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

Case No.	8/2018
Date of Institution	23.07.2018
Date of Order	25.09.2018

In the matter of:

1. Miss Neeru Varshney, R/o Flat No. 312, Sector-17A, Vasundhra, Ghaziabad- U. P. 201012.
2. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/S Lifestyle International Pvt. Ltd., Mahagun Metro Mall, Plot No. VC3, Sector-3, Vaishali, Ghaziabad, U. P.-201010.

Respondent

Quorum:-

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

Present:-

1. None for the Applicant No. 1.
2. Sh. Akshat Aggarwal Assistant Commissioner and Sh. Bhupender Goyal Assistant Director (Costs) for the Applicant No. 2.
2. Sh. Jagdish Solanki, AVP-Group Tax, Sayam Bandopadhyay, SVP-Accounts and Taxation, Sh. Sparsh Bhargava, Advocate, Sh. Tarun Gulati, Advocate and Ms. Jayashree Parthasarathy, Consultant for the Respondent.

ORDER

1. This report dated 02.04.2018 has been received from the Applicant No. 2 i.e. Director General of Safeguards (DGSG), now re-designated as 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 23.11.2017 was filed by the Applicant No. 1 before the Standing Committee constituted under Rule 128 of the above Rules alleging that the Respondent had not passed on the benefit of reduction in the rate of tax by lowering the price of "Maybelline FIT Me foundation", (here-in-after referred to as the product) which she had purchased from him, when the Goods and Services Tax (GST) was reduced from 28% to 18% on this product on 15.11.2017. She had also alleged that she had bought the above product from the Respondent @ Rs. 525/- per unit vide tax invoice No. 1230010554 on 22.11.2017 which included GST @ 18%. She had also claimed that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.
2. The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the DGAP, vide the minutes of it's meeting dated 29.11.2017 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP had called upon the Respondent to submit his reply on the allegation levelled by the Applicant No. 1 and also to suo moto determine the quantum of benefit which he had not passed on during the period between 15.11.2017 to 31.01.2018 on the product to its buyers. The Respondent was also requested to provide copy of the Balance Sheet, GST Returns and details of outward taxable supplies etc. by the DGAP.
4. The Respondent had submitted replies to the notice issued by the DGAP vide his communications dated 12.01.2018, 24.01.2018, 09.02.2018, 28.02.2018 and 12.03.2018. After examination of the replies submitted by the Respondent the DGAP has informed that the Respondent had contended that the label on the product showed Maximum Retail Price (MRP) of Rs. 550/- and the sale price of the product in the retail sale invoice was shown as Rs. 525/- and that he was not in a position to correlate the invoice with the MRP label as only a part of the MRP label was made available along with the application. The DGAP has further informed that the Respondent had also contended that it was evident that the MRP label of the product provided by the applicant was from the pre-GST stock which was

imported in March, 2017 and hence, it did not factor the GST in it's price. The Respondent had also stated that in respect of the external brands he was dependent on the respective brand owner and the MRP and the retail selling price should have been revised by the brand owners.

5. The DGAP has also intimated that the Respondent had maintained that he had submitted the details of the sales of the product for all the 24 GSTINs made during the period between November, 2017 to January, 2018 and had further maintained that in total 797 units of the product had been sold by him on which he had given discount of 11.66% on the MRP which was more than what he was required to pass on consequent to the reduction in the rate of tax w.e.f. 15.11.2017.
6. The DGAP has further intimated that after the investigation he had found that though the Respondent had no direct influence over the revision of MRP of external brands but still he was liable to revise his retail selling price as he had taken the benefit of Input Tax Credit (ITC) on the purchase of the product, therefore he was required to reduce the Retail Selling Price (RSP) to pass on the benefit of reduction in the rate of GST from 28% to 18% w.e.f. 15.11.2017 to his customers. It was also found by the DGAP that earlier the MRP of the product was Rs. 550/- which was revised to Rs. 575/- post 20.06.2017 and the RSP of the product was decided by the Respondent within the MRP which was printed on the back of the product.
7. The DGAP has further stated that the Respondent had sold 46 units of the product carrying MRP of Rs. 550/- during the period between 01.11.2017 to 14.11.2017 wherein the basic price per unit excluding GST of the product was Rs. 410/- per unit and the RSP charged inclusive of 28% GST was Rs. 525/- per unit. The product was bought by the Applicant No. 1 from the Respondent on 22.11.2017 vide tax invoice No 1230010554 for Rs 525/-, in which the basic price per unit was increased from Rs. 410/- to Rs. 445/- as a result of which the RSP charged inclusive of 18% GST came out to be Rs. 525/- which was equal to the RSP which was being charged by the Respondent before the rate of tax was reduced w.e.f. 15.11.2017. The DGAP has also maintained that if the reduction in the GST rate from 28% to 18% had been taken into consideration the RSP charged inclusive of 18% GST would have been maximum of Rs. 484/- per unit, therefore it was evident that profiteering of Rs. 41/- per unit (Rs. 525 - Rs. 484) and profiteering of Rs. 779/- on total 19 units (Rs. 41x19= Rs. 779/-) was made by the Respondent. The DGAP has further maintained that on one unit of the product RSP of which was Rs. 500/- per unit, profiteering of Rs. 16/- per unit (Rs. 500 - Rs. 484) on that single unit

