2024 INSC 521

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7209 OF 2019

M/S. SUN PHARMACEUTICAL INDUSTRIES LTD. … Appellant

Versus

UNION OF INDIA AND OTHERS … Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Having failed before the Delhi High Court at both levels, the appellant approached this Court.

2. Noting that the appellant had already paid a sum of ₹1.25 crores towards the demand made by the respondent authorities, this Court directed *status quo* to be maintained in relation to recovery of the remaining sum payable by the appellant, *vide* order dated 10.11.2014.

3. Challenge in W.P.(C) No. 10700 of 2005, filed by the appellant before the Delhi High Court, was to the demand notices dated 08.02.2005 and 13.06.2005. By order dated 13.07.2005, a learned Judge dismissed the

said writ petition. The appellant, thereupon, filed L.P.A. No. 1629 of 2005 but the appeal met with the same fate when a Division Bench of the High Court dismissed it by the impugned judgment dated 06.08.2014.

4. The issue for consideration is whether the National Pharmaceutical Pricing Authority (for brevity, 'the NPPA'), Government of India, was justified in raising a demand against the appellant to recover the higher price charged in relation to Roscilox, a brand of a Cloxacillin-based drug formulation, than that fixed by the Government under the provisions of the Drugs (Price Control) Order, 1995 (for brevity, 'the DPCO').

5. In this regard, the NPPA addressed demand notice dated 08.02.2005 to the appellant, directing it to deposit the overcharged principal amount of ₹2,15,62,077/- for the period April, 1996 to July, 2003. The notice made it clear that the NPPA was also empowered to recover the interest due on the said amount. Pursuant thereto, the NPPA issued demand notice dated 13.06.2005, quantifying the interest payable on the overcharged amount as ₹2,49,46,256/-, and the appellant was directed to deposit the overcharged amount with interest, aggregating to ₹4,65,08,333/-.

6. Recovery of the excess price charged was sought to be effected by the NPPA in exercise of power under Paragraph 13 of the DPCO.

Paragraph 13 is titled ‘Power to recover Overcharged Amount’ and it reads as follows:

‘Notwithstanding anything contained in this order, the Government shall by notice, require the manufacturers, importers or distributors, as the case maybe, to deposit the amount accrued due to the charging of prices higher than those fixed or notified by the Government under the provisions of Drugs (Price Control) Order, 1987 and under the provisions of this Order.’

Certain definitions in the DPCO may be noted at this stage.

Paragraph 2(d) of the DPCO defines ‘dealer’ as under:

‘ ‘Dealer’ means a person on the business of purchase or sale of drugs, whether as a wholesaler or retailer and whether or not in conjunction with any other business and includes his agent.’

Paragraph 2(e) of the DPCO defines ‘distributor’ thus:

‘ ‘Distributor’ means a distributor of drugs or his agent or a stockist appointed by a manufacturer or an importer for stocking his drugs for sale to a dealer.’

Paragraph 2(y) defines “wholesaler” as follows:

‘ ‘Wholesaler’ means a dealer or his agent or a stockist appointed by a manufacturer or an importer for the sale of his drugs to a retailer, hospital, dispensary, medical, educational or research institution purchasing bulk quantities of drugs.’

A bare perusal of the aforestated definitions demonstrates that there is some overlapping inasmuch as a ‘wholesaler’, as defined in Paragraph 2(y), would include not only a ‘dealer’, as defined in Paragraph 2(d), but also a stockist appointed by a manufacturer or an importer, who would fall

within the ambit of a ‘distributor’ under Paragraph 2(e). There is, thus, no clear and absolute delineation amongst the definitions. However, the so-called distinction in the defined categories was the basis for the claim of the appellant that it could not be proceeded against under Paragraph 13 of the DPCO. It asserted that it was not a manufacturer or an importer or a distributor and, therefore, it stood beyond the grasp of Paragraph 13.

7. Though an attempt was made before us by the learned counsel for the appellant to enlarge the scope of this appeal by questioning the very validity of the demand made under the DPCO, we are not inclined to permit the same. More so, as there is no evidence of the appellant having raised such an issue properly before the Delhi High Court. Similarly, we find that the issue as to whether computation of the demand was erroneous in the context of Paragraph 19 of the DPCO was raised by the appellant only during the course of arguments before the Division Bench of the High Court. Noting this, the Division Bench specifically recorded that such a plea had been made by the appellant before it for the first time and that the writ petition as well as the memorandum of appeal were bereft of any pleadings to that effect. Therefore, the appellant cannot be permitted to raise that plea before us at this stage.

