

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

Case No. : 09/2019
Date of Institution : 12.11.2018
Date of Order : 11.02.2019

In the matter of:

1. Kerala State Screening Committee on Anti-profiteering.
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.

Applicants

Versus

M/s Emke Silks & Garments Pvt. Ltd., Kodungallur – Shornur Highway,
Near KSRTC Bus Stand, Veliyannur, P.O. Thrissur, Kerala 680001.

Respondent

Quorum:-


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

Present:-

1. None for the Applicant No. 1.
2. Sh. Anwar Ali T. P., Additional Commissioner, DG Anti-Profiteering for the Applicant No. 2.

Order

1. The present report dated 08.11.2018 has been received from the Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that the Kerala State Screening Committee on Anti-profiteering, vide the minutes of its 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 "Trousers" (Denim Jeans Design 899), by not passing on the benefit of reduction in the rate of tax at the time of implementation of the GST w.e.f. 01.07.2017. It was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017. In this regard, the Kerala State Screening Committee has relied on two invoices issued by the Respondent, one dated 29.04.2017 (Pre-GST) and the other dated 12.09.2017 (Post-GST).



2. The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the DGAP vide minutes of its

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 08.11.2018 that the "Trousers" (Denim Jeans Design 899) (HSN Code 62034200), were exempted from Central Excise Duty, vide Notification No. 30/2004-CE dated 09.07.2004 and attracted only VAT @ 5%. After implementation of the GST w.e.f. 01.07.2017, the tax on the above product was fixed @ 5%. The pre-GST & the post-GST sale invoice-wise details of the applicable tax rates and the base prices (excluding VAT or GST) of the said product supplied by the Respondent are mentioned in the table below:-

Table

S. No	Description of the Product	Pre-GST				Post-GST			
		Base Price (Rs.)	Tax Rate (VAT)	Tax Amount (Rs.)	Total Selling Price (Rs.)	Base Price (Rs.)	Tax Rate (VAT)	Tax Amount (Rs.)	Total Selling Price (Rs.)
1.	"Trousers" (Denim Jeans Design 899)	847.62	5%	42.38	890	847.62	5%	42.38	890

4. The DGAP has submitted in its report that the rate of tax on the product had remained the same in the pre-GST and the post- GST era. Moreover, the pre-GST and post-GST base prices (excluding tax) had also remained the same. Therefore, the provisions of Section 171 of the CGST Act, 2017 have not been contravened and the allegation of profiteering by the Respondent was not established.
5. The above Report was considered by the Authority in its meeting held on 13.11.2018 and it was decided that since there was no complainant/other applicant in this case, the Kerala Screening Committee be asked to appear before the Authority. The Kerala

Screening Committee was given three opportunities to plead the case on 28.11.2018, 08.01.2019 and 28.01.2019 but none appeared on the stipulated dates.

6. A letter dated 25.01.2019 from the Additional Commissioner, State Tax, Kerala was received mentioning that no further details regarding this manufacturer of the brand were available with them.
7. We have carefully considered the Report of the DGAP and the documents placed on record and find that the only issue that needs to be dwelled upon is as to whether there was a case of reduction in the rate of tax and whether the provisions of section 171 of CGST Act, 2017 are attracted in this case.
8. 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."

9. It is clear to us from the perusal of the facts of the case and the evidence on record that there was no reduction in the rate of tax on the above product w.e.f. 01.07.2017 and hence the anti-profiteering provisions contained in Section 171 (1) of the CGST Act, 2017 are not attracted. Also, there is no increase in the per unit base price (excluding tax) of the above product and therefore the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017. As such, we do not find any merit in the application filed by the above Applicants and accordingly, the same is 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.

sd/-

(B. N. Sharma)
Chairman

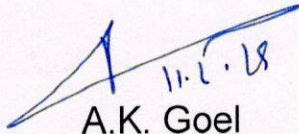
sd/-

(J. C. Chauhan)
Technical Member

sd/-

(R. Bhagyadevi)
Technical Member

Certified Copy


11.2.18

A.K. Goel
(Secretary, NAA)



F. No. 22011/NAA/102/Emke Silks/2018/1827

Date: 11.02.2019

Copy To:-

1. M/s Emke Silks & Garments Pvt. Ltd., Thrissur.
2. Commissioner, State GST Department, 9th Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
3. Director General Anti-Profitteering, 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.

5. Guard File.