

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

Case No.	41/2019
Date of Institution	02.04.2019
Date of Order	26.06.2019

In the matter of:

1. Sh. Pranesh Pathak, Commissioner of Central Goods and Service Tax, Delhi South Commissionerate, 3rd floor, EIL Annexe building, Bhikaji Cama Place, New Delhi-110066.
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. Bhutani International Medicos, 38-S & 39-S, Safdarjung Hospital, Gate No.2, Opposite AIIMS, New Delhi-110029.

Respondent

Pranesh Pathak

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. R. A. Rajneesh, Assistant Commissioner, for the Applicant No. 2.
3. Sh. Anurag Kapoor, CA and Sh. Sushil Gaba, Advocate for the Respondent.

ORDER

1. The brief facts of the case are that under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017, an application was filed by the Applicant No. 1 alleging profiteering in respect of supply of "Sanitary Napkins" (hereinafter referred to as the product) by the Respondent.

2. The application was examined by the Standing Committee on Anti-profiteering in its meeting held on 06.09.2018, and it was decided, to refer the matter to the Director General of Anti-Profiteering (DGAP) to initiate detailed investigation in the matter.

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3. The DGAP after completing the investigation has submitted his report under Rule 129 (6) of CGST Rules, 2017 on 02.04.2019 for the period 01.07.2018 to 30.09.2018.
4. The DGAP in his report has stated that a notice under Rule 129 of the CGST Rules, 2017 was issued on 15.10.2018, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in GST rate had not been passed on to the recipients by way of commensurate reduction in price and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice along with all the supporting documents.
5. The DGAP has also stated that the Respondent submitted that Computerized bills were being issued by his clerk and in the bill bearing No. 43136 dated 01.08.2018, pertaining to the supply of the product, the benefit of reduction of tax rate from 12% to Nil was inadvertently not passed on to the recipient. However the GST of Rs. 65/- collected by him was paid to the Government along with interest. The Respondent had also submitted the following documents to the DGAP: -
- Pranesh Pathak* (i) Invoice-wise details of outward taxable supplies of all the Sanitary Napkins during the period July, 2018 to September, 2018.

(ii) Purchase prices of the all the Sanitary Napkins pre and post 27.07.2018.

(iii) GSTR-1 and GSTR-3B returns for the period July, 2018 to September, 2018.

6. The DGAP in his Report has stated that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the product "Sanitary towels (pads) or sanitary napkins; tampons" from 12% to Nil w.e.f. 27.07.2018, vide S. No. 146 of the Schedule to Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018, which was not in dispute. The Report has further stated that from the invoices made available by the Respondent, it appeared that the base price of the product had increased inspite of GST rate reduction from 12% to NIL w.e.f. 27.07.2018. The Report has admitted that the Respondent had purchased the product at an average base price of Rs. 57.70/- while the average selling price of the same product during the said period was Rs. 60.58/-, thus, the profit margin for the Respondent during the pre-rate reduction period was Rs. 2.88/- per unit.

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7. The DGAP has also submitted that the Respondent had a closing stock of 16 units of the product when the rate of tax was reduced from 12% to NIL w.e.f. 27.07.2018 without the benefit of ITC. Hence the Respondent was not entitled to avail ITC on the closing stock and the commensurate price of the closing stock of the product as on 26.07.2018, should have been the sum total of Rs. 57.70/- (basic purchase price), Rs. 6.92/- (increase in cost due to denial of ITC @12% of the basic purchase price of Rs. 57.70/-) and Rs. 2.88/- (profit margin) i.e., Rs. 67.50/-. The Report has further claimed that since the Respondent had sold only 13 units out of the closing stock of 16 units at a price above the aforesaid commensurate price he had profiteered to the extent of Rs. 76.83/- on the closing stock as on 26.07.2018.

8. The DGAP has also stated that during the post-rate reduction period (27.07.2018 to 30.09.2018), the purchase price of the product was increased to Rs. 66.07/- by the Respondent and hence, the commensurate selling price of the Respondent for the stock purchased after rate reduction w.e.f. 27.07.2018 should have been the sum of Rs. 66.07/- (basic purchase price) and Rs. 2.88/- (profit margin), i.e., Rs. 68.95/-. But, the Respondent had sold 207 units of the above product at a price above this commensurate price and therefore, the total

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profiteered amount on account of this sale out of the stock purchased after reduction of the GST rate w.e.f. 27.07.2018 was Rs. 1,204.70/-.

9. The DGAP has further submitted that based on the records of the outward supplies of all the products made by the Respondent it was found that during the period 27.07.2018 to 30.09.2018, i.e., after the reduction of the GST rate from 12% to Nil w.e.f. 27.07.2018, the Respondent had supplied a total of 1304 units of the product at a price above the commensurate price, out of which 266 units were supplied from the closing stock as on 26.07.2018.

10. Accordingly the DGAP has submitted that the profiteered amount on account of the sales made from the closing stock as on 26.07.2018 was Rs. 894.88/- and for the 1038 units sold from the stock purchased post GST rate reduction (after 26.07.2018) at a price above the commensurate price the profiteered amount was Rs. 4,387.63/-. Thus the Respondent has sold 1513 units during the period 27.07.2018 to 30.09.2018, at a price above the commensurate price and profiteered an amount of Rs. 5,282.51/-, as has been furnished in Annex-15 of the DGAP's Report where all the supplies were made in the State of Delhi only.

B. Bhatnagar

11. On perusal of the DGAP's Report, the Authority in its sitting held on 03.04.2019 decided to hear the Applicants and the Respondent on 22.04.2019 and accordingly notice was issued to them. But the Respondent sought adjournment and accordingly the hearing took place on 29.05.2019. On behalf of the Applicant No. 1 none appeared, the DGAP was represented by Sh. R.A. Rajneesh, Assistant Commissioner and the Respondent was represented by Sh. Anurag Kapoor, CA and Sh. Sushil Gaba, Advocate.

12. The Respondent vide his written submissions dated 10.06.2019 has stated that the DGAP had alleged that he had not passed on the benefit of rate reduction to the recipients. He has claimed that this act of negligence/mistake was not committed intentionally but was due to lack of knowledge. He has also claimed that the 12% GST which was wrongly collected was deposited with the Government along with the interest. The Respondent has also stated that without going into the merits of the case and to avoid litigation he has paid an amount of Rs. 5,283/- in terms of demand draft dated 06.06.2019 drawn on Yes Bank limited in favour of PAQ (HQ) CBEC, New Delhi. He has also claimed he was a law abiding citizen of India and the error of not passing on the benefit was not committed intentionally but was due to oversightness. He has also requested to drop the penalty proceedings

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if any and pass favourable order as deemed fit and proper by the Authority. The Respondent has enclosed the demand draft along with his letter to the Principal Chief Controller of Account, New Delhi stating that the amount of Rs. 5,283/- was being deposited in the account of Central Consumer Welfare Fund (Rs. 2,641.50/- and State of Delhi Consumer Welfare Fund Rs. 2,641.50/-) respectively.

13. We have carefully considered the Report of the DGAP and all the submissions placed on record. It's an admitted fact that the rate of tax on the product was reduced from 12% to NIL w.e.f. 27.07.2018 without the benefit of ITC. The DGAP vide Annexure-15 of his Report dated 29.03.2019 has found that the Respondent had increased his base price inspite of reduction in the rate of tax from 12% to NIL. Accordingly the DGAP has arrived at profiteered amount of Rs. 5,282.51/- which includes the profiteered amount of Rs. 894.88/- on the closing stock as on 26.07.2018 and Rs. 4,387.63/- on the fresh stock for the period 27.07.2018 to 30.09.2018. The Respondent has neither disputed the quantity nor the profiteered amount as has been arrived at by the DGAP.

14. The DGAP vide Annexure-15 of his report has clearly stated that based on the records filed by the Respondent and taking into consideration the base price of Rs. 57.70/- and Rs. 6.92/- the cost on

account of denial of ITC plus Rs. 2.88/- as profit margin the commensurate price Rs. 67.50/- should have been charged. However based on the sales and the actual sale price of the product it was found that the product was sold at much higher price thus denying the benefit of tax reduction to the recipients. It is also seen that the Respondent had supplied 1304 units during the period 27.07.2018 to 30.09.2018 and 266 units which were lying in his closing stocks as on 27.07.2018 at a higher price inspite of a rate reduction from 12% to NIL. Therefore the total profiteered amount on 1513 units that were supplied from 27.07.2018 to 30.09.2018 was to the extent of Rs. 5,282.51/-.

15. Based on the above discussion the Respondent is hereby 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 price, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Authority also confirms and determines the profiteered amount at Rs. 5,282.51/- and directs the Respondent to deposit this amount along with interest @18% into the Central and Delhi State Consumer Welfare Fund in the ratio of 50:50 since the supplies have been made in the State of Delhi as per Rule 133 (3) (c) of the CGST Rules, 2017.

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16. The amount of Rs. 5,283/- paid by the Respondent vide demand draft dated 06.06.2019 along with interest of Rs. 900/- paid through HDFC Bank demand draft no. 023223 dated 20.06.2019 is taken on record. This amount of Rs. 5,283/- is to be accounted in the ratio of 50:50 i.e. Rs. 2,641.50/- into the Central Consumer Welfare Fund and Rs. 2,641.50/- into the Delhi State Consumer Welfare Fund.

17. It is also established from the above facts that the Respondent has issued incorrect invoices while selling the above products to his recipients as he has not correctly shown the basic prices which he should have legally charged from them. The Respondent has also collected additional GST on the increased prices 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 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.

AB

18. A copy of this order be sent to both the Applicants, Commissioners CGST/SGST, Delhi and the Respondent free of cost. File of the case be consigned after completion.



Certified copy

B. Natar

(Bhupinder Batar)
Assistant Commissioner, 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/23/Bh.Int./2019

Dated: 26.06.2019

Copy to:-

1. Sh. Pranesh Pathak, Commissioner of Central Goods and Service Tax, Delhi South Commissionerate, 3rd floor, EIL Annexe building, Bhikaji Cama Place, New Delhi-110066.
2. M/s. Bhutani International Medicos, 38-S & 39-S, Safdarjung Hospital, Gate No.2, Opposite AIIMS, New Delhi-110029.
3. Chief Commissioner, CGST, CR Building, ITO Lane, IP Estate, New Delhi, Delhi 110002.
4. Commissioner, Department of Trade and Taxes, Govt. of NCT of Delhi, Vyapar Bhawan, IP Estate, New Delhi-110002
5. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
6. NAA Website/Guard File.