

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

Case No. 24/2020  
Date of Institution 29.10.2020  
Date of Order 05.05.2020

**In the matter of:**

1. Shri Anil Sharma, Fortune Print Services, F-25, Okhla Industrial Area, Phase -I, New Delhi -110 020.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Printing Machine Solutions, 401, F.I.E. Patparganj Industrial Area New Delhi -110092.

Respondent

**Quorum:-**

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



Present:-

- 1) Sh. Anil Sharma, Applicant No. 1 in person.
- 2) Sh. Deepak Agarwal, Proprietor for the Respondent.

### ORDER

1. This Report dated 25.10.2019 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 & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that an application dated 29.09.2017 was filed before the Standing Committee on Anti-profiteering, by the Applicant No. 1, alleging profiteering in respect of the supply of a "Used Heidelberg Speed Master Offset Press with complete tools and accessories (Model SM 74-5+LX, Year of manufacture 1997)" by the Respondent.
2. The DGAP also submitted that the Applicant had purchased an imported "Used Heidelberg Offset Press SM 74-5 +LX, Mfg. Year 1997 with complete tools and accessories" from the Respondent for which the Respondent had quoted price of Rs. 1,40,00,000/- (plus local Sales Tax, if applicable) as per the proforma Invoice No. Press/DA/PMS/060517 dated 06.05.2017. He was, however, billed for an amount of Rs. 1,65,20,000/- as per tax invoice No. 01 dated 29.07.2017, which included GST @ 18% on Rs. 1,40,00,000/-. The above Applicant also alleged that after the implementation of the

GST, various existing taxes like VAT, CST, CVD, SAD etc. had been subsumed in the GST but the Respondent charged 18% GST on Rs. 1,40,00,000/- which was the quoted price inclusive of erstwhile taxes like CVD and SPL CVD etc. and did not pass on the benefit of ITC to him by way of commensurate reduction in price in terms of Section 171 of the CGST Act, 2017.

3. The DGAP Submitted that the aforesaid application was examined by the Standing Committee in its meeting held on 11.04.2019, the minutes of which were received in the office of the DGAP on 02.05.2019, whereby it was decided to refer the same, to conduct a detailed investigation in the matter, in terms of Rule 129 of the Rules.
4. The DGAP further submitted that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 02.05.2019, a Notice under Rule 129(3) of the Rules was issued by the him on 16.05.2019, calling upon the Respondent to submit his reply as to whether he admitted that the benefit of input tax credit, 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. Further, vide the said Notice, the Respondent was also allowed to inspect the non-confidential evidences/ information which formed the basis of the said Notice, during the period 22.05.2019 to 24.05.2019

which the Respondent did not avail of. The Applicant No. 1 was also offered an opportunity to inspect the non-confidential evidences/ documents submitted by the Respondent on either on 22.10.2018 or 23.10.2019 which the Applicant availed on 23.10.2018. The period covered by the current investigation was from 01.07.2017 to 30.04.2019.

5. The DGAP also stated that the time limit to complete the investigation had been extended upto 01.11.2019 in terms of Rule 129 (6) of the Rules.

6. The DGAP intimated that the Respondent submitted his replies to the said Notice vide letters dated 17.06.2019, 21.06.2019, 10.10.2019, 11.10.2019 and 14.10.2019. Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:-

- a) GSTR-1 Returns for the period July 2017 to April 2019.
- b) VAT Returns for the period April 2017 to June 2017.
- c) Import documents such as Bill of Entry and Invoices in respect of the Printing Machine supplied.

7. The DGAP further intimated that the Respondent had requested to treat all the data/information furnished by him as confidential, in terms of Rule 130 of the Rules.

