

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

Case No.	31/2019
Date of Institution	06.03.2019
Date of Order	10.05.2019

In the matter of:

1. Kerala State 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

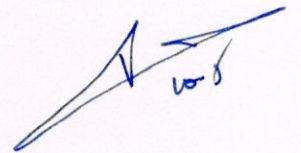
Versus

M/s VTWO Ventures, VP III 91B, Near Vimala Hridaya Girls HS,
Pattathanam, P.O. Kollam, Kerala- 691021.

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. Sh. Mansur M.I., Deputy Commissioner, SGST, Kerala for the Applicant No. 1.
2. Sh. Rana Ashok Rajneesh, Assistant Commissioner for the Applicant No. 2.
3. Ms. Nidhi Dhamija and Sh. Sumesh, Authorised Representatives, for the Respondent

ORDER

1. The present Report dated 05.12.2018 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The facts of the case are that the Kerala State Screening Committee on Anti-Profiteering, vide minutes of its meeting held on 08.05.2018, had referred the instant matter to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of "luggage trolley bag/suitcases", namely "Tropic 45 Weekender Black" and "Neolite Strolly 53 360(VIP) FIR" (hereinafter referred to as "the products"), as the benefit of reduction in the rate of tax of GST w.e.f. 15.11.2017 had not been passed on by the Respondent to the recipients. In this regard, the Applicant No. 1 had relied on two invoices issued by the Respondent, one dated 25.10.2017 (Pre-GST rate reduction) and the other dated 27.12.2017 (Post-GST rate reduction).
2. The Standing Committee considered the matter and opined that this was a case of profiteering. Thereafter, vide minutes of its meeting dated 02.07.2018, the Standing Committee forwarded the complaint to the

Director General of Anti-Profiteering (DGAP) to initiate investigation under Rule 129 (1) of the CGST Rules, 2017 and to determine whether the benefit of reduction in the rate of tax on the above products had been passed on by the Respondent to his recipients or not.

3. The DGAP, after concluding his investigation submitted his Report on 05.12.2018 under the provisions of Rule 129 (6) of the CGST Rules, 2017, wherein the DGAP reported that he had issued notice to the Respondent dated 13.09.2018 under Rule 129 of the CGST Rules, 2017 calling upon the Respondent to reply as to whether he admits to the charge that the benefit of reduction in the rate of tax had not been passed on by him (the Respondent) to the recipients by way of commensurate reduction in prices. The Respondent was also asked to *suo-moto* determine the quantum of benefit not passed on to his recipients, if any, and specify the same in his reply. The period of investigation covered by the DGAP under this Report is from 15.11.2017 to 31.08.2018.
4. In the aforementioned Report, the DGAP has reported that the Respondent had submitted replies to the DGAP vide his letters dated 28.09.2018 and 05.10.2018 and 22.10.2018 where he had stated that as distributor of the company's (VIP) products, he followed the company's pricing structure and that his distributor's margin had remained unchanged in the pre and post GST periods, even when the rate of GST was reduced from 28% to 18% ad-valorem and he never enjoyed any additional benefits in respect of his supplies. The Respondent also submitted that along with other suppliers of luggage items he had represented before the Government of India seeking reduction in the GST rate as the tax burden on the industry had

increased in the post-GST era as compared to the pre GST era. The Respondent further stated that he had not increased the prices of his products post implementation of GST, since he was hopeful of a reduction in the tax rate and that the reduction in GST rate from 28% to 18%, which came into effect from 15.11.2017, had only corrected the excessive tax burden which was being borne by him. The Respondent also submitted relevant documents, viz. invoice-wise details of outward taxable supplies of the products under investigation, covering the period from October, 2017 to August, 2018 and price lists of the products under investigation (pre and post 15.11.2017) as also his GSTR-1 and GSTR-3B returns for the period July, 2017 to August, 2018.

5. In this Report, the DGAP has reported that investigation was conducted to ascertain as to whether the benefit of such reduction in the rate of tax had been passed on by the Respondent to his recipients as mandated by the provisions of Section 171 of the CGST Act, 2017. The DGAP has further reported that despite the reduction in GST rate from 28% to 18%, the sale price of the products was not reduced by the Respondent on the pretext that the distributors had been following the pricing structure of the manufacturing company and that his distributor's margin had not increased and hence, he had not derived any additional benefit on account of the reduction in tax rate from 28% to 18%.
6. The DGAP has reported that the investigation revealed that the Respondent had actually increased the base price of the products "Tropic 45 Weekender Black" and "Neolite Strolly 53 360(VIP) FIR" when GST rate on the said products was reduced from 28% to 18%, which implied that the commensurate benefit of rate reduction was not passed on to the recipients by the Respondent.

