on a *prima facie* test that, the proceedings sought to be initiated by the third

respondent in the case on hand is misplaced. Calling in question the order impugned, the State and its instrumentalities are before us in this intra-Court appeal.

5. Heard, Smt.Prathiba.R.K, learned Addl. Government Advocate appearing for the appellants/ State and Sri.Saravana.S, learned counsel appearing for the respondent.

6. Learned Addl. Government Advocate reiterated the same grounds, as follows:

6.1 Admittedly, the SIM Card and GSM FWP's were pre-packaged commodities and petitioner is duty bound to display the date of manufacture, expiry date, if any and other statutory requirements, as contemplated under Section 39 of the SWM Act and in terms of definition provided under Rule 2(l) and 2(m) of the PC Rules, failing which the notices as contemplated under the provisions of compounding offences issued were valid.

- 6.2 It is further contended that, in an identical matter pertaining to soaps manufactures by M/s.WIPRO, learned Single Judge of this Court upheld the validity of notice as well as the provisions referred to in this case.
- 6.3 It is further contended that when the commodity was a pre-packed one and in the absence of contest or opposition that the commodity would not fall within the provisions of the Act, the order of the learned Single Judge is opposed to law and is liable to be set aside.
- 6.4 It is further contended that the judgment on which reliance was placed by the learned Single Judge is not applicable on facts to the case on hand, as the issue involved in this case is in respect of SIM Card or GSM FWP. Attractive price is collected from the customers and that the service tax was also being collected, as such, said commodity would attract provisions of the Act and the Rules and failure to comply with the provisions of the Act and the Rules resulted in issuance

of compounding notices, requiring the defaulter to compound the offence, lest, registration of a case before the jurisdictional Magistrate, are validly issued in terms of law.

6.5 It is also contended that, absence of adjudicatory mechanism as per contention of the petitioner, does not by itself result in or lead to the petitioners to claim that the commodities stated afore are subjected to this Act and the Rules.

6.6 Further contended that, the issue since answered by learned Single Judge upholding the provisions that, any failure/shortfall to comply with the provisions would definitely attract the provisions as contained under Section 39 of the SWM Act and the Rules there under, the learned Single Judge in the present case, has failed to consider this aspect of the matter as the said Judgment supra was rendered much prior to the Judgment passed in the present petition and non-

consideration of the same by the learned Single Judge resulted in divergent findings passed by this Court, one is near to the object and another against it.

6.7 It was also contended that mere absence of adjudication mechanism as per the contention of the petitioner, would not entail any situation for the petitioner to claim an exemption from compliance of the provisions of the Act and the Rules. In that view of the matter, the order passed by the learned Single Judge is not sustainable in law and sought to allow the appeal and set-aside the order passed by the learned Single Judge.

6.8 Learned Addl. Government Advocate placed reliance on the following Judgments:

(i) ***M/S. WIPRO LIMITED AND ANOTHER
VS. UNION OF INDIA AND OTHERS***⁶ –

Paragraph Nos.11 to 13.

⁶ W.P.No.11596/2008, disposed of on 21.08.2009

(ii) **M/S. ATRIA CONVERGENCE
TECHNOLOGIES LTD VS. DEPUTY
COMMISSIONER OF COMMERCIAL TAX
AND ANOTHER⁷.**

6.9 In **M/s.ATRIA CONVERGENCE TECHNOLOGIES LTD,** supra, the primary question raised before the Division Bench was as under:

"All these petitions by the Assessses call in question orders made by the Karnataka Appellate Tribunal at Bengaluru whereby their Appeals filed under Section 62(6) of the Karnataka Value Added Tax Act, 2003 have been negatived essentially holding that the Assessses have transferred to the subscribers the right to use Set Top Boxes for consideration and therefore, the same amounts to sale within the definition of Section 2(29)(d) of the act and as a consequence, levy of sales tax is unassailable."