8. The DGAP further claimed that the Central Government had implemented GST w.e.f 01.07.2017 which subsumed various taxes levied by the Central Government and State Governments, which are as follows: -



Taxes which were subsumed in the Goods and Services Tax (GST)	
Central Taxes	State Taxes
Central Excise Duty	State VAT/ Sales Tax
Additional Duties of Excise (Goods of special importance)	Central Sales Tax
Additional Duties of Excise (Textiles and Textile products)	Entertainment Tax (other than by local bodies)
Excise Duty levied under Medicinal & Toilet Preparations Act	Entry Tax/ Octroi (all forms)
Additional Duties of Customs (commonly known as CVD)	Purchase Tax
Special Additional Duties of Customs (SAD)	Taxes on lottery, betting & gambling
Service Tax	Luxury Tax
Central Surcharges and Cesses	State Surcharges and Cesses

Out of the above taxes, the ITC of some taxes was not being allowed in the erstwhile tax regime. Such input taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied, resulting in increased price. With the introduction of GST with effect from 01.07.2017, all these taxes got subsumed in the GST and the ITC of GST was available in respect of all the goods and services unless specifically denied. Thus, the additional benefit of ITC in the GST regime would be limited to those input taxes, the credit of which was not allowed in the pre-GST regime but was allowed in the

GST regime. This additional benefit of ITC in the GST regime was required to be passed on by the suppliers to the recipients by way of commensurate reduction in price, in terms of Section 171 of Goods and Services Tax Act, 2017. This was a matter of fact which had not been contested by the Respondent.

9. The DGAP also claimed that in the event of the 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 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 the input tax credit. This was the only legally prescribed mechanism to pass on the benefit of ITC or reduction in the rate of tax to the recipients under the GST regime and there was no other method that a supplier could adopt to pass on such benefits.

10. The DGAP further claimed that quotation as per the proforma invoice No. Press/DA/PMS/060517 dated 06.05.2017, for a total amount of Rs. 1,40,00,000/- (plus local Sales Tax, if applicable), was given to the Applicant No. 1 by the Respondent. As per the above quotation, the total amount which had to be paid by the Applicant, was as follows:

Description	Price (in Rs.)
Used Heidelberg Speed Master Offset Press with complete tools and accessories(A)	1,40,00,000/-
Plus (Sales Tax or VAT @ 5%), if applicable	

As against the aforementioned quotation, the Tax Invoice No. 01 dated 29.07.2017 issued was as follows:-

Description	Price (in Rs.)
Used Heidelberg Speed Master Offset Press with complete tools and accessories (A)	1,40,00,000/-
CGST @ 9% (B)	12,60,000/-
SGST @ 9% (C)	12,60,000/-
Total Price, including Tax (D=A+B+C)	1,65,20,000/-

11. The DGAP also contended that had the import of the "Used Heidelberg Speed Master Offset Press with complete tools and accessories (Model SM 74-5+LX, Year of manufacture 1997)" taken place before implementation of GST when the quotation dated 06.05.2017 was provided to the above Applicant, the Respondent would have suffered Countervailing Duty (CVD) @ 12.5% and Special Additional Duty (SAD) @ 4% at the time of import. Though the refund of the amount paid by the Respondent as SAD would have been available to him upon the sale of the products, the credit of CVD paid by the Respondent would not have been available, and would have formed an embedded part of the cost of the product in the said quotation. However, the actual import of the said machine had taken place vide Bill of Entry No. 2432766 dated 13.07.2017, i.e., after implementation of GST, when the CVD and SAD were replaced by IGST and the full

amount of IGST@ 18% paid at the time of actual import was available as ITC to the Respondent.

12. The DGAP further contended that in the light of the aforementioned legal position regarding the duties payable and the credits available (or not available) both at the time, the quotation was given and when the actual import took place after the introduction of GST, the finding was that the Respondent should have reduced the base price to the extent of the CVD that was no longer to be paid as well as to the extent of the IGST the credit of which was now available. However, the invoice that was raised on 29.07.2017 for the transaction and on which IGST@18% was charged showed that the base price of the product remained the same, i.e., Rs. 1,40,00,000/- as per the quotation dated 06.05.2017. Thus, the base price was not reduced to the extent of CVD that was not payable in the post-GST period.