was also made by the Respondent. He has also stated that 4 units the RSP of which was Rs. 488/- per unit, profiteering of Rs. 4/- per unit (Rs. 488 - Rs. 484) and profiteering of Rs 16/- on total 4 units (Rs. 4x4=16) had been made by the Respondent which amounted to total profiteering of Rs. 811/- on all the 24 units (Rs. 779+ Rs. 16+ Rs. 16= Rs. 811).

8. The DGAP has further stated that the Respondent had sold 485 units of another shade of the product which were having MRP of Rs. 575/- per unit between 01.11.2017 to 14.11.2017, in which the basic price per unit was increased from Rs. 449/- to Rs. 487/- and as a result of which the retail selling price charged Inclusive of 18% GST had remained unchanged at Rs. 575/-. He has also claimed that if the reduction in the GST rate from 28% to 18% had been taken into consideration the RSP charged inclusive of 18% GST would have been maximum of Rs. 530/- and therefore it was evident that profiteering of Rs. 45/- per unit (Rs. 575 - Rs.530) and profiteering of Rs.14,985/- on total 333 units (Rs.45x333=14,985) supplied during the period between 15.11.2017 to 31.01.2018 has been made and in the case of 13 units the RSP of which was Rs.535/-, profiteering of Rs .5/- per unit (Rs.535 - Rs.530) and profiteering of Rs.65/- on total 13 units (Rs.535 - Rs.530)x13=Rs.65) has been made during the period between 15.11.2017 to 31.01.2018 which finally amounted to profiteering of Rs.15,050/- on total 346 units (Rs. 14,985+ Rs. 65= Rs.15,050). The DGAP has also submitted that the total amount of profiteering came out to be Rs.15,861/- (Rs.811+ Rs. 15,050=Rs. 15,861) including the amount of Rs.41/- which was collected by the Respondent from the Applicant No. 1.
9. The above report was considered by the Authority in its sitting held on 17.04.2018 and it was decided to hear the interested parties (Applicants and the Respondent). The Applicant No. 1 did not appear inspite of service of the notice. The Applicant No. 2 was represented by Sh. Akshat Aggarwal, Assistant Commissioner and Sh. Bhupender Goyal, Assistant Director (Costs). The Respondent was represented by Sh. Jagdish Solanki, AVP-Group Tax, Sh. Sayan Bandopadhyay, SVP-Accounts and Taxation, Sh. Sparsh Bhargava, Advocate, Sh. Tarun Gulati, Advocate and Ms. Jayashree Parthasarathy, Consultant.
10. The Respondent has filed his first written submissions on 03.05.2018 in which he has stated that the minutes of the meeting of the Standing Committee held on 29.11.2017 showed that there were two complaints filed by the Applicant No. 1. He has also submitted that it was recorded by the Standing Committee that the complaint mentioned at Serial No. 1 of the Annexure attached to the minutes had only tax invoice attached with it and hence the complaint was

returned on the ground that not enough information was provided by the complainant to initiate action and therefore, she was free to make fresh complaint with adequate evidence. The Respondent has also submitted that against Serial No. 30 of the above Annexure, the Committee had recorded that the Respondent was not passing on the benefit of reduced GST from 28% to 18% and forwarded the complaint to the DGSG for necessary action. He has also claimed that Annexure-1 which had been referred to as the application by the complainant had been provided to the Respondent which comprised of the invoice and product label only and he had not been provided with any other complaint/document on which the present proceedings were being undertaken. He has further claimed that prima facie opinion under Section 29 of the CGST Rules, 2017 was to be formed by the Standing Committee on an application of the interested party which was to be filed in the prescribed format and duly verified in Form. No. APAF–1 and such form had been provided to the Respondent. He had therefore, sought a copy of the complaint on the basis of which the entire proceedings were initiated.

