

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

Case No. : 20/2019
Date of Institution : 24.12.2018
Date of Order : 22.03.2019

In the matter of:

1. Kerala State Screening Committee on Anti-Profiteering.
2. Director General of 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

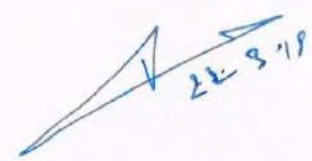
Versus

M/s Win Win Appliances, T. C. 28/106, KRA-28, Kaithamukku,
Trivandrum, Kerala- 695024.

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

A handwritten signature in blue ink, followed by the date '22-3-19' written in blue ink.

Present:-

1. None for the Applicant No. 1.
2. Sh. Akshat Aggarwal, Assistant Commissioner for the Applicant No. 2.
3. Sh. G. Jayaprakash, Advocate, for the Respondent.

ORDER

1. The brief facts of the present case are that the rate of tax on Grinder was reduced from 28% to 12% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. The Applicant No. 1, after verification that the benefit of the rate reduction was not passed on to the customers had referred the matter to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of "Matchless Plus TTWG Grinder" (here-in referred to as the product), vide the minutes of its meeting held on 08.05.2018. The Applicant No. 1 had relied on two invoices issued by the Respondent, Invoice No. 627 dated 28.09.2017 (Pre-rate revision) and the other Invoice No. 943 dated 27.12.2017 (Post-rate revision), as per the details furnished in the Table-A given below. The Applicant No. 1 had also claimed that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the Central Goods & Services Tax (CGST) Act, 2017 and hence appropriate action should be taken against him.



Table-A

Name of the Product	Pre GST rate revision on 15.11.2017			Post GST rate revision on 15.11.2017		
	Invoice No. & Date	Tax Rate	Discounted Base Price (in Rs.)	Invoice No. & Date	Tax Rate	Discounted Base Price (in Rs.)
Matchless Plus TTWG Grinder (HSN Code 85094010)	627 28.09.2017	28%	4,728.90	943 27.12.2017	12%	4,774.59

2. The Standing Committee vide the minutes of its meeting dated 02.07.2018, after prima facie satisfying itself that there was profiteering had forwarded the complaint to the Director General of Anti-Profitteering (DGAP) to initiate investigation under Rule 129 (1) of the CGST Rules, 2017 and to determine whether the benefit of reduction in the rate of tax on the above product had been passed on by the Respondent to his recipients or not?
3. The DGAP after concluding his investigation has submitted his Report on 13.11.2018, under Rule 129 (6) of the CGST Rules, 2017. It is revealed from the Report that the DGAP had issued notice dated 05.09.2018 under Rule 129 of the CGST Rules, 2017, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in the rate of tax had not been passed on to the recipients by way of commensurate reduction in price. The Respondent was also asked to *suo-moto* determine the quantum of benefit not passed on, if any, and indicate the same in his reply. The period of investigation covered by the DGAP under this Report is from 15.11.2017 to 31.07.2018 and all the supplies of the product in question were made in the State of Kerala only.

4. The Report states that the Respondent had submitted his replies to the DGAP vide his letters dated 25.09.2018 and 03.10.2018 in which it was stated that he was a distributor of the product which was being sold under the brand name Butterfly, and was manufactured by his supplier viz. M/s Butterfly, Gandhimathi Appliances Limited, 32/1487 C1, Kochappilly Road, Bye-Pass Junction, Palarivattom, Kerala- 682025. It is also stated that the manufacturer was revising his price list every quarter and the product was being sold by the Respondent to the retailers at the price fixed by the manufacturer. The Respondent has also stated that his selling price for the product was Rs. 6053/- when the GST rate was 28% and the base price of the product (without GST) was Rs. 4728.90, while his purchase price for the product was Rs. 4291.06. After the GST rate reduction, his selling price of the product was reduced to Rs. 5629/- from Rs. 6053/-, though the base price was increased to Rs. 4774.59 but his purchase price with discount of Rs. 229.07, was Rs. 4352.50. The Respondent has further stated that he had sold the above goods based on the purchase price charged by the manufacturer and increase in the base price had occurred due to increase in the purchase price of the product after revision of the price by the manufacturer, effective from November, 2017. The Respondent has further claimed that he has not indulged in profiteering by retaining the benefit of the reduced rate of tax and he had passed on the benefit of reduced tax rate to the recipients by commensurate reduction in the price. The Respondent has also submitted the GSTR-1 and GSTR-3B returns for the period July, 2017 to July, 2018, price lists of product pre & post 15.11.2017 along with the copy of the invoices of the product for the period 01.07.2017 to 31.07.2018.

