
(2014) 08 DEL CK 0075
In the Delhi High Court
Case No : L.P.A. No. 1629/2005

Ranbaxy Laboratories Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-08-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Essential Commodities Act, 1955 — Section 7A

Citation : (2015) 215 DLT 398 : (2015) 2 RCR(Civil) 850

Hon'ble Judges : Vibhu Bakhru, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : S. Ganesh, Sr. Adv., K. Datta, Ashish Verma, Amit Mishra, Rahul Malhotra and Akshat Hansaria, Advocate for the Appellant; Raveeve Mehra, ASG, Anuj Aggarwal, Kartikey Mahajan, Ashish Virmani and Shruti Agarwal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.—The present appeal has been filed by the appellant challenging an order dated 13.07.2005 passed by a learned Single Judge of this court in W.P. (C) No.10700/2005 (hereinafter referred to as the 'impugned order') whereby the learned Single Judge dismissed the said writ petition. The said writ petition was filed by the appellant under Article 226 of the Constitution of India inter alia challenging the demand notices dated 08.02.2005 and 13.06.2005 (hereinafter collectively referred to as 'the impugned notices' and separately referred to as 'the impugned notice') issued by the National Pharmaceutical Pricing Authority (respondent no.3). By the impugned notice dated 08.02.2005, respondent no.3 demanded a sum of Rs. 2,15,62,077/- as the excess of the amount charged by the appellant for sale of the formulations under the brand name "Roscilox" during the period April 1996 to July 2003. By the impugned notice dated 13.06.2005, respondent no. 3 also demanded a sum of Rs. 2,49,46,256/- as interest u/s 7A of the Essential Commodities Act, 1955, in addition to the demand for the overcharged amount. The learned Single Judge dismissed the

said petition inter alia on the ground that no case warranting the exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India was made out.

2. The relevant facts of the case are as under:

2.1 The appellant company is engaged in the business of manufacturing, marketing and dealing in pharmaceutical products.

2.2 On 04.09.2000, the respondent no.3 issued a notice to the appellant demanding a provisional sum of Rs. 1,99,62,708/- on account of charging a price in excess of the notified prices for Cloxacillin based formulations from April 1996 to June 2000 in violation of the provisions of the Drug (Price Control) Order, 1995 (hereinafter referred to as "DPCO 1995"). On 18.09.2000, the appellant replied to the said demand notice and denied its liability for the said amount, claiming that it manufactures bulk Cloxacillin, most of which is exported and it neither manufactures Roscilox formulations nor owns the brand names.

2.3 Thereafter, on 02.09.2003, respondent no.3 issued a notice and directed the appellant to deposit a sum of Rs. 99,81,354/-, being 50% of the overcharged amount of Rs. 1,99,62,708/- for the period April 1996 to June 2000, in view of the judgment dated 01.08.2003 passed by the Supreme Court in the case of Ministry of Chemicals & Fertilizers v. M/s Cipla Ltd. & Ors. in CA Nos.3375-3384/2002. Respondent no.3 also issued a notice dated 25.11.2003 directing the appellant to deposit a sum of Rs. 7,99,685/-, being 50% of the overcharged amount of Rs. 15,99,369/- for the period July 2000 to July 2003, in view of the abovementioned judgment. In response to the said notices, the appellant by its letters dated 30.09.2003 and 05.12.2003 denied its liability for the said amount reiterating its earlier stand that the Cloxacillin based formulations under the trademark Roscilox were not manufactured by the appellant and the said trademark also did not belong to it. It was further claimed that the appellant was not holding any manufacturing license to manufacture the said product.

2.4 Thereafter, on 15.12.2003, a personal hearing was granted to the appellant during which it submitted a sample of Roscilox injection and denied its liability for the amounts alleged in the abovementioned notices; the appellant made the following submissions:-

1. The Cloxacillin Formulations is a purchased formulation and Ranbaxy has no right or title in respect of the product Roscilox.
2. The product and the brand is neither owned nor manufactured by us.
3. The trademark Roscilox is not of Ranbaxy and there is no brand ownership rights on the said trademark directly or indirectly in any manner by which it can be construed that Ranbaxy is the proprietor of the trademark.
4. The product list published by Ranbaxy in Form V makes mention of the price

of the product Roscilox which is circulated amongst the stockists and distributors.

