

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

Case No.	4/2018
Date of Institution	17.04.2018
Date of Order	31.05.2018

In the matter of:

M/S Abel Space Solutions LLP, 47, DDA Site-1, Shankar Road, New
Rajinder Nagar, New Delhi – 110060 (email:-info@ndlc.in).

Applicant

Versus

M/S Schindler India Private Limited, B-401/402, Delphi, Hiranandani
Business Park, Powai, Mumbai-400076.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member

ORDER

1. The present report dated 16.04.2018, has been received from the Director General of Safeguards (DGSG) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that an application dated 20.09.2017 was filed by above applicant before the Standing Committee, constituted under Rule 123 (1) of the above Rules alleging that the Respondent had not charged GST on the base price of the lift ordered by him from the Respondent, after excluding the pre-GST Excise Duty on the material component and thus he had been charged tax twice on the same material.
2. The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the DGSG, vide the minutes of it's meeting dated 15.02.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.
3. The DGSG after summoning both the parties had found that an order for supply of two lifts was placed by the Applicant on the Respondent in December 2016 and for the first lift, the invoice was raised by the Respondent on 26.06.2017, against which full payment was made by the Applicant and he had no objection in respect of this invoice. The DGSG had also found that in the case of the second lift, the material was despatched to the Applicant on 29.03.2017 and the installation was done on 25.07.2017, i.e., after the GST had come into force. He had further found that three invoices were issued by the Respondent in respect of the second lift. The DGSG had also observed that some

payment for the second lift was paid by the Applicant in advance, hence an invoice dated 28.06.2017 was issued by the Respondent levying Service Tax at the then applicable rate. He had further observed that after installation of the second lift in the GST regime, two more invoices were issued on 27.07.2017 wherein the prevalent rate of GST was charged. The DGSG had also stated that as per the Finance Act, 1994, the supply and installation of lift amounted to "Works Contract" and as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006, value of the service portion of the works contract was to be taken as equivalent to the gross amount charged for the works contract minus the value of property in goods transferred in the execution of the said works contract and on the goods transferred Value Added Tax was to be charged and on the service portion, Service Tax was leviable. He had further stated that as per Section 142 (10) and 142 (11) of the CGST Act, 2017, the goods or services or both supplied after coming in to force of the above Act, in pursuance of a contract entered into prior to the appointed day were liable to GST but no tax was payable under this Act to the extent the tax was leviable on the said goods or services under the erstwhile VAT Act of the State or Chapter V of the Finance Act, 1994. He had also submitted that as per the explanation to Rule 3 of Point of Taxation Rules, 2011, wherever any advance was received by the service provider against the taxable service, the point of taxation was to be construed as the date of receipt of such advance. He has further submitted that the installation of elevator was completed in the GST regime, and hence the point for levy of

tax for supply of material fell under the GST regime and accordingly, two more invoices were issued on 27.07.2017 wherein the applicable GST was correctly charged. He has also intimated that the Respondent had claimed that the Excise Duty benefit could only be given if the material was dispatched on or after 01.07.2017 and since all the material was delivered before 30.06.2017 and hence, he was not in a position to pass such benefit to the Applicant.

4. The Applicant vide his letter dated 28.03.2018 to the DGSG had also intimated that his application dated 20.09.2017 was submitted when the CGST Act, 2017 had been freshly introduced and there were several provisions in it which were not clear to him. He had also intimated that a number of clarifications had come on the various issues pertaining to the above Act, due to which he had properly understood the implication of the invoices raised by the Respondent and found them correct as per the provisions of the CGST Act, 2017. He had therefore, requested the DGSG to treat his application as withdrawn. Based upon the above facts the DGSG had recommended closure of the present proceedings.
5. The above report was considered by the Authority in its sitting held on 24.04.2018 and it was decided to hear the Applicant on 11.05.2018. The hearing was further rescheduled to 14.05.2018. However, the Applicant did not put in an appearance on the scheduled date but vide his letter dated 14.05.2018 sent to the Authority, the Applicant had requested for withdrawal of his application dated 20.09.2017 citing the same reasons which were given by him in his letter dated 28.03.2018 to the DGSG.

6. We have carefully considered the material placed before us as well as the claim made by the Applicant and it has been revealed that the Applicant had placed an order for installation of two lifts on the Respondent in the month of December, 2016. It has also been revealed that the Applicant has no grievance against the price of the first lift supplied by the Respondent and the tax levied upon him. It has further been revealed that in respect of the second lift the Applicant has claimed that the Respondent had issued three invoices one of which was issued on 28-06-2017 on which the then applicable Service Tax was charged but on the two invoices issued on 27-07-2017 i.e. after coming in to force of the GST, the tax had been charged without excluding the pre-GST regime Excise Duty and hence he had been charged tax twice once on the pre-GST Excise Duty and subsequently on the full value of the material used in the lift. It is clear from the perusal of the record that the Applicant had paid advance for purchase of this lift and he was charged the Service Tax which was leviable at the time of issue of the invoice on 28-06-2017, which he has not disputed and which is also correct as the Applicant was liable for payment of Service Tax under the then applicable provisions of Finance Act, 1994. However in respect of the two invoices dated 27-07-2017 as the installation of the second lift had been completed after coming in to force of the CGST Act, 2017, he was liable to be charged GST at the rate which was prevalent on 27-07-2017.
7. It is also apparent from the record that the Applicant vide his letter dated 28-03-2018 sent to the DGSG and vide his letter dated 14-05-

2018 sent to this Authority has admitted that he was not fully aware of the provisions of the CGST Act, 2017 when he had filed his application on 20-09-2017 and since the issues pertaining to his case had been further clarified subsequently his application; should be treated to have been withdrawn.

8. Based on the above facts there is no substance in the claim made by the Applicant and therefore, this Authority accepts the report dated 16-04-2017 filed by the DGSG under Rule 129 (6) of the CGST Rules, 2017 and hereby orders dropping of the present proceedings as no violation of the provisions of Section 171 of the CGST Act, 2017 has been established. A copy of this order be sent to the Applicant, the Respondent and the DGSG free of cost. File of the case be consigned after completion.



(B. N. Sharma)
Chairman

(J. C. Chauhan)
Technical Member

(R. Bhagyadevi)
Technical Member

Certified Copy

o/c

1.6.18
(A.K. Goel)
Secretary, NAA

Copy to :

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220

2. M/S Schindler India Private Limited, B-401/402, Delphi, Hiranandani Business Park, Powai, Mumbai-400076
3. Director General, Safeguards, CBEC(DOR), Ministry of Finance, New Delhi-110001
4. NAA website