CASE NO.:
Appeal (crl.) 207 of 2002

PETITIONER:
M/s.Holani Auto Links Pvt. Ltd

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 29/04/2008

BENCH:
C.K. Thakker & Tarun Chatterjee

JUDGMENT:
J U D G M E N T
CRIMINAL APPAEL NO.207 OF 2002

TARUN CHATTERJEE,J.

1. This appeal is directed against the judgment and order dated 3rd of May, 2001 of the High Court of Madhya Pradesh at Jabalpur in Criminal Revision No.890 of 2000 whereby the High Court had set aside an order dated 26th of February, 2000 passed by the Sessions Judge, Sagar, M.P. in Criminal Appeal No.184 of 1999 who in his turn had set aside an order dated 20th of December, 1999 passed by the Collector, Sagar in so far as he proceeded to include M/s. Holani Auto Links Pvt. Ltd. (in short the "Appellant Company.") within the definition of "Dealer" as contained in Clause 2(a) of the M.P. Essential Commodities (Exhibition of Price & Price Control) Order, 1977 (in short the "Order of 1977") and held them guilty for violating Clauses 3(1) to 3(3) and 6(1) of the Order of 1977.

2. Brief facts leading to the filing of this appeal are as follows.
The Appellant Company was appointed as a Distributor by Castrol India Ltd. (in short the "manufacturing company") by entering into an agreement dated 1st of June, 1998. On 27th of May, 1999, a team headed by Deputy Collector, Food Department, Sagar, M.P. came to the office premises of the appellant company for inspection and asked for the records and various registers and the lists. Before the Deputy Collector and the Members of the Food Department, Sagar, the representative of the appellant company had explained that it was only a Distributor and therefore was not required to maintain all those lists and other things. However, the Deputy Collector and his team seized around 33344.80 litres of lubricating oil stored in the premises of the appellant company. The value of the oil was worth Rs.2,01,840/-. On the basis of such inspection, the Collector, Sagar on 2nd of June, 1999 issued a show cause notice to the appellant company and thereafter evidence from both the sides were adduced and

the Collector by his order dated 20th of December, 1999 found that the appellant company had violated Clauses 3(1) to 3(3) and 6(1) of the Order of 1977 and, accordingly, he ordered confiscation of the commodities worth Rs.1,00,000/- out of the commodities seized from the possession of the appellant company under Section 6(a) of the Essential Commodities Act, 1955. In the alternative, it was directed that in case the appellant company wanted the release of the commodities worth Rs.1,00,000/-, it may deposit Rs.1,00,000/- instead and get the release of the entire stock of oil. Feeling aggrieved, the appellant company filed an appeal under Section 6-C of the Essential Commodities Act, 1955 before the Sessions Judge, Sagar. The learned Sessions Judge, Sagar by the order dated 24th of February, 2000 had set aside the order of the Collector and allowed the appeal of the appellant company holding that the appellant company was not covered by the definition of "Dealer" under the Order of 1977 and accordingly, it was neither liable to exhibit the price nor was it required to keep the accounts. Feeling aggrieved by this order of the Sessions Judge, Sagar, the State of M.P. filed a Criminal Revision No.890 of 2000 before the High Court and the High Court by the impugned judgment and order dated 3rd of May, 2001 had allowed the revision case thereby setting aside the order of the Sessions Judge and restoring the order of the Collector, Sagar. Against this decision of the High Court, a special leave petition has been filed in respect of which leave has already been granted.

3. From the factual matrix and in view of the arguments advanced before us, the following questions need to be decided in this appeal.

(1) Whether the appellant company would fall within the definition of ’Dealer’ as contained in Clause 2(a) of the Order of 1977.

(2) Whether the appellant company has violated Clauses 3(1) to 3(3) and 6(1) of the Order of 1977.

4. Before we answer these questions, it is expedient to give a brief narrative pertaining to the Order of 1977 and the relevant provisions contained there under.