13. The DGAP also submitted that regarding the allegation of profiteering, perusal of the Bill of Entry No. 2432766 dated 13.07.2017 revealed that the taxable value of the product "Used Heidelberg Speed Master Offset Press with complete tools and accessories (Model SM 74-5+LX, Year of manufacture 1997)" on which CVD @ 12.5% would have been required to be paid (Assessable Value + Basic Customs Duty) had the import taken place before implementation of GST, was Rs. 46,85,564/-. Thus, the Respondent would have been liable to pay CVD @12.5% amounting to Rs. 5,85,696/-



for the above product without getting the benefit of ITC. However, as the import of the product took place after the implementation of GST, the Respondent did not have to suffer the burden of the same and hence, the base price of the product should have been reduced by Rs. 5,85,696/-. Accordingly, the base price should have been Rs. 1,34,14,304/- [Rs. 1,40,00,000 (-) Rs. 5,85,696] for the product. The commensurate cum-tax price of the product inclusive of GST @18% would have been Rs. 1,58,28,879/-. Thus, the total price to be charged from the applicant should have been Rs. 1,58,28,879/- instead of Rs. 1,65,00,000/- and the amount of profiteering by the Respondent was Rs. 6,71,121/- [Rs. 1,65,00,000(-) Rs. 1,58,28,879]. This calculation of the amount of profiteering has been summarized in the table below:-

Description	Amount (in Rs.)
Taxable value at the time of import (A)	46,85,564
CVD@12.5% of the taxable value at the time of import (B)	5,85,696
Base price charged by the Respondent (C)	1,40,00,000
Commensurate base price (D=C-B)	1,34,14,304
IGST(18%) (E=D x 0.18)	24,14,575
Commensurate cum-tax price (F= D+E)	1,58,28,879
Price actually charged by the Respondent (G)	1,65,00,000
Profiteering amount (H=G-F)	<b>6,71,121</b>

*AS*

14. The DGAP also reported that the benefit of the ITC would be available to the Respondent in those situations where the Respondent had quoted the prices of his supplies in the pre-GST regime and supplies of the same were made in the post-GST regime. Therefore, the profiteering on account of the benefit of ITC would be restricted to only such supplies. As the Respondent had claimed that he had supplied only one machine in the post-GST period for which he had given quotation in the pre-GST era, therefore, during the period of the current investigation i.e., from 01.07.2017 to 30.04.2019, the amount of profiteering by the Respondent was Rs. 6,71,121/- (Rupees Six Lakh Seventy One Thousand One Hundred and Twenty one only).

15. The DGAP finally stated that as the benefit of ITC had not been passed on to the Applicant No. 1, the provisions of Section 171(1) of the CGST Act, 2017 have been contravened and the amount of profiteering by the Respondent was Rs. 6,71,121/- (inclusive of GST@18% amounting to Rs. 1,02,374/- charged on the excess base price).

16. The above Report was considered by the Authority in its meeting held on 01.11.2019 and it was decided to hear the Applicants and the Respondent on 19.11.2019. Notice dated 01.11.2019 was also issued to the Respondent to explain why the Report furnished by the DGAP should not be accepted and his liability for having violated the provisions of Section 171 of the CGST Act, 2017 should not be fixed. The hearing

fixed on 25.03.2019 was postponed to 09.04.2019 on the request of the Respondent. On 09.04.2019, Applicant No. 1 was present in person while Shri Deepak Agarwal, proprietor appeared on behalf of the Respondent. Further hearings were held on 29.04.2019, 27.05.2019 and 12.06.2019, whereas another hearing scheduled for 17.05.2019 was adjourned.

