

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

Case No. : 10/2020
Date of Institution : 04.09.2019
Date of Order : 03.03.2020

In the matter of:

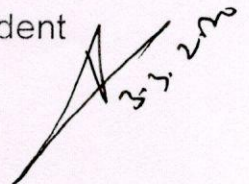
1. Shri S. C. Grover, House No. 31, Sector 14, Panchkula, Haryana.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Garg Kitchen Collection, Service Booth No. 1-P, Sector 9,
Panchkula, Haryana – 134109.

Respondent



Quorum:-

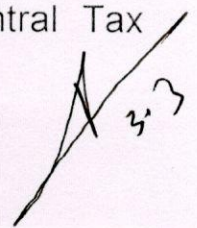
1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicant No. 1.
2. None for the Applicant No. 2.
3. None for the Respondent.

ORDER

1. This Report, dated 04.09.2019, 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 received by the Standing Committee on Anti-Profiteering under Rule 128 of the CGST Rules, 2017 vide which the Applicant No. 1 had alleged profiteering in respect of the supply of 'Sujata Mixer Grinder 900W' (hereinafter referred to as **the product**) by the Respondent. The Applicant No. 1 had alleged that the Respondent had not passed on the benefit of reduction in the rate of GST on the impugned product supplied by him, although the rate of GST was reduced from 28% to 18% w.e.f. 27.07.2018 vide Notification no. 18/2018-Central Tax



(Rate) dated 26.07.2018, by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

2. The above complaint was examined by the Standing Committee on Anti Profiteering and vide the minutes of its meeting dated 13.12.2018, the matter was forwarded to the DGAP to conduct a detailed investigation. On receipt thereof, the DGAP observed that the supporting documentary evidence was not received alongwith the said minutes and thus, a letter dated 18.01.2019 was sent by the DGAP to the Standing Committee requesting that the supporting documentary evidence be provided. The requisite documentary evidence was received by the DGAP on 28.02.2019 and thereafter, the investigation commenced w.e.f. 28.02.2019.
3. Thereafter the DGAP on receipt of the reference from the Standing Committee on Anti-profiteering and the supporting documents, issued a Notice under Rule 129 of the Rules on 15.03.2019 calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in GST rate w.e.f. 27.07.2018 had not been passed on to his recipients by way of commensurate reduction in price 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 documents in support of his reply. The DGAP also offered an opportunity to the Respondent to inspect the non-confidential evidence/information submitted by the Applicant No. 1 on any date from 25.03.2019 to 27.03.2019. However, the said opportunity was not availed by the Respondent. The DGAP also offered an opportunity to Applicant No. 1 to inspect

the non-confidential documents/reply furnished by the Respondent on either 1.07.2019 or 2.07.2019, which he did not avail of.

4. Meanwhile, the DGAP sought extension of time for completing the investigation, which was granted by this Authority in terms of Rule 129 (6) of the CGST Rules, 2017 vide its order dated 21.05.2019. The period of the investigation undertaken by the DGAP was from 27.07.2018 to 28.02.2019.
5. The Respondent replied to the Notice issued by the DGAP, vide his letters/e-mails dated 18.03.2019 and 20.05.2019, vide which he stated that the reduction in the GST rate was to be given effect on 27.07.2018, but he was not aware of Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018. He further submitted that he started passing on the benefit of the reduction in the GST rate to his recipients/customers, as soon as he become aware of the reduction in the tax rate. The Respondent also stated that he had deposited the entire GST @ 28% with the Government which he had recovered from his buyers during the relevant period and thus the recipient/customer was at liberty to claim the refund of the excess GST paid at the time of purchase of the goods from him. The Respondent also contended that he had mistakenly sold the goods with GST @ 28% instead of charging GST @ 18% only for five days, i.e, from 27.07.2018 to 31.07.2018, and that too unintentionally and that he had deposited the excess GST charged by him in the Government treasury and contended that he had not profiteered in the process.

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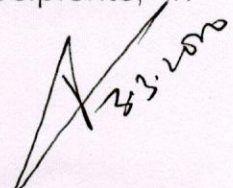
6. The Respondent has also submitted the following documents/information to the DGAP:-

- (i) GSTR-1 and GSTR-3B Returns for the period April, 2018 to February, 2019.
- (ii) Details of the invoice-wise outward taxable supplies of all the products impacted by the GST rate reduction w.e.f. 27.07.2018, during the period April, 2018 to February, 2019.
- (iii) Sample invoices of products impacted by the GST rate reduction w.e.f. 27.07.18, both pre and post GST rate reduction.
- (iv) The details of the purchase prices of the products.

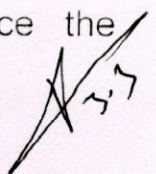
7. The Respondent did not claim any confidentiality in terms of Rule 130 of the CGST Rules in respect of any of the data/information furnished by him.

