

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

Case No. : 92/2020
Date of Institution : 04.12.2018
Date of Order : 11.12.2020

In the matter of:

1. Kerala State Screening Committee on Anti-Profiteering, Kerala Goods & Service Tax Department, Tax Tower, Thiruvanthapuram – 695002.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Dev Snacks Cheriya, Alummoodu, P.O. Kollam, Kerala – 691577.

Respondent

Quorum:-

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

Case No. : 92/2020
KSC Vs. M/s Dev Snacks Pvt. Ltd.


11.12.2020

Present:-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The brief facts of the present case are that the Applicant No. 2 (here-in-after referred to as the DGAP) vide his Report dated 04.12.2018, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaint of the Applicant No. 1 and found that the Respondent had not passed on to his recipients, the benefit of reduction in the rate of tax of GST w.e.f. 27.11.2017 from 12% to 5% in respect of his supplies of Snacks (HSN Code 21069099), (hereinafter referred to as "the products"), as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of GST rate reduction to his recipients amounting to Rs. 12,76,306/-, pertaining to the period w.e.f. 27.11.2017 to 31.12.2017 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.
2. This Authority after careful consideration of the Report dated 04.12.2018 had issued notice dated 10.12.2018 to the Respondent to show cause why the Report furnished by the DGAP should not be

accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After hearing both the parties at length this Authority vide its Order No. 25/2019 dated 16.04.2019 had determined the profiteered amount as Rs. 12,76,306/-, as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 27.11.2017 to 31.12.2017 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent had not only collected extra amount on account of price of the above products from the consumers but he had also compelled them to pay more GST on the additional amount realised from them between the period from 27.11.2017 to 31.12.2017 and therefore, he had apparently committed an offence under Section 122 (1) (i) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section.
4. The Respondent was issued notice dated 26.04.2019 asking him to explain why the penalty mentioned in Section 122 read with Rule 133 (3) (d) should not be imposed on him.
5. The Respondent vide his submissions dated 03.05.2019 has stated that the penal provisions under Section 122 of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as he had no malafide intention and that the mistakes were due to incorrect interpretation of the exemption notification and he had also requested to wave the penalty and drop further proceedings.

6. We have carefully considered the submissions of the Respondent and all the material placed before us and it has been revealed that the Respondent has wrongly charged GST @ 5% on his unregistered brand "Dev Snacks" HSN Code 21069099 from his buyers w.e.f. 27.11.2017 to 31.12.2017 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.
7. It is also revealed from the perusal of the CGST Act and the Rules framed under it that no penalty had been prescribed for violation of the provisions of Section 171 (1) of the above Act, therefore, the Respondent was issued show cause notice to state why penalty should not be imposed on him for violation of the above provisions as per Section 122 (1) (i) of the above Act as he had apparently issued incorrect or false invoices while charging excess consideration and GST from the buyers. However, from the perusal of Section 122 (1) (i) of the CGST Act, 2017, it is clear that the violation of the provisions of Section 171 (1) is not covered under Section 122 (1) (i) of the CGST Act, 2017 as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the penalty prescribed under Section 122 cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.
8. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A).
9. Since, no penalty provisions were in existence between the period w.e.f. 27.11.2017 to 31.12.2017 when the Respondent had violated

the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) can not be imposed on the Respondent retrospectively. Accordingly, the notice dated 11.03.2019 issued to the Respondent for imposition of penalty under Section 122 (1) (i) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

10. Copy of this order be supplied to both the parties. File be consigned after completion.

Sd/-

(Dr.B. N. Sharma)

Chairman



Certified Copy

Sd/-

(J. C. Chauhan)
Technical Member

Sd/-

(Amand Shah)
Technical Member

O/C

(A.K. Goel)
Secretary, NAA

F. No. 22011/NAA/118/Dev Snacks/2018 /64 89-90 Date: 11.12.2020
Copy To:

1. Kerala State Screening Committee on Anti-Profiteering, Kerala Goods & Service Tax Department, Tax Tower, Thiruvanthapuram – 695002.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. M/s Dev Snacks Cheriya, Alummoodu, P.O. Kollam, Kerala – 691577.
4. NAA Website/Guard File.

A. K. GOEL
SECRETARY, NAA