

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

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|---------------------|------------|
| Case No. | 17/2018 |
| Date of Institution | 11.09.2018 |
| Date of Order | 07.12.2018 |

In the matter of:

1. Sh. Pushpak Chauhan, pushpakchauhan511@live.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

M/s Harish Bakers & Confectioners Pvt. Ltd., 21/11, Shiv Puri
Corner, Opp. Sec.-7, Gurugram, Haryana-122110.

Respondent

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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. Bhupender Goyal Assistant Director (Costs) for the Applicant No. 2.
3. Mrs. Monika Goel and Sh. Rajesh Kumar Soota, Advocates for the Respondent.

ORDER

1. The present Report dated 18.06.2018 has been received from the Director General of Safeguards, now Director General of Anti-Profitteering (here-in-after referred to as the DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that vide his application dated 29.11.2017 the Applicant No. 1 had complained to the Standing Committee, constituted under Rule 123 (1) of the above Rules alleging that although the GST rate

applicable on the Chocolates had been reduced from 28% to 18% w.e.f. 15.11.2017, the Respondent had not reduced the prices of 2 products viz. the Nestle Munch Nuts 32 Gm. Chocolate and the Cadbury Dairy Milk Chocolate (here-in-after referred to as the products) and had thus not passed on the benefit of such rate reduction to him. He had also submitted the pre rate reduction invoice No. 299238 dated 10.11.2017 and the post rate reduction invoice No. 311392 dated 16.11.2017 which showed that both the above products were sold by the Respondent @ Rs. 20/- per piece and Rs. 40/- per piece respectively before and after the rate of tax was reduced on them. Thus it had been alleged by the above Applicant that the Respondent had indulged in profiteering in contravention of Section 171 of CGST Act, 2017 and action should be taken against him. The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the DGAP, vide minutes of it's meeting dated 20.12.2017 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.

2. The DGAP had called upon the Respondent to submit his reply on the above allegation and also asked him to suo moto determine the quantum of benefit which had not been passed on by the Respondent after the GST rate reduction for the period w.e.f. 15.11.2017 to 31.03.2018. The Respondent had submitted replies vide his letters dated 12.02.2018, 27.02.2018, 21.03.2018, 16.04.2018, 24.04.2018 and 02.05.2018 and admitted that he had sold the above products to the applicant vide invoices dated 10.11.2017 and 16.11.2017 after charging the tax at the prevalent

rates of 28% and 18% on the base prices and he had not made any additional profit after the reduction in the GST rate. He had also replied that since their base prices had been increased by their Distributors he had increased the base prices keeping his profit margin same @ 11.5% and 12% respectively and sold the above products at the original Maximum Retail Prices (MRPs) as there was no change in the MRPs. He had further informed that the price of Nestle Munch 32 Gm. Chocolate being charged from him before 15.11.2017 was Rs. 14.01 per piece which was increased to Rs. 15.20 per piece by it's Distributor after 15.11.2017 and it was sold by him at the base price of Rs. 16.95 per piece keeping the same profit margin of 11.50%. He had also submitted that the price of Cadbury Dairy Milk Chocolate was Rs. 27.90 per piece before 15.11.2017 which was enhanced to Rs. 30.27 per piece by it's Distributor after 15.11.2017, which was sold at Rs. 33.90 per piece by him after maintaining the same profit margin of 12%, which has been shown in the tables given below:-

| Sale Invoice No. | Sale Invoice Date | Description of Product | Base Price (Rs.) (without GST) | Rate of GST Charged (in percentage) | Price Charged (Rs.) (including GST) |
|------------------|-------------------|------------------------------------|--------------------------------|-------------------------------------|-------------------------------------|
| 299238 | 10.11.2017 | Nestle Munch Nuts 32 Gm. Chocolate | 15.63 | 28% | 20.00 |
| | | Cadbury Dairy Milk | 31.25 | 28% | 40.00 |

