

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

Case No. : 28/2019
Date of Institution : 05.02.2019
Date of Order : 02.05.2019

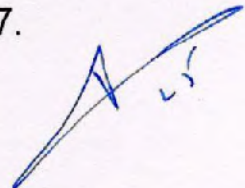
In the matter of:

1. Shri Kumudchandra Atmaram Patel, 47648 Sagar Apartment, Opp. Bhavsar Hostel, Nava Vadaj, Ahmedabad, Gujarat – 380013.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s TTK Prestige Limited, 102/103 Haash Building Above HDFC Bank Near Ankur School, Ahmedabad, Gujarat – 380007.


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. None for the Applicant No. 1.
2. Sh. Bhupinder Goel, Assistant Director (Costs) and Rana Ashok Rajnish, Assistant Commissioner for the Applicant No. 2.
3. Sh. K. Shankaran, Director and Sh. C. Chandramohan, General Manager for the Respondent.

ORDER

1. This Report, dated 14.01.2019, has been received by this Authority from the Director General of Anti-Profiteering (DGAP) under Rule 129 (6) of the Central Goods and Service Tax (CGST) Rules, 2017. The brief facts of the present case are that an application dated 29.08.2018 was filed by the Applicant No. 1 before the Standing Committee on Anti-Profiteering constituted under Rule 128 of the above Rules alleging that the Respondent did not pass on the benefit of reduction in the GST rate from 28% to 18% by increasing the base price to maintain the same cum-tax selling price which was prevalent before the reduction. He also stated that he had purchased "68766- Glass for GT 03-RO Gas Stove" (here-in

referred to as the product) from the outlet of the Respondent, on 06.08.2018 where he had charged GST @ 28% in the invoice No. 001252 dated 06.08.2018. However, after objection by the Applicant, the Respondent issued a new invoice No. 001403 dated 24.08.2018 charging GST @ 18%. He further stated that the Respondent had increased the base price of the impugned goods from Rs. 1640.62 to Rs. 1779.66 to maintain the same cum-tax selling price (Rs. 2100/-), even after charging GST at the lower rate of 18%. The Applicant had also claimed that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.

2. The Standing Committee vide the minutes of its meeting dated 08.10.2018 had requested the DGAP to conduct a detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. A notice under Rule 129 of the CGST Rules, 2017, was issued on 13.11.2018, by the DGAP, calling upon the Respondent to reply as to whether he admitted that he had contravened the provisions of Section 171 of the CGST Act, 2017, and that the benefit of reduction in GST rate 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 profiteering, if any, and indicate the same in his reply to the notice issued by the DGAP. The DGAP had also called upon the Respondent to submit certain documents like GST Returns (1 & 3B), details of outward taxable supplies, etc.

The DGAP had also called upon the Applicant vide e-mail dated

07.01.2019, to inspect the non-confidential evidences/reply furnished by the Respondent between 08.01.2019 to 09.01.2019 which was not availed by the Applicant.

4. The Respondent had submitted replies vide his letters dated 22.11.2018 and 07.12.2018, and stated that he had refunded the differential amount arising on account of reduction in the rate of GST from 28% to 18% to the Applicant. The Respondent also stated that total 44 numbers of the product were sold during the period 15.11.2017 to 31.10.2018. Hence, the quantum of benefit to be passed on was Rs. 7,216/- (@ Rs. 164/- per unit). He also enclosed the computation and proof of such refund, as per details furnished in table A below:-

Table-A

Particulars	(inRs.)
Base price before rate change	1,641
GST rate @ 28%	459
Selling price before rate charge(A)	2,100

Base price after rate charge (same as before)	1,641
GST rate @ 18%	295
Selling price after rate change (B)	1,936
Amount to be refunded to the customer (A-B)	164

He further stated that he had also initiated the process of refund of excess amount collected from the customers and submitted that some cheques had already been dispatched and enclosed the photocopy of registered post-dispatch receipt. The Respondent also submitted the Invoice-wise details for outward supplies of the goods under investigation from 01.11.2017 to 31.10.2018 to all his Franchisee outlets in India, sample copies of invoices pre & post

15.11.2017 and GSTR-1 and GSTR-3B returns for the period July, 2017 to October, 2018.

