

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

I.O. No. : 11/2022
Date of Institution : 17.09.2021
Date of Order : 05.08.2022

In the matter of:

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.

Applicant

Versus

M/s Dange Enterprises, 2nd Floor, Food Court, Sector-46, Grand Central Mall, Seawoods, Navi Mumbai-400706.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh shah, Technical Member.

Present:-


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



ORDER

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1. A Report dated 16.09.2021 has been received from the Director General of Anti-Profiteering (DGAP) after detailed re-investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017 pursuant to Interim Order No 25/2020 dated 20.11.2020 passed by National Anti-Profiteering Authority (NAA or Authority) in respect of the investigation report of DGAP

dated 01.07.2019. The Authority had ordered reinvestigation under the rule 133 (4) as per the following grounds:-

- a. The Respondent has not cooperated in the investigation and has not provided the requisite data to the DGAP which was required to examine whether the benefit of reduction in rate of tax has been passed on to the customers or not. Hence, the DGAP, in absence of the requisite data, was unable to compute the amount of profiteering as per the standard methodology adopted in similar cases of restaurant services.
 - b. This Authority observed that the Respondent has failed to comply with the repeated directions of not only the DGAP to furnish the requisite data/information during the investigation but also the repeated directions of this Authority.
 - c. Hence, the case was remanded back to the DGAP by directing him to obtain the requisite data/information by using all the means available within the law and complete the investigation and submit his report to this Authority. 
2. The brief facts of the case are that a reference was received by the DGAP from the Standing Committee on Anti-Profiteering on 01.07.2019 recommending a detailed investigation in respect of an application under Rule 128 (2) of the CGST Rules 2017, alleging profiteering in respect of restaurant service supplied by the Respondent (Franchisee of M/s Subway Systems India Pvt. Ltd.). It was alleged that despite the reduction in the rate of GST from 18% to 5% w.e.f. 15.11.2017, the Respondent had not passed on the commensurate benefit of tax-rate reduction as he had increased the base prices of his products. On receipt of the said reference from the

Standing Committee on Anti-profiteering, a notice under Rule 129 (3) of the CGST Rules, 2017 was issued on 12.07.2019 by the DGAP, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 15.11.2017, had not been passed on to his recipients by way of commensurate reduction in prices 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 the supporting documents. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information which formed the basis of the investigation between 18.07.2019 and 22.07.2019, which was however not availed of by the Respondent. Vide the above mentioned Report, the DGAP has stated:-

- a. That in response to the notice dated 12.07.2019 and subsequent reminders, the Respondent submitted his replies vide his letters/e-mails dated 01.10.2019, 17.10.2019, 31.10.2019, 18.02.2020, 25.02.2020, 26.02.2020, 28.02.2020, 03.03.2020, 05.03.2020, 06.03.2020, and 13.03.2020.
- b. That vide his e-mail dated 18.02.2020, the Respondent submitted certain data and information in respect of his sales, itemization report and his cash reports to the DGAP and that vide his e-mails dated 25.02.2020 and 26.02.2020, he furnished his GSTR-1 and GSTR-3B Returns; that vide his e-mail dated 03.03.2020, the Respondent submitted that as a franchisee, the pricing of his products was controlled by M/s Subway Systems India Pvt. Ltd. (the franchisor) and that he should not be penalized for adopting the prices suggested by his franchisor; that as a franchisee, he had nothing to do with the issue of passing of the benefit to the customers/ recipients, post the

reduction of GST rate; that he had been made to understand by his franchisor that if he did not get any ITC in the 5% GST slab, then he would be at a loss and for that reason he revised his product pricing upwards to offset the loss on account of non-availability of ITC; further, that the sales data from 01 July 2017 to 01 March 2018 was unavailable with him but the same was available with his franchisor, SSIPL; and that the data for the period from 02 March 2018 to 31 July 2019 had been made available to him by his franchisor; that the Respondent had requested the DGAP for a time of two months to submit the requisite data, as requisitioned by the DGAP; that the Respondent also submitted that the requisite data could be obtained by the DGAP from his franchisor, M/s Subway Systems India Pvt. Ltd. ; and that the franchisor not only had the requisite records but also had the manpower and resources to cull the data.