| | | | | | | | |
|--------|------------|--------------------------|--|--|-------|-----|-------|
| | | Chocolate | | | | | |
| 311392 | 16.11.2017 | Nestle Munch Nuts 32 Gm. | | | 16.95 | 18% | 20.00 |
| | | Chocolate | | | | | |
| | | Cadbury Dairy Milk | | | 33.90 | 18% | 40.00 |
| | | Chocolate | | | | | |

| Description of product | Pre 15.11.2017 | | | Post 15.11.2017 | | |
|------------------------------------|---------------------------|-----------------------|------------------|---------------------------|-----------------------|------------------|
| | Base Purchase Price (Rs.) | Base Sale Price (Rs.) | Margin of Profit | Base Purchase Price (Rs.) | Base Sale Price (Rs.) | Margin of profit |
| A | B | C | $D=(C-B)/B$ | E | F | $G=(F-E)/E$ |
| Nestle Munch Nuts 32 Gm. Chocolate | 14.01 | 15.63 | 11.50% | 15.20 | 16.95 | 11.50% |
| Cadbury Dairy Milk Chocolate | 27.90 | 31.25 | 12.00% | 30.27 | 33.90 | 12.00% |

3. The DGAP's Report has submitted that the Respondent had also filed Purchase & Sale invoices from November 2017 to March 2018, copies of the GSTR-3B from November, 2017 to March, 2018 along with copies of GSTR-1 from November, 2017 to February, 2018 but did not provide the details of the invoice-wise outward supplies. The DGAP after examining the facts of the case has reported that vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 the rate of tax on Chocolates was reduced from 28% to 18% w.e.f. from 15.11.2017. The Report also mentioned that from the sale invoices

of the Distributor of Cadbury Chocolates viz. M/s Chandna Trading Company (here-in-after referred to as M/s CTC) for the period from November 2017 to March 2018 it was revealed that he had given discount to the Respondent on the base price categorically mentioning that the "Anti- Profiteering provisions under GST Act require that you pass on the benefits of GST rate reduction given to you; to the consumers". Similarly the Distributor of Nestle Chocolates viz. M/s Navin Enterprises (here-in-after referred to as M/s NE) had also sold Nestle Munch Nuts 32 Gm. bars through it's various sales invoices between November 2017 to March 2018 giving a discount clearly mentioning on the invoices "with GST benefits where applicable". Accordingly the DGAP's Report has held that though the base prices were increased but since discounts were given by the Distributors to the Respondent, he was bound to pass on the benefit of reduction in the rate of tax w.e.f. 15.11.2017 to the customers. The Report also stated that the Respondent was responsible for passing on the benefit as he was a registered supplier under the CGST/SGST Act, 2017. It is also submitted by the DGAP that it was established from the record that the Respondent had sold 114 units of Nestle Munch Nuts 32 Gm. Chocolate at the MRP of Rs. 20/- including GST @ 28% during the period between 01.11.2017 to 14.11.2017 when the base price of the above product was Rs. 15.63 per unit. One unit of the above product was sold by the Respondent to the Applicant No. 1 on 16.11.2017 vide invoice No. 311392 dated 16.11.2017 by increasing it's base price from Rs. 15.63 to Rs. 16.95 due to which the MRP

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had remained Rs. 20/- per bar which he was charging before the tax reduction. The DGAP has also stated that the Respondent should have charged Rs. 18.44 for the above product by realising base price of Rs. 15.63 and GST of 18% whereas he had raised the base price to Rs. 16.95 and hence the MRP had remained same @ Rs. 20/- even after the rate of tax was reduced to 18%. The DGAP has also claimed that similarly 85 units of Cadbury Milk Chocolate were sold post 15.11.2017 at MRP of Rs. 40/- per bar inspite of reduction in the GST rate from 28% to 18% by raising their base price from Rs. 31.25 to Rs. 33.90 although the Respondent should have ideally charged Rs. 36.87 per unit. The Applicant No. 1 had bought one unit of this product at this increased price vide invoice dated 16.11.2017 at the same MRP of Rs. 40/- which he had paid on 10.11.2017. Thus the report submitted that from the above facts it was evident that the Respondent had sold the above products at higher prices inspite of rate reduction and had not passed on the benefit of rate reduction to the above Applicant.