6.10 The Division Bench answered the same against the Assessses/ petitioners, under the heading '(F) As to whether STB is capable of exclusive use by the

⁷ STRP NO.19/2024 & connected matters, disposed of on 18.02.2025

subscribers'. The observation of the Division Bench reads as under:

"F. AS TO WHETHER STB IS CAPABLE OF EXCLUSIVE USE BY THE SUBSCRIBERS:

(1) Learned advocates appearing for the Assesses secondly argued that section 2(29) of the 2003 Act defines 'sale' in an inclusive way and clause (d) of it makes transfer of the right to use any goods for consideration also a sale and therefore, user potential of STB is a precondition for the invocation of this sub-clause. Section 2 enacts dictionary clause of the Act. Substantive part of sub-section 29 reads as under:

"(29) 'Sale' with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes,-

(a) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;

(b) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a delivery of goods on hire purchase or any system of payment by instalments;

(d) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

(Explanations not being relevant, are not reproduced).

(2) The above definition is coined by the State Legislature in the light of 46th Amendment to the

Constitution of India whereby, clause (29A) came to be introduced to the definition clause enacted in Article 366. This Amendment expands the concept of sale and thereby, enlarges the power of State Legislatures to tax the transactions simulating sales but not conforming to the conventional meaning of sale under the Sale of Goods Act, 1930. Clause (29A)(d) being relevant, is reproduced below:

"tax on the sale or purchase of goods" includes—

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;"

*In **STATE OF MADRAS vs. GANNON DUNKERLEY & CO.**,¹⁰ the Supreme Court had held that the expression "sale of goods" used in the Constitution involves an existence of any agreement between the parties for the sale of goods in which eventually property passes. To a great extent, the substratum of this decision is altered by introducing a fiction by which six instances of transactions are treated as sale, one of them being the transfer of the right to use any goods for any purpose for consideration. Incidentally, the validity of this Amendment came to be upheld in **BUILDERS ASSOCIATION OF INDIA vs. UNION OF INDIA**¹¹. There is force in the submission of learned Sr. Advocate Mr.Suryanarayana that section 2(29) has to be read with section 2(15) and Article 366(29A)(d) of the Constitution, since they have a thick kinship.*

(3) The submission that STB is not capable of being exclusively used by the subscriber is bit difficult to countenance. Let us drift a bit to the cognate provisions of law namely 2012 Regulations again. Regulation 17

*obligates every Multi Service Operator like the Assesses herein to provide to the subscribers STBs conforming to standard, set by the Bureau of Indian Standards, with a minimum warranty of one year, unless the subscriber himself has bought one on his own. There is a statutory obligation to repair the STBs within 24 hours of the complaint that too, free of cost. It is admitted before us by both the sides that the STBs are installed in the premises of subscriber only, albeit license to visit the same for service/repair is accorded under the subject agreements. In deciding the question, what are the goods involved in a sale transaction of the kind and with what intent the parties have entered into it, would assume importance. The seller and purchaser, the words being used in their widest amplitude have to be ad idem as to the subject matter of the arrangement. To this to be added, the intent of law also. In finding answers to questions of the kind, the approach of the court should be of a reasonable person of average intelligence. This view gains support from **M/S ASSOCIATED CEMENT COMPANIES LTD vs. COMMISSIONER OF CUSTOMS**¹². If STBs had no user potential at the hands of subscribers, the statutory obligations enacted in 2012 Regulations would not have been made so meticulously. Added, without the STBs subscribers may not be in a position to make use of the channels of their choice.*

(4) Learned advocates appearing for the Assessed vehemently argued that even if user potential is assumed, what needs to be demonstrated is the exclusive use of STBs at the hands of the subscriber. In support of this they

relied upon a Co-ordinate Bench decision of this court in **INDUS POWERS LTD., vs. DEPUTY COMMISSIONER OF COMMERCIAL TAXES**¹³. This decision refers to Apex Court Ruling in *BSNL vs. UOI* supra wherein it is observed that to constitute transfer of right to use goods, it should be *inter alia* to the exclusion of transferor since it is not just merely a license to use. In the light of that, the Bench after perusing various terms of the contract, observed at para 64 as under:

"It is well settled that, whether the transaction amounts to transfer of right or not cannot be determined with reference to a particular word or clause in the agreement. The agreement has to be read as a whole to determine the nature of the transfer. From a close reading of all the clauses in the agreement it appears to us that under the terms of the contract there is no transfer of right to use the passive infrastructure conferred on the sharing operator/mobile operator. What is permitted under the contract is, a permission in the nature of a licence to have access to the passive Infrastructure and permission to keep the equipments of the mobile operator in the pre-fabricated shelter with permission to have ingress and egress only to the authorized representatives of the mobile operator... in the facts of this case- if we look into the various terms of the agreement it is clear under the contract, the assessed has not transferred any right in the passive infrastructure to the mobile operators. The right that is conferred on the mobile operator is a permission to have access to the passive infrastructure, a permission to keep the active infrastructure in the site belonging to the assessed, a permission to mount the antenna on the tower erected by the assessed and to have the benefit of a particular temperature so as to operate the equipments belonging to the mobile operator. No sale of goods or transfer is involved in the transaction in question. Therefore, it does not fall within the mischief of Article 366(29A)(d) of the Constitution."

(5) *The above Ruling does not come to the aid of Assesses since it has been rendered in the peculiar fact matrix as was ascertained from the terms of contract involved therein. A perusal of those terms, the Bench observed, revealed a case of pure license as contradistinguished from a substantive right granted to the user to the exclusion of the Assessed. However, that is not the case here inasmuch as a full right is given to the subscribers to make use of STBs. In **COMMISSIONER OF SERVICE TAX vs. QUICK HEAL TECHNOLOGIES LTD.**,¹⁴ at paragraph 54.4 it is observed as under:*

"54.4 the effective or general control does not mean always physical control and, even if the manner, method, modalities and the time of the use of goods is decided by the lessee or the customer, it would be under the effective or general control over the goods."

(6) *It has been held in **AGARWAL BROTHERS vs. STATE OF HARYANA**¹⁵, that a mere transfer of the right to use goods for consideration is sufficient to attract Article 366(29A)(d) of the Constitution and that the transfer of goods itself is not necessary. This view has been reiterated in **STATE OF ORISSA vs. ASIATIC GASES LTD**¹⁶.*

(7) *The Tripura High Court in **BHARATI TELEMEDIA supra**, at para 33 has observed as under:*

"One of the most important elements of determining whether the right to use goods has been transferred or not is by ascertaining who has effective control over the goods. As far as STBs are concerned they are in total control of the customer. Under his effective control the STBs are installed in the house of the customer. He can use the STB when he wants to. He can use the STB to view whichever channel he wants to view. He may or may not use the STB. The company does not even

have the power of entering the premises of the customer. Most importantly as per the terms of the agreement, the companies are responsible for the functioning of the STBs only for a period of 6(six) months. The warranty is valid only for six months and thereafter there is no warranty. Therefore, if STB of a customer is spoiled after six months he will have to pay for repair or replacement of the same. We are of the considered view that this amounts to transfer of the right to use goods."

We are in complete agreement with this view, there being nothing to substantiate pervasive control of the Assessed over the STBs, merely because they have license to gain entry to the premises of the subscriber for periodic inspection/repair."

7. In contrast, Sri.Saravana.S, learned counsel appearing for the Writ petitioner, with all vehemence submits that in view of the agreement between the parties, wherein the specific stipulation is contained under Clause 9 of the Terms and Conditions which states that, the SIM Card and Cellular Number are and shall always remain the sole property of BCL and shall be returned by the subscriber to BCL upon termination and/ or deactivation or temporary suspension of services. Upon termination and/or deactivation or temporary suspension of services, the subscriber shall not claim any right or interest to the same. This clearly indicates

that there is no element of sale. Further, in view of absence of adjudication mechanism provided under the Act, there cannot be any fact finding on the contention of devious method as claimed by the Government/ Revenue against the petitioner. The reason being the absence of mechanism stated supra, declined the opportunity to the entities such as the petitioner to demonstrate that a particular commodity would not fall under the provisions of the Act or Rules. In that view of the matter, the proceedings initiated are not tenable in law, by means of notices and this aspect of the matter has been properly and appropriately considered by the learned Single Judge.

7.1 To buttress his arguments, learned counsel placed reliance on the following Judgments:

(i) *BHARAT SANCHAR NIGAM LTD. VS. THE STATE OF ANDHRA PRADESH REVENUE DEPARTMENT*⁸.

(ii) *BHARTI MOBILE LIMITED VS. STATE OF PUNJAB AND OTHERS*⁹.

⁸ SLP (C) Nos.16551-16555/2012, disposed of on 11.04.2023

(iii) IDEA MOBILE COMMUNICATION LTD. VS. C.C.E & C., COCHIN¹⁰.

