

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

Case No. 05/2020
Date of Institution 28.08.2019
Date of Order 10.02.2020

In the matter of:

1. Shri Rahul Sharma on behalf of M/s Local Circles India Pvt Ltd., 4th Floor, Express Trade Tower-2, Sector-132, Noida-201301.
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 Xiaomi Technology India Pvt. Ltd., Orchid (Block E), Ground Floor to 4th Floor, Embassy Tech Village, Marathahalli- Sarjapur, Outer Ring Road, Bengaluru-560103.

Respondent

Quorum:-

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



Present:-

1. None for the Applicant.
2. None for the Respondent.
3. None for the DGAP.

ORDER

1. The present Report dated 28.08.2019 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 present case are that the Standing Committee on Anti-Profiteering vide the minutes of its meeting held on 11.03.2019 had forwarded an application dated 21.02.2019 filed by the Applicant No. 1, to the DGAP. The Applicant No. 1 had stated in his application that the Respondent had resorted to profiteering in respect of supply of "Xiaomi-MI Power Bank 2i Red (10000 mAh)" (hereinafter referred as "said Power Bank"). The Applicant No. 1 had also alleged that the Respondent had maintained the same selling price for the said Power Bank despite reduction in the GST rate from 28% to 18% effected vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018, which came into force on 01.01.2019 and that the Respondent had not passed on the benefit of this reduction in the GST rate to his recipients by way of commensurate reduction in the price of the Power Bank as envisaged under Section 171 of the CGST Act 2017. The said application was examined by the Standing Committee on Anti-Profiteering, in its meeting held on

11.03.2019, and it had referred the application to DGAP to conduct a detailed investigation in the matter under Rule 129(1) of the CGST Rules, 2017 to determine whether the benefit of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients.

2. Thereafter, the DGAP issued a Notice to the Respondent on 09.04.2019 under Rule 129 of the CGST Rules, 2017 calling upon the Respondent to reply as to whether he admitted the allegation made by the Applicant No. 1 that the benefit of reduction in the GST rate from 28% to 18%, had not been passed on to the Applicant No. 1 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 as well as furnish all supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 15.04.2019 to 17.04.2019 which the Authorised Representative of the Respondent availed of on 24.04.2019. The Applicant No. 1 was also given an opportunity to inspect the non-confidential evidences/reply furnished by the Respondent on 09.08.2019. However, the Applicant No. 1 did not avail of the said opportunity. Meanwhile, on the request of the DGAP, the time limit to complete the investigation was extended upto 26.09.2019 by this Authority, vide its order dated 19.06.2019, in terms of Rule 129(6) of the CGST Rules, 2017.
3. The Respondent submitted his replies to the notice issued by the DGAP vide letters and e-mails dated 17.04.2019, 24.04.2019, 29.04.2019, 13.05.2019, 20.05.2019 and 01.08.2019. The submissions of the Respondent made before the DGAP can be summed as follows:-

- a) With regard to rate of tax, the Respondent was charging GST 18% before 01 Jan 2019 and continued to charge GST at 18% after 01 January 2019 for the said Power Bank supplied by him, classifying the same under HSN 8507 60 00. He also submitted that amendments effected vide notification No. 24/2018-Central Tax (Rate) dated 31 December 2018 did not lead to any reduction in the rate of tax applicable to the said Power Bank and accordingly the price of the said Power Bank remained unchanged.
- b) The Respondent said that classification of Power Bank under HSN 8507 60 00 was adopted by him on a conservative basis, although he believed that the impugned product merited classification under HSN 8504 40 90 as a static convertor. He also stated that he had already filed an Advance Ruling application in the state of Karnataka on this matter. He further stated that since all his supplies of the said Power Bank were classified under HSN 8507 60 00 in the periods before and after 01 January 2019 there was no reduction of tax rate in respect of the supplies made by him.
- c) The Respondent also furnished a tabulation along with sample invoices to support his stand that the base price, GST rate applicable, the GST charged upon the supplies of the said Power Bank and the cumulative tax price of the Power Bank which remained unchanged in the period before and after 01 January 2019. He also stated that he did not increase the price

of the said Power Bank supplied by him and hence the allegation made by the Applicant No. 1 was incorrect.

4. The DGAP in his report dated 28.08.2019 has reported that the main issue for determination was as to whether the Respondent had derived any benefit on account of reduction in rate of tax on the supplies of the said Power Bank on account of reduction in the GST rate w.e.f. 01.01.2019 and if so, whether he had passed on such benefit to his recipients in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
5. The DGAP has reported that it was evident from the documentary evidence received from the Standing Committee on Anti-profiteering that the price of the said Power Bank as shown in the screenshots had remained the same both before and after 01.01.2019. Further, the Respondent had contended that anti-profiteering provisions could not be applied to the case as there was no reduction in the rate of tax for the said Power Bank in his case.
6. The Respondent submitted a table as reproduced below (Table A) to the DGAP, highlighting the breakup of the price in respect of his supplies of the said Power Bank in the periods before the date, i.e. 01.01.2019, of coming into force of the amendments effected vide Notification No. 24/2018- Central Tax (Rate) dated 31.12.2018 and after 01.01.2019:

Table: A

Particulars	Before Amendment	After Amendment	Difference
Base Price	761.86	761.86	0
GST Rate	18%	18%	0




GST	137.14	137.14	0
Total	899	899	0
Invoice Numbers	3535296 and 3559133	3614473 And 3616581	

7. From the above Table the DGAP has observed that the price changed by the Respondent had remained same before and after 01.01.2019 and there was no reduction in the rate of GST being charged by him. The DGAP has further reported that the Respondent had classified the said Power Bank under HSN 8507 60 00 and the same following the Notification No. 18/2018-Central Tax (Rate), wherein under entry "S. No. 376AA, Chapter Heading HSN 8507 60 00, Description of Goods Lithium-ion Batteries", as had been inserted in Schedule III thereby attracting 18% GST. Hence, rate of tax in respect of the said Power Bank remained unaffected by coming into force of Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. The DGAP has also stated that Section 171 of CGST Act, 2017 which governs the anti-profiteering provisions under the GST regime, 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."* Therefore, the DGAP has found that the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 are not attracted in the present case.

8. The DGAP has further stated that as the Notice for Initiation of Investigation had been issued to the Respondent on the basis of complaint of the Applicant No. 1 that post rate reduction vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 which came into effect on 01.01.2019, MRP of the said Power Bank had

remained unchanged, the ambit of the current investigation was limited to determine if the Respondent had not passed on the benefit of reduction in the GST rate on Power Banks, from 28% to 18% w.e.f. 01.01.2019 in terms of Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and the scope of investigation did not cover any previous instance of reduction of tax rate including the rate reduction effected vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018.

9. Thus, the DGAP concluded that the provisions of Section 171(1) of Central Goods and Services Tax Act, 2017, relating to profiteering, are not attracted in the present case.
10. Report of the DGAP was received by this Authority on 28.08.2019 and the same was considered in the sitting of the Authority held on 11.09.2019 and it was decided to accord an opportunity of hearing to the Applicant No. 1 on 30.09.2019. The Applicant No. 1 vide his e-mail dated 30.09.2019 stated that he was in agreement with the Investigation report of the DGAP in this matter.
11. This Authority has carefully examined the Report and the written submissions of Applicant No. 1. It is revealed that the issues to be decided by the Authority are as under:-
 - 1) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?
 - 2) If yes then what was the quantum of profiteering?
12. 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."

13. In the present case, we observe that the allegation of the Applicant No. 1 is that the Respondent had maintained the same selling price in respect of supplies of the said Power Bank before and after coming into force of Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and he had not passed on the benefit of reduction in the GST rate to the Applicant No. 1 and other recipients. In this context, we have perused the screenshots of price of the product on the official web portal of the Respondent as on 19.12.2018 and 03.01.2019 and we observe that the said Power Bank was being classified under the HSN 8507 60 00 and supplies of the said Power Bank, described as "Lithium-ion Batteries", were being effected in line with entry at S. No. 376AA, of Notification No. 18/2018-Central Tax Rate dated 26.07.2018, whereby the GST being levied @ 18% w.e.f. 26.07.2018. We also observe that the entry after coming into force of Notification No. 24/2018-Central Tax (Rate) had no effect on the tax rate leviable on the said Power Bank, HSN 8507 60 00, being supplied by the Respondent. Hence, we do not find the present case to be a case of profiteering as had been alleged by the Applicant No. 1. The scope of this investigation/proceedings is limited to the issue of profiteering only and not to the issue of classification.
14. In view of the above discussion, we take the view that the allegation of the Applicant No. 1 is not tenable and therefore the application alleging violation of provisions of Section 171 of the CGST Act, 2017 is hereby dismissed.

16. 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.

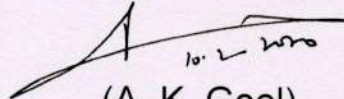
Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Member(Technical)



Certified Copy


(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/73/Xiaomi/2019

Date: 11.02.2019

Copy To:-

1. M/s Xiaomi Technology India Pvt. Ltd., Orchid (Block E), Ground Floor to 4th Floor, Embassy Tech Village, Marathahalli-Sarjapur, Outer Ring Road, Bengaluru-560103.
2. M/s. Local Circles India Pvt. Ltd., 2413, 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
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/Guard File.