- c. That a notice of initiation of investigation was issued to the Respondent on 12.07.2019. Subsequently, reminders 01.08.2019, 24.09.2019 & 15.10.2019 and Summons dated 24.10.2019 & 01.11.2019 were also issued, but the Respondent did not submit the requisite details/ information. Since no information was forthcoming from the Respondent, letters dated 13.12.2019, 09.01.2020, 24.01.2020 & 14.02.2020 were issued to the Additional Commissioner (Anti-Evasion) requesting necessary action to get the requisite information and details from the Respondent. Further, letters dated 24.01.2020, 07.02.2020 & 14.02.2020 were also issued by the DGAP to the Commissioner, CGST Belapur Commissionerate, Navi Mumbai,

requesting him to depute an officer to get the requisite documents from the Respondent.

- d. That the Respondent was also issued another (fourth) reminder dated 14.02.2020 asking him to submit the required details/documents. Further, since the Respondent was a franchisee of M/s Subway Systems India Pvt. Ltd., the requisite details/ information in respect of the said franchisee was also solicited by the DGAP from the franchisor vide letter dated 14.02.2020.
- e. That vide letter dated 14.02.2020, the Joint Commissioner, CGST & CEx., Belapur Commissionerate forwarded certain documents gathered from the Respondent. That on examining these documents, it was found that the Respondent had provided the copies of GSTR -1 and GSTR-3B Returns for the period from July 2017 to June 2019. It was also found that the other documents gathered and forwarded by the above said Commissionerate, such as cash reports, were not relevant to the investigation.
- f. That the Respondent also furnished partial data/ information vide his successive emails dated 18.02.2020, 25.02.2020, 26.02.2020 & 28.02.2020, which comprised his GSTR-1 and GSTR-3B Returns and cash reports, as also the itemization reports and sales-details for the period from June 2017 to Oct 2017. However, the submissions made by the Respondent did not contain any data/ details pertaining to the period from November 2017 to June 2019. It was also found that the Respondent had not provided product-wise invoice-wise outward taxable sales data for even a single month, which had been requisitioned by the DGAP as the same was essential for the

investigation and hence the submitted by the Respondent was incomplete.

g. That the Respondent, vide letter/e-mail dated 03.03.2020, has submitted that:-

- i. the data/ information for the period 01/07/2017 to 01/03/2018 was not available with him, however, the same was available with M/s Subway Systems India Pvt. Ltd. (SSIPL) the franchisor;
- ii. even the data/ information that was available at his end was in 'text' format and copying from text format to 'M.S. word' document format would take him two months and requested the DGAP for at least two months to submit the data;
- iii. The data/ information could be procured by the DGAP from SSIPL as it was available with SSIPL.

h. That summons were issued to Chief Financial Officer SSIPL, the franchisor, on 06.03.2020 seeking production of data/ information pertaining to the Respondent before 16.03.2020 but since the summons were not complied with by SSIPL, another summons was issued to the Chief Financial Officer SSIPL seeking furnishing of the data/ information by 19.03.2020. Since the required data/ information was not furnished by SSIPL despite the abovementioned two summons, third summons were issued to the Chief Financial Officer SSIPL on 19.03.2020 seeking the information. However, neither the requisite data/ information nor any reply was received from SSIPL in response to the summons.

- i. That despite the above-mentioned steps taken by it and despite all possible efforts made by the officers concerned, the Respondent and SSIPL, the franchisor, did not submit the data/ information that had been solicited from them for completing the investigation.
- j. That since the Respondent, as also SSIPL the franchisor, was not cooperating in the investigation by not providing the requisite data/ information on one pretext or the other, DGAP was not able to compute the amount of profiteering as per the standard methodology followed in similar cases of restaurant services. The DGAP has further reported that in the absence of the requisite data required for the investigation as per the standard practice adopted in other such similar cases of franchisees of SSIPL, the DGAP was left with no option but to compute the amount of profiteering, taking the other similar cases of Subway franchisees investigated by the DGAP as the basis, which is detailed in Table-A below:-

