

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

Case No.	34/2020
Date of Institution	23.12.2019
Date of Order	26.06.2020

In the matter of:

1. Shri M. Srinivas, Principal Commissioner, Medchal Commissionerate, Medchal GST Bhavan, 11-4-649/B, Lakdi Ka Pool, Hyderabad-500004.
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 Vijetha Supermarkets Pvt. Ltd., Ratna Arcade, NCL Colony,
Cine Planet Service Road, Kompally, Hyderabad-500015

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. R. Sateesh, Accounts Manager and Smt. Geetha Srinivasan, Consultant for the Respondent.

ORDER

1. The present Report dated 23.12.2019, has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application alleging profiteering by the Respondent in respect of the product "Frozen Green Peas" supplied by him. The Applicant had alleged that the Respondent had not reduced the selling price of the "Frozen Green Peas", when the GST rate was reduced from 5 % to Nil w.e.f. 01.01.2019 with denial of Input Tax Credit, vide Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018.
2. The DGAP has stated in his Report that the above application was examined by the Standing Committee on Anti-profiteering in its meeting held on 15.05.2019, whereby it was decided to refer the same to the DGAP to conduct a detailed investigation in the matter in terms of Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP has also stated that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 28.06.2019, a notice under Rule 129 (3) of the CGST Rules, 2017

was issued by him on 11.07.2019, calling upon the Respondent to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 01.01.2019 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 as well as furnish all documents in support of his reply. Vide the above said notice dated 11.07.2019, the Respondent was also afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said notice, during the period from 18.07.2019 to 22.07.2019 however, the Respondent did not avail of the said opportunity.

4. The DGAP has further stated that in response to the above notice, the Respondent did not submit the requisite documents on the due date. Hence reminders were issued to him. The Respondent did not submit complete documents even after several letters, therefore, Summons under Section 70 of CGST Act, 2017 read with Rule 132 of the above Rules, were issued to Sh. R. Satish, Managing Director of the Respondent to appear in the DGAP's office on 11.11.2019 and to submit the requisite documents/information. In compliance to the Summons, Sh. R. Satish did not appear in the DGAP's office on 11.11.2019 and neither submitted any documents/information.
5. The DGAP has also submitted that Summons under Section 70 of CGST Act, 2017 read with Rule 132 of the above Rules, were

again issued to Sh. R. Satish to appear in the DGAP's office on 20.11.2019 and to submit the requisite documents/information. In compliance to the second Summons, Sh. R. Satish again did not appear in the DGAP's office on 20.11.2019 but vide e-mail dated 19.11.2019 requested for another date.

6. The DGAP has further submitted that third Summons under Section 70 of CGST Act, 2017 read with Rule 132 of the above Rules, were issued to Sh. R. Satish to appear in the DGAP's office on 02.12.2019 and to submit the requisite documents/information. In compliance to the third Summons, the authorised representative of the Respondent namely Smt. Geetha Srinivasan appeared in the office of the DGAP on 02.12.2019 and submitted certain details vide letter dated 02.12.2019 and requested for another 2 days time to submit the pending details. The Respondent had submitted the required pending details vide e-mail dated 04.12.2019.

7. The DGAP has covered the period from 01.01.2019 to 30.06.2019 during the current investigation. The DGAP has also stated that an opportunity was afforded to the Applicant No. 1 for inspection of non-confidential documents submitted by the Respondent on any working day between 05.12.2019 and 06.12.2019 vide e-mail dated 04.12.2019 however, the above Applicant did not avail of the said opportunity.

8. The DGAP has further stated that in response to the notice dated 12.07.2019 and various letters and Summons, the Respondent

had replied vide letters/e-mails dated 24.07.2019, 22.08.2019, 19.09.2019, 01.10.2019, 19.11.2019, 02.12.2019, 04.12.2019 and submitted the following documents/information:-

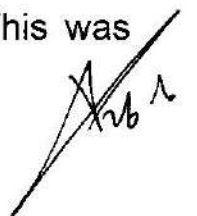
- a) List of all GSTIN registrations.
- b) GSTR-1 & GSTR-3B Returns for the period from September, 2018 to June, 2019 for all the GST registrations in India.
- c) Details of invoice-wise outward taxable supplies for the impacted products during the period from September, 2018 to June, 2019.
- d) Sample copies of invoices, pre and post 01.01.2019.
- e) Total outward sales summary for the period from September, 2018 to June, 2019.
- f) Price list of the impacted products.
- g) Purchase registers in respect of the impacted products,
- h) Details of closing stock of all the impacted products as on 31.12.2018.

9. The DGAP has also claimed that the Respondent in his submissions/replies has stated that he had not made any reversal of the ITC till date, in relation to the closing stock of the impacted products as on 31.12.2018. He had also stated that his suppliers had increased the taxable amount by 5% to cover the impact of GST rate reduction from 5% to Nil on the impacted products.

10. The DGAP has further claimed that the complaint, various replies of the Respondent and the documents/evidence on record has

been carefully examined by him and he has found that the main issues for determination were whether the rate of GST on the products supplied by the Respondent was reduced w.e.f. 01.01.2019 and if so, whether the Respondent had passed on the benefit of such reduction in the GST rate to his recipients, in terms of Section 171 of the CGST Act, 2017.

11. The DGAP has also contended that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "Frozen Green Peas" and "Frozen Sweet Corn" falling under the HSN 071021000 and 07104000, from 5% to Nil with the denial of ITC w.e.f. 01.01.2019, vide Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018 .
12. The DGAP has further contended that it was important to examine Section 171 of the CGST Act, 2017 which governed the anti-profiteering provisions under the GST. Section 171(1) of the CGST Act, 2017 reads as "*any reduction in rate of tax on any supply of goods or services or the benefit of ITC 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 ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could only be in terms of money, so that the final price payable by a recipient got reduced commensurate with the reduction in the tax rate or benefit of input tax credit. This was



legally prescribed mechanism to pass on the benefit of ITC or reduction in the rate of tax to the recipients under the GST regime.

13. The DGAP has also averred that on account of the reduction in the GST rate from 5% to Nil w.e.f. 01.01.2019, the ITC reversed on the closing stock held on 31.12.2018 would become cost to the Respondent as the Respondent would not get any ITC once rate of GST on "Frozen Green Peas" and "Frozen Sweet Corn" was reduced from 5% to Nil. Further, the Respondent's input was also his final product or output. Hence, the Respondent would not have to pay any GST on the supply of the said impacted products. Since it was submitted by the Respondent that he had not made any reversal of ITC till date, in relation to the closing stock held by him as on 31.12.2018, therefore, the benefit of denial of ITC which became cost for the Respondent w.e.f. 01.01.2019 might not be given while arriving at the amount of profiteering. This had been done because there was no reversal of ITC on the closing stock of inputs/input services and capital goods as on 31.12.2018 by the Respondent which was required under the provisions of Section 17 of the CGST Act, 2017 read with Rule 42 and 43 of the CGST Rules, 2017.
14. The DGAP has further averred that the methodology adopted for determining the amount of profiteering could be explained by illustrating the calculation in respect of specific item i.e. "Frozen Kings Green Peas 500 gm" sold during the month of December, 2018 (pre-GST rate reduction) an average base price (after

discount) of which was obtained by dividing the total taxable value by the total quantity sold during the period from 01.12.2018 to 31.12.2018. The average base price of this item was compared with the actual selling price of same item sold through the said channel during post-GST rate reduction period i.e. on or after 01.01.2019 as has been illustrated in the Table-A below:-

Table-A (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (Before 31.12.2018)	Post Rate Reduction (From 01.01.2019)
1.	Product Description	A	Frozen Kings Green Peas 500 gm	
2.	Product Code	B	011611	
3.	Notification No.	C	25/2018	
4.	Total quantity of item sold	D	574	
5.	Total taxable value	E	57242	
6.	Average base price (without GST)	F=E/D	99.72	
7.	GST Rate	G	5%	Nil
8.	Commensurate Selling price (post Rate reduction-with GST)	H=F*1.00		99.72
9.	Invoice No.	I		335
10.	Invoice Date	J		18.01.2019
11.	Total quantity (above invoice)	K		2
12.	Total Invoice Value	L		210
13.	Actual Selling price per unit (post rate reduction-with GST)	M=L/K		105
14.	Excess amount charged or profiteering	N=M-H	5.28	
15.	Total Profiteering	O= N*K	10.55	

15. From the above Table, the DGAP has stated that the Respondent did not reduce the selling price of the "Frozen Kings Green Peas 500 gm", when the GST rate was reduced from 5% to Nil w.e.f. 01.01.2019, vide Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018 and hence he had profiteered an amount of Rs. 10.55/- on a particular invoice and thus the benefit of reduction in GST rate was not passed on to the recipients by way of

commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. On the basis of above calculation as illustrated in Table-A above, profiteering in case of all the impacted goods of the Respondent for the period from 01.01.2019 to 30.06.2019 has also been arrived in similar way.

16. The DGAP has also stated that on the basis of aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted goods during the period from 01.09.2018 to 30.06.2019, as furnished by the Respondent, the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 5% to Nil or in other words, the profited amount came to **Rs. 2,33,515/-**. The said profited amount had been arrived at by comparing the average of the base prices of the impacted goods sold during the period from 01.09.2018 to 31.12.2018, with the actual invoice-wise base prices of such products sold during the period from 01.01.2019 to 30.06.2019. The DGAP has furnished the place (State or Union Territory) of supply-wise break-up of the total profited amount of Rs. 2,33,515/- as is given in Table-B below:-

Table-'B'

S. No.	State Code	State	Profiteered Amount (Rs.)
1	36	Telangana	210575
2	37	Andhra Pradesh (New)	22940
		Grand Total	233515

17. The DGAP has further stated that the allegation of the Applicant No. 1 that the base prices of the impacted goods were increased when there was a reduction in the GST rate from 5% to Nil with the denial of the ITC w.e.f. 01.01.2019, so that the benefit of such reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in prices, was correct. The DGAP has concluded that the total amount of profiteering on account of contravention of the provisions of Section 171 of the CGST Act, 2017 covering the period from 01.01.2019 to 30.06.2019 was Rs. 2,33,515/-.
18. The DGAP has also submitted that Section 171(1) of the CGST Act, 2017 requiring that "any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices", had been contravened by the Respondent in the present case.
19. The above Report was considered by this Authority in its meeting held on 24.12.2019 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 14.01.2020. The Respondent was issued notice on 26.12.2019 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the hearings no one has appeared on behalf of the Applicant No. 1 and 2 whereas the Respondent was represented by Sh. R. Sateesh, Accounts Manager and Smt. Geetha Srinivasan, Consultant. The

Respondent has filed written submissions dated 21.01.2020 in which he has stated as follows:-

20. That the final price to the consumer had remained same during the pre and the post rate reduction periods due to the reason that the suppliers had increased the base prices of the products. As a result, cost to the Respondent got increased and hence the Respondent could not pass on any benefit to his recipients.
21. The Respondent has also provided the following documents along with his submissions:-
 - a. Details of suppliers whose goods were linked with the computation of profiteering.
 - b. Sample invoice copies from the above mentioned suppliers to support the claim of the Respondent that they had increased the base prices at the time of rate reduction.
22. The Respondent was directed to submit consolidated and complete submissions vide Order dated 21.01.2020 but the Respondent vide his letter dated 04.02.2020 has accepted the profiteered amount of Rs. 2,33,515/- as computed by the DGAP in his Report dated 23.12.2020. The Respondent has further accepted that he would pay the profiteering amount along with interest @ 18% p.a. He has further requested to close the hearing.

23. The Respondent has furnished copies of the Demand Drafts of profiteered amount along with interest, a copy of which was supplied to the DGAP for verification. The DGAP vide his letter dated 19.02.2020 has stated that the Respondent had submitted the Demand Drafts of the profiteered amount and interest thereon; before this Authority therefore, he could not do the verification of the same. This Authority vide its order dated 11.02.2020 has directed the Respondent to deposit the Demand Drafts in the concerned Consumer Welfare Funds and to submit a copy of the receipts of the same before this Authority. The Respondent has not submitted the receipts from the concerned Consumer Welfare Funds till date.

24. We have carefully considered the DGAP's Report, the submissions of the Respondent and the documents placed on record. It is revealed that the Respondent is engaged in the purchase and sale of frozen grocery products including the "Frozen Green Peas" and the "Frozen Sweet Corn". It is also revealed that the Applicant No. 1 had lodged a complaint with the Standing Committee on Anti-Profiteering vide his application dated 29.03.2019 that the Respondent had not passed on the benefit of GST rate reduction from 5% to Nil w.e.f. 01.01.2019 by commensurately reducing his prices and had thus resorted to profiteering. The complaint was examined by the above Committee in its meeting held on 15.05.2019 and was forwarded to the DGAP for detailed investigation. The DGAP after collecting necessary evidence has reported that the Respondent has not reduced the prices of both

the above products and has thus profiteered an amount of Rs. 2,33,515/- w.e.f. 01.01.2019 to 30.06.2019, the details of which have been furnished by the DGAP vide Annexure-12 of his Report.

25. The record also reveals that the Government had reduced the GST rate from 5% to Nil w.e.f. 01.01.2019 vide its Notification No. 25/2018-Central Tax dated 31.12.2018 on "Frozen Green Peas" and "Frozen Sweet Corn". Since, the Respondent was supplying the above products which were impacted by the above Notification hence, he was required to pass on the benefit of rate reduction to his recipients.
26. It is further revealed from the perusal of Annexure-12 that the DGAP has computed the profiteered amount by comparing the average base prices of both the above products in respect of which the rate of GST was reduced from 5% to 0% w.e.f. 01.01.2019 with the actual post rate reduction base prices of these products as it was not possible to compare the actual base prices prevalent during the pre and the post GST periods due to the reasons that the Respondent was (i) selling his products at different rates to different customers by offering them different discounts (ii) the same customer may not have purchased the same product during the pre and the post rate reduction periods and (iii) a customer may have purchased a particular product during the pre rate reduction period and may not have purchased it in the post rate reduction period or vice versa and (iv) the average base prices computed for a period of one month w.e.f. 01.12.2018 to 31.12.2018 provide

highly representative and justifiable comparable average base prices. However, the average pre rate reduction base prices were required to be compared with the actual post rate reduction base prices as the benefit was required to be passed on each product to each customer. In case average to average base prices were compared for both the periods, the customer who had purchased products on the base prices which were more than the average base prices but less than the commensurate base prices, would not get the benefit of tax reduction. Such a comparison would be against the provisions of Section 171 as well as Article 14 of the Constitution which require that each customer has to be passed on the benefit of tax reduction on each purchase made by him. The methodology adopted by the DGAP to calculate the profiteered amount has been explained vide Table-A supra. From the invoices and the details of the outward supplies made available by the Respondent it has been found that he has increased the base prices of his products when the rate of GST was reduced from 5% to 0% w.e.f. 01.01.2019, therefore, the commensurate benefit of GST rate reduction was not passed on to the recipients. There was no reason for the Respondent to increase his base prices exactly equal to the rate of tax reduction w.e.f. 01.01.2019. Such a coincidence is incomprehensible, strange and unheard off which shows that the Respondent has deliberately tried to pocket the benefit of tax reduction to enrich himself at the expense of the vulnerable customers. This Authority has also approved the above methodology in its various orders which involved passing on of the

tax benefit. Therefore, the methodology employed by the DGAP while computing the profiteered amount is appropriate, reasonable, justifiable and in consonance with the provisions of Section 171 of the CGST Act, 2017 and hence, the same can be relied upon.

27. It is also evident that the Respondent has increased the base prices of the goods in question when the rate of GST was reduced from 5% to Nil. On account of the reduction in the GST rate w.e.f. 01.01.2019, the input tax credit reversed on the closing stock held as on 31.12.2018 by the Respondent would have become cost to the Respondent as he would not have got any input tax credit once the rate of GST on the "Frozen Green Peas" and "Frozen Sweet Corn" was reduced from 5% to Nil. As his input was also his final output he would not have to pay any GST on the supply of the impacted products. The Respondent has admitted before the DGAP that he had not reversed any Input Tax Credit till date in relation to the closing stock held by him of the impacted products as on 31.12.2018, therefore, the benefit of denial of Input Tax credit which would have become cost to the Respondent w.e.f. 01.01.2019 has rightly not been given by the DGAP to the Respondent as there was no reversal of the input tax credit on the closing stock of inputs/input services and capital goods as on 31.12.2018 made by the Respondent as per the provisions of Section 17 of the Central Goods and Services Tax Act, 2017 read with Rule 42 and 43 of the Rules.

28. The Respondent has also claimed that he had increased his base prices due to the reason that the suppliers of the both the above products had also increased their prices exactly equal to the tax reduction. He has also submitted the details of his suppliers and the tax invoices issued by them. In this connection it would be pertinent to mention that the Respondent has maintained the same base prices after the rate reduction which he was charging before tax reduction, w.e.f. 01.01.2017 i.e. the very day from which the tax reduction was made effective. Hence, the increase made in the base prices exactly equal to the amount of tax reduction is deliberate and has been made with the sole intention of pocketing the benefit of tax reduction. The Respondent cannot deny the benefit of tax reduction on the above ground as any increase in the prices made by the suppliers of the Respondent on the eve of tax reduction amounts to violation of the provisions of Section 171 by his suppliers also. Therefore, the above contention of the Respondent is frivolous and cannot be accepted.

29. It has also been observed that the Respondent vide his letter dated 04.02.2020 has accepted the Report of the DGAP and furnished the Demand Drafts to this Authority on account of the profiteered amount and 18% interest thereon, which were returned to him vide letter dated 11.02.2020 for depositing the above amount in the Central and State Consumer Welfare Funds of Andhra Pradesh and Telangana. However, no confirmation of the deposit of the profiteered amount has been received from the Respondent.



30. Based on the above facts the profiteering amount is determined as Rs. 2,33,515/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017 as per Annexure-12 of the Report. The Respondent is therefore directed to reduce the prices of the above products 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. 2,33,515/- along with the interest to be calculated at 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. 2,33,515/- as per Table-B, mentioned above and Annexure-12 of the DGAP's Report dated 23.12.2019, in terms of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest in the Central and the State Consumer Welfare Funds of State of Andhra Pradesh and Telangana. The above amount shall be deposited within a period of 3 months from the date of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

31. It is also evident from the above narration that the Respondent has denied the benefit of reduction in the tax rate to his buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus resorted to profiteering. Hence, he has committed an offence under section 171 (3A) of the CGST Act,

2017, and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

32. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST of concerned States to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is deposited in the respective Consumer Welfare Funds (CWFs). A report in compliance of this order shall be submitted to this Authority by the concerned Commissioner through the DGAP within a period of 4 months from the date of receipt of this order.
33. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 24.12.2019 the order was to be passed on or before 23.06.2020. However, due to the prevalent pandemic of COVID-19 in the country, this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of


Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

34. A copy each of this order be supplied to the Applicants, the Respondent, Commissioners CGST/SGST of the concerned States for necessary action. File be consigned after completion.

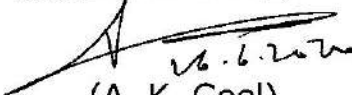
Sd/-
(Dr. B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Member(Technical)



Certified Copy


(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/116/Vijetha/2019 | 3545 -- 3551 Date: 26.06.2020

Copy To:-

1. M/s Vijetha Supermarkets Pvt. Ltd., Ratna Arcade, NCL Colony, Cine Planet Service Road, Kompally, Hyderabad-500015.
2. Shri M. Srinivas, Principal Commissioner, Medchal Commissionerate, Medchal GST Bhavan, 11-4-649/B, Lakdi Ka Pool, Hyderabad-500004.
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. Commissioner of commercial Taxes, o/o the Commissioner of state Tax, ct complex, nampally station road, hyderabad - 500 001.
5. Commissioner of commercial Taxes, office of the chief Commissioner of state Tax, eedupugallu, krishna district, Andhra Pradesh.
6. Chief Commissioner of central Goods & service Tax, Hyderabad zone GST bhavan, I.B.stadium road, basheer bagh, Hyderabad 500 004.
7. NAA Website / Guard File.

o/c

