

Before Mukul Mudgal, C.J., & Jasbir Singh, J.

N.K. JAIN,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents

C.W.P. No. 15198 of 2003

20th May, 2010

Constitution of India, 1950—Art. 226—Standard of Weights and Measures Act, 1976—Standard of Weights and Measures (Enforcement) Act, 1985—PIL—Allegations against Companies for non payment of income tax, sales tax, excise and custom duty as per norms in connivance with Government officials—Authorities taking no action against defaulters—Locus standi of petitioner to file petition—May be an inspired one, but filing of petition had led to recovery of amount running into crores towards tax due which was not paid by respondent Nos. 10 and 11 and other manufacturers of measuring tapes—Benefit to public exchequer—Objection against locus stand rejected—Writ Court in its public interest jurisdiction cannot indefinitely monitor statutory authorities and its role is largely confined to enforcing statutory provisions and bringing into action provisions of law—Statutory authorities directed to act strictly in accordance with statute and fulfil their statutory obligations.

Held, that measuring tapes in lacs were sold without verification and stamping as is necessary under the Standard of Weights and Measures Act, 1976. By doing that the respondents have violated the provisions of the Act, under which they were allowed to manufacture the measuring tapes. Besides prosecuting them, as per law, the authorities had no option but to suspend their licence. After getting it restored, now the respondents cannot take a somersault and say that the amount could not be recovered because there is no provision under the Act. Once, it is established on record that amount towards stamping fee was due and not paid by the respondents, it is inbuilt in the provisions of the Act to recover that amount even by cancelling the manufacturing licence of respondent Nos. 10 and 11. That was rightly done and if the respondents failed to deposit the balance amount,

the authorities are duty bound to cancel their manufacturing licence and thereafter to effect recovery of the amount due as per the provisions of the Act. If this contention of the respondents is accepted then it would amount to giving an advantage to a manufacturer who has swindled the State exchequer and swallowed public money by violating the provisions of the Act. It is apparent from the records that the State authorities had not been vigilant and had adopted a carefree attitude qua the defaulters.

(Para 44)

Further held, that so far as *locus standi* of the petitioners to file this writ petition is concerned, may be that it is an inspired one, but at the same time, we cannot ignore a fact that filing of this writ petition had led to the recovery of amount running into crores towards tax due which was not paid by respondent Nos. 10 and 11 and other manufacturers of measuring tapes. This writ petition has yielded good results and has benefited the public exchequer and then subserved public interest. In view of this, objection raised against lack of locus for filing of this writ petition has no legs to stand and is rejected.

(Para 47)

Further held, that a Writ Court in its public interest jurisdiction cannot indefinitely monitor the statutory authorities and its role is largely confined to enforcing the statutory provisions and bringing into action the provisions of law. The Court may direct statutory authorities which have been indifferent, comatose or negligent in fulfilling the statutory obligations and acting in accordance with law but a Writ Court cannot indefinitely monitor the steps which the statutory authorities are required to take.

(Paras 52)

N.K. Jain, *petitioner in person*.

Rupinder Khosla, *Additional Advocate General, Punjab*.

Kamal Sehgal, Senior Standing Counsel *for respondent Nos. 7 and 8*.

Atul Chitale, Senior Advocate with.

Sunil Chadha, Advocate *for respondent No. 10*.

Rajive Atma Ram, Senior Advocate with

Yashraj Singh Dogra, Advocate *for respondent No. 11*.

MUKUL MUDGAL, C.J.

(1) This present case is a classic example as to how public exchequer can be depleted by nefarious methods by the indifference/acquiescence/connivance of the government officials. The private respondents continued to purloin the public money, by not paying amount of tax due, for years together but no action was taken till such time the matter was agitated and raised in the Parliament by its members. Even thereafter, by taking recourse to the technicalities, as contained in the provisions of the Standard of Weights and Measures Act, 1976 (in short 1976 Act) and the Standard of Weights and Measures (Enforcement) Act, 1985 (in short 1985 Act), the private respondents were let off by giving them a very light punishment. Under the pressure of proceedings pending in this Court, for committing default in payment of tax due, licence to manufacture measuring tapes, of private respondent Nos. 10 and 11, was cancelled. With a view to get it restored, in appeal they deposited part of the amount claimed by the government without reserving any liberty with them, however, now they have started asking for refund of the same by picking holes in the provisions of 1976 Act.

(2) This petition is pending in this Court since from the year 2003. It was allegation of the petitioner that private respondent Nos. 10 and 11, in connivance with the government officials had failed to pay amount of tax, in crores, which was due on account of non-verification and non-stamping of the measurement tapes. It was further alleged that the private respondents have also committed default in payment of Income Tax and also committed default in paying Sales Tax and Excise and Customs Duty as per norms. It was stated by the petitioner that the private respondents have illegally concealed true and exact figure of production of manufacturing tapes which has resulted into evasion of verification fee payable under the 1976 Act. It was further the allegation of the petitioner that without making payment of the tax due, the private respondents had been adding the amount towards tax due in the selling price of the measuring tapes (in short tapes). The amount recovered from the sellers towards tax was never deposited in the exchequer. To say that there is a big difference so far as number of tapes manufactured by the private respondents are concerned, *vis-a-vis* the number of tapes presented by them for verification and stamping under the 1976 Act reference was made to the balance sheets filed by the private respondent Nos. 10 and 11 before the Registrar of Companies at Jalandhar (Annexure P4).

(3) In this writ petition, fact and figures have been given regarding manufacture of tapes by the private respondents. Details given by them in their returns submitted before Registrar of the Companies at Jalandhar have been noticed. Further details have been given regarding number of tapes presented for verification by the private respondents before the competent authority under the 1976 Act. Still further facts have been given as to how the private respondents had committed default in not paying Sales Tax, Excise and Custom Duty etc. For this judgment, facts averred against respondent No. 11 (M/s FMI Ltd.) will be mentioned.

(4) It is also evident from the records that respondent Nos. 10 and 11 are the companies managed by one family. The petitioner, after mentioning detail of the provisions of 1976 and 1985 Act has leveled following allegations against respondent No. 11 :—

“32. M/s FMI Ltd. : That in the year 1997, a few family members of Nayars who were running the business of FREEMANS, the respondent No. 10, floated another company under the name and style of M/s FMI Limited—respondent No. 11, who carried on the same activities of the same business and the style of business also did not change as the previous/parent company i.e. M/s Freemans Measures Ltd. The said company, since it was being managed by the old and elderly persons who had been instrumental in running the business of Freemans, continued indulging in malpractices of concealment of true and exact production, evasion of Verification & Stamping Fees, Income Tax, Sales Tax, Excise and Custom Duty and other Government dues. The petitioner submits a few instances of such misdeeds, acts of omission and commission, and hereby is tendering the following instances and evidence of such illegal activities and acts for the last almost five years since the said company M/s FMI Ltd., came into existence only in the year 1997 :

- (a) As per the balance sheet for the year 1998-99 submitted in the office of Registrar of Companies, Jalandhar, respondent No. 11 manufactured 45,02,188 pcs. of measuring tapes out of which 18,68,086 Pcs. were exported. As per their own showing the Excise Duty was

paid on the remaining 26,88,622 Pcs. out of which 5,37,724 were the long tapes in the ratio of 20% (when split into length wise 25% 10M + 50% 15M + 25% 30M) and about 21,50,898 were Steel Tapes in the ratio of 80% (when split into length wise 95% Pocket Tape + ½% 10M + ½% 50M + 3% 15M + 1% 30M). But it is most unfortunate that the respondent No. 11 concealed the aforesaid figures from the Department of Weights & Measures and shown less number of Measuring Tapes to the aforesaid department. Upon the aforesaid number of Measuring Tapes respondent No. 11 paid a sum of Rs. 5,59,958.00 as Verification & Stamping Fees to the Department of Weights & Measures whereas the actual amount payable comes to Rs. 2,73,56,691.00 (as per their Balance Sheet submitted in Registrar of Companies, Jalandhar) thus, there is an evasion of Rs. 2,67,96,733.00 (Rs. Two Crores Sixty Eight lac approx).

