

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 18/2018

Date of Institution 18.09.2018

Date of Order 17.12.2018

In the matter of:

1. Shri Shylesh Damodaran, A/203, Siddharaj Apartment, Opp. Sur Sagar Tower, Jodhpur Road, Satellite, Ahmedabad-380015.
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. Landmark Automobiles Pvt. Ltd., Opp. AEC, Near Gurudwara, Sarkhej Gandhinagar Highway, Ahmedabad

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 for the Applicant No. 2.

ORDER

1. An application dated 12.08.2017 was filed before the Standing Committee on Anti-profiteering under Rule 128 of the Central Goods and Service Tax (CGST) Rules, 2017, by the Applicant No. 1 alleging that he had purchased one Honda City Car from the above Respondent vide Tax Invoice No. A-Tax/998/17-18 dated 14.10.2017 by paying an amount of Rs. 9,54,234/- on which GST @ 28% and Cess @ 17% was charged, however the benefit of Input Tax Credit (ITC) was not passed on to him by the above Respondent and therefore action should be taken against the Respondent for contravention of the provisions of Section 171 of the CGST Act, 2017.
2. The application was examined by the Standing Committee on Anti-profiteering and on 04.01.2018 it was forwarded to the Director

General of Anti-Profiteering (here-in-after referred to as the DGAP) (erstwhile Director General of Safeguards) to initiate an investigation and collect evidence necessary to determine whether the benefit of ITC on the said Car had been passed on by the Respondent to the above Applicant or not. The DGAP after scrutiny of the application had returned the same to the Standing Committee for reconsideration on the ground that no meaningful investigation could be conducted as no evidence had been furnished by the above Applicant. The Standing Committee had returned the above application on 28.02.2018 to the DGAP stating that once the application had been recommended for investigation, it couldn't reconsider its decision as it had become 'functus officio'.

3. On receipt of the reference from the Standing Committee on Anti-profiteering, the DGAP had re-examined the Application filed by the above Applicant and vide letter F.No. D-22011/API/11/2018/736 dated 14.03.2018 a Report was submitted by the DGAP to this Authority under Rule 129 (6) of the CGST Act, 2017 stating that the allegation of profiteering was without any basis and hence, no meaningful investigation could be initiated by him. The Report submitted by the DGAP was considered by the Authority and vide its order dated 24.04.2018 passed in Case No. 2/2018, it had directed the DGAP to conduct fresh investigation in the case and submit a comprehensive and detailed report as no opportunity of being heard had been granted to the above Applicant by the DGAP during the course of the investigation.

4. In consequence of the order dated 24.04.2018 the DGAP has submitted the present Report dated 17.09.2018 and intimated that

vide e-mail dated 09.05.2018, he had asked the Applicant to submit copy of the Tax Invoice of a Car of similar model sold by the Respondent prior to the coming in to force of the GST w.e.f. 01.07.2017. He has also intimated that the above Applicant vide his e-mail dated 16.05.2018 had furnished copy of the Invoice No. AHM/0609 dated 24.06.2017 which showed that the price charged by the Respondent for a similar Car was Rs. 9,58,237/-. He has further intimated that vide e-mails dated 22.05.2018, 05.06.2018, 07.06.2018, 20.06.2018 and letter dated 04.07.2018, he had asked the Respondent to provide the details of the applicable taxes in respect of the Car of the above model which he had purchased before and after the implementation of the GST, however, the Respondent did not respond. The DGAP has also informed that he had issued a Notice under Rule 129 of the CGST Rules, 2017 to the Respondent on 19.07.2018 to provide evidence in his support and vide his reply dated 01.08.2018 the Respondent had sought extension of time by 7 days to file his reply and vide e-mail dated 04.08.2018 he had submitted his detailed reply along with the following documents:-

- a) Purchase invoice of the Car sold to the above Applicant.
- b) Sale invoice of the Car sold to the above Applicant.
- c) Sample Sale and Purchase invoices of the same model Car as was sold to the above Applicant.
- d) Price lists applicable pre-GST (01.05.2017) and post-GST (01.07.2017).

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- e) Worksheet showing details of the sale and purchase of 4 Cars of similar model.

