

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

Case No. 43/2019

Date of Institution 01.04.2019

Date of Order 26.06.2019

In the matter of:

1. Shri C.P.Rao, Principal Chief Commissioner of Central Goods and Services Tax, Tamil Nadu & Puducherry, 26/1, Uthamar Gandhi Rd, Thousand Lights West, Nungambakkam, Chennai, Tamil Nadu 600034.
2. Sh. Sandeep Puri, Commissioner of Central Goods and Services Tax, Mumbai West Commissionerate, 1st Floor, Mahavir Jain Vidyalaya, C D Burfiwala Marg, Andheri (W), Mumbai-400058.
3. 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

1. M/s Unicharm India Pvt. Ltd., Corp. Office, 5th Floor, Unit No. 501 to 508 & 510 to 518, Centrum Plaza Building, Golf Course Road, Gurugram, Haryana-122002.
2. M/s Apollo Hospitals Enterprise Ltd. (GSTIN 33AAACA5443N1ZP), Regd. Office: 19, Bishop Gardens, Raja Annamalaipuram, Chennai-600028.

Respondents

B. S. Rao


Quorum:-

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

Present:-

1. None for the Applicant No. 1.
2. None for the Applicant No. 2.
3. Smt. Neelam Kapur, Superintendent, DGAP for the Applicant No. 3.
4. Sh. K. Gurumurthy, Advocate and Sh. Vivek Singh, Employee for the Respondent.

ORDER

1. The brief facts of the case are that under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017, the Applicant No. 1 vide his letter dated 03.08.2018, addressed to the Member (Budget), Central Board of Indirect Taxes and Customs (CBIC), informed that the prices of "Sanitary Napkins" hereinafter referred to as "the product" were not reduced by the Respondent No. 1 and Respondent No. 2, despite reduction in the rate of GST on the said product from 12% to Nil w.e.f. 27.07.2018.
2. The above issue was examined by the Standing Committee on Anti-profiteering in its meeting held on 06.09.2018, wherein it was decided,  to refer the matter to the Directorate General of Anti-Profiteering

(DGAP) to initiate detailed investigation in the matter and collect evidence necessary to determine whether the benefit of reduction in the rate of GST on supply of the products had been passed on by the Respondents to the recipients.

3. An Application dated 02.08.2018, under Rule 128 of the CGST Rules, 2017 was also filed by the Applicant No. 2 against the Respondent No. 1 for selling of the product at the same price even after rate reduction w.e.f 27.07.2018. The same was forwarded to the DGAP after it was examined in the meeting held by the Standing Committee on 08.10.2018.
4. The DGAP, after completing the investigation has submitted his report under Rule 129 (6) of CGST Rules, 2017 on 29.03.2019 pertaining to the period w.e.f. 27.07.2018 to 30.09.2018.
5. The DGAP has stated that a notice under Rule 129 of the CGST Rules, 2017 was issued on 29.10.2018, calling upon the Respondents to reply as to whether they admitted that the benefit of GST rate reduction had not been passed on to the recipients by way of commensurate reduction in price and if so, to suo-moto determine the quantum thereof and indicate the same in their reply to the notice along with all supporting documents. The Respondents were also



given an opportunity to inspect the non-confidential evidences/information furnished by the above Applicants.

6. The DGAP in his Report has also stated that the Applicant No. 1 had submitted supporting evidences in the form of copies of tax invoices of the Respondent No. 2 dated 18.07.2018 and 02.08.2018, as per the details furnished in table below:-

Period		Pre 27.07.2018	Post 27.07.2018
Product Description	A	Sofy Bodyfit XL 6S (HSN Code 96190010) Sanitary Napkins	
Invoice No.	B	15674CS0075832	15674CS0077150
Invoice Date	C	18.07.2018	02.08.2018
MRP (Rs.)	D	39.00	39.00
Discount offered on MRP(Rs.)	E	01.95	01.95
Base Price excluding GST (Rs.)	F	33.08	37.05
GST Rate Charged (%)	G	12%	Nil
GST Amount (Rs.)	H = F * G	03.97	0.00
Selling Price after discount (Rs.)	I = F + H	37.05	37.05
Difference in Base Price (Rs.)		(37.05 – 33.08) = 03.97/-	

