IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1570 OF 2016

Nagarjuna Fertilizers & Chemicals Ltd. ..Petitioner

v/s.

Union of India & Ors. ..Respondents

Mr. Birendra Saraf, Sr. Advocate a/w. Mr. Ankit Lohia, Ms. Dhanyashree Shah I.b. M/s. AZB & Partners for the Petitioner.
Mr.Ashish Mehta for the Respondent No.1 (UOI).

CORAM : SHANTANU KEMKAR &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : SEPTEMBER 18, 2017.

P.C.

. Feeling aggrieved by the Order dated 16th May, 2016 at Exhibit L, passed by the Controller of the Legal Metrology, Maharashtra State, Mumbai in Appeal Nos.150 of 2015 and 168 of 2015, the petitioner has filed this petition.

2. According to the petitioner, while deciding the petitioner's appeal, the Appellate Authority has not taken into consideration the specific grounds raised by the petitioner in memo of appeal-Exhibit J

at paragraph (h), (i) and (j).

3. The aforesaid grounds read thus :

> (h) In the instant case, however, NFCL cannot round-off the MRP of Rs.283.76 to Rs.283.50 or Rs.284 as such rounding-off would either involve (i) violation of the Fertilization Control Order; or (ii) Lead to reducing amounts of statutory taxes; or (iii) require NFCL to suffer/bear a loss. It is pertinent to mention that, even assuming whilst denying that NFCL is required to round-ff the amount to Rs.283.50, the question remains as to from what component of the price of urea, should NFCL reduce the quantum of 0.26 paise, i.e. from the component of taxes or from NFCL/s margin.
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> (i) It is pertinent to highlight that, the price of Rs.283.76 (per 50 kg bag) charged by NFCL is in strict compliance of the provisions of the Fertilizer Control Order read with the Notification and could not and cannot be modified and/or rounded-off as any alteration would attract penal provisions and also grossly prejudice NFCL financially.
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> (j) The rules cannot impose an obligation upon NFCL to charge an amount lesser than Rs.5,360/- per tonne; these Rules ought not to and/or cannot take away the right available to NFCL under the Notification and/or in law to charge the price that has been permitted to be charged under the Notification. It may also be noted that NFCL cannot , in any event, reduce the quantum of taxes; so the only way in which the price of a 50 kg bag of urea can be reduced from Rs.283.76 to Rs. To Rs.283.50, is by NFCL reducing its own margin. This ix extremely unfair and prejudicial to NFCL. Products that are not under price control can always be rounded off to the nearest next rupee. It is only a product such as urea, which is

> under price control, whose price cannot be increased beyond the price notified under the Fertilizers Price Control Order."

2. According to the petitioner, now, the Central Government has amended the Legal Metrology Package Commodities Rules, 2011 and as per the amended proviso to Rule 6(1)(e) of the Rules of 2016, the petitioner is entitled to sell the commodities as per the price fixed by the Competent Authority under the Essential Commodities Act, 1955.

3. The learned Counsel for the petitioner submits that the impugned order passed by the Appellate Authority is a non speaking order and the grounds as aforesaid are not been taken into consideration by the Appellate Authority. In the circumstances, he submits that the impugned order be set aside and the matter be remanded back to the Appellate Authority for deciding of the appeals afresh. He also submits that while deciding the appeals afresh, the Appellate Authority be directed to consider the effect of amended Rules of 2016.

4. Having considered the submissions made by the learned Counsel for the parties and having gone through the impugned order,

it is clear that the Appellate Authority has passed the impugned order mechanically without taking into consideration the specific grounds (h), (I) and (j) raised by the petitioner in the memo of appeal.

5. In the circumstances, the impugned order is liable to be and is hereby set aside, and the matter is remanded to the Appellate Authority for deciding the appeals afresh, keeping in view the aforesaid grounds as also keeping in view the effect of the above amended Rules.

6. Till the petitioner's appeal is decided afresh, no coercive steps be taken against the petitioner.

7. The petitioner's challenge to the validity of the Rules of 2011 is kept open.

8. With the aforesaid directions, the petition is disposed of.

(ANUJA PRABHUDESSAI, J.) **(SHANTANU KEMKAR, J.)**