

HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 22 of 2022

IN THE MATTER OF:

A. Krishna & Ors. ...Applicants

Versus

Union of India & ors. ...Respondents

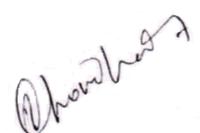
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THROUGH



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Date: 09.05.2022

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SOUTHERN ZONAL BENCH AT CHENNAI
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**REJOINDER TO REPLY OF RESPONDENT NO. 1 DATED
01.04.2022 AND REPLY OF RESPONDENT NO. 13**

MOST RESPECTFULLY SHOWETH:

1. That the above Application is being filed under Section 14 and 15, read with Section 20 of the National Green Tribunal Act, 2010 highlighting the violation of the Plastic Waste Management Rules, 2016. It is submitted that the Applicant in the Original Application is raising concern with respect to non-compliance of Rule 9 of Plastic Waste (Management) Rules, 2016 in the States of Kerala, Tamil Nadu, Andhra Pradesh and Karnataka by not demonstrating large scale recyclability, energy recovery or alternate use of multi-layered plastic containing materials. It is submitted that as per Rule 9 of the Plastic Rules, multi-layered plastics which are non-recyclable or non-energy recoverable or with no alternative use are to be phased out in two years' time.
2. That Respondent No. 1 and Respondent No. 13 have filed their counter affidavits to the OA filed by the Applicant. That the

contents of the affidavit of Respondent No. 1 and Respondent No. 13 and are denied in entirety, unless specifically admitted.

REJOINDER TO COUNTER AFFIDAVIT OF RESPONDENT

NO. 1

3. That the Respondent No. 1 has raised the following ground in their Counter- Affidavit:

(i) All multi-layered plastic made in the country are either recyclable or energy recoverable or have alternate use. As such, they may not be required to be phased out.

4. That in Para 11 of their Affidavit, Respondent No. 1 has stated the following:

"That it is humbly submitted that, based upon available information, all multi-layered plastic made in the country are either recyclable or energy recoverable or have alternate use. As such, may not require to be phased out. Further information is also being sought from the Central Pollution Control Board in this regard."

5. That the Respondent No. 1 has made baseless statements that **"all multi-layered plastic made in the country are either recyclable or energy recoverable or have alternate use. As such, may not require to be phased out"**. It is submitted that Respondent No. 1 has not provided any information or proof to support this statement. Blank statements stating that *all* multi-layered plastic is recyclable, energy recoverable or has alternate use have been made without backing it with facts. The Applicant has provided information that prove that the multi-layered plastic is neither recyclable, nor energy recoverable or has any alternate use. However, Respondent No. 1 has not provided facts to prove

that they are recyclable, are energy recoverable or have alternate use.

REJOINDER TO COUNTER AFFIDAVIT OF RESPONDENT NO.

13

6. That the Respondent No. 13 has raised the following grounds in their Counter- Affidavit:

- (i) That aseptic packaging produced by Uflex is predominantly a paper product by virtue of more than 70% component of paper and therefore does not fall within the ambit of the definition of multi-layered packaging given in the Plastic Waste (Management) Rules, 2018;
- (ii) That aseptic packaging produced by Uflex is recyclable and energy recoverable;
- (iii) That the timeline for compliance with the provisions of Extended Producer Responsibility have been extended by the Plastic Waste Rules of 2022.

On the averment that aseptic packaging is predominantly a paper product:

7. That Respondent No. 13 has claimed by placing reliance on the HSN Codes published by World Customs Organization (WCO), its own sales invoice and the Customs category for the purposes of Customs tariff that aseptic packaging is not multilayered plastic but only paper. Respondent No. 13 has also claimed that aseptic packaging predominantly consists of paper (to the extent of 73%) and other part comprises of multilayer plastic (21%) and aluminum (6%). The definition of multi-layered plastic, as given in the Plastic Waste (Management) Rules, 2018 is as follows: "*any material used or to be used for packaging and **having at least one layer of plastic as***