11. The Respondent has also filed further submissions on 18.05.2018 in which he has stated that Rule 126 of the CGST Rules, 2017 empowered the National Anti-Profiteering Authority to prescribe the methodology and procedure for determination whether any reduction in the rate of tax or benefit of ITC had been passed on by a registered person by way of commensurate reduction in the prices or not. He has also claimed that since no guidelines had been framed as prescribed under Rule 126 thus a registered person could not be held being non-compliant. He has further stated that in the absence of any prescribed methodology, a methodology which was reasonable and consistent with the objectives of the statutory provisions deserved to be accepted and since the Respondent had adopted a methodology that was reasonable and consistent with the objectives, the entire proceedings needed to be dropped. He has also stated that under Section 171 (2) of the CGST Act, 2017, it was required to determine whether the reduction in tax rate had actually resulted in commensurate reduction in the prices but there was no prescription either under the Act or the Rules which required that the benefit had to be passed on in respect of each product separately. He has further stated that the pricing of the products was a complex exercise and they were usually not priced individually and in isolation at the unit level and several considerations such as those of demand, supply, product range, supplier’s position in market and entity level operational costs etc. were also taken into consideration to determine the price of a product and hence product wise price reduction was not required to be done. The Respondent has also argued that the

statutory provisions required that only a broad correlation between the reduction in taxes and the pricing of products was to be made as was clear from the word, “commensurate” which showed that the intent was to take the overall facts and circumstances into consideration, as otherwise the word “equivalent” would have been used to mandate exact measurement of benefit to be passed on. He has further argued that Article 19 (1) (g) of the Constitution granted him right to carry on trade or business and to fix prices and earn profits which could not be subjected to unreasonable restrictions under Section 171. He has also contended that there was no bar on considering the change in the rate / GST benefit accruing to a registered person as a whole where the registered person was engaged in supply of different goods / services and an individual product or service could not be isolated to determine compliance with the above provisions. He has further contended that the alleged benefits arising on an individual product could not be seen in isolation and the same were to be considered in terms of the regime introduced, the overall costs of GST implementation, other businesses carried out by the dealer and upon factoring in of various costs/ losses incurred at an entity level on his range of products. He has also alleged that neither the constitutional provisions nor the CGST Act empowered the Authority to get into the realm of price fixation at an individual product level and there was no intention to move away from free market price principles to an administered price mechanism.

12. The Respondent has also claimed that he had requested for a copy of the final complaint in the hearing held on 3 May 2018 but the same was not supplied to him. He has also claimed that no personal hearing was granted by the DGAP prior to issuance of the investigation report and hence the entire proceeding are in contravention of the principle of audi alteram partum and liable to be dropped. He has also pleaded that the scope of the present investigation ought to have been restricted to the complaint and could not be expanded to include any other complainant/recipient, product or dealer and hence, the extension of scope of investigation to pan-India registrations and sales of the product was without jurisdiction and not permitted under the law. He has further pleaded that in the event it was held that the term ‘the recipient’ did not refer to the complainant but the recipients of goods in general, it supported his claim that the reduction in prices generally and offering the same to the recipients of goods in general was in compliance with the above provisions. He has also claimed that he had sold the pre-GST and post-GST stock of the product at the average per unit price of Rs. 483/- and Rs. 523/- respectively which was lower than the price of