5. It is submitted that merely by publishing the product in the price list will not confer the product rights of the said product on Ranbaxy.

2.5 Subsequently, by demand-cum-show cause notice dated 20.01.2004, respondent no. 3 noted that the sample of Roscilox injection submitted by the appellant was owned and manufactured by M/s Oscar Laboratories Pvt. Ltd. (hereinafter referred to as "Oscar Labs") and that Oscar Labs had amalgamated with M/s Shimal Investment Trading Company, presently known as Ranbaxy Holding Company Pvt. Ltd. It was alleged that Oscar Labs was fully owned and controlled by the appellant. It was alleged that the appellant had acted as the distributor of the said product and in nexus with Oscar Labs had violated the provisions of the DPCO 1995. Consequently, the appellant and Oscar Labs were liable to pay the overcharged amount along with interest. In response to the said notice, the appellant by its letter dated 30.01.2004, stated that the appellant did not control or own Oscar Labs at any point of time and it never had any nexus with Oscar Labs in any manner. The appellant further stated that it had never acted as distributor for Oscar Labs for Cloxacillin based formulations and it had only purchased the said formulations from Oscar Labs. It was also stated that Ranbaxy Holding Company Pvt. Ltd. was not connected with the appellant.

2.6 Respondent no.3, by a notice dated 22.03.2004, alleged that the appellant was liable to deposit the alleged amount as the appellant had purchased the Cloxacillin based formulations from Oscar Labs for sale and further distribution and had thus acted as a distributor. The appellant in its reply dated 29.03.2004, reiterated its earlier submissions and further stated that it did not have any arrangement or agreement with Oscar Labs for distribution of the formulations in question.

2.7 Respondent no.3, by demand notices dated 22.09.2004 and 01.10.2004, directed the appellant to deposit a sum of Rs. 99,81,354/- and Rs. 7,99,685/- respectively, being 50% of the overcharged amount, in terms of the directions passed by the Supreme Court, on 01.08.2003, in the case of Ministry of Chemicals & Fertilizers v. M/s Cipla Ltd. and Ors. and also on 10.09.2004, in SLP (Civil) No. 17712/2004. The appellant in its reply dated 26.10.2004, to the said notice reiterated its earlier submissions and denied any liability for selling the formulations at a price in excess of the notified price.

2.8 Thereafter, the appellant was granted a personal hearing on 29.11.2004, in reference to the applicability and interpretation of the words "Dealer" and "Distributor" as defined in the DPCO 1995. The appellant submitted its written submission on 18.01.2005, whereby the appellant claimed to be a dealer and not a manufacturer of the said product. The appellant stated that after the purchase of the product, the appellant offered the product both as wholesalers and dealers nationally through its locations to persons who may be authorized to purchase the same, i.e. dealers/wholesalers who hold a valid drug license for purchase and

storage and subsequent sale, as well as to actual consumers who hold and provide copies of duly registered medical practitioners' prescription. The appellant asserted that the appellant was neither a Distributor nor a Stockist appointed by a manufacturer for the products. It was also claimed that the appellant had not been supplied or offered the products - Roscilox injection and DT Tabs by the manufacturer since 2003 and 1999 respectively.

2.9 Thereafter, by the impugned notice dated 08.02.2005, the respondent no.3 directed the appellant to deposit the total principal overcharged amount of Rs. 2,15,62,077/- for the period April 1996 to July 2003. Subsequently, by another impugned notice dated 13.06.2005, respondent no.3 directed the appellant to deposit a total amount of Rs. 4,65,08,333/- (Rs. 2,15,62,077/- being the principal overcharged amount and Rs. 2,49,46,256/- on account of interest). The said impugned notices were challenged by the appellant by preferring a writ petition being W.P. (C) No.10700/2005. The said writ petition was dismissed by a learned Single Judge of this court by the impugned order dated 13.07.2005.

