

**IN THE CONSUMER DISPUTES REDRESSAL COMMISSION,
THRISSUR**

Present : Sri. C.T. Sabu, President
Smt. Sreeja. S., Member
Sri. Ram Mohan R., Member

27th day of June 2025
CC 241/18 filed on 08/05/2018

Complainant : Lenish V.R., S/o. Raman, Vettiyattil House,
V.R. Puram, Perambra Village, V.R Puram Desom,
Chalakkudy, Thrissur, Pin – 680 307, Now Residing
At: BSNL Staff Quarters, C-1, Mundur, Thrissur
District, Pin – 680 541.
(By Advs. Shrikumar Nambanath &
R.Ravichandran, Thrissur)

Opposite Parties : 1. Managing Director, Kerala State Beverages
Corporation Limited, P.B.No. 2263, Sasthakripa
Office Complex, Sasthamangalam,
Thiruvananthapuram, Kerala, Pin – 695 010.
2. Branch Manager, Kerala State Beverages
Corporation KSBC Shop No. 8003, Panchikkal,
P.O Ayyanthole, Thrissur, Pin – 680 003.
(By Adv. A.D Benny, Thrissur)

FINAL ORDER

By Sri.Ram Mohan R, Member :

1) Complaint in brief, as averred :

The complaint is filed under Section 12(1) of the Consumer Protection Act, 1986. The complainant on 10/01/2018, statedly purchased from the second opposite party sales outlet one package of ‘Macdowell VSOP Brandy’ which bore thereon declarations as ‘MRP Rs. 740/-, BR No. 9/23 Oct/17’, paying them a sum of Rs. 800/- (Rupees eight hundred only) vide their invoice No. 01109. The second opposite party is the Branch Manager of the sales outlet of the Kerala State Beverages Corporation Limited KSBC shop No. 8003, whereas the first opposite party is the Managing Director of the company, namely Kerala

State Beverages Corporation Limited. The complainant alleges that the opposite parties had illegally collected from him Rs. 60/- (Rupees sixty only) in excess of the MRP of Rs. 740/- (Rupees seven hundred and forty only) marked on the package. Hence the complaint. The complainant prays for an order directing the opposite parties to refund to him the sum of Rs. 60/- (Rupees sixty only) that they illegally realised from him, apart from other reliefs.

2) NOTICE :

The Commission having issued notice, the opposite parties filed their written version.

3) Version of the Opposite parties :

The opposite parties denied any illegal act on their part.

4) Evidence :

The complainant produced documental evidence that had been marked Ext. P1, apart from the material object marked as MO1, affidavit and notes of argument.

The opposite parties produced documental evidence that had been marked Ext. R1 to R4, apart from affidavit and notes of argument.

5) Deliberation of Facts and Evidence :

The Commission has delved deep in to the facts and evidence of the case. Ext. P1 is Invoice No. 01109 dated 10/01/2018 issued by the second opposite party in respect of the sale of 1 quantity of “MCD’S VSOP DL BY, 750 ML”, receiving Rs. 800/- (Rupees eight hundred only) from the buyer. MO1 is an empty/tare bottle of “McDowell’s VSOP Deluxe Brandy” with declarations “Batch No. 92/23, BR No. 9, Mfg Date Oct 17, MRP ‘inclusive of all taxes’ Rs. 740/- , 750ml”.

Ext. R1 is copy of office order no. KSBC/TSR/001/2018-19 dated 30/04/2019 issued by the Manager, KSBC warehouse, Thrissur, regarding posting of an incumbent. Ext. R2 is copy of Authorisation Letter No. KSBC/LAW-2/CC-240/18, 241/18, 247/18/2022-23 dated 24/11/2022 issued by Kerala State Beverages (Manufacturing And Marketing) Corporation Ltd., pertaining to appearance before the Consumer Commission. Ext. R3 is copy of letter no. TAXES-A3/172/2018-TAXES dated 23/08/2018 from the Additional Chief Secretary to Government, Government of Kerala Taxes (A) Department addressed to the first opposite party. Ext. R4 is copy of letter no. 133/A3/2022/TD dated 06/09/2022 from the Additional Chief Secretary to Government, Government of Kerala Taxes (A) Department, addressed to the first opposite party.