5. The DGAP in his Report stated that the Central Government on the recommendations of the GST Council had reduced the GST rate on the above products from 28% to 18% 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 prices which was being charged by him before 15.11.2017 and levy GST @18% so that the benefit of reduction in the rate of tax could be passed on to his recipients.
6. The DGAP while examining Section 171 of the CGST Act, 2017 which governs the anti-profiteering provisions under GST, has stated that Section 171(1) CGST Act, 2017 reads as "*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 a benefit of input tax credit or reduction in rate of tax, there must be a commensurate reduction in the prices of the goods or services. 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 tax rate and this was the legally prescribed mechanism for passing on the benefit of input tax credit or reduction in rate of tax to the recipients under the GST regime.
7. The DGAP has also submitted that the issue was to determine the amount of profiteering by the Respondent for failing to pass on the

benefit of the reduction in the rate of tax on the product to the recipients in terms of Section 171 of the CGST Act, 2017. The DGAP further submitted that from the invoices made available, it was clear that the Respondent had increased the base price of the product from Rs. 1640.62 to Rs 1779.66, when the rate of tax was reduced from 28% to 18% and on the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the product during the period 15.11.2017 to 31.10.2018, as furnished by the Respondent, the amount of net higher sale realization due to increase in the base price of the goods, despite the reduction in the GST rate from 28% to 18%, the profiteered amount has been arrived at Rs. 13,973/-. The DGAP also submitted that this amount was inclusive of Rs. 535/- which was the profiteered amount in respect of the Applicant. The DGAP further submitted that this profiteered amount had been arrived at by comparing the average base price of the product (Rs. 1,326.18) sold during the period 01.11.2017 to 14.11.2017, with the actual base price of the product sold during the period 15.11.2017 to 31.10.2018. Further, the DGAP also noticed that during the period 15.11.2017 to 26.12.2017, the Respondent had sold the product by charging 28% GST from the customers, while the rate had already been reduced to 18% w.e.f. 15.11.2017. The excess tax so collected from the customers was also included in the profiteered amount determined by the DGAP.

8. The above Report, received on 14.01.2019, was considered by the Authority in its meeting held on 22.01.2019 and it was decided to hear the Applicant and the Respondent on 07.02.2019.
9. Since, similar case of the Respondent was pending before the Authority, the Authority decided to hear both the cases on the same day. Accordingly, personal hearing was accorded to the Applicant and the Respondent on 05.02.2019, wherein no one appeared on behalf of the Applicant No. 1; Applicant No. 2 was represented by Sh. Bhupender Goel, Assistant Director (Costs), Rana Ashok Rajnish, Assistant Commissioner and the Respondent was represented by Sh. K. Shankaran, Director and Sh. C. Chandramohan, General Manager.
10. During the hearing, the Respondent has stated that he agreed that an error was committed on his part and informed the DGAP that he had refunded Rs. 164/- to the Applicant by cheque, which the Applicant had also acknowledged. The Respondent has also filed his written submissions stating that the product was a spare part sold by him and the product was sold to his Authorised Dealers who used this as replacement of the broken Glass of the product. He further stated that he had also sold this product to his walk-in customers at his Company Service centres. He further stated that the GST rate for the product was reduced from 28% to 18% vide Notification 41/2017 dated 14.11.2017 and the Applicant was a walk in customer who was wrongly billed @ 28% due to a software rate updation error and the excess amount charged amounting to Rs. 164/- as computed below, had been already refunded to the Applicant vide Cheque No. 047999

drawn on HDFC Bank, which the Applicant had also acknowledged. The Respondent also calculated the amount to be refunded to the Applicant by him as under:-

Particulars	INR
Selling price (A)	2,100
Tax @ 28%	459
Base price before change	1,641
Base price (same)	1,641
Tax @ 18%	295
Selling price after rate change (B)	1,936
Amount to be refunded to the customer (A-B)	164

11. The Respondent further stated that the total sale quantity of the Company of the product, during the period Nov 2017 to Oct 2018 as per the details submitted to the DGAP was 241 units and in this 212 nos. were related to the sales made to his trade customers and 29 units were related to the sales made to his walk-in customers. He further stated that he had already issued credit notes for the differential amount to his trade customers and had sent cheques to walk in customers as detailed below:

Particulars	Qty	Rate	Value
Credit notes issued	212	164	34,768
Cheques despatched	15	164	2,460
Cheques being processed	14	164	2,296
Total	241		39,524

12. He further submitted that, in compliance of Section 171 of the CGST Act, 2017 which warrants passing on the commensurate reduction in prices owing to reduction in rate of tax, he had duly

refunded the differential amount arising on account of the aforementioned rate change to the Applicant and pleaded that the DGAP Report may be set aside and further proceedings be dropped.

