



COMPETITION COMMISSION OF INDIA

06.11.2018

Case No. 65 of 2014

In Re:

M/s Alis Medical Agency

Informant

And

**Federation of Gujarat State Chemists and Druggists
Association and Others**

Opposite Parties

Case No. 71 of 2014

M/s Stockwell Pharma

Informant

And

**Federation of Gujarat State Chemists and Druggists
Association (Federation) and Others**

Opposite Parties

Case No. 72 of 2014

M/s Apna Dawa Bazar

Informant

And

**Federation of Gujarat State Chemists and Druggists
Association and Others**

Opposite Parties

Case No. 68 of 2015

Reliance Medical Agency

Informant

And

**The Chemists and Druggists Association of Baroda (CDAB)
and Others**

Opposite Parties



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ORDER

1. In the instant matter, the Commission passed an order dated 12.07.2018, under Section 27 of the Act, whereby monetary penalty was imposed upon the Opposite Parties, except for Cadila Healthcare Ltd. and M/s Rimi Distributors, pursuant to an appeal (LPA 160/2018) filed by them before the Division Bench of the Hon'ble Delhi High Court, against the order of the Single Judge of the Hon'ble Delhi High Court, dated 09.03.2018. *Vide* order dated 12.09.2018, the Division Bench of the Hon'ble Delhi High Court has disposed of the appeal partly in favour of the appellants, *i.e.*, Cadila Healthcare Ltd. and M/s Rimi Distributors.
2. On 10.09.2018, the Federation of Gujarat State Chemists and Druggists Association ('Federation') and Shri Jashvant Patel seeking review and rectification of the order dated 12.07.2018, stating that there was an incorrect assessment of penalty amount and objecting to the financial years which were taken as the basis of imposition of penalty upon them, and accordingly requested for a reassessment. The aforesaid parties also requested for an opportunity to advance their rebuttal to the arguments of the other Opposite parties. On 11.10.2018, the Commission considered the application and decided to hear them on 30.10.2018.
3. Further, the Federation was directed to file its audited financial statements including balance sheets and profit & loss accounts for the financial years 2014-15 and 2015-16 by 25.10.2018. Shri Jashvant Patel was also directed to file his income details including income tax returns for the financial years 2014-15 and 2015-16 by 25.10.2018.
4. On 30.10.2018, the learned counsel for the Federation and Shri Jashvant Patel appeared before the Commission and pressed for review and rectification of the order dated 12.07.2018. He argued that the order of the Commission dated 22.05.2018 specifically mentioned that the matter will be listed on a future date and while they were waiting for an opportunity for



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rebuttal, which was orally requested by them, final order dated 12.07.2018 was passed by the Commission. The learned counsel further argued that since the Commission has allowed cross-examination request of Cadila Healthcare Pvt. Ltd. and M/s Rimi Distributors, he may also be allowed to submit arguments on behalf of the Federation and Shri Jashvant Patel when the matter is listed for hearing Cadila Healthcare Pvt. Ltd. and M/s Rimi Distributors. Lastly, he challenged the penalty calculation by the Commission. It was argued that the Commission had already imposed a monetary penalty on the Federation and Shri Jashvant Patel in an earlier matter, *i.e.* Case No. 97 of 2013, for the same financial years (2011-12, 2012-13 and 2013-14) for which penalty has been imposed upon them in the present matter and thus, such penalty imposition has led to double jeopardy. It was further argued that the penalty amount arrived at by the Commission in the present matter is different from that of Case No. 97 of 2013, despite usage of same financial years as the basis of calculation.

5. The Commission, however, observed that the hearing in the present matter took place on five different days, *viz.* 16.01.2018, 17.01.2018, 08.03.2018, 10.04.2018 and 22.05.2018, where parties were sequentially heard. The arguments on behalf of Federation and Shri Jashvant Patel were concluded on 17.01.2018 which was specifically recorded in the daily order bearing the said date. Thereafter, on 08.03.2018, 10.04.2018 and 22.05.2018, the Commission heard the other parties. On 22.05.2018, the Commission finished hearing all the parties except Cadila Healthcare Pvt. Ltd. and M/s Rimi Distributors because of the pending Letter Patents Appeal (LPA 160/2018) filed by them before the Hon'ble Delhi High Court. Those parties, including the Federation and Shri Jashvant Patel, were also given an opportunity to file their brief synopsis on the oral arguments already made by them during the course of the hearing. Thereafter, the Commission specifically recorded in the order that '*[w]ith regard to Cadila Healthcare Pvt. Ltd. and M/s Rimi Distributors..... the Commission directed that the matter be relisted to a later date*'.



