

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

Case No. 22/2018
Date of Institution 27.09.2018
Date of Order 24.12.2018

In the matter of:

1. State Level Screening Committee on Anti-Profiteering, Kerala.
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

1. M/s Peps Industries Pvt. Ltd., 49/52(1), Devakinandanam Building, Karakkamandapam, Nemom, PO Trivandrum, Kerala.

Respondent

Quorum:-

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

Present:-

1. Ms. 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 27.09.2018, has been received from the Applicant No. 2 i.e. The Directorate 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 Peps Spring Koil Bornell Normal Maroon 75x60x6" Mattress (HSN Code 94042910), by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017. Thus it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017 In this regard, The Kerala State Screening Committee had relied on four invoices issued by the Respondent, two invoices were dated 30.06.2017 & 15.06.2017 (Pre-GST) and two invoices were dated 21.07.2017 & 09.08.2017 (Post-GST).
2. The above reference 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 investigation 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 applicable Central Sales Tax (CST) on the product "Peps Spring Koil Bornell Normal Maroon 75x60x6" Mattress" was being levied @ 2% and Central Excise Duty @ 12.5%. In the post GST era the rate of tax was levied @ 28%. Details of the invoices issued by Respondent are as per the table given below:-

S. No.	Description of the product supplied	Pre GST rate				Post GST rate			Difference (in Rs.)
		Invoice No.& Date	CST rate	Central Excise Duty rate	Price excluding Taxes (in Rs.)	Invoice No. & Date	GST rate	Price excluding GST (in Rs.)	
1.	Peps Spring Koil Bornell Normal Maroon 75X60X6" Mattress (HSN 94042910)	2901 dated 30.06.2017	2%	12.5%	7,293	C/0014196 dated 09.08.2017	28%	7,986	693
		C/002255 dated 15.06.2017	2%	12.5%	7,293	C/003495 dated 21.07.2017	28%	7,643	350

4. After scrutiny of the above four invoices issued by the Respondent, the DGAP has intimated that there was an increase in the rate of tax on the product "Peps Spring Koil Bornell Normal Maroon 75X60X6" Mattress" from 14.5% (2%+12.5%) (wrongly shown as 14.75% in the Report)) in the pre-GST era to 28% in the post-GST era. Therefore, the rate of tax applicable to the product had increased from 14.5% (12.5% Excise Duty + 2% CST) in pre-GST era to 28% in the post-GST regime. Consequently, the DGAP has stated that as there was no reduction in the rate of tax on the product in the post-GST era as compared to the pre-GST era, the provisions of Section 171 of the CGST Act, 2017 were not contravened

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and hence the allegation of profiteering by the Respondent was not established.

5. The above report was considered by the Authority in its meeting held on 03.10.2018 and it was decided that since there was no complainant/other applicant in this case, the Kerala Screening Committee be asked to appear before the Authority. On 31.10.2018, Ms. 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 examined the report of the DGAP and the documents placed on record and find that the only issue that need to be dwelled upon in as to whether there is a case of reduction in the rate of tax and whether the provision of section 171 of CGST Act, 2017 are attracted in the case.
7. Perusal of Section 171 of the CGST Act shows that it provides as under:-
 - (1). "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."
8. It is clear from the perusal of the facts of the case that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017 and that the rate of tax on the said product has increased from 14.5% (2% CST + 12.5% Excise) to 28% and therefore the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017. As such, we do not find any merit in the application filed by the above Applicant and accordingly the same is dismissed.

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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.

Sd/-
(B. N. Sharma)
Chairman

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

Certified Copy

B. Batar
24/12/18

(Bhupinder Batar)

Assistant Commissioner



Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/90/Peps Industries/2018

Date: 24.12.2018

Copy To:-

1. M/s Peps Industries Pvt. Ltd., 49/52(1), Devakinandanam Building, Karakkamandapam, Nemom, PO Trivandrum, 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.