5. The DGAP has further stated that the issues for determination were whether the rate of tax applicable to the product was reduced w.e.f. 15.11.2017 and if so, whether the benefit of such reduction in the rate of tax was passed on by the Respondent to his recipients in terms of Section 171 of the CGST Act, 2017. The DGAP has further informed that the Central Government on the recommendations of the GST Council had reduced the GST rate on the above product from 28% to 12% w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, in consequence of which the Respondent was required to sell the above goods on the base price which was being charged by him before 15.11.2017 and levy GST @12% so that the benefit of reduction in the rate of tax could be passed on to the customers. The DGAP has further informed that Section 171(1) of the CGST Act, 2017, stated that *"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."* Thus, the legal requirement was abundantly clear that in the event of benefit of input tax credit or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services and such reduction could only be in absolute terms such that the final price payable by a consumer must get reduced commensurate with the reduction in the GST tax rate.

6. The DGAP has further informed that during the investigation, it had been observed that the issue related to passing on the benefit of reduction in the rate of GST to the recipients of goods has been examined after arriving at the base price of the product, pre 15.11.2017 and post 15.11.2017. It is further submitted that the sale invoices during the period

w.e.f. 01.07.2017 to 31.07.2018 clearly showed that the Respondent had increased the base price of the product from Rs. 4728.90 to Rs. 4774.59 when the rate of tax was reduced from 28% to 12%. Thus, by increasing the base price of the product, the Respondent did not pass on the benefit of the reduction in the GST rate to his customers, instead profited from such reduction. The DGAP has also submitted that the base price of the product was increased after 15.11.2017 and by increasing the base price of the product consequent to the reduction in GST rate, the commensurate benefit of reduction in the GST rate from 28% to 12% was not passed on to the recipients and hence, the provisions of Section 171 of the CGST Act, 2017, were attracted and accordingly the amount of profiteering during the period 15.11.2017 to 31.07.2018, was arrived at as Rs. 1,20,194/-.

7. The above Report received on 14.11.2018 was considered by the Authority in its sitting held on 15.11.2018 and it was decided to hear the Applicants and the Respondent on 28.11.2018. On the date of hearing no one appeared for the Applicant No. 1, Applicant No. 2 was represented by Sh. Akshat Aggarwal, Deputy Commissioner and the Respondent was represented by Sh. G. Jayaprakash, Advocate. Though several opportunities for hearing were also granted to the manufacturer M/s Butterfly but none appeared on his behalf.

8. The Respondent has filed written submissions dated 28.11.2018 denying that there was any profiteering and submitted that he did not pocket any excess benefit that was intended for the consumers. He has also stated that this case had emanated from a reference made by the

Applicant No. 1, on account of the allegations of profiteering made against the manufacturer which were based on the pre revision and the post revision prices and he was not the manufacturer but only a distributor and this fact was ignored by the DGAP while submitting his Report. The Respondent has further stated that the Report of the DGAP was merely an investigation Report in terms of Rule 129 (6) of the CGST Rules, 2017, and the same could not be relied upon without independent evidence. The Respondent has also claimed that in the instant case, the allegation against him was that he had sold the product at the base price of Rs. 4,728.90 with GST@ 28% prior to 15.11.2017 and when the GST rate on the said product was reduced from 28% to 12% w.e.f. 15.11.2017, he had increased the base price to Rs. 4774.59 thereby not passing on the benefit of the reduction in the tax rate by way of commensurate reduction in the base price of the product, however, this allegation could not be sustained against him as he was only a distributor of the product under the brand name Butterfly the price of which was fixed by the manufacturer and all his products were sold only to the retailers and not to the end customers, i.e. majority of his transactions were only B to B transactions.

9. The Respondent has further submitted that the manufacturer was revising his price lists every quarter and as per the price list for the period w.e.f. 1st July 2017 to 30th September 2017, the price for the product was Rs. 6053/- and the price of the product as per the price list for the period from 1st November 2017 to 15th March 2018, was fixed at Rs. 5629/- thus reducing the price by Rs. 424/-. He has also stated that the basic rate of purchase of the product prior to 15.11.2017 was Rs. 4291.06 and after 15.11.2017, it was Rs. 4581.57 and the base selling price was fixed at Rs.