- (b) Likewise the respondent No. 11 submitted the balance sheet for the year 1999-2000 in the office of Registrar of Companies, Jalandhar showing that the said respondent had manufactured 42,90,082 Pcs. of measuring Tapes out of which 17,41,682 pcs were shown as exported. As per their own showing the Excise Duty was paid on the remaining 25,81,717 pcs out of which 5,16,343 were the Long Tapes in the ratio of 20% (when split into length wise 25% 10M + 50% 15M + 25% 30M) and about 20,65,374 were Steel Tapes in the ratio of 80% (when split into length wise 95% Pocket Tape + ½% 10M + ½% 50M + 3% 15M + 1% 30M). While acting with *malafide* and dishonest intentions the respondent No. 11 concealed the aforesaid figures from the Department of Weights & Measures and showed less number of Measuring Tapes to the aforesaid department. Upon the aforesaid number of Measuring Tapes respondent No. 11 paid a sum of Rs. 7,57,203.00 as Verification & Stamping Fees to the Department of Weights & Measures

whereas the actual amount payable comes to Rs. 2,62,68,998.00 (as per their Balance Sheet submitted in Registrar of Companies, Jalandhar) thus, there is an evasion of Rs. 2,55,11,795.00 (Rs. Two Crores Fifty Five Lac approx).

- (c) Next year the Respondent No. 11 submitted the balance sheet for the year 2000-01 in the office of Registrar of Companies, Jalandhar showing that it had manufactured 38,84,735 pcs of Measuring Tapes out of which 7,24,626 pcs were shown as exported. As per their own showing the Excise Duty was paid on the remaining 31,68,749 pcs out of which 6,33,750 were the Long Tapes in the ratio of 20% (when split into length wise 25% 10M + 50% 15M + 25% 30M) and about 25,34,999 were Steel Tapes in the ratio of 80% (when split into length wise of 95% Pocket Tape + ½% 10M + ½% 50M + 3% 15M + 1% 30M). Again the respondent No. 11 with malafide and dishonest intentions concealed the aforesaid figures from the Department of Weights & Measures and showed less number of Measuring Tapes in connivance with the officials of respondent No. 6 and the Department of Weights & Measures and paid a sum of Rs. 12,39,535.00 as Verification & Stamping Fees whereas the actual amount payable comes to Rs. 3,22,41,997.00 (as per their Balance Sheet submitted in Registrar of Companies, Jalandhar) thus, there is an evasion of Rs. 3,10,02,462.00 (Rs. Three Crores Ten Lac approx).
- (d) That the Respondent No. 11 continued in its malpractices of concealment of the true and exact production and submitting the false and incorrect figures to the respondent No. 6. The respondent No. 11 submitted the balance sheet for the year 2001-02 in the office of Registrar of Companies, Jalandhar showing that it had manufactured 35,32,838 pcs of Measuring Tapes out of which 5,74,003 pcs were shown as exported. As per their own showing the Excise Duty was paid on the remaining 29,87,540

pcs out of which 5,97,508 were the Long Tapes in the ratio of 20% (when split into length wise 25% 10M + 50% 15M + 25% 30M) and about 23,90,032 were Steel Tapes in the ratio of 80% (when split into length wise 95% Pocket Tape + ½% 10M + ½% 50M + 3% 15M + 1% 30M). However, the respondent No. 11 with *malafide* and dishonest intentions concealed the aforesaid figures from the Department of Weights & Measures and showed less number of Measuring Tapes in connivance with the officials of respondent No. 6 and paid a sum of Rs. 12,68,375.00 (Rupees Twelve Lac Sixty Eight Thousand Three Hundred Seventy Five only) as Verification & Stamping Fee to the Department of Weights & Measures whereas the actual amount payable comes to Rs. 3,03,98,197.00 (Rupees Three Crores Three Lac Ninety Eight Thousand One Hundred Ninety Seven only) (as per their Balance Sheet submitted in Registrar of Companies, Jalandhar) thus, there is an evasion of Rs. 2,91,29,822.00 (Rs. Two Crores Ninety One Lac Twenty Nine Thousand Eight Hundred Twenty Two only).

- (e) The respondent No. 11 who had been concealing true and exact production since long, indulged and continued in the malpractices of concealment of the true and exact production and submitted the false and incorrect figures to the respondent No. 6. The respondent No. 11 submitted the balance sheet for the year 2002-03 in the office of Registrar of Companies, Jalandhar showing that it had manufactured 39,26,798 pcs of Measuring Tapes out of which 6,86,082 pcs were shown as exported. As per their own showing the Excise Duty was paid on the remaining 32,36,419 pcs out of which 6,47,284 were the Long Tapes in the ratio of 20% (when split into length wise 25% 10M + 50% 15M + 25% 30M) and about 25,89,135 were Steel Tapes in the ratio of 80% (when split into length wise 95% Pocket Tape + ½% 10M + ½% 50M + 3% 15M + 1% 30M). But, the respondent

No. 11 with *malafide* and dishonest intentions concealed the aforesaid figures from the Department of Weights & Measures and showed less number of Measuring Tapes in connivance with the officials of respondent No. 6 and paid a sum of Rs. 10,59,340.00 (Rupees Ten Lac Sixty Nine Thousand Three Hundred Forty only) as Verification & Stamping Fees to the Department of Weights & Measures whereas the actual amount payable comes to Rs. 3,29,30,478.00 (Rupees Three Crores Twenty Nine Lac Thirty Thousand Four Hundred Seventy Eight only) (as per their Balance Sheet submitted in Registrar of Companies, Jalandhar) thus, there is an evasion of Rs. 3,18,61,138.00 (Rs. Three Crores Eighteen Lac Sixty One Thousand One Hundred Thirty Eight only).

