

भारतीय लोक
प्रशासन संस्थान
इन्द्रप्रस्थ एस्टेट, रिंग रोड, नई दिल्ली-110 002



INDIAN INSTITUTE OF
PUBLIC ADMINISTRATION
I.P. ESTATE, RING ROAD, NEW DELHI-110002 (INDIA)

State Consumer Helpline Knowledge Resource Management Portal
(SCHKRMP)
(A National Nodal Agency)

Ref. No. IIPA/SCHKRMP/Legal Metrology/2017

Dt. 11/07/2017

Controller of Legal Metrology (Weights & Measures)
Government of Karnataka,
No.1, Ali Askar Road, P.B. No. 175, Bangalore,
Karnataka – 560 052


Sub: Complaint against Myntra Designs Pvt. Ltd- Violation of Legal Metrology Rules in terms of charging taxes on MRP- disrespect to judgement of Hon'able Punjab State Consumer Disputes Redressal Commission upheld by Hon'ble National Consumer Disputes Redressal Commission despite being reminded through tweeter communications

Dear Sir,

We are attaching a copy of the email complaint sent to your office on 10th July 2017 for your appropriate action against Myntra Designs Pvt. Ltd. The company has been maintaining silence to the tweeter messages requesting them to stop such unfair trade practices of charging Taxes on MRP. While we are looking forward for appropriate action as per rules in Legal Metrology, we are also expecting that you would look into for ensuring refund of the extra amount so charged by the company unethically to the consumers. Since the company is in the business through online shopping, the tracing back the consumers may not be difficult.

Thanking you,

Yours sincerely


11/07/2017
(S.K.VIRMANI)
Project Manager

Encl: As above (...21.... pages)

**State Consumer Helpline Knowledge Resource MANAGEMENT PORTAL
(SCHKRMP)**

Indian Institute of Public Administration, New Delhi

Brief Report on Unfair trade practices by retailers (Shopperstop, Myntra, Jabong, Lifestyle, Anita Dongre, Big Bazar Gen Nxt) and others - Charging VAT/ GST on discounted sales

The State Consumer Helpline Knowledge Resource Management Portal has been raising issues of unfair trade practices being adapted by retailers in charging of VAT on discounted sales since March 2014 onwards. As it has become a trend wherein the retailers announce the discount on the MRP either on % age basis or on a fixed amount basis and then the consumers are being charged VAT on these discounted prices so arrived at the time of billing either at counters or through online shopping. While some retailers use to charge the additional VAT at the time of billing, some retailers also used to write “**VAT Extra**” in their display board, advertisements etc. The charging of additional VAT in both the situations is an unfair business practices on a basic fact that the MRP is always inclusive of VAT and other charges under the provisions of MRP rules. Therefore any discounted prices so arrived after discounting on MRP becomes discounted MRP and hence it is inclusive of VAT/ Sales Tax on the proportionate basis. The industrial behavior in charging the taxes which are not chargeable reflects some dubious activities as most of the business always thinks of how to avoid taxation. The possibility of some vested interest cannot be ruled out.

The Portal sought the intervention of Department of Consumer affairs vide letter no. IIPA/SCHKRMP/2013-14 dated 17/04/2014 (copy attached in the report for ready reference). The Portal further therein requested the Department of Consumer Affairs through the same letter to:

- Issue an advertisement in national newspapers across the country under “Jago Grahak Jago” campaign to create public awareness.
- Advising all State Controller to have an audit of accounts on sampling basis so as to ensure that such practices are not resorted to.
- Requesting the sales tax authorities to look into the possibility of tax evasion.
- Exploring the possibility of taking up of class action before appropriate Commission by DCA or any of its nominated agencies. This class action may also include unethical trade practices, misleading advertisements, non-disclosure etc.

While Department of Consumer Affairs requested the Controller of Legal Metrology (All States/UTs) vide letter no. WM-10(28)/2014 dated 23/06/2014 (copy attached in the report) to take necessary action regarding the same, the consumers continued to be deceived by the retailers and such deception is still continuing not only by the small retailers but also by the big brands like Shoppers Stop, Lifestyle, Big Bazar Gen Nxt, Myntra.com, Jabong (ecommerce shopping site) etc. The Portal also sought the intervention of State Tax Departments during May 2014 along with documents pertaining to the issue taken up based on complaints received against three prominent brands i.e Aditya Birla, Park Avenue and Ritu Wears. A copy of the letter addressed to State Trade Tax Department is attached in the report for ready reference. An awareness campaign was also being done through social media like facebook, twitter, blog, Local Circle Community etc. by the Project Manager (SCHKRMP). Incidentally some of the major retailers seem to be adapting ethical business practices as Snowwhite, have clearly stated in their advertisement dtd. 10/01/2015 that “**No Extra Vat**” is chargeable on discounted sale prices. Home Saaz does not charge any VAT on discounted prices. A copy of the communications with some of the retailers along with supporting documents are available in the attached report. While Aditya Birla attempted to justify their charging of extra VAT, Ritu Wears preferred to get the complaint compounded with Rs. 4,000/- and agreed to stop such practices in future. Interestingly M/s JDS Apparels Limited responded with a document from Retailers Association of India in March 2014 which supported that in case the dealers has displayed or advertised Vat extra, the same can be charged extra. However, State Commission and National Commission did not agree to such statements made by the retailers during the proceedings as brought out hereinafter. Project Manager (SCHKRMP) in association with Haryana State Consumer Helpline and Govt. of Haryana, organized two workshops which were held at Faridabad and Rohtak wherein officials from State Legal Metrology Departments were shared with presentation by Project Manager (SCHKRMP) as to how the retailers are deceiving the consumers in charging sales tax on the discounted MRP sales. Subsequent to the presentations, Govt. of Haryana has requested concerned Legal Metrology Department to issue instructions to Legal Metrology Inspectors in the State of Haryana for awareness and taking action against the retailers on such violations. In the case of Jabong, the Portal has done fake shopping recently on their website by generating an invoice. It has been now noticed that Jabong is also charging even GST on their discount sales. GST regime has come into force w.e.f 01/07/2017.