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| S. No. | Name of the unit /franchisee | Period of investigation | Profiteered amount | Relevant turnover in post rate reduction period of which profiteering found | Percentage of profiteering |
|--------|--|--------------------------|--------------------|---|----------------------------|
| 1 | M/s Smokey Kitchen Foods OPC Pvt. Ltd. | 15.11.2017 to 30.06.2019 | 6,49,397 | 43,18,208 | 15.04% |
| 2 | M/s N Rai Delights LLP | 15.11.2017 to 31.03.2019 | 1,49,896 | 49,98,693 | 3.00% |

| | | | | | |
|----|------------------------------------|--------------------------------|-----------|-------------|--------|
| 3 | M/s Hungry Eyes | 15.11.2017 to 31.03.2019 | 6,66,700 | 1,55,30,721 | 4.29% |
| 4 | M/s Le Reve Pvt. Ltd. | 15.11.2017 to 31.03.2019 | 8,24,260 | 1,66,60,124 | 4.94% |
| 5 | M/s Lite Bite Travel Foods | 15.11.2017 to 30.04.2019 | 61,67,097 | 6,35,16,820 | 9.70% |
| 6 | M/s Cilantro Diners Pvt. Ltd. | 15.11.2017 to 31.03.2019 | 20,80,087 | 1,21,64,185 | 17.10% |
| 7 | M/s Bonne Sante | 15.11.2017 to 30.06.2019 | 7,33,043 | 1,04,33,995 | 7.03% |
| 8 | M/s Gaurav Sharma Foods Industries | 15.11.2017 to 30.06.2019 | 7,53,854 | 1,50,52,143 | 5.01% |
| 9 | M/s Neeva Foods Pvt. Ltd. | 15.11.2017 to 30.06.2019 | 41,93,431 | 2,60,61,557 | 16.09% |
| 10 | M/s Dough Makers India (P) Ltd. | 15.11.2017 to 31.03.2019 | 78,41,754 | 8,50,72,793 | 9.22% |
| 11 | M/s Subwest Restaurant LLP | 15.11.2017 to 30.06.2019 | 685531 | 23761435 | 2.89% |

k. That amongst the above-listed cases, the highest 'profiteering to turnover' ratio for exactly the same period of investigation had been computed in the case of M/s Neeva Foods Pvt Ltd, another franchisee of SSIPL. Accordingly, the 'profiteering to turnover' ratio computed in the case of M/S Neeva Foods Pvt. Ltd., i.e. 16.09%, was adopted as the basis of quantification of the quantum of profiteering in the instant case as well. DGAP has further stated that the aggregate of the monthly taxable turnovers of the Respondent, as reflected in his

GSTR-3B returns for the period from 15.11.2017 to 30.06.2019, worked out to Rs. 1,78,65,489/- as shown in table-B below:-

| Table-B | | (Amount |
|----------------|------------------------|----------------|
| in Rs.) | | |
| Month | Taxable Value/Turnover | |
| Nov-17 | 4,41,553 | |
| Dec-17 | 11,02,071 | |
| Jan-18 | 9,86,076 | |
| Feb-18 | 8,17,167 | |
| Mar-18 | 10,41,285 | |
| Apr-18 | 6,85,121 | |
| May-18 | 8,96,883 | |
| Jun-18 | 9,93,637 | |
| Jul-18 | 8,23,674 | |
| Aug-18 | 8,82,193 | |
| Sep-18 | 10,45,296 | |
| Oct-18 | 9,32,241 | |
| Nov-18 | 11,25,578 | |
| Dec-18 | 11,41,770 | |
| Jan-19 | 7,71,830 | |
| Feb-19 | 6,98,252 | |
| Mar-19 | 8,00,230 | |
| Apr-19 | 8,83,545 | |
| May-19 | 8,38,417 | |
| Jun-19 | 9,58,670 | |
| Total | 1,78,65,489 | |

*Note: The Taxable turnover for the month of November 2017 mentioned in the above table is half of the total taxable turnover for the month of Nov-2017 as mentioned in GSTR-3B since the period of determination of profiteering covers the period from 15.11.2017 to 30.06.2019.

