

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

Case No.	11/2018
Date of Institution	02.08.2018
Date of Order	29.10.2018

In the matter of:

1. Sh. Raman Khaira, Email Id:- ramankhaira47@gmail.com
2. 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.

Applicants

Versus

1. M/s. Yum Restaurants India Pvt. Ltd., 12th & 14th Floor, Global Business Park, Tower D, M. G. Road, Gurgaon 122002, Haryana.
2. M/s Devyani International Ltd. Gurugram, Email Id: info@dil-ricorp.com,
3. M/s Sapphire Foods, Mumbai, Email Id: info@sapphirefoods.in

Respondents

Quorum:-

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

3. Smt. R. Bhagyadevi, Technical Member

4. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicant No. 1.
2. Sh. Manoranjan Singh, Assistant Commissioner for the Applicant No. 2.
3. Sh. Dharmender Gupta, Director (Tax) for the Respondent No. 1.
4. None for the Respondents No. 2 & 3.

ORDER

1. This report dated 30.07.2018 has been received from the Applicant No. 2, i.e. Director General of Safeguards (DGSG), now re-designated as Director General 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 the Applicant No. 1 vide his email dated 12.12.2017 had alleged that the Respondent No. 1 had not passed on the benefit of reduction of tax from 18% to 5% to his customers. He had also alleged that the Respondent No. 1 was supplying him Burger @ Rs. 32/- per unit and after adding 18% GST he was paying about Rs. 40/- per unit before the tax was reduced w.e.f. 15.11.2017, whereas he was purchasing the above product @ Rs. 42/- per unit after the reduction in the rate of tax and therefore, the above Respondent was illegally profiteering by appropriating the amount of reduction of tax by


A. K. GOEL
SECRETARY, NAR

fleeing the poor customers as he was denying them the benefit of reduction and therefore action should be taken against him.

2. In his report dated 30.07.2018, the Applicant No. 2 has stated that vide his emails dated 04.05.2018, 21.05.2018 and 18.07.2018, the Applicant No. 1 was requested to provide the pre and post GST invoices of the products sold by the Respondent No. 1 and the details like name and address of the concerned outlet being run by the above Respondent regarding which the allegation of profiteering had been made so that the matter could be investigated, however, no reply was received from him. He has also stated that on preliminary enquiry from the internet, it was gathered that there were more than 700 outlets in India of the "KFC" brand which was a subsidiary of US based "M/s Yum! Brand Inc.". The Applicant No. 1 has further stated that the above Brand was operating around 300 stores in northern India through M/s Devyani International Limited, Gurugram, another 300 stores through M/s Sapphire Foods, Mumbai, in south India and around 100 stores were being directly operated by the Respondent No. 1. The above Applicant has also submitted that in the absence of any specific evidence of profiteering against a specific supplier of M/s KFC, he was not in a position to initiate any investigation in the matter. He had further submitted that it was also not practical to initiate investigation against all the franchisees of M/s KFC, especially when there was no evidence of profiteering. He had therefore recommended that no meaningful investigation in respect of M/s KFC could be conducted by him and hence the application filed by the Applicant No. 1 merited rejection as the allegation of profiteering was not substantiated.

3. After considering the above Report filed by the Applicant No. 2 both the interested parties were issued notices to attend the hearing before this Authority. However, the Applicant No. 1 did not appear. The Applicant No. 2 was represented by Sh. Manoranjan Singh, Assistant Commissioner and the Respondent No. 1 was represented by Sh. Dharmender Gupta, Director (Tax). The Respondents No. 2 and 3 also did not appear.
4. The Respondent No. 1 vide his written submission dated 16.08.2018 and 06.09.2018 has stated that the Applicant No. 2 in his report dated 30.07.2018 had not recommended initiation of proceedings against him under section 171 of the CGST Act, 2017 as there was no specific evidence of profiteering against him. He has also stated that the above Applicant had also recommended that no meaningful investigation could be conducted against him. He has further stated that in view of the report submitted by the Applicant No. 1, the allegation of profiteering had not been proved against him and therefore the present proceeding should be dropped.
5. We have carefully considered the Report filed by the Applicant No. 2 as well as the submissions made by the Respondent No. 1 and it is obvious from the narration of the facts stated above that the investigation conducted in the matter by the Applicant No. 2 against the Respondent No.1 could not establish profiteering for want of credible evidence and hence no violation of the provisions of Section 171 of the CGST Act 2017 could be established. Accordingly, the application filed by the Applicant seeking action against the Respondents on account of alleged violation of the provisions of Section 171 of the CGST Act, 2017

is not maintainable and hence the same is dismissed. A copy of this order shall be sent to both the Applicants and the Respondents 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

-Sd-
(Amand Shah)
Technical Member

Certified copy


(A.K. Goel)
Secretary NAA

F.No.22011/NAA/67/2018

Dated: 29.10.2018

Copy to:-

1. Sh. Raman Khaira, Email Id:- ramankhaira47@gmail.com
2. M/s. Yum Restaurants India Pvt. Ltd., 12th & 14th Floor, Global Business Park, Tower D, M. G. Road, Gurgaon 122002, Haryana.
3. M/s Devyani International Ltd. Gurugram, Email Id: info@dil-rjcorp.com,
4. M/s Sapphire Foods, Mumbai, Email Id: info@sapphirefoods.in
5. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001
6. NAA website.