17. The Applicant No. 1 vide his submissions dated 18.11.2019 submitted that the Central Excise, Education Cess and Higher Education Cess were subsumed in the GST, however, it has not been considered by the DGAP in the calculation of Input Tax Credit. He also submitted that the DGAP has misquoted the billed price of the machine as Rs. 1,65,00,000 which should have been Rs. 1,65,20,000 and accordingly the profiteered amount will also change. He also submitted the alternative calculation of ITC, amount of profiteering and extra tax paid in GST regime which is as follows:-

#### Calculations of ITC

(a) Assessable value	=Rs. 43,58,664.00
(b) Basic Custom Duty (7.5%)	=Rs. 3,26,890.00
(c) CVD 12.5%	=Rs. 5 85 69600
(d) Central Excise education cess (b+c) x 2	= Rs. 18,252.00
(e) Higher education cess (b+c) x1	=Rs. 9 ,126.00
(f) Sum of CVD Cess	=Rs. 6,13,074.00



### Calculations of the amount of the profiteering

Taxable value at the time of Import (A)	= Rs. 46,85,564.00
CVD + Cesses (B)	= Rs. 6,13,074.00
Base Price charged by notice(C)	=Rs. 1,40,00,000.00
Commensurate base price (D=C-B)	=Rs. 1,33,86,926.00
IGST 18% (E=D x 0.18%)	=Rs 24,09,647.00
Commensurate cum-tax price (F=D+E)	= Rs. 1579657300
Price actually charged by the notice (G)	=Rs. 1,65,20,000.00
Profiteering amount ( H=G-F)	= Rs. 7,23,427.00
000	

### Extra Tax paid in GST regime

GST paid	= Rs.25,20,000.00
Pre GST applicable Tax (VAT @5%)	= Rs. 7,00,000.00
Impact of GST (Additional)	= Rs.18,20,000.00

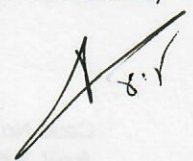
18. The Applicant No.1 further submitted that the selling price (Rs. 1,40,00,000) of the product was very high in comparison to the assessable value (Rs. 46,85,564) and the net profit earned by the Respondent was Rs. 93,14,436.00, which meant that his purchase price was almost 200% of the base price. He also requested for investigation of the same in terms of Directorate General of Foreign Trade guidelines.

19. The Respondent, vide his letter dated 05.12.2019, submitted that to compensate the loss of ITC to the Applicant No. 1 he had provided additional accessories to him which were not the part of his initial quotation. He agreed with the DGAP's Report

and showed his willingness to pass on the profiteered amount.

He further requested for waiver of the interest payable on the above agreed profiteered amount because he was new into the business and had no knowledge about anti-profiteering provisions.

20. The DGAP, vide his supplementary Report dated 18.12.2019, submitted a detailed clarification on the submissions made by Applicant No. 1, whereby the DGAP submitted that since the product, i.e Printing Machine, had been imported by the Respondent, it was not a case of levy of Central Excise Duty and hence also not a case where Central Excise Duty Education Cess and Secondary & Higher Education Cess were leviable; that in the case of import, Countervailing Duty (CVD) was leviable (instead of Central Excise Duty) along with Education Cess (@1% of CVD) and Secondary & Higher Education Cess(@ 2% of CVD till February 2015, before the Government of India issued Notification No.14/2015-Central Excise dated 01.03.2015 and 15/2015-Central Excise dated 01.03.2015, exempting the import of the impugned product from the levy of Education Cess and Secondary & Higher Education Cess, respectively. Therefore at the time of the import of the impugned product and at the time of the raising of the subject quotation by the Respondent to the Applicant No. 1 in the year 2017, the cesses, namely Education cess and Secondary & Higher Education Cess, were not leviable,



hence, the said Cesses have not been considered while calculating profiteering.

21. The DGAP has further reported that the contention of Applicant No. 1 that due to a typing error, the amount of Rs. 1,65,20,000/- had been mistyped as Rs. 1,65,00,000/- in Para 18 of the DGAP report dated 25.10.2019, was correct and thus liable to be accepted and accordingly, the amount of profiteering will increase by Rs. 20,000/-; the actual amount of profiteering ought to be read as Rs. 6,91,121/- (inclusive of GST @18% or Rs. 1,15,187/- charged on the excess base price) and not as Rs.6,71,121/-; also that the price actually charged by the Respondent in respect of the said supply to Applicant No.1 has to be read as Rs. 1,65,20,000/- (instead of Rs. 1,65,00,000/-); and Para 18, 19 and 20 of the DGAP report stood revised accordingly.

