

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

Case No.	23/2019
Date of Institution	09.01.2019
Date of Order	03.04.2019

In the matter of:

1. Kerala Screening Committee on Anti-Profiteering.
2. 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.

Applicants

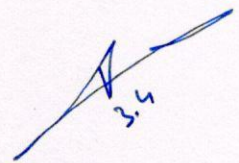
Versus

M/s Saint Gobain India Pvt. Ltd. Gyproc, Bangalore Plant, Plot No. 10-17, KIADB Industrial Area, Haraohalli, Kanakapura, Ramanagaram, Bengaluru, Karnataka – 562112.

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:-

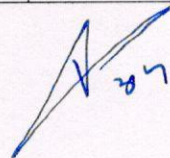
1. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala for the Applicant No. 1.
2. Sh. Anwar Ali T. P., Additional Commissioner for the Applicant No. 2.

ORDER

1. The present Report dated 26.09.2018, has been received from the Applicant No. 2 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 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 'Gypsum Board' (HSN Code 68091100) (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 29.05.2017 (Pre-GST) and the other was dated 20.09.2017 (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 investigation under Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP in his Report dated 26.09.2018 observed that in the pre-GST era, the rate of tax applicable on the product was CST @ 2% and Central Excise Duty @ 12.5% as per the Central Excise Tariff Act, 1985 and after implementation of the GST w.e.f. 01.07.2017, the tax rate of GST on the said product was fixed @ 28%. 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:-

Particulars			Pre-GST	Post- GST
1	Product Description	A	Gypsum Board HSN Code 68091100)	
2	Invoice No.	B	1300002553	GY9114061424
3	Invoice Date	C	29.05.2017	20.09.2017
4	Gross Price per UOM (excluding Taxes) (in Rs.)	D	139.44	139.50
5	Discount per UOM (in Rs.)	E	22.60	22.70
6	Discounted base price (in Rs.)	F=D-E	116.84	116.80
7	Central Excise Duty (%)	G	12.5%	-
8	Central Excise Duty (in Rs.)	H=F*G	14.61	-
9	Central Sales Tax (CST) (%)	I	2%	-
10	Central Sales Tax (CST) (in Rs.)	J=(F+H)*I	2.63	-
11	GST (%)	K	-	28%
12	GST (in Rs.)	L= F*K	-	32.70
13	Total Tax (in Rs.)	M= H+J or L	17.24	32.70
14	Total Tax as a percentage of base price	N=M/F*100	14.75%	28%



4. After scrutiny of the above two invoices issued by the Respondent, the DGAP has submitted that the rate of tax on the product was 2% (CST) and 12.5% (Central Excise Duty) in the pre-GST era and in the post-GST era, the rate of tax on the said product was fixed at 28%. Therefore, the rate of tax applicable to the product was increased from 14.75% as can be seen from the table above, in the pre-GST era to 28% in the post-GST era. Further, Section 171 of the CGST Act, 2017 comes into play in the event there is a reduction in the rate of tax or if there is net benefit of ITC (the latter is not the subject matter of this enquiry). Consequently, the DGAP has stated that as there was no reduction in the rate of tax on the said product and the Respondent had reduced the price from Rs. 116.84 (Pre-GST) to Rs. 116.80 (Post-GST), the provisions of Section 171 of the CGST Act, 2017 were not contravened.

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 and accordingly on 31.10.2018. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing, it was observed that in the



DGAP's report, the invoices mentioned in the Report were same as those enclosed with the Report but the value in those invoices differed from the ones relied upon in the same Report.

6. The Authority vide its order dated 13.12.2018 had return the Report to the DGAP for re-investigation on the above mentioned issue under Rule 133 (4) of the CGST Rules, 2017.
7. The DGAP vide his Report dated 09.01.2019 has again 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 values reported in table mentioned in para-3 of his Report dated 26.09.2018 were per UoM basis (per m²) arrived at by dividing the total values in the invoices attached as annexures to the said Report, by the quantity (in m²) mentioned in the said invoices and the details shown in the invoices were furnished in the table below:-



Particulars			Pre-GST	Post- GST
1	Product Description	A	Gypsum Board HSN Code 68091100)	
2	Invoice No.	B	1300002553	GY9114061424
3	Invoice Date	C	29.05.2017	20.09.2017
4	Total Quantity (in m ²)	D	2006.64 (900 in Nos.)	2006.64 (900 in Nos.)
5	Gypsum Board Gross Price @ Rs. 138.80 per m ² in pre-GST & @ Rs. 139.50 per m ² in post-GST (in Rs.)	E=D*138.80 or D* 139.50	2,78,522	2,79,926
6	Loading Charges @ 1.43 per No. in pre-GST (in Rs.)	F=900*1.43	1,287	-
7	Trade Discount as per Invoice (in Rs.)	G	41,778	41,989
8	Cash Discount as per Invoice (in Rs.)	H	3,570	3,569
9	Total Assessable Value/Base Price (in Rs.)	I=E+F-G-H	2,34,460	2,34,368
10	Central Excise Duty (%)	J	12.5%	-
11	Central Excise Duty (in Rs.)	K=I*J	29,308	-
12	Central Sales Tax (CST) (%)	L	2%	-
13	Central Sales Tax (CST) (in Rs.)	M=(I+K)*2%	5,275	-
14	Freight as per Invoice (in Rs.)	N	28,583	28,719
15	GST (%)	O	-	28%
16	GST on base price (in Rs.)	P= I*O	-	65,623
17	GST on Freight (in Rs.)	Q=N*O	-	8,042
18	Total Amount as per Invoice (in Rs.)	R= I+K+M+N+P+Q	2,97,626	3,36,752
19	Total Tax (in Rs.)	S=K+M or P+Q	34,583	73,665
20	Total Tax as a percentage of base price(%)	T=S/I*100	14.75%	28%

8. The DGAP has further observed that, as could be seen from the above table, there were no discrepancies between the figures of the

invoices and the figures relied upon by the DGAP in his Report dated 26.09.2018. Further, it was stated that there was no reduction in the rate of tax on the product "Gypsum Board" on introduction of GST instead the rate of tax was increased from 14.75% to 28% and therefore the provisions of Section 171 (1) of the CGST Act, 2017 relating to profiteering, would not be attracted.

9. We have carefully examined 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. Perusal of Section 171 of the CGST Act, 2017 reads 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."

10. It is apparent from the perusal of the facts of the case and the invoices placed on record that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017 instead the rate of tax in the pre GST era which was 14.75% has increased to GST @ 28% in the post GST era. Therefore, the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017 as there is no reduction in the rate of

tax. As such, we do not find any merit in the application filed by the Applicant No.1 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.

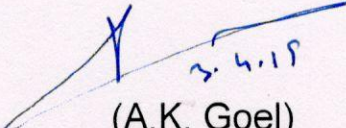
Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

Certified copy


(A.K. Goel)
Secretary, NAA



F.No.22011/NAA/84/SaintGobain/2018/2333-2337

Dated: 03.04.2019

Copy to:-

1. M/s Saint Gobain India Pvt. Ltd. Gyproc, Bangalore Plant, Plot No.10-17, KIADB Industrial Area, Haraohalli, Kanakapura, Ramanagaram, Bengaluru, Karnataka – 562112.
2. Commissioner, State GST department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.
3. Commissioner, CGST and Central Excise, GST Bhavan, Press Club Road, Statue, Thiruvananthapuram-695001.
4. 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
5. NAA website/Guard File.