The State Government promulgated the Order of 1977 with the prior concurrence of the Central Government in the exercise of its powers conferred by Section 3 of the Essential Commodities Act, 1955 (10 of 1955).

In 1998, certain amendments were made in the Order of 1977. Prior to the amendment of 1998, Clause 2(a) defined ’Dealer’ as under: -

"Dealer means a person who carries on the business of selling by retail or wholesale or storing for sale by retail or wholesale any commodity, whether or not such business is

carried on in addition to any other business, but does not include a hawker or peddler or an oil company, storage depot or installation wherefrom no sales are made to made to general public"

The amended definition of the term 'Dealer' now reads as under: -
"Dealer means a person (except the exceptions mentioned below under this clause) who carries on the business of purchase, sale, or storage for sale, or processing or manufacturing any of the following essential commodities: -

i. \005\005.
ii. \005\005.
iii. \005\005.
iv. \005\005.
v. \005\005.
vi. If dealing with engine oil at any time in more than 5 (five) kilolitres.

Exceptions.- Following persons or categories of persons are not included in the above definition of dealer: -
i. \005\005
ii. Any oil company producing or storing Kerosene, Diesel (High Speed Oil), Petrol (Motor Spirit), cooking gas, or engine oil in its storage depot or installation wherefrom no sales are made to general public.
iii. \005\005"

We keep it on record that the decision of this appeal shall practically rest on the interpretation of the amended definition of the term 'Dealer' and the 2nd exception to it as noted hereinabove. We will examine this definition more elaborately a little later. The other relevant provisions, which would be required in this appeal are Clauses 3(1), 3(2), 3(3) and Clause 6(1).
Clause 3 reads as under: -
3. Exhibition of Price List.-
(1) Every dealer shall exhibit at the entrance or some other prominent place of his business premises the price list of essential commodities held in stock by him for sale.

(2) The price list shall-
(a) indicate separately the prices of different categories or varieties of essential commodities;
(b) bear the signature of the dealer; and
(c) be legibly written in Hindi language and devnagari script.

(3) Every dealer shall prominently exhibit a separate list showing the stock of different categories or varieties of essential commodities held by him at the end of the day preceding."

Clause 6(1) of the Order of 1977 is another relevant provision and was also amended in the year 1998. The amended Clause 6(1), which would be required in this case reads as under: -
"6. Every dealer shall maintain proper accounts of the purchase and sale of essential commodity showing the price of purchase, price of sale as the transactions take place, and the balance in stock on each day on the close of the day."

5. Keeping these provisions in mind, let us now take up the first question, as noted herein earlier, for our consideration.
The learned senior counsel for the appellant company Mr. V.A. Mohta vehemently argued before us that the appellant company was appointed as a Distributor by the manufacturing company through a written agreement, which clearly prohibited sale of the commodity by the appellant company. The manufacturing company was the manufacturer of Castrol Oil, which is used as Engine Oil and the appellant company was keeping the commodities at the instance of the manufacturing company. Our attention was drawn to clause 10(a) of the agreement, which provides that the Distributor, being the appellant company herein, shall not trade in the company's product as a 'Dealer' by itself or through anyone else. Accordingly, the learned senior counsel Mr. Mohta submitted that the High Court had erred in holding that the appellant company was a 'Dealer' when in fact, the appellant company was only the Distributor who was prohibited to trade in the company's product as a 'Dealer' either by itself or through anyone else. The learned senior counsel further argued that the appellant company was merely storing the material on behalf of the manufacturing company without making any sales to the general public. Accordingly, he argued that the appellant company would come within the 2nd exception to the definition of 'Dealer' and that the High Court had erred in interpreting the definition of the term 'Dealer' and the 2nd exception to it thereby holding that the appellant company does not fall within the purview of the said exception. Mr. Mohta further argued that the word "its" as used in the 2nd exception to the definition of 'Dealer' should be given a liberal interpretation in favour of the appellant company. In support of this contention, he relied on a decision of this court in the case