(iv) AIRCEL LTD VS. GOV.T OF NCT OF DELHI AND OTHERS¹¹.

(v) TATA CELLULAR LTD VS. GOVERNMENT OF ANDHRA PRADESH¹².

(vi) THE MANAGING DIRECTOR, BHARTI AIRTEL LIMITED AND ANOTHER VS. ASSISTANT CONTROLLER OF LEGAL METROLOGY¹³.

(vii) M/S.BHARATI AIRTEL LIMITED VS. SATE OF KARNATAKA AND OTHERS¹⁴.

8. Having considered the rival submissions, we have perused the entire Writ Appeal paper.

9. Before we proceed to answer the rival claims put forth by the respective parties, it is apt to state the introduction of the Standards of Weights and Measures Act,

⁹ CWP-3320/2004 (O & M), disposed of on 16.10.2024

¹⁰ 2011 (12) SCC 608

¹¹ 2011 (126) DRJ 449

¹² 2012 SCC ONLINE AP 747

¹³ 2013 SCC ONLINE KAR 2009

¹⁴ ILR 2010 KAR 1968

1976 and Statement of objects and reasons on which the Act was enacted and certain provisions in the Act and Rules there under for earlier understanding of the *lis*.

"STATEMENT OF OBJECTS AND REASONS"

In India, uniform standards of weights and measures, based on the metric system, were established, for the first time, by the Standards of Weights and Measures Act, 1956. The standards established by the 1956 Act were, however, based on the international system of units, as recognized by the General conference of Weights and Measures (CGPM) and the International Organization of Legal Metrology (OIML). Subsequent to the enactment of the said, CGPM revised the standards of weights and measures with a view to providing a coherent scheme for measurements having regard to the rapid advances made in the fields of science and technology, and evolved a practical system of units of weights and measures, suitable for adoption for all the signatories to the Metre Convention. This practical system of weights and measures was given the name "Le Systeme International d'Units" (with its International abbreviation "SI"). The SI includes seven base units, two supplementary units, about fifty derived units and a few special units. The SI is not a new system; it emanates from the six primary units which were

established by the 1956 Act, and also includes derived units which are required in the specialised fields of nuclear science, space technology, aeronautics, electronics, communication and for the manufacture of high precision instruments and equipments required in the country and for export. To sustain and assist scientific and technological research in the country more accurate standards of weights and measures, as in the SI, have to be adopted for the measurement of space, time, temperature and heat, magnetic quantities, X-ray dosages, nuclear radiation, etc. The Indian Science Academy and other scientific and technical organisations, as well as the technical departments of the Government, have urged the formal adoption of SI and other units to facilitate their working.

2. The OIML, which is responsible for the preparation of international laws on weights and measures, called "Legal metrology" has recognised all the SI units for legal purposes and has prepared the draft of a legislation for enactment by member-countries.

3. India is a signatory to the Metre Convention and is thus a member of the CGPM. India is also a member of the OIML. In view of the revision by the CGPM of the standards of weights and measures and the changes in the law suggested by the OIML, the Central Government constituted a

Committee with Shri.S.K.Maitra, a Joint Secretary in the Ministry of Law, Justice and Company Affairs, as its Chairman, to consider what changes were required to be made in the 1956 Act to give effect to the recommendations made by the aforesaid international organisations. The said Committee included technical and scientific experts and also included representatives of some of the State Governments.

4. After going into the matter in depth, the Committee submitted a unanimous recommendation suggesting the replacement of the 1956 Act by a comprehensive legislation on the subject. The Bill seeks to give effect to the recommendations of the aforesaid international organizations.

5. The Bill further provides for consumer protection in respect of packaged commodities by providing, in pursuance of the recommendations of the International Organization of Legal Metrology (OIML) for the proper indication on the package of net quantity by weight, measures of number, the identity of the commodity contained therein, name of the manufacturer, and what is very important, the price of the package. It is also proposed that commodities commonly used by people should be packed in rationalised standard quantities by weight, measure or number, so as to facilitate the purchase and comparison of price by the people. Further, indication

of date of manufacture and date of expiry would also be marked for appropriate products.