3. It was contended on behalf of the appellant that the appellant company was only a dealer with respect to the formulations sold under the brand name Roscilox and thus, was outside the ambit of paragraph no. 13 of the DPCO, 1995. It was submitted that the power of the Government to require deposit of the overcharged amount was not applicable to dealers as the Government could only require manufacturers, importers or distributors to deposit the overcharged amount. It was contended that as the appellant was neither a manufacturer nor a distributor, the demand made on the appellant was without authority of law. The appellant also relied on the definitions of "dealer" and "distributor" as contained in clauses (d) and (e) of paragraph no.2 of DPCO, 1995.

4. The learned senior counsel appearing for the appellant also relied upon the decision of the Supreme Court in Kailash Nath Agarwal and Others Vs. Pradeshia Industrial and Investment Corporation of U.P. Ltd. and Another, and contended that where two different words are used in the same statute, the same have to be construed as carrying different meanings. It was contended that the DPCO 1995 uses two different expressions "dealer" and "distributor, thus, the expression "distributors" occurring in paragraph 13 of the DPCO 1995 cannot be read to mean a "dealer" and a person who is a dealer is necessarily excluded from the scope of paragraph 13 of the DPCO 1995.

5. It was next contended on behalf of the appellant that respondent had been changing their stand in various notices that were served on the appellant. It was pointed out that the initial notice dated 04.09.2000, served by the respondent simply alleged that the appellant had been charging prices higher than those notified for the Cloxacillin based formulations. The learned senior counsel pointed out that in the annexures to the subsequent communications, the appellant was shown as a manufacturer of the Cloxacillin formulations sold under the brand name Roscilox. It was contended that in the notice dated 20.01.2004, respondent no.3 had accepted that the appellant was not a manufacturer and

had alleged that Oscar Labs, from whom the formulations were alleged to have been purchased by the appellant, was fully owned and controlled by the appellant company. The appellant submitted that in the subsequent notice dated 08.02.2005, respondent no.3 had again changed its stand and had alleged that everyone including a manufacturer, importer, distributor, dealer or retailer, was bound to adhere to the prices fixed under the DPCO 1995. This was at variance with the earlier notices. It was contended that whereas earlier the liability was sought to be imposed on the appellant as a manufacturer, respondent no.3 had subsequently accepted that the appellant was not a manufacturer and had sought to impose the liability on the appellant as a dealer, which was not permissible.

6. It was submitted that the respondents were seeking to sustain the impugned notices on the basis of trade literature and other material showing a connection between Oscar labs" brand name RosciloX and the appellant. It was contended that the respondents could not rely on any other material or ground that had not been alleged in the impugned notices. The respondent relied upon the decision of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . The appellant further relied upon the decision of the Supreme Court in the case of Rashmi Metaliks Ltd. and Another Vs. Kolkata Metropolitan Development Authority and Others, , wherein the Supreme Court had followed the earlier decision in the case of Mohinder Singh Gill (supra) and held that it was not fair or permissible for an authority to adopt a new ground for the first time to support an impugned order of rejection which had not been indicated in the said order.

7. It was contended on behalf of the appellant that the learned Single Judge erred in rejecting the writ petition and in coming to a conclusion that the petitioner was a dishonest litigant. It was contended that there was no basis on which the learned Single Judge could have come to this conclusion. It was further submitted that the learned Single Judge erred in finding that there was a nexus between Oscar Labs and the appellant company. The learned counsel appearing for the appellant argued that the said finding was without any material and was based on surmises. It was further contended that it was for the respondent authorities to prove that the petitioner had violated the DPCO 1995 and that Oscar Labs and the appellant were connected. It was urged that the observation of the learned Single Judge that if the corporate veil was pierced it may disclose the presence of the appellant, was without any basis. The learned Single Judge had observed that these matters needed to be proved by the appellant before it could successfully contend that it had no connection with Oscar Labs. The appellant submitted that this conclusion of the learned Single Judge was erroneous as it was for the respondent authorities to prove their case and the burden could not be shifted to the appellant.

