

10 August 2020

Shri. Amit Mehta,
Honourable Joint Secretary,
Department of Consumer Affairs,
Government of India

Subject: Decriminalization of Offence under Legal Metrology Act 2009 – Welcome move and much appreciated - regarding

Reference: I-9/12/2020-W&M: Stakeholder consultation on proposal of decriminalization of Legal Metrology Act, 2009 - regarding.

Honourable Joint Secretary,
Greetings from Retailers Association of India (RAI)!

Retailers Association of India (RAI) is the apex body of retailers in India. RAI is the unified voice of Indian retailers working with all the stakeholders for creating the right environment for growth of the modern retail industry in India. It has around 13667 member establishments, including large and small retailers in the country, having approximately 500,000 stores providing Direct and Indirect employment to 50 million Indians.

On behalf of the entire retail fraternity, allow us to express our sincere gratitude to Department of Consumer Affairs for proposing a landmark reform of Decriminalization of offences under Legal Metrology Act, 2009 the act of the Department is praiseworthy.

We, at the Retailers Association of India (RAI) have always been supportive of decriminalization of Legal Metrology Act, 2009. We would like to applaud you for taking a stand on the same. The move received much appreciation from all members of RAI.

We are enclosing herewith our comments on the proposal for your consideration.

Once again, we thank you for bringing such a positive change in the regulation and look forward to your continued support this will further help in Ease of Doing Business.

Warm regards,
For and on behalf of Retailers Association of India (RAI),



Gautam Jain,
Director – Finance & Advocacy

Stakeholder consultation on proposal of decriminalization of Legal Metrology Act, 2009.

Suggestion by Retailers Association of India

1. It is in the interest of the society and for the larger good of the public that no crime shall be committed as they harm the society in general and victim in the particular. Accordingly, the society has made laws, rules and regulations to prevent, deter the people in committing any crime. However, Crimes are committed in the society since the time of immemorial and penalties and punishment are levied proportion the crime.
2. Mens Rea, the guilty of mind and the intent to commit the crime is essential ingredient to constitute any offence. "the act is not culpable unless the mind is guilty". It is the fundamental in criminal jurisprudence to assess the element of mens rea in awarding the punishments. While arriving to the conclusion, the courts will invariably consider the following in ensuring the delivery of justice.
 - a. Acting purposefully
 - b. Acting knowingly
 - c. Acting recklessly
 - d. Acting negligently
3. While levying any fine or penalty the intent of the accused to be considered beyond reasonable doubt. "ignorance of the law or a mistake of law is no defense to criminal prosecution." However, in some cases, courts have held that if knowledge of a law, or if intent to break a law, is a material element of an offense, then a defendant may use good faith ignorance as a defense.
4. With the above premise, we at RAI submit the following before your good offices for your kind consideration. The Proposed fine / penalties levied under the discussion paper is disproportionate to the offence or non-compliance. By levying huge fine we cannot achieve optimal trade-off between offence and punishment. The magnitude of punishment shall be realistic to the crime / offence committed. The section wise remarks are stated below and kindly consider the same.

S.No.	Provision	Current Punishment	Proposed Amendments	Suggestions	Rationale for Suggestions
1.	Section 25 Penalty for use of non-standard weight,	Penalty of Rs. 25,000 for first offence and upto 6 months imprisonment or both	Penalty: upto INR 10 Lacs. If the compounding is not done after the	The existing penalty for compounding is Rs.25,000 for the first offence, if the penalty is increased to 40 time,	Under Criminal Jurisprudence the proportional justice to be ensured, i.e. the punishment shall be proportion to the