the main ingredients in combination with one or more layers of materials such as paper, paper board, polymeric materials, metalized layers or aluminium foil, either in the form of a laminate or co-extruded structure". It is submitted that the definition of multi-layered packaging makes plastic as the "main ingredient" in combination with other materials. The Respondent No. 13 has considered the percentage of quantity of a material in the entire product to be the factor in deciding what constitutes as the 'main ingredient'. However, the Plastic Waste Rules do not prescribe the qualifications for a material to be considered as a 'main ingredient'. It is submitted that the term 'main ingredient' has to be interpreted in terms of the essential nature of the material and not the amount of material present in the entire product. The Hon'ble High Court of Delhi in the case of **Travancore Rayons Ltd. vs Union Of India And Others 1985 (19) ELT 354 Del** held that the products as known in the common parlance will be their common name, as opposed to going into the technicality of their composition and its percentage. In this matter, the classification of nitrocellulose lacquer was disputed. The product was composed of paraffin wax, volatile matter and nitrocellulose contents. The percentage of volatile matter was 85.2% whereas the percentage of paraffin wax and nitrocellulose content was only 14.8%. The revenue department alleged that the product could not be classified as nitrocellulose lacquer as the presence of nitrocellulose contents was low. The Hon'ble High Court of Delhi held that traders and consumers know this product as nitrocellulose lacquer and generally do not know the exact materials used in preparing it. The product is known as nitrocellulose lacquer in common parlance. Thus, merely based on lower percentage of nitrocellulose contents, it cannot be disregarded

as nitrocellulose lacquer. The relevant part from the judgment is reproduced below:

*"17. After noting various other judgments, it was held that the meaning given to the article in a fiscal statute **must be as people in trade and commerce, conversant with the subject, generally treat and understand them in usual course.***

*18. Traders and consumers generally understand from the term 'nitrocellulose lacquer', a surface coating composition which dries up rapidly and on drying forms a film by evaporation of volatile constituents and contains a substantial quantity of nitrocellulose. (I say so because of the definition of the term 'lacquer' given in various dictionaries noted earlier). **They generally do not know the exact materials used in preparing the composition. They are not supposed to know whether volatile matter is 70 per cent or more and whether it contained paraffin wax or not.***

*19. **The percentage of volatile matters depends on the evaporation rate required. If for achieving a particular result more volatile matters are required to prepare a composition it would not cease to be nitrocellulose lacquer if the basic requirements exist.** For the same reason presence of paraffin wax for obtaining the particular result, namely, making the cellulose film, on which the composition is to be coated, moisture proof, would not make any difference. Paraffin-wax is only 2 Kgs. out of 103 Kgs. while nitrocellulose is 50 Kgs. out of 103 Kgs. of non-volatile material."*

(Emphasis supplied)

8. That the term 'main ingredient' has to be interpreted as the essential ingredient in the product. Plastic is essential for the manufacturing of any kind of multi-layered packaging and therefore forms the 'main ingredient' of the product. Multi-layered packaging such as those used in fast-moving consumer goods (soap packets, shampoo sachets etc.) and packaged food industry (chips packets, biscuits wrappers etc.) have plastic as the 'main ingredient' because without the use of plastic in these products, the product will lose its utility that only plastic can provide. Multi-layered packaging is used for the reason that it provides freshness to the product stored inside, reduces air contact and is leak-proof. All these features in the multi-layered packaging are only possible because plastic forms a part of the packaging. Additionally, the structure of multi-layered packaging is provided by the plastic component in it. If plastic is removed from the composition, multi-layered packaging will lose its structure. Therefore, plastic forms a 'main ingredient' in multi-layered packaging.

9. That the Hon'ble Supreme Court of India in the case of ***Commissioner of Central Excise New Delhi v. M/s Connaught Place Restaurant (P) Ltd., New Delhi***, while deciding whether 'soft serve' served by Mc Donalds can be classified as 'ice cream' for the purposes of taxation or not held the following:

*"31. Therefore, what flows from a reading of the aforementioned decisions is that in the **absence of a statutory definition in precise terms; words, entries and items in taxing statutes must be construed in terms of their commercial or trade understanding, or according to their popular meaning.** In other words they have to be*

*constructed in the sense that the people conversant with the subject-matter of the statute, would attribute to it. **Resort to rigid interpretation in terms of scientific and technical meanings should be avoided in such circumstances.***

*This, however, is by no means an absolute rule. When the legislature has expressed a contrary intention, such as by providing a statutory definition of the particular entry, word or item in specific, scientific or technical terms, then, **interpretation ought to be in accordance with the scientific and technical meaning and not according to common parlance understanding.***

(Emphasis supplied)

10. Multi-layered packaging are known as 'plastic packaging' in common parlance. Packaging material used to store food may contain other materials such as paper and aluminum but are known as 'plastic packaging' in common man's language. Therefore, it may be construed as plastic packaging, as per the common parlance.

