

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 12.10.2018

+ **W.P.(C) 7348/2015**

AMKAY LABORATORIES PVT LTD

..... Petitioner

versus

UNION OF INDIA AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr Piyush Sharma and Mr K. G. Mishra, : Advocates.
For the Respondent	: Mr Kirtiman Singh, CGSC, Mr Manish : Mohan, CGSC with Ms Manisha Saroha, : Mr Waize Ali Noor, Mr Prateek Dhanka, : Ms Shruti Dutt and Mr Vikramaditya : Singh, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the notification – S.O. No. 607(E) dated 27.05.2003 (hereafter ‘the impugned notification’) – issued by respondent no.2 (hereafter ‘NPPA’) fixing the ceiling price of Dexametosome plus Gentamycin Eye/Ear Drops. The petitioner also impugns the order dated 27.11.2008 passed by NPPA, *inter alia*, demanding a sum of ₹26,536/- from the petitioner on account of charging a price in excess of the ceiling price fixed for the

formulation in question and further, to pay interest quantified at ₹9,288/- on the aforesaid amount up to November, 2008.

2. The petitioner owns a Small Scale Industrial Unit located in the State of Uttar Pradesh and, on 04.12.1986, a license to this effect was issued to the petitioner. In 1994, the petitioner was granted the license by the Drug Controller State of Uttar Pradesh for manufacture of Dexogen Eye/Ear Drops.

3. On 27.05.2003, the NPPA issued a price fixation order modifying an earlier order dated 19.02.1997 and 29.06.2000 wherein, the price for formulations containing Dexamethasone Sodium Phosphate were fixed.

4. It is the petitioner's case that since it is a Small Scale Industry, it is exempt from the rigors of the Drugs (Price Control) Order (hereafter 'the DPCO') issued in exercise of the powers under the Essential Commodities Act, 1955. It is further contended by the petitioner that the formulation manufactured by it – "Dexogen Eye/Ear Drops" (hereafter 'the Product') – is not covered under the impugned notification, as the Product is not packaged in glass vial with a dropper but in a plastic bottle (FFS).

5. In addition, the petitioner contends that there is a substantial difference between the Product and the formulation for which the ceiling price has been fixed in terms of the impugned notification.

6. The petitioner also impugns the ceiling price fixed under Paragraph 7 of the DPCO on the ground that the Central Government

had not specified the norms for costs as required in terms of Paragraph 7 of the DPCO.

7. The decision in *Amkay Laboratories v. Union of India &Anr: W.P.(C) 12351/2009* delivered today, is also determinative of the issues raised in the present petition.

8. In *Amkay Laboratories (supra)*, this Court held that since the Product contains a drug specified in the Schedule to the DPCO, the same would fall within the definition of the term “scheduled formulation” as defined in paragraph 2 (v) of the DPCO. Consequently, the petitioner is liable to pay the price it has charged in excess of the ceiling price fixed for the formulation in question. However, while deciding on the issue of interest payable on the impugned demand, this Court held that the liability to pay interest would arise only once a default is committed in making a payment of the demanded amount within the time stipulated therein.

9. In the present case, the demand was raised for the first time by the impugned order dated 27.11.2008 and the petitioner was called upon to pay the amount demanded within a period of fifteen days from the date of the said letter. Thus, the liability to pay interest would arise with effect from 12.12.2008 (that is, on expiry of fifteen days after the date of the impugned letter).

10. Thus, for the reasons stated in *Amkay Laboratories (supra)*, the impugned order to the extent it seeks recovery of interest prior to the date of the impugned order, is set aside.

11. The petition is disposed of in the above terms.

VIBHU BAKHRU, J

OCTOBER 12, 2018

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