

020BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	54/2019
Date of Institution	13.06.2019
Date of Order	06.11.2019

In the matter of:

1. Shri Rahul Sharma on behalf of M/s Local Circles India Pvt Ltd., 4th Floor, Express Trade Tower-2, Sector-132, Noida-201301.
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 Gyan Books Pvt Ltd., 5, Ansari Road, Daryaganj, New Delhi-110002.

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:-

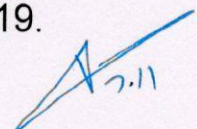
1. None for the Applicant.
2. None for the Respondent.
3. None for the DGAP.

ORDER

1. The present Report dated 11.06.2019 has been received from the Applicant No. 2 i.e. 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 present case are that the Standing Committee on Anti-Profiteering vide the minutes of its meeting held on 11.03.2019 had forwarded an application dated 28.02.2019 filed by the Applicant No. 1, to the DGAP. The Applicant No. 1 had stated in his application that the Respondent had resorted to profiteering in respect of supply of the book titled "Ragas in Hindustani Music: Conceptual Aspects (without cassette)". The Applicant No. 1 had also alleged that the Respondent had maintained the same selling price for the above said book despite reduction in the GST rate from 12% to NIL vide Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018, which took effect on 01.01.2019 and that the Respondent had not passed on the benefit of reduction in the GST rate to the recipients by way of commensurate reduction in the price of the book. The said application was examined by Standing Committee on Anti-Profiteering, in its meeting held on 11.03.2019, and it had referred the application to DGAP to conduct a detailed investigation in the matter under Rule 129(1) of the CGST Rules, 2017 to determine whether the benefit of

reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients.

2. Thereafter, the DGAP issued a notice to the Respondent on 09.04.2019 under Rule 129 of the CGST Rules, 2017 calling upon the Respondent to reply as to whether he admitted to the allegation made by the Applicant No. 1 that the benefit of reduction in the GST rate from 12% to Nil, had not been passed on to the Applicant No. 1 by way of commensurate reduction in prices and if so, to *suo-moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the above Applicant during the period 15.04.2019 to 17.04.2019. However, the Respondent did not avail of the said opportunity. The Applicant No. 1 was also given an opportunity to inspect the non-confidential evidences/reply furnished by the Respondent on 20.05.2019 or 21.05.2019. However, the Applicant No. 1 also did not avail of the said opportunity.
3. The Respondent vide his submissions dated 09.04.2019 submitted his reply stating that he was dealing in trading of text books which fell under the HSN code 4901 and which had been exempted from GST vide Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017 (Sl. No. 119) and that he had not been charging any GST from his customers ever since coming into effect of GST i.e. even before the Notification 25/2018-Central Tax (Rate) dated 31.12.2018 came into force, i.e. on 01.01.2019. The Respondent also submitted the copies of the invoices issued to his customers pre and post 01.01.2019.



4. The DGAP in his report has stated that the main issue for determination was whether there was reduction in the rate of GST from 12% to Nil w.e.f. 01.01.2019, in respect of the above said book supplied by the Respondent and if so, whether the Respondent had passed on the benefit of such reduction in the GST rate to the recipients, in terms of Section 171 of the CGST Act, 2017.
5. The DGAP in his Report has further stated that vide Notification No. 02/2017-Central Tax (Rate) dated 28.06.2017, the Central Government, on the recommendation of the GST Council, had exempted the GST on "Printed books, including Braille books", whereas vide Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018, the GST rate on "Music, printed or in manuscript, whether or not bound or illustrated", falling under HSN code 4905, had been reduced from 12% to Nil. The DGAP has claimed that the product under consideration was a printed book and not a music book and the same was also apparent from the invoices submitted by the Respondent wherein the books were classified under HSN code 4901.
6. The DGAP in his Report has also stated that the above said book, falling under the category of "Printed books, including Braille books" was already exempted from GST w.e.f. 01.07.2017 and there was no reduction in the GST rate on the said product w.e.f 01.01.2019 and hence, the allegation of profiteering was completely misplaced. The DGAP has further claimed that as per the copies of the invoices submitted by the Respondent, it was observed that the Respondent had maintained the same base price during the entire period and had not charged GST on the base price and apparently there was no reduction in the GST rate on the above said book w.e.f. 01.01.2019.