6. A further provision for consumer protection is the approved models of weights, measures and weighing and measuring instruments, which is recommended by the OIML, draft law. The scientific evaluation of the performance accuracy and dependability of weights, measures etc. would enable the consumer to buy his requirements with greater confidence about accuracy and also give industries the facility to use more accurate measuring instruments in their production control and enable the scientists to measure accurately the quantities involved in their researches. All these benefits will contribute to national development.

7. The main features of the Bill are:-

- (a) Establishment of the standards of weights and measures, based on the SI units, as adopted by the CGPM and recognised by the OIML;*
- (b) Establishment of the standards of numeration, based on the international form of Indian numerals;*
- (c) Regulation of inter-State trade and commerce in weights and measures and commodities sold, distributed or supplied by weight or measure;*

- (d) Regulation of inter-State trade and commerce in commodities sold, supplied or distributed in packaged form;*
- (e) Control and regulation of export and import of weights and measures and commodities in packaged form;*
- (f) Approval (before manufacture) of models of weighing and measuring instruments intended to be manufactured after the commencement of the proposed legislation;*
- (g) Establishment of an Indian Institute of Legal Metrology for imparting training in legal metrology to inspectors and other persons;*
- (h) Surveys and collection of statistics for facilitating, planning and enforcement of the proposed legislation;*
- (i) Punishment for offences against the proposed legislation."*

10. Further, it is apt to extract relevant provisions viz., Sections 2(s), 2(v), 2(z), 39, 63 of the SWM Act, 1976 and Rules 2(l), 2(m), 4, 6 and 23 the SWM (PC) Rules, 1977, which reads as under:

"Section 2(s) – "prescribed" means prescribed by rules made under this Act and "prescribed authority" means such authority as may be specified by such rules;"

"Section 2(v) – "sale", which its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of any weight, measure or other goods on the hire-purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of, or a charge or pledge on, such weight, measure or other goods;"

"Section 2(z) – 'transaction' means –

- (i) any contract, whether for sale, purchase, exchange or any other purpose or
- (ii) any assessment of royalty, toll, duty or other dues, or
- (iii) the assessment of any work done, wages due or services rendered;"

"Section 39 - Quantities and origin of commodities in

packaged form to be declared. - (1) No person shall,-

- (a) make, manufacture, pack, sell, or cause to be packed or sold; or

(b) distribute, deliver, or cause to be distributed or delivered; or

(c) offer, expose or possess for sale,

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

(i) the identity of the commodity in the package;

(ii) the net quantity, in terms of the standard unit of weight or measure, of the commodity in the package;

(iii) where the commodity is packaged or sold by number, the accurate number of the commodity contained in the package;

(iv) the unit sale price of the commodity in the package; and

(v) the sale price of the package.

Explanation.- In this sub-section, the expression unit sale price means the price according to such unit 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) Wherever 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 provisions of this section shall not apply or shall apply with such exceptions or modifications as may be specified therein."

11. For violation of Section 39, Section 63 is the Penalty Clause, which reads as under:

"Section 63. Penalty for contravention of section

39. - *Whoever, in the course of inter-State trade or commerce, sells, distributes, delivers or otherwise transfers, or causes to be sold, distributed, delivered or otherwise transferred any commodity in a packaged form which does not conform to the provisions of this Act or any rule made there under, shall be punished with fine which may extend to five thousand rupees, and for the second or subsequent*

offence, with Imprisonment for a term which may extend to five years and also with fine."

"Rule 2(l) – "pre-packed commodity", means a commodity, which without the purchaser being present, is placed in a package of whatever nature, whether sealed or opened, so that the commodity contained therein has a pre-determined value and includes those commodities which could be taken out of the package for testing or examining or inspecting the commodity;"

"Rule 2(m) – "principal display panel", in relation to a package, means the total surface area of the package where the information required under these rules are to be given. This information could be given in the following manner:-

- (i) all the information could be grouped together and given at one place; or
- (ii) the pre-printed information could be grouped together and given in one place; and
- (iii) on line information grouped together in other place."

"Rule 4 - Regulation for pre-packing and sale etc. of commodities in packaged form. – On and from the

commencement of these rules, no person shall pre-pack or cause or permit to be pre-packed any commodity for sale, distribution or delivery unless the package in which the commodity is pre-packed bears thereon, or on a label securely affixed thereto, such declarations as are required to be made under these rules."

