

COMPETITION COMMISSION OF INDIA

M RTP CASE RTPE NO. 20 OF 2008

16th January, 2013

In re:

All India Tyre Dealers' Federation
Tyre Manufacturers

Informant
Opposite Parties

ORDER UNDER SECTION 38 OF THE COMPETITION ACT, 2002

1. This application has been made on behalf of the Opposite Party, i.e., Automotive Tyre Manufacturers' Association ("**Applicant**") under Section 38(2)(b) of the Competition Act, 2002 ("**Act**") for rectifying a mistake apparent in the Order dated October 30, 2012 ("**Order**").
2. It is submitted by the Applicant that the Order was passed under Section 27 of the Act holding that there was insufficient evidence for a violation of the Act by the opposite parties. It is further submitted by the Applicant that provisions of Section 27 of the Act provide for certain orders that can be passed by the Commission where after inquiry the Commission finds that there is a contravention of Section 3 or 4 of the Act and therefore the Order cannot correctly be made under Section 27 of the Act since the Commission has exonerated the opposite parties of the violation, and therefore a correction of the Order needs to be made under Section 38 of the Act.
3. The provisions of Section 38 of the Act read as follows:

38. Rectification of orders.-

(1) With a view to rectifying any mistake apparent from the record, the Commission may amend any order passed by it under the provisions of this Act.

(2) Subject to the other provisions of this Act, the Commission may make-

(a) an amendment under sub-section (1) of its own motion;

(b) an amendment for rectifying any such mistake which has been brought to its notice by any party to the order.

Explanation.- For the removal of doubts, it is hereby declared that the Commission shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

Thus, under Section 38(2)(b) of the Act, any order of the Commission may be rectified to correct a mistake which is apparent from the record and which has been brought to its notice by any party to the order.

4. In order determine whether the application has any merit, we must look at the provisions of Section 27 of the Act, which reads as follows:

27. Orders by Commission after inquiry into agreements or abuse of dominant position

Where after inquiry the Commission finds that any agreement referred to in section 3 or action of an enterprise in a dominant position, is in contravention of section 3 or section 4, as the case may be, it may pass all or any of the following orders, namely:-

(a) direct any enterprise or association of enterprises or person or association of persons, as the case may be, involved in such agreement, or abuse of dominant position, to discontinue and not to re- enter such agreement or discontinue such abuse of dominant position, as the case may be;

(b) impose such penalty, as it may deem fit which shall be not more than ten per cent. of the average of the turnover for the last three preceding financial years, upon each of such person or enterprises which are parties to such agreements or abuse: [Provided that in case any agreement referred to in section 3 has been entered into by a cartel, the Commission shall impose upon each producer, seller, distributor, trader or service provider included in that cartel, a penalty of up to three times of its profit for each year of the continuance of such agreement or ten per cent of its turnover for each year of the continuance of such agreement, whichever is higher];

(c) [Omitted by Competition (Amendment Act), 2007];

(d) direct that the agreements shall stand modified to the extent and in the manner as may be specified in the order by the Commission;

(e) direct the enterprises concerned to abide by such other orders as the Commission may pass and comply with the directions, including payment of costs, if any;

(f); [Omitted by Competition (Amendment Act), 2007];

(g) pass such other order or issue such directions as it may deem fit.

[Provided that while passing orders under this section, if the Commission comes to a finding, that an enterprise in contravention to section 3 or section 4 of the Act is a member of a group as defined in clause (b) of the Explanation to section 5 of the Act, and other members of such a group are also responsible for, or have contributed to, such a contravention, then it may pass orders, under this section, against such members of the group]

5. It is clear from a plain reading of Section 27 that orders under Section 27 can only be passed where after inquiry, the Commission finds a contravention of Sections 3 or 4 of the Act. Since in the present case, no contravention of either Sections 3 or 4 was found by the Commission after inquiry, the Order in question cannot be made under Section 27 of the Act.
6. The Commission is therefore of the opinion that this is a fit case for rectification of the Order and hereby directs that the title of the Order be amended to ‘ Final Order ’ and not ‘Order under section 27 of the Competition Act, 2002’
7. The Secretary is directed to communicate this order as per regulations to all the parties.

(H.C. Gupta)
Member

(M.L. Tayal)
Member

(Justice S.N Dhingra [Retd.]
Member

(Ashok Chawla)
Chairperson