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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgement Pronounced on: 12.04.2018

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W.P.(C) 2407/2014

M/S. SEAGULL PHARMACEUTICALS PVT. LTD. Petitioner

Through: Mr.Niraj Kr. Singh with Mr.Ankur Singh
Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Deepak Kikhari, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

1. This is a writ petition in which the following substantive prayers have been made:

“1. Issue a writ/direction in the nature of Mandamus or Certiorari or any other Writ thereby quashing the notices issued by respondent No.2, dated 11.02.2004, 05.10.2011, 09.05.2011, 23.03.2011 & 14.12.2010, to meet the ends of justice.

2. Restrain respondent Nos.1 and 2 from initiating any coercive action, pursuant to impugned notice, for effecting recovery of amount till the disposal of present petition, against the petitioner to serve the ends of justice.

3. Direct the respondent No.1 and 2 to delete the name of petitioner from the array of the parties against whom recovery are sought to be effected in terms of notices on conditions, just and fair, in the interest of justice”.

2. The petitioner's case is that it was engaged in the business of manufacturing and distribution of drugs (generic formulations) of various descriptions.

3. The petitioner claims that it made a request on 30.08.2006 to the Government of Rajasthan, Department of Drug Controller, for surrendering its

license Nos.1862 and 1863 dated 12.05.1998.

3.1 It is also the petitioner's case that based on its application for cancellation of its license, vide order dated 08.09.2006, the concerned Licensing Authority cancelled the license issued to the petitioner company.

3.2. The petitioner further claims that, thereafter, it entered into an agreement with respondent No.4, whereby, it permitted the said entity to market/manufacture generic drugs under registered marks owned by it.

3.3. The aforesaid agreement was executed between the petitioner and respondent No.4 on 11.09.2008. As per this agreement, the petitioner received a fixed royalty.

4. It appears that several notices were issued to the petitioner between 14.12.2010 and 11.02.2014 by respondent No.2/NPPA. The burden of these notices was that the petitioner along with respondent No.3 and 4 had been manufacturing the scheduled formulation under the brand name SEADOX 100 tabs at a price higher than the selling price as notified under Drug (Price Control) Order ('DPCO'), 1995. More particularly, the accusation levelled was that the petitioner had over-charged by breaching the selling price. It was alleged that this infraction had occurred between October 2009 and July 2010.

5. The record shows that to begin with, the demand on this account raised on the petitioner was in the sum of Rs.26,99,040/- which along with interest was enhanced to Rs.46,75,966/-. This aspect of the matter is reflected in the last demand notice served on the petitioner, which is, dated 11.02.2014.

6. The petitioner claims that it has been religiously responding to the demand notices raised upon it. In this behalf, the petitioner refers to replies addressed to respondent No.2/NPPA between 29.12.2010 and 22.02.2014.

7. In sum, the stand taken by the petitioner is that it did not manufacture the drug in issue during the period for which the demand notices had been issued. The petitioner claims that it is respondent Nos.3 and 4 who are engaged in

manufacturing and/or marketing the drug qua which the demand notices have been issued by respondent No.2/NPPA.

8. A perusal of the impugned notice shows that the only reason why the impugned demand is sought to be sustained against the petitioner is that the packaging of the subject drug carries the endorsement “manufactured under the technical collaboration of the petitioner”.

9. According to the petitioner, that by itself, cannot be a reason for respondent No.2/NPPA to come to a conclusion that the petitioner is a manufacturer or the entity which marketed the drug during the relevant period.

9.1 In support of this submission, learned counsel relies upon the judgment dated 27.01.2010, passed in W.P(C) 11656/2009, titled: *Morepen Laboratories Ltd. Vs. UOI*.

10. A perusal of the impugned notices shows that respondent No.2/NPPA is seeking to enforce the demand based on the provisions of clause 13 of the DPCO, 1995. For the sake of convenience, the said provision is extracted hereafter:

“Power of recover Overcharged Amount:

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

(emphasis is mine)

11. Upon a plain reading of the said provision, what emerges is that Clause 13 is applicable only in the case of manufacturers, marketers, importers and distributors.

12. Insofar as the petitioner is concerned, it claims that after 08.09.2006, it has not manufactured the subject drug i.e. SEADOX 100 tabs. The impugned notices also suggest that because respondent Nos.3 and 4 who were said to be the

manufacturer and the marketeer had not responded to the demand notice served on them, the concerned authority though it fit to conclude that the petitioner was working in connivance with them.

13. According to me, unless there is material on record to show connivance, the *ipse dixit* of the concerned authority i.e. the Director NPPA would not suffice. In fact, while issuing the impugned notices, there is no discussion of the stand taken by the petitioner that it had got its license cancelled as far back as on 08.09.2016. Having regard to the facts & circumstances, I am of the view that there is merit in the stand of the petitioner that the demand notices are based on surmises and conjectures and that there is no material on record to suggest that the petitioner was either the manufacturer or the entity which marketed the subject drug i.e. SEADOX 100 tabs and, therefore, should have been held liable for overcharging.

14. Thus, as prayed, the impugned notices are quashed. The writ petition is allowed.

15. No costs.

RAJIV SHAKDHER, J

APRIL 12, 2018
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