7. The DGAP has further stated that on preliminary examination of the documents, it was revealed that the benefit of reduction in the GST rate from 12% to Nil on the product was not passed on to the ultimate consumers. Also, in case of the Respondent No. 1, the denial of ITC (ITC) on account of reduction in GST rate from 12% to Nil would affect the pricing pattern as input taxes are embedded in the cost of the product but in case of the Respondent No. 2, profiteering, if any, on the part of the wholesaler/retailer was directly related to the pricing adopted pursuant to GST rate reduction by the Government because on or after 27.07.2018, the product attracted Nil rate of GST. The wholesaler/retailer did not pay any GST on or after 27.07.2018 and the ITC would also not be available to him as there would be no output tax

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on the product and therefore, profiteering, if any, by the Respondent No. 2 would be limited to the closing stock of the product as on 26.07.2018.

8. The DGAP has stated based on the submissions of Respondent 1 that the net taxable turnover exclusively for the product was Rs. 186.77 crore during the period 01.07.2017 to 26.07.2017 which included the value of closing stock of The product as on 30.06.2017, i.e., Rs. 11.8 crore, and the net ITC of Rs.25.65 crore was availed by him during the period 01.07.2017 to 26.07.2018 for the product which did not include ITC on the closing stock of The product as on 30.06.2017. It is also stated that the value of closing stock of raw materials, packing materials and finished goods for sanitary protection business as on 26.07.2018, was Rs. 25.25 crore and on account of the closing stock as on 26.07.2018, ITC of Rs 3.43 crore which was reversed.

9. The DGAP further stated that, the Respondent No. 2 submitted to him that for the stocks purchased prior to 27.07.2018, a dealer could not alter the MRP but the fact that the MRP was being reduced from Rs. 39/- to Rs. 38/-, was communicated to him by the Respondent No. 1 and he had sold the goods at the revised MRP of Rs. 38/-, in compliance with the relevant rules and regulations. He has further informed that as he was not eligible to retain the ITC in respect of the stock held as on 26.07.2018 and consequently, had realised that the loss of ITC would become cost to him and would increase the purchase or procurement price but he had maintained the same selling price, thus he has completely passed on the benefit of the reduction in GST rate by way of:-

As per

- a.) adopting the revised MRP of Rs. 38/- and
- b.) not recovering the additional cost on account of non-availability of ITC for the stock procured prior to 27.07.2018.


10. The DGAP has also stated that on perusal of the invoices issued by the distributors/retailers to the ultimate consumers, it was observed by him that the base price of the product had been increased and the final selling price of the product had remained the same, despite the GST rate reduction and therefore, the reduction in MRP did not indicate that there was commensurate reduction in price charged from the ultimate consumers. He has further stated that while determining the ratio of ITC in respect of The product as a percentage of the taxable turnover by the DGAP from The product supplied during the period 01.07.2017 to 26.07.2018, the DGAP stated the ITC on closing stock as on 26.07.2018 had to be excluded and therefore the ITC amounting to Rs. 22.22 crore (Rs. 25.65 crore - Rs.3.43 crore) was available to the Respondent No. 1 during the period 01.07.2017 to 26.07.2018 which was approximately 12.7% of the taxable turnover from The product during the same period minus the value of closing stock as on 30.06.2017 (Rs. 186.77 crore – Rs. 11.8 crore = Rs. 174.97 crore). With effect from 27.07.2018, when the GST rate on the product was reduced from 12% to Nil, the said ITC was not available to him. A summary of the computation of ratio of ITC to the taxable turnover of the Respondent No. 1 exclusively for The product, is given in the table below :-