8. The learned counsel for the appellant also sought to dispute the computation of the amount demanded vide the impugned notices. It was argued that interest

could only be charged from the date of demand and not from the date of sale of the products. The appellant relied upon the decision of the Division Bench of Allahabad High Court in TC Healthcare Pvt. Ltd. and Anr. v. Union of India and Another: W.P. No.33753/2009, decided on 20.04.2010, in support of its contention that the dealers margin ought to be excluded from the computation of the overcharged amount and the interest charged u/s 7A of the Essential Commodities Act, 1955 could be levied only from the date of demand for deposit and not from the date of overcharging.

9. The learned counsel for the appellant urged that the respondent authorities as well as the learned Single Judge erred in ignoring that bulk of the purchases of the formulations in question, were made from Delta Aromatics Pvt. Ltd. He submitted that the appellant had purchased the Roscilox formulations from Oscar Labs during the period from 1996 till September 1999 and thereafter the appellant had purchased the formulations from one Delta Aromatics Pvt. Ltd. He contended that there was no allegation that Delta Aromatics Pvt. Ltd. and the appellant were connected in any manner.

10. Mr Rajiv Mehra, learned Addl. Solicitor General appearing for the respondents contended that the appellant company had an interest in the brand name Roscilox and handed over a compilation of documents including printouts of various websites, which indicated that the appellant company and/or its affiliates owned the brand name Roscilox in territories outside India. The website of the appellant company also advertised that it had received a Nigerian award for Roscilox suspension (which was described as "Ranbaxy"s Roscilox suspension"). The said compilation of documents also included orders passed by the Income Tax Appellate Tribunal and the Punjab & Haryana High Court in relation to income tax assessment of Oscar Labs and Ranbaxy Holding Company Pvt. Ltd. respectively. The same indicated that the appellant company was related to the said companies.

11. It was contended that the drugs under the brand name Roscilox were marketed exclusively by the appellant company. The learned counsel for the respondents also referred to the trade literature which indicated that Roscilox formulations were marketed by Ranbaxy (Pharma Marketing). It was argued that it was apparent from the said material that the appellant company had an interest in the said brand name. He further submitted that it was apparent that there was a nexus between the appellant and Oscar Labs. It was contended that although manufacturing may have been carried on under the name of or by Oscar Labs, its formulations were distributed by the appellant company through its network of stockists and dealers. He further stated that despite sufficient opportunity, the appellant had not made a complete disclosure as to the arrangements with Oscar Labs or the distribution of the products. The prices at which their formulations had been acquired had also not been disclosed. He referred to the notice dated 08.01.2005 which also mentioned that the appellant had failed to provide the purchase details from the manufacturers.

12. We have heard the learned counsel for the parties.

13. The question that arises for our consideration in the present appeal is whether a demand could be raised by the Government on the appellant company for charging an amount higher than the price notified, for the formulations sold under the brand name Roscilox?

14. It is not in dispute that, in fact, sums higher than as specified had been charged by the appellant for sale of Cloxacillin formulations under the brand name Roscilox. The principal contention canvassed is that although higher prices had been charged, nonetheless, the Government could not recover the overcharged prices from the appellant company, as it was not a manufacturer or a distributor but merely a dealer who had purchased the formulations from the manufacturer.

15. Before proceeding further, it would be relevant to refer to paragraph no. 13 and paragraph no. 19 of DPCO 1995 which is quoted below:

13. Power to recover overcharged amount.-Notwithstanding anything contained in this order, the Government shall by notice, require the manufacturers, importers or distributors, as the case maybe, 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.

xxxx xxxx xxxx xxxx xxxx

19. Price of formulations sold to the dealer.-- (1) A manufacturer, distributor or wholesaler shall sell a formulation to a retailer, unless otherwise permitted under the provisions of this Order or any order made thereunder, at a price equal to the retail price, as specified by an order or notified by the Government, (excluding excise duty, if any) minus sixteen percent thereof in the case of Scheduled drugs.