Rs. 484/- and Rs. 530/- calculated by the DGAP and hence he had not profiteered. He has further claimed that he being a retailer operated on the basis of 'net realization' as the MRP on all the external brands was fixed by the brand owner and he was entitled to margin which was derived by working back from the MRP, net of retail point taxes. He has also stated that his net realization, pre-GST was determined on the basis of VAT @ 14.5% which was factored in the MRP however, after the levy of GST his net realization had been adversely impacted. He has further stated that he was earning margin of Rs. 143/- on the product before coming in to force of the GST which was reduced to Rs. 95/- and Rs. 130/- after the imposition of GST @ 28% and 18% respectively and infact he was suffering losses and hence the working of the profiteered amount from a notional retail sale price after applying tax on the units sold was incorrect. The Respondent has also maintained that the product which was mentioned in the complaint was out of the pre-GST stock and hence, there was no profit much less any profiteering. He has further maintained that even if a notional calculation was made for the products where the benefit of rate reduction had not directly been passed on, such notional amount would be at Rs.3,66,47,019 in which an amount of Rs.1,98,46,438/- might not have been passed on to the individual buyers but an amount of Rs.10,06,42,391/- had been passed on to the customers subsequently.

13. The Respondent has also claimed that the DGAP's findings in paras 14 to 17 of the Report were based on an erroneous presumption that the base price had been increased and hence the benefit of rate reduction had not been given which had no factual or legal basis as the DGAP had completely ignored the actual cost of goods and the net margin earned by the Respondent prior to the introduction of GST which alone could determine the so called base price. He has further claimed that as the Respondent was holding substantial pre-GST stock, it was necessary to compare the net margin earned by him prior to the introduction of GST and on the sales made after the reduction in the GST rate. He has also alleged that the Report did not take cognizance of the fact that the Respondent was incurring increased expenses as there was overall increase in the various operational costs by 16% in the FY 2017-18 as compared to the FY 2016-17 which had not been taken into account in arriving at the ideal price of the product. The Respondent has further submitted that in Para 14 it had been mentioned that the MRP of the product was Rs. 550/-, which was revised to Rs. 575/- post 20.06.2017 and the Respondent had no control on the revision of the MRP of the external brands and hence he could not be held accountable for profiteering. He has also contended that it had been

admitted in the Report that the RSP of the product was decided by the Respondent within the MRP printed on the pack of the product and therefore, no profiteering could be alleged. He has further contended that only a part of the label had been made available to him along with the complaint and therefore, it was impossible to correlate the invoice with the MRP / Label of the product. He has also maintained that only Rs. 525/- and not Rs. 550/- were charged from the Applicant No. 1, therefore, even if the MRP had been increased to Rs. 550/- the sale had been made only at the price of Rs. 525/- by the Respondent and hence he had suo moto passed on the GST benefit by lowering his RSP. He has further maintained that in Para 15 of the Report, it had been observed that as per the record which was uncontested by the Respondent he had sold 46 units of the product carrying MRP of Rs. 550/- during the period between 01.11.2017 to 14.11.2017 wherein the basic price per unit excluding GST was Rs. 410/- and the retail selling price charged inclusive of 28% GST was Rs. 525/- and therefore, the ideal price should have been Rs. 410/- + 18% GST i.e. Rs. 410/- +Rs. 74 =Rs. 484/-, however, the DGAP had ignored the sales made below Rs. 484/- arbitrarily but assessed profiteering of Rs. 811/- on the 24 units sold by the Respondent above the RSP of Rs. 484/-. He has also submitted that the methodology adopted by the DGAP was incorrect as he had ignored the relevant facts and made unwarranted presumptions as the MRP as well as the sale price was not Rs. 550/- but it was only Rs. 525/- as was evident from the Annexure-16 as submitted by him. He has further submitted that the calculation of an assumed base price by reducing 28% tax was incorrect and instead the actual cost of the product and the margin he was making prior to the introduction of GST should have been seen to calculate the base price which would have made it clear that there was no profiteering as there was no increase in the margin of the Respondent. He has also claimed that where the product had been sold at a price lesser than the alleged ideal price, those figures could not have been ignored but the same ought to have been considered as he had passed on the additional benefit to other customers and the Respondent had not earned a higher gross margin. He has further claimed that if the increase in the operating expenses by 16% was considered then at the net margin level he had made a lower margin and hence there was no question of profiteering. He has also contended that similar wrong presumptions had been made by the DGAP in Para 16 of the Report in respect of the product which was being sold at the MRP of Rs. 575/- which were completely wrong.

