

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

Case No. : 40/2019
Date of Institution : 03.04.2019
Date of Order : 26.06.2019

In the matter of:

1. Sh. Saurabh Gahoi, gahoi.saurabh@gmail.com.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Pinky Sales, LSL G-1, Ground Floor, Plot No.-10, Vardhman Gee
Dee Plaza, Sector-12, Dwarka, New Delhi-110078

R. Bhatnagar

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. Smt. Neelam Kapur, Superintendent, for the Applicant No. 2.
3. Sh. Rishabh Aggarwal, Chartered Accountant for the Respondent.

ORDER

1. This Report, dated 02.04.2018, has been received by this Authority from the Director General of Anti-Profiteering (DGAP) under Rule 129 (6) of the Central Goods and Service Tax (CGST) Rules, 2017. The brief facts of the present case are that an application was filed before the Standing Committee on Anti-Profiteering under Rule 128 of the CGST Rules, 2017, by the Applicant No. 1, alleging that he had purchased a footwear (here-in-after referred to as the product) at a price of Rs 699/- from the Respondent and the Respondent had not passed on the benefit of rate reduction of GST from 18% to 5% to him by way of commensurate reduction in price. The Applicant No. 1 further submitted that by doing so, the Respondent had indulged in

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profiteering and had contravened the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him. He further submitted the details of the invoice which are furnished in the Table given below:-

Table					(Amount in Rs.)	
Invoice No. and Date	Description of Product	Base Price (Rs.)	Rate of GST	Total Tax (Rs.)	Price Charged Inclusive of GST (Rs.)	
3006 dated 29.07.2018	Footwear	665.71/-	5%	33.29	699/-	

2. The above complaint was examined by the Standing Committee and vide the minutes of its meeting dated 06.09.2018, it had forwarded the same to the DGAP to initiate investigation under Rule 129 (1) of the CGST Rules, 2017 to examine whether the benefit of reduction in the rate of tax on the product had been passed on by the Respondent to the Applicant.

3. The DGAP on receipt of the above minutes had called upon the Respondent vide notice dated 15.10.2018 to reply as to whether he admitted that the benefit of reduction in rate of tax had not been passed on to the recipients by way of commensurate reduction in price and that he had contravened the provisions of Section 171 of the CGST Act, 2017. The Respondent was also asked to suo-moto determine the quantum of benefit not passed on, if any and indicate the same in his reply to the notice issued by the DGAP. The

Respondent was also given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant, however the Respondent did not avail this opportunity. The Applicant was also given an opportunity vide DGAP's e-mail dated 22.03.2019 to inspect the non-confidential documents/reply furnished by the Respondent but he also did not avail this opportunity.

4. The DGAP had requested for granting extension to complete the investigation up to 09.12.2018 which was allowed by this Authority under Rule 129 (6) of the above Rules, vide its order dated 26.12.2018. The present investigation pertains to the period between 27.07.2018 to 30.11.2018.

5. The DGAP in his Report has stated that the Respondent had submitted his replies vide his emails/letters dated 12.11.2018, 16.11.2018, 03.12.2018, 14.12.2018, 26.12.2018, 07.01.2019, 05.02.2019, 12.03.2019 and 13.03.2019. The Respondent had submitted that he was running an exclusive showroom of M/s Liberty Shoe Ltd., which had given him the software which was being used for billing and he could not make any modification to this software since it was fully controlled by M/s Liberty Shoe Ltd. The Respondent had also submitted his agreement with M/s Liberty Shoe Ltd. and his purchase invoices from M/s Liberty Shoe Ltd. during the pre and post rate reduction periods. Based on these invoices the DGAP has observed that M/s Liberty Shoe Ltd. had increased the base price in respect of footwear priced between Rs. 500/- to Rs. 1000/-, to

maintain the same selling prices (inclusive of GST) on or after 27.07.2018 when the GST rate was reduced from 18% to 5%. The Respondent has also submitted the GSTR-1 and GSTR-3B returns for the period June, 2018 to November, 2018, the details of invoice-wise outward taxable supplies during the period June, 2018 to November, 2018, the Price Lists (pre and post 27.07.2018) and the sample invoices issued during the periods, pre and post 27.07.2018.

6. The DGAP after examining the replies of the Respondent and the documents/evidences on record has intimated that the issues for determination was whether the rate of tax applicable to footwear priced between Rs. 500/- to Rs. 1,000/- was reduced from 18% to 5% w.e.f. 27.07.2018, and if so, whether the benefit of such reduction in the rate of tax was passed on by the Respondent to the Applicant No. 1, in terms of Section 171 of the CGST Act, 2017.