(2) Notwithstanding anything contained in sub-paragraph (1), the Government may by a general or special order fix, in public interest, the price of formulation sold to the wholesaler or retailer in respect of any formulation the price of which has been fixed or revised under this Order.

16. It is apparent from a plain reading of paragraph 19 of the DPCO 1995 that a manufacturer, a distributor or a wholesaler is obliged to sell the formulations to a retailer at a price equal to the retail price as specified in the order minus sixteen percent being the retailer's margin of sixteen percent of the retail price. It cannot be disputed that whether a person is a wholesaler or distributor or a manufacturer he cannot charge a price higher than the notified price for a scheduled drug. In the present case, the appellant has asserted that it has been purchasing the drugs from the manufacturers and selling the same to other dealers and consumers nationally. Thus, even according to the appellant, the appellant has acted as a wholesaler. The appellant, therefore, cannot dispute that it has violated paragraph 19 of the DPCO 1995, inasmuch, as formulations in

question have been sold by the appellant at a price higher than the specified price.

17. The next issue, therefore, to be considered is whether the Government has the power to recover the overcharged amount from the appellant. A bare reading of paragraph no.13 of the DPCO 1995 indicates that the Government has the power to recover the overcharged price from the manufacturers, importers or the distributors. Before proceeding further it would be necessary to refer to clauses (d) and (e) of paragraph no.2 of the DPCO 1995 which define the expressions "dealer" and "distributor" respectively. The said clauses are reproduced below:

(d) "dealer" means a person on the business of purchase or sale of drugs, whether as a wholesaler or retailer and whether or not in conjunction with any other business and includes his agent;

(e) "distributor" means a distributor of drugs or his agent or a stockist appointed by a manufacturer or an importer for stocking his drugs for sale to a dealer;

18. A plain reading of the definition of the expression "distributor" indicates that it includes; (a) a person who is a distributor of drugs, (b) an agent of a distributor of drugs and (c) a stockist who is appointed by a manufacturer/importer for stocking of drugs for sale to a dealer.

19. Commonly understood, distribution is a process of making products available for consumption to a consumer. The products may be distributed directly by the manufacturer or indirectly through market intermediaries. The intermediaries may be independent merchants or traders who buy the product from the manufacturer and resell the same, or they may be agents or brokers who act on behalf of manufacturers without acquiring any title to the products. The Oxford Dictionary defines "distributor" to mean:

A person who distributes something, spec. an agent who markets goods, esp. a wholesaler.

The Black's Law Dictionary, Eight Edition, defines distributor to mean:

A wholesaler, jobber, or other manufacturer or supplier that sells chiefly to retailers and commercial users.

It is, thus, apparent that any person who is involved in distribution of products would fall within the definition of the word "distributor".

20. In the present case, the appellant in its letter dated 18.01.2005 had inter alia asserted:

The products are not manufactured by us. Consequent to its purchase, we offer the product both as wholesalers and dealers nationally through our locations to persons who may be authorized to purchase the same i.e. dealers/wholesalers who hold valid Drug Licence for purchase and storage and subsequent sale as well to actual consumers who hold and provide copies of duly registered medical

practitioners" prescription by dispensing the products. Thus, we are a dealer.

The respondent has found that the appellant has acted as a distributor. Even on its own showing, the appellant had purchased the formulations from Oscar Labs and had sold the same through various channels of its stockists and dealers nationally. As a matter of fact, the formulations have been distributed by the appellant nationally. The fact that there has been no arrangement or agreement which has been placed on record between the manufacturer and the appellant cannot by itself be determinative of whether the appellant has acted as a distributor of the formulations in question.

