

LEGAL METROLOGY ACT AS APPLICABLE TO CEMENT MANUFACTURERS

The Legal Metrology Act ("the Act") is a forward looking enactment. It repealed the Standards of Weights & Measures Act, 1976. It acquired legal existence in 2009 however the Act became effective only in 01.04.2011. The Act accords due recognition to the provisions of erstwhile Standards of Weights & Measures Act by incorporating its basic provisions and at the same time removing anomalies for safeguarding the interests of consumers.

This enactment educates the consumers and gives all necessary information which will enable consumers to make an informed choice. The Act lays down reference standards and declarations which are necessary to be provided on such other goods as are being sold in Indian markets. All goods which are sold or distributed by weight, measure or number are covered within the expanse of the Act.

The Central Government in exercise of the powers conferred under section 52(2) of the Act framed the Legal Metrology (Packaged Commodity) Rules, 2011 ("the Rules"). The Rules provide specific guidelines to be followed by the manufacturer/ packer of commodities. It provides for consumer protection in respect of packaged commodities by providing for legible indication on the package. Such indication includes declaration of net quantity by weight, measures, number or identity of the commodities contained therein, the name of manufacturer or packer and the price as "Maximum Retail Price".

For the purposes of these Rules, two kinds of packages have been identified- 'Retail Package' and 'Wholesale Package'.

'Retail package' has been defined under Rule 2(k) of these Rules as:

"retail package means the package which are intended for retail sale to the ultimate consumer for the purpose of the commodity contained therein and includes the imported packages:

Provided that for the purposes of this clause, the expression 'ultimate consumer' not include shall not include industrial or institutional consumer;"

'Wholesale package' on the other hand has been defined under Rule 2(r) of these Rules in the following words:

"wholesale package means a package containing:

(i) a number of retail packages, where such first mentioned package is intended for sale distribution or delivery to an intermediary and is not intended for sale direct to a single consumer; or

(ii) a commodity sold to an intermediary in bulk to enable such intermediary to sell, distribute or delivery such commodity in similar quantities; or

(iii) packages containing ten or more than ten retail packages provided that the retail packages are labeled as required under the rules."

It is essential at this point, to draw a basic distinction between 'retail package' and a 'wholesale package'.

1. Packages containing less than ten retail package are not considered wholesale packages;

2. The provisions relating to retail package are contained in Chapter II of these Rules. Whereas, the provisions relating to wholesale package are contained in Chapter III of these Rules;

3. Declaration on retail package are to be necessarily made in accordance with prescribed quantities in Second Schedule. They are further required provide for all statutory declarations as specified therein.

Whereas, wholesale package on the other hand are exempted from some of these mandatory statutory declarations. Wholesale package may be packages in any quantity and need not declare net content, consumer complaint cell, MRP or date of manufacture. However, such packages must declare the total number of packages contained therein.

With respect to discussion at hand, Chapter II of the Rules provides that retail package of cement bag weighing up to 50 kgs is exempt from the mandatory declaration as laid down in the Chapter.

It is necessary to emphasise at this point that this singular limit of 50 kgs has to be cautiously adhered to. With cement bags falling within this delicate limit of 50 kgs, there have been very various instances, where very minimal distortion in this limit, often by bonafide negligence, has led to severe consequences for cement manufactures.

In light of recent cases, it becomes all the more necessary to understand the various legal provisions under the Act as applicable to the cement industry.

Rule 3 of the Rules expressly exempts cement sold in bags weighing up to 50 kgs from complying with the provisions contained in Chapter II of the Rules.

Accordingly, where a cement bag up to 50 kgs is being sold or distributed in the market to retail consumers, not being industrial or institutional consumers, then the declarations relating to name of manufacturer, month and year of manufacture, retail sale price of the package etc shall not be required to be declared.

Rule 5 of the Rules read with Schedule II of the Act provides that cement shall be packed for sale, distribution or delivery only in bags weighing kg, 2 kg, 5 kg, 10 kg, ANM Global- Solicitors & Advocates 20 kg, 25 kg and 40 kg for white cement. Whereas, for other category of cements the limit is 50 kg.

Apart from the above two briefly described provisions, the Legal Metrology Act and Rules there under are a complete code regulating the sale or distribution of all commodities within the territory of India. Understanding this Code will require a detailed write up providing for information relating to licensing and registration under the Act, the power of seizure of commodities, provisions relating to verification of such weights and measures and others.

In conclusion, it is made essentially clear that any violation of the above provisions shall make a cement manufacturer/ packer/ distributor liable to penalty under the provisions of the Act.

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