(1999) 06 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

DIRECTOR GENERAL (INVESTIGATION AND REGISTRATION)	APPELLANT
Vs	
SRICHAKRA TYRES LIMITED	RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Citation : 1999 1 CLT 361 : 1999 2 CPJ 77

Hon'ble Judges : S.K.Parthasarathy , R.K.Anand J.

Final Decision : Application disposed of

Judgement

1. AN application has been made by the Director General (Investigation and Registration) (the DG) under Sections 10(a)(iii) and 37 of the MRTP Act, 1969 (the Act for brief) charging the respondent with adoption of and indulgence in restrictive trade practices. The case of the DG is that the respondent is engaged in the business of manufacturing, selling and distribution of automotive tyres, tubes and flaps and with a view to promoting sale and distribution thereof, it has issued a memorandum containing salient features of the performance bonus and cash discount admissible to its dealers. The performance bonus admissible to the dealers is indicated below : 100 tyres and above 2% 150 tyres and above 2.5% 250 tyres and above 3% 350 tyres and above 3.5% It has been further alleged that the performance bonus is admissible on the invoice prices of the tyres, tubes and the flaps with the further stipulation that full payment is made within 60 days. The DG has impugned performance bonus on the sale of tyres on the ground that it falls foul of the provisions of Section 33(1)(e) of the Act. It has also been alleged by the DG that the price lists of 1.6.1995 and 14.12.1995 issued by the respondent do not contain the stipulation that the dealers are free to sell at prices lower than the printed prices and thus these price lists come within the ambit of Section 33(1)(f) of the Act.

2. A Notice of Enquiry was issued to the respondent. In reply thereto it has been submitted by the respondent that 65% of its production is sold to original equipment manufacturers and the balance through the dealers in the replacement market. It has been further mentioned that the respondent''s

market share is less than 2% of the total Industry turnover and the respondent''s total turnover for the year 1994-95 was Rs. 76.13 crores as against the Industry turnover of over Rs. 5,000 crores. It has been further explained by the respondent that 65% of its turnover i.e. Rs. 49.48 crores in 1994-95 was accounted for by supplies to the original equipment manufacturers and no performance bonus was paid to them. It has also been stated that in a highly competitive market, it would be difficult for the respondent to sell its tyres and tubes without giving incentives and discounts. It has been added that the total amount paid to the dealers as performance bonus during the same period was Rs. 18.34 lakhs and further that it was paid only to those dealers who paid the full invoice amount within 60 days of the date of the invoice and this discount is necessary in order to induce the dealers to make prompt payments. It has also been explained that the respondent sells its products to the dealers on principal to principal basis and the dealers are free to sell their products at prices lower than the maximum prices. It has also been clarified that the respondent has since introduced a uniform dealer price with effect from 21st March, 1997. On completion of pleadings, the following issues were framed : (1) Whether the respondent has indulged in the restrictive trade practices as alleged in the Notice of Enquiry ? (2) Whether the said restrictive trade practices are not prejudicial to public interest ? Both the DG and the respondent have tendered affidavits by way of evidence.

We have heard the learned Advocates for DG as well as the respondent. There is no doubt that the automotive tyre market is highly competitive and it appears that the respondent is one of the several manufacturers and accounts for only 2% of the total production and turnover of the Industry. It has also not been disputed that the respondent supplies 65% of its production to the original equipment manufacturers and no discount is admissible to them or has been paid to them. It transpires that performance bonus has been paid only on 35% of the production which is sold in the replacement market through dealer network.

3. THE provisions of Section 33(1) of the Act are however, quite clear and unambiguous and any agreement falling within one or more of its clauses is deemed to be a restrictive trade practice for the purposes of this Act. It is not disputed or denied that the performance bonus payable to the dealers ranges from 2% to 3.5% of the invoice amount depending upon the quantity of the tyres lifted by the dealers. In other words, it appears that the performance bonus is linked with the quantity off take and thus by its very nature is tantamount to a restrictive trade practice and will have the effect of eliminating competition. Any incentive or discount which is linked to quantity off-take is bound to be disadvantageous to the small dealers who do not have the financial resources to lift large quantities. In other words, the small dealers and distributors will not be able to avail of the performance bonus and thus without the advantage of discount will not be able to compete in the market. It thus follows that the performance bonus will be admissible to those dealers whose off-take is more than 100 tyres at least and in fact the higher the off-take, the greater the price

discount and more disadvantageous it will be to a small dealer. Any performance bonus linked with the quantity off-take is by its nature a restrictive trade practice and falls within the ambit of Section 33(1)(e) of the Act and any such clause in an agreement between a manufacturer and its dealers is deemed to be a restrictive trade practice. In that view of the matter there is no escape from the conclusion that the respondent has adopted and indulged in restrictive trade practices as alleged in the Notice of Enquiry. As regards the restriction in the price list which does hot give the dealer the flexibility to charge a price lower than the maximum price shown in the price list, the respondent''s contention that such a stipulation has since been deleted is of no avail as under the provisions of Section 33(1), such trade practices as deemed to be restrictive trade practices at that point in time when the DG made the present application. In view of our aforesaid discussion, our findings on two issues are that the respondent is guilty of adoption of and indulgence in restrictive trade practices within the meaning of Section 33(1) of the Act and such trade practices are prejudicial to the public interest. Therefore, the respondent is directed to cease the alleged restrictive trade practice forthwith and to desist from adoption of and indulgence in same or similar trade practices in future. Compliance of this order may be made within 6 weeks of its pronouncement. Application disposed of.