(5) It was further stated by the petitioner that on a measurement tape upto 15 meters, verification and stamp duty (in short the duty) was payable @Rs. 18.75 each tape and on pocket tapes @Rs. 6.25 each tape. By giving an imaginary figure of manufactured tapes, the petitioner alleged that total evasion of fee/tax, at the instance of respondent No. 11, comes to Rs. 14,43,01,950. Serious allegations of connivance were leveled against the officers, who were responsible to recover duty under the 1976 Act. To strengthen the aforesaid plea, reference was made to copies of the balance sheets filed by respondent No. 11 with the Registrar of Companies at Jalandhar (Annexure P7). Further, it was alleged as under :—

“40. That the Respondent No. 10 & 11 are also exporting their products to various countries and thus getting benefits against such exports viz. duty drawback, exemption from paying the Central Excise Duty @ 16%, exemption from paying the Central Sales Tax @ 10% and certain rebates in Income Tax. It shall not be out of place to mention here that income from the export sale is tax-free and also the Respondent No. 10 & 11 are claiming the expenditure over foreign travelling in the name of export promotion ; commission on exports are shown having been paid and the rebate/exemption from paying the Income

Tax. Moreover, while importing the respondent No. 10 & 11 are claiming duty drawback and D.E.P.B. (Duty Exemption Pass Book) as such benefit of custom duty is taken. In addition to the above, they are charged special concessional rate of bank interest. The petitioner *bona-fide* believes that the Respondent No. 10 & 11 are indulging in malpractice and misusing the above provisions for their selfish gains and causing wrongful loss to the State Exchequer. It is pertinent to mention here that the format of the Sale Invoice for both the Domestic market and Export are different which is not observed by the Respondent No. 10 & 11 and the petitioner most respectfully seeks that they both be asked to produce their records so that the amount of total evasion and exemption is arrived.

41. That the respondent No. 10 & 11 are claiming that they sell their products within the State, outside the State within the territory of India and Exporting to other countries. It is stated that the export sales are made against Form 'H' whereas the local sales i.e. the domestic market sales are made against Form 'ST XXII' in case, the same are made within the State of Punjab without charging any Sales Tax. But in the absence of aforesaid declaration form, the Local Sales Tax @ 8% has to be charged and deposited with the Sales Tax Department. In case the sales are made outside the State then Central Sales Tax @ 10% has to be charged/paid and against Form 'C' the Central Sales Tax @ 4% is to be charged/paid. The Respondent No. 10 is indulging in stock transfer to branch and thus evading the payment of Central Sales Tax. In the same manner the Respondent No. 10 is indulging in stock transfer against Form 'F' and thus not paying any Central Sales Tax. It is respectfully submitted that due to such stock/branch transfer of stocks there is a huge evasion of Central Sales Tax and Local Sales Tax by Respondent No. 10 to 13, which amount the petitioner, presently, is unable to quantify because this practice is continuing for decades together and there is a perpetual loss to the State Exchequer amounting to hundreds of crores of Rupees."

(6) It was further stated that on coming to know about the irregularities committed, a question was raised in the Parliament by its members, whereupon it transpired that even a licence, to manufacture non-standard measuring tapes was given to respondent No. 11 for a period of six months and thereafter it was extended for a further period of one year. In reply to the questions, it was further stated that selling of non-standard tapes within the country is a violation of the 1976 Act and the 1985 Act. It was further alleged that above said licence was granted to respondent No. 11 and 10 subject to the following conditions :—

- (a) No non-standard tapes manufactured for export purposes shall be sold or otherwise distributed within the territory of India ;
- (b) The firm shall submit to the Central Government, at the end of six months, a statement as to the quantity of non-standard tapes exported by it and the particulars of the persons to whom such exports has been made ;
- (c) The firm shall maintain a monthly record of the number of such non-standard tapes manufactured by it, number of non-standard tapes exported by it and number of non-standard tapes in stock or under production. The records so maintained shall be open to inspection by an officer authorise by the Central Government in this behalf. The firm shall submit to the Central Government, at the end of every six months, a statement as to the quantity of the non-standard tapes exported by it and the particulars of the person to whom such exports have been made ;
- (d) Each of non-standard tapes shall carry a declaration that it is meant “for export purposes only”, and
- (e) A six monthly statement in the following proforma shall be submitted to the Central Government.

(7) It is the allegation of the petitioner that the private respondents failed to comply with the terms and conditions as stipulated above, however, despite that their licence was extended for a further period of one year.

In reply to the question put in the Parliament, it was stated that no measurement tape can be put to use unless it is verified and stamped by collecting verification and stamping fee at the spot as per Section 41(7) of the 1976 Act. It was further stated that the aforesaid fee is collected on the basis of type and length of each measuring tape. Further following details were given regarding tapes got verified and stamped by respondent Nos. 10 and 11 :—

Period	Number of Steel Tapes and fibre glass tapes verified in pieces (length various from 1m to 100m)		Verification fees paid in Rupees	
	FMI Ltd.	Freemans Ltd.	FMI Ltd.	Freemans Ltd.
2000-01	135730	154579	1239535	1059835
2001-02	141332	201462	1268375	1434300
2002-03	110612	164412	1069340	1179821

(8) It is further stated that again question No. 6924 was put by Shri Adhir Chowdhury, Member Parliament, raising the following queries :—

- (a) the percentage of Central Excise payable on product, measuring tapes (CETSH No. 9017—90) ;
- (b) the details of the amount of Central Excise duty paid along with the amount CENVAT credit claimed by each manufactures of measuring tapes from Ludhiana and Mumbai during each of the last three years ;
- (c) the details of the quantities manufactured with their assessable value by each of the above manufacturers during each of the last three years : and

- (d) the details of the quantities cleared/removed, on payment and without payment of excise duty i.e. under full exemption or nil rate of duty for exports separately with their assessable value by each of the above manufacturers during each of the last three years along with the amount of Excise paid on both types of above clearances/removals ?

(9) To the said queries, the following answer was given by the Minister of State in the Ministry of Finance :—

- (a) 16% Advelorum
(b) As in Annexure I at (b)
(c) As in Annexure I at (c)
(d) As in Annexure I at (d)

Annexure—I

(b)

Sr. No.	Name of Manu- facturer	Finanical Year	Duty		Cevat credit claimed (in Rs. Thousand
			PLA (in Rs. Thousand)	Paid CENVAT (in Rs. Thousand)	
1.	M/s Skanan	2000-01	363	1205	1205
	Hardware Pvt.	2001-02	470	1127	1373
	Ltd. Mumbai	2002-03	730	1316	1316
2.	Freemans	2000-01	9100	6100	7100
	Measures Ltd.	2001-02	10100	6400	7300
	Ludhiana	2002-03	9000	9300	8300
3.	Festo	2000-01	7900	9400	1100
	Measuring	2001-02	6900	9800	9300
	Ind. Ltd. Ludhiana	2002-03	6000	11500	11100

(c)

Sr. No.	Name of Manufacturer	Financial Year	Quantity Manufactured (in Nos.)	Assessable value (in Rs. Thousand)
1.	M/s Skanan	2000-01	1188437	13284
	Hardware Pvt.	2001-02	1356397	17174
	Ltd. Mumbai	2002-03	1319136	15386
2.	Freemans	2000-01	3177923	105800
	Measures Ltd.	2001-02	3029109	110900
	Ludhiana	2002-03	3447101	125100
3.	Festo	2000-01	3884735	132600
	Measuring	2001-02	3532838	123600
	Ind. Ltd. Ludhiana	2002-03	3926798	132700

(d)

Sr. No.	Name of Manufacturer	Financial Year	Quantity cleared on payment of duty	Assessable value (in Rs. Thousand)	Quantity cleared without payment of duty	Assessable value (in Rs. Thousand)
1.	M/s Skanan	2000-01	1160347	12970	Nil	Nil
	Hardware Pvt.	2001-02	1243267	15741	Nil	Nil
	Ltd. Mumbai	2002-03	1391400	16229	Nil	Nil
2.	Freemans	2000-01	2864297	98000	333358	16500
	Measures Ltd.	2001-02	2802963	103400	219782	11500
	Ludhiana	2002-03	3154508	114200	229013	16100
3.	Festo	2000-01	3168749	108200	724626	48100
	Measuring	2001-02	2987540	104600	574003	45700
	Ind. Ltd. Ludhiana	2002-03	3236419	109400	686082	47400

