

(2010) 08 DEL CK 0114

In the Delhi High Court

Case No : Writ Petition (C) 3928 of 1996 and CM 6860/96, 8890/97, 6829 and 9441/98

Franco Indian Pharmaceuticals Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Essential Commodities Act, 1955 — Section 7A

Citation : (2010) 172 DLT 190

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : S. Ganesh, Rajesh Narain, Rajeshwari Shukla and Rajiv Kumar Dubey, for the Appellant; A.S. Chandhiok, ASG, Meera Bhatia, Sandeep Bajaj and Riya Kaul, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—An order dated 11th August 1996 passed by the Department of Chemicals and Petrochemicals, Drug Prices Equalisation Account (DPEA) Cell, Government of India, Respondent No. 1 herein, directing the Petitioner to deposit a sum of Rs. 29,09,141 under Para 7(2)(a) of the Drugs (Prices Control) Order, 1979 ("DPCO, 1979") read with para 17 (1) (a)(i) thereof on account of overcharging of the prices of Penivoral Plain Tablets and Penivoral Forte Tablets during the period from 12th March 1981 to 30th April 1987 into the DPEA together with interest of Rs. 48,26,047.99 u/s 7A of the Essential Commodities Act, 1955 (ECA) within a period of 30 days, has been challenged by the Petitioner in this writ petition.

Factual Background

2. The Petitioner company is engaged in the manufacture of pharmaceutical formulations including, inter alia, certain formulations called Penivoral and Penivoral Forte ("Penivoral formulations") based on Penicillin. It is stated that the prices of the said Penivoral formulations were declared as a package under the

"alternative method of price fixation" under the DPCO, 1970 and were regulated and controlled in order to ensure that the Petitioner earned only a reasonable margin of profit on the whole. It is stated that the prices fixed under the DPCO 1970 in respect of the said Penivoral Formulations continued to remain in force after the coming into force of DPCO, 1979.

3. Under para 7 of the DPCO 1979, the Central Government had the power to fix the retention price and the pooled price for the sale of bulk drugs specified in the First or Second Schedule of the DPCO, which were either for indigenously manufactured or imported bulk drugs respectively. Para 10 set out the method for calculation of the retail price of the formulations. Under para 15, the Government had the power to revise the prices of the formulations.

4. On 12th March 1981, the Respondent No. 1 issued an order/notification fixing the "leader" prices of the Penivoral formulations manufactured by the Petitioner. According to the Petitioner, certain drastic reductions were made from the pre-existing prices of the said Penivoral formulations. The rate of "mark up" which had been allowed to the Petitioner was drastically reduced from about 75% to less than half that amount, even though, since the time the said prices had been fixed under the DPCO, 1970 (in the year 1974 and revised in the year 1976), there had been an over-galloping inflation and continuous increase in the various items of expenses that had to be met out of the mark up.

5. The Petitioner filed a review application against the above price fixation order dated 12th March 1981 and also asked the Respondent No. 1 to disclose the relevant cost data and explanation on the basis of which the said prices were fixed. It is stated that the Respondent No. 1 failed to disclose the data. The Petitioner had to file Writ Petition (Civil) No. 1070 of 1981 in this Court challenging the above price fixation order/ notification dated 12th March 1981.

6. On 12th May 1981, this Court granted a conditional interim order staying the implementation of the prices fixed by the order/notification dated 12th March 1981 subject to the Petitioner giving an undertaking that in case the writ petition was dismissed and Rule was discharged the Petitioner would, within eight weeks of the disposal of the petition, deposit the difference in the price of formulations in question into the DPEA.

7. On 29th September 1983, the Central Government issued a fresh notification reducing the prices of the Penivoral formulations in exercise of the powers under Para 12(1) of the DPCO, 1979. By a common judgment dated 17th December 1984, this Court allowed the Petitioner's writ petition as well as the writ petitions filed by other drug manufacturers who challenged similar price fixation notifications under the DPCO 1979. This Court quashed the price fixation order/ notification dated 12th March 1981 insofar as the Petitioner's case was concerned.