14. The Respondent has also stated that in Para 17 of the Report it had been observed that he had contended that the total no. of units of

the product sold were 797 on which a total discount of 11.66% of the MRP which was more than what was required to be passed on as a result of reduction in rate of tax had been offered, however, from the details of outward taxable supplies submitted by him it had been observed by the DGAP that the total number of units sold during the period between 15.11.2017 to 31.01,2018 was 2604 out of which the Respondent had sold 370 units by increasing the basic price excluding GST. In reply to Para 17 the Respondent has claimed that he had only submitted details of sales of the specific shade of the product which was the subject matter of the complaint however, the DGAP had also taken details of other shades of the product into account which had resulted in the difference in the number of the units. The Respondent has further claimed that the notification prescribing rate change with effect from 15th November 2017 was published on the same date and a reasonable time frame was required to implement it in respect of each product. He has also contended that Section 171 did not provide that the price reduction had to be immediate and Section 126 of the CGST Act itself waived liability for minor breaches of tax regulations and procedural requirements and since the profiteered amount was only Rs. 15,861/- which was a miniscule percentage of the sales made of the product the present proceedings should be dropped. He has also pleaded that there were no provisions in the Act for interest and penal action as had been provided in the Rules as it was well settled that the Rules could only provide for procedural provisions and could not create substantive liabilities on their own in the absence of specific sanction under the provisions of the Act. He has also referred to Section 164 of the CGST Act, 2017 and stated that this Section only allowed Rules to be framed for carrying out the provisions of the Act. He has also argued that In the case of **Kunj Behari Lal & Ors. v. State of H.P. 2000 (3) SCC 40** it was held that the legislature could not create any substantive rights or obligations or disabilities through general rule making powers unless the same was specifically contemplated by the provisions of the Act under which such powers were exercised. He has further argued that in the case of **Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited & Ors. (2015) 9 SCC 209** it had been held that if on reading of the statute in entirety, a power did not flow, a delegated authority could not frame a regulation as that would not be in accord with the statutory provisions nor would it be for the purpose of carrying on the provisions of the Act. He has also claimed that the Report did not recommend imposition of any penalty and interest and hence the same could not be imposed.

15. Clarification was sought from the Standing Committee on the issues raised by the Respondent in respect of the two complaints made by the Applicant No. 1. The Committee vide it's reply dated 20.07.2018 has intimated that it had received two complaints from the above Applicant which were considered by it in it's meeting held on 29.11.2017. The Complaint mentioned at Sr. No. 1 of the minutes of the meeting consisted of a photograph of the invoice which was forwarded by the DGAP through email intimating that the complaint was attached however, no complaint was attached except the photo of the invoice which showed that a number of items were purchased from the Respondent but the name and address of the above Applicant or the nature of the complaint was not available hence the Committee had returned the enclosures to the DGAP by recording that enough information had not been provided and the complainant was free to file fresh complaint with adequate evidence. The Committee has also informed that the second complaint mentioned at Sr. No. 30 of the proceedings filed by the above Applicant had her full name, email address, product label, bill and gist of the complaint alleging that she had bought one unit of the product from the Respondent for Rs. 525/-, the MRP of which was Rs. 550/- and the Respondent had not passed on the benefit of reduction of GST from 28% to 18% to her. The Committee has informed that since the complaint had all the details and it prima-facie appeared to be genuine it was forwarded to the DGAP for investigation.

16. Vide it's reply dated 19.06.2018 the DGAP has intimated that Form APAF-1 had not been prescribed when the complaint was filed by the above Applicant and hence there was no question of filing the complaint on this form. He has also informed that copy of the complaint dated 23.11.2017 was received by Sh. Sayan Bandhopadhyay on behalf of the Respondent on 06.01.2018 and a receipt was also issued by him which has been placed on record.

17. We have carefully considered the material placed before us as well as the submissions made by the Applicant No. 2 and the Respondent and it has been revealed that the GST rate on the product was reduced from 28% to 18% vide Notification No. 41/2017 -Central Tax (Rate) dated 14.11.2017, with effect from 15.11.2017, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act. It has also been revealed that the Respondent had sold one unit of the product to the Applicant No. 1 vide Tax Invoice No. 1230010554 dated 22.11.2017 for Rs. 525/- which included GST @ 18%. Although the MRP of the product was Rs. 550/- per unit the Respondent was selling it at the RSP of Rs. 525/- Before 15.11.2017. The Respondent was selling this product at the basic price of Rs.