	measure or numeration		appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	then business will be severely jeopardized. We recommend the govt to consider doubling the existing penalty amount. Penalty to be kept at Rs. 50000	severity of the offence.
2.	Section 26 Penalty for tampering or altering of Standards weights and measures	Rs. 50,000 for the first offence. For second or subsequent offence, Imprisonment six months to one year or Fine or both	Penalty: upto INR 10 Lacs. If the compounding is not done after the appeal stage, then the process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	Generally, the weighing scales and measures, undergo repairs due to rough handlings and the service providers will repairs the measures and the sealing of the measures/machine will takes after the visit of the inspector. If the inspector unable to attend and during that time some other squad inspects then penalty will be levied. So, the measures shall be allowed to be repaired and the service provider certificate can be considered till the measures or machine is sealed by the Inspector.	Under Criminal Jurisprudence the proportional justice to be ensured, i.e. the punishment shall be proportion to the severity of the offence.
3.	Section 31 Penalty for non-production of documents	Rs. 5000 for the first offence. For second or subsequent offence, Imprisonment up to one year and with Fine	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be	The penalty is very high. Reasonable opportunity to be provided, as it may happen that documents will be at Head office or the person under whose custody documents are stored may not be available	Non-submission of the documents is non-compliance but levying penalty upto 40 times of the existing penalty is very extra ordinary.

			initiated with information to applicant.		
4.	Section 33 Penalty for use and sale of un-verified weight or measure	For the first offence it is Rs. 2000 For second or subsequent offence, Imprisonment up to one year and with Fine.	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	Consideration to be given for renewals of the scales. One Inspector is entrusted with huge verification of scales and sometimes he may not be available or visit for verification.	The submission of renewal application or payment or renewal fee is to be considered as compliance.
5.	Section 34 Penalty for sale or delivery of commodities, etc. by non-standard weight or measure	For the first offence it is Rs. 2000 For second or subsequent offence, Imprisonment from three months to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	Consideration to be given for renewals of the scales. One Inspector is entrusted with huge verification of scales and sometimes he may not available or visit for verification.	The submission of renewal application or payment or renewal fee is to be considered as compliance.
6.	Section 35 Penalty for rendering services by non-standard weight, measure or number	For second or subsequent offence, Imprisonment from three months to one year or Fine or both	Penalty: upto INR 2 Lacs. If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.	Consideration to be given for renewals of the scales. One Inspector is entrusted with huge verification of scales and sometimes he may not available or visit for verification.	The submission of renewal application or payment or renewal fee is to be considered as compliance

7.	<p>Section 36(1) Penalty for selling etc. of non-standard packages in declarations</p>	<p>For the first offence fine is Rs. 25,000</p> <p>For second offence fine Upto INR 50,000 and for subsequent offence fine from INR 50,000 to INR 1,00,000 or with imprisonment upto one year or with Fine</p>	<p>Penalty: upto INR 2 Lacs.</p> <p>If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.</p>	<p>A retailer has no control over the declaration on the packages, generally he ensures all diligence in identifying the non-complied products, however, due to various reasons it may happen to miss retailers' sight. So, the Retailer shall not be penalised for non-compliance as per PCRO 2011.</p> <p>We recommend the Govt to consider doubling the existing penalty amount Penalty to be kept Rs. 50000.</p>	<p>The inspector shall issue an improvement notice to the retailer and if the same is not complied or repeated then penalty to be levied.</p>
8.	<p>Section 36(2) Penalty for selling etc. of non-standard packages in quantity</p>	<p>For the first offence the penalty is Rs. 10,000.</p> <p>For second or subsequent offence, Fine: up to INR 1,00,000 or with imprisonment up to one year or both</p>	<p>Penalty: upto INR 2 Lacs.</p> <p>If the compounding is not done after the appeal stage, then process of cancellation of licence issued by the State/ Central Government will be initiated with information to applicant.</p>	<p>A retailer has no control over the declaration on the packages, generally he ensures all diligence in identifying the non-complied products, however, due to various reasons it may happen to miss retailers' sight. So, the Retailer shall not be penalised for non-compliance as per PCRO 2011.</p> <p>We recommend govt to consider doubling the existing penalty amount Penalty to be kept Rs. 50000.</p>	<p>The inspector shall issue an improvement notice to the retailer and if the same is not complied or repeated then penalty to be levied</p>