- i. That adopting 16.09% as the percentage of profiteering based on the discussion in the preceding paragraphs, the amount of profiteering in the case of the Respondent works out to Rs. **28,74,557/-**. Based on the above, it has been concluded by the DGAP that the provisions of Section 171(1) of the CGST Act, 2017 have indeed been contravened by the Respondent in the present case.
3. The above Report of the DGAP was considered by this Authority and it was decided to allow the Respondent to file his consolidated written submissions by 05.06.2020. A Notice dated 27.05.2020 was also issued to the Respondent asking him to explain why the Report of the DGAP dated 27.03.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed.
4. This Authority after carefully considering the Report furnished by the DGAP, the submissions made by the Respondent, and the other material placed on record observed that the Respondent has not cooperated in the investigation and has not provided any data to the DGAP which was required to examine whether the benefit of reduction in the rate of tax has been passed on to the customers or not. The DGAP, in absence of the requisite data, was unable to compute the amount of profiteering as per the standard methodology adopted in similar cases of restaurant services. The Respondent has abysmally failed to comply with the repeated directions of not only the DGAP to furnish the data/information etc. during the investigation but also the repeated directions of this Authority over a five-month period to furnish the same.

5. Therefore, this Authority vide I.O. No. 25/2020 dated 20.11.2020 directed the Respondent to furnish all the data/information to the DGAP within 30 days of this order under any circumstances, failing which the DGAP shall use all the means, available within the law, to obtain the requisite data/information and complete the investigation and submit his report to this Authority under Rule 133(4) of the CGST Rules 2017
6. In response to this Authority's I.O. No. 25/2020 dated 20.11.2020, the DGAP submitted his report dated 16.09.2021 vide which it has been reported:-
- a. That on receipt of the above Order of this Authority, a letter dated 04.12.2020 was sent to the Respondent seeking requisite documents/details. However, the Respondent did not submit the requisite documents as required by the DGAP, in the proper format as provided.
 - b. Three summonses dated 18.12.2020, 06.01.2021 and 04.02.2021 under Section 70 of CGST Act, 2017 read with Rule 132 of the CGST Rules, 2017 were also issued to the Respondent seeking requisite documents/details for further investigation.
 - c. The Respondent did not submit the required documents even after providing enough time to furnish the data to reinvestigate the case. Subsequently, vide letters dated 06.01.2021 and 04.02.2021, the Joint Commissioner (State Tax), Belapur-702, Raigad Division, Thane, Maharashtra was also requested to serve the summons as well as depute an officer to procure the required documents from the Respondent in the prescribed format. In response to that, the jurisdictional officers have served the summons to the Respondent, however requisite details were not provided by the Respondent.

- d. That a letter dated 07.06.2021 was sent to Sh. Ravi Prakash, the Standing Counsel for the department to seek legal opinion whether prosecution could be launched in the case for non-compliance of summons dt 18.12.2020, 06.01.2021 & 04.02.2021 issued to the Respondent.
- e. The Standing Counsel for the departmental opined vide their letter dated 21.06.2021, that:-

*"The CGST Act, 2017 is a complete code in itself, which constitutes the offences, the procedure for prosecution and the punishment upon conviction. It also emanates the power of Commissioner, who is not a Police Officer, to order the arrest of a person, as contained in the GST Act itself. Section 69(1) of CGST Act, 2017 very clearly delineates the power of the Commissioner to order the arrest of a person whom he has reasons to believe, to have committed an offence which is cognizable and non-bailable. **In case of non-cognizable and bailable offence,** the Commissioner if have reasons to believe that an offence has been committed as specified in clauses (f) to (l) of Section 132 (1) of CGST Act, which are non-cognizable and bailable, can initiate a prosecution against the Respondent.*

Our conclusions are based on the completeness and accuracy of the facts and assumptions provided to us. If any of these facts and assumptions are not entirely complete or accurate, it is imperative that we are informed immediately, as the inaccuracy or the incompleteness could have a material effect on our conclusions. We are relying upon the current applicable provisions and the

regulations made thereunder and the judicial and administrative interpretation thereof, which are subject to change or modification by subsequent legislative, regulatory, administrative or judicial decisions. Any such changes also could have an effect on the validity of our conclusions.

Unless you specifically request otherwise, we will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretation thereof. Views are not binding on any authority or court, and hence no assurance is given that a position contrary to the opinion expressed herein, will not be sustained by any authority and/or sustained by an appellate authority or a Court of Law."