Table


Sr. No.	Period	Particulars	Amount (in Crores.)
1.	01.07.2017 to 26.07.2018	Net ITC exclusively in respect of Sanitary Napkins (A)	25.65
2.	01.07.2017 to 26.07.2018	Net Taxable Turnover exclusively from Sanitary Napkins (B)	186.77
3.		Value of closing stock of Sanitary Napkins as on 30.06.2017 (C)	11.8
4.		Reversal of ITC on closing stock as on 26.07.2018 (D)	3.43
5.	01.07.2017 to 26.07.2018	Relevant Taxable Turnover (E=B-C)	174.97
6.	01.07.2017 to 26.07.2018	ITC relevant to Taxable Turnover (F) = (A-D)	22.22
7.		Ratio of ITC to Taxable Turnover (%) (F/E*100) (E)=	12.7%

11. The DGAP has further stated that on examination of the details of outward supplies during the period 01.07.2018 to 30.09.2018, as submitted by the Respondent No. 1, it was observed by him that the base prices of the product were different for different channels/category of supply and also varied for the same channel/category of supply. The Respondent Further stated that prior to GST rate reduction w.e.f. 27.07.2018, the base price at which the Respondent sold "Sofy BodyFit XL 6P" to Canteen Stores Department (CSD) was between Rs. 24.21 to Rs. 27.12 and for outlets other than CSD, the base price of the same product was between Rs. 25.49 to Rs. 29.33 and therefore, the average base prices of supplies to CSD and other than CSD outlets had been considered separately for



calculation of the base prices during the pre-GST rate reduction period.

12. The DGAP has computed profiteering in respect of the Respondent No. 1 by comparing the commensurate post GST rate reduction base price with the base price at which the product had actually been sold during the period 27.07.2018 to 30.09.2018. The commensurate base price or selling price post reduction in GST rate from 12% to Nil w.e.f. 27.07.2018, has been arrived at by the DGAP by increasing the pre-GST rate reduction base prices by 12.7% on account of denial of ITC credit and the profiteering has been calculated by comparing the said commensurate selling price with the actual invoice-wise selling price during the period 27.07.2018 to 30.09.2018 and accordingly, the amount of net higher realisation or the amount of profiteering due to increase in base price beyond 12.7% has been worked out. The DGAP further stated that from the details of the Respondent No.1's outward supplies made during the period 27.07.2018 to 30.09.2018, it was found that he had sold 51 items during the said period and out of the said 51 items, 44 items were sold by him during the period 01.07.2018 to 26.07.2018. After scrutiny of the Respondent No. 1's outward supplies during the period April, 2018 to June, 2018, it was found by the DGAP that the remaining 7 items (51-44) were sold during the said period and the profiteered amount had been arrived at by comparing the commensurate prices of the said 51 items (by increasing the pre GST rate reduction prices by 12.7%), with the actual selling prices or base prices of the said items sold during the period 27.07.2018 to 30.09.2018. Hence, the DGAP computed the profiteered amount as Nil

 for the Canteen Stores Department (CSD) outlets and Rs. 10,77,182/-

for outlets other than CSD outlets. The place of supply (State or Union Territory) wise break-up of the aforesaid total profiteered amount of Rs. 10,77,182/-, is furnished in table below as given by the DGAP :-