4. The DGAP's Report further stated that from the records submitted by the Respondent it was revealed that he had purchased 910 units of Nestle Munch Nuts 32 Gm. and 4646 units of Cadbury Dairy Milk Chocolate during the period between 15.11.2017 to 31.03.2018. He has also reported that the Respondent had failed to supply the details of the invoices of the outward supplies pertaining to the above period and hence he had presumed that the above quantity of the Chocolates was sold by him during the period between 15.11.2017 to 31.03.2018. The DGAP had therefore, concluded that

the Respondent had resorted to profiteering of Rs. 15,958/- as per the details given in the table below. He has also reported that the Respondent had profited an amount of Rs. 4.69 from the Applicant No. 1 vide invoice date 16.11.2017 while selling two units of the above products to him.

| Product | MRP (Rs.) | Before 14.11.2017 (Rs.) | | | 15.11.2017 to 31.03.2018 (Rs.) | | | | Profit per unit (Rs.) | Total profiteering in Rs. |
|------------------------------|-----------|-------------------------|----------------|----------|--------------------------------|----------------|----------|--------------------|-----------------------|---------------------------|
| | | Amount charged | Base price GST | GST rate | Amount charged | Base price GST | GST rate | Unit sold | | |
| Nestle Munch Nuts 32 Gm. | 20 | 20 | 15.63 | 28 | 20 | 16.95 | 18 | 910 | 1.56 | 1416 |
| Cadbury Dairy Milk Chocolate | 40 | 40 | 31.25 | 28 | 40 | 33.90 | 18 | 4646 | 3.13 | 14542 |
| | | | | | | | | Total Profiteering | | 15,958 |

5. The above Report was considered by the Authority in its sitting held on 05.07.2018 and it was decided to hear the interested parties on 25.07.2018. Ms. Monika Goel, Advocate appeared on behalf of the Respondent however, the Applicant No. 1 did not appear. The

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Applicant No. 2 was represented by Sh. Bhupender Goyal, Assistant Director (Costs). The Respondent vide his written pleadings submitted on 25.07.2018 has stated that the complaint against him of not passing on the benefit of reduction in the GST rate to the customers and making profit was wrong as he had given details of all the basic components of the prices of the chocolates on the invoices and the benefit of tax rate reduction has been passed to the Applicant No. 1. He also submitted that he had not made any additional profit after the reduction in the rate of tax and that he had reduced the tax rate from 28% to 18% and he had sold the chocolates after charging the applicable rate of tax on base prices which were calculated on the basis of the cost of the purchases and mark-up and hence he had not resorted to profiteering. He had also submitted that In fact the base prices of the above products had been increased by the Distributors as the cost of Nestle Munch Nuts 32 Gm. to him was Rs. 14.01 per unit before 15.11.2017 which was increased to Rs. 15.20 after 15.11.2017 and he had sold the same at the base price of Rs. 15.63 before 15th November 2017 and at the base price of Rs. 16.95 after 15th November, 2017, thus keeping this margin same at 11.5%. He had further stated that the cost of Cadbury Dairy Milk Chocolate was Rs. 27.90 per unit before 15th November, 2017 which was increased to Rs. 30.27 after 15th November, 2017 therefore, he had increased his base price from Rs. 31.25 to Rs. 33.90 maintaining the margin at 12% and hence he had not profiteered.

