

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3156 OF 2016

(Against the Order dated 25/07/2016 in Appeal No. 948/2015 of the State Commission Punjab)

1. BENETTON INDIA PRIVATE LIMITED
OFFICE AT PLOT NO. 25, BLOCK B, INFOCITY
SECTOR 34,
GURUGRAM-122001
HARYANA.

.....Petitioner(s)

Versus

1. RAVINDER SINGH
S/O. GULZAR SINGH, R/O. H.NO. 16, SHAHEED
NAGAR,
AMRITSAR-143001
PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE AJIT BHARIHOKE, PRESIDING MEMBER

For the Petitioner : Mr. Sukumar Pattjoshi, Sr. Adv. with
Mr. Diwakar Maheshwari, Advocate

For the Respondent : Ex Parte

Dated : 09 Feb 2017

ORDER

This revision is directed against the order of the State Commission Punjab dated 25.07.2016 whereby the State Commission dismissed the First Appeal No. 948/2015 filed by the petitioner opposite party and confirmed the order of the District Forum Amritsar.

2. Briefly stated, the facts relevant for the disposal of the revision petition are that respondent complainant on 11.07.2014 purchased one trouser from the petitioner opposite party vide bill no. 769-3375 dated 11.07.2014. The trouser was offered on 30% discount on MRP, which as per tag was Rs.2299/- inclusive of all taxes. The petitioner after discounting the MRP by 30% of Rs. 2299/- sold the trouser for Rs.1609/-. However, on the aforesaid discounted price, the petitioner charged 6.05% VAT amounting to Rs.97.36/-. According to the complainant, when the trouser was offered on 30% discount on the tag price, which was inclusive of taxes, the addition of VAT on discounted price amounts to overcharging and unfair trade practice. The complainant thus filed consumer complaint in the District Forum, Amritsar.

3. The petitioner contested the complaint by filing written statement, while denying the

allegations of over charge or unfair trade practice on its part, it was pleaded that subject trouser was offered on 30% discount subject to payment of VAT etc. Therefore, the allegation made by the complainant that the petitioner had illegally charged VAT is without any basis.

4. On analysis of the pleadings and evidence adduced by the parties, the District Forum found force in the claim of the respondent complainant. Consequently, the District Forum allowed the complaint and directed the petitioner opposite party to refund a sum of Rs.97.36 i.e. excess charged from the complainant in the form of VAT. The District Forum also directed the opposite party to pay compensation of Rs.5000/- to the complainant besides Rs.1000/- against cost of litigation.

5. Aggrieved by the order of the District Forum, the petitioner approached the State Commission in appeal. On appreciation of the material placed on record, the State Commission concurred with the finding of the District Forum and dismissed the appeal.

6. We have heard Sh. S.K.Pattjoshi, Senior Advocate appearing for the petitioner. The main thrust of his submissions are that petitioner charged VAT strictly as per the provision of State VAT Act and Legal Meteorology Act. Expanding on the argument, learned senior advocate submitted that discount of 30% offered on MRP was subject to terms and conditions and as per condition no.4 which clearly mentioned that percentage discount mentioned in the offer shall be on the maximum retail price of the merchandise. However, the VAT payable on the purchase during the offer shall be charged extra from the members / customers of Benetton India Private Limited. In support of his contention, learned counsel for the petitioner has referred to the judgments of the Supreme Court in the matter of **Deputy Commissioner of Commercial Taxes (Vigilance) Vs. M/s Hindustan Lever Limited 2016 SCC Online SC 646** as also **Delhi Cloth and General Mills Co. Ltd., Etc. Vs. The Commissioner of Sales Tax, Indore 1971 (2) SCC 559**.

7. We have considered the submissions made on behalf of the petitioner and analysed the evidence on record. The issue raised in this revision petition is no more resintegra. Similar issue came up before the Coordinate Bench of this Commission in **Revision Petition no. 3477 of 2016 M/s Aero Club (Woodland) Vs. Rakesh Sharma** decided on 04.01.2017 wherein the Coordinate Bench under the similar set of facts has observed as under:

“The short question falling for consideration is whether having announced a discount of “FLAT 40%” on selected merchandise, which in actual terms works out to less than 40% on the MRP, the Petitioners had indulged in unfair trade practice and/or there was any deficiency on their part in charging VAT on the discounted price of the merchandise.?”*

The expression “unfair trade practice”, as defined in Section 2 (r) of the Act is of very wide amplitude. Clause (2) of Sub-Section (r) of the Act, relevant for our purpose, reads as follow:-

“(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are

not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.

Explanation—*For the purpose of clause (2), "bargaining price" means:-*

(a) a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

(b) a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;"

Explanation to the clause, defining "bargaining price", leaves little scope for doubt that the advertisement offering "FLAT 40%" off on the select merchandise was the bargaining price within the meaning of clause (2) of Section 2 (r) of the Act. In our view, any person who sees the advertisement would reasonably understand that these items are being sold at "FLAT* 40%" discount. Although it is true that the word "FLAT" has an asterisk, appended to it, purporting to be a pointer to an annotation or footnote, but a bare comparison of the font size of "40%" and the font size of the corresponding terms and conditions mentioned in the footnote, clearly shows that the goods in question were not intended to be sold at a discount of FLAT 40%, the offered bargain price. For the purpose of ready reference and better clarity, the scanned picture of the advertisement, widely publicized, is reproduced hereunder:-*

In our opinion, the advertisement in the above form is nothing but an allurements to gullible Consumers to buy the advertised merchandise at a cheaper bargain price, which itself was not intended to be the real "bargaining price" and, therefore, tantamounts to unfair trade practice, as found by both the Fora below. Significantly, under Section 2(d) of the Consumer Goods (Mandatory Printing of Cost of Production and Maximum Retail Price) Act, 2014, the "Maximum Retail Price" printed on the goods, a mandatory labelling requirement, at the relevant time, for pre-packaged goods, means "such price at which the consumer goods shall be sold in retail and such price shall include all taxes levied on the goods." In that view of the matter, having seen the word "FLAT" in the advertisement, a consumer would be tempted to buy the goods under a bonafide belief that he would get a flat 40% off on the MRP. In our opinion, therefore, the defence of the Petitioners that they had charged VAT as per law is of no avail in so far as the issue at hand, viz. misleading advertisement, resulting in unfair trade practice, is concerned. We are in complete agreement with the Fora below that any discount falling short of "Flat

40%” on the MRP would amount to unfair trade practice, as defined in the Act.

8. I do not find any reason to differ with the reasoning adopted by the Coordinate Bench in the aforesaid case. Learned counsel for the petitioner in order to get rid of the aforesaid judgment has submitted that facts of the aforesaid case before Coordinate Bench were different because in the advertisement of the aforesaid case, flat discount of 40% was offered, whereas the words ‘FLAT’ is missing in offer of the petitioner. Merely absence of word ‘FLAT’ in the offer of the petitioner will not make any difference because the discount of 30% on MRP by itself means that discount is ‘FLAT’ discount on maximum retail price. So far as judgments relied upon by the petitioner are concerned, those judgments are not applicable to the facts of the case because those judgments relates to tax matters whereas in the instant case, we have to see whether the petitioner has indulged in unfair trade practice by giving misleading offer to the customers and thereafter overcharging them by charging VAT on discount price.

9. In view of the discussion above, we do not find any jurisdictional error or material irregularity in the impugned order which may call for interference in exercise of revisional jurisdiction. Revision Petition is, therefore, dismissed.

.....J
AJIT BHARIHOKE
PRESIDING MEMBER