Table

S.No.	State & Code (Place of Supply)	Profiteering (Rs.)
1	JAMMU & KASHMIR (1)	3390.94
2	HIMACHAL PRADESH (2)	1747.76
3	PUNJAB (3)	305106
4	CHANDIGARH (4)	9475.30
5	UTTARAKHAND (5)	18046.20
6	HARYANA (6)	12531.80
7	DELHI (7)	5220
8	RAJASTHAN (8)	35536.90
9	UTTAR PRADESH (9)	60712.40
10	BIHAR (10)	9546.54
11	SIKKIM (11)	11345.50
12	ARUNACHAL PRADESH (12)	94.51
13	NAGALAND (13)	155.07
14	MANIPUR (14)	1818.22
15	MIZORAM (15)	2314.29
16	TRIPURA (16)	393.32
17	MEGHALAYA (17)	9.56
18	ASSAM (18)	10510.70
19	WEST BENGAL (19)	66641.10
20	JHARKHAND (20)	8503
21	ODISHA (21)	12198.90
22	CHATTISGARH (22)	16574.30
23	MADHYA PRADESH (23)	18402.80
24	GUJARAT (24)	106992
25	DAMAN AND DIU (25)	95.26
26	DADRA AND NAGAR HAVELI (26)	31
27	MAHARASHTRA (27)	65425.90
28	KARNATAKA (29)	94168.20
29	GOA (30)	5297.67
30	KERALA (32)	41393.80
31	TAMIL NADU (33)	63119.90
32	PUDUCHERRY (34)	971.51
33	ANDAMAN AND NICOBAR ISLANDS (35)	0
34	TELANGANA (36)	47737.80
35	ANDHRA PRADESH (NEW) (37)	41673.80
Total		1077182/-

13. The DGAP, in respect of the Respondent No. 2 has stated that from the details of outward supplies of the product during the period 01.07.2018 to 30.09.2018 made available by the Respondent No. 2, it

was clear that he had increased the base prices of the goods in question when the rate of GST was reduced from 12% to Nil. And on account of the reduction in GST rate from 12% to Nil w.e.f. 27.07.2018, the ITC reversed on the closing stock held as on 26.07.2018 would become cost to the Respondent No. 2, also as he would not get any ITC once rate of GST on The product was reduced from 12% to Nil and his input was also his final product or output. Hence, the Respondent No. 2 would not have to pay any GST on supply of the product and thus, the profiteering would be limited to closing stock on which credit was available in the pre-GST rate reduction period. The excess realisation from the closing stock (as on 26.07.2018) sold during the period 27.07.2018 to 30.09.2018, as compared with the ITC reversed on the said stock and the difference, if any, would be the amount of profiteering and such excess realisation came to Rs. 8,16,641/- as calculated by the DGAP. It has also been informed by the DGAP that the entire closing stock held by him as on 26.07.2018, was sold out during the period 27.07.2018 to 30.09.2018 and the reversal of ITC on the closing stock held as on 26.07.2018, as submitted by the Respondent No. 2 to the DGAP was Rs. 8,21,576 /- which has to be treated as cost to the Respondent No. 2 in respect of the supply of such stock in the post-GST rate reduction period. DGAP has arrived at a conclusion that since the cost / reversal of ITC was more as compared to the excess realisation made during the period 27.07.2018 to 30.09.2018, the allegation of profiteering against the Respondent No. 2 was not sustainable.

14. After perusal of the DGAP's Report, the Authority in its sitting held on 03.04.2019 decided to hear the Applicants and the Respondent No. 1

on 22.04.2019 and accordingly notice was issued to them. But the Respondent No. 1 sought adjournment three times and had intimated vide his letter dated 21.05.2019 that he had filed Writ Petition before the Hon'ble High Court of Delhi against the Notice issued by the NAA dated 04.04.2019 and the DGAP Report dated 29.03.2019. The Hon'ble High Court of Delhi directed him to file reply to the NAA Notice dated 04.04.2019 and appear before NAA to make submissions. Accordingly the hearing took place on 04.06.2019. On behalf of the Applicants none appeared, the DGAP was represented by Smt. Neelam Kapur, Superintendent and the Respondent No. 1 was represented by Sh. K. Gurumurthy, Advocate and Sh. Vivek Singh, Employee.

15. The Respondent No. 1 has filed detailed written submissions on 04.06.2019 and has stated that when the Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018 was published revising the GST rate from 12% to NIL w.e.f. 27.07.2018, he had passed on the benefit of reduction in the rate of tax in respect of the product "Sofy Bodyfit XL 6S" The product, in respect of which the present complaint has been filed, by way of commensurate reduction in price and at the time of reduction in MRP, the he had made announcements in the leading newspapers, clearly informing all the consumers that the MRP has been reduced due to decline in the rate of tax. Also, with reduction in rate of tax he was denied the benefit of ITC on the inputs and input services, as a result of which the input tax paid on the inputs and services had become cost to him, and taking this cost into consideration he had suitably revised the prices of the product and issued declaration in the newspapers.