5. The DGAP has mentioned in his Report that the Respondent had submitted that the trade of selling Cars was controlled by the manufacturers and the dealers were bound to follow the ex-show room prices fixed by the manufacturers. He has also mentioned that the Respondent had submitted that margin of the dealers had decreased by about Rs. 7,000/- per Car from the pre-GST regime while the sale price of the same Car had reduced by Rs. 15,683/- [Rs. 9,69,917/- (Pre-GST price) – Rs. 9,54,234/- (Post-GST price)].
6. The DGAP has also furnished the purchase and sale invoice wise details of the base price of the Car sold by the Respondent to the Applicant which were applicable before and after coming in to force of the GST along with the applicable duties/taxes/cess as per the tables A, B, C and D given below:-

Table A

Pre- GST purchase invoice dated 15.04.2017

Pre GST	Amount (in Rs.)	Rate of Tax (%)	Remarks
Base Price	6,22,876		
Excise Duty	1,49,490.24	24	24% of Base Price
Infrastructure Cess	24,915.04	4	4% of Base Price
NCCD	6,228.76	1	1% of Base Price
Cess	778.595	0.13	0.125% of Base Price

Price After Excise Duty, Infrastructure Cess (IC), NCCD	8,04,288.635		Price After Excise Duty, IC, NCCD
CST+Freight + Insurance	10,528		
Dealer's Landed Price	814817		
VAT	1,22,223	15	15% of Dealer Landed Price
Total	9,37,039		

Table B

Post GST purchase invoice dated 29.09.2017

Post GST	Amount (in Rs.)	Rate of Tax (%)	Remarks
Base Price	6,41,471		
GST	2,88,661.95	45	28% GST +17% Cess on Cars longer than 4 mtrs.
Dealer's Landed Price	9,30,132.95		

Table C

Pre GST sale invoice dated 28.04.2017

Pre GST	Amount (in Rs.)
Dealer's Landed Price (A)	8,14,817
Dealer's Margin (B)	28,589
Total (C= A+B)	8,43,406
VAT (D = 15% of C)	1,26,510.9
Selling price (E= C+D)	9,69,916.9

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Table D

Post GST sale invoice dated 14.10.2017 issued to the Applicant

Post GST	Amount (in Rs.)
Dealer's Price (excluding GST paid which is available as Input Tax Credit) (A)	6,41,471
Dealer Margin(B)	16,621
Total (C= A+B)	6,58,092
GST (D= 45% of C)	2,96,141.4
Selling price (E= C+D)	9,54,233.4

7. The DGAP has further mentioned that the Respondent had submitted that he had received a discount of Rs. 4,500/- for achieving a pre-defined purchase and sale target for the pre-GST transactions and a trade discount of Rs. 9,000/- for the post-GST transactions.
8. The DGAP has also intimated that he had given an opportunity to the Applicant vide e-mail dated 04.09.2018, to inspect the non-confidential evidences/reply furnished by the Respondent on any working day from 06.09.2018 to 10.09.2018 however, he had not availed the given opportunity and requested to e-mail the information submitted by the Respondent which was sent to the Applicant by the DGAP through e-mail on 13.09.2018.
9. The DGAP has examined the said application, replies of the Respondent and the documents/evidences on record and stated that the main issue for determination was whether the benefit of reduction

in rate of tax or the ITC had been passed on by the Respondent to the Applicant by way of commensurate reduction in the price of the Car or not. The DGAP has observed that the profit margin of the Respondent had been reduced from Rs. 28,589/- which he was getting in the pre-GST era to Rs. 16,621/- in the post-GST era. He has also observed that even after taking in to account the trade discounts of Rs. 4,500/- and Rs. 9,000/-, which the Respondent had received for achieving pre-defined purchase and sale targets for the pre-GST and post-GST transactions respectively, the total post-GST profit margin of the Respondent came to Rs. 25,621/- (Rs. 16,621/- + Rs. 9,000/-), which was less than the total pre-GST profit margin of Rs. 33,089/- (Rs. 28,589/- + Rs. 4,500/-). He has further observed that the reduced profit margin of the Respondent was also evident from the fact that the Respondent's post-GST purchase price was Rs. 6,906.05 less than the pre-GST purchase price [Rs. 9,37,039/- (-) Rs. 9,30,132.95/-]. He has also informed that the post-GST sale price was Rs. 15,683.50/- less than the pre-GST sale price [Rs. 9,69,916.90/- (-) Rs. 9,54,233.40/-] and therefore, the allegation of profiteering made by the Applicant was not established. The DGAP has further informed that the landed price charged by the Respondent in the post-GST sale invoice dated 14.10.2017 was Rs. 1,73,346/- less than the landed price in the pre-GST sale invoice dated 28.04.2017 (Rs. 8,14,817/- (-) Rs. 6,41,471/-) due to the reason that in the pre-GST period, the credit of Excise Duty, National Contingent Calamity Duty (NCCD), and Cesses etc. was not available to the Respondent as only credit of VAT was admissible while in the post-GST period, the Respondent was entitled to claim the ITC of the