The opinion of the Counsel did not categorically suggest launching of prosecution against the Respondent under the CGST Act, 2017. N

- f. That the Respondent submitted his reply vide letters/e-mails dated 22.12.2020, 24.12.2020, 20.01.2021 and 11.08.2021. In his reply, he furnished irrelevant data, which was insufficient and not even in the format, as asked for, to investigate the case and compute the profiteering amount, if any. The documents sought by the DGAP and the replies filed by the Respondent have been furnished in the Table below:-


| <u>S.No.</u> | <u>Documents sought by DGAP</u> <u>Vide NOI dated 04.12.2020</u> | <u>Respondent's reply</u> |
|---------------------|---|--|
| 1. | Invoice wise details of outward taxable supplies of all the products impacted by | a. Email dated 22.12.2020. The data |

| | | |
|----|--|---|
| | the GST rate reduction w.e.f. 15.11.2017, the period July, 2017 to June, 2019. | furnished was only for the month of December, 2017. |
| 2. | Input Tax Credit register for the period July, 2017 to June, 2019. | b. Email dated 24.12.2020. No data furnished. |
| 3. | Electronic Credit Ledger for the period July, 2017 to June, 2019. | c. Email dated 20.01.2021. A sample data furnished. |
| 4. | Any other relevant documents and evidences in support of their reply to this notice. | d. Letter dated 11.08.2021. No data furnished. |

g. That after careful examination of the data/documents furnished by the Respondent vide his aforesaid letters/e-mails dated 22.12.2020, 24.12.2020, 20.01.2021 and 11.08.2021, it was found that the documents/information submitted by the Respondent were not adequate to compute the profiteering and also not in the desired formats as provided by the DGAP.

h. That to procure the requisite data/information, the DGAP also wrote letters dated 06.01.2021 and 04.02.2021 to the jurisdictional SGST Office, Belapur- 702, Raigad Division, Navi Mumbai to serve the summons as well as to depute an officer to procure the required documents from the Respondent in the prescribed format so that the investigation could be reached to its finality. In response to that, he served the summons to the Respondent and informed vide letter dated 17.08.2021 that the Respondent had conveyed them that the required data in this case has already been furnished to the DGAP

and enclosed the letter dated 11.08.2021 of the Respondent in which it was reiterated that the data had been furnished.

- i. That the various reply submitted by the Respondent and the documents/evidences on record had been carefully examined. From reply of the Respondent through his mail/letters as mentioned above, it was apparent that the Respondent remained evasive in submitting the information/data called for. Although five letters/emails were received from the Respondent, but the submissions made therein were insufficient to re-investigate the case as directed by this Authority in its Internal Order dated 20.11.2020. Even during the course of earlier investigation in this case, the Respondent had been evasive in furnishing the requisite information/data despite of several correspondences made with him. 
- j. That the Respondent had failed to follow the directions of the Internal Order dated 20.11.2020 of this Authority, wherein it was specifically directed that they shall furnish the desired data/information to the DGAP within 30 days of order under any circumstances and if the Respondent failed to do so, the DGAP should use all the means available within the law.
- k. That in view of non-submission of requisite data/information by the Respondent in spite of sincere efforts made by the DGAP, a legal view was sought by the DGAP from Shri Ravi Prakash, the departmental Standing Counsel vide letter dated 21.06.2021 whether the Respondent could be prosecuted in this case. The counsel has, as detailed in para-9 above, advised in detail the action under the CGST Act, 2017 which may be initiated against the Respondent

- I. That all possible means within the law have been used to procure the requisite data/information from the Respondent. However, the Respondent did not provide the same even against the Summonses issued to them. Therefore, appropriate legal action against the Respondent for non-compliance of Summonses appears fit to be taken. Since the DGAP is dealing with only with Anti-profiteering provisions provided under the CGST Act/Rules, 2017, and since the office of the Commissioner of State Tax, Maharashtra State, Mazgaon, Mumbai is the Jurisdictional GST authority for the Respondent, a letter dated 13.09.2021 has been sent to them requesting to take appropriate legal action against the Respondent in light of the legal opinion/advice of the Standing Counsel and in terms of appropriate provisions of the SGST Act, 2017. They have also been requested to send the action taken Report directly to the National Anti-profiteering Authority under intimation to the DGAP
7. The DGAP has concluded that his earlier report dated 27.03.2020 submitted by him, establishing and determining the profiteered amount to the tune of Rs. 28,74,577/- (including GST on the base profiteered amount) might be considered as the findings of this investigation.
8. The above Report of the DGAP was considered by this Authority and it was decided to allow the Respondent to file his consolidated written submissions. A notice dated 25.02.2022 was also issued to the Respondent to explain why the Report above dated 16.09.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed and penalty under Section 171(3A) read with Rule 133(5) of the CGST Rules, 2017 should not be imposed. In response to

the above notice dated 25.02.2022, the Respondent filed his submissions dated 15.03.2022 through e-mail, vide which he has submitted:-