8. Aggrieved by the above common judgment of this Court the Union of India filed appeals in the Supreme Court.

9. By a judgment dated 10th April 1987 in Union of India (UOI) and Another Vs. Cynamide India Ltd. and Another etc., , the Supreme Court allowed the appeals and upheld the validity of all the price fixation notifications, including the one dated 12th March 1981 as far as the Petitioner was concerned. The Supreme Court observed that "the undertakings, given by the parties in the present cases were intended and do continue to subsist." Thereafter in para 38 the following directions were issued (AIR, @ p.1822):

38. On the conclusions arrived at by us we have no doubt that the appeal must be allowed and the writ petition in the High Court dismissed. However, we think that it is necessary to give a direction to the Government to dispose of the review application after giving a notice of hearing to the manufacturer. The hearing may be given within two months from today and the review application dispose of within two weeks after the conclusion of the hearing. Any information sought by the manufacturer may be given to him at the hearing in terms of what we have said in the judgment. The Union of India is entitled to the costs of the appeal and the writ petition in the High Court.

10. Pursuant to the above directions, the Petitioner was given a hearing and by an order dated 2nd July 1987 the review application filed by the Petitioner was dismissed. This was communicated to the Petitioner by a letter dated 2nd July 1987, para 3 of which reads as under:

3. The company's oral and written submissions were considered in detail. Keeping in view of the observations/directions made by Supreme Court in its judgment, it is felt that the prices fixed on 12th March, 1981 and 20th September, 1983 are as per the provisions of DPCO, 1979 and require no change. Your representation is therefore rejected and you are requested to immediately comply with the prices already fixed. The necessary supplementary price list indicating changes may please be issued within 15 days of receipt of this letter.

11. The DPCO, 1979 stood repealed on 25th August 1987 with the issuance of the Drug (Prices Control) Order, 1987 ("DPCO, 1987"). The Petitioner states that during the relevant period, i.e., from 1981 to 1987, it made a total profit of Rs. 42,936/- on Penivoral formulations. The Petitioner states that after discussions with the Respondent No. 1 and to avoid any controversy, the Petitioner paid over the entire profit of Rs. 42,936/- into the DPEA. Correspondence was exchanged between the Petitioner and the Respondent No. 1 in respect of its liabilities under the DPCO, 1979. It is stated that after discussing with a Committee the convener of which was Sri R.N. Tandon (and therefore known as the Tandon Committee), the Petitioner on 6th June 1989 paid a further sum of Rs. 1 lakh.

12. On its part, the Respondent No. 1 issued a letter on 15th May 1990 calling upon the Petitioner to furnish certain details to enable the Government of India "to determine the final liability", pursuant to the judgment of the Supreme Court. It is stated by the Respondent No. 1 that since the Petitioner did not provide the requisite details, the Respondent No. 1 calculated the Petitioner's liability on a

tentative basis at Rs. 14,01,630.46 for the period up to December 1983, and this was communicated to the Petitioner by a letter dated 6/11th July 1990. A further letter was sent on 4th September 1990 re-computing the tentative liability as Rs. 14,41,837.25 up to December 1983.

13. On 21st March 1994, the Respondent No. 1 constituted a three- member Drug Prices Liabilities Review Committee (DPLRC) headed by a retired High Court Judge to review the entire matter relating to the DPEA recoveries and submit its recommendation to the Respondent No. 1. The DPLRC, Respondent No. 2 herein, was to determine the liabilities of drug companies on the overcharged amounts between 1981 and 1987. The Petitioner filed a representation before the DPLRC on 9th October 1995. In reply to the said representation, the Respondent No. 1, on 14th March 1996, provided the complete details of the break-up of the prices in assessing the liability. A personal hearing was fixed for the Petitioner on 20th March 1996.

14. On 4th July 1996, the DPLRC submitted its report. The DPLRC took note of the fact that the Petitioner had paid a sum of Rs. 42,936 on 29th October 1987 into the DPEA, and that pursuant to the discussions held with the Tandon Committee it had paid a further sum of Rs. 1 lakh on 6th June 1989. The DPLRC came to the conclusion that "the procedure adopted by the Department for the calculation of the notified price of the formulations Penivoral Plain 65 mg. tablets and Penivoral Forte 130 mg. Tabs being in conformity with the provisions of DPCO, the Committee is of the view that the petitioners are not entitled to any relief on this count."

15. As regards the computation of the overcharged amount and the consequent liabilities on the Petitioner, the DPLRC concluded:

...the Department is right in computing on the basis of notified prices (M.R.P) and not on the basis of net accruals.