13. The Respondent further submitted that he had not reduced the company fixed basic price and the MRP had remained the same at Rs. 2100/-. This SKU was sold to Trade at a $MRP \times 0.75 \times 0.95 = MRP \times 0.7125$. He further stated that for Retail customers— it was billed at MRP – 2100/- and trade sales were made through Accounting Software & Regional Price Centre and walk in customers was through his Point of Sales software (POS). The Respondent further submitted that the HSN was wrongly mentioned in POS and the rate change in tax did not happen in POS. He also stated that the Accounting Software GST rate was changed to 18% but the basic was not reduced, as it was a formula on $MRP \times Dealer Price\%$. In POS, the GST rate did not get changed, and he had billed @ 28% GST, till it was brought to his notice by a walk in customer (who was a ex-Sales tax officer). He had then corrected the Invoice to 18% but did not reduce the MRP and hence he had complained to the DGAP for profiteering. He has further stated that on receipt of the notice from the DGAP, he had agreed that an error had been committed and informed that he had refunded an amount of Rs. 164/- to the Applicant. He also submitted that he had given all the data to the DGAP i.e. 44 products sold in Gujarat (Nov 17 to Oct 2018) and 241 products sold during the period to all his walk-in customers. He further stated that he had dispatched letters to 15 customers for an amount of Rs. 2460/- and 14 cheques of Rs. 2296/- were pending to

be dispatched. The Respondent further stated that while the DGAP working is based on average rate of sales for the period 01.11.2017 to 14.11.2017 and the difference in realization was Rs. 13,973/- and since he had refunded the amount, the proceedings may be dropped.

14. The Respondent vide his submissions dated 14.02.2019 stated that while considering the Authority's concern that whether the credit note would benefit the ultimate recipient, the Respondent had no reservation in depositing the amount of Rs. 13,973/- into the Consumer Welfare fund.

15. The Applicant vide his email dated 30.01.2019 submitted that the Respondent's claim that Rs. 164/- were refunded to him was not fair. He further submitted that he had refused to accept this amount as he knew that the Respondent would use it to dilute the case. He further submitted that he would accept the final amount as decided by the Authority and requested the Authority to take strict action against the Respondent for not only profiteering but also collecting GST @ 28% when actually the rate was reduced to 18%. He further submitted that the penalty and Interest should be recovered as per law.

16. The DGAP vide his Supplementary Report dated 05.02.2019 stated that the documents/ information submitted by the Respondent was both confidential and non-confidential in nature which was received by him in soft copy. Since the confidential and non-confidential document/information provided in soft copy by the Respondent could not be segregated, the same could not be made available to the Applicant through e-mail as requested by him. The

DGAP also submitted that the Respondent had submitted the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the product in respect of 18 GSTIN across India but profiteering was found only in the case of 12 GSTINs as had been mentioned in the DGAP's original Report and as per the Standing Committee's directions, the investigation was confined to the product only.

17. We have carefully considered the material placed before us and it has been 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 18% in respect of the above product 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. From the above discussion and the invoices available it is revealed that the Respondent had increased the base price of the product from Rs. 1,640.62 to Rs. 1,779.66, when the rate of tax was reduced from 28% to 18% with effect from 15.11.2017. Thus, by increasing the base price of the product, post-GST, the benefit of reduction in tax rate was not passed on to the recipients. The total amount of profiteering during the period 15.11.2017 to 31.10.2018 is Rs. 13,973/- and this amount is inclusive of Rs. 535/- which is the profited amount in respect of the Applicant. The Respondent has also agreed to deposit this alleged amount along with interest, in his submission dated 05.02.2019 filed before this Authority.



18. Based on the above discussions the Respondent is directed to reduce the price of the product as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, by making commensurate reduction in the prices, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The above Respondent is also directed to refund the amount of Rs. 535/- to the Applicant along with interest @18% from the date when this amount was received by him from the Applicant No. 1 and deposit the remaining amount of profiteering of (Rs. 13,973/- (-) Rs. 535/- = Rs. 13,438/- (Rupees Thirteen Thousand Four Hundred Thirty Eight Only) along with interest @18% in the Consumer Welfare Fund of the Central and the concerned State Governments as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 in the ratio of 50:50, till the same is deposited within a period of 3 months.