While the issue of such unethical business practices was being taken up with the appropriate authorities as well social media being aggressively used since March 2014 onwards, National Consumer Disputes Redressal Commission in a **Revision Petition No. 3156 of 2016 (against the order dated 25/07/2016 in Appeal No. 948/2015** of the State Commission, Punjab) in its judgment on 9th February 2017 adjudicated with the same view point as brought out in our advocacy paper. It adjudicated as:

“Learned counsel for the petitioner in order to get rid of the aforesaid judgment has submitted the facts of the aforesaid case before Coordinate Bench were different because in the advertisement of the aforesaid case, flat discount of 40% was offered, whereas the words ‘FLAT’ is missing in offer of the petitioner. Merely absence of word ‘FLAT’ in the offer of the petitioner will not make any difference because the discount of 30% on MRP by itself means that discount is ‘FLAT’ discount on maximum retail piece. So far as judgments relied upon by the petitioner concerned, those judgments are not applicable to the facts of the case because those judgments relates to tax matters whereas in the instant case, we have to see whether the petitioner has indulged in unfair trade practice by giving misleading offer to the customers and thereafter overcharging them by charging VAT on discount price.

In view of the discussion above, we do not find any jurisdictional error or Material irregularity in the impugned order which may call for interference in exercise of revisions jurisdiction. Revision petition is, therefore, dismissed.”

State Commission has earlier stated that **“as per established law, on discounted Maximum Retail Price (MRP), Value Added Tax (VAT) cannot be charged. It was so said by this Commission in the following cases:-**

- i. Shoppers Stop and others Versus Jashan Preet Singh Gill and Others, first Appeal No. 210 of 2015 decided on 01.09.2015.**
- ii. Benetton India Private Limited Vs. Ravinderjit Singh, Appeal N. 61 of 2016 decided on 20.09.2016.**
- iii. M/s Aero Club (Woodland) Vs. Harpreet Singh, Appeal No.318 of 2016 decided on 01.12.2016.**
- iv. Ethnicity Vs. Heema Aggrawal, Appeal No. 331 of 2016 decided on 02.01.2017.”**

The judgments of the State Commission upheld by National Commission in Revision Petition have explicitly adjudicated that the VAT cannot be charged on the discounted prices. While a specific complaint against Shoppers Stop and others was adjudicated by the State Commission, surprisingly the Shoppers Stop even preferring to continue the same practice as on date. The Shoppers Stop was continuously being reminded through social media about non-applicability of any tax on the discounted sale prices. A consumer who shopped at Shoppers Stop recently on 25/06/2017 vide Invoice No. 0679 has reported charging of VAT of Rs. 67.83 on two items offered to be sold at 50% and 40% discount respectively. A copy of the invoice is attached.

Some of the other cases which have come to the notice of the Portal recently in addition to Shoppers Stop are against Myntra.com (an e-commerce site), Jabong, Lifestyle, Big

Bazar Gen Nxt. The details of the purchases from these retailers are given in the attached Annexure:

Some of the remedies that could address the issues could be intervention of Department of Consumer Affairs in the matter and taking appropriate actions some of may be like:

1. Directing the retailers to refund the amount charged on account of VAT being charged in addition to what is already being included in the price.
2. Awareness campaign through “**Jago Grahak Jago**” advertisements
3. Advising State Trade Tax Departments or any other appropriate authority to audit the records of the retailers to look into whether there is any evasion of taxes be it the amount charged or the amount already built in the MRP. In our considered view since all these retailers are dealing with trade of tagged commodities, a reasonable demand could be to direct the retailers to deposit equal amount of VAT charged on discounted sales with **Consumer Welfare Fund** of the Govt. of India. With the computerized billing system, it is not difficult to assess the value.
4. State Controllers of Legal Metrology could become pro-active in handling the complaints
5. Any other action as may be deemed fit including refund to the identified consumers who have been charged such unfair amount in the name of taxes.

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Myntra

Sr. No	Invoice No	Order No	Date	MRP	Discount (%)	Discount	Amount chargeable	VAT/GST (charged unethically)	Amount Paid	Excess Amount to be refunded
1	Inv-1503073779_29	104692 1-997764 1-979880 3	17/05/2017	2199	50	1099.50	1099.50	57.5	1157.00	57.50
2	Inv-1503073779_21	104692 1-997764 1-979880 3	17/05/2017	1799	50	809.50	989.45	51.55	1041.00	51.55
3		Order No. 104692 0-140133 3-236540 3	19/05/2017	1099		384.65	714.35			
				999	40	399.60	599.40			
				1499	40	899.40	599.60			
				3597		1683.65	1913.35	105.65	2019.00	105.65
4		Order no. 104750 7-895124 1-716190 3	26-05-2017	1299		103.92	1039.20	46.76	1086.00	46.76
5		Order No. 104750 7-895124 1-716190 3	29-05-2017	780		39	546.00	30.42	576.42	30.42
6	Inv_1503442664_25	104714 4-199599 6-552320 1	20/05/2017	699	50	349.50	349.50	19.22	368.72	19.22