7. The Report has also stated that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on footwear priced between Rs. 500/- to Rs. 1,000/-, from 18% to 5%, vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 which was not in dispute. The Report further stated that the Respondent was required to sell the product at the base price of pre-rate revision of 26.07.2018 and should have charged lower GST @ 5% w.e.f. 27.07.2018 on such base price, to pass on the benefit of reduction in the rate of tax from 18% to 5%. But based on invoices submitted by the Respondent it was noticed that the base price of the

product was increased to maintain the pre-GST rate reduction cum-tax price charged from the recipients. The DGAP has also informed that from the invoice of the product, the base price (excluding GST), was increased from Rs. 592.37/- to Rs. 665.71/- which maintained the cum-tax price even with reduced rate of GST @5%, at Rs. 699/-, thus denying the benefit of tax reduction to the recipient.

8. The Report further submitted that, the Respondent had sold his products in the State of Delhi and Haryana and based on the price lists submitted by the Respondent it was clear that the base prices of most of his products in the price range of Rs. 500/- to Rs. 1,000/-, had been increased after reduction in the GST rate w.e.f. 27.07.2018. The DGAP has further based on the outward sale registers of the Respondent found that during the period 27.07.2018 to 30.11.2018, the Respondent had supplied 6380 products out of which 1451 were impacted by the reduction in the rate of GST from 18% to 5% w.e.f. 27.07.2018. Out of these 1451 products, 439 products were sold during the period from 01.07.2018 to 26.07.2018 and the remaining 1012 (1451 - 439) products were not sold during the period 01.07.2018 to 26.07.2018. Out of these remaining 1012 products, the DGAP has taken rate reduction reference prices for calculating the profiteering amount in respect of 392 products from the price list submitted by the Respondent. The DGAP has submitted that in respect of the remaining 620 (1012 - 392) products, no reference pre rate reduction price was found. Based on the above calculations the amount of profiteering in respect of 831 (439 + 392) products,

supplied by the Respondent during the period w.e.f. 27.07.2018 to 30.11.2018, has been arrived at Rs. 6,55,307/- by the DGAP. This amount was inclusive of Rs. 77/-, which was the profiteered amount in respect of the Applicant No. 1.

9. The above Report which was received on 03.04.2019 and was considered by the Authority in its meeting held on 03.04.2019 and it was decided to hear the Applicants and the Respondents on 23.04.2019. The hearing was further adjourned to 27.05.2019.

10. During the hearings held on 27.05.2019 and 07.06.2019 none appeared for the Applicant No. 1, the Applicant No. 2 was represented by Smt. Neelam Kapur, Superintendent and the Respondent was represented by Sh. Rishabh Aggarwal, Chartered Accountant.

11. The Respondent vide his written submissions dated 28.05.2019 has stated that when the rate of tax was reduced from 18% to 5% the reduced rate of 5% was updated in his system but the software automatically amended the base price to keep the MRP intact since amendment to the MRP was not permitted as per Legal Metrology Act, 2009. He further submitted that though the rate of tax was reduced he had sold the products by increasing the base price to maintain the earlier MRP thus denying the benefit of Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 to the recipient. He

admitted his lapse and tendered sincere apologies and agreed to deposit the entire profiteered amount on the stocks lying with him. The Respondent has also submitted that the DGAP vide para 8 of his Report had stated that "vide reply dated 13.03.2019 the noticee submitted that they were running an exclusive showroom of M/s Liberty Shoe Ltd. and was given the software used for billing and he could not make any modification to the billing software since it was fully controlled by M/s Liberty Shoe Ltd.". The Respondent clarified that no such reply dated 13.03.2019 was filed by him during the course of proceedings with the DGAP. He also claimed that the company had recommended the billing software and considering the inbuilt features and advantages he had opted for it. He has further submitted that since he was the dealer for the products of M/s Liberty Shoe Ltd., he had full discretion at his hand to extent the benefits of discounts/reduction to the end consumer.

12. We have carefully considered the material placed before us and the submissions made by the Respondent, dated 27.05.2018 and it has been revealed that the Central Govt. vide Notification No. 18/2018- Central Tax (Rate) dated 26.07.2018 had reduced the rate of GST from 18% to 5% in respect of footwear priced between Rs. 500/- to Rs. 1000/-, with effect from 27.07.2018 and the benefit of the same was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the CGST Act, 2017.

