

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

Case No. : 28/2018

Date of Institution : 03.10.2018

Date of Order : 27.12.2018

In the matter of:

1. State Level Screening Committee on Anti-Profiteering, Kerala
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

**Versus**

1. M/s Ahuja Radios, Phase-II, Noida-201305

Respondent

Quorum:-

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



Present:-

1. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala for the Applicant No. 1
2. Sh. Anwar Ali T. P., Additional Commissioner for the Applicant No. 2.

### ORDER

1. The present Report dated 28.09.2018, 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 case are that the Kerala State Screening Committee on Anti-Profiteering vide the minutes of it's meeting held on 08.05.2018 had referred the present case to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of "**PA Ceiling Speaker BS- 6083T**" (HSN Code 85182100), and "**PA Wall Speaker WS- 661T**" (HSN Code 85182100) and by not passing on the benefit of reduction in the rate of tax w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. Thus it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017. In this regard, the Kerala State Screening Committee had relied on two invoices issued by the Respondent, one dated 30.10.2017 (Pre-GST rate revision) and the other dated 04.12.2017 (Post GST rate revision).
2. The above reference was examined by the Standing Committee on Anti-Profiteering and was further referred to the DGAP vide minutes of it's meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.



3. The DGAP has stated in his report dated 28.09.2018 that the applicable rate of tax was reduced to 18% from the existing rate of 28% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. Details of the invoices issued by the Respondent are as per the table given below:-

S.No.	Product	Pre-rate of GST revision (Before 15.11.2017)			Post rate of GST revision (After 15.11.2017)		
		Invoice No. & date	Tax Rate	Base price per unit Excluding GST (Rs.)	Invoice No. & date	Tax Rate	Base price per unit Excluding GST (Rs.)
1	PA Ceiling Speaker BS 6083T	SKN/17- 18/1469 dated 30.10.2017	28%	<b>625/-</b>	SKN/17- 18/1761 dated 04.12.2017	18%	<b>625/-</b>
2	PA Wall Speaker WS- 661T	SKN/17- 18/1469 dated 30.10.2017	28%	<b>545/-</b>	SKN/17- 18/1761 dated 04.12.2017	18%	<b>545/-</b>

4. The DGAP after scrutiny of the above two invoices issued by the Respondent has intimated that there was no increase in the per unit price (excluding GST) in respect of both the products mentioned in the above invoices. The base Price per unit excluding GST remained same at Rs. 625/- and Rs. 545/- respectively for both the products during Pre GST rate revision and Post GST rate revision. The DGAP



has finally submitted that while the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, there was no increase in the per unit price (excluding GST) and hence the allegation of profiteering by the Respondent was not sustainable.

5. The above Report was considered by the Authority in its meeting held on 03.10.2018 and it was decided that as there was no private applicant, hence the Kerala Screening Committee should be asked to appear before the Authority. On 31.10.2018 Smt. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 and during the hearing she agreed to the Report submitted by the DGAP.
6. We have carefully examined the DGAP's Report and the documents placed on record and find that the following issues are required to be settled in the present proceedings:-
  - I. Whether there was reduction in the rate of tax on the above products in question w.e.f. 15.11.2017?
  - II. Whether any benefit of reduction in the rate of tax was to be passed on?
7. Perusal of Section 171 of the CGST Act 2017, shows that it reads as under:-
  - (i) "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."
8. It is apparent from the perusal of the facts of the case that while there was reduction in the rate of tax on the above products from 28% to

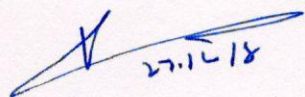


18% w.e.f. 15.11.2017, vide Notification no. 41/2017-Central Tax (Rate) dated 14.11.2017, but the base prices (excluding tax) of both the above products had remained the same and hence the allegation of profiteering is not established.

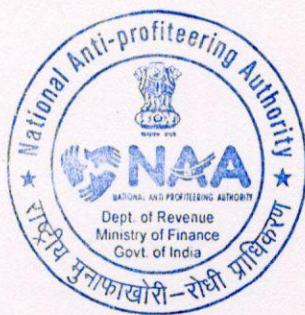
9. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and hence there is no merit in the application filed by the above Applicants and the same is accordingly dismissed.

10. 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.

Certified copy

 27.12.18

(A.K.Goel)  
Secretary NAA



Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(R. Bhagyadevi)  
Technical Member

F.No.22011/NAA/102/Ahuja/2018 / 1302 - 1306

Dated: 27.12.2018

Copy to:-

1. M/s Ahuja Radios, Phase-II, Noida-201305
2. Commissioner, State GST Department, 9<sup>th</sup> Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001
4. NAA website.
5. Guard File.