(10) By referring to the aforesaid figures, it was alleged that there is evasion of payment of duty towards verification and stamping charges under 1976 Act. Reference has also been made to the subsequent question put in the Parliament and answers given thereon. By stating as above, the following prayer was made :—

- (iii) Since it is an apparent case of connivance of officials of respondent No. 1 to 9, with respondent No. 10 to 13, the enquiry be entrusted to Central Bureau of Investigation (CBI), who should be directed to look into the past and ongoing evasion by respondent No. 10 to 13 in which the petitioner be allowed to participate and assist and the CBI be directed to submit its report after assessing the true and exact number of pieces produced, type and length-wise and also quantifying the concealment and damage caused by such concealment of production and its effect upon the payment of Verification & Stamping Fees, other Taxes, Duty and Levies etc. Further, the CBI be directed to identify the officials who have/had been instrumental in the evasion of Verification & Stamping Fees, other Taxes, Duty and Levies etc.
- (iv) And Respondent No. 1 to 9 be directed to take appropriate steps to recover the Verification & Stamping Fees, other Taxes, Duty and Levies etc. which has been evaded alongwith interest from the respective dates of evasion alongwith penalty as provided under the relevant provisions of Law within a fixed time frame, from Respondent No. 10 to 13.
- (v) The respondent No. 1 to 9, be directed to take appropriate and suitable legal action against the Respondent No. 10 to 13, and prosecuting them for violation of Sections 22, 23, 35, 36, 37, 38, 41, & 46 of Standard of Weights and Measures, 1976 and Sections 19, 22, 23, 24, 26, 56 and 60 of Standard of Weights and Measures (Enforcement) Act, 1985 and Rules 19, Standard of Weights and Measures (General) Rules, 1987.”

(11) Upon notice separate replies have been filed by all the respondents. Respondent No. 11 in its reply has raised serious objection regarding *locus standi* of the petitioner to maintain this writ petition. It has been stated with vehemence that this writ petition has been filed at the instance of one Ashok Jain, who at an earlier point of time, was distributor of respondent No. 11. On account of some mischief committed by the person mentioned above, his agency was terminated. With a view to settle the scores, he has projected the petitioner as a front man to harm the interest of respondent No. 10 and 11. On merits it has specifically been denied that any evasion of duty has been committed by the respondents, as alleged. It was also stated that stamping fee etc. was to be counted towards expenditure in the Profit and Loss Accounts, as such, there was no necessity to evade the same. It was further stated that returns are required to be submitted in terms of Section 46 of the 1976 Act to the Controller as per norms. Facts and figures given by the petitioner were controverted and it was stated that the stamp duty, Sales Tax and other taxes due were paid as per law.

(12) In affidavit dated 30th January, 2004, filed by respondent No. 6, it was stated that show cause notice has been issued to respondent No. 10 and 11 in the month of December, 2003 for violating the provisions of law and proceedings are going on.

(13) Respondent No. 10 also filed a short reply on the same pattern and raising the same contentions as were raised by respondent No. 11.

(14) Reply on behalf of respondent No. 2 and 3 was filed in the shape of an affidavit of Deputy Director Legal Metrology, Ministry of Department of Consumer Affairs, Food and Public Distribution Department of Consumer Affairs (Weights and Measures Unit) in which, it was specifically stated that permission by the Central Government was granted to respondent Nos. 10 and 11 to manufacture non-standard measuring tapes for export purposes only. It was stated as under :—

“That although the information had been collected by the Department of Consumer Affairs, Govt. of India with regard to the figures

of production, sale and export or both standard and non-standard tape of respondents from 10 and 11. However, subsequently, it was found that the export figures furnished by the respondent firm did not tally with the figures given by the Director General of Foreign Trade and Ministry of Finance.”

(15) A detailed reply was filed by respondent No. 5 and 6, wherein it was stated that for violating the provisions of law, penal proceedings have been initiated against respondent Nos. 10 and 11. Para 17 of the reply reads thus—

“The replies along with documents submitted by the respondent Nos. 10 and 11 have been examined by the answering respondent and it has been found that respondents 10 and 11 have *prima facie* violated various provisions of Standard of Weights and Measures (Enforcement) Act, 1985. The firms have been prosecuted under section 41, 43 r/w r/w 62,46, r/o 67, 47 r/w 64 and 48 r/w 65 of Standard of Weights and Measures Act, 1976 and section 22 r/w 45 of Standard of Weights and Measures (Enforcement) Act, 1985. The copies of prosecutions are placed at Annexures R/2, R/3, R/4, R/5, R/6, R/7, R/8, R/9, R/10, & R/11.” (emphasis supplied).

(16) It was further stated that on preliminary enquiry, it was found that respondent No. 11 has sold standard tape measures within the country without proper verification and stamping fee. Paragraph 32 of the reply reads thus :—

“That it is denied that the respondent No. 11 is not paying due amount of verification and stamping fee. The verification and stamping fee has been charged for the standard measuring tapes offered. The Controller, legal Metrology, Punjab (Respondnt No. 6) has charged requisite verification and stamping fee on standard measuring tapes offered by M/s FMI Ltd. Respondent No. 11, as prescribed under the Act/Rules during 1998-99 to

2002-03. The detail of measuring tapes manufactured exported stamped and fee paid the respondent No. 11 as given below :—

Year	Total No. of measuring tapes manufactured	No. of measuring tapes exported	No. of standard tapes measures stamped	Stamping fee (in Rs.)	Standard Tape measuring sold without verification and stamping within State and Interstate
1998-99	45,02,188	18,68,086	1,07,083	5,59,958	26,88,622
1999-2000	42,90,082	17,41,682	1,38,603	7,57,203	25,81,717
2000-01	38,84,735	7,24,626	1,37,530	12,39,535	31,68,749
2001-02	35,32,838	5,74,003	1,41,332	12,68,375	29,87,540
2002-03	39,26,798	6,86,082	1,25,972	11,98,115	32,36,419

(emphasis supplied)

(17) Similar information was supplied regarding respondent No. 10.

(18) To the replies filed by all the respondents, replications were filed by the petitioner, reiterating the averments made by him in the writ petition.

(19) In a short affidavit filed by Ranjit Powar, Controller Legal Metrology dated 22nd April, 2004, it was specifically stated that respondent Nos. 10 and 11 have violated the provisions of the 1976 and the 1985 Act and it was further stated that penal action has been taken again both the respondents as per law. On 4th December, 2008, this Court sought the following information from the State of Punjab :—

- (i) Whether any process of verification is undertaken by the controller or any of his/her subordinate in compliance with the provisions

of the Standard of Weights and Measures Act, 1976 and the Standard of Weights and Measures (Enforcement) Act, 1985 before allowing renewal of licences granted to the manufacturing units of respondents No. 10 and 11 in this petition and similar other units situated in the State of Punjab. In case the answer is in the affirmative what is the nature of the verification and at what level the same is conducted ?