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16. Respondent No.1 has further submitted that he had intimated the dealers about the price reduction due to GST and claimed that the Report of the DGAP was not in terms of any guidelines or principles laid down under the Rules and as such, the same was in violation of the Rules and was unsustainable and that he had actually passed on the reduction in prices by commensurate reduction in prices of his products after adjusting for loss of ITC due to exemption notification which had become a cost to him. He has further submitted that he had passed on more than the rate of reduction in taxes and has actually suffered a loss of Rs.2.52 crores, he has also claimed such method has been either prescribed in the CGST Act or the Rules to make commensurate reduction in price and no Methodology and Procedures has been framed by the NAA to determine the same.

17. Respondent No. 1 has contended that while arriving at the amount of profiteering, the DGAP has computed the same in Annexure 31 of his Report, in which there were a large number of items where the difference in Ideal Selling Price and the Actual Selling price was in the negative which the DGAP had conveniently ignored and had arrived at the total profiteering of Rs. 10,77,182.34 during the period. If such losses were also taken into account, there would be no Profiteering by him at all, and he has actually suffered a loss of Rs. 2,52,47,191.78. Also, the excess amount received in respect of some of the products, which the DGAP in his report has computed was negligible and liable to be ignored. For example, in Sl. No. 23, the Respondent had sold SOFY Bodyfit Regular 8P the ideal selling price of which was Rs. 3.10 per unit whereas the actual selling price was Rs. 3.12 per unit.

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18. Respondent No. 1 has also argued that the DGAP has arrived at the profiteering by following a “mathematical calculation” which has not been prescribed by the Authority under the Goods and Service Tax Methodology and Procedure, 2018 framed by it based on the powers conferred by the CGST Rules. He has also claimed that the assertion made in the Para 21 that “The contention of the Noticee that as per Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018, they had immediately given effect to the reduction in GST rate from 12% to Nil on The product and accordingly, had reduced the Maximum Retail Price (MRP) of said goods, appears to be correct.” Still the DGAP had continued to determine the profiteering by adopting hyper technical “mathematical calculation” and arrived at a profiteering of Rs. 10,77,182/- during the period of investigation.
19. The Respondent No. 1 further claimed that in the DGAP’s Report dated 29.03.2019, DGAP it was argued that exact calculation of the reduction in rate of tax was required to be passed on to the consumers on each and every unit of an item individually and it would not be taken into account in a holistic manner whether the manufacturer had intentionally profited on the products manufactured by him, and this finding and interpretation by the DGAP was contrary to the anti-profiteering provisions. Neither the Act nor the Rules provided any time frame within which commensurate reduction in prices was to be passed on.
20. The Respondent No. 1 has also stated that the Notice dated 04.04.2019 issued by the Authority proposed to invoke the penal provisions under Section 29, 122, 123, 124, 125, 126 and 127 of the CGST Act, 2017 read with Rule 21 and 133 of CGST Rules, 2017

which was unsustainable and unconstitutional. He has also stated that the proposal to impose penalty under Rule 133 for alleged profiteering was also unconstitutional as the power of penalty conferred under Rule 127 and 133 suffer from the vice of excessive delegation and was ultra vires the Constitution for violation of Article 14 and 19(1) (g) of the Constitution. The term "commensurate reduction in price" had not been defined under the Act or the Rules, and the Authority has also not prescribed any such principles or safeguards in the Methodology and Procedure, 2018 framed by it to determine whether there was a benefit from the reduction in price or the method of calculation of the quantum of benefit.