6) Points to be deliberated:

- (i) Whether the alleged illegal act on the part of the opposite parties stands proved? Also whether there is any deficiency in service or adoption of unfair trade practice on the part of the opposite parties and whether the complainant is entitled to receive refund of the sum of Rs. 60/- (Rupees sixty only), as claimed? If yes;
- (ii) Whether the complainant is entitled to receive any compensation from the part of the opposite parties? If so its quantum?
- (iii) Costs?
- (iv) Other reliefs, if any, necessary?

7) Point No.(i)

The gist of the complaint is the allegation that the opposite parties illegally collected from the complainant a sum of Rs. 800/- (Rupees eight hundred only) pertaining to the former's sale of a package of 'Macdowell VSOP Brandy, whereas the MRP declared on the package was Rs. 740/- (Rupees seven

hundred and forty only). MO1 is the tare bottle of a pre-packaged commodity that as per declarations thereon, contained 750 ml of “McDowell’s VSOP Deluxe Brandy”. MO1 tare bottle also bears thereon declarations to the effect that its manufacturing/packaging date was Oct 17 and MRP was Rs. 740/- (Rupees seven hundred and forty only). Ext. P1 is the invoice in respect of the second opposite party’s sale of 1 number of ‘MCD’S VSOP DL BY’ for a sum of Rs. 800/- (Rupees eight hundred only). The term of ‘MCD’S VSOP DL BY’ seen entered in Ext. P1 invoice is apparently the abbreviation of ‘MacDowells VSOP Deluxe Brandy’. Therefore, the complainant’s pleadings align with the entries in Ext. P1 invoice and the declarations seen on MO1 bottle. Moreover, neither the Ext. P1 invoice, nor the MO1 bottle is disputed by the opposite parties. Therefore in the instant case, we find that the complainant has succeeded in discharging the initial onus on him to prove his allegation that the opposite parties had collected from him Rs. 60/- (Rupees sixty only) in excess of the MRP declared on the package in question. Resultantly, the onus is now shifted to the opposite parties to establish that their act of having collected Rs. 60/- (Rupees sixty only) in excess of the MRP, was lawful. It is surprising that neither of the parties, especially the opposite parties, who shoulder the shifted onus, has not cared to deliberate on the provisions of the pertaining law that governs the matter or dispute involved. Nor do the opposite parties dispute their having collected Rs. 60/- (Rupees sixty only) in excess of the MRP of Rs. 740/- (Rupees seven hundred and forty only) marked on the package in question. But they claim their collection of excess sum to be lawful. The commodity in question being a ‘pre-packaged commodity’ as defined under Section 2(l) of the Legal Metrology Act, 2009, (hereinafter referred to as the Legal Metrology Act), the law that governs the issue involved is undoubtedly the Legal Metrology (Packaged Commodities) Rules, 2011 (hereinafter referred to as the Packaged Commodities Rules).

Sections 2(l) & 2(m) of the Legal Metrology Act read as ;

“2. Definitions. – in this Act, unless the context otherwise requires,--

(l) “pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre determined quantity;

(m) “person” includes,--

(i) a Hindu undivided family,

(ii) every department or office,

(iii) every organisation established or constituted by Government,

(iv) every local authority within the territory of India,

(v) a company, firm and association of individuals,

(vi) trust constituted under an Act,

(vii) every co-operative society, constituted under the Act,

(viii) every other society registered under the Societies

Registration Act, 1860 (21 of 1860);

Therefore, a thoughtful analysis of the pertaining provisions of the Packaged Commodities Rules, becomes essential in the prevailing context.

Rule 18 of the Packaged Commodities Rules reads as:

“18 provisions relating to wholesale and retail dealers.

(1) ****

(1-A) ****

(2) No retail dealer or other person including manufacturer, packer, importer and whole-sale dealer shall make any sale of any commodity in packed form at a price exceeding the retail

sale price thereof.

