NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

REVISION PETITION NO. 3477 OF 2016

(Against the Order dated 20/10/2016 in Appeal No. 287/2016 of the State Commission Chandigarh)

1. M/S. AERO CLUB (WOODLAND)
THROUGH ITS MANAGER, SCO-25, SECTOR 20-D, CLOTH MARKET,
CHANDIGARH
UT ....Petitioner(s)

Versus

1. RAKESH SHARMA
R/O. H.NO. 3342, SECTOR 27-D,
CHANDIGARH ....Respondent(s)

BEFORE:
HON'BLE MR. JUSTICE D.K. JAIN,PRESIDENT
HON'BLE MRS. M. SHREESHA,MEMBER

For the Petitioner : For the Petitioners : Mr. Rajesh Mahna, Advocate
Mr. Ramanand Roy, Advocate
Mr. Rohit Sharma, Advocate

For the Respondent :

Dated : 04 Jan 2017

ORDER

1. By these Revision Petitions, under Section 21(b) of the Consumer Protection Act, 1986 (for short “the Act”), the Retail Outlets of ‘Woodland’ make products, viz. Shoes and Apparels, call in question the legality and correctness of a common order dated 20.10.2016, passed by the State Consumer Disputes Redressal Commission, UT Chandigarh (for short “the State Commission”) in Appeals No. 287 – 293 of 2016. By the impugned order, while affirming the differently dated orders passed by the District Consumer Disputes Redressal Forums I and II at Union Territory, Chandigarh (for short “the District Forums”) in the Complaints filed by the Respondents/ Complainants, the State Commission has dismissed the Appeals, preferred by the Petitioners.

2. The afore-noted Appeals had been preferred by the Petitioners against the orders dated 29.06.2016, 20.09.2016 and 30.08.2016, passed by the District Forums in Complaint Cases No. CC/110/2016, CC/180/2016, CC/188/2016, CC/241/2016, CC/332/2016, CC/200/2016 and CC/288/2016. By the said orders, while holding that there was deficiency in service on the part of the Petitioners in charging VAT from the Complainants on the ‘FLAT’ discounted prices of the said products, as announced in the advertisements putting these items on ‘SALE’, the District Forums partly allowed the Complaints and directed the Petitioners to refund the said extra amount(s) to the Complainants, besides paying

compensation, ranging between ₹2,000/- to ₹5,000/-, and litigations costs, between ₹1,000/- to 2,500/-. In some of the Complaints, the District Forums had awarded interest @ 9% p.a. on the amount(s) to be refunded to the Complainants from the date of filing of the Complaints till realization with enhanced rate of interest @ 12% p.a. as default stipulation, if the orders were not complied within one month.

3. Since the issue involved; reliefs prayed for by the Complainants and granted by the Fora below are identical, and all the Appeals preferred by the Petitioners have been disposed of by the State Commission by a common order, all these Revision Petitions, having more or less similar facts, are also being disposed of by this order. However, for the sake of convenience, Revision Petition No. 3477 of 2016 is treated as the lead case and, accordingly, the facts of that case are being taken as illustrative.

4. On 26.01.2016, the Complainant purchased a 'GMT Men Jacket' from Petitioner's outlet. The MRP shown on the sticker was ₹3,995/-. After deducing ₹1,598/- as discount @40% and adding to the discounted price, VAT @ 5%, amounting to ₹119.85, the Complainant was asked to pay ₹2,517/- as cost for the said Jacket. Since the amount, so demanded, resulted in a discount less than "Flat" 40% of the stated MRP, the Complainant protested. His complaint was rejected by the Petitioner on the ground that as per the terms and conditions (T & C) of the SALE, VAT had been charged extra as per the instructions of the parent company. Realizing that by advertising at large that the items in the store were being offered at a "FLAT" 40% discount, which in the final analysis was much less, the Consumers were being duped by the Petitioner by adopting such unfair trade practice, alleging deficiency in service on its part, the Complainant filed the Complaint before the District Forum. The Complainant had prayed for a direction to the Retailer to refund to him the aforesaid sum of ₹119.85, illegally charged as VAT, besides paying a further sum of ₹5,000/- towards mental agony and harassment.