22. DGAP has further submitted that the claim of Applicant No. 1, regarding the additional component of tax paid by him in the GST period was not acceptable, since Respondent's quotation for the supply of the impugned product, which had been issued before the implementation of GST, was for an amount of Rs. 1,40,00,000/- (exclusive of VAT). Further, since the actual supply was effected only after GST was implemented by the Government, GST was leviable on the supply and hence the said contention of Applicant No.1 was not tenable.



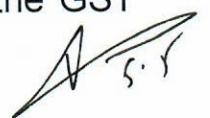
23. The DGAP has further reported that Applicant No. 1 was, in any case, entitled to claim ITC of the amount of GST paid by him at the time of purchase of the said product, implying thereby that the actual impact of tax on him was zero; that in the pre-GST regime, Applicant No. 1 would have had to pay VAT thereon, credit of which would have been available to him. Now, in the GST regime also, the GST amounting to Rs. 25,20,000/- (@ 18% tax rate) paid by him at the time of the purchase was available to him as ITC and therefore there was no loss to Applicant No. 1 on this account.

24. The DGAP has further reported that the contentions of Applicant No. 1 regarding the significant disparity in the assessable value of the impugned printing machine with its subsequent offer price to the Applicant No.1 (as mentioned in the quotation) was of no relevance to the computation of profiteering in the present proceedings; also, that the contention of the Applicant No. 1, relating to the huge profit margin of the Respondent has no bearing on the computation of profiteering which has been done in line with the provisions of Section 171 of the CGST Act 2017.

25. The DGAP has also reported that the contention of the Respondent that he had passed on the benefit to the Applicant No. 1 by providing additional accessories, in place of passing on the benefit derived on account of profiteering, was not acceptable because Section 171(1) of the CGST Act, which reads as - "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,"* did not provide any other means of passage of such benefit except by way of commensurate reduction in price; that thus the legal requirement of Section 171 of the Act, *ibid*, was that in the event of benefit of input tax credit or reduction in the rate of tax, there must be a commensurate reduction in the price of the goods or services; that any such reduction could only be in absolute terms so that the final price payable by a consumer got reduced commensurately. Further, the DGAP has reported that the Respondent has not submitted any documentary evidence in support of his above claim, hence, the said contention of the Respondent fell flat.

26. We have carefully heard both the parties and have also gone through the record of the case placed before us and it is observed that the Central Government implemented GST w.e.f 01.07.2017 and that GST subsumed several taxes hitherto levied by the Central Government and the State Governments. Out of these several taxes, input tax credit of some taxes was not being allowed in the erstwhile tax regime. Such subsumed taxes, the credit of which was not allowed in the erstwhile tax regime, used to get embedded in the cost of the goods or services supplied resulting in an increase in the prices of the goods or services supplied. With the introduction of GST with effect from 01.07.2017, the said taxes got subsumed in GST. Under the GST regime, ITC of the GST





paid on inputs is available in respect of all inward supplies of goods and services, unless specifically denied. Thus, the additional benefit of ITC in the GST regime is limited to those input taxes, the credit of which was not allowed in the pre-GST regime, but is allowed in the GST regime. This additional benefit of ITC in the GST regime is required to be passed on by the suppliers to the recipients by way of commensurate reduction in price in terms of Section 171 of Goods and Services Tax Act, 2017.