4728.90 and Rs. 5025.89 with 5% discount as per the direction of the manufacturer. He has also claimed that the profit margin before 15.11.2017 was Rs. 437.84 when the GST rate was 28% and Rs. 422.09 when the GST rate was reduced to 12%, thus reducing his profit margin percentage from 10.20% to 9.70% after the reduction in the rate of GST w.e.f. 15.11.2017. He has also contended that after the rate reduction, the price for the product under investigation was reduced to Rs. 5629/- from Rs. 6053/- and on computation of the base price based on the reduced price after reduction of the rate worked out to Rs. 4774.59. Thus, the base purchase price was Rs. 4582/- and with the discount of Rs. 229.07, the selling price arrived at was Rs. 4352.50. The Respondent has further contended that he had sold the goods based on the purchase price charged by the manufacturer and increase in the base price had occurred due to increase in the purchase price of the product after revision of the price by the manufacturer effective from November, 2017 and hence he had not indulged in profiteering but had passed on the benefit of reduced tax rate to the recipients. He has also claimed that his profit margin was reduced from 10-20% to 9.70 % after the reduction of tax rate w.e.f. 15.11.2017.

10. The Respondent has further intimated that even though he was only a distributor and was selling the goods based on the selling price fixed by the manufacturer during the entire period under investigation, there was no finding in the DGAP's Report which concluded that the Respondent had indulged in profiteering. He has further intimated that the increase in the base price was an act of the manufacturer and not of the Respondent and he could not be proceeded against. He has also urged

that he could not have increased the base price as per the agreement and he was also not empowered to reduce the price fixed by the manufacturer. This aspect was also not considered in the DGAP Report and therefore there was no allegation in the notice or finding in the Report that the Respondent had sold the product at a selling price higher than the purchase price, he has contended. He has also submitted the details of his profit margin as under:-

WITH GST 28%

Purchase Price (Rs.)	Base Selling Price (Rs.)	Total Selling Price (Rs.)	Profit of the Respondent No. 1 (Rs.)
(a)	(b)	©	(d)= b-a
4291.06	4728.90	6053.00	437.84=10.20%

WITH GST 12 %

Purchase Price (Rs.)	Base Selling Price (Rs.)	Total Selling Price (Rs.)	Profit of the Respondent No. 1 (Rs.)
(a)	(b)	©	(d)= b-a
4352.50	4774.59	5347.54	422.09=9.70%
4352.5	Assuming 4728.90	5296.37	11.40=8.65%

11. He has further claimed from the details given above that even when the base price was increased, his profit margin was reduced from 10.20% to 9.70 % and assuming that the he had retained the base price which was prevailing when the GST was 28%, after its reduction

to 12% the profit margin would have been reduced to 8.65% and this would have invited intervention of the Competition Commission of India. He has further claimed that he had actually suffered loss and did not indulge in profiteering as had been alleged in the notice. He has also submitted that the alleged non passing of the benefit of the reduction in the rate of tax to the retailers commensurate with the reduction in GST rate, was not due to any action of the Respondent but was due to increase in the base price by the manufacturer. Thus, he has claimed that the DGAP's Report which stated that he had made an undue profit of Rs.1,20,194/- was against the facts and needed to be rejected.

12. The Respondent has also furnished the details of the purchase price after reduction in the GST rate to 12% as has been shown in the Table-B given below. He has further submitted that the base purchase price prior to 15.11.2018 was Rs. 4291.49. He has also urged that the commensurate price was computed by the DGAP without considering his purchase price and if the same base price of Rs. 3972.276 was adopted, he would have incurred loss since the purchase base price would have been more than the selling base price. He has further argued that the GST rate for purchase of goods was 12% from 15.11.2018 and not 28% and thus the computation of the commensurate price was erroneous and the DGAP's Report was devoid of the facts and merits and needed to be rejected.



Table- B

S. No.	Invoice No.	Invoice Date	Quantity (No.)	Rate of GST (in percent age)	Rate/unit (in Rs.)	Total amt. in Rupees	Discount in Rupees	Taxable Amount after discount (Rs.)	Actual base price charged per unit in invoice w.e.f. 15-11-2017 (in Rs.)
1	320000 4697	30-11- 2017	16 Nos	12%	4581.57/ nos	73305.12	3665.25	69639.87	4352.49/nos
2	320000 6163	17-01- 2018	20 Nos	12%	4581.57/ nos	91613.40	4581.57	87049.83	4352.49/nos
3	320000 7059	15-02- 2018	30 Nos	12%	4581.57/ nos	137447.10	6872.35	130574.75	4352.49/nos
4	321000 0219	09-05- 2018	20 Nos	12%	4810.65/ nos	96213.00	0	96213.00	4810.65/nos
5	321000 0711	04-07- 2018	9 Nos	12%	4810.65/ nos	43295.85	0	43295.85	4810.65/nos
6	321000 1014	28-07- 2018	24 Nos	12%	4810.65/ nos	115455.60	0	115455.60	4810.65/nos
			119 Nos						