entire GST paid @ 45%. He has also observed that in case the post-GST purchase invoice dated 29.09.2017 and sale invoice dated 14.10.2017 issued by the Respondent were compared, it would be clear that the Respondent had not passed on the burden of the input GST paid @ 45% amounting to Rs. 2,88,661.95/- to the Applicant as he was eligible to claim ITC of the said amount. The DGAP in his report has also concluded that there was increase in the ITC available to the Respondent in the post-GST era as compared to the pre-GST era and the pre-GST and post-GST sale invoices issued by the Respondent revealed that the base price charged from the above Applicant was reduced as the benefit of ITC had been passed on by the Respondent to the Applicant No. 1. Therefore, he has maintained that the allegation that the above Applicant had not been given the benefit of ITC by the Respondent was not proved.

10. Investigation Report received from the DGAP was considered in the meeting of the Authority held on 26th September, 2018 and it was decided to accord opportunity of hearing to the Applicant only as there was 'nil' profiteering established in this case by the DGAP. Accordingly, two hearing opportunities on 09.10.2018 and 29.10.2018 were accorded but the Applicant did not appear. Further, the Applicant vide his e-mail dated 01.11.2018 stated that he did not intend to make any further submissions in the matter.

11. The Authority has carefully considered the DGAP's Report, the written submissions of the above Applicant and the Respondent placed on record. The issues to be decided by the Authority in this case are as under:-

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1) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?

2) If yes then what was the quantum of profiteering?

12. Perusal of Section 171 (1) of the CGST Act shows that it provides as under:-

(1). "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."

13. It is clear from the plain reading of Section 171 (1) that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rates, it is clear from the DGAP's investigation report that there was no reduction in the tax rate in this case hence, the allegation of profiteering by the Respondent on account of change in tax rate is not sustainable. It is also revealed from the perusal of the record that the profit margin of the Respondent had got reduced from Rs. 28,589/- which he was receiving in the pre-GST period to Rs. 16,621/- in the post-GST period and after taking in to account the discounts of Rs. 4,500/- and Rs. 9,000/-, which the Respondent had received for achieving pre-defined purchase and sale targets for the above two periods the total post-GST profit margin of the Respondent was Rs. 25,621/- (Rs. 16,621/- + Rs. 9,000/-), which was less than the pre-GST profit margin of Rs. 33,089/- (Rs. 28,589/- + Rs. 4,500/-). It is also apparent that the reduced profit margin was due to the fact that the post-GST purchase price of the Respondent was Rs. 6,906.05 less than the

pre-GST purchase price. It is also clear from the record that the post-GST sale price charged by the Respondent was Rs. 15,683.50/- less than the pre-GST sale price. The record also reveals that the base price charged by the Respondent in the post-GST sale invoice dated 14.10.2017 was Rs. 1,73,346/- less than the base price in the pre-GST sale invoice dated 28.04.2017 due to the reason that in the pre-GST period, the credit of Excise Duty, NCCD and Cesses etc. was not available to the Respondent as only credit of VAT was admissible while in the post-GST period, the Respondent was entitled to claim the ITC on the entire GST paid @ 45% and when the post-GST purchase invoice dated 29.09.2017 and sale invoice dated 14.10.2017 issued by the Respondent were compared, it was evident that the Respondent had not passed on the burden of the input GST paid @ 45% amounting to Rs. 2,88,661.95/- to the Applicant due to the reason that he was eligible to claim ITC on this amount. It is also clear that there was increase in the ITC which the Respondent could avail in the post-GST era as compared to the pre-GST era and the pre-GST and post-GST sale invoices issued by the Respondent revealed that the base price charged from the above Applicant had been reduced as the benefit of ITC was passed on by the Respondent to the Applicant No. 1. Therefore, the allegation that the above Applicant had not been given the benefit of ITC by the Respondent was not proved.

14. In view of the aforementioned findings, this Authority finds that the provisions of Section 171 (1) of the CGST Act, 2017 quoted above have not been contravened in the present case.

15. Accordingly, the application filed by the Applicant No. 1 requesting for action against the Respondent for violation of the provisions of the Section 171 (1) of the CGST Act, 2017 is not maintainable and hence the same is dismissed. 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


12.12.18
(A.K. Goel)
Secretary NAA

F.No.22011/NAA/74/Landmark/2018/1132-1136

Dated: 17-12-2018

Copy to:-

1. M/s. Landmark Automobiles Pvt. Ltd., Opp. AEC, Near Gurudwara, Sarkhej Gandhinagar Highway, Ahmedabad, Gujarat
2. Shri Shylesh Damodaran, A/203