8. The DGAP upon examining the application, scrutinizing the various replies of the Respondent and studying the various documents/evidences on record, observed that the main issues that required to be addressed were:-

- (i) Whether the rate of GST on the goods supplied by the Respondent was reduced from 28% to 18% w.e.f. 27.07.2018.
- (ii) If so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

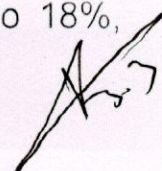


9. The DGAP has reported that the Central Government, on the recommendation of the GST Council, reduced the GST rate on the goods supplied by the Respondent from 28% to 18% w.e.f. 27.07.2018, vide S. No. 376AC, 376AD and 378A of the Schedule III attached to the Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 and that the impugned product, i.e., 'Sujata Mixer Grinder 900W' was covered by the aforesaid Notification. This was a matter of fact which had also not been contested by the Respondent.
10. The DGAP further stated that the Section 171(1) of the Act CGST Act reads as "*any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*" Thus, the legal requirement was abundantly clear that in the event of benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction in price could only be in terms of money, so that the final price payable by a recipient got reduced commensurate with the reduction in the tax rate or benefit of ITC. This was the only legally prescribed mechanism to pass on such benefit under the GST regime and that there was no other method which a supplier could adopt to pass on the benefits to his customers/recipients.
11. The DGAP also observed that from the outward sales data made available by the Respondent, it appeared that the Respondent had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 27.07.2018 and hence the

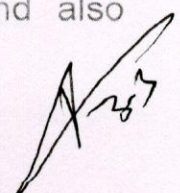


commensurate benefit of GST rate reduction had not been passed on by him to his customers/recipients. Further, on the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies of all the products impacted by the reduction in GST rate w.e.f. 27.07.2018, (during the period from 01.04.2018 to 28.02.2019), as furnished by the Respondent, the amount of net higher sales realization due to the increase in the base prices of all impacted goods, when the GST rate was reduced from 28% to 18% w.e.f. 27.07.2018 or in other words, the total profiteered amount during the period 27.07.2018 to 28.02.2019, was Rs. 30,153/-. The DGAP also enclosed the details of the computation of the same in Annexure 9 of his Report. The DGAP further stated that the profiteered amount was the sum of total of the profiteered amounts arrived at by comparing the average of the base prices of all the products impacted by GST rate reduction w.e.f. 27.07.2018 which were sold during the period 01.07.2018 to 26.07.2018 (or during the period 01.04.2018 to 30.06.2018 for the products not sold during the period 01.07.2018 to 26.07.2018), with the actual invoice-wise base prices of such products sold during the period 27.07.2018 to 28.02.2019. The profiteered amount also included the GST charged on the increased base prices. The DGAP also reported that the Respondent had supplied products in the State of Haryana only.

12. Thus, the allegation that the base prices of the goods were increased when there was reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018 appeared to be correct and by doing so the commensurate benefit of reduction in GST rate from 28% to 18%,



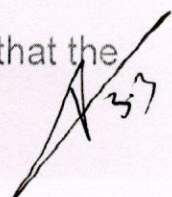
- was not passed on by the Respondent to his recipients and that Section 171(1) of the CGST Act, 2017 had been contravened.
13. The above Report was received on 04.09.2019 and was considered by this Authority in its meeting held on 11.09.2019 and it was decided to hear the Applicants and the Respondent on 27.09.2019.
 14. During the hearings held on 27.09.2019, 17.10.2019 and 15.11.2019 none appeared for the Applicant No. 1, none appeared for the Applicant No. 2 and none appeared for the Respondent.
 15. The Respondent filed his written submissions dated 24.09.2019 in which he has stated that the Respondent vide letter No. AJ/GST/2019-20/203 dated 02.06.2019 had submitted the detailed reply to the allegations made against the Respondent. However, the DGAP vide his Report dated 04-09-2019 was totally silent about the submissions filed by the Respondent. There was also no mention of the reply/submissions or the documents submitted by the Respondent vide the aforesaid letter dated 02-06-2019. He further stated that he had not contravened any of the provisions of CGST Act, 2017 or Rules made thereunder and that he had deposited the amount of GST with the Government which was collected from the Applicant No. 1. The Respondent further submitted that his previous submissions might be taken on record and his personal presence may be dispensed with. The Respondent also enclosed his previous written submissions dated 02.06.2019 made before the DGAP.
 16. The Respondent also filed written submissions on 26.09.2019 vide email vide which he agreed with the DGAP's Report and also requested to pass the order as per the Report of the DGAP.



17. Clarification was also sought from the DGAP on the Respondent's above mentioned submissions. The DGAP, vide his supplementary Report dated 10.10.2019, stated that the Respondent's submissions dated 24.09.2019 had been prepared by the Advocate on behalf of the Respondent whereas the submissions dated 26.09.2019 had been prepared by the Respondent himself. The DGAP further dismissed the Respondent's contention that his submissions dated 02.06.2019 had not been considered in the DGAP's Report. In this context, the DGAP has reported that the investigation had taken into account all the relevant facts, submission and documents submitted by the Respondent vide his various submissions including those dated 02.06.2019, which were a mere elaboration of his earlier submissions which stated:-

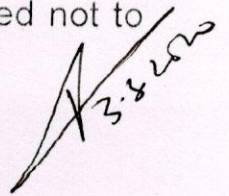
- (i) That he was a small retailer and that the goods had been sold in retail at discounted prices with discounts upto 40%, which were much lower than the MRP and as such he had not profiteered.
- (ii) That the discounts offered by him may be considered as the benefit of reduced rate of GST.
- (iii) That the excess GST charged mistakenly from the buyers after the GST rate reduction (w.e.f. 27.07.2018 to 31.07.2018) had been deposited in the government treasury by him.

