
(2017) 03 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

Case No : 210 of 2012

**UNISOURCE TRADING (INDIA) PVT. LTD. Vs CONTINENTAL AIRLINE
CARGO (UNITED?CARGO & CONTINENTAL CARGO) & ANR.**

Date of Decision : 15-03-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 2 \(1\) \(d\)](#) - Definitions

Citation : 2017 2 CPR 354

Hon'ble Judges : Ajit Bharihoke, Anup K Thakur

Advocate : Jayant K Sud, Arjun Mahajan

Judgement

1. Unisource Trading (India) Pvt. Ltd. has filed the instant complaint against opposite parties, namely, Continental Airline Cargo and Perfect Cargo Movers Pvt. Ltd. alleging deficiency in service on the part of the opposite parties in delivering consignment of garments to the purchasers after the expiry of due date resulting in loss to the complainant. We are not detailing full facts of the case because of objection regarding maintainability of complaint.

2. Opposite party in its written statement apart from denying the allegations on merits have taken a specific plea that the complainant is not a consumer as defined under section 2 (1) (d) of the Consumer Protection Act, 1986 (in short, the Act). As such he has no locus standi to maintain the complaint.

3. Before advertng to the submissions made by the parties, it would be useful to have a look on the definition of term "consumer" qua the service provider as defined under section 2 (1) (d) of the Act. (d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for

any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who "hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes ;

Explanation .- For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment

4. On reading of the above, it is clear that consumer is a person who buys goods or hires or avail of services for consideration whether past, present or to be paid in future. The section carves out an exception by providing that if the goods are bought or services are hired or availed for commercial purpose, the person concerned would not be a consumer. In the instant case, admittedly, the services of the opposite parties were hired for commercial purpose i.e. to deliver the goods produced by the complainant to the purchaser in furtherance of the purchase order.

5. Learned Shri Jayant Sud, Advocate for the complainant has contended that no doubt services of the opposite parties were hired for commercial purpose but the case of the complainant is covered under the Explanation to Section 2 (1) (d) of the Act which gives a restricted meaning to the term "commercial purpose" by providing that commercial purpose does not include use of goods bought by a person or services availed by him exclusively for the purpose of earning his livelihood by means of self employment. It is contended that complainant is a Private Limited Company having two directors and they had been running the business exclusively for earning their livelihood by way of self employment. Thus, it is contended that in view of the Explanation, the complainant company falls within the definition of term "consumer".

6. Learned counsel for the opposite party on the contrary has contended that this is not a case of the complainant indulging in the commercial activity exclusively for the purpose of earning his livelihood by way of self employment. It is argued that complainant is a renowned export / buying house recognized by Ministry of Commerce involved in large scale business which is run with the assistance of number of employees. Therefore, by no stretch of imagination, it can be said that complainant has been running its business exclusively for the purpose of earning livelihood by way of self employment.

7. We have considered the rival contentions.

8. Admittedly, the complaint has been filed by Private Limited Company which is

not a natural person. Therefore, the question of Private Limited Company indulging in commercial activity for earning his livelihood does not arise. Otherwise also, perusal of allegations made in the complaint particularly para numbers 1, 2 & 4 would show that it is the case of the complainant that complainant is a renowned export / buying house recognized by Ministry of Commerce and Industry and is in business for more than a decade with large number of renowned retailers world wide. It is pertinent to note that instant complaint has been filed by Sh. Jagadeesan M s/o R Madhavan, Logistic Manager as also authorized representative of the complainant company which gives an indication that complainant company is running large scale business with the help of several employees including a Logistic Manager. Sh. Jayant Sud, Advocate in response to our query has submitted that complainant company is running its business with the assistance of number of employees. From this it is evident that this is not a case of self employment but a case of giving employment to several other persons. Therefore, in our considered view, this is not a case which is covered under the Explanation to Section 2 (1) (d) of the Act which gives restricted meaning to the term "commercial purpose". Reference be made to judgment of Hon"ble Supreme Court in the matter of Laxmi Engineering Works Vs. P S G Industrial Institute (1995) 3 SCC 583

9. In view of the discussion above, it is clear that instant complaint has been filed on the allegations of deficiency in service in respect of services hired or availed for commercial purpose. Therefore, complainant company is not a consumer as envisaged under section 2 (1) (d) of the Act. Consequently, complainant company has no locus standi to file consumer complaint. Consumer complaint is, therefore, dismissed. It is made clear that this order will not come in the way of the complainant to avail of legal remedy by approaching appropriate forum having jurisdiction.