13. He has also pleaded that the notice dated 19.11.2018 proposed penal action against the Respondent under different Sections of the CGST Act, 2017 and CGST Rules, 2017 however, he was not liable for any penal action in as much as he did not violate Section 171 of the CGST Act, 2017, read with the CGST Rules, 2017 and penal provisions could be invoked only when any contumacious act was carried out by him. He as a bonafide distributor had sold the product as per the price list of the manufacturer and if he had retained the base price when the GST rate was 28% without following the price list of the manufacturer, he would not only be violating the terms of the agreement with the manufacturer but also indulging in unfair trade practices for which he

could be investigated by the Competition Commission of India. The Respondent has further pleaded to drop the proceedings on the following grounds:-

- a) Section 29 read with Rule 21 of the CGST Rules could not be invoked in as much as the Respondent had not committed any grave violation of the provisions of the CGST Act 2017 and hence the proposal to cancel the registration may be dropped.
 - b) Section 122 to Section 127 of the Act did not envisage any of the acts relating to Section 171 of the Act so as to impose any penalty against the Respondent
 - c) Rule 133 could not be invoked as the Respondent had not retained any portion of the reduced tax intended to be passed on to the buyers of the goods and hence proposed penalty needed to be dropped.
14. The Authority vide its directions dated 30.11.2018 and 13.12.2018 had sought further Report from the DGAP on the issues raised by the Respondent in respect of his submissions dated 28.11.2018 and 07.12.2018. The DGAP vide his Supplementary Reports dated 11.12.2018 and 21.12.2018 has stated that the Kerala Screening Committee had referred a case against the Respondent alleging that the benefit of reduction of GST rate w.e.f 15.11.2017 was not passed on by way of commensurate reduction in price which was examined by the Standing Committee and it was prima facie held that there was evidence to show that the supplier had not passed on the benefit of reduction in the rate of tax by way of commensurate reduction in price and hence, the matter was referred to him for a detailed investigation.

The DGAP has also submitted that the allegation was against the Respondent who was a distributor hence the scope of investigation was limited to the Respondent. With reference to the quantification of profiteering the DGAP has admitted that he had inadvertently calculated the profited amount at Rs. 1,20,194/- but on re-examination the amount of profiteering came to be Rs. 32,927/- as could be seen from the table given below:-

Table-C

Amount in Rs.

Particulars	Calculation of profiteering as per original DGAP Report	Revised Calculation of profiteering amount
Base price prior to 15.11.2017	4728.90	4728.90
Base price post 15.11.2017	4774.59	4774.59
Ideal base price	$[4728.90 - (4728.90 * 16\%) = 3972.27]$	4728.90
Amount of profiteering per unit	$[4774.59 - 3972.27 = 802.32]$	$[4774.59 - 4728.90 = 45.69]$
GST @ 12% (Rs.)	NIL	$[45.69 * 12\% = 5.48]$
Total Profiteering per unit (Rs.)	$[802.32 + 0 = 802.32]$	$[45.69 + 5.48 = 51.17]$
Total Amount of Profiteering (Rs.)	1,20,194	32,927

15. We have carefully considered the DGAP's Report, the written submissions of the Respondent and all other materials placed on record and it is revealed that the Central Govt. vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 had reduced the rate of GST from 28% to 12% on the product in question with effect from 15.11.2017, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the CGST Act, 2017.

16. From the perusal of the tax invoices dated 28.09.2017 and 27.12.2017, issued by the Respondent it is observed that the base price of the product had increased from Rs. 4728.90, which he was charging before the rate reduction till 14.11.2017 to Rs. 4,774.59 w.e.f. 15.11.2017 i.e. it was increased by Rs. 45.69 per item. Therefore, there is no doubt that the Respondent had increased the base price of the above product w.e.f. 15.11.2017 in spite of GST rate reduction from 28% to 12%, when he was legally bound to charge the reduced prices so as to pass on the benefit of reduced tax rate to his recipients.

17. The Respondent's claim that the base price was increased because the purchase price of the product was increased by the manufacturer and that there was no question of profiteering by him is not legally tenable because he as a dealer registered under the GST is legally bound to pass on the benefit of rate reduction. Section 171 of the CGST Act, 2017, read with the rules made under it clearly mandates that every registered person has to pass on the benefit of reduction in the rate of tax on any supply of goods and services to the recipients by way of commensurate reduction in prices. Moreover his claim that his profit margin had reduced also does not hold good as this Authority is not concerned with his profit margin or loss because Section 171 of the CGST Act, 2017, read with relevant CGST Rules, 2017, is clear and unambiguous to the effect that the benefit of rate reduction has to be passed on by every registered person to his recipients.

