(2001) 08 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION) APPELLANT

Vs

AMBIKA JEWELLERS RESPONDENT

Date of Decision : 08-08-2001

Acts Referred:

Citation : 2002 2 CPJ 27

Hon'ble Judges : C.M.Nayar , R.L.Sudhir J.

Final Decision : N.O.E. discharged

Judgement

1. THIS enquiry started on the basis of an application filed by the Director General of Investigation and Registration (DG in brief), under Section 36-B(c) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the MRTP Act). It has been alleged that the practice of including ''Tanka'' and stones'' in the total weight of the gold ornaments and charging for the whole weight at the rate of gold is a mis-representation amounting to unfair trade practice within the meaning of Section 36-A(1)(i) of the MRTP Act. It has been further stated that the said unfair trade practice is prejudicial to public interest as it is causing loss/injury to the common consumers.

2. THE Commission issued a Notice of Enquiry (NOE) under Sections 36B(c) and 36-D of the MRTP Act. THE respondent filed its reply to the NOE. On completion of pleadings, the following issues were framed : (1) Whether the respondent is or has been indulging in the unfair trade practice as stated in the Notice of Enquiry ? (2) If reply to issue No. 1 is in affirmative, whether the aforesaid unfair trade practice is prejudicial to public interest, interest of the consumer or consumers in general ? (3) Relief.

Parties filed their respective affidavits of evidence supported by documents. Although the enquiry initially started against one jeweller only, subsequently notices were issued to other jewellers also and replies were also received from some of them. To gather more information on the subject, DG was directed to make available the full report of the investigation conducted by the Assistant Director General. Simultaneously, Director (Research) was also directed to make further investigations to ascertain the normal trade practice in the trade. Reports filed by the DG and the Director (Research) are on record.

We have heard the learned Counsel for the parties and have also taken into account the reports of the DG and the Director (Research) and the replies received from the respondents.

3. THE gravamen of DG''s allegation is that ''Tanka'' used for making the gold ornaments works to the disadvantage of the consumers in two ways. Firstly, while purchasing the ornaments, the buyer has to pay for ''Tanka'' at the same rate at which he pays for the gold used in the ornaments and secondly when the buyer goes to resell the ornaments to the jeweller, the weight of ''Tanka'' is deducted from the total weight of the ornament and he is paid only for the net weight of gold. This appears to be a double edged weapon in the hands of the jewellers. In his reply the respondent has taken the plea that the ground realities have been ignored and the facts peculiar to the trade have been over-looked. It has been stated that there can be no ornaments of 24 carat gold. Ordinarily they are made of 22 carat of gold or less. It has been further explained that for the purposes of soldering, copper, silver and cadium etc. are used and sometimes precious or cheap stones are also studded in the ornaments.

4. IN the Preliminary INvestigation Report (PIR) filed by Director (Research) on 8th April, 1994, also it has been confirmed that most of the jewellers make gold ornaments of 22 carat purity. It has been stated that ''Tanka'' is an essential element which is used for soldering the ornaments during the process of manufacturing. However, the extent and the kind of ''Tanka'' used differs from jeweller to jeweller. Generally an alloy of gold, silver, copper, zinc and cadium etc. is used as ''Tanka'' for soldering the ornaments. The quantity of ''Tanka'' used varies from ornament to ornament depending on the number of joints but generally the ''Tanka'' component in the ornaments is 10% or less. It is further stated that the ''Tanka'' used in the ornaments brings down the purity of gold. But when cadium is used as ''Tanka'' it does not affect the purity of gold, as it evaporates after soldering without leaving any impurity or residue behind. It is also confirmed that while the practice varies from jeweller to jeweller, most of the jewellers include the weight of ''Tanka'' in the total weight of the ornament while selling and deduct the same from the total weight while buying back the ornament. However, some jewellers like Tribhovandas Bhimji Zaveri and B.K. Jeweller House, Delhi, repurchase the gold ornaments sold by them at the prevailing gold rate without making any deduction in the weight. However, making charges and sales tax are not refunded. Dg''s Investigation Report covers a large number of jewellers but curiously the application has been filed against one jeweller only. Dg''s explanation is that there is no malafide intention behind it. It has been added that the name of the respondent has been picked up because the name of some party or the other had to be mentioned to highlight the trade practice. Be that as it may, the Commission took the initiative to issue notices to some other jewellers also. But replies have not been received from all

jewellers to whom the notices were issued. In short, the enquiry is based on the Investigation Reports of Director General and the Director (Research) and the replies received from some of the jewellers. We do not consider it proper to draw final conclusion from an enquiry based on such a minuscule sample of such a wide-spread trade. It may lead to mis-carriage of justice. All the same we do find a broad picture of the trade emerging from the enquiry. It is indisputable that use of ''Tanka'' for soldering gold ornaments is an age old and universally accepted practice. However, there are variations from jeweller to jeweller in respect of the quantity and the kind of alloy use for the soldering the ornaments. While some jewellers still adhere to the old practices, there are others who have adopted modern manufacturing processes. For instance, the use of cadium in soldering the ornaments hits at the very root of the alleged unfair trade practice because cadium evaporates in the process of soldering leaving behind no residue or impurities.

5. THE present enquiry with its narrow compass does not reflect a true picture of the trade which exists universally in all the nooks and corners of the country. We, therefore, do not consider it proper to condemn a trade practice as an unfair trade practice in the absence of a comprehensive report reflecting an overall picture of the trade in the country, which should inter alia pin-point the objectionable trade practices the persons/respondents liable therefor as also the new technologies adopted by the trade which render the once objectionable practices now acceptable after their adoption.

6. DG''s application is accordingly disposed of. The Notice of Enquiry is discharged with no order as to costs. N.O.E. discharged.

