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

Case No.	27/2019
Date of Institution	19.02.2019
Date of Order	02.05.2019

In the matter of:

1. M/s A B V & Company, 21/169, Unnat Nagar, Near Jain Hospital, M G Road, Goregaon (W), Mumbai-400090

2. Director General of Anti-Profiteering, Central Board of Indirect Taxes and Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s The Professional Couriers, Unit No. 401-405, 4th Floor, Silver Astra, J.B. Nagar, Chakala, Andheri (East), Mumbai-400099.

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. None for the Applicant No.1
2. Sh. Anwar Ali T.P., Additional Commissioner for the Applicant No. 2.
3. Sh. G. Suresh, Coordinator, Sh. Jaychandran V. Manager (Finance and Accounts) and Sh. S.M. Singh, Consultant for the Respondent.

ORDER

1. A report dated 31.07.2018, was received from the Applicant No. 2, i.e. the Directorate General of Anti-Profiteering (DGAP) under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 stating that a reference dated 28.02.2018 was forwarded by the State level Screening Committee of Maharashtra to the Standing Committee on Anti-profiteering, recommending investigation in respect of an application alleging profiteering by the Respondent in the course of "Courier Service" being provided by him. The application was filed by the Applicant No. 1, under Rule 128 of the CGST Rules, 2017. The Applicant No. 1 stated that he had availed courier service supplied by the Respondent on 15.04.2017 and 21.07.2017. The Respondent had charged Rs. 80/- as courier charges (inclusive of Service Tax @ 15%) for the consignment booked on 15.04.2017. However, after the implementation of GST,

when he had again booked a similar consignment on 21.07.2017, the Respondent had charged Rs. 94/- for this consignment (inclusive of Rs 14/- as GST @ 18%). The applicant No. 1 alleged that after the advent of GST, the Respondent increased the courier charges (exclusive of GST) from Rs. 69.50/- to Rs. 80/- and also submitted copies of the tax invoices dated 15.04.2017 and 21.07.2017 issued by the Respondent alongwith his application.

2. The above application was examined by the Standing Committee on Anti-profiteering and thereafter, vide the minutes of its meeting dated 02.05.2018, the Standing Committee on Anti-profiteering had referred it to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. On the basis of investigation, the DGAP has reported that a notice was issued to the Respondent on 18.05.2018 to submit his reply on the allegation levelled by the Applicant No. 1 and to suo-moto determine the quantum of benefit on account of GST implementation which he had not passed on to his service recipients after implementation of GST. The Respondent was also requested to furnish documents and evidences in support of his reply. The DGAP has reported that the Respondent, vide his replies dated 25.05.2018, 29.06.2018, 24.07.2018 and 26.07.2018,

submitted that prior to 01.07.2017, the rate of Service Tax on courier service was 15% ad-valorem and w.e.f. 01.07.2017, the GST rate applicable to courier service had been increased to 18% ad-valorem. The DGAP has also reported that the Respondent had also submitted that there was no reduction of rate of tax leviable on courier services provided by him as a result of GST implementation and that the courier service charges being charged by him from his customers had increased due to factors such as increase in operational costs, establishment expenses and inflation etc. It has also been submitted by the Respondent that there had also not been any additional benefit arising out of any increased availability of input tax credit in his case.

3 (a). The DGAP has also reported that the above submissions made by the Respondent were investigated and it was found that prior to implementation of GST w.e.f. 01.07.2017, Service Tax on courier service was chargeable @ 15% [14% (vide Notification No. 14/2015-ST dated 19.05.2015) + 0.5% Swachh Bharat Cess (vide Notification No. 22/2015-ST dated 06.11.2015) + 0.5% Krishi Kalyan Cess (vide Notification No. 27/2016-ST dated 26.05.2016)], whereas in the period after implementation of GST w.e.f.

01.07.2017, the GST rate was fixed at 18% ad-valorem in respect of courier services, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017, which was higher than the pre-GST rate of Tax leviable on courier services.

3 (b). The DGAP, also found that in the tax regime prior to implementation of GST, for discharging their Service Tax liability, the Respondent was availing the credit of Service Tax paid by him on the input services utilized by him and using the same for discharging his Service Tax liability in the course of providing courier service. Further, in the period after 01.07.2017, the Respondent had also become eligible to avail input tax credit of GST paid on all the goods and services used by him for supplying courier service. Hence, there was no change in the benefit of input tax credit after implementation of GST w.e.f. 01.07.2017.

3 (c). The DGAP concluded that after the introduction of GST w.e.f. 01.07.2017, there was neither any reduction in tax rate applicable to courier service, nor any additional input tax credit was available to the Respondent. Therefore, the provisions of Section 171(1) of the Central Goods and Service Tax Act, 2017 were not attracted in the present case.

The DGAP has further stated that the increase in the courier charges (exclusive of tax) from Rs. 69.50/- to Rs. 80/- could be attributed to the reasons stated in detail at para 3 above, which were not within the scope of this investigation.