- (ii) If answer to question No. (i) is in the affirmative, the Controller shall indicate on affidavit whether and if so what was the nature of verification undertaken while granting renewals of licences to respondents No. 10 and 11 for the period 1996 onwards till the end of December, 2008. Records relating to the renewals sought and granted as also verification, if any done, shall be produced by the controller;
- (iii) Whether the controller has before granting renewal or independent of the same, sought any verification from the Excise Department, regarding the extent of tapes manufactured by respondents No. 10 and 11 for the period 2003 onwards till date ? If so, whether the said information has disclosed sale or manufacturing of tapes without compliance with the provisions of the two Acts mentioned above and the Rules framed thereunder ?
- (iv) The Controller shall also in his/her affidavit indicate whether the question of recovery of stamping/verification fee, on the tapes manufactured by the respondents, were sold without such stamping/ verification, has been examined by the authorities at any stage at any level and if so, the result of such examination ?

(20) In response to aforesaid order, an affidavit was filed by Mr. Ranjit Powar, Controller Legal Metrology, Punjab on 5th December, 2008, wherein it was stated that verification of the record of the party concerned was carried out by the Inspector, Legal Metrology of the area and on recommendation made that the party has maintained the proper records, licence of the unit was renewed. It was further stated that there is no provision under the Act and Rules for recovery of stamping and verification fee. The Court was assured that an appropriate action will be taken against

the violators. Respondent No. 11 also filed an additional affidavit to show that the petitioner had been litigating at the instance of somebody else to harm its interest.

(21) On 10th December, 2008, the following order was passed by this Court :—

“Mr. Mattewal today appears on behalf of the respondent-State of Punjab and seeks time to take instructions as also to furnish the requisite information in terms of order, dated December, 5th 2008. He submits that the Government would also consider appointing of High Power Committee on the analogy of the order passed by the Supreme Court in *Suresh Chander Sharma versus Chairman, UPSEB and others* (1998) 2 S.C.C. 66, We do not for the present wish to make any observation as to the correctness of that course of action. All that we need say is that the matter is serious and needs to be inquired into at the appropriate level without any further loss of time.

The information provided by Mr. Cheema, Advocate, appearing for the Excise Department is taken on the record. A copy of the said information shall be made available even to Mr. Jain, petitioner in person and to M/s Mattewal, Rajiv Atma Ram, Sr. Advocate, Sunil Chadha, counsel appearing for the respondents, by the registry.

Post again on December, 18, 2008.”

(22) On 18th December, 2008, this Court was informed by the Advocate General Punjab that action has been initiated against respondent No. 10 and 11 and their licence to manufacture tapes have already been suspended. It was further stated that officers responsible for evasion of the verification and stamping fee are being identified so that action against them can be initiated. He further assured the Court that recovery proceedings for unpaid stamping and verification fee are being initiated and in anticipation thereof, the respondents have paid a sum of Rs. 15 lacs (Rs. 5 lacs plus Rs. 10 lacs respectively). He sought more time to give further details to the Court.

(23) In response to order passed on 18th December, 2008, an affidavit dated 16th February, 2009 was filed by Dr. Ranjit Powar, Controller Legal Metrology, Punjab. Paragraph No. 1 of the affidavit reads thus :—

“That an enquiry was conducted regarding the volume of manufacture of measuring tapes reported by M/s FMI Ltd. Doraha and M/s Freedman Measures (P) Ltd., Jugiana Distt. Ludhiana (Annexure R-1). Returns submitted by them to the Central Excise Department were tallied with the returns submitted by these firms to the organization of Legal Metrology. The following discrepancies were found in the returns submitted by the firms for the year 2003 to 2009.

Information regarding discrepancies and evasion of fees of M/s FMI Ltd. Dorana District Ludhiana.

Year of manufacture	Manufactured tapes as per record submitted to CLM (ASLM-4)	Nos. of tapes actually verified	No. of tapes submitted to Central Excise & Custom Department	No. of tapes exported	No. of tapes not presented for verification	Fee possible from tapes not presented for verification in (Rupees)
2003-04	224725	224725	3671521	595980	2850816	14254080
2004-05	307810	305765	4198411	724007	3168639	15843195
2005-06	289372	291465	3953442	647177	3014800	15074000
2006-07	1104592	10250256	4171312	709961	2436326	12181630
2007-08	3998541	4488050	4488050	412165	Nil	Nil
2008-09 (Upto 30-11-08)	2524356	3112942	3112942	338132	Nil	Nil
Total	8449396	18673203	23595678	3427422	11470581	57352905

(emphasis supplied)

Information regarding discrepancies and evasion of fees of
M/s Freeman Measures (P) Ltd., Jugiana District Ludhiana.

Year of manufacture	Manufactured tapes as per record submitted to CLM (ASLM-4)	Nos.of tapes actually verified	No. of tapes submitted to Central Excise & Custom Department	No. of tapes exported	No. of tapes not presented for verification	Fee possible from tapes not presented for verification in (Rupees)
2003-04	265802	265802	3008584	108073	2634709	13173545
2004-05	28900	28900	794937	43020	723017	3615085
2005-06	72158	72767	1831665	59090	1699808	8499040
2006-07	323256	337825	2060040	25753	1696456	8482280
2007-08	2020248	2019620	2266725	247105	628	628
2008-09 (Upto 30-11-08)	1383411	1620911	1620911	Nil	Nil	Nil
G. Total	4093775	4345825	11582862	483041	6754618	33770578

(emphasis supplied)

Thus it is clear that by omitting to report and get the actual number of tapes manufactured stamped by the Organization of Legal Metrology, these two concerns contravened the provisions of Standard of Weights and Measures (Enforcement) Act, 1985 Section 56(1) & 56(2) and Standard of Weights and Measures Act, 1976 section 43/62, 70(1) & 70(2) and also evaded a huge amount of fees due to the government. Therefore manufacturing and dealers licenses of both the companies were suspended indefinitely,—*vide* the Controller's order dated 17th December, 2008 Annexure R-II.

Both the companies appealed against the Controller, Organization of Legal Metrology under section 69 of the Standards of Weights and Measures (Enf) Act, 1985 to the Principal Secretary, Food, Civil Supplies and Consumer Affairs Punjab Government on 18th December, 2008. The Principal Secretary heard the companies on 24th December, 2008 represented by

Mr. Samir Nayar, Director, Freeman Measures (P) Ltd. Jugiana, Distt. Ludhiana and Mr. Rakesh Nayar, Director, FMI Mr. Harpal Singh, Deputy Controller, Legal Metrology and Superintendent Legal Metrology, Punjab, were also present. After hearing both parties the Principal Secretary, stayed the suspension orders issued by the Controller, Legal Metrology, Punjab (Annexure R-III), after they offered a *suo motto* undertaking to deposit the evaded stamping fee amounting to Rs. 5,73,52,905/ for M/s FMI Ltd. Doraha and Rs. 3,37,70,578 for M/s Freeman Measures (P) Ltd. Jugiana, District Ludhiana.
(emphasis supplied)

The above said companies have deposited in the credit head of department "1475—Other General Economic Services-106-Fee for stamping weights and Measures" evaded fee as below :—

(i) Freeman Measures (O) Ltd., Jugiana Distt. Ludhiana

Date of deposit	Amount deposited
7-1-2009	10,00,000.00
23-1-2009	3,27,70,578.00 R-IV
Total	3,37,70,578.00

(H) FMI Ltd.