27. We further find that had the import of the "Used Heidelberg Speed Master Offset Press with complete tools and accessories (Model SM 74-5+LX, Year of manufacture 1997)" taken place before implementation of GST when the quotation dated 06.05.2017 was provided to the Applicant No. 1, the Respondent would have suffered Countervailing Duty (CVD) @ 12.5% and Special Additional Duty (SAD) @4% at the time of import. Though the refund of the amount paid by the Respondent as SAD would have been available to the Respondent upon the sale of the product, the credit of CVD paid by the Respondent would not have been available, and would have formed an embedded part of the cost of the product in the said quotation. However, the actual import of the said machine has taken place vide Bill of Entry No. 2432766 dated 13.07.2017, i.e., after implementation of GST, when the CVD and SAD were replaced by IGST and the full amount of IGST@ 18% paid at the time of actual import is

available as input tax credit to the Respondent and hence the Respondent should have reduced the base price to the extent of the CVD that was no longer to be paid as well as to the extent of the IGST whose credit was now available. However, the invoice that was raised on 29.07.2017 for the transaction and on which IGST@18% was charged shows that the base price of the product remained the same.

28. We also observe that Applicant No. 1, vide his submissions dated 18.11.2019, has argued that due to typographical error in the DGAP Report, the billed price of Machine was wrongly mentioned as Rs. 1,65,00,000 instead of Rs. 1,65,20,000/- This contention of Applicant No. 1 has been accepted by the DGAP vide supplementary Report dated 18.12.2019 and accordingly the profiteered amount has been increased to Rs. 6,91,121/- by the DGAP. Hence we find that this contention of Applicant No. 1 is justified and hence the profiteered amount stands increased to Rs. 6,91,121/-.

29. We further observe that during the hearings, Applicant No. 1 has contended that the Education Cess and the Higher Education cess were not considered by the DGAP and that a calculation of the profiteered amount has also been submitted by Applicant No.1 as per his own understanding. In this context, the DGAP has submitted that since the product, i.e the Printing Machine, had been imported by the Respondent, it was not a case of levy of Central Excise Duty and hence also not a case where Central Excise Education Cess and

Secondary & Higher Education Cess were leviable; that in the case of importation, Countervailing Duty (CVD) was leviable (instead of Central Excise Duty) along with Education Cess (@1% of CVD) and Secondary & Higher Education Cess(@2% of CVD till February 2015, before the Government of India issued Notification No. 14/2015-Central Excise dated 01.03.2015 and 15/2015-Central Excise dated 01.03.2015, exempting the imports of the impugned product from the levy of Education Cess and the Secondary & Higher Education Cess, respectively. Therefore at the time of the import of the impugned product and at the time of the raising of the subject quotation by the Respondent to the Applicant No. 1 in the year 2017, the cesses, namely the Education cess and the Secondary & Higher Education Cess, were not leviable, hence, the said Cesses have not been considered while calculating profiteering. We do not find any grounds to differ from the submissions of the DGAP on this issue and hence we dismiss this contention of Applicant No. 1.

30. Another contention of Applicant No. 1 was that since the quotation for supply was supplied by the Respondent in the pre-GST period, GST has been incorrectly charged from him in the invoice. On this issue, we have two observations, firstly that the price quoted by the respondent in the quotation was exclusive of VAT, and secondly that the actual supply was effected only after GST had been implemented by the Government. It is also pertinent that Applicant No.1 was

entitled to claim ITC of the amount of the tax paid by him in respect of the subject supply in both the tax regimes, i.e. pre-GST before 30<sup>th</sup> June 2017 and post-GST after 1<sup>st</sup> July 2017 and as such, the actual impact of the tax on him was zero in both the scenarios. Hence it is clear that GST was leviable on the subject supply and hence we dismiss this contention of Applicant No.1.

31. Another contention of Applicant No. 1 relates to the huge profit margin earned by the Respondent, which was because of the considerable difference between the assessable value of the impugned printing machine (on which the Respondent had paid the duties of Customs at the time of import thereof) and its subsequent offer price to the Applicant No. 1. On this issue, the DGAP has submitted that this disparity has no relevance to the computation of profiteering, which has been done as per provisions of Section 171 of the GST Act 2017. We agree with the view of DGAP on this issue. We also find it pertinent to mention that profiteering, as defined under Section 171 of the Act, *ibid*, has no connection with the terms 'profit' and 'margin' retained by a supplier. Since the computation of profiteering has been done in line with provisions of Section 171 of the CGST Act 2017, we do not find any merit in this contention of Applicant No. 1.