410/- and charging GST @ 28% and hence an amount of Rs. 525/- per unit was being charged by him. However, when the rate of GST was reduced to 18% w.e.f. 15.11.2017 the Respondent had increased the basic price to Rs. 445/- and charged 18% GST and hence he had continued to realise RSP of Rs. 525/- per unit which he was charging before 15.11.2017. Had the Respondent not increased the basic price of Rs. 410/- per unit; the RSP of the product would have been Rs. 484/- per unit including GST of 18%. There was no reason for the Respondent to increase the basic price exactly equal to the amount by which the rate of tax had been reduced. This change in the basic price was also done by him w.e.f. 15.11.2017 the day from which the rate of tax was reduced. Therefore, there is no doubt that the whole exercise of increasing the basic price was done by the Respondent with malafide intention of not passing on the benefit of tax reduction to his customers. Although the Respondent was selling the product of a foreign brand owner the MRP of which he could not have decided still he was legally bound to pass on the benefit of tax reduction to his local customers as he had claimed benefit of ITC. Any discount offered by the Respondent on the product can also not be taken to have been given in lieu of the reduction in the rate of tax as such discounts are regular trade practices. Hence it is clear that the Respondent had not passed on the benefit of reduction in the rate of tax to the Applicant No. 1 and resorted to profiteering of Rs. 41/- per unit from the above Applicant vide invoice dated 23.11.2017. The Respondent had also sold 19 units of the product to other customers after the rate of tax was reduced and hence he had profiteered Rs. 779/- (41X19) from them. He had also sold one unit of the product @ Rs. 500/- on which profiteering of Rs. 16/- was made and further sold 4 units @ Rs. 488/- on which profiteering of Rs. 16/- was realised and thus the Respondent had resorted to profiteering of Rs, 811/- on the sale of 24 units of the product.

18. Further, it is also apparent from the record that the Respondent had sold 485 units of another shade of the product which was having MRP of Rs. 575/- per unit during the period between 01.11.2017 to 14.11.2017, wherein the basic price per unit excluding GST of the product was Rs. 449/- and the RSP charged inclusive of 28% GST was Rs. 575/-. After the reduction in the GST rate from 28% to 18% w.e.f. 15.11.2017 and taking into consideration the basic price per unit excluding GST the ideal RSP inclusive of 18% GST would have been Rs. 530/- per unit. Although there was a reduction in the GST rate from 28% to 18%, the basic price per unit excluding GST was increased by the Respondent from Rs. 449/- to Rs. 487/- per unit so that the RSP inclusive of 18% GST had remained unchanged at Rs.

575/- per unit, resulting in profiteering of Rs. 45/- per unit (Rs. 575 (-) Rs. 530). During the period between 15.11.2017 and 31.01.2018, the Respondent had sold 333 units of this shade of the product at the RSP inclusive of 18% GST @ Rs. 575/-, involving profiteering of Rs. 14,985/- (Rs. 45 x 333). The Respondent had also sold 13 units of the product at the RSP inclusive of 18% GST @ Rs. 535/- per unit, involving profiteering of Rs. 65/- [(Rs. 535/- (-) Rs. 530/-) x 13]. Thus, during the aforesaid period, on the product carrying MRP of Rs. 575/- he had profiteered an amount of Rs. 15,050/- (Rs. 14,985/-+Rs. 65/-).

19. It is also revealed from the record that the Applicant No. 1 had filed two complaints against the Respondent as is evident from the minutes of the meeting of the Standing Committee dated 29.11.2017. As has been clarified by the above Committee vide it's reply dated 20.07.2018 the complaint mentioned at Sr. No. 1 did not contain the copy of the complaint and only a photocopy of the invoice was sent by the DGAP. The name and address of the above Applicant and the nature of the complaint was also not mentioned and hence the Committee had rightly refused to take cognizance of this complaint and returned it to the DGAP for filing fresh complaint. However, in the second complaint mentioned at Sr. No. 30 of the minutes there was a written application with full name, email address, product label, invoice and gist of the allegation and hence this complaint was rightly considered by the Committee and sent to the DGAP for investigation. A copy of this complaint was also supplied to Sh. Sayan Bandhopadhyay representative of the Respondent on 06.01.2018 as is clear from the receipt issued by him and hence the allegation made by the Respondent that he was not supplied copy of the complaint on the basis of which the present proceedings had been launched is not correct. It is also apparent from the reply filed by the DGAP on 19.06.2018 that no APAF-1 form had been prescribed when the above Applicant had lodged her complaint on 23.11.2017 and hence there was no question of filing the complaint in the above Form and hence this averment of the Respondent is also not correct.