4. The above report of the DGAP dated 31.07.2018 was considered by the Authority in its sitting held on 03.08.2018 and it was decided to hear the Applicants and the Respondent on 21.08.2018. However, the Applicant No. 1 and the Respondent failed to appear before the Authority on the stipulated date. The Respondent vide his letter dated 20.08.2018, conveyed that he accepted and agreed with the report of the DGAP and elaborated that after the GST came into effect w.e.f. 01.07.2017, the rate of tax on courier service has increased from 15% to 18% ad-valorem and also that no additional ITC benefit was available to them in the new tax regime. The Respondent further submitted that on introduction of GST, many expenses had gone up due to various reasons viz. increase in the salary of employees, the administrative expenses, the index figure of inflation and the transportation expenses on account of petrol and diesel. Hence, he had resorted to increase in the rate of 'Courier Services' in July 2017, for which, prior intimation was circulated to his respective centres/offices.

5. The Second hearing was held on 10.09.2018, wherein Applicant No. 1 was not present while Applicant No. 2 was represented by Sh. Anwar Ali T.P., Additional Commissioner, Sh. G. Suresh, Coordinator, Sh. Jaychandran V., Manager (Finance and Accounts) and Sh. S.M. Singh, Consultant appeared on behalf of the Respondent. The Respondent contended that they had increased the base price from Rs. 69.50 to Rs. 80.00 due to increase in operational costs, establishment expenses, inflation, manpower costs and rent of collection centers etc. and emphasised that they had been following this practice of increasing their price every year. During the hearing, he was directed to produce/submit the circulars issued by him to his respective offices/centers evidencing such annual price increase. In response, the Respondent submitted copies of circulars issued by him to the respective offices/centres for the years 2014, 2015 and 2016 evidencing annual increase in his charges.

6. The Authority during the course of the hearing had observed that as per para 8 of the DGAP's Report dated 31.07.2018 the Respondent had been availing the cenvat credit on input services in the pre-GST regime, but after implementation of GST, the Respondent had become eligible to avail input tax credit in respect

of services as well as goods in the course of supplying courier service. It was therefore not clear as to how it had been concluded that there was no additional benefit of input tax credit after implementation of GST. Therefore, the Authority vide its order dated 22.10.2018 had sent 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. In terms of the Authority's Order dated 22.10.2018 under Rule 133 (4) of the CGST Rules, 2017, the DGAP has re-examined the above issue vide his Report dated 19.02.2019 and has reported that he had verified the input tax credit register of the Respondent and found that the Respondent was availing input tax credit in respect of inputs, capital goods and input services during both the pre-GST and the post-GST regimes. Therefore, there had been no additional benefit of input tax credit available to the Respondent after implementation of GST w.e.f. 01.07.2017. The DGAP has further submitted that in the Pre-GST regime, the Service Tax on courier service was leviable @ 15% and after the implementation of GST w.e.f. 01.07.2017, GST had become leviable @18% on such service vide Notification No. 11/2017-Central Tax (Rate) dated

28.06.2017, which was 3% higher than the Pre-GST rate of Service Tax.

8. The Authority in its sitting held on 21.02.2019 decided to hear the Applicants and the Respondent on 07.03.2019. But Applicant No. 1 failed to appear and made submissions dated 05.03.2019 before the Authority that prior to GST regime, the "Courier Service" was attracting Service Tax @ 15% and after the introduction of GST, the said service was charged to GST@18%. Therefore, the rate of tax had gone up by 3%. He had informed his depots/collection centres about change in the courier rate(s) on account of various circumstances including increase in inflation etc, copies of circulars had already been filed with the DGAP.

9. We have carefully gone through the entire case record, the DGAP's Reports, the written submissions of the Respondent and all the other material placed on record. The issues to be decided by this Authority in this case are as under:-

1) Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?

2) If yes then what was the quantum of profiteering?

10. 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."

11. We find it evident that there was no reduction in the rate of tax on supply of "Courier Service" after the implementation of GST, instead there was increase in the rate of tax from 15% in pre-GST regime to 18% in post-GST regime. The fact that the Respondent had increased his base price for providing courier service from Rs. 69.5/- to Rs. 80/- has no relevance in view of the fact that there has been no reduction in the rate of tax nor increased benefit on account of Input Tax Credit was available and hence the provisions of Section 171 of CGST Act, 2017 can not be invoked in this case.

12. Based on the above facts it is clear that there is no case of contravention of the provisions of Section 171 of the CGST Act, 2017 and hence we find no merit in the application filed by the above Applicant No. 1 and the same is accordingly dismissed.

13. 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/61/Professional Couriers/2018/2942-2945 Dated: 02.05.2019

Copy to:-

1. M/s The Professional Couriers, Unit No. 401-405, 4th Floor, Silver Astra, J.B. Nagar, Chakala, Andheri (East), Mumbai-400099.
2. M/s A B V & Company, 21/169, Unnat Nagar, Near Jain Hospital, M G Road, Goregaon (W), Mumbai-400090.
3. 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
4. NAA website/Guard File.