32. Further, Respondent's contention, made vide his submissions dated 5.12.2019, that he had passed on the benefit to Applicant No. 1 in the form of supply of additional

accessories, is not tenable and unacceptable since Section 171(1) of the CGST Act does not provide for any other means of passage of the benefit except by way of commensurate reduction in the price of the goods/ services supplied and since there is no evidence on record to demonstrate that the above provisions have been complied with.

33. Further, during the course of hearings before this Authority, the Respondent has conveyed his agreement with the report of the DGAP and has also submitted that he has passed on the profiteered amount of Rs. 6,91,121/- to the Applicant No. 1, albeit without interest, vide RTGS dated 12.12.2019. Applicant No. 1 has also acknowledged the same during the course of the hearings.

34. The Respondent has also requested waiver of the interest on the profiteered amount. However, in the absence of any provision of law, this request of the Respondent is untenable and cannot be accepted.

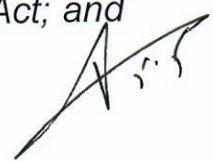
35. It is clear from the above narration of the facts that the Respondent has violated the provisions of Section 171 of the CGST Act 2017 in as much as he had not passed on the benefit of reduction of tax/ additional ITC in respect of the supply effected by him to Applicant No. 1, and therefore, he is liable for action under Rule 133 of the CGST Rules, 2017, the relevant provisions of which, inter alia, state as under:-



X-X-X-X-X

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order –

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by the way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;
- (c) the deposit of an amount equivalent to fifty percent of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty percent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;
- (d) Imposition of penalty as specified under the Act; and





CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

38. It is evident from the case records that the Respondent has denied the benefit of rate reductions/additional ITC in the GST to the Applicant No. 1 in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus profiteered as per the explanation attached to Section 171 of the above Act. Therefore, he is liable for imposition of penalty under Section 171 (3A) of the CGST Act, 2017. Therefore, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above sub-Section should not be imposed on him.

39. Further this Authority as per Rule 136 of the CGST Rules, 2017 directs the Commissioners of CGST/SGST Delhi to monitor this order under the supervision of the DGAP by ensuring that the interest amount as ordered by the Authority is passed on to the Applicant No. 1. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners within a period of 4 months from the date of receipt of this order.

40. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report furnished by the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 29.10.2019 the order was to be passed on or before 28.04.2020. However, due to prevalent pandemic of COVID-



19 in the Country this order could not be passed before the above date due to *force majeure*. Accordingly, this order is being passed today on 05.05.2020 in terms of the Notification No. 35/2020- Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs under Section 168 A of the CGST Act, 2017.

41. A copy of this order be sent to both the Applicant and the Respondent free of cost. File of the case be consigned after completion.

Sd/-  
(Dr. B. N. Sharma)  
Chairman

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

Sd/-  
(Amand Shah)  
Technical Member



Certified Copy

(A.K. Goel)  
Secretary, NAA

File No. 22011/ NAA/98/PMS/2019

Dated: 05.05.2020

Copy To:-

1. M/s Printing Machine Solutions, 401, F.I.E., Patparganj Industrial Area, New Delhi -110 092.
2. Shri Anil Sharma, Fortune Print Services, F-25, Okhla Industrial Area, Phase-I, New Delhi -110 020.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi.

4. Chief Commissioner of Central Goods & Services Tax, Delhi  
Zone C.R. Building, I.P. Estate, New Delhi 110109.
5. Commissioner of Commercial Taxes, Deptt of Trade & Taxes,  
VyaparBhavan, IP Estate, New Delhi-2 Pin: 110002.
5. Guard File/ NAA Wibesite.

A handwritten signature in black ink, appearing to be 'S.S. Sharma', written in a cursive style.