18. The claim of the Respondent that the DGAP is only an investigating Authority and has not relied on any evidence is not sustainable in as much

as the DGAP in his Report has relied on all the documents submitted by him and accordingly has arrived at the profiteered amount. The Respondent on the one hand has claimed that the price of the product was reduced from Rs. 6053/- to Rs. 5629/- by the manufacturer but at the same time has claimed that his purchase price had increased from Rs. 4291.06 to Rs. 4581.57 due to which he had increased his base price and his selling price after discount was only Rs. 4352.50. From the recipients point of view it is very clear that even though the manufacturer had reduced the price, the Respondent has admittedly sold it at higher base price post GST rate reduction even after considering the discounted base price.

19. The Respondent has vehemently argued that he had no control on the fixing of the base price as well as the MRP as they were fixed by the manufacturer through the software which he was bound to follow as per the terms of the agreement executed by him with the above Company. However, it is apparent from the record that the Respondent is duly registered under the CGST/SGST Act, 2017 and he was hence bound to follow the Notification No. 41/2017 dated 14.11.2017 when the rate of GST was reduced from 28% to 12% on the product. He cannot escape the legal obligation which was imposed upon him by Section 171 of the CGST Act, 2017, by shifting his accountability on this ground. Therefore, the above contention of the appellant cannot be accepted.

20. On perusal of Annexure-8 of the DGAP's Report it is clear that the Respondent had increased the base price of the product from Rs. 4728.90 to Rs. 4774.59 when the rate of tax was reduced from 28% to 12% and

further increased the base price from Rs. 4774.59 to Rs. 5277.67, as is evident from the invoices issued during the period 23.05.2018 to 31.07.2018. Therefore, it is apparent from the above Annexure that the Respondent had increased the base prices of the product which was supplied by him during the period between 15.11.2017 to 31.07.2018.

21. The DGAP vide his Report 21.12.2018, has submitted that the profiteered amount of Rs. 1,20,194/- was wrongly calculated and the correct amount of profiteering was Rs. 32,926.36 on account of increase in the base price of the product as has been shown in the Table-C above. As per the revised calculation provided by the DGAP vide Annexure-7A of his Report dated 21.12.2018 it is clear that keeping the base price same as Rs. 4728.90 prior to GST rate reduction the selling price of the product should have been Rs. 5296.37. However, the Respondent had sold the product at Rs. 5629/- thus denying benefit of Rs. 332.63 to the recipients. Thus, for the entire period from 15.11.2017 to 31.07.2018 the amount of profiteering has been arrived at as Rs. 32,926.36.

22. Based on the above facts it is established that the Respondent has acted in contravention of the provisions of Section 171 of the CGST Act, 2017 and has not passed on the benefit of reduction in the rate of tax to his recipients by commensurate reduction in the prices. Accordingly, the amount of profiteering is determined as Rs. 32,926.36 as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the price of the above product as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is passed on to the

recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 32,926.36 along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients in this case are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 16463.18 in the Central Consumer Welfare Fund (CWF) and Rs. 16463.18 in the Kerala State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of receipt of this order failing which the same shall be recovered by the Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

23. It is also established from the above facts that the Respondent had issued incorrect invoices while selling the above product to his recipients as he had incorrectly shown the base prices and had also compelled them to pay additional GST on the increased prices through the incorrect tax invoices which would have otherwise resulted in further benefit to the recipients. It is also established from the record that the Respondent has deliberately and consciously acted in contravention of the provisions of the CGST Act, 2017 by issuing incorrect invoices which is an offence under Section 122 (1) (i) of the above Act and hence he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. In the interest of natural justice before imposition of penalty a notice be issued to him asking him to explain why penalty should not be imposed on him.

24. A copy of this order be sent to 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

-Sd-

(R. Bhagyadevi)
Technical Member

-Sd-

(Amand Shah)
Technical Member



Certified copy

(A.K. Goel)
Secretary NAA

File No. 22011/NAA/113/WinWin/2018

Dated: 22.03.2019

Copy to:-

1. M/s Win Win Appliances, T. C. 28/106, KRA-28, Kaithamukku, Trivandrum, Kerala-695024.
2. Commissioner, State GST department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.
3. Commissioner, GST, C.R. Building, I.S. Press Road, Ernakulam, Cochin, Kerala-682018.
4. 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
5. NAA website.
6. Guard File.