6. The Respondent had also submitted that as had been noted in para 10 of the Investigation Report he had reduced the rate of tax on the chocolates from 28% to 18% w.e.f. 15.11.2017 as per the Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017. He has also claimed that he did not intend to benefit on account of tax reduction and had not contravened the provisions of Section 171 (1) of the CGST Act, 2017. He has also quoted the case of *Dinesh Mohan Bhardwaj v. Vrandavaneshwree Automotive (P) Ltd.* (2018) 67 GST 429/92 taxmann.com 360 (NAA) decided by this Authority on 27.03.2018 stating that the entire scheme of GST was ITC based i.e. the recipient of the goods and services took credit of the GST paid by him on the purchase of goods and services and used such ITC while discharging GST output tax liability on supply of goods and services and since no additional ITC was available to him he was bound to enhance the base prices of the above products.

7. The Respondent has also claimed that he had purchased Cadbury Dairy Milk Chocolates from M/s CTC at the base price of Rs. 27.90 per unit before 15.11.2017 and at the base price Rs 30.27 per unit after 15.11.2017. He has further claimed that since the Distributor had increased the basic purchase price, he was also forced to increase his basic sale price however, he had not increased his profit margin. The Respondent has also pleaded that M/S CTC through its sale invoices issued to him on different dates during the pre and post GST period was giving him quantity discounts through various schemes which could not be construed as discounts on the basic prices as they had no connection with the reduction in the rate


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of tax as these discounts were not provided on every purchase and the amount was also different on each schemes. He has further pleaded that the above discounts did not fall in the category of benefit of GST rate reduction given to him as had been mentioned in para 11 of the Investigation Report. The Respondent has also averred that no incentives were given to him during the months of November and December, 2017 and the incentive schemes were offered only on some purchases during January to March, 2018. The Respondent has also submitted details of the various incentive schemes offered to him by M/s CTC before and after 15.11.2017 vide Annexures IV and VI to substantiate his claim that no discounts were offered to him by the above Distributor for passing on the benefit of tax reduction.

8. The Respondent has also argued that he had procured Nestle Munch Nuts 32 Gm. bars from M/S NE which had also not given him discounts during the months of November, 2017 to March, 2018 on the base price and therefore, the finding of the DGAP that "M/S Navin Enterprise, in his various sale invoices issued to the noticee on different dates during the period from November, 2017 to March, 2018, had given discount on the base price" mentioned in para 11 of the Investigation Report was incorrect. He has also contended that the statement made in para 11 of the Report that M/S NE had clearly mentioned in his invoices "With GST benefits wherever applicable" was not correct as such statement was not found in his invoices for the month of November, 2017 and was added in his invoices during the month of January, 2018, whereas M/S NE had

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increased the base price from Rs. 14.01 per unit to Rs. 15.20 per unit after 14th November, 2017.

9. The Respondent has also raised objection against para 12 of the Investigation Report which stated that it was the responsibility and statutory obligation of the Respondent to pass on the benefit of tax reduction as he had not received any such benefit and his statutory obligation under Section 171 of the CGST Act, 2017 would arise only on the receipt of the benefit. The Respondent has also stated that the calculation of the profiteered amount in para 13 of the Report as Rs. 1.56 per unit in the case of Nestle Munch Nuts 32 Gm. bars calculated as a difference between the actual MRP and the ideal MRP (Rs. 20 - 18.44) was wrong as the profit if any should be calculated on the increase in the base price i.e. Rs. 1.32 per unit (Rs. 16.95 - Rs. 15.63). The Respondent has further stated that the assessment of profit of Rs. 3.13 per unit in the case of Cadbury Dairy Milk Chocolate as a difference between the actual MRP and the ideal MRP (Rs. 40 - Rs. 36.87) was also incorrect as the amount of profit if any should be calculated on the increase in the base price i.e. Rs. 2.65 per unit (Rs. 33.90 - 31.25). He has also claimed that the amount of profiteering shown by the DGAP in para 15 of the Report was wrong as he had purchased 944 units of Nestle Munch Nuts 32 Gm. and 4515 units of Cadbury Dairy Milk Chocolate during the period between 15.11.2017 to 31.03.2018.
10. The above submissions filed by the Respondent were forwarded to the DGAP who vide his reply dated 16th August 2018 has stated that the Respondent was a supplier who was registered vide GSTIN