21. We are also unable to accept the appellant's contention that since it falls within the definition of a "dealer" within the meaning of Clause (d) of paragraph 2 of the DPCO 1995, it could not be considered as a "distributor" which is defined in Clause (e) of paragraph 2 of the DPCO 1995. The appellant had contended that since two expressions, namely, "distributor" and "dealer" had been used in the DPCO 1995, the same could not be ascribed one meaning. It is generally accepted that if a legislature uses two expressions, unless the context otherwise indicates, it must be presumed that the legislature intended to convey two different meanings. However, since it is nobody's case that the expressions "distributor" and "dealer" have identical meanings, the said principle would be of no assistance to the appellant in any manner. The fact that a person may be acting as a distributor does not necessarily mean that he is excluded from the definition of a dealer. Similarly, the fact that the person is acting as a dealer does not preclude him from also acting as a distributor. In our view, the two expressions are not mutually exclusive. A person who is engaged in a business of purchase or sale of drugs either as a wholesaler or as a retailer would fall within the expression of a "dealer" as defined by clause (d) of paragraph 2 of the DPCO 1995. A distributor of drugs would include a person who distributes drugs, in other words-acts as an intermediary for making the drugs available to the end user. Such a person would fall within the definition of a distributor. It is not necessary that a distributor purchases the drugs as he may act on behalf of the manufacturer either as an agent or a broker for ensuring that the goods reach the retailer and/or the consumers. In such cases, the person would be a "distributor" but not a "dealer". In the present circumstances, where a person acts as an intermediary channel to ensure that the drugs manufactured by the manufacturers reach various retailers or consumers, and in the process the drugs are also purchased from the manufacturer, in such situations the person would be a "distributor" within the definition of Clause (e) of paragraph 2 of the DPCO 1995 and also be a "dealer" within the meaning of Clause (d) of paragraph 2 of the DPCO 1995.

22. In the case of Jay Engineering Works Ltd. and Another Vs. Union of India and Others, , the Delhi High Court held that the expression "distributor" "is a very wide expression which gains colour from the context; in which it is employed". One of the principal objectives of the DPCO 1995 is to ensure that drugs are

available to consumers at a price below or equal to a fixed ceiling price. Paragraph 19 of the DPCO 1995 proscribes a manufacturer, distributor or wholesaler from selling drugs to a retailer at a price exceeding that which is specified. Given the object and scheme of the DPCO 1995, we find no reason why a wholesaler who purchases drugs from a manufacturer and sells the same nationally through its channels to other wholesalers, retailers and consumers, should be excluded from the ambit of the scope of the expression "distributor" as defined by clause (e) of paragraph 2 of the DPCO 1995.

23. The contention that since the appellant has acted as a "dealer" within the definition of clause (d) of para 2 of the DPCO 1995, it is precluded from being considered as a distributor is, in our opinion, erroneous. The fact that a distributor may be required to purchase the drugs from a manufacturer would not by itself exclude it from being considered as one. The appellant's contention that since the appellant purchases the formulations from the manufacturer and there is no agreement for acting as a distributor it would be excluded from being considered as a distributor is in our view also without merit. The only question that has to be determined is whether the appellant acted as a distribution channel for distributing the drugs in India. In the present case, the bare facts which are available on record clearly indicate that the appellant acted as a distributor.

24. We are also unable to accept the contention of the appellant that the finding of the learned Single Judge that there is a prima facie nexus between the appellant and Oscar Labs is without any basis. The material placed on record clearly indicates that prima facie there is a nexus between Oscar Labs and the appellant. Although the brand name Roscilox is alleged to be owned by Oscar Labs, the website of the appellant company itself refers to a Nigerian award received in respect of "Ranbaxy's Roscilox suspension". The judgment of the Punjab & Haryana High Court in *Ranbaxy Holding Company v. CIT*: (2007) 208 CTR P&H 413 records the facts noted by the Assessing Officer which refers to Ranbaxy Laboratories and Oscar Pharmaceuticals Ltd. as companies of the Ranbaxy Group. The decision of the Income Tax Appellate Tribunal, Chandigarh in the case of (2002) 83 ITD 408 indicates that during the years 1987- 88 to 1993-94 the appellant was manufacturing drugs on behalf of Oscar Labs. The print outs of certain websites also indicate that the appellant owns the brand Roscilox. The report by ORG-MARG, which is a reputed market research organization, also indicates Roscilox formulations to be a product of the appellant company. The trade literature also indicates that Ranbaxy (Pharma Marketing), was marketing Roscilox products. In addition, Oscar Labs is stated to have merged with M/s Shimal Investment Pvt. Ltd which is now known as Ranbaxy Holdings Company Pvt. Ltd. The learned Single Judge took note of the trade literature as well as the fact that Oscar Labs had merged with M/s Shimal Investments Pvt. Ltd. and concluded that prima facie there was a nexus between Oscar Labs and the appellant. In view of the same, we are unable to accept the contention that the finding of the learned Single Judge was without any basis or