21. The Respondent No. 1 has also contended that the Authority in Case No.3/2018 Sh. Kumar Gaurav Vs. KRBL Limited had held that increase in the price of paddy, which was an input for basmati rice has to be taken into account for determining whether there was profiteering or not. In case No.5/2018 Rishi Gupta Vs. M/s Flipkart Internet Pvt. Ltd. it was held by the Authority that discount did not fall within the ambit of the base price and withdrawal of discount did not amount to profiteering and in case No. 29/2018 KSC Vs. M/s Asian Paints Limited also, it was held that reduction in discount did not amount to profiteering as the same was offered from the profit margin of the Respondent.

22. The Respondent No. 1 has also stated that investigation of the selling price of the product by the Authority amounted to placing restriction on the prices which was his exclusive right and while deciding the price, the business has to consider a number of factors like competition, demand elasticity, funding costs, research and pricing and it was never

a direct function of cost or rate of tax. In the guise of ensuring commensurate reduction in prices, the DGAP has gone into the fixing of base prices, the determination of which was a right conferred on the him by Article 19 (1) (g) of the Constitution.

23. We have carefully considered the Report of the DGAP, the submissions of the Respondent No. 1 and all the documents placed on record. The mandate of the Authority as per Section 171 of the CGST Act, 2017 read with Rule 127 of the CGST Rules, 2017 is to examine and determine as to whether

i). any reduction in rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices,

ii). to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices.

24. It is revealed that the Central Govt. vide Notification No.19/2018-Central Tax (Rate) dated 26.07.2018 the Government had reduced the rate of GST from 12% to NIL without ITC in respect of the The product with effect from 27.07.2018, the benefit of which was required to be passed on to the recipients as per the provisions of Section 171 of the CGST Act, 2017. From the above discussion and the invoices available, it is revealed that the base price of the product "Sofy Bodyfit XL 6S" was increased from Rs. 33.08/- to Rs. 37.05/-, when the rate of tax was reduced from 12% to NIL% with effect from 27.07.2018. Thus, by increasing the base price of the product, post-GST rate reduction, the benefit of reduction in tax rate was not passed on to the recipients.

25. The Respondent No. 2, who is the seller of the impugned product, had clearly increased the base price of the product as can be seen from the invoices. But as the benefit of ITC was not available to him post 27.07.2018, so the reversal of ITC on the closing stock was the extra cost on him. As can be seen from the records that reversal of ITC by him was more than excess realization on closing stock after denial of ITC benefit w.e.f 27.07.2019, and therefore no profiteering can be established on his part and hence, we take the view that Section 171(1) is not attracted in respect of the Respondent No. 2. As such, we do not find any merit in the application filed by the Applicants in respect of the Respondent No. 2 and accordingly the same is dismissed.

26. Further, we observe that the Respondent No. 1 claims to have passed on the benefit of reduction in the rate of tax by reducing MRP. However on perusal of the invoices on the basis of which complaint has been made it is clear that there was increase in the base price while the MRP had remained the same. Notwithstanding the fact that there had been reduction in MRP and the Respondent No. 1 had reduced his MRP, we find that it has not been commensurate with the net reduction in the rate of tax and that the benefit has not reached all the recipients which establishes contravention of the provisions of Section 171(1) of the CGST Act, 2017.

27. Perusal of the Report filed by the DGAP nowhere shows that the DGAP had gone in to computation of the base price fixed by the Respondent No. 1 as he has neither sought details of the cost of the inputs used by the Respondent No. 1 nor of his profit margins, and therefore, the allegation of the Respondent No. 1 regarding

computation of base price during the investigation on part of the DGAP is completely wrong. The DGAP has only tried to investigate whether the benefit of reduction in the rate of tax has been passed on to the customers or not as per the provisions of Section 171 or not.