06AABCH2910G1Z3 and the Applicant No. 1 had alleged that he had not passed the benefit of tax reduction to him. He has also stated that the Respondent was required to sell the products at the basic prices which were prevalent before 15.11.2017 by levying GST @ 18% to pass on the benefit of reduction in the rate of tax. The DGAP has also contended that being a registered supplier under the CGST/SGST Act, 2017 the Respondent was legally bound to pass on the benefit of reduction in rate of tax to his customers. The DGAP has further contended that the point raised by Respondent regarding calculation of the profiteered amount in para 13 of the Report was invalid as prices included both the base prices and also the tax charged on it and therefore, any excess amount collected from the recipients must be returned to them and if they were not identifiable, the same was to be deposited in the Consumer Welfare Fund (CWF). The DGAP has also claimed that the Respondent had stated that the closing stock as on 14.11.2017 of Nestle Munch Nuts 32 Gm. was 32 units and that of Cadbury Dairy Milk Chocolates was 216 units and he had purchased 944 units of the earlier and 4,515 units of the later brand during the period w.e.f. 15.11.2017 to 31.03.2018 and hence the profiteering in respect of the total 910 units of 'Nestle Munch Nuts 32 Gm.' and 4,646 units of 'Cadbury Dairy Milk Chocolates' had been computed in the manner furnished in the table below:-

| <u>Products</u> | <u>Cadbury Dairy</u> | <u>Nestle</u> |
|---|----------------------|---------------|
| | <u>Milk</u> | <u>Munch</u> |
| Total Purchase made during 01.11.2017 to 31.03.2018 as per purchase calculation sheet submitted by noticee (Units)(A) | 4,731 | 1,024 |
| Sale Made during 01.11.2017 to 14.11.2017 as per Sales Calculation Sheet submitted by Noticee (Units)(B) | 85 | 114 |
| Total Sale deemed to have been made during 15.11.2017 to 31.03.2018 (Units) (C)= (A)-(B) | 4646 | 910 |
| Profiteering Per Unit (In Rs.) (D) | 3.13 | 1.56 |
| Total Profiteering (In Rs.) (E)= (C)*(D) | 14542 | 1,416 |

11. The Authority had decided to call the representatives of the Distributors viz. M/s CTC and M/s NE as the Respondent had specifically alleged that both of them had increased the base prices after 15.11.2017 and had also not given him any discounts to pass on the benefit of rate reduction. On 21.08.2018 Mr. Rajesh Chandna on behalf of M/s CTC and Sh. Rajeev on behalf of M/s appeared for the hearing. Both the above Distributors vide their written submissions stated that their billing softwares were fully managed/controlled by the manufacturers viz. M/s Mondelez India Foods Private Ltd (Cadbury) & M/S Nestle Limited India respectively and they couldn't make any change in them expect that of quantity.

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They also claimed that the GST rate reduction benefits were passed on by them to the Respondent in the form of discounts which had also been reflected in their invoices. Additionally M/s CTC vide his written submissions dated 30.08.2017 contended that the sale invoicing of the products was done through the Company billing software and all the rates & reductions were decided through the Company server system and he could not add/alter/delete any rates/discounts in the Company's billing software. He further submitted that the above Company had provided him discount on his closing stock as on 15.11.2017 and after getting the same in the billing software, he had passed it on to his respective retailers on the directions of the Company and he being the sale Distributor had got only the profit margin on the sales which had remained same during the pre and post period of 15.11.2017. M/s NE vide his written submissions dated 08.09.2018 reiterated the points already submitted by M/s CTC. They had also submitted the details of the purchase and sale invoices to support their contentions.