13. From the above facts and discussions it is evident that the Respondent had increased the base price of the product from Rs. 592.37/- to Rs. 665.71/-, when the rate of tax was reduced from 18% to 5% with effect from 27.07.2018. Thus, by increasing the base price of the product the benefit of reduction in tax rate was not passed on to the recipients and hence he has contravened the provisions of Section 171 of the CGST Act, 2017. The records clearly show that the Respondent has supplied a total number of 6380 footwears out of which 1451 were impacted by the reduction in the rate of GST from 18% to 5% w.e.f. 27.07.2017. Out of these 1451 products 620 were not sold prior to 27.07.2018 hence the question of profiteering on these products does not arise. Out of the remaining 831 products 439 were sold prior to 27.07.2018, hence the base price has been arrived at by taking into account the price at which these products were sold. For remaining 392 products the prices have been taken from the price lists provided by the Respondent. Accordingly the DGAP vide Annexure-15 of his Report has correctly arrived at the profited amount Rs. 6,55,307/- for these 831 products which includes the profited amount of Rs. 77/- in respect of the Applicant No. 1. The Respondent has also agreed to deposit this alleged amount along with interest, vide his submission dated 28.05.2019 filed before this Authority.

14. Therefore the Respondent is hereby directed to reduce the price of the products as per the provisions of Rule 133 (3) (a) of the

CGST Rules, 2017, by making commensurate reduction in the prices, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to refund the amount of Rs. 77/- to the Applicant No. 1 along with interest @18% from the date when this amount was received by him from the Applicant No. 1 and deposit the remaining amount of profiteering of (Rs. 6,55,307/- (-) Rs. 77/- = Rs. 6,55,230/- (Rupees Six Lakhs Fifty Five Thousand Two Hundred Thirty Only) along with interest @18% in terms of Rule 133 (3) (d) of the CGST Rules, 2017. Further the Respondent is directed to deposit Rs. 6,55,230/- into the Consumer Welfare Fund of the Central and the concerned State Governments as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 in the ratio of 50:50, within a period of 3 months as is given in the Table below:-

Sl. No.	State Code	State (Place of Supply)	Profiteered Amount (Rs.)	50% of the Profiteered Amount (Rs.)
1	06	Haryana	3,72,763	186381.50
2	07	Delhi	2,82,467	141233.50
Total			6,55,230	327615
50% - payable to Central Fund (Rs.)			327615	
50% payable to State Fund (Rs.)			327615	

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15. The payment of Rs. 3,27,655/- paid through demand draft no. 500576 dated 07.06.2019 and Rs. 3,27,655/- paid through demand

draft no. 5579 dated 21.06.2019 that has been deposited into the Central Consumer Welfare Fund has been taken on record. Since the Respondent has paid the entire profiteered amount of Rs. 6,55,310/- into the Central Consumer Welfare Fund, he is directed to pay interest @18% on this amount as per Rule 133 (3) (b) of the CGST Rules, 2017 within 3 months from the date of receipt of this order.

16. It is also established from the above facts that the Respondent has issued incorrect invoices while selling the above products to his recipients as he had not correctly shown the basic prices which he should have legally charged from them. The Respondent has also collected additional GST on the increased prices through the incorrect tax invoices which would have otherwise resulted in further benefit to the customers which he had failed to pass on. It is also established from the record that the Respondent has 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. 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, notice may be issued to the Respondent to show cause as to why penalty should not be imposed on him as per the provisions of Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017.

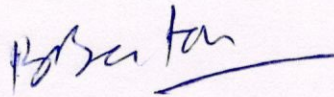
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17. A copy of this order be sent to the Applicants, Commissioners CGST/SGST of Delhi and Haryana and to the Respondent free of cost. File of the case be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

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

Certified copy



(Bhupinder Batar)
Assistant Commissioner, NAA

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/22/Pinky/2019

Dated: 26.06.2019

Copy to:-

1. Sh. Saurabh Gahoi, email id- gahoi.saurabh@gmail.com
2. M/s Pinky Sales, LSL G-1, Ground Floor, Plot No.-10, Vardhman Gee Dee Plaza, Sector-12, Dwarka, New Delhi-110078.
3. Chief Commissioner, CGST, CR Building, ITO Lane, IP Estate, New Delhi, Delhi 110002.
4. Commissioner, Department of Trade and Taxes, Govt. of NCT of Delhi, Vyapar Bhawan, IP Estate, New Delhi-110002.
5. The Commissioner, GST&CX, SCO 407-408, Sector-8, Panchkula, Haryana-134109.
6. Excise and Taxation Department, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, Haryana-134151.
7. Director General Anti-Profitteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
8. NAA Website/Guard File.