



**COMPETITION COMMISSION OF INDIA**

**Case No. 69 of 2015**

**In Re:**

- 1 M/s Taj Pharmaceuticals Ltd.**  
**B-134, Oshiwara Industrial Center,**  
**Link Road, Goregaon (W), Mumbai - 400104** **Informant No. 1**
- 2 Dr. Ranvir Kumar Singh**  
**Chairman, M/s Taj Pharmaceuticals Ltd.** **Informant No. 2**
- 3 Shri Abhishek Ranvir Kumar Singh**  
**Director, M/s Taj Pharmaceuticals Ltd.** **Informant No. 3**

**And**

- 1 The Department of Sale Tax/ Professional tax**  
**8<sup>th</sup> Floor, E Wing, New Vikrikar Bhavan,**  
**Old Nesbit Road, Sardar Balwant Singh Dodhi Marg,**  
**Mazgaon, Mumbai - 400010** **Opposite Party No. 1**
- 2 Juhu Police Station**  
**Mumbai, Maharashtra** **Opposite Party No. 2**

**CORAM:**

**Mr. Ashok Chawla**  
**Chairperson**

**Mr. S. L. Bunker**  
**Member**



**Mr. Sudhir Mital**  
**Member**

**Mr. Augustine Peter**  
**Member**

**Mr. U. C. Nahta**  
**Member**

**Mr. M. S. Sahoo**  
**Member**

**Justice (Retd.) G. P. Mittal**  
**Member**

**Order under section 26(2) of the Competition Act, 2002**

1. The information in the present case has been filed by M/s Taj Pharmaceuticals Ltd. (hereinafter the '**Informant No. 1**'), Dr. Ranvir Kumar Singh (hereinafter the '**Informant No. 2**'), and Shri Abhishek Ranvir Kumar Singh (hereinafter the '**Informant No. 3**') under section 19(1)(a) of the Competition Act, 2002 (hereinafter the '**Act**') against the Department of Sale Tax/ Professional Tax, Government of Maharashtra through its Commissioner (hereinafter, the '**Opposite Party No. 1**'/ '**OP 1**') and Juhu Police Station, Mumbai through its Senior Inspector (hereinafter, the '**Opposite Party No. 2**'/ '**OP 2**') alleging, *inter alia*, contravention of the provisions of section 4 of the Act in the matter.
2. As per the information, the Informant No. 1 is a company registered under the Companies Act, 1956 and the Informant No. 2 is its Chairman and the Informant No. 3 is one of its Directors (for the sake of brevity and simplicity of analysis, collectively hereinafter referred to as the '**Informant**'). The Informant has claimed to be the owner of eighteen registered companies of which only two



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companies namely, M/s Taj Pharmaceuticals Ltd. and M/s Ekalvyia Health Care Pvt. Ltd. are in operation and subject to payment of professional taxes under the 'Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975' (hereinafter, '**Professional Tax Act, 1975**'). As per the Informant, it has been paying professional tax to OP 1 with respect to its companies M/s Taj Pharmaceuticals Ltd. and M/s Ekalvyia Health Care Pvt. Ltd and has submitted the tax receipts with respect to the same for the year 2011, 2012 and 2014.

3. It is submitted that the Informant has received a notice from OP 1 on 30.11.2013, served by two of its officials namely, Mr. P. D. Sable, Professional Tax Officer and Mr. Ramakant Kakde, Inspector. As per the said notice the Informant was required to show cause to OP 1 why a penalty, not exceeding Rs. 5/ Rs. 2 for each day of delay, should not be imposed on it for its failure to apply for a certificate of registration/ enrolment within the required time under the Professional Tax Act, 1975 for its company M/s Ekalvyia Health Care Pvt. Ltd. which is located at B-406, Crystal Plaza, Link Road, Andheri East, Mumbai. Further, through the said notice the Informant was asked to appear in the office of OP 1 on 06.12.2013. As per the Informant, it has already registered M/s Ekalvyia Health Care Pvt. Ltd. with OP 1 under the Professional Tax Act, 1975 and has already paid the required tax to OP 1. The Informant has alleged that the said notice was served to it by OP 1 with malafide intention.
4. As per the information, the Informant was again served a notice by Mr. Ramakant Kakde, Inspector of OP 1 on 13.12.2013 asking it to register all its eighteen companies under the Professional Tax Act, 1975. It is submitted that the Informant has been paying tax under the said Act for its companies M/s Taj Pharmaceutical Ltd. and M/s Ekavlaya Health Care Pvt. Ltd. which are in operation and has not paying tax for the remaining sixteen companies which are not in operation and even do not have a bank account. As per the Informant, since it is not liable to pay tax under the Professional Tax Act, 1975 for its sixteen



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companies which are not operational, the said notices by OP 1 were totally uncalled for.