7-1-2010	20,00,000.00
31-1-2009	2,80,00,000.00 R-V
Post dated Cheque No. 085977 dated 31-8-2009	
Total	5,73,52,905.00

(24) It was further stated that strict action will be taken against the officers, who were posted in the given places during the period of evasion of stamping fee and some of the employees have been put under suspension. It was further stated that regarding other dealers /manufacturers of tapes verification has been done and action has also been initiated against the defaulters. The matter was adjourned to 17th February, 2009. In a very surprising manner, respondent Nos. 10 and 11 filed an appeal before

Principal Secretary, Government of Punjab department of Food and Supplies at Chandigarh. The officer concerned, despite noting that matter is pending before this Court, chose to grant stay to respondent No. 10 and 11 regarding suspension of their manufacturing licence. Before the appellate authority, an undertaking was given by respondent Nos. 10 and 11 to deposit the amount without reserving any liberty with them to lay challenge to the assessment made. By taking note of the same, cancellation of licence was stayed.

(25) On 17th February, 2009, by making reference to the affidavit, mentioned above, Advocate General Punjab brought it to the notice of the Court that an amount of Rs. 3,37,578, has already been deposited by respondent No. 10 and Rs. 3 crores out of Rs. 5,73,52,905 due from respondent No. 11, stood paid and rest of the amount shall be paid on or before 31st August, 2009. Advocate General also assured the Court that action will be taken against other units also, who are the defaulters. Further following information was sought from the State of Punjab,—*vide* order, mentioned above :—

- (i) The Appellate Authority before whom the respondents No. 10 and 11 have filed their appeals shall dispose of the said appeals within four months from today and place copies of the orders passed in those appeals on the record of this Court.
- (ii) The process for quantification of the liability qua seven units mentioned in the affidavit filed by the respondents shall be finalized by the competent authority and status report regarding action taken against the said units be filed in the Court before the next date of hearing.
- (iii) The Government shall also examine the veracity of the allegations made by respondent No. 11 in so far as 16 other units mentioned in Annexure A-2 to the affidavit filed by the said respondent is concerned and file a report as to the action taken against the said units, if the same are also found to be in default.”

(26) In response to the order, mentioned above, on 16th September, 2009, a status report was filed by Dr. Ranjit Powar, Controller Legal Metrology, Punjab, wherein it was mentioned that order suspending

manufacturing licence of respondent Nos. 10 and 11 was set aside by the appellate authority,—*vide* order dated 19th March, 2009. It was further stated that the respondent No. 11 has filed an application before the appellate authority for modification of the order, mentioned above. It was further stated that another application moved before the competent authority to quash demand raised, was dismissed,—*vide* order dated 17th July, 2009, against which, the respondents have filed an appeal, which was pending. It was further stated that action has been initiated against other defaulting manufacturers also.

(27) On 17th September, 2009, the petitioner raised an objection before this Court that calculation of amount due has not correctly been made against respondent Nos. 10 and 11. Taking note of the same, two months' time was granted to the competent authority to pass an order determining the amount of fee payable on the tapes manufactured and sold by respondent Nos. 10 and 11. The respondent-State was also directed to quantify the loss qua other manufacturing units. In response to order, mentioned above, a status report was filed by Dr. Karanbir Singh Mann, Controller Legal Metrology, Punjab, wherein it was stated that respondent No. 11 had not yet paid balance amount of Rs. 2,73,52,905. It was further stated that by passing a detailed order, assessment has been made and it was found that an amount of Rs. 1,73,16,940 over and above the assessment already made is due from respondent No. 11 and the amount of Rs. 51,02,957 over and above assessment already made is due from respondent No. 10. A copy of the order was put on record along with the assessment made. Regarding other manufacturing units, a status report was also furnished.

(28) Petitioner and the counsel for the parties have been heard.

(29) Counsel for respondent Nos. 10 and 11 have vehemently contended that filing of this writ petition is the result of *mala fide* on the part of the petitioner and he has initiated this process not with clean hands but at the instance of a former distributor of the respondents, whose distributorship was cancelled on account of acts of omissions and commissions. It was further argued that as per provisions of the Act, the measuring tapes, which were sold within the country, were got verified and stamped. The figures given by the petitioner are imaginary. It was further stated that each year, the respondent used to deposit the stamp fee as per requirement of

the Act and they had committed no default in the discharge of their obligation under law. It was further argued that for any act of omission or commission, the respondents were proceeded as per law and the matters were compounded. It was further stated that as per provisions of the Act, there is no power with the State Government to recover the alleged defaulted amount. The money was got paid by the authorities under duress by cancelling the manufacturing licence of the respondents. By stating as above, a prayer has been made to dismiss the writ petition.

(30) The petitioner has vehemently controverted the arguments raised by counsel for respondent Nos. 10 and 11. It was denied that he had any connection with former distributor of the respondents, as alleged and there is no *mala fide* at his part in filing this writ petition. By making reference to the statements filed by respondent Nos. 10 and 11 with the Registrar of the Companies and other documents including the documents of Excise Department, he argued that number of tapes manufactured and sold within the country, is much higher than the one, , which were put for verification and stamping under the Act. By making reference to various answers to the questions raised in the Parliament, he attempted to show that respondent Nos. 10 and 11 and other similarly situated manufacturers have defaulted in making payment of stamping fee and as such, for non-compliance with the provisions of the Act, under which, manufacturing licence was issued to them, the authorities are supposed to cancel their licence. He further argued that consequent to the orders passed by this Court, the authorities were forced to cancel manufacturing licence of respondent Nos. 10 and 11. They went in appeal. The appellate authority without getting any clarification from this Court, on their undertaking to deposit the amount claimed, granted interim stay and thereafter on deposit of part amount order, cancelling manufacturing licence was set aside. It is the further contention of the petitioner that once the respondents have deposited the defaulted amount of their own, it does not lie in their mouth to say that they had paid the amount under duress. If amount had not been paid by them their manufacturing licence would not have been restored. He further argued that once it is proved on record that respondent Nos. 10 and 11 have acted contrary to the provisions of the Act, under which licence was granted, the authorities were justified to ask them to pay due amounts towards stamping fee, which they have evaded and for non-compliance the authorities are within their jurisdiction to cancel their licence or in the

alternative to recover the amount defalcated. He further argued that the authorities had connived with respondent Nos. 10 and 11. Proper checking was not made. The material shown to have used in manufacturing of the measuring tapes is an indicator that much more measuring tapes were produced than the one shown by respondent Nos. 10 and 11. He further alleged that amount to be recovered from respondent Nos. 10 and 11 has not even been determined as per the provisions of the Act and it is deficient and needs re-consideration/re-calculation. By stating as above, he prayed that the writ petition be allowed and CBI be asked to look into the matter and proceed against respondent Nos. 10 and 11 and others as per law.

(31) Counsel for respondent Nos. 5 and 6 by making reference to documents on record, argued that respondent No. 10 and 11 had acted in contravention to the provisions of 1976 Act and 1985 Act. For offence committed by them, process was initiated against them and in some cases, matter has been compounded and in others, proceedings are still going on. Subject to deposit of amount due, manufacturing licence of the respondents has been restored. At the time when deposit was made, it was unconditional. Before the appellate authority dispute was only raised regarding over-charging and not regarding capacity of the State Government to recover the defalcated amount. After giving an undertaking to the appellate authority, respondent No. 10 has failed to deposit the balance amount and started moving applications to prolong the period to make deposit, on one pretext or the other.