28. It is absolutely clear even from a cursory perusal of the provisions of Section 171 that they are completely unambiguous and clear and hence there is hardly any scope for misinterpretation of the same. The intent of legislature shows that it proposes to hold the suppliers accountable for passing on the benefit of rate reduction as it is being given out of the public exchequer and any breach of the same will fall foul of the above Section. It is also clear from the provisions of Section 171 that it has given mandate only to ensure that the benefits of rate reduction and ITC are passed on to the consumers and it has no provisions for interference in the process of price fixing as has been alleged by the Respondent No. 1 and hence there is no question of violation of the right of the Respondent granted under Article 19 (1) (g).

29. The Respondent No. 1 has not furnished any evidence to challenge the calculation of the DGAP of Ratio of ITC to Taxable Turnover which is 12.7%. The computation followed by the DGAP by taking all the positive values and not considering negative values in calculation of the profiteered amount is correct as benefit has to be passed on to all the recipients of all the products. Also, very small difference in commensurate price and actual selling price amounts to profiteering as it results in considerable amount of realisation to the Respondent.

30. After the perusal of Annexure-31 of the DGAP report, it is established beyond any doubt that the Respondent No. 1 had increased the base price w.e.f. 27.07.2019 which clearly shows that he had deliberately in

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conscious disregard of the provisions of Section 171 of the above Act had resorted to profiteering as he had no ground whatsoever to increase his prices on the eve of tax reduction.

31. In view of the above discussion the quantum of profiteering illegally obtained by the Respondent No. 1 is determined as Rs. 10,77,182.34/- as per the details mentioned in para 11 supra in terms of the provisions of Rule 133 (1) of the CGST Rules, 2017 as the above Respondent has failed to pass on the benefit of rate reduction to his customers. Accordingly, the Respondent No. 1 is directed to reduce his prices by way of commensurate reduction keeping in view the reduced rate of tax which has been availed by him as per Rule 133 (3) (a). The Respondent No. 1 is further directed to deposit the above amount as per the provisions of Rule 133 (3) (c) in the ratio of 50:50 in the Central or the State Consumer Welfare Fund of all the States and UTs as mentioned in para 12 above, along with the interest @ 18% till the same is deposited within a period of 3 months. The concerned Central and State GST Commissioners are directed to ensure that the amount due is got deposited from the Respondent No. 1 along with the interest and in case the same is not deposited necessary steps shall be taken by them to get it recovered from the Respondent No.1 as per the provisions of the CGST/SCST Acts under the supervision of the DGAP. They are further directed to submit report in compliance of this order within a period of 4 months.

32. It is also established from the above facts that the Respondent had issued incorrect invoices while selling the above product to his recipients as he had incorrectly shown the base price without mentioning any specifics such as colour, texture, quality etc about the

products being supplied with the sole intention of not having to pass commensurate benefit of reduction in rate of tax to his 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.

33. A copy of this order may be supplied to all the Applicants, the Respondent No1, the Respondent No.2 and the concerned Central and the State GST Commissioners free of cost. The file of the case be consigned after completion.



Certified Copy

B. N. Sharma
28/06/2019

(Bhupinder Batar)

Assistant Commissioner

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/163/Unicharm/2018

Date: 28.06.2019

Copy To:-

1. Shri C.P.Rao, Principal Chief Commissioner of Central Goods and Services Tax, Tamil Nadu & Puducherry, 26/1, Uthamar Gandhi Rd, Thousand Lights West, Nungambakkam, Chennai, Tamil Nadu 600034.

2. Sh. Sandeep Puri, Commissioner of Central Goods and Services Tax, Mumbai West Commissionerate, 1st Floor, Mahavir Jain Vidyalaya, C D Burfiwala Marg, Andheri (W), Mumbai-400058.
3. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. M/s Unicharm India Pvt. Ltd., Corp. Office, 5th Floor, Unit No. 501 to 508 & 510 to 518, Centrum Plaza Building, Golf Course Road, Gurugram, Haryana-122002.
5. M/s Apollo Hospitals Enterprise Ltd. (GSTIN 33AAACA5443N1ZP), Regd. Office: 19, Bishop Gardens, Raja Annamalaipuram, Chennai-600028.
6. NAA Website.
7. Guard File.

ABRanta