12. Both the written submissions filed by the Distributors were forwarded to the DGAP for his reply. The DGAP vide his reply dated 11.09.2018 had submitted that the invoices of M/s NE from Nestle India Limited and invoices of M/s CTC from M/s Mondelez India Foods Private Ltd. were not relevant to the present case filed against the Respondent. He had further submitted that the invoices submitted by both the above Distributors had been examined vide paras 11 and 12 of his Report dated 18.06.2018 and it was found that on some of the products on some dates discounts had been

given with the remark 'GST transaction discount 6.6%' and comments such as 'anti profiteering provisions under GST require that you pass on to consumers, benefits of GST reduction given to you' and 'with GST benefits where applicable' were recorded on these invoices but the fact remained that the MRPs had remained unchanged.

13. Further Vide his written submissions dated 23.08.2018, the Respondent had specifically admitted profiteering on the closing stock of Chocolates lying with him as on 14th November, 2018. He had also accepted that M/s CTC had given him 6.6% discount on his invoice No. 53129 dated 28.11.2017 amounting to Rs. 647/-. Accordingly, suo moto he had deposited an amount of Rs. 1295/- (Rs. 1250/- for Cadbury Dairy Milk and Rs. 45/- for Nestle Munch Nuts 32 Gm.) including the discount of Rs. 647/- which he had received from M/s CTC and had not passed on to his customers into the CWF vide Demand Draft dated 18.08.2018. He had also submitted that the amount of Rs. 15,958/- reported by the DGAP in his Investigation Report was not correct since he had not received any GST rate reduction benefit from the Distributors.

14. We have carefully heard both the parties and have also gone through the record of the case placed before us and it has been revealed that the Central Govt. vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 had reduced the rate of GST from 28% to 18% in respect of the above two products viz. the Nestle Munch Nuts 32 Gm. Chocolate and the Cadbury Dairy Milk

Chocolate 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.

15. It is also revealed from the perusal of the tax invoice dated 10.11.2017 issued by the Respondent in favour of the Applicant No. 1 that he had sold one unit of Nestle Munch Nuts 32 Gm. Chocolate at the base price of Rs. 15.63 and after levying GST @ 28% realised MRP of Rs. 20/- from him. It is also revealed from the above invoice that the Respondent had charged Rs. 31.25 per bar for the Cadbury Dairy Milk Chocolate and sold it @ MRP of Rs. 40/- after realising GST of 28%. Perusal of the tax invoice dated 16.11.2017 shows that the Respondent had charged base price of Rs. 16.95 per unit for the Nestle Munch Nuts 32 Gm. Chocolate and after levying GST @ 18% had again charged MRP of Rs. 20/- and for one bar of Cadbury Dairy Milk Chocolate he had charged base price of Rs. 33.90 and after charging 18% GST the MRP realised by him from the above Applicant was Rs. 40/-. Therefore, it is clear that the Respondent had increased the base price by Rs. 1.56 per unit in respect of the Nestle Munch Nuts 32 Gm. Chocolate and Rs. 3.13 for the Cadbury Dairy Milk Chocolate and hence the MRP charged on both the above products had remained Rs. 20/- and Rs. 40/- per unit respectively before and after the reduction in the rate of tax. Therefore, it is established that the Respondent had in fact increased the base prices of these Chocolates and sold them at the same MRPs which he was charging before the reduction in the rate

of tax instead of reducing the same and had hence not passed on the benefit of such reduction to the above Applicant.