7. The DGAP has further reported that investigation further revealed that the amount so profiteered by the Respondent in respect of supplies of the products during the period 15.11.2017 to 31.08.2018, worked out to Rs. 18,887/-, the details of which are as below:-

Goods/Services Description	HSN	Base price per unit pre 15.11.2017	Base price per unit post 15.11.2017	Qty sold after 15.11.2017	Rate of GST	Actual Selling price per unit	Commensurate price	Profiteering per unit	Profiteering
A	B	C	D	E	F	G=118% of D	H=118% of C	I=G-H	J=I*E
Tropic 45 Weekender black	42021250	Rs. 2160.16	Rs. 2343.22	22	18%	Rs.2765.00	Rs. 2548.99	Rs. 216.01	Rs. 4752
Tropic 45 Weekender black	42021250	Rs. 2160.16	Rs. 2403.31	48	18%	Rs. 2835.91	Rs. 2548.99	Rs. 286.92	Rs. 13772
Neolite Strolly 53 360 (VIP) FIR	42021220	Rs. 1864.26	Rs. 2022.25	1	18%	Rs. 2386.26	Rs. 2199.83	Rs. 186.43	Rs. 186
Neolite Strolly 53 360 (VIP) FIR	42021220	Rs. 1864.26	Rs. 1939.31	2	18%	Rs. 2288.39	Rs. 2199.83	Rs. 88.56	Rs. 177
Total									Rs. 18887

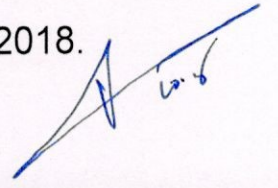
8. The above Report of the DGAP received on 06.12.2018, was considered by the Authority in its sitting held on 11.12.2018 and it was decided to hear the Applicants and the Respondent on 03.01.2019. Sh. Mansur M.I., Deputy Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1., Applicant No. 2 was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner and no one appeared for the Respondent.

9. The Respondent filed his written submissions vide his letter dated 01.01.2019 via post wherein he averred that he was a distributor engaged in business of trading of "luggage and travel goods", falling under Chapter 4202. The said goods were leviable to taxes @ 18% in the pre GST era, whereas the GST rate fixed thereon was 28% with effect from 1 July, 2017, which was later reduced to 18% on 15th November, 2017 on account of representations by the trade. The Respondent has contended that in the period after 01.07.2017, when the rate of tax was increased to 28%, he had not increased the prices of the products and had absorbed the additional cost arising on account of

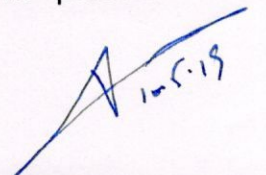
implementation of GST. The Respondent further averred that the reduction in the GST rate w.e.f 15.11.2017 from 28% to 18%, had only corrected the excessive tax burden which was borne by him since 01.07.2017 due to GST implementation and that reduction of tax rate was merely a corrector w.e.f 15.11.2017 and thus the question of passing on the benefit of this tax rate change to the recipients did not arise. He added that the said reduction in rate of tax would not entail any commensurate reduction in pricing of the said products. He further submitted before the Authority that he has duly filed all the requisite returns prescribed under the law and has always complied with all the relevant provisions of law. He added that since he had harboured no intention of profiteering and since he had not committed any of the offences listed in Sections 122, 123, 124, 125, 126 & 127 of the CGST Act, 2017, he may not be penalised.

10. The final hearing was held on 30.01.2019 wherein the Applicant No. 1 was not present; Applicant No. 2 was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner and the Respondent was represented by Ms. Nidhi Dhamija and Sh. Sumesh, Consultants. During the hearing, the Respondent had filed written submissions dated 25.01.2019, wherein he reiterated the facts mentioned in his earlier submissions made on 01.01.2019.

11. Supplementary Report was sought from the DGAP on the issues raised by the Respondent vide his submissions dated 01.01.2019 & 25.01.2019. In response, the DGAP, vide his Report dated 06.03.2019 has reported that the issues raised by the Respondent had already been addressed in para 13 of DGAP Report dated 05.12.2018.