20. The Respondent has also claimed that the Authority had not prescribed the methodology under Rule 126 of the CGST Rules, 2017 for determining whether the benefit of tax reduction had been passed on or not and hence he could not be held liable for profiteering. In this connection it would be pertinent to mention that the Authority has already prescribed the methodology and the procedure as required under Rule 126 vide it's notification dated 28.03.2017 and hence the objection raised by the Respondent in this regard is not tenable. However, it is made clear that the Authority is not required to make mathematical calculations on behalf of the Respondent to arrive at the amount of benefit which he was required

to pass on. This exercise can be done by the Respondent himself and he can pass on the commensurate benefit which has accrued as a result of tax reduction. The Respondent has not suggested any alternate reasonable and consistent methodology to pass on the benefit except for making far-fetched claims which cannot be accepted. Provisions of Section 171 are very clear which state that any reduction in the rate of tax or the benefit of ITC has to be passed on to the recipient which means that every citizen who is a recipient of supply of goods or services has to get the benefit and hence this benefit has to be calculated on each and every product. The Respondent has no discretion to provide benefit on certain class of products and deny the same in respect of the other products. Denial of benefit as per the convenience of the Respondent is not permissible as it is hit by the provisions of the above Section and hence he cannot argue that the benefit was not required to be passed on all the products as a consumer may buy a particular product and may not buy another. His claim that fixation of price of a product was a complex exercise and the Authority was travelling in to the realm of price and profit fixation is completely wrong and untenable as the Authority is only concerned with the passing of the above two benefits and it has no mandate to be a price regulator. The present proceedings are nowhere connected with looking in to the process of fixation of prices or margins of profit by the Respondent and they are limited only to the extent of finding out whether the benefit of tax reduction has been passed on by the Respondent to his customers or not. This Authority is only concerned with passing on of the commensurate benefit as is arrived at after calculation of the impact of rate reduction on the MRP of a product. There is further no restriction on the right of the Respondent to conduct trade as per Article 19 (1) (g) of the Constitution as Section 171 only requires him to pass on the above two benefits and does not require him to get any licence or seek approval to conduct trade or fix prices of the products being sold by him. The Respondent must remember that the Government has thought is appropriate in the public interest to reduce the rate of tax on the products being sold by him by sacrificing its own revenue and therefore, he is bound to pass on this benefit to his customers and by no stretch of imagination he can pocket this reduction to the detriment of the ordinary consumer.

21. The Respondent has also claimed that he was not supplied copy of the complaint and was also not heard by the DGAP however, both these claims are not borne out from the facts of the present proceedings and hence they cannot be accepted as the Respondent has been provided copy of the complaint and the DGAP has afforded him due opportunity of defending himself and hence the principle of

audi alteram partum has not been violated. The Respondent has also objected to the pan India investigation against him. The objection raised by the Respondent in this behalf is frivolous as all violations of Section 171 whether done locally or on all India basis can be looked in to by the DGAP and adjudicated upon by this Authority and the Respondent cannot be given liberty to decide which areas he should pass on the benefit and which areas he should not. Once infringement of the above provisions has come in the notice of the DGAP he was required to investigate and report upon it forthwith. The argument of the Respondent that reduction in prices in general amounted to sufficient compliance is also incorrect as the benefit of reduction in the rate of tax has to be passed on to each and every buyer and not to those buyers who are arbitrarily chosen by the Respondent. The claim made by the Respondent that he had sold both the products at an average price of Rs. 483/- and Rs. 523/- which was less than the price of Rs. 484/- and 530/- calculated by the DGAP is also illogical as the law of averages cannot be applied when benefit is to be given to each and every customer. The Respondent has also submitted that his net realisation had decreased after coming in to force of the GST and he was suffering losses and hence working of the profiteered amount from the notional retail sale price was incorrect. However, this contention of the Respondent is not logical as he cannot be allowed to top up his margins from the amount of tax reduction which he is legally required to pass on to his customers. The Respondent has also claimed that his costs had increased by 16% during the year 2017-18 as compared to the year 2016-17 which had not been taken in to account by the DGAP. However, the Respondent had not increased his prices by 16% but has increased them exactly equal to the amount by which the tax had been reduced and that also on 15.11.2017 when the rate of tax was reduced from 28% to 18% and hence the claim made by the Respondent is hollow. The contention of the Respondent that he had sold the product below the ideal price calculated by the DGAP and had thus passed on the benefit can also not be accepted as the benefit was to be passed on to each and every customer and not a few chosen buyers. The Respondent has further claimed that the benefit could not be passed on immediately as reasonable time was required for doing so and since the profiteered amount was only Rs. 15,861/- the proceedings should be dropped. He has also raised objection against imposition of penalty on the ground that no substantial liabilities could be created under the CGST Rules, 2017 in the absence of specific provisions in the CGST Act.