(32) Before dealing with the arguments raised by counsel for the parties, it is necessary for us to note certain provisions of 1976 Act and 1985 Act.

(33) As per Section 22 of 1976 Act, manufacturing of non-standard weight or measure is prohibited. It reads thus :—

22. Manufacture of non-standard weight or measure prohibited—
No weight or measure shall be made or manufactured unless it conforms to the standards of weight or measure established by or under this Act :

Provided that the Central Government may permit the making or manufacturing of any weight or measure which does not conform to the standards established by or under this Act, if such weight

or measure is made or manufactured exclusively for the purpose of any scientific investigation or research or for export and is made or manufactured under such conditions and restrictions as may be prescribed.

(34) Licence to manufacture weight or measures is to be granted under the provisions of Section 37 of 1976 Act, which reads thus :—

37. Licence to manufacture weights or measures when to be issued.—

(1) Before issuing a licence to make or manufacture any weight or measure to which this Part applies, the State Government shall satisfy that a certificate of approval of the model of such weight or measure has been granted by the Central Government under Section 36.

(2) Where any certificate of approval of any model has been revoked by the Central Government, the licence issued by the State Government for the making or manufacturing of any weight or measure in accordance with such model shall stand suspended ;

(3) Provided that such suspension shall stand vacated if such model is subsequently approved by the Central Government.

(35) Section 46 makes it mandatory for a manufacturer, who sends any weight or measure to any State, to submit returns to the Controller.

(36) As per provisions of Section 47, a manufacturer who is engaged in exporting or importing any weight or measure is required to get itself registered.

(37) Section 52 of 1976 Act envisages penalty to be imposed for contravention of Section 22. It reads thus :—

52. Penalty for contravention of Section 22.—Except where any weight or measure is made or manufactured, with the permission of the Central Government, exclusively for export, every person who makes or manufactures any weight or

measure which does not conform to the standards of weight or measure established by or under this Act, shall, where such offence is not punishable under any other law relating to weights and measures for the time being in force, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and for the second or subsequent offence with imprisonment for a term which may extend to three years and also with fine.

(38) Section 53 relates to the penalty for violation of Section 23 of 1976 Act, Section 62 refers to the penalty sale of unverified weights or measures in the course of inter-state trade or commerce. Section 70 provides penalty for giving false information or filling false returns.

(39) Relevant provisions of 1985 Act reads thus :—

Section 22 of 1985 act prohibits sale or use of unstamped weights or measures. It reads as under :—

22. Prohibition of sale or use of unstamped weights or measures.—No weight or measure shall be sold, or offered exposed possessed for sale, or used or kept for use in any transaction or for industrial production or for protection unless it has been verified and stamped :

provided that nothing in this section shall apply to any weight or measure which has been initially verified and stamped with a special seal referred to in sub-section (3) of Section 41 of the Standards Act.

Section 23 of 1985 Act mandates a manufacturer to maintain records and registers. Section 24 of 1985 Act provides verification and stamping of weights or measures. Section 45 of 1985 Act provides penalty for contravention of Section 22 of 1985 Act. It reads as under :—

45. Penalty for contravention of Section 22.—Whoever,—

(a) Sells, offers, exposes or possesses for sale any weight or measure which has not been verified and stamped under this Act, or

- (b) Uses, or keeps for use, any weight or measure which being required to be verified and stamped under this Act, has not been so verified and stamped.

Shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both, and for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine;

Provided that nothing in clause (b) shall apply, in relation to any weight or measure which is used for domestic purposes.

(40) A reading of provisions referred to above, indicates that respondent Nos. 10 and 11 were supposed to get the measuring tapes verified and stamped before those were put to sale within the country. They were also supposed to make payment of Sales Tax, Excise Duty etc. It is an admitted fact that as per provisions of exemption granted both the respondents were permitted to manufacture non-standard tapes only for the purpose of export, that too for a limited period. It has come on record that there is a lot of variation so far as amount of measuring tapes manufactured by both the respondents shown in their returns filed before the Registrar of the Companies and those shown to have been verified and stamped. Many discrepancies have also been noticed and indicated by the Central Government in its reply. Respondent Nos. 5 and 6 have also given figures of the measuring tapes, which were produced and sold in the market without getting verified and stamped as required under the Act. The number of those tapes went into lacs.

(41) It appears that the officers who were responsible to check registers of the respondents, to ensure compliance of the law, were remiss in the performance of their duties. They were activated only when questions were raised in the Parliament and thereafter when the matter was taken up by this Court.

(42) Orders passed by this Court from time to time, as reproduced in earlier part of this Order, indicate that matter is very serious and defalcation committed by respondent Nos. 10 and 11 was writ large on the face of the record brought before this Court. It has come on record that the manufacturing licence of respondent Nos. 10 and 11 was being renewed in a very casual manner.

(43) Faced with the situation, the Advocate General Punjab made a statement before this Court on 18th December, 2008 that manufacturing licence of respondent Nos. 10 and 11 stood suspended and they had also deposited some amount of their own to show their *bona fides*. Thereafter, it appears that respondent Nos. 10 and 11 went before the appellate authority against action of respondent No. 6 in suspending their manufacturing licence. The appellate authority after noting that matter is pending in the Court, surprisingly without getting any clarification from this Court, chose to grant interim stay on an undertaking given by both the respondents that they shall deposit the amount claimed by the competent authority. In fact, substantial portion of the amount claimed, was deposited. Respondent No. 10 took time to deposit the remaining amount of about more than Rs. Two Crores in due course of time. When the interim order was passed, the appellate authority observed as under :—

“5. I have considered the above position and it is to be made out that on account of suspension of license, the party is going through loss of business rendering their employees also jobless.

The intention of such an order is to recover the Government dues and not to kill the business. Both the appellants have established sufficient *bonafide* to make the payment, as an amount of Rs. 15.00 lacs has already been paid by them and another Rs. 15.00 lacs will be paid by them together on or before 30th December, 2008.

6. M/s Freemans Measures Private Limited, G.T. Road, Jugiana, District Ludhiana have already given an undertaking to make payment of the whole of the due amount within one month i.e. on or before 23rd January, 2009. Similarly, the M/s FMI Ltd. G.T. Road Roraha, Distt. Ludhiana have also given an undertaking to make the payment of Govt. dues to the tune of Rs. 3,00 Crores on or before 1st February, 2009. They have also given an undertaking to give a post dated cheque for the remaining amount on or before 1st February, 2009 encas-hable by 31st August, 2009.

7. The above circumstances indicate the commitment of both the appellants to make payment of the Govt. dues. In view of the above circumstances, the operation of the impugned order dated 17th December, 2008 issued,—*vide* No. M/20/4982—86 by

Controller, Legal Metrology, Punjab is stayed till next date of hearing. In order to review the further progress about recovery of Govt. dues as per commitment of the parties, the case will come up for hearing 5th January, 2009. The department in the meanwhile will also file their reply to the appeal before the next date of hearing alongwith the correct amount due towards the appellants.”