"Rule 6 – Declaration to be made on every package. -

(1) Every package shall bear thereon or on a label securely affixed thereto, a definite, plain and conspicuous declaration, made in accordance with the provisions of this Chapter as to—

- (a) the name and address of the manufacturer or where the manufacturer is not the packer, the name and address of the manufacturer and packer and for any imported package the name and address of the importer.

Explanation I – If any name and address of a company is declared on the label without any qualifying words "manufactured by" or "packed by", it shall be presumed that such name and address shall be that of the manufacturer and the liability shall be determined accordingly.

Explanation II – If the brand name and address of the brand owner appear on the label as a

marketer, then the brand owner shall be held responsible for any violation of these rules and action as may be required shall be initiated against the deemed manufacturer and in the event of more than one name and address appearing in the label, prosecution shall be launched against the manufacturer indicated on the label in the first place and not against all of them.

Explanation III – In respect of packages containing food articles, the provisions of this clause shall not apply and instead the requirement of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply.

- (b) the common or generic name of the commodity contained in the package and in case of packages with more than one product, the name and number or quantity of each product shall be specified on the package.

Explanation — Generic name in relation to a commodity means the name of the genus of the commodity, for example, in the case of common salt, sodium chloride is the generic name.

- (c) 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;

- (d) the month and year in which the commodity is manufactured or pre-packed or imported:

Provided that for packages containing food articles, the provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and the rules made there under shall apply.

Provided further that nothing in this clause shall apply in case of packages containing seeds which are labelled and certified under the provisions of the Seeds Act, 1966 (54 of 1966) and the rules made there under.

Provided also that a manufacturer may indicate the month and year using a rubber stamp without overwriting.

Provided also that for packages containing cosmetic products, the provisions of the Drugs and Cosmetics Rules, 1945 shall apply.

- (e) ***

- (f) the retail sale price of the package;

Provided that for packages containing alcoholic beverages or spirituous liquor, the State Excise Laws and the rules made there under shall be applicable within the State in which it is manufactured and where the State excise laws and rules made there under do not provide for declaration of retail sale price, the provisions of these rules shall apply.

- (g) where the sizes of the commodity contained in the package are relevant, the dimensions of the

commodity contained in the package and if the dimensions of the different pieces are different, the dimensions of each such different piece;

- (h) such other matters as are specified in these rules:

Provided that—

(A) no declaration as to the month and year in which the commodity is manufactured or pre-packed shall be required to be made on —

(vi) any package containing bidis or incense sticks;

(vii) any domestic liquefied petroleum gas cylinder of 14.2 Kg or 5Kg, bottled and marketed by a public sector undertaking.

(B) where any packaging material bearing thereon the month in which any commodity was expected to have been pre-packed is not exhausted during that month, such packaging material may be used for pre-packing the concerned commodity produced or manufactured during the next succeeding month and not thereafter, but the Central Government may, if it is satisfied that such packaging material could not be exhausted during the period aforesaid by reason of any circumstance beyond the control of the manufacturer or packer, as the case

may be, extend the time during which such packaging material may be used, and, where any such packaging material is exhausted before the expiry of the month indicated thereon, the packaging material intended to be used during the next succeeding month may be used for pre-packing the concerned commodity:

Provided that the said provision shall not apply to the packages containing food products, where the "Best before or Use before" period is ninety days or less from the date of manufacture or packing.

(C) no declaration as to the retail sale price shall be required to be made on—

(vii) any package containing bidis;

(viii) any domestic liquefied petroleum gas cylinder of which the price is covered under the Administered Price Mechanism of the Government.

Explanation I.—The month and the year in which the commodity is pre-packed may be expressed either in words, or by numerals indicating the month and year, or by both.

Explanation II.—*Liquid milk does not include condensed milk.*

(1A) 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.

(1B) It shall not be permissible to affix individual stickers (labels) on the packages for altering or making declaration required under these rules:

Provided that for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same should not cover the MRP declaration made by the manufacturer or the packer as the case may be, on the label of the package.

(1C) It shall be permissible to use stickers for making any declarations other than the declaration required to be made under these rules.