7. Vide his Report, the DGAP further stated that Section 171(1) of the CGST Act, 2017 can be invoked in the event where there is a reduction in the rate of tax or an increase in input tax credit and in the present case, since neither of the aforesaid conditions had been met, Section 171 of CGST Act, 2017 may not be applicable to the facts of the present case.
8. The investigation Report was received by the National Anti-Profiteering Authority from the DGAP on 13.06.2019 and was considered in the sitting of the Authority held on 18.06.2019 and it was decided to accord an opportunity of hearing to the Applicant No. 1 on 02.07.2019. The Applicant No. 1 vide e-mail dated 27.06.2019 stated that the book in respect of which he has filed the application alleging non passing on of the benefit of tax reduction actually fell under the category of "Printed Books" (and not an e-book), which was already exempted from GST w.e.f. 01.07.2017 and hence this was not a case where passing on of the benefit of tax reduction was warranted. The applicant had also stated that he would not be attending hearing in person.
9. The Authority has carefully examined the DGAP's Report, the written submissions of the above Applicant No. 1 placed on record. The issues to be decided by the Authority are as under:-
- 1) Whether there was any violation of the provisions of Section 171 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. In the present case, we observe that that the book "Ragas in Hindustani Music: Conceptual Aspects (without cassette)" deals with various conceptual aspects and various affinities in Ragas and analysis thereof. We observe that the invoices dated 24.09.2018 and 09.01.2019, issued by the Respondent in respect of supply of the said book "Ragas in Hindustani Music: Conceptual Aspects (without cassette)" to his buyers does not contain the HSN code, which is a requirement under the provisions of Section 31 of the CGST Act, 2017. We observe that the main allegation of the Applicant No. 1 is that the Respondent had maintained the same selling price for the book even after the Notification No. 25/2018-Central Tax (Rate) dated 31.12.2018 had come into force and that the Respondent had not passed the benefit of reduction in the GST rate to the recipients. In this context, we have perused the invoices dated 24.09.2018 and 09.01.2019, issued by the Respondent in respect of supply of the said book "Ragas in Hindustani Music: Conceptual Aspects (without cassette)" and we observe that the Respondent has not charged any GST from his buyers in case of both the supplies, one effected before the rate reduction and the other after that date. Since no GST was charged by the Respondent before and after the relevant date i.e. 01.01.2019, question of profiteering does not arise in this case.
12. Further, as observed above, the invoices issued by the Respondent do not mention the HSN classification, which is violation of Section 31 of the Act *ibid*. This aspect of the correct classification of the said

book "Ragas in Hindustani Music: Conceptual Aspects (without cassette)", notwithstanding the findings of the DGAP on the classification of the said book in his report dated 11.06.2019, needs to be carefully examined by the Jurisdictional Commissioner for further action.

13. In view of the above discussion, we take the view that the allegation that the Respondent had not passed on the benefit of reduction in the tax rate is not sustainable. Accordingly, the application filed by the Applicant requesting action against the Respondent for alleged violation of the provisions of the Section 171 of the CGST Act is not maintainable and hence the same is dismissed.
14. 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

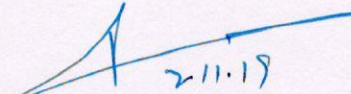
Sd/-
(J. C. Chauhan)
Member(Technical)

Sd/-
(R. Bhagyadevi)
Member(Technical)

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy

dc



(A.K Goel)
(Secretary, NAA)



File No. 22011/NAA/45/GYAN BOOKS/2019
Copy to:-

Dated: 07.11.2019

1. Sh. Rahul Sharma, (M/s Local Circles India Pvt Ltd.), 2413, 4th Floor,
Express Trade Tower-2, Sector-132, Noida-201301.

2. M/s Gyan Books Pvt Ltd., 5, Ansari Road, Daryaganj, New Delhi-110002.
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Chief Commissioner of Central Goods & Services Tax, Delhi Zone C.R. Building, I.P. Estate, New Delhi 110 109.
5. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin: 110 002.
6. NAA Website/Guard File.

 7.11.18