16. The Respondent has vehemently argued that he had no control on the fixing of the base prices as well as the MRPs as he was charged increased base prices by his Distributors Viz. M/s CTC and M/s NE and hence the Respondent could not make any changes in the base prices and the MRPs. He has also claimed that he had charged 18% GST after the rate was reduced w.e.f. 15.11.2017 on all the sales made by him and had also maintained the same profit margins which he was charging before 15.11.2017 and hence he had not profiteered. However, it is apparent from the record that the Respondent is duly registered under the CGST/SGST Act, 2017 and therefore, he was under legal obligation to follow the Notification dated 14.11.2017 mentioned above vide which the rate of GST was reduced from 28% to 18% on both the above products. He cannot deny his accountability as well as the duty cast upon him under the above Notification by contending that he had not increased the base prices whereas he had charged the increased base prices on both the above products after 15.11.2017. The Respondent has failed to produce any evidence to show that he had taken up the issue of giving benefit of reduced rate of tax to his customers with M/s CTC or M/s NE and informed them that he was bound to reduce the MRPs due to reduction in the rate of tax and both of them should either reduce/not increase the base prices or compensate him on account of the benefit which he was required to pass on to his customers, therefore, it is quite apparent that he had

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deliberately charged the enhanced prices with an intention to pocket the amount which he was bound to pass on to the recipients. The Respondent can also not legally maintain that since he had not received the benefit from his Distributors and hence he would not pass on the same as he was bound by the provisions of Section 171 being a registered dealer under the above Act. Mere charging of 18% GST after 15.11.2018 cannot be construed to have resulted in the passing of the benefit unless the MRPs were reduced and the base prices were maintained. The claim of the Respondent that his profit margins had remained the same is also not tenable as he had not only increased the base prices but had also earned additional margin on the enhanced prices. He had further forced his customers to pay additional GST on the increased base prices otherwise the customers should have got further benefit of reduced base prices. The Respondent has also cited the case of *Dinesh Mohan Bhardwaj* supra in his support however the facts of the present case are different than that case as the complainant in the above case had been given the benefit of ITC whereas in the present case the Applicant No. 1 was to be given the benefit of tax reduction and hence the Respondent cannot claim any relief on account of the above case. Therefore, the above contentions of the appellant cannot be accepted.

17. The Respondent has also argued that M/s CTC and M/s NE had not given him discounts for passing on the benefit of tax reduction. However, perusal of the tax invoices issued by both the above Distributors shows that they had given him discounts to pass on the

benefit of tax reduction with specific endorsements that he was required to pass on the benefit of reduced rate of GST. The Respondent has himself admitted through his submissions dated 23.08.2018 that he was given discount of 6.6% by M/s CTC vide invoice No. 53129 dated 28.11.2017 amounting to Rs. 647/-. Therefore, the Respondent was bound to pass on the benefit to his customers which he had not done. Otherwise also the Respondent being a registered dealer under the CGST/SCST Act, 2017 is under legal obligation to pass on the benefit to his customers on account of the reduction in the rate of tax whether he was given any discount by his Distributors or not.

18. It is also apparent from the purchase tax invoices that the Respondent had purchased 910 units of Nestle Munch Nuts 32 Gm. Chocolate and 4646 units of the Cadbury Dairy Milk Chocolate during the period between 15.11.2017 to 31.03.2018 and since he has not furnished the details of the outward supplies made during the above period the DGAP has rightly taken the above units to have been sold by the Respondent during the above period. It is also clear from the record that the Respondent had increased the base price by Rs. 1.56 per unit in the case of Nestle Munch Nuts 32 Gm. Chocolate and Rs. 3.13 per unit in respect of the Cadbury Dairy Milk Chocolate and hence the total amount of profiteering is determined as Rs. 15,958/- (Rs. 1416 + Rs. 14,542) on all the above units of both the products. The Respondent has claimed that the amount of profiteering should be calculated on the basis of the difference between the base price at which he had purchased the

above products and the base price on which he had sold them, however, this argument of the Respondent is fallacious as the amount of profiteering has to include the amount of additional profit margin and the additional tax charged by the Respondent as both of them had been illegally charged by him otherwise the recipients should have got further benefit of reduction in the MRPs of both the products and hence this contention of the Respondent cannot be accepted.