8. Further, we do not even find a specific ground having been raised on that issue. The learned counsel for the appellant would refer to Grounds H and Y in the appeal in this regard, but we find the said grounds are general in nature and do not focus on the computation made in the context of Paragraph 19 of the DPCO. Reliance placed on the decision of the Allahabad High Court in ***TC Health Care Private Limited and others vs. Union of India and others***[1] is, therefore, misplaced as we find that the claim of the appellant under Paragraph 19 of the DPCO, unlike that case, is not supported by any factual narrative and was raised for the first time during the course of arguments before the Division Bench of the High Court. The edict laid down therein cannot, therefore, be applied to the appellant in a vacuum.

9. The High Court undertook the exercise of piercing the corporate veil and found, on facts, that there was overlapping and merger of identities of Oscar Laboratories Pvt. Ltd., from which the appellant claimed to have purchased the drug formulation, with the appellant's own group companies. Various facts, in this regard, were set out at length by the Division Bench in the impugned judgment. However, we do not propose to go into that issue

[1] 2010 (5) ADJ 401.

at all as we find on facts that the appellant would be accountable and liable independent thereof.

10. The main issue that was raised before and considered by the High Court was whether the appellant would come within the reach of Paragraph 13 of the DPCO in the light of its claim that it was not a manufacturer or importer or distributor. In this regard, we find that the replies filed by the appellant in response to the notices issued by the NPPA categorically manifested that the appellant admitted purchase of the drug from the manufacturer itself. Thus, in terms of its own admissions in its replies, the appellant had direct contact with the ostensible manufacturer. Be it noted that a 'dealer', as defined in the DPCO, would be a wholesaler or retailer who undertakes the purchase or sale of the drug while a 'distributor', as defined thereunder, would include a distributor of the drugs or a stockist appointed by a manufacturer. Though the definition of 'wholesaler' under Paragraph 2(y) of the DPCO blurs the distinction between a 'dealer' and a 'distributor', by including a dealer as well as a stockist appointed by a manufacturer, the fact remains that a 'distributor' under Paragraph 2(c) of the DPCO has links with the manufacturer directly while a 'dealer' does not, as he obtains his supply of drugs from the said 'distributor'. It is obvious

that the definitions of ‘distributor’ and ‘dealer’ under the DPCO are not mutually exclusive and it is very much possible in this scheme that a ‘distributor’ may play a dual role by becoming a ‘wholesaler’ or ‘retailer’ also and thereby satisfy the definition of ‘dealer’ under Paragraph 2(d) of DPCO.

11. That appears to be the case presently as the appellant played both roles. However, that would not be sufficient to exclude the appellant from the ambit of Paragraph 13 of the DPCO. The intent and purpose thereof are to control the prices at which medicinal drug formulations are made available to the common man by holding out the threat of recovery of the higher prices charged for such drug formulations by those involved in their manufacture and marketing. Given the laudable objective underlying the provision, it cannot be subjected to a restricted or hidebound interpretation.

12. Pertinent to note, the agreement, if any, between the manufacturer and the appellant in relation to the purchase and sale of Roscilox was never produced. This failure was explicitly raised before the Division Bench by the respondent authorities, stating that the appellant had not made complete disclosure, despite sufficient opportunity, as to its arrangement with Oscar Laboratories Pvt. Ltd. for the distribution of the drug formulation. Significantly, before the Division Bench of the High Court, the appellant

came up with a new version that it had purchased the drug formulation from Delta Aromatics Pvt. Ltd. from September, 1999. This story was not accepted by the Division Bench as it was an altogether new story that was introduced afresh.

13. Given its own inconsistent versions and in the absence of a firm factual foundation being built up by the appellant with proper documentation as to its status, it was not open to it to baldly claim that it was not a ‘distributor’ but only a ‘dealer’.

14. We, therefore, find no error committed by the High Court in rejecting the claim of the appellant.

The appeal is devoid of merit and is accordingly dismissed.

Order of *status quo* dated 10.11.2014 shall stand vacated.

Pending applications, if any, shall also stand dismissed.

Parties shall bear their own costs.

....., J
Sanjay Kumar

....., J
Augustine George Masih

July 15, 2024;
New Delhi.