is in any manner erroneous. There is sufficient material on record to prima facie show a relationship between Oscar Labs and the appellant and in these circumstances it was for the appellant to explain the same.

25. We are not inclined to entertain the contention that the computation of the demand made by respondent no.3 in the impugned notices is erroneous inasmuch as the dealer's margin has not been excluded from the computation and interest has been calculated from the date when the appellant overcharged for the formulations. These pleas have been made by the appellant for the first time before us. The writ petition and the Memorandum of Appeal are bereft of any pleadings to this effect. The learned counsel for the appellant has also not pointed out any response sent to respondent no.3 which includes these averments. The appellant has all along contested the demand mainly on the ground that it was not a manufacturer or a distributor. The plea that purchases had been made by the appellant from Delta Aromatics Ltd. has also neither been pleaded nor urged before the learned Single Judge. The appellant has also not placed the quantitative details of Roscilox formulations on record. There is no material which indicates the quantum of Roscilox formulations produced by Delta Aromatics Ltd. and those that have been purchased/marketed by the appellant. In these circumstances, we also cannot entertain these pleas for the first time in these proceedings.

26. The learned Single Judge had considered the submissions and had concluded as under:

12. From the conspectus of the material placed before the Court there is prima facie reason to believe that there was a nexus between Oscar Laboratories (P) Ltd. and the Petitioner. In Rejoinder Mr. Nayyar has drawn attention to an Order dated 2.3.1995 where an exemption had been granted to Oscar Laboratories (P) Ltd. from the operation of Para 8 of DPCO'95. This, however, related to the fixation of retail price of Scheduled Formulations not covered under Para 9. Mr. Nayyar has drawn attention to this Order to make good his submission that the primary liability for the over-pricing lay on Oscar Laboratories (P) Ltd. and that since this Company had been granted an exemption the Respondents were unfairly and illegally making recoveries only against the Petitioner. However, the exemption, if it is at all relevant, would only have been in respect of formulations marketed in its own brand names and trademarks by the exempted entity - namely Oscar Laboratories (P) Ltd. and not those marketed by the Petitioner which is not a small scale industry unit.

13. It is also sanguine for the Petitioner to assert that it has no nexus whatsoever with Oscar Laboratories (P) Ltd. Prima facie, the evidence indicates to the contrary and if the corporate veil is pierced it may disclose the presence of the Petitioner. All these matters need to be proved by the Petitioner before it can successfully say that it has no connection with Oscar Laboratories (P) Ltd. Resort shall have to be made to ordinary civil proceedings.

14. A consideration of all the relevant facts shows that the gravamen behind the Essential Commodities Act, 1955 as well as DPCO"95 has been circumvented, if not violated by the Petitioner and the objectives of the law have been frustrated. The public has had to pay prices in excess of those fixed either for the sale of the bulk drugs or in the course of its retail. The Petitioner has not succeeded in proving that it is not the manufacturer through its defunct and resolved subsidiary, Oscar Laboratories (P) Ltd. It has certainly not succeeded in showing that it is not the distributor of the said drug/formulation. It is not possible to equate the Petitioner's role to that of a retailer.

27. We find no infirmity with the above decision and find no reason to interfere with the judgment of the learned Single Judge. Accordingly, the present appeal is dismissed.