

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1653 OF 2016**

M/s. Maneesh Pharmaceuticals Ltd. & anr.	..Petitioners
Vs.	
The Union of India & ors.	..Respondents

Mr. Zal Andhyarujina, Kunal Dwarkadas a/w. Ms. Riva Shah, Marish Saurastri i/b. Krishna & Saurastri Assoc., for the Petitioners.

Mr. K.B. Dighe, AGP for the Respondent No. 3 State.

Dr. G.R. Sharma, a/w. Mr. D.P. Singh, for the Respondent Nos. 1 and 2.

**CORAM :R. M. SAVANT, J &
SMT.SADHANA S. JADHAV, J
DATE : 23rd JUNE, 2017**

P.C.

1 The writ jurisdiction of this Court is invoked against the show notices dated 15th September, 2010 and 21st December, 2010 and the subsequent demand notices dated 11th March, 2011 and 8th July, 2011 and the recovery certificate dated 26th February, 2015.

2 The allegation in the show cause notices is of the Petitioners' overcharging the customers in respect of the item Duoflam Kid Tabs 10's which it manufactures. The said show cause notices, it seems were preceded by letters dated 14/11/2008, 18/5/2009, 7/8/2009, 14/12/2009, 21/12/2010

and 10/3/2011. By the said letters, the National Pharmaceutical Pricing Authority ("NPPA" for short) had requisitioned certain information from the Petitioners in respect of its products. It seems that the Petitioners vide their letter 20/7/2011 requested for the copies of the letters addressed by the NPPA to the Petitioners.

3 It is the case of the Petitioners that the said copies have not been furnished to the Petitioners, resulting in the Petitioners' not being able to properly represent themselves against the said show cause notices. Pursuant to the said show cause notices, the demand notices have been issued. In the Demand Notices, the reasons justifying the demand has been set out. However, it is required to be noted that there is no adjudicatory order passed by the NPPA in respect of the allegations made in the notices. The said show cause notices and the demand notices have been challenged inter alia on various grounds and even the very issuance of the show cause notices having regard to the items mentioned therein is sought to be questioned.

4 The action taken is also sought to be challenged on the ground that though the Petitioners had requested for the copies of the letters which were a precursor to the issuance of the show cause notices, the NPPA has not

furnished the Petitioners with the said letters. By the demand notices the amount sought to be recovered is in the sum of Rs. 3,33,00,837/- and adding interest to it at the rate of 15% per annum, the amount comes to almost Rs. 6 crores.

5 As indicated above, the show cause notices have been challenged inter alia on various ground and one of the grounds is that in fact, the Petitioners are not covered by the notification to which reference has been made in show cause notices but are covered by the notification dated 29th March, 2006 and the subsequent amendments thereto. The said notification dated 29th March, 2006 contemplates the pro-rata fixing of price. Considering the fact that there is no adjudicatory order passed by the NPPA dealing with the claims and contentions of the petitioners, we do not deem it appropriate to go into the merits of the case of either side. In our view, the interest of justice would be served if the demand notices as well as recovery certificate are set aside and the matter is relegated back to NPPA for a de novo adjudication pursuant to the said show cause notices. Hence, the following directions :

- (1) The impugned Demand Notices dated 11th March, 2011 and 8th July, 2011 and the Recovery Certificate dated 26th February, 2015 are set

aside and matter is remanded back to the NPPA for adjudication pursuant to the show cause notices dated 15th September, 2010 and 21st December, 2010.

(2) However, prior to the said adjudication, the NPPA would furnish the petitioners the copies of the letters, reference to which is made hereinabove and reference to which appears in the letter dated 8/7/2011 within four weeks from date.

(3) After being furnished with the copies, the Petitioners would file their response within four weeks to the show cause notices. The same to be filed with the NPPA.

(4) The NPPA is directed to adjudicate upon the show cause notices within 8 weeks of the receipt of the reply of the Petitioners to the said show cause notices. Needless to state that the contentions of the parties are kept open for being urged before the NPPA. We expect the NPPA to pass a reasoned order either accepting or rejecting the contentions of the Petitioners.

(5) Since it is the case of the Petitioners that they are covered by the notification dated 29th March, 2006 and the subsequent amendment thereto, the Petitioners would be liable to deposit the amount in terms of their liability under the said notification. The Petitioners have

calculated their liability in respect of which statements have been tendered by the learned Counsel Shri Andhyarujina. The principal amount is a sum of Rs. 47,78,849/- and the interest calculated thereon at 15% is totalling upto Rs. 32,37,718.47. We therefore, direct the Petitioners to deposit the said amounts with the Pay and Accounts Officer(NPPA), Department of Pharmaceuticals, Ministry of Chemicals and Fertilizers, New Delhi within 6 weeks from date. However, the same to be deposited prior to the commencement of the adjudication.

(6) The amount deposited in terms of the said circular dated 29/3/2006 is without prejudice to the rights and contentions of the Respondents.

6 The Writ Petition is disposed of, in the above terms.

Parties to act upon a copy of this order duly authenticated by the Court Associate/Sheristedar.

[SMT.SADHANA S. JADHAV,J]

[R.M.SAVANT, J]