

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

Case No.	17/2019
Date of Institution	16.01.2019
Date of Order	13.03.2019

**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

M/s Ramraj Handlooms, Ramraj-V-Tower, No. 10, Sengunthapuram,  
1st Street, Mangalam Road, Tirupur, Tamil Nadu - 641604.

Respondent

**Quorum:-**

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






Present:-

1. Ms. 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 Directorate 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 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 'Little Stars Dhoti (5-6)' (here-in referred to as the product) by not passing on the benefit of reduction in the rate of tax at the time of implementation of the Goods and Services Tax (GST) w.e.f. 01.07.2017. Thus, 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, Kerala State Screening Committee had relied on two invoices issued by the Respondent, one was dated 09.05.2017 (Pre-GST) and the other was dated 24.10.2017 (Post-GST). 
2. The above reference was examined by the Standing Committee on Anti-Profiteering and was further 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 28.09.2018 that it has been observed that in the pre-GST era, the rate of tax applicable on the product was CST @ 2% and there was no Central Excise Duty as per the Central Excise Tariff Act, 1985 and after implementation of the GST w.e.f. 01.07.2017, the tax rate of IGST on the said product was fixed at 5%. The DGAP has further furnished the pre-GST & post-GST sale invoice-wise details of the applicable tax rate and base price (excluding CST or GST) of the said product supplied by the Respondent in the table given below:-

S. No.	Description of the Product	Pre-GST			Post-GST			Difference in Price (Rs.)
		Invoice No./Date	Tax Rate (CST)	Base Price (Rs.)	Invoice No./Date	Tax Rate (GST)	Base Price (Rs.)	
1.	Little Stars Dhoti (5-6) (HSN code 63079090)	LS9725 dated 09/05/2017	2%	265/-	LS54264 dated 24/10//2017	5%	265/-	-

4. After scrutiny of the above two invoices issued by the Respondent, the DGAP has intimated that the rate of tax on the product was 2% in the pre-GST era (CST) which was increased to 5% in the post-GST era (GST). The DGAP has also observed that the Respondent did not increase the base price (excluding tax) of the product, which was Rs. 265/- in both the periods. Further, Section 171 of the CGST Act, 2017 comes into play in the event there is a reduction in rate of tax or there is an increase in the input tax credit (the latter is not the subject matter of this enquiry). Consequently, the DGAP has stated that as there was no reduction in the tax rate of the said product the provisions of Section 171 of the CGST Act,



2017 were not contravened and hence the allegation of profiteering by the Respondent was not established.

5. The above Report was considered by the Authority in its meeting held on 03.10.2018 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 on 18.10.2018. Since, no one appeared for the hearing on 18.10.2018, the Authority decided to ask Kerala Screening Committee to appear before the Authority again on 31.10.2018. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the above committee on 31.10.2018. During the hearing, it was observed that in the DGAP's report, the issue of MRP had not been addressed.
6. The Authority vide its order dated 12.12.2018 had decided to send the DGAP's report back to him for re-investigation on the above mentioned issue under Rule 133 (4) of the CGST Rules, 2017.
7. The DGAP vide his Report dated 16.01.2019 has submitted that as per the Annexure-7 of the minutes of the Kerala Screening Committee dated 08.05.2018, profiteering was alleged against the Respondent, when the GST was introduced w.e.f. 01.07.2017. The DGAP has further stated that the transactions relied upon in the above annexure were between the manufacturer and the wholesalers or between the wholesalers and the retailers and these transactions had taken place at the prices which were lower than the MRP. The DGAP has also contended that since the MRP had remained unchanged after introduction of GST, the same could not be the basis for allegation of profiteering in this case. The DGAP has further observed that the rate of tax applicable on the product was CST @ 2%



and post-GST it attracted IGST @ 5%. The DGAP has further observed that there was no Central Excise Duty in terms of Notification No. 30/2004- Central Excise dated 09.07.2004, and the pre-GST unit base price of Rs. 265/- had remained unchanged even after introduction of GST w.e.f. 01.07.2017.

8. The DGAP has also stated that the incidence of IGST post-GST was @ 5%, being higher than the pre-GST incidence @ 2% of CST, therefore, the provisions of Section 171 of the CGST Act, 2017 were not attracted. He has also furnished the following details in this regard:-

Particulars	Pre-GST	Post-GST
Base price per piece as per Annexure-7 (Rs.)	265/-	265/-
CST @ 2% (Rs.)	5.30/-	--
IGST @ 5% (Rs.)	--	13.25/-
Total price per piece (Rs.)	270.30/-	278.25/-
Total tax rate on base price	2%	5%

9. 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 in 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 the case. Perusal of Section 171 of the CGST Act shows that it provides as under:-

*A. S. 3*

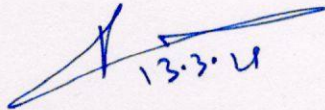


(1). "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

10. It is apparent from the perusal of the facts of the case that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017 and that the rate of tax in the Post-GST era has also been increased from CST @ 2% to IGST @ 5%, therefore, the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017 as there has been no reduction in the rate of tax. As such, we do not find any merit in the application filed by the above Applicants and the same is dismissed.
11. 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

  
13.3.19

(A.K. Goel)  
Secretary, NAA

Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(R. Bhagyadevi)  
Technical Member

Sd/-  
(Amand Shah)  
Technical Member

F.No.22011/NAA/80/Ramraj2018 / 2139 - 2143

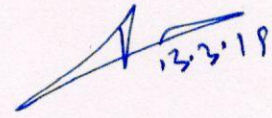
Dated: 13.03.2019

Copy to:-

1. M/s Ramraj Handlooms, Ramraj-V-Tower, No. 10, Sengunthapuram, 1st Street, Mangalam Road, Tirupur, -641604.
2. Commissioner, State GST department, 9<sup>th</sup> floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.



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.

 13.3.19

A. K. GOEL  
SECRETARY, NAA