- a. That in his case, the methodology adopted by the DGAP for calculation of profiteering is based on adopting the highest ratio of the benefit received to turnover amongst all similar cases of profiteering pertaining to another franchisee of M/s SSIPL, i.e. based on the profiteering percentage in the case of M/s Neeva Foods Pvt. Ltd. which had been decided by this Authority. However, in the Order No. 36/2020 passed by this Authority in the case of M/s Neeva Foods Pvt. Ltd., it was mentioned that no fixed formula can be set for computation of the profiteered amount as the facts of each case are different. Since, his company and M/s Neeva Foods Pvt. Ltd. are two different companies, owned by two different people, operating in different geographical areas, serving different customer segments, with different taxation filings and having two different GST numbers, the calculation of profiteering should also be different for both the cases.
- b. That he has not been provided the data and the computation done in the case of M/s Neeva Foods Pvt. Ltd. which he needed to understand the basis of the calculation of profiteering.
- c. That he has requested for the data of the referred company i.e. M/s Neeva Foods Pvt. Ltd. so that he could understand the methodology under which calculation of profiteering was done. That he agreed to submit the invoice-wise and customer-wise data for the duration as requested by the DGAP.

- d. That all the Subway franchisees should be treated at the same percentage of profiteering as all the Subway franchisees follow same tax bracket, standard menu, menu rate, food vendor etc.
- e. That in the case of M/s Neeva Foods Pvt. Ltd., the ratio of ITC to turnover was 9.19%. If the percentage of benefit that needed to be passed on was 13% (GST was reduced from 18% to 5%), by using simple arithmetic, his ratio of ITC to turnover would be 3.81% (13%-9.19%) and the profited amount would be Rs. 6,80,675/-. Out of the total profited amount 12.5% of the amount would be shared by the franchisor i.e. M/s Subway Systems India Pvt. Ltd. as he had been charging royalty @ 12.5%.
- f. That he was giving discount throughout the year which was more than 13%. Hence, the discounted sales needed to be taken out from the Total Sale of Rs. 1,78,65,489/-.
9. Further, vide Order dated 22.03.2022, the Respondent was given one more chance to submit the complete requisite data required for calculating the amount of profiteering. However, vide e-mail dated 05.04.2022, the Respondent has submitted some data in excel format for the year 2017 and has further requested for two weeks' time for submitting the remaining data. The request of the Respondent was considered by this Authority and vide Order dated 12.04.2022, the Respondent was directed to provide the complete data required for the purpose of profiteering calculation and personal hearing through video conferencing was also granted to the Respondent on 10.05.2022. However, the Respondent has neither appeared for the hearing nor has he requested for further extension and accordingly, the matter was closed by the Authority for order. However, the Respondent

vide e-mail dated 13.06.2022 informed that he agreed to provide invoice-wise and customer-wise data for the duration requested by the DGAP. He also requested to methodology adopted by the DGAP in the case of M/s Neeva Foods Pvt. Ltd. may be provided to them (Respondent).

10. The Report furnished by the DGAP, the submissions made by the Respondent, and the other material placed on record were carefully considered by this Authority. On examining the various submissions it is found that the Respondent did not co-operate in the investigation and had not provided the requisite data to the DGAP which was required to examine whether the benefit of reduction in the rate of tax had been passed on to the customers or not. Therefore, in absence of the requisite data, the DGAP was unable to compute the amount of profiteering as per the standard methodology adopted in similar cases of restaurant services. Therefore, in the present case, the DGAP had arrived at the profiteering amount by adopting the highest ratio of the amount of profiteering to the turnover of 16.09% in the similar case of M/s Neeva Foods Pvt. Ltd. for the same period of investigation and had thus computed that the Respondent had profited an amount of Rs. 28,74,557/- approximately. The contention of the Respondent that methodology adopted in respect of M/s Neeva Foods Pvt. Ltd. may be supplied to the Respondent is not acceptable, as the said order is already available on the website of this Authority.