of Charan Lal Sahu Vs. Union of India [(1990) 1 SCC 613]. Relying on this decision, Mr. Mohta contended that a liberal approach should be adopted while interpreting the word "its" appearing in the 2nd exception to the definition of 'Dealer' under Clause 2(a) of the Order of 1977 and accordingly, the appellant company should also be given the benefit of this exception. Reliance was also placed in this connection on the decision of this court in the case of Bangalore Water Supply & Sewerage Board Vs. A. Rajappa and others [(1978) 2 SCC 213].

These contentions of Mr. Mohta were contested by the learned counsel appearing on behalf of the respondent who submitted before us that on a plain reading of the definition of 'Dealer' and the 2nd exception to it, it is evident that the exception is applicable only to the oil company and to no one else.

6. Before we deal with this issue as posed by the learned counsel for the parties, we may now look at the findings of the High Court on this issue, which are as under: -

"It cannot be disputed that the respondent company was stocking the Castrol engine oil for sale under an agreement. The Castrol India Ltd. was the manufacturer of the engine oil and it has sent the oil for storage with the respondent- company so that it can be sold to various dealers. Once this fact is realized and it is not disputed that the quantity of the oil was more than five kilolitres, the respondent-company shall be deemed to be covered by the main part of the definition of "dealer". The only way the respondent-company could escape the clutches of the definition of "dealer" is by relying on exception (2) of Clause 2(a) of the Order of 1977 which has been reproduced above. The question, therefore, is whether the learned Govt. Advocate is right in saying that the exception is confined only to the oil company mentioned therein or would it cover the case of the present respondent-company which is the distributor under an agreement on behalf of the company. It cannot be disputed that the agreement shows that from the storage depot or the installation of the respondent-company, no sale is made to the general public. The respondent-company had undertaken in its agreement not to make a sale of the essential commodities stored with it to the general public. It

is, thus, clear that the intention was not to make any sale from the depot or installation of the respondent-company to general public. However, the use of the words "in its storage depot or installation" have to be interpreted. Obviously, the storage depot or installation of the respondent-company does not belong to the Castrol Company. Therefore, strictly speaking the respondent-company is not covered by exception to the definition of "dealer" given in the Order of 1977.

It has been further contended on behalf of the respondent-company that spirit of the entire order is to control the prices of a commodity and the exhibition of the prices required to be made under the order is for the purpose that a customer must get the correct value of the commodity covered by the Order of 1977. Therefore, an extended meaning should be given to the exception particularly when its violation is confiscatory in nature.

It is very difficult to accede to this contention for the reason firstly that the respondent-company is relying on an exception to the definition of "dealer". It must fall strictly within the exception. Secondly, the intention of the legislature is very clear by enacting exception 2 to Clause 2(a) of the Order of 1977. It meant only to except the oil company producing or storing the commodities mentioned in the exception. No other person was meant to be covered by the exception. The respondent is not an oil company. Otherwise, the definition of "dealer" is quite broad. It may be that the persons like the present respondent should be exempted from operation of the order in case they do not sell the oil to general public, but the legislature in its wisdom has not done so. This court cannot fill in the gap by giving an altogether different meaning to the exception which is not manifested by it. The use of the words "engine oil in its storage depot or installation wherefrom no sales are made to the general public" refer to the Oil

Company. This is clear by the use of the word "its". The contention of the learned counsel for respondent that this court should mitigate a rigour of definition by reading it down to include a "dealer" like the respondent-company cannot be accepted."

Let us now look at the ingredients of the definition of 'Dealer' as contained in Clause 2(a).
A dealer means a person who carries on the business of: -

1) purchase, or
2) sale or ;
3) storage for sale; or
4) processing; or
5) manufacturing.
6) If dealing with engine oil at any time in more than 5 (five) kilolitres.