19. The concerned State CGST/SGST Commissionerates are also directed to get the amount of profiteering of Rs. 6,719 (Rupees Six Thousand Seven Hundred Nineteen Only) along with interest @ 18% respectively deposited from the Respondent in the respective Central/ State Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 as shown in the Table given below:

Table -B

Sr.No.	State Code	State(Place of Supply)	Amount (Rs.)	50% of the amount (Rs.)
01	03	Punjab	535	267.50
02	07	Delhi	10	5
03	08	Rajasthan	10	5
04	09	Uttar Pradesh	535	267.50
05	10	Bihar	535	267.50

06	18	Assam	535	267.50
07	22	Chhattisgarh	1071	535.50
08	23	Madhya Pradesh	10	5
09	24	Gujarat	7522	3761
10	27	Maharashtra	1605	802.50
11	30	Goa	535	267.50
12	33	Tamil Nadu	535	267.50
Total			13438	6719/-
50% - payable to Central Fund (Rs.)			6719	
50% payable to State Fund (Rs.)			6719	

The above amount shall be deposited within a period of 3 months by the Respondent, from the date of receipt of this order, failing which the same shall be recovered by the corresponding field formations of Central and State GST Authorities, as per the provisions of the CGST/SGST Act, 2017. The Authority as per the provisions of Rule 136 of the CGST Rules, 2017 also directs the respective Commissioners of CGST/SGST to monitor the implementation of this order. One of the allegations of the Applicant is that the Respondent has collected GST @ 28% even when it was reduced to 18%. This Authority though has no jurisdiction over the above allegation directs the respective Commissioners of CGST/SGST to examine the same and necessary action may be taken if it is found to be true.

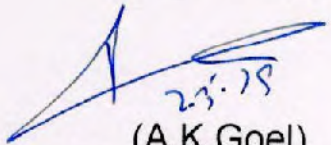
20. It is also established from the above facts that the Respondent had issued incorrect invoices while selling the above product to his customers as he had not correctly shown the basic price which he should have legally charged from them. The Respondent had also compelled them to pay additional GST on the increased price through the incorrect tax invoices which would have otherwise resulted in

further benefit to the customers which he had failed to pass on. 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. 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, notice may be issued to the Respondent to show cause as to why penalty should not be imposed on him as per the provisions of Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017.

21. A copy of this order be sent to the Applicant and the Respondent free of cost. File of the case be consigned after completion.



Certified copy


23.7.19

(A.K. Goel)
Secretary, NAA

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/01/TTKGS/2019

Dated: 02.05.2019

Copy to:-

1. Shri Kumudchandra Atmaram Patel, 47648 Sagar Apartment, Opp. Bhavsar Hostel, Nava Vadaj, Ahmedabad, Gujarat – 380013.

2. M/s TTK Prestige Limited, 102/103 Haash Building Above HDFC Bank Near Ankur School, Ahmedabad, Gujarat – 380007.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001
4. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.
5. Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna – 800 001
6. Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001
7. Commissioner of Commercial Taxes, Office of Commissioner of Commercial Tax, Vikrikar Bhavan, Old High Court Building, Panji, Goa- 403 001
8. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.
9. Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore
10. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010
11. Commissioner of Commercial Taxes, Office of Excise and Taxation Commissioner, Bhupindra Road, Patiala- 147 001
12. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.
13. Commissioner of Commercial Taxes, PAPJM Building, Greams Road, Chennai – 600 006.
14. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)
15. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin- 110 002
16. Chief Commissioner of Central Goods & Services Tax, Bhopal Zone 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal M.P. 462 011.
17. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone C.R. Building, Plot No.19A, Sector 17C, Chandigarh 160017.
18. Chief Commissioner of Central Goods & Services Tax, Delhi Zone C.R. Building, I.P. Estate, New Delhi 110 109
19. Chief Commissioner of Central Goods & Services Tax, Jaipur Zone, New Central Revenue Building, Statue Circle, Janpath Jaipur 302 005

20. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. CCS University, Mangal Pandey Nagar, Meerut 250004
21. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building ,115 M.K. Road, Opp. Churchgate Station, Mumbai 400020
22. Chief Commissioner of Central Goods & Services Tax,, Telangkhedi Road, Civil Lines, Nagpur 440001
23. Chief Commissioner of Central Goods & Services Tax, Pune Zone GST Bhawan Ice House, 41A, Sasoon Road, Opp. Wadia College, Pune 411001
24. Chief Commissioner of Central Goods & Services Tax, (Ranchi Zone) 1st Floor, C.R. Building, (ANNEX) Veerchand Patel Path Patna, 800001
25. Chief Commissioner of Central Goods & Services Tax, Vadodara Zone 2nd Floor, Central Excise Building, Race Course Circle, Vadodara 390 007
26. NAA Website.
27. Guard File.


A. K. GOEL
SECRETARY, NAA