It is apparent from the order passed that no objection was raised regarding amount claimed by the authority under the Act. When final order, restoring manufacturing licence of the respondents was passed on 19th March, 2009, the appellate authority stated as under :—

“In so far as M/s Freemans Measures Private Limited are concerned they have already made payment of outstanding Government dues amounting to Rs. 3,27,70,578 (Rupees three crores twenty seven lacs seventy thousand five hundred and seventy eight only). There is therefore no need to prolong the suspension of their licence. Accordingly, the order dated 17th December, 2008 issued by Controller, Legal Metrology regarding suspension of license is set aside.

As far as M/s FMI Limited are concerned; the firms has deposited a sum of Rs. 3,00,00,000 (Rupees Three Crores only) and issue a post dated cheque for the remaining outstanding amount of Rs. 2,73,52,905 (Two Crores Seventy Three Lacs Fifty Two Thousand Nine Hundred and Five only) which is payable by 31st August, 2009.

The order dated 17th December, 2008 in their case issued by Controller, Legal Metrology regarding suspension of their license is set aside with the condition that the post dated cheque is honoured on the due date.

M/s FMI Ltd. have also raised the issue that they have been overcharged. It appears that this plea was not taken up before the competent authority. The party may take up the matter before the competent authority first.

This matter is pending before the High Court and next date of hearing in this case is fixed for 17th September, 2009. This order is therefore, subject to the final outcome of the Writ Petition No. 15119 of 2003 titled as **N.K. Jain, versus Union of India and others.**”

(44) At the time of final hearing, only objection was raised by respondent No. 11 that the company has been over-charged by the competent authority. Permission was granted to respondent No. 11 to take up this matter before the concerned authority. Before the competent authority, matter was raked up thereafter and their application was dismissed. As per information supplied, an appeal against that order is still pending. It is also apparent from the records that after giving undertaking before the appellate Court on 19th March, 2009, respondent No. 11 failed to deposit the amount of Rs. 2,73,52,905 within the stipulated time and in fact moved an application for extension of time to make that deposit before the competent authority. Frivolous objections were also raised by stating that the State is not competent to recover the alleged amount. This objection was not raised at all at any stage prior. After getting licence restored on deposit of money and admitting their liability, it now does not lie in the mouth of respondent Nos. 10 and 11 to turn back and urge to the contrary. If the amount had not been deposited/undertaken to deposit the appellate authority may not have restored their manufacturing licence. There is clear violation of the provisions of the Act. Measuring tapes in lacs were sold without verification and stamping as is necessary under the 1976 Act. By doing that the respondents have violated the provisions of the Act, under which they were allowed to manufacture the measuring tapes. Besides prosecuting them, as per law, the authorities had no option but to suspend their licence. After getting it restored, now the respondents can not take a somersault and say that the amount could not be recovered because there is no provision under the Act. Once, it is established on record that amount towards stamping fee was due and not paid by the respondents, it is inbuilt in the provisions of the Act to recover that amount even by cancelling the manufacturing licence of respondent Nos. 10 and 11. That was rightly done and if the respondents failed to deposit the balance amount, the authorities are duty bound to cancel their manufacturing licence and thereafter to effect recovery of the amount due as per the provisions of the Act. If this contention of the respondents is accepted then it would amount to giving an advantage to a manufacturer who has swindled the State exchequer and swallowed public money by violating the provisions of the Act. It is apparent from the records that the State authorities had not been vigilant and had adopted a carefree attitude *qua* the defaulters.

(45) Before this Court, an objection was raised that the amount due has not been calculated as per norms. This Court,—*vide* order dated 17th September, 2009, ordered the authorities to re-look the matter. Fresh

order of assessment was passed and it was found that over and above the amount already assessed, an amount of Rs. 1,73,16,940 is due from respondent No. 11 and an amount of Rs. 51,02,957 over and above the amount already assessed, is due from respondent No. 10, Besides the amount to be paid which had been already assessed, this amount needs to be paid by respondent Nos. 10 and 11. Under these circumstances, this Court feels that respondent Nos. 5 and 6 were justified in raising demand against respondent Nos. 10 and 11 for defalcated amount and respondent Nos. 5 and 6 have the authority to recover the same as tax due by cancelling manufacturing licence of respondent Nos. 10 and 11 and also by ordering recovery as per law.

(46) At the time of arguments, counsel for respondent Nos. 10 and 11, on merits, have failed to show as to how finding given by the authorities that more tapes than the one put for verification, were produced by both the respondents is wrong. The authorities have verified the figures by comparing the number of tapes which were put up for verification and shown in the returns filed before Registrar of Companies, Excise Department and before other authorities when tapes were exported. To a question raised in the Parliament, it was specifically stated that a large number of measuring tapes have been sold by respondent Nos. 10 and 11 without complying with the provisions of the Act. It was so said by respondent Nos. 5 and other official respondents in their statements before this Court, which have been reproduced in earlier part of this order. Once, it is so, the authorities were bound to take action against respondent Nos. 10 and 11. The appellate authority, by taking note of deposit made by both the respondents, has taken a lenient view and restored their manufacturing licence. Now, it is not open to the respondents to dispute the authority of the State to recover the amount in dispute.

(47) So far as *locus standi* of the petitioner to file this writ petition is concerned, may be that it is an inspired one, but at the same time, we cannot ignore a fact that filing of this writ petition had led to the recovery of amount running into crores towards tax due which was not paid by respondent Nos. 10 and 11 and other manufactures of measuring tapes. This writ petition has yielded good results and has benefited the public exchequer and then subserved public interest. In view of this, objection raised against lack of locus for filing of this writ petition has no legs to stand and is rejected.

(48) Before this Court, it was stated by the Advocate General Punjab that action against the erring official has been initiated. This Court expects that the action will be taken to its logical conclusion so that in future officials, who are responsible to enforce the law, may not relax and may not connive with those who are bound to discharge duty under the Act.

(49) The appellate authority, before whom, the appeal filed by respondent Nos. 10 and 11, challenging the authority of the State Government to recover the amount is pending, shall dispose of the same in terms of the findings given by us. If the appeal has already been decided, respondent Nos. 5 and 6 will file an application for review of the order, in terms of the order passed by us.

(50) A reading of the provisions of the Act indicates that for first default committed lesser punishment is provided and for subsequent and second default committed harsher punishment has been provided. The respondents continued to commit offence for a long period of more than four years and now they have been let off only on charging of the compounding fee. This Court feels that penalty awarded is not in consonance with the Act, however, since, no challenge has been laid to those orders passed, we are restraining ourselves to say anything further in that regard.

(51) We have sufficiently laid down the contours of the dispute which arises from the present Public Interest Litigation.

(52) However, we are of the view that a Writ Court in its public interest jurisdiction cannot indefinitely monitor the statutory authorities and its role is largely confined to enforcing the statutory provisions and bringing into action the provisions of law. The Court may direct statutory authorities which have been indifferent, comatose or negligent in fulfilling the statutory obligations and acting in accordance with law but a Writ Court cannot indefinitely monitor the steps which the statutory authorities are required to take. Accordingly, we are of the view that the proceedings in the present writ petition now must come to an end and we direct that the statutory authorities in the light of the finding recorded in the judgment would act strictly in accordance with the statute and fulfill their statutory obligations.

(53) The writ petition accordingly stands disposed of.