7. Having examined the findings of the High Court in the impugned judgment in the light of the definition of 'Dealer' and the 2nd exception to it, as reproduced herein earlier, we agree with the views expressed by the High Court that the appellant company falls within the definition of 'Dealer' and will not be saved from the rigor of the provisions by taking shelter of the 2nd exception to it. Let us first see if the appellant company is covered by the main part of the definition of 'Dealer'. As noted hereinabove, for this, a person must carry on the business of purchase or sale of commodities etc. From the above definition, it also emerges that mere storage will not suffice so as to fall within the definition of 'Dealer'. The storage must be for sale as is clear from the expression 'storage for sale'. In this case, the learned senior counsel for the appellant company has argued that the commodities were only stored with the appellant company and there was no sale to the general public. However, from the agreement entered into by the appellant company with the manufacturing company, we find certain clauses, which give the clear impression that the appellant company was carrying on the business of purchase and sale and that it was not a mere storage depot of the manufacturing company but all the transactions were carried on a principal to principal basis. Some of the relevant clauses are as under: -
"\005AND WHEREAS the Distributor has approached the Company to purchase in wholesale quantities the products processes by or on behalf of the Company\005\005

2.The Distributor shall place purchase orders/indents from time to time on

the Company with regard to the quantity of the products which the Distributor desires to purchase from the Company\005\005\005.

3.The Distributor shall purchase the products at the rates which will be fixed by the Company from time to time.

4. Sales Tax, Excise and other taxes if any levied on delivery of the products to the Distributor shall be borne by the Distributor as an extra charge.

5. It is expressly agreed that the basis of all transactions between the Company and the Distributor in pursuance of this agreement shall be on a principal to principal basis and that nothing in this agreement shall constitute or be deemed to constitute either party as the agent of the other.

8(d) The Distributor undertakes that in respect of supplies to be made by it to the distributors customers/dealers, it shall not charge prices exceeding the prices recommended by the Company."

Therefore, considering the fact that more than 5 kilolitres of engine oil was found in the premises of the appellant company and reading the agreement as a whole, in particular, the clauses quoted hereinabove, we have no doubt in our mind that the appellant company squarely falls within the main part of the definition of 'Dealer'. In this view of the matter, we affirm the findings of the High Court that the appellant company is covered by the main part of the definition of 'Dealer'.

8. The significance, if any, of the argument of the learned senior counsel for the appellant company that 'no sales were made to the general public' will be considered by us later. In this context, let us first see if the appellant company falls within the 2nd exception to the definition of 'Dealer'. The 2nd exception provides that 'Any oil company producing or storing Kerosene, Diesel (High Speed Oil), Petrol (Motor Spirit), cooking gas, or engine oil in its storage depot or installation wherefrom no sales are made to the general public' shall not fall with in the definition of dealer.
The reasons given by the High Court in support of its finding that the appellant company does not fall within the purview of this exception are that first, this exception applies only to the Oil company and secondly,