5. Upon notice, the Petitioner contested the Complaint, by filing its Written Version. While denying any unfair trade practice on its part, it was pleaded that it had floated a scheme offering 'Woodland' products on 50% discount on the MRP (Maximum Retail Price) in Chandigarh, subject to payment of VAT extra; the goods had been sold by it for a price as per the discount scheme; the allegation made by the Complainant that it had illegally charged VAT from him was without any basis; the moment a purchaser availed of the scheme, he was out of the ambit of MRP, which served only the basis for calculation of net sale consideration subject to payment of VAT; the display board and advertisement had clearly made it public that 40% to 50% discount was only for allowing the reduction but it was subject to payment of VAT; the Complainant failed to understand the difference between the MRP on fresh stock and under the discount scheme for clearance; the sale bill itself indicated both the elements, viz, the rebate and charging of VAT; the concept of MRP is applicable only on fresh stocks and not on sales at discounted price and that it had rightly charged VAT as per the charging Section of the State VAT Act and had deposited the same with the concerned Authority.

6. On analysis of the evidence adduced by the parties before it, the District Forum found force in the submission made by the Complainant and consequently, while partly allowing the Complaint, directed the Petitioner to refund to the Complainant the amount of ₹119.85 p. illegally charged as VAT, besides paying ₹5,000/- as compensation for mental agony and harassment and ₹2,000/- as litigation costs, with the aforesaid default stipulation observing

thus:-

> *"   If we read this display board with 40% off having VAT extra, then also it is not possible to make out by a prudent man that the VAT was to be paid on the concessional price also. Since the MRP includes the VAT, so one could easily understand that the VAT was already paid. Hence, this advertisement of 40% off is misleading. One cannot reach at the conclusion that VAT extra was also to be given on 40% off price or 60% of the price. Had the OP specifically mentioned that extra VAT shall have to be paid after 40% off price or concessional price, in that situation it could be argued on behalf of the OP that the complainant was duly informed about charging of the extra VAT. This display of 40% off with VAT extra itself is misleading and leads the customer nowhere. Display of such type of misleading advertisement/notice boards by the OP amounts to unfair trade practice on its part. Thus, the OP were not liable to charge the extra VAT as the MRP of Rs.3,995/- already included the VAT @ 5%. Concessional price amounting to Rs.2,397/- also included 5% VAT. When 40% amount is deducted from the MRP (inclusive of VAT), balance 60% amount of Rs.2,397/- also included VAT. For example, in case MRP of a goods is Rs.100/- inclusive of 5% VAT i.e. Rs.5/-, in that situation the price of goods would be Rs.95/- excluding VAT. If 50% off is given on Rs.95/- the balance amount would come as Rs.47.50 and if 5% VAT is added on the said amount i.e. Rs.2.38, the total amount would come as Rs.49.88 say Rs.50/-. But, in case the MRP is taken as Rs.100/- and 50% off is given on the same, then the balance price would be Rs.50/- and in that case if again VAT @5% is charged on Rs.50/-, the total price would be Rs.52.50 and in that situation extra VAT would be charged. Similar is the position in the present case. Firstly the VAT was included in the MRP and then after giving concession of 40%, on the balance sale price which already included the VAT amount, again 5% VAT was charged which clearly amounts to unfair trade practice."* ***(Emphasis supplied)***

7. Aggrieved, all the Petitioners herein, carried the matter further in their respective Appeals to the State Commission. On re-appreciation of the material placed on record, the State Commission relying on a number of its earlier decisions on the issue, concurred with the District Forum. The State Commission has also observed that once it has come on record that the MRP of the product includes all taxes, it was not open for the trader to impose VAT again on the discounted price. Consequently, as afore-noted, the State Commission has dismissed all the Appeals.

8. Hence, the present Revision Petitions.

9. We have heard Mr. Rajesh Mahna, Learned Counsel appearing for the Petitioners. The main thrust of the submissions made by the Learned Counsel is that having charged VAT strictly as per the provisions of the State VAT Act and Legal Meteorology Act, the Fora below was not justified in holding that the Petitioners had indulged in unfair trade

practice and there was deficiency in service on their part in charging VAT on the discounted price.

10. Having perused the documents on record, including the publicity material, announcing the sale, declaring “Flat* 40% OFF” on Woodland Shoes and Apparels, as also the invoice, referred to above, we are of the view that the Petitions are without any substance.

11. 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.?

12. 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:-
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> (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;”

13. 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:-

14. In our opinion, the advertisement in the above form is nothing but an allurement 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.

15. In view of the above, we do not find any jurisdictional error in the impugned order warranting interference in our limited Revisional Jurisdiction. Resultantly, all the Revision Petitions fail and are dismissed accordingly.

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D.K. JAIN
PRESIDENT

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M. SHREESHA
MEMBER