18. The DGAP further clarified that the discounts offered by the Respondent were pursuant to a discretionary business Strategy wherein he willingly cut into his profit margins to offer appropriate discounts time and again. Further, Section 15 (3) (a) provided that the

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value of the supply shall not include any discount which was given before or at the time of supply if the said discount has been duly recorded in the invoice issued in respect of such supply. Thus GST was chargeable on the actual transaction value after excluding any discount and therefore, for the purpose of computation of profiteering, MRP could not be considered. The actual transaction value was the correct amount which was to be considered to determine whether any reduction in the rate of tax on any supply of goods or services has been passed on to the recipient by way of commensurate reduction in price. The DGAP also stated that the profiteering has been calculated on the basis of the invoice/transaction value which was after allowing discount. Further, as informed by the Respondent that he had deposited the excess charged amount of GST @ 28% after rate reduction that he had unintentionally recovered from the buyers, the DGAP has stated that the actual consumer had to suffer an amount which was not required to be paid by him after the reduction in tax rate. Thus, the commensurate benefit to the recipient had not been passed on as required in line with the provisions of Section 171 of the CGST Act, 2017.

19. The Respondent filed his next written submissions dated 14.10.2019 vide which he stated that his submissions dated 26.09.2019 may be considered wherein he agreed with the DGAP's Report dated 04.09.2019. He further submitted that he has nothing more to say in the matter and the case may be decided on merits. The Respondent vide his written submissions dated 14.11.2019 also requested not to



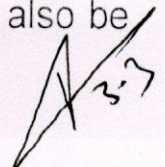
grant him any more hearing and the case may be decided on the basis of his previous submissions.

20. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent and other material placed on record and it is revealed that the Central Govt. vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 had reduced the rate of GST for the product from 28% to 18% 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.
21. The Respondent has raised objection that his submissions dated 02.06.2019 were not take into consideration by the DGAP in his Report dated 04.09.2019. However, upon perusal of the DGAP's Report, it is found that his submissions dated 02.06.2019 have been duly considered while computing the profiteering amount. The same has also been verified by the DGAP vide his supplementary Report dated 10.10.2019. Thus, the Respondent's above mentioned submission is fallacious and not tenable.
22. The Respondent vide his written submissions dated 26.09.2019, 14.10.2019 and 14.11.2019, has agreed with the DGAP's Report.
23. From the above facts and discussion, it is evident that the Respondent had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 27.07.2018, so that the commensurate benefit of GST rate reduction was not passed on to his recipients. Thus, by increasing the base price of the product the benefit of reduction in the tax rate was not passed on to the recipients



by the Respondent and hence he has contravened the provisions of Section 171 of the CGST Act, 2017 and accordingly the DGAP vide Annexure-9 of his Report has correctly arrived at the profiteered amount Rs. 30,153/-. The Respondent has also agreed with the DGAP's Report.

24. The Respondent is therefore directed to reduce the prices of his products as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, 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 deposit the profiteered amount of Rs. 30,153/- 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 in terms of Rule 133(3) (b) of the CGST Rules, 2017. Since, rest of the recipients in this case are not identifiable, the above Respondent is directed to deposit the amount of profiteering of Rs. 30,153/- along with interest in 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 in the Central and State CWFs along with interest @ 18% till the same is deposited.
25. The above amount shall be deposited within a period of 3 months by the Respondent, from the date of receipt of this order, failing which the same shall be recovered by the concerned Commissioners of the Central and the State GST, as per the provisions of the CGST/SGST Acts, 2017 under the supervision of the DGAP and shall be deposited as has been directed vide this order. A detailed Report shall also be



filed by the concerned Commissioner of the Central and the State GST indicating the action taken by him within a period of 4 months from the date of this order.

26. It is also evident from the above narration of the facts that the Respondent has denied the benefit of rate reduction of the GST to the consumers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus resorted to profiteering. Hence, he has committed an offence under Section 171 (3A) of the CGST Act, 2017 and therefore, he is apparently liable to penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
27. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.

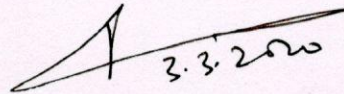
Sd/-
(J. C. Chauhan)
Member(Technical)



Sd/-
(Amand Shah)
Member(Technical)

Sd/-
(B. N. Sharma)
Chairman

Certified Copy


3.3.2020

(A. K. Goel)
NAA, Secretary

File No. 22011/ NAA/54/GKC/2019 /1294-97
Copy To:-

Dated: 03.03.2020

1. M/s Garg Kitchen Collection, Service Booth No. 1-P, Sector 9, Panchkula, Haryana - 134109
2. Shri S. C. Grover, House No. 31, Sector 14, Panchkula, Haryana.
3. Director General 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. Guard File.


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