11. In view of above, it is submitted that the product produced by Respondent No. 13 falls within the definition of multi-layered plastic and compliance with the Plastic Waste Management (Amendment) Rules, 2018 is mandatory.

On the averment that multi-layered plastic is fully recyclable and energy recoverable:

12. That the Respondent No. 13 has in Para (v) of Preliminary Objections has stated that,

"the Asepto packaging paper manufactured by Respondent No. 13 (UFLEX Ltd.) having 21% MLP is fully recyclable and energy recoverable therefore there is no violation of Rule

9(3) of Plastic Waste Management (Amendment) Rules, 2018....

It is further submitted that the product in question i.e. Aseptic packaging paper is known in international market as Aseptic Laminated Packaging and has been found to be recyclable the paper part can be recycled to make paper packaging and the plastic and aluminum foil parts can be recycled to make composite material for building/ construction."

13. That the Applicant, in the Original Application had prayed as interim prayer that Respondent No. 13 may be directed to produce records with regard to implementation of Rule 9(1) of the Rules, on method of collection of multi-layered plastic produced in India and the total quantity of multi-layered plastic produced and recycled in India since 2018.
14. That Respondent No. 13 has only stated that their product is recyclable and energy-recoverable. However, they have not provided any evidence/ data/ proof to prove the same. Blank statements such as these cannot be relied upon for the purposes of deciding whether multi-layered packaging is energy recoverable and recyclable or not.
15. That Respondent No. 13 has also stated that their product "*has been found to be recyclable the paper part can be recycled to make paper packaging and the plastic and aluminum foil parts can be recycled to make composite material for building/ construction.*" It is submitted that even if the layers can be separated and recycled, Respondent No. 13 has not been able to demonstrate large-scale recyclability of the product. Even if recycling is taking place, it is happening at a very miniscule level, resulting in no impact on the total amount of waste

being produced. Additionally, Respondent No. 13 has made blank statements that the paper part can be used to make paper packaging and plastic and aluminum foil parts can be recycled to make composite material for building/ construction. However, to achieve this, these materials will have to be separated, which is not been done at a large scale. Respondent No. 13 has not made any mention of any procedure that is used to separate these materials from each other and further process them.

On extension on timeline for compliance with the provisions of Extended Producer Responsibility by 2023-24:

16. That the Plastic Waste Management (Amendment) Rules, 2022 provides an extension on the provisions of Extended Producer Responsibility. It provides the EPR in Category III multi-layered plastic packaging fixed up to 100% upto 2023-24 and obligation of producers, importers and brand owners in category III multilayered packaging fixed upto 2027-28 onwards.

17. That however, the provision on EPR have been a part of the Plastic Waste Rules since 2011 when the Plastic Waste (Management and Handling) Rules, 2011 were promulgated. These were also made a part of the successive Plastic Waste Rules as well. Eventually, they came to be a part of the 2022 Rules as well. Therefore, it is submitted that the obligation to comply with the provision of EPR has been upon the producers since 2011 and is not a new obligation, formulated in 2022. Therefore, compliance with the same was mandatory from 2011.

In light of above, it is submitted that the reply of Respondent No. 1 and Respondent No. 13 is faulty and filed with an intention of misleading the Hon'ble Tribunal.

Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



APPLICANT No. 2

THROUGH



RITWICK DUTTA



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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONAL BENCH AT CHENNAI
ORIGINAL APPLICATION NO. 22 OF 2022**

IN THE MATTER OF:

A. KRISHNA & ORS.

...APPLICANTS

VERSUS

UNION OF INDIA AND ORS.

...RESPONDENTS

AFFIDAVIT

I, Antony Clement Rubin, R/O No. 1B, E Block, VGN Imperia Phase 1, 3rd Main Road, VGN Mahalakshmi Nagar, Thiruverkadu, Chennai- 600 007 do hereby solemnly affirm and declare as under:

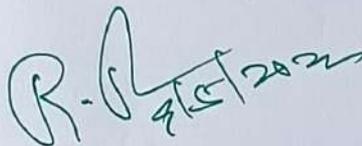
1. That I am the Applicant No. 2 in the above titled Application and I am conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.



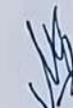
DEPONENT

VERIFICATION

Verified on this 7th day of May 2022 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.

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