12. The Applicant No. 1 i.e. Kerala State Screening Committee, vide its letter dated 25.01.2019 had observed that the case qualified to be a case of profiteering in terms of Section 171 of CGST Act, 2017 since there was an increase in the base prices of the products supplied by the Respondent when GST rate on the products was reduced from 28% to 18% w.e.f. 15.11.2017.
13. We have carefully considered the Report of the DGAP contention of the Applicant No. 1 and the submissions made by the Respondent as also the documents placed on record to consider whether there was any reduction in the rate of tax in the relevant period and whether the benefit of reduction in the rate of tax was passed on to the recipients as required under Section 171 of the CGST Act, 2017.
14. From the facts of the case and the records placed before us, we find it evident that the Respondent had increased the base prices of his products w.e.f. 15.11.2017 despite reduction in the rate of GST from 28% to 18%. The DGAP in his Report has also revealed that the amount profited by the Respondent in respect of supplies of the products during the period 15.11.2017 to 31.08.2018 is Rs. 18,887/-, the details of which have already been tabulated in para 7 above. Therefore we find that the Respondent has acted in contravention of the provisions of Section 171 of the CGST Act, 2017 in as much as he did not pass on the benefit of reduction in the rate of tax to his recipients by way of commensurate reduction in the prices. It is

 12.5.19

pertinent to note that the amount of profiteering determined by the

Applicant No. 2 works out as Rs. 18,887/- as follows:

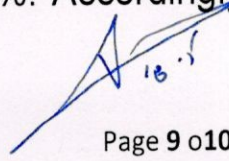
Goods/Services Description	HSN	Base price per unit pre 15.11.2017	Base price per unit post 15.11.2017	Qty sold after 15.11.2017	Rate of GST	Actual Selling price per unit	Commensurate price	Profiteering per unit	Profiteering
A	B	C	D	E	F	G=118% of D	H=118% of C	I=G-H	J=I*E
Tropic 45 Weekender black	42021250	Rs. 2160.16	Rs. 2343.22	22	18%	Rs.2765.00	Rs. 2548.99	Rs. 216.01	Rs. 4752
Tropic 45 Weekender black	42021250	Rs. 2160.16	Rs. 2403.31	48	18%	Rs. 2835.91	Rs. 2548.99	Rs. 286.92	Rs. 13772
Neolite Strolly 53 360 (VIP) FIR	42021220	Rs. 1864.26	Rs. 2022.25	1	18%	Rs. 2386.26	Rs. 2199.83	Rs. 186.43	Rs. 186
Neolite Strolly 53 360 (VIP) FIR	42021220	Rs. 1864.26	Rs. 1939.31	2	18%	Rs. 2288.39	Rs. 2199.83	Rs. 88.56	Rs. 177
Total									Rs. 18887

We find that the methodology and the profiteered amount calculated by the DGAP, as shown in the above table, is correct and accordingly direct the Respondent to reduce the prices of the above products commensurate with the reduction in the rate of tax to ensure that the benefit is passed on to the recipients. The Respondent is further directed to deposit the profiteered amount of Rs. 18,887/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients in this case are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 9443.50/- in the Central Consumer Welfare Fund (CCWF) and Rs. 9443.50/- in the Kerala State CCWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above

amount shall be deposited within a period of 3 months from the date of receipt of this order failing which the same shall be recovered by the Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

15. It is also established from the above facts that the Respondent had issued incorrect invoices while selling the above products to his recipients as he had incorrectly shown the base prices and had also compelled them to pay additional GST on the increased prices through the incorrect tax invoices which would have otherwise resulted in further benefit to the recipients. It is also established from the record that the Respondent has deliberately and consciously acted in contravention of the provisions of the CGST Act, 2017 by issuing incorrect invoices which is an offence under Section 122 (1) (i) of the above Act and hence he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. In the interest of natural justice before imposition of penalty a notice be issued to him asking him to explain why penalty should not be imposed on him.

16. The Respondent has claimed that he had been following the pricing structure of the manufacturing company and that his distributor's margin had not increased and hence, he had not derived any additional benefit on account of the reduction in tax rate from 28% to 18%. Accordingly,



the DGAP is directed to investigate the aspect of profiteering by the above said Manufacturer.

17. 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.

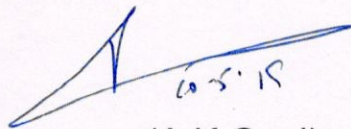
Sd/-
(B. N. Sharma)
Chairman

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/123/VTWO/2018

Dated: 10.05.2019

Copy to:-

1. M/s VTWO Ventures, VP III 91B, Near Vimala Hridaya Girls HS, Pattathanam, P.O. Kollam, Kerala- 691021
2. Commissioner, State GST department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.
3. Commissioner, GST, C.R. Building, I.S. Press Road, Ernakulam, Cochin, Kerala-682018.
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.