the use of the term 'its' in the exception means that the storage depot or installation should belong to the oil company and not any storage depot or installation. The learned senior counsel for the appellant company argued that an extended meaning should be given to this exception and that the High court has given unwarranted importance to the term 'its'. We have already noted the two decisions of this court relied upon by the learned senior counsel for the appellant company in support of this submission herein earlier. In this regard, we would say that admittedly, the appellant company is not an oil company, which in this case is Castrol India Ltd. (manufacturing company). The 2nd exception, as rightly held by the High Court, applies only to an oil company. By this we mean that what is exempted through this provision is the Oil company if it satisfies the ingredients laid down in that exception and not the storage depot or installation. It is not the case of the appellant company that it is an Oil company and therefore should be covered by this exception. The appellant company is only trying to establish that it is merely a storage depot or installation wherefrom no sales were made to the general public and therefore, although, it did not belong to the oil company, it should nevertheless be given the benefit of this exception. We are unable to agree with this submission of the learned senior counsel for the appellant company. Admittedly, the term 'its' refers to the installation or storage depot of the oil company and we would desist from giving the same an extended meaning for two reasons. First, as rightly held by the High Court, an exception must be construed strictly and in that view of the matter, we cannot interpret the same to add something to it by implication. Secondly and in our view, more importantly, by doing that, we would be ignoring the clear intention of the legislature. This is because if we compare the erstwhile definition of 'Dealer', as reproduced herein earlier, with the amended definition, it is pellucid that the intention of the legislature was to exclude people like the appellant company from the purview of the exception. We may add here that we may have accepted the contention of the appellant company if the definition of 'Dealer' had not been amended in 1998 in the manner indicated herein earlier. We may also have given an extended meaning to the term "its" but this would militate against the clear intention expressed by the legislature by bringing about the said amendment. This was not the case in the two decisions of this court relied upon by the learned senior counsel for the appellant company and in fact, in those decisions, the language of the Act permitted liberal interpretation. For this reason, these two authorities cannot be of any help to the appellant company. It is true that no sales

were made from the storage depot of the appellant company to the general public. But from a plain reading of clause 8(d) of the agreement, as quoted herein earlier, it is apparent that sales were made by the appellant company to its customers/dealers. The agreement clearly shows that the appellant company, although termed as a Distributor, essentially did what 'Dealers' do. The terms 'Dealer' and 'Distributor' can be used interchangeably. However, we should not engage ourselves in the discussion whether any difference does exist between the two. Instead, we should try to see the substance of what was happening in the premises of the appellant company. From the agreement, it is clear that the appellant company, as noted hereinabove, was purchasing the commodities from the manufacturing company, stocking them for sale and selling them to its customers/dealers and was not merely storing them as alleged. Therefore, the appellant company was not merely storing the commodities but purchasing the commodities, selling it at the price prescribed by the manufacturing company and also earning profit, by whatever name called.

9. Let us now take up the second question for our consideration. If we look at Clauses 3(1), 3(2), 3(3) and 6(1) of the order of 1977, the clear requirement is that for their violation, one must be a 'Dealer' as defined in Clause 2(a). In this view of the matter and having come to the conclusion that the appellant company is a 'Dealer', by whatever name called, the High Court and the Collector had rightly held that the appellant company had violated the said clauses. The reason given by the Sessions Judge for holding the appellant company not liable cannot be accepted because we find from the judgment of the Sessions Judge that it has relied on wrong definitions to reach that conclusion. The Sessions judge relied on the definition of "Trader" as given in M.P. Govt. Department of civil Supply of Food and Protection of Consumer, Ministry Ballabha Bhawan Bhopal Notification No. F.one/26/98/29/1 dated 10.9.98. The definition of 'Trader' and the exceptions to it are different from the definition of 'Dealer' and its exceptions. We are only concerned with the amended definition of 'Dealer' in this appeal and as noted herein above, after comparing the erstwhile definition of 'Dealer' and the amended definition of 'Dealer', it is pellucid that the intention of the legislature was to exclude people like the appellant company from the purview of the exception. Faced with this situation, the learned senior counsel for the appellant company argued that the principle of Mens Rea should be applied in this case and it should be held that since the appellant company had no intention to sell the commodities, it should not be held guilty. He relied on Nathulal Vs. State of M.P. [(AIR) 1966 SCC 43]