(2) Where a commodity consists of a number of components and these components are packed in two or more units, for sale as a single commodity, the declaration required to be made under sub-rule (1) shall appear on the main package and such main package shall also carry information about the other accompanying packages."

"Rule 23. Provisions relating to wholesale dealer and retail dealers.- (1) No wholesale dealer or retail dealer shall sell, distribute, deliver, display or store for sale any commodity in the packaged form unless the package complies with, in all respects, the provisions of the Act and these rules.

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

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

(3) ***

(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 ^[86]*** 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.”

12. Now, coming to the case on hand, as per Notice dated 04.06.2007, the third respondent – Inspector of Legal Metrology, on visit and inspection of the premises of one of the agents of the petitioner namely, M/s.Soft-Ed Solutions India Private Limited, Koppikar Road, Hubli, on 13.03.2007, found pre-packed GSM FWP was not marked on Principal Display Panel which were manufactured/ packed/ imported M/s.Bharati Airtel Limited and supplied by Karnataka Branch of Bharati Airtel Limited, were kept for sale/ exposed for sale/ offered for sale by the above said Traders, were not in accordance with the provisions of Standards of Weights and

Measures Act, 1976 and PC Rules, 1977, as there was violation of Rules, 4, 23(1), 6(f) and 33 of the SWM (PC) Rules 1977 and Section 39 of the SWM Act, 1976. Accordingly, they were seized and detained under Section 39 of the Act.

13. A Notice was issued calling upon the petitioner for penalty and to compound under Sections 63 and 73 of the SWM Act, 1976 and PC Rules, 1977, by paying necessary compounding fine, as fixed by the Compounding Authority, lest, it will be presumed that the petitioner has no intention to have the said case compounded and accordingly, the complaint under the provisions of the above said Act and Rules would be lodged in the Court of Jurisdictional Magistrate. The petitioners before the Writ Court calling in question the said Rules, so also for Writ declaring that SIM card or a GSM FWP belonging to the petitioner are in lieu of services and are therefore not regulated/ covered under the provisions of the SWM Act, 1976 and the Rules, 1977 and also for direction restraining the respondents or their officers

from taking any further action or steps against the petitioner under the Act or the Rules there under.

14. As stated above, the main contention is that, in terms of the agreement, the SIM Card and the Cellular Number are and shall always remain the sole property of BCL and shall be returned by the subscriber to BCL upon termination and/ or deactivation or temporary suspension of services. In that view of the matter, there is no element of sale involved. Accordingly, the provisions of SWM Act and PC Rules are not made applicable.

15. It is their further case that, the claim /allegation of the concerned authority that the petitioner is indulged in devious method/ scheme to evade the tax, in the absence of any adjudication mechanism and a fact finding in reference to such allegation, amounts to depriving the petitioner to demonstrate that the particular commodity would not fall under the provisions of the Act and Rules, action contemplated is against the law and as such, the entire

process stands vitiated. To buttress their claim, they have referred to the definition of 'Retail Dealer', 'Retail Package' and 'Retail Sale' under Rules 2(o), (p) and (q) and contended that it is only with respect of the commodities in pre-packaged form which are intended to be sold, or likely to be sold, that are obviously covered under the Act and Rules, and not otherwise.

16. As per Rule 2(l) which states about pre-packaged commodity, the definition is very clear with the language used in the said definition, whereunder the pre-packed commodity has been defined. The definition starts with the words, '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, requires to display on the Principal Display Panel within the meaning of Rule 2(m), in relation to a package, the information required under the

Rule supra in a printed form. Since these standards stated were absent, the third respondent issued the notice directing the petitioner to compound the shortcomings noticed within the meaning of Section 63 of the SWM Act and Rules there under, lest, prosecution would follow before the jurisdictional Magistrate.

(emphasis supplied by us)

17. As per the definition stated supra, there is no element of sale involved, since the definition itself states that without purchaser being present. In that view of the matter, the contention that the Act and Rules there under emphasizes in respect of commodities which are intended for sale is not acceptable. The definition under which the petitioner has taken shelter cannot obliterate the meaning and ingredients of the language used under Rule 2(I) in respect of pre-packed commodity, with qualifying words stated supra.

18. So far as mechanism is concerned, if the compounding notice is not complied, proceedings would be initiated before the concerned Magistrate, wherein all reasonable opportunity under law is available to the petitioner to put forward all the contentions including the contentions taken before the Writ Court.