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6. In view of all these observations, the Commission rejected the argument of the learned counsel for the Federation and Shri Jashvant Patel that they were denied an opportunity of further hearing for rebuttal.
7. With regard to the plea regarding incorrect calculation of penalty, the Commission, in its order dated 30.10.2018, noted that despite repeated directions and reminders sent on 20.06.2017, 12.12.2017, 08.03.2018 and 10.04.2018, the Federation as well as Shri Jashvant Patel did not file their financial statement/ITRs for the years 2013-14, 2014-15 and 2015-16 which were asked for. Thus, while passing the final order dated 12.07.2018, the Commission considered the financial statements submitted by them before the DG during investigation and accordingly penalty was imposed upon them based on the financial statements pertaining to the years 2011-12, 2012-13 and 2013-14. This, in Commission's considered view did not amount to double jeopardy as the period of investigation and contravention in the present matter was found to be different from that of Case No. 97 of 2013. The Commission further clarified that the imposition of penalty under Section 27 of the Act in the present case was triggered by a finding of contravention for a period different from the period for which contravention was found in case No. 97 of 2013. Merely because the financial statements of the same years were used for calculation of penalty does not result into double jeopardy. The learned counsel representing the Federation and Shri Jashvant Patel was also explained the reason for difference in the gross income and penalty calculated by the Commission in the present matter as compared to that imposed in Case No. 97 of 2013. Based on these observations, the Commission disposed of their plea with regard to incorrect calculation of penalty.
8. In the said order, the Commission once again directed the Federation as well as Shri Jashvant Patel to file their financial details/ITRs, as the case may be, for the years 2014-15 and 2015-16 within a week of the receipt of this order, to avoid consequences under Section 43 of the Act.



9. In view of the said directions, the Federation as well as Shri Jashvant Patel filed their financial statements/ITRs for the financial years 2014-15 and 2015-16 *vide* email dated 01.11.2018 and 03.11.2018, respectively.
10. Today, with the permission of the Chair, the aforesaid financial statements/ITRs were placed before the Commission. The Commission noted that the Federation as well as Shri Jashvant Patel has prayed for a rectification of the order and *inter alia* has pointed out that the Commission has imposed penalty on them by taking financial statements/ITRs for the years 2011-12, 2012-13 and 2013-14, while recent financial years (*i.e.* 2013-14, 2014-15 and 2015-16) have been considered for the other OPs. In view of the said plea and for maintaining parity, the Commission decided to re-calculate their penalties on the basis of recent three financial statements/ITRs submitted by them (2013-14, 2014-15 and 2015-16), applying the same percentage that was decided by the Commission in its order dated 12.07.2018 *i.e.* 10%. Accordingly, in terms of the provisions of Section 38 of the Act, the penalties imposed upon them *vide* order dated 12.07.2018 stands rectified as provided in the table below:

Income of Federation/OP-1 and Shri Jashvant Patel (in Rupees)

Year	Federation/OP-1	Shri Jashvant Patel
2013-14	71,17,633	8,59,327
2014-15	53,85,321	11,03,600
2015-16	43,95,275	11,48,083
Total	1,68,98,229	31,11,010
Average	56,32,743	10,37,003
10% of Average Income	5,63,274	1,03,700

11. The Federation and Shri Jashvant Patel are directed to deposit the amount of penalty within 60 days of the receipt of this order.



12. The Secretary is directed to inform all concerned accordingly.

**Sd/-
(Augustine Peter)
Member**

**Sd/-
(U. C. Nahta)
Member**

**Sd/-
(Sudhir Mital)
Chairperson**