wherein it was held that an offence under Section 7 of the Essential Commodities Act, for breach of Section 3 of the Madhya Pradesh Food grains Dealers Licensing Order, 1958, necessarily involved a guilty mind as an ingredient of the offence. It was further held in that decision that considering the scope of the Act, it would be legitimate to hold that an offence under Section 7 of the Act was committed by a person if he intentionally contravened any order made under Section 3 of the Act and that the object of the Act would be best served and innocent persons would also be protected from harassment if Section 7 was so construed. Mr. Mohta strongly relied on the remarks made by the High Court in paragraph 8 of the impugned judgment to the effect that no sales were made by the appellant company to the general public. From the clauses of the agreement, as quoted herein above, and in view of our discussions made hereinabove, we must come to the conclusion that the appellant company was at least indulging in the activity of purchase and sale of lubricant oil. In Nathulal's case [supra], the dealer had made an application for a licence under the order of 1958 and was under a bona fide impression that the licence had been issued to him though not actually sent to him and since the rejection of the licence was not communicated to him, he had stored the food grains in his godown. In these circumstances, it was held that since he had not intentionally contravened the provisions of Section 7 of the Act, he should be held not guilty. This case is distinguishable on facts from our case. Let us now see if the appellant company in the instant case had any such bona fide impression. It is the averment of the appellant company that it had applied for a licence and it is not in dispute that the appellant company did not get any licence under that order. It was claimed by the appellant company that its application was pending. Therefore, it would be wrong to say that the appellant company had any bona fide impression in this case that it was granted a licence.

10. Even otherwise, as regards the finding in the impugned judgment that the goods were not sold to the general public, relying on which the learned senior counsel for the appellant company has contended before us that it was not selling goods to the general public but was only an authorized distributor of the commodity to the traders, we would make two points. First, the definition of 'Dealer' does not specify that to be a 'Dealer', the goods must be sold to the general public. Secondly, if we look at the 2nd exception to the definition of 'Dealer', it says that an Oil company producing or storing kerosene diesel etc. in its storage depot or installation wherefrom no sales are made to the general public would not be a 'Dealer'. With regard to this exception, we have already noted herein earlier that this

exception applies only to the Oil company. Admittedly, the appellant company is not an oil company and neither is it the case of the appellant company that it is an oil company. Therefore, looking at the main part of the definition of 'Dealer', it is pertinent to note that it nowhere requires as one of its ingredients that to be a 'Dealer', the commodities should be sold to the general public. The very idea of 'sale to the general public' finds mention for the first time in the 2nd exception. Does that mean that we should include this aspect i.e. 'sale to the general public' as an ingredient of the main definition. We are afraid that it is not permissible for us to do that. In this regard, we may note that the function of a proviso or an exception is that it qualifies the generality of the main enactment by providing an exception and taking out as it were from the main enactment a portion which but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of the proviso to read it as providing something by way of an addendum. In Madras & Southern Maharatta Rly. Co, Ltd Vs. Bezwada Municipality [AIR 1944 PC 71], it was held as under: -

"Except as to cases dealt with by it, a proviso has no repercussion on the interpretation of the enacting portion of the section so as to exclude something by implication which is embraced by clear words in the enactment."

Further, as stated by Lord Watson, if the language of the enacting part of the statute does not contain the provisions which are said to occur in it, you cannot derive these provisions by implication from a proviso." [See West Derby Union Vs. Metropolitan Life Assurance Co., (1897) AC 647, p. 652 (H.L.)] The reason behind giving the above cases on interpretation of provisos and exceptions is to drive home the point that in the present case, admittedly, a 'Dealer' may be any person, whether he sells commodities to the general public or not. It is only the exception, which provides that an oil company storing its goods in its storage depot or installation wherefrom no sales are made to the general public shall not be a 'Dealer'. 'Sale to general public' therefore cannot be taken to be an ingredient of the main definition and the exception is applicable only to an oil company. In the present case, the appellant company was selling commodities to its customers or dealers, may be not to the general public, but in view of the last preceding discussion, this argument of the learned senior counsel for the appellant company does not hold any water. Furthermore, the exception, as noted herein earlier applies only to the oil company and on this count also, the appellant company cannot claim the benefit

of the exception.

11.For the reasons aforesaid, this appeal is dismissed. There will be no order as to costs.