19. The Act is enacted as per the object and reasons as contemplated therein and it is for consumer protection in respect of packed commodities by providing, in pursuance of the recommendations of the OIML, for the proper indication on the package of net quantity by weight, measures or number, the identity of the commodity contained therein, name of the manufacturer, and what is very important, the price of the package. One among main features of the Bill is control and regulation of export and import of weights and measures and commodities in packaged form.

(emphasis supplied by us)

20. The ground urged in the Writ Petition is that, these devices are pre-packaged in order to safeguard the same from moisture or damage on account of handling. In an identical circumstance, in respect of toiletry soaps in the case of **M/s.WIPRO** stated supra, the learned single Judge of this Court considered the importance of Section 39 of the Act, wherein by means of an amendment to Rule 11(4) and Fourth Schedule, a word was added in respect of weight with words "when packed", in order to maintain the weight of the soap when it reached the ultimate consumer, which due to loss in moisture may reduce in weight. These words by way of further amendment has been removed and calling in question the same as *ultra vires* in respect of displaying the same on the Principal Display Panel, in terms of Rule 2(m), the petitioners were before the Court stating that the said amendment *ultra vires* Section 39(4) of the Act.

21. The learned Single Judge, as stated supra, declined to accept the contention and held that, the manufacturer is taken care of if there is any loss of moisture,

thus reducing the net weight when packed. Further, it is held that indeed it is always open for the manufacturer to add a little more moisture so as to maintain the weight when packed and it would remain constant when the product ultimately reaches the hands of the consumer. In that view of the matter, the Court held that the petitioner cannot be held to say that pursuant to the amendment and deletion of sub-Rule (4) of Rule 11 and deletion of Fourth Schedule are detrimental to their interest. Ultimately, the avowed act as observed by the Court was enacted for the purpose of benefiting the consumer.

22. Further, the Division Bench of this Court in the case of **M/S.ATRIA CONVERGENCE TECHNOLOGIES LIMITED** supra, in a similar circumstances, wherein the question placed before the Division Bench to consider the subscriber's right to use Set Top Box amounts to sale within the definition of 2(29)(d) of the Act, held that the tax is assessable, which we have already extracted above.

23. In the case on hand also, the right to use the SIM Card and GSM FWP amounts to sale and event if it is not in lieu of the qualifying words used in definition 2(I) [when without the purchaser being present] deem that even if it is not intended for sale, the declaration on the Principal Display Panel, must contain the entire description or information, more particularly, the price of the commodity, in view of the object of the Act, which we have already stated above, since the Act is enacted with avowed object for consumer protection and consumer friendly. The learned Single Judge has failed to consider this aspect of the matter. The Judgments referred by the petitioner in support of its claim are distinguishable on facts. All more the Writ Court has clearly stated that the Judgment extracted in the order impugned, that these observations though made in the context of considering whether the transactions would attract the sale tax. In that view of the matter, the same are not made applicable to the case on hand.

24. In view thereof, the contention of the petitioner does not hold any water and they are liable to be rejected and accordingly, they are rejected, upholding the contention of the State/ Revenue that the provisions of the Act and the Rules there under made applicable, even in respect of a pre-packed commodity, in the case on hand, on the SIM Card and GSM FWPs. It is more especially in the absence of a declaration that in the event, the devices which according to the petitioner are its sole property, in the event of loss or damage, can be replaced with free of cost. In that view of the matter, indeed there is an element of sale and a Clause or term in the agreement cannot override the provisions of the Act to contend that, there is no element of sale and the provisions of the Act and Rules there under are not made applicable.

25. The contention itself clearly indicates that, in the absence of such a declaration, there is all intention of sale even at the time of providing the services, as they are charging for activation of the SIM Card. This indeed shows

that the commodities are chargeable for tax and required to display the price on the commodities. In that view of the matter, the appeal succeeds. Accordingly, we proceed to pass the following:

ORDER

- (a) The Writ Appeal is ***allowed***.
- (b) The order dated 08.01.2010, passed by the Writ Court in W.P.No.11486/2007 C/w. W.P.No.1744/2008, is set-aside. Consequently, the Writ Petitions are dismissed.
- (c) No order as to costs.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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