

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER
THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 29/2018
Date of Institution : 03.10.2018
Date of Order : 27.12.2018

In the matter of:


1. Kerala State Screening Committee on Anti-profiteering.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Asian Paints Ltd., 1634/APL Kottayam Asian Paints Ltd., No-557/10.557/19.668/Kaniyanmala, Nr. Channannikka, Kerala.

Respondent

 Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member

Present:-

1. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala for the Applicant No. 1.
2. Sh. Anwar Ali T.P., Additional Commissioner for the Applicant No. 2.

ORDER

1. The present Report dated 28.09.2018, has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Kerala State Screening Committee on Anti-Profiteering, vide the minutes of it's meeting held on 08.05.2018 had referred the present case to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of the product "Paint (AP Apex Classic WT 10 LT (HSN Code 3209))", by not passing on the benefit of reduction in the rate of tax of GST at the time of implementation of the GST w.e.f. 01.07.2017. In this regard, the Kerala State Screening Committee had relied on two invoices issued by the Respondent, one dated 20.06.2017 (Pre-GST rate reduction) and the other dated 09.11.2017 (Post-GST rate reduction).
2. The above application was examined by the Standing Committee on Anti-Profiteering and was further referred to the DGAP vide minutes of it's meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP has stated in his Report dated 28.09.2018 that in the pre GST era, the product "Paint (AP Apex Classic WT 10 LT (HSN Code 3209))" attracted VAT @ 14.50% and the Central Excise Duty @ 12.50% on 70% of the MRP, in terms of Notification No. 49/2008-CE (N.T.), dated 24.12.2008. On implementation of the GST w.e.f. 01.07.2017, the pre-GST rate and the post-GST sale invoice-wise details of the applicable rate of tax and the base price (excluding Central Excise Duty, VAT or GST) of the said product supplied by the Respondent are furnished in the table below:-

Table

Period			Pre-GST	Post- GST
1	Product Description	A	Paint (AP Apex Classic WT 10 LT (HSN Code 3209))	
2	Invoice No.	B	1113006429	KR1701110400
3	Invoice Date	C	20.06.2017	09.11.2017
4	MRP as per Annexure-7 (Rs.)	D	2,610	2,660
5	Price before discount per unit (Rs.)	E	2,159	1,927
6	Discount per unit (Rs.)	F	75.57	67.45
7	Price after discount per unit (Rs.)	G=E-F	2,083.43	1,859.55
8	Central Excise Duty @12.5% on 70% of MRP (Rs.)	H=(D*70%)*12.5%	228.38	-
9	Base Price (Excluding duties & taxes) (Rs.)	I=G-H	1,855.05	1,859.55
10	Tax Rate Charged (%)	J	14.50% VAT	28% GST
11	Tax Amount (VAT or GST) (Rs.)	K= G*J	302.10	520.67
12	Total Tax Amount (Rs.)	L= H+K	530.48	520.67
13	Total Tax incident (%)	M= L/I	28.60%	28%
14	Increase in Base Price	Diff. in I	Rs.4.50/- (0.24%)	

4. The DGAP has further stated that the total tax rate has been reduced from 28.60% to 28% post implementation of the GST. The DGAP has also submitted that the Respondent had increased the base price of the above product from Rs. 1855.05/- to Rs. 1859.55/- resulting in an increase of Rs.

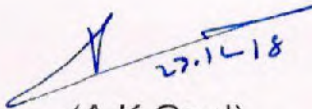
4.50/- which was very negligible i.e. 0.24%. He has further submitted that post-GST, the price before discount had been reduced from Rs. 2159/- to Rs. 1927/- and the discount offered was reduced from Rs. 75.57/- to Rs. 67.45/- i.e. by Rs. 8.12/- hence the post-GST increase in the base price was Rs. 4.50/-. He has also contented that this increase was only of 0.24% which was primarily on account of the reduction in the discount and such an increase couldn't qualify as profiteering due to reduction in the tax rate, thus, the provisions of Section 171 (1) of the CGST Act, 2017 relating to profiteering were not contravened in the instant case.

5. The above Report was considered by the Authority in it's meeting held on 03.10.2018 and it was decided that as there was no private applicant, the Kerala Screening Committee may be asked to appear before the Authority on 31.10.2018. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing she agreed with the report submitted by the DGAP.
6. We have carefully considered the DGAP's Report and the documents placed on record to examine whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipient as provided under Section 171 of the CGST Act, 2017.
7. From the invoices referred above, it is evident that the Respondent has increased the base price of the product from Rs. 1855.05/- to Rs. 1859.55/- resulting in an increase of Rs. 4.50/-. In this context, it is apparent that the post-GST price before discount has been reduced from Rs. 2159/- to Rs. 1927/-. Also, the discount offered has been reduced from Rs. 75.57/- to Rs. 67.45/- i.e. by Rs. 8.12/- and hence post-GST, there is increase in the base price of Rs. 4.50/-. The increase in the base

price is on account of the reduction in the discount. It is also revealed that the reduction in discount doesn't amount to profiteering as the same was offered from his profit margin by the Respondent and doesn't not form part of the base price and therefore, the Respondent cannot be held guilty under Section 171 of the Act.

8. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and hence there is no merit in the application filed by the above Applicants and the same is accordingly dismissed.
9. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Certified copy


27.12.18
(A.K. Goel)
Secretary NAA



Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(R. Bhagyadevi)
Technical Member

F.No.22011/NAA/95/Asian Paints-2/2018 | 1297-1301 Dated: 27.12.2018

Copy to:-

1. M/s Asian Paints Ltd., 1634/APL Kottayam Asian Paints Ltd., No-557/10.557/19.668/Kaniyanmala, Nr. Channannikka, Kerala.
2. Commissioner, State GST Department, 9th Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001
4. NAA website.
5. Guard File.