19. The Respondent has claimed that only 944 units of Nestle Munch Nuts 32 Gm. Chocolate and 4515 units of the Cadbury Dairy Milk Chocolate were purchased by him during the period w.e.f. 15.11.2017 to 31.03.2018 however, he has not produced the tax invoices to prove his contention and hence the claim made by the Respondent cannot be relied upon.

20. It is also on record that the Respondent vide his written submissions dated 23.08.2018 has voluntarily admitted that he had profiteered to the extent of Rs. 1295/- on the stock which was lying with him On 14.11.2017 and had also deposited the same in the CWF. Therefore, there is absolutely no doubt that the Respondent has resorted to profiteering and has not passed on the benefit of tax reduction to his customers.

21. It is clear from the narration of the facts stated above that the Respondent has indulged in profiteering in violation of the provisions of Section 171 of the CGST Act, 2017 and has not passed on the benefit of reduction of tax as per the Notification

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dated 14.11.2017 supra in respect of the above products to his customers and therefore, he is liable for action under Rule 133 of the CGST Rules, 2017, the relevant provisions of which state as under:-

“133. x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-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;

A handwritten signature in blue ink, followed by the date '21-18' written in blue ink.

(d) Imposition of penalty as specified under the Act; and

(e) x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

22. Accordingly, the Respondent is directed to reduce the sale prices of the above products immediately commensurate to the reduction in the rate of tax as was notified on 14.11.2017 and pass on the benefit of reduction in the rate of the tax to his customers. Since the Applicant No. 1 has paid a higher price of Rs. 4.69 (1.56 + 3.13) for 02 items Viz. Nestle Munch Nuts 32 Gms. and Cadbury Dairy Milk Chocolate, the Respondent is directed to refund the same to the Applicant No. 1 along with interest @ 18% w.e.f. 16.11.2017 till the same is paid to the Applicant No. 1. The Respondent has also voluntarily deposited an amount of Rs. 1295/- in the CWF. Therefore, the balance profiteered amount of Rs. 14,658.31 (15,958 - {1295 + 4.69}) will be deposited into the CWF by the Respondent as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 along with the interest at the rate of 18% to be calculated from the date of collection of the higher amount till the date of the deposit of such amount. The above amounts shall be refunded or deposited by the Respondent within a period of 3

 7.12.18

months from the date of receipt of this order failing which the same shall be recovered by the DGAP and refunded or deposited as has been directed above. Since the present investigation has been carried out for the period between 15.11.2017 to 31.03.2018 the DGAP is directed to conduct further investigation in respect of the sales made by the Respondent after the above period to assess the amount of profiteering made by the Respondent and submit report accordingly.

23. It is also established from the above facts that the Respondent had issued incorrect invoices while selling the above products to his customers as he had not correctly shown the basic prices which he should have legally charged from them. The Respondent had also forced them to pay additional GST on the increased prices and had also earned additional profit through the incorrect tax invoices which would have otherwise resulted in further benefit to the customers in the shape of reduced prices. It is also established from the record that the Respondent has knowingly and consciously acted in contravention of the provisions of the CGST Act, 2017 by issuing incorrect invoices which is an offence under Section 122 (1) (i) of the above Act and hence he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. Although notice for imposition of penalty has already been issued to the Respondent on 16.08.2018 however, no formal oral or written pleadings have been filed by the Respondent on the same.

Therefore, as per the provisions of the principles of natural justice it would be appropriate to issue fresh show cause notice asking him to explain why penalty should not be imposed on him for the above offence.

24. 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


7.12.18
(A.K. Goel)
Secretary NAA

F.No.22011/NAA/ 31/2018/1040-1043

Dated: 07-12-2018

Copy to:-

1. M/s Harish Bakers & Confectioners Pvt Ltd., 21/11, Shiv Puri Corner, Opp Sector-7, Gurugram, Haryana.
2. Sh. Pushpak Chauhan, email – pushpakchauhan511@live.com.
3. Director General Anti-Profitteering, 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.