22. As is evident from the narration of the facts mentioned above the Respondent had enhanced the basic price of both the shades of

the product which was exactly equal to the amount by which the GST on them had been reduced and hence there is no doubt that the Respondent had resorted to profiteering amounting to Rs. 15,861/- which includes profiteering of Rs. 41/- made by him from the Applicant No. 1, which constitutes violation of the provisions of Section 171 of the above Act. It is also established that the Respondent had issued incorrect invoices while selling the product to his customers as he had not correctly shown the basic price which he should have legally charged from them which is an offence under Section 122 (1) (i) of the CGST Act, 2017 and hence he is liable for imposition of penalty under the above Section. Rule 133 (3) (d) of the CGST Rules, 2017 also makes it clear that the penalty has to be imposed as per the provisions of the Act and since it is proposed to impose penalty under the Act there is no question of creating substantive liability under the Rules as there is specific sanction under the above Act to impose penalty. Similarly the CGST Act, 2017 also provides for imposition of interest under the Act and therefore, the same can be levied in the present proceedings. The Respondent cannot claim that since the amount of profiteering was miniscule no penalty should be imposed as each breach of the law has to be visited penalty. The law settled in the case of **Kunj Behari Lal supra** is of no help to the Respondent as there is specific provision of penalty under Section 122 of the CGST Act, 2017 which the Respondent has violated and hence this Authority is competent to impose penalty upon him under the above Section. Similarly, the judgement passed in the case of **Petroleum and Natural Gas Regulatory Board** mentioned above is also not relevant in the facts of the present case and hence it is respectfully submitted that the same is not being relied upon.

23. Accordingly, the Respondent is directed to reduce the price of both the shades of the product to Rs. 410/- and Rs. 449/- respectively excluding GST. He is also directed to refund an amount of Rs. 41/- along with interest @ 18% to the Applicant No. 1 from the date when this amount was realised by him from her till the date of refund. Since rest of the recipients are not identifiable the DGAP is directed to get the balance amount of profiteering of Rs. 15,820/- deposited in the Consumer Welfare Fund of the Central and the Concerned State Govt. as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 along with interest @ 18% till the amount is paid. Any amount ordered to be refunded or to be deposited shall be refunded or 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 DGAP as per the provisions of the CGST Act, 2017 and shall be refunded or deposited as has been directed vide this order.

Notice may also be issued to the Respondent to show cause as to why penalty as per the provisions of Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, should not be imposed upon him.

24. The Respondent has himself admitted in para 27 of his submissions dated 18.05.2018 that an amount of Rs. 1,98,46,438/- might not have been passed on to the individual buyers by him, therefore, the DGAP is directed to investigate the claim made by the Respondent in this Para and submit Report to the Authority under Rule 129 (6) of the above Rules.

25. 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)
Technical Member

-Sd-
(R. Bhagyadevi)
Technical Member

Certified copy

25.9.18

(A.K.Goel)
Secretary NAA

F.No.22011/NAA/15/2018 Dated: 25.09.2018

Copy to:-

1. M/s Lifestyle International Pvt. Ltd. Mahagun Metro Mall, Plot No. VC3, Sector-3, Vaishali, Ghaziabad, U. P.-201010.
2. Miss Neeru Varshney, R/o Flat No. 312, Sector-17A, Vasundhra, Ghaziabad- U. P. 201012.
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. NAA website.
5. Guard File.