5. It is averred that an FIR No. 457/2013 dated 16.12.2013 was lodged against the Informant by OP 1 at Juhu Police Station, Mumbai (*i.e.*, OP 2) on false and baseless allegations of non-fulfilment of illegal, habitual demand of the said officials of OP 1. As per the Informant, since the said FIR was lodged as an afterthought and based on malafide intention and there was an unexplained gap of three days between the event of the alleged altercation between Mr. Ramakant Kakde, Inspector of OP 1 and the Informant; the same should be quashed. The Informant has requested that the alleged act of OP 1 needs investigation by the Director General ('DG') as the said act of OP 1 completely ruins its company. The Informant has submitted that there was no such incident of altercation as highlighted by OP 1 in the FIR, as revealed from the CCTV footage provided to the investigating authority.
6. It has been stated that the Informant has made an unsuccessful attempt to get anticipatory bail against the said FIR from the Hon'ble High Court and the Supreme Court of India. As per the Informant, OP 2 has also filed the charge sheet/ final report in the matter before the Court of Metropolitan Magistrate, Mazgaon, Mumbai making a case against the Informant. The Informant has refuted certain charges reported in the final report regarding the said incidence and also highlighted its counter arguments for the same.
7. Based on the above, the Informant has alleged that OP 1, *inter alia*, has abused its dominant position in issuing notices and registration of FIR in violation of the provisions of section 4 of the Act. The Informant has prayed to initiate investigation under section 26(1) of the Act and to fix an appropriate penalty for the above said act. The Informant has also prayed for interim relief in the matter under the provisions of section 33 of the Act.



8. The Commission has perused the information filed by the Informant and material available on record. From the facts of the case it is revealed that the Informant is primarily aggrieved by the conduct of OP 1 in issuing notices to the Informant for registration and payment of tax under the Professional Tax Act, 1975 for its sixteen companies which are not operational and registration of FIR against it for the alleged altercation between one of the official of OP 1 and the Informant. The Informant has alleged that OP 1 has abused its dominant position in contravention of the provisions of section 4 of the Act.
9. Before proceeding to determine whether the alleged conduct of OP 1 is abusive in terms of section 4 of the Act or not, the primary issue that arise is whether OP 1 falls within the definition of ‘enterprise’ in terms of section 2(h) of the Act. To determine this question, it would be pertinent to highlight the provisions of section 2(h) of the Act, as laid down below:

*“‘enterprise’ means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space”.*



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10. For the purposes of ascertaining whether an entity is an enterprise or not within the meaning of section 2(h) of the Act, it is essential to examine the nature of the activity undertaken by the entity. Further, the assessment of whether an entity is an 'enterprise' or not is to be done based on the activity of the entity under consideration and the facts of the case.
  
11. The Commission observes that OP 1 is a department of the Government of Maharashtra. The activity of OP 1 under consideration in the instant case pertaining to the sovereign function undertaken by OP 1 as stated in Article 276 of the Constitution of India which deals with 'taxes on professions, trades, callings and employments' wherein State Governments have given power to legislate for taxes in respect of professions, trades, callings or employment for the benefit of the State. By performing the said activity OP 1 is merely carrying out the sovereign function of the Government and as such is not engaged in any economic activity to be covered within the definition of an enterprise, given the facts of the present case. Hence, the Commission is of the view that the nature of the activities undertaken by OP 1 do not fall within the ambit of section 2(h) of the Act. Since, OP 1 is not an enterprise in terms of the provision of section 2(h) of the Act, the alleged abusive conduct of OP 1 need not be examined under the provisions of section 4 of the Act.
  
12. Further, the Commission observes that it is not germane to go into the grievances of the Informant arising out of lodging of FIR, subsequent filing of charge sheet and other related issues as these do not involve any question having a bearing on competition in the market and appropriate forum exists for the redressal of these issues. The 'Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975' also provides appellate remedy if a person is aggrieved.
  
13. In light of the above analysis, the Commission finds that no *prima facie* case of contravention of the provisions of section 4 of the Act is made out against the



Opposite Parties in the instant matter. Accordingly, the matter is closed under the provisions of section 26(2) of the Act.

14. The Secretary is directed to inform the parties accordingly.

**Sd/-**  
**(Ashok Chawla)**  
**Chairperson**

**Sd/-**  
**(S. L. Bunker)**  
**Member**

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

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

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

**Sd/-**  
**(M. S. Sahoo)**  
**Member**

**Sd/-**  
**(Justice (Retd.) G. P. Mittal)**  
**Member**

**New Delhi**  
**Date:29.09.2015**