*(2-A) *****

(3) 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 news paper, of such revised price shall not be necessary where such revision is due to any increase in, or imposition or, 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.

(4) ****

(5) *No wholesale dealer or retail dealer or other person shall obliterate, smudge or alter the retail sale price, indicated by the manufacturer or the packer or the importer, as the case may be, on the package or on the label affixed thereto.*

(6) *The manufacturer or packer or the importer shall not alter the price on the wrapper once printed and used for packing”.*

Rule 18 (2) of the Packaged Commodities Rules unambiguously proscribes any retail dealer or other person including manufacturer, packer, importer and wholesale dealer, from selling any commodity in packed form at a price exceeding the retail sale price thereof. An in-depth comprehension of the aforesaid provisions of the Packaged Commodities Rules would unveil the degree of integrity and security, that the law imparts on the declaration of MRP made by the manufacturer on a pre-packaged commodity. Rule 18 (6) proscribes even the manufacturer or packer or the importer from altering the price on the wrapper once printed and used for packing. Axiomatically, the Packaged Commodities Rules by Rule 18 (5) forbids all other person including wholesale dealer or retail dealer from doing so. A bare reading of Rule 18 (3) would make it further clear that the lone occasion that permits the sale of a pre-packaged commodity at a price exceeding the MRP marked thereof, is a post-packing tax revision, and that too only if such tax revision had taken place either during the month in which the pre-packed commodity in question was packed or in the succeeding month of pre-packing. Resultantly, in the instant case, the MO1 bottle having been packed in the month of Oct 2017, the tax

revision, if any, that can vindicate the excess charging made by the opposite parties ought to have taken place either in Oct 2017 or Nov 2017. The opposite parties have not produced any order/enactment or amendment of law in respect of such a tax revision that had taken place in the month of Oct 2017 or Nov 2017. Hence, we are of the considered view that the opposite parties have miserably failed to discharge the shifted onus on them to substantiate that the charging done by them in excess of the marked MRP of the pre-packaged commodity in question, was lawful. Undoubtedly, the opposite parties' act of having unfoundedly collected Rs. 60/- (Rupees sixty only) in excess of the MRP declared on the pre-packaged commodity in question, is an unlawful one, which constitutes an unfair trade practice on their part. This fault committed by the opposite parties, at the same time, is tantamount to deficiency in service on their part, as well. The complainant is certainly entitled under Section 2(1) (c) (iv) (b) of the Consumer Protection Act, 1986 to launch a complaint before the Commission against the said unlawful act committed by the opposite parties. The allegation of excess charging having been cogently proved, the complainant is entitled to receive refund of the excess charge of Rs. 60/- (Rupees sixty only) collected by the opposite parties.

Point no. (i) is thus found in the affirmative.

8) Point No.(ii) & (iii)

As elaborated under point no.(i) above, there is deficiency in service as well as adoption of unfair trade practice on the part of the opposite parties. Such unlawful acts committed by the traders/vendors/retailers will inflict financial loss, agony and hardship on those who are so fiddled with. While being subjected to a deceptive practice as one cited, the person who undergoes such misdeeds, would certainly experience a whirlwind of emotions, irrespective of the size of the sum he or she was so fiddled with. Such a

deceptive act on the part of a trader/vendor/retailer, is tantamount to jeopardizing the very dignity of the consumer and his/her right to live a life free from exploitation or deception or any kind of unfair trade practice. The misdeed on the part of the opposite parties might certainly have inflicted agony, hardship and financial loss on the complainant. The opposite parties have necessarily to compensate the complainant. The complainant in the instant case, prays for a compensation worth Rs. 5,000/- (Rupees five thousand) only. We are of the firm view that the complainant is entitled to receive from the opposite parties the asked sum of Rs. 5,000/- (Rupees five thousand only) towards compensation for the agony, hardship and financial loss inflicted on him, and a sum of Rs. 10,000/- (Rupees ten thousand only) towards cost of litigation.

9) Point No.(iv)

Being a sentinel on the qui vive as regards consumer rights, we can't assume an ostrich's stance while we come across such deceptive practices adopted by traders/retailers/vendors. By Ext. R3 letter, the Government of Kerala Taxes (A) Department is seen to have rightly advised the first opposite party to adhere to Rule 18 (3) of the Packaged Commodities Rules pertaining to matters connected with MRP. Ext. R3 is also indicative of the fact that the Taxes (A) Department of the Government is aware of the pertinent provisions of the law that governs matters pertaining to MRP of pre-packaged commodities. But Ext. R4 does not at all rely on any tax revision that is capable of vindicating collection of charges in excess of MRP marked on the packages, the very absence of which makes the same unfounded. Government owned companies, while engaged in trade or retailing activities, do have the bounden responsibility to be model vendors/retailers/traders. The opposite parties being part of a Government owned establishment engaged in the retailing of liquor, it is unbecoming of them to unlawfully charge their consumers in excess of the MRP

mandatorily marked on the pre-packaged commodities, concerned. An order directing the opposite parties to discontinue such unfair trade practice of unlawfully charging in excess of the MRP declared on pre-packaged commodities, also seems essential to meet the ends of justice. Moreover, Section 6(b) of the Consumer Protection Act, 1986 [Section 2 (9) (ii) of the Consumer Protection Act, 2019] invests every consumer with a basic right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, so as to protect the consumer against unfair trade practices. Hence the opposite parties, whenever are entitled to lawfully charge the consumers in excess of the respective MRP marked on the pre-packaged commodity, concerned, are duty bound to convince and enlighten the Consumer, of the pertinent tax revision which the opposite parties rely upon to do so.

In the result, the complaint is allowed and **the opposite parties are directed** to jointly and severally pay the complainant:

1. a sum of Rs. 60/- (Rupees sixty only) towards refund of the sum that they unlawfully collected from him,
2. a sum of Rs. 5,000/- (Rupees five thousand only) towards compensation for the agony, hardship and financial loss inflicted on him, and
3. a sum of Rs. 10,000/- (Rupees ten thousand only) towards costs,

all with 9% interest per annum from the date of filing of the complaint till the date of realisation. The opposite parties shall comply with the above direction within 30 days of receipt of a copy of this order.

The opposite parties are further directed to discontinue with immediate effect, the unfair trade practice of unlawfully selling any pre-packaged commodity as the one impugned, at a price exceeding its sale price thereof. The opposite parties, in selling any pre-packaged commodity, shall

constantly adhere to the stipulations pertaining to MRP envisaged under Rule 18 of the Packaged Commodities Rules, without fail.

The first opposite party is furthermore directed to ensure that whenever the retail shops/other person under his control are entitled under the second proviso to Rule 18(3) of the Packaged Commodities Rules to lawfully charge consumers in excess of the MRP already marked on the pre-packaged commodities, concerned, such retail shops/person shall display the order/enactment or amendment of law pertaining to the tax revision, concerned, in a conspicuous place in the respective premises, so that the right of consumers guaranteed under Section 6 (b) of the Consumer Protection Act, 1986 [Section 2(9)(ii) of the Consumer Protection Act, 2019], is fulfilled.

Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in the open Commission this the 27th day of June 2025.

Sreeja S.
Member

Ram Mohan R
Member

C. T. Sabu
President

Appendix

Complainant's Exhibits :

Ext. P1 is Invoice No. 01109 dated 10/01/2018 issued by the second opposite party in respect of the sale of 1 quantity of "MCD'S VSOP DL BY, 750 ML", receiving Rs. 800/- (Rupees eight hundred only) from the buyer.

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Opposite parties' Exhibits :

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Ext. R4 is copy of letter no. 133/A3/2022/TD dated 06/09/2022 from the Additional Chief Secretary to Government, Government of Kerala Taxes (A) Department, addressed to the first opposite party.

Ram Mohan R
Member

//True copy//

Assistant Registrar

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