11. This Authority observes that the methodology adopted by the DGAP while calculating the amount of profiteering at the highest percentage of profiteering as indicated in Table-A cannot be considered as appropriate methodology until and unless the said contention is supported by some data

belonging to the Respondent. As may be seen from the Table-A, the percentage of profiteering in respect of different franchisee have varied from 2.89% to 17.10 %. The Authority feels that different companies owned by different people operating in different geographical areas, serving different customer segment different taste and choices cannot be compared equally unless they are supported by the data, may be for a limited period also. The Authority also finds that the variation of profiteering from 2.89% to 17.10% indicates huge variation and adopting a particular percentage needs to be done in a scientific manner keeping into consideration the factors mentioned in this paragraph.

12. The Authority finds from the facts narrated above that innumerable opportunities have been provided to the Respondent to provide relevant information and data to the DGAP. During the earlier round of proceedings, the matter was remanded back to the DGAP to reinvestigate the matter by taking all relevant data and information from Respondent and necessary direction in this regard was also provided to them (Respondent). However, it would appear from the facts narrated and recorded in the earlier paragraphs that the Respondent has deliberately not provided full and complete information for the period of investigation from November-2017 to June-2019.
13. The Authority finds that Respondent vide e-mail dated 05.04.2022 to the Authority has submitted some data in the excel format for the period from July-2017 to December-2017. The Authority has carried out preliminary scrutiny of the limited data provided by the Respondent and the observations are as follows:-

- a. This Authority has randomly taken four items sold by the Respondent namely '6" Chicken Tandoori Sub', '12" Aloo Patty Sub', '6" Corn & Peas Sub' and '6" Aloo Patty Sub' and has compared the pre-rate reduction average base prices of these products with the post-rate reduction average base prices. The comparison of the average base prices is tabulated in the below Table-C:-

Table-C

(Amount in Rs.)

| S. No | Name of the Item (A) | Average Base price July-17 to Nov-17 (B) | Average Base price December-2017 (C) | Increase in Base Price (D= C-B) | Increase in Base Price in Percentage (E= D*100/B) |
|-------|-------------------------|--|--------------------------------------|---------------------------------|---|
| 1 | 6" Chicken Tandoori Sub | 146.80 | 180.95 | 34.15 | 23.27 |
| 2 | 12" Aloo Patty Sub | 241.49 | 280.95 | 39.46 | 16.34 |
| 3 | 6" Corn & Peas Sub | 120.21 | 136.68 | 16.47 | 13.70 |
| 4 | 6" Aloo Patty Sub | 123.54 | 137.23 | 13.69 | 11.08 |

14. The Authority also find that after the closure of the hearing, Respondent vide his email dated 13.06.2022 has stated that he has agreed to submit the requisite data in the prescribed format as required by the DGAP for the entire period of investigation. In the given situation, as narrated above, it would be prudent that last opportunity may be provided to the Respondent to provide complete information for the investigation period within one month of issue of this order, failing which, DGAP would calculate the amount of profiteering based on the information provided by the Respondent vide

email dated 05.04.2022 and extrapolating the profiteered percentage of the limited period of information provided to the over all investigation period.

15. In view of the above said observation, the matter is remanded back to the DGAP to carry out further investigation in terms of Rule 133(4) with a direction that the investigation should be completed and a report should be sent to the Authority within three months. It is reiterated that if the Respondent does not provide relevant and complete information for the investigation period all means available under the provisions of the CGST Act, 2017 and rules made thereunder shall be utilised.
16. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-



"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

17.A copy each of this order be sent, free of cost to the DGAP and the Respondent.

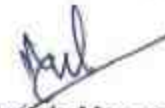
Sd/-
(Amand Shah)
Technical Member &
Chairman



Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/ NAA/160/Dange/2020
Copy To:-

Dated: 05.08.2022

1. M/s Dange Enterprises, S-46, 2nd Floor, Food Court, Grand Central Mall, Seawoods, Navi Mumbai-400706.
2. 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.
3. Guard File.