The DPLRC further concluded that the proceedings of the Tandon Committee or the earlier Price Review Committee had no relevance to the proceedings before it. It ultimately held as under:

...the Department has followed the provisions of DPCO 1979 while calculating the liability of the petitioner and as such no interference is warranted in the present case except to the extent of reconfirming the facts and figures regarding the quantities actually sold and the prices actually charged by the petitioners from time to time. It should also be confirmed that the petitioners implemented the leader price with effect from 1.5.87 and if it is not so, necessary amendments should be made in the total liability of the petitioners so as to cover the entire period during which DPCO 1979 remained in force.

16. On the basis of the report of the DPLRC, the impugned demand dated 11th August 1996 was raised on the Petitioner. The Petitioner has challenged the said demand as well as the order of the DPLRC in this petition.

17. By an order dated 24th June 1998, this Court directed that no recovery would be made and the said interim order was made absolute on 6th August 1998.

Petitioner's Submissions

18. It is submitted by Mr. S. Ganesh, learned Senior counsel appearing for the Petitioner that in the first place, the demand raised in the order dated 11th August 1986 is in terms of para 7(2) of DPCO, 1979 read with para 17 (1) (a) thereof. Unless the cost of the bulk drug which has been allowed to the manufacturer in the price of its formulations is taken into consideration and that is compared with the price at which the bulk drug has actually been purchased or procured, no demand could be raised under para 7(2)(a) of the DPCO 1979. Reliance was placed on the judgment dated 19th October 2001 of the Division Bench of this Court in Writ Petition (Civil) No. 2170 of 1990 Glaxo India Ltd. v. Union of India, wherein in similar circumstances, it was held that a demand with reference to the DPCO, 1979 could not be raised under para 7(2)(a) read with para 17 thereof unless and until bulk drug price was fixed. Thus, the powers under Para 7 (2) (a) of the DPCO 1979 could not be used for raising a demand for mere difference in the prices of formulations.

19. Secondly, it was submitted that nowhere does the impugned order indicate the basis on which the Respondent No. 1 has arrived at the sum for which the demand was raised. There has been no fixation of the bulk drug price at all. It is then submitted that the response of the Respondent No. 1 that the demand is not referable to para 7(2) (a) of the DPCO, 1979 is untenable in law, since the demand is to speak for itself. A counter affidavit cannot explain the basis of the order which is under challenge. Reliance is placed on the judgment of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

20. Thirdly, it is submitted by Mr. Ganesh that a provision authorizing the raising of a demand based on the difference in formulation prices was introduced for the first time in para 15 of the DPCO 1987. The impugned demand related to a period covered by the DPCO 1979, which was rescinded by the DPCO 1987. Para 14 of the DPCO 1987 permits recovery of all dues accrued on account of the actions under the DPCO , 1979 before the commencement of DPCO, 1987. It is submitted that no liability had accrued under the DPCO, 1979 prior to coming into force of the DPCO 1987 and, therefore, no demand could have been raised after the DPCO, 1979 had ceased to exist. Reliance is placed on the judgment dated 10th May 2010 of this Court in Writ Petition Nos. 9699-9700 of 2004 Ranbaxy Laboratories Ltd. v. Union of India.

21. Fourthly, it is submitted that the demand of interest with reference to Section 7A ECA was wholly untenable in law. No demand was raised prior to 11th August 1996. It was only where the Petitioner defaulted in making payment within 30 days thereafter that any interest amount could be levied. Therefore, the demand

for interest for a period prior to 11th August 1996 was not legally sustainable. Lastly, it is submitted the Petitioner had deposited its entire profit of Rs. 42,936/-, and a further sum of Rs. 1 lakh pursuant to the discussions with the Tandon Committee. Therefore, no further amount was due from the Petitioner.

Respondents' Submissions

22. Mr. Chandhiok, learned Additional Solicitor General ("ASG") appearing for the Respondents first submitted that the Petitioner had filed an affidavit of undertaking in this Court in the earlier writ petition filed in 1981 as a pre-condition for grant of stay by this Court by the order dated 5th May 1981. The said undertaking was to the effect that in the event of the writ petition being dismissed and Rule discharged the Petitioner would deposit the difference in the prices of formulations into the DPEA. By virtue of the order of the Supreme Court in Cynamide India, that undertaking continued. It was this undertaking that was sought to be enforced by raising a demand on 11th August 1996 after the report of DPLRC. This undertaking did not get wiped out as a result of the subsequent proceedings. Reliance is placed on the judgments in Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, and State of Gujarat and Others Vs. Dilipbhai Shaligram Patil, to urge that the parties would be placed in the same condition as they were prior to the stay order being granted by this Court on 5th May 1981 and the Petitioner was bound to act in accordance with the undertaking given by it to this Court on an affidavit.

23. Secondly, it is submitted that as directed in the judgment of the Supreme Court, the Petitioner's review application was taken up for consideration. The Petitioner was heard in the review application and a detailed order was passed dismissing the review application. The said order dated 2nd July 1987 was not challenged by the Petitioner and became final. Consequently, the Petitioner could not turn around and challenge the basis of the impugned demand dated 11th August 1996 which was based on the price fixation notification dated 12th March 1981 as reaffirmed by the order dated 2nd July 1987 passed by the Respondent No. 1, dismissing the Petitioner's review application.

24. Mr. Chandhiok submitted that the judgment of this Court in Ranbaxy is distinguishable inasmuch as in that case it was found that no action had been taken to recover the amount accrued under the DPCO 1979 during the time when the said DPCO 1979 was subsisting. However, in the present case, the demand was raised on 12th March 1981 at a time when the DPCO, 1979 was subsisting. Moreover, no further action to recover such amount could have been taken in the light of the stay order granted by this Court till the time the Supreme Court disposed of the appeal of the Union of India. It is submitted that although in terms of para 14 of the DPCO 1987 the Respondent would have to show that some action has been taken to recover the dues under the DPCO 1979, under the subsequent DPCO, 1995 which has superseded the DPCO 1987, the Central Government is empowered in terms of para 12 thereof to recover any amount which had accrued under the DPCO, 1979 on or before the commencement of the

DPCO, 1995. The wording of para 12 of the DPCO 1995 was wider than para 14 of the DPCO 1987. If the three DPCOs of 1979, 1987 and 1995 are harmoniously construed, then the demand raised on 11th August 1996 for an amount that had accrued under the DPCO, 1979 would be justified. Reliance is placed on the judgment in *Visitor, Aligarh Muslim University v. K.S. Misra* (2007) 8 SCC 598.

25. As regards the reference to para 7(1)(a) of DPCO, 1979, learned ASG pointed out that this was a mistake since the demand was in fact relatable to the earlier demand made on 12th March 1981 which referred to para 12 of the DPCO 1979. Merely because a wrong legal provision had been mentioned, it could not invalidate a demand otherwise legally sustainable. Reliance is placed upon the judgments in *K.K. Parmar and Others Vs. H.C. of Gujarat thr. Registrar and Others*, and *N. Mani v. Sangeetha Theatre* (2004) 12 SCC 278.

26. The learned ASG distinguished the judgment of Division Bench of this Court in *Glaxo India Ltd. v. Union of India* by pointing out that the review application in that case had been allowed and the DPLRC had also recommended an increase in the price notified. Despite this, the Central Government raised a demand. Moreover, the demand raised in that case was on the basis of the price of bulk drugs whereas the demand in the present case was based on the revision in the price of the formulations. Lastly, as regards the interest, it is submitted that the amount had accrued from the time the demand with reference to the notification dated 12th March 1981 was raised and, therefore, interest would run from the date as indicated in the impugned demand.

The impugned demand is enforcement of undertaking given to this Court

27. The impugned demand dated 11th August 1996 no doubt refers to para 7 (2) (a) and para 17(1)(a) of the DPCO, 1979. However, it refers to the period of overcharging of prices as between 12th March 1981 and 30th April 1987. It also refers to the judgment of the Supreme Court, the rejection of the Petitioner's review application, the subsequent rejection of the Petitioner's case by the DPLRC and thereafter explains the basis for the interest charged u/s 7A ECA. The Petitioners could not have, upon perusing the above demand letter, been in any doubt that what was being enforced was their undertaking to pay the difference in the formulation prices as notified on 12th March 1981 and the price actually charged by them thereafter in terms of the undertaking given to this Court.

28. Interestingly, the Petitioner has for reasons best known to it not enclosed a copy of the stay order dated 8th May 1981 passed by this Court in W.P. (C) No. 1070 of 1981. It has also not elaborated on the contents of the said stay order. In the rejoinder it does not deny that it had indeed filed an affidavit of undertaking in this Court in the said writ petition. In para 8 of its Rejoinder dated 3rd January 1998, the Petitioner stated as under:

I may also point out that the petitioner company is not in any manner seeking to question the validity of the undertaking given by it to the High Court. The Petitioner is only seeking to point out and submit that it has been specifically

accepted by the respondents that for determination the amount of difference of prices in accordance with the said undertaking, the formulation prices would first have to be reviewed in accordance with law and the difference of prices can be determined only with reference to and on the basis of the reviewed and correctly determined formulations prices. The petitioner is merely seeking to point out and submit that the said review of the formulation price has not taken place in accordance with law with due and proper application of mind and keeping in mind the correct and relevant principles as embodied in the provisions of DPCO.

(emphasis supplied)

29. Further in para 4A of the affidavit filed by the Petitioner on 18th November 1996, it is stated as under:

The Petitioner has not in any way dispute the undertaking given by it to this Hon''ble Court in the earlier writ petition filed by the petitioner. However, it is the petitioner's submission based on the judgment of the Hon''ble SC in Cynamide case that the amount of demand that could be raised on the petitioner could only be determined after a proper review of the impugned formulations prices is completed in accordance with law...

30. Having challenged the notification dated 12th March 1981 which fixed the "leader prices" of the Petitioner's Penivoral formulations under para 12 (2) of the DPCO 1979, and having got an interim order in its favour staying the enforcement of that order subject to the Petitioner filing an undertaking to pay back the differential amount into the DPEA together with interest in the event of the writ petition being dismissed, and having ultimately lost the case in the Supreme Court, the Petitioner cannot escape the obvious legal consequences of the undertaking reviving as explained unambiguously in the judgment of the Supreme Court.

31. Consequent upon the judgment of the Supreme Court the Petitioner's review application was taken up for consideration by the DPLRC. It was dismissed by an order dated 2nd July 1987. That order became final since the Petitioner did not challenge it. It may be pointed out that while the Petitioner has challenged the DPLRC's report dated 4th July 1996, it never challenged the decision dated 2nd July 1987. Thus, the price fixation notification dated 12th March 1981, which was reaffirmed on 2nd July 1987 became final and formed the basis for the demand raised. Such demand could obviously not have been raised on account of the stay order of this Court and till such time the review application was not disposed of in terms of the judgment of the Supreme Court in Cynamide India case. The demand was based on the revision of the formulation price and the difference between the price notified by the Respondent No. 1 and the price at which the formulation was sold was bound to be made good by the Petitioner in terms of the undertaking filed by it before this Court. The undertaking given by the Petitioner to this Court thus never got wiped out. It subsisted and could rightly be enforced by the Respondents after the rejection of the Petitioner's review

application.

32. In *Kanoria Chemicals and Industries Ltd. v. U.P S.E.B.*, the Supreme Court held as under:

In our respectful opinion, the underlined portions do not constitute the decision of the court. They merely refer to the fact that the Board itself did not make a demand for surcharge amount in respect of the period covered by the stay under its own understanding of the effect of the stay order granted by the High Court and that it was justified in its opinion. The demand was, the Court pointed out, in respect of the period covered by the order of injunction granted by this Court. This Court expressly held expressly that the grant of an injunction does not relieve the consumers of their obligation to pay the charge at the enhanced rates and, therefore, the demand for surcharge/interest for such period is not illegal....

...It is equally well settled that an order of stay granted pending disposal of a writ petition/suit or other proceeding, comes to an end with the dismissal of the substantive proceeding and that it is the duty of the court in such a case to put the parties in the same position they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing a party (Board in this case) for no fault of its and would also mean rewarding a writ petitioner in spite of his failure. We do not think that any such unjust consequence can be countenanced by the court. As a matter of fact, the contention of the consumers herein, extended logically should mean that even the enhanced rates are also not payable for the period covered by the order of stay because the operation of the very notification revising/enhancing the tariff rates was stayed. Mercifully, no such argument was urged by the appellants. It is understandable how the enhanced rates can be said to be payable but not the late payment surcharge thereon, when both the enhancement and the late payment surcharge are provided by the same notification - the operation of which was stayed.

(emphasis supplied)

Later, in *State of Gujarat v. Dilipbhai Shaligram Patil*, the above position was reiterated.

Mere quoting of wrong provision will not invalidate demand

33. It is sought to be contended in the written submissions filed on behalf of the Petitioner that since the order dated 11th August 1996 mentions that the demand is being raised under para 7(2)(a) and para 17(1)(a)(i) of the DPCO, 1979, it would not be open to the Respondent to explain away the said reference to para 7 (2) (a) as a mistake. It is contended that such explanation cannot be permitted by way of a counter affidavit, as was held in the Supreme Court in *Mohinder Singh Gill*.

34. This Court is unable to accept the above contention for the simple reason that it is the Petitioner's affidavit of undertaking given to this Court way back in

May 1981 that is sought to be enforced by the Central Government by raising the demand on 11th August 1996. As pointed out by the Supreme Court in a number of cases, the mere mentioning of a wrong provision will not per se invalidate a demand, if otherwise justified in law. In *K.K. Parmar v. High Court of Gujarat*, the Supreme Court held as under:

21. The superior court exercising its power of judicial review is not concerned as to whether a wrong provision of law has been take recourse to, but is only concerned with the question as to whether the authority passing the order had the requisite jurisdiction under the law to do so or not. In the event, it is found that the impugned order is not ultra vires or illegal or without justification, the same would not be interfered with only because it at one point of time proceeded on a wrong premise. A jurisdictional question, in our opinion, can always be permitted to be raised.

(emphasis supplied)

35. Likewise in *N. Mani v. Sangeetha Theatre*, the Supreme Court held:

9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.

36. Consequently the mere fact that the impugned demand dated 11th August 1996 mentions Para 7 (2) (a) and Para 17 (1) a) (i) of the DPCO 1979 makes no difference to the validity of the demand traceable as it is to the price fixation notification of 12th March 1981, the enforcement of which was stayed conditional upon the Petitioner's undertaking which undertaking became enforceable once the Petitioner's challenge to the said notification failed.

Decisions in *Glaxo India* and *Ranbaxy* distinguishable on facts

37. The judgment of the Division Bench of this Court in *Glaxo India Ltd* is distinguishable on facts. The Division Bench held that for justifying a demand under para 7(2)(a) of the DPCO, 1979 there had to be a fixation of the bulk drug price. However, in the instant case the impugned demand is relatable to the initial demand raised on 12th March 1981, which was affirmed by the dismissal of the review application filed by the Petitioner. In *Glaxo India Ltd* the review application was allowed and the DPLRC recommended an increase in the prices notified. Consequently, this Court does not find the decision in *Glaxo India Ltd* to be of assistance to the Petitioner.

38. The decision of this Court in *Ranbaxy Laboratories* case did not involve the question whether a demand with reference to a price fixation notification issued even while the DPCO 1979 was operational could be enforced after its repeal. In the instant case, the action taken in terms of the DPCO 1979 even while it was operational was in the form of the price fixation notification dated 12th March

1981. The challenge to the said notification was negated by the Supreme Court. The Petitioner was only left with the remedy of the review application which was also dismissed by the order dated 2nd July 1987 of the Respondent No. 1. The undertaking given by the Petitioner to this Court for getting the enforcement of the notification dated 12th March 1981 stayed did not get wiped out on account of the subsequent proceedings. In fact, the said undertaking subsisted and became enforceable soon after 2nd July 1987. It cannot be said, therefore, that no action was taken and such sum as demanded accrued under the DPCO, 1979 prior to 25th August 1987 the date on which the DPCO 1979 stood repealed. Further, as pointed out rightly by learned ASG, para 12 of the DPCO 1995 is even wider in its wording than para 14 of DPCO, 1987. Para 12 of the DPCO, 1995 reads as under:

Notwithstanding anything contained in this Order, the Government may be notice, require the manufacturer, importer or distributor, as the case may be, to deposit the amount which has accrued under the provisions of the drugs (Prices Control) Order, 1979 on or before the commencement of this Order, into the Drugs Prices Equalisation Account and the manufacturer, importer or distributor, as the case may be, shall deposit the said amount into the said Account within such time as the Government may specify in the said notice.

(emphasis supplied)

39. The fact that the Petitioner was bound by its undertaking given to this Court also disentitles it from challenging the report dated 4th July 1996 of the DPLRC which even on merits appears not to be assailable.

Claim of interest not invalid

40. As regard the claim of interest with reference to Section 7A of the ECA, this Court finds that the demand raised on 12th March 1981 stood further confirmed by the Supreme Court's judgment followed by the dismissal of the Petitioner's review application. The claim for interest, therefore, with reference to the dates mentioned in the impugned order dated 11th August 1996 cannot be held to be invalid.

41. For the aforementioned reasons, this Court does not find any merit in the writ petition and dismisses it with costs of Rs. 20,000/- which will be paid by the Petitioner to the Respondents within a period of four weeks. The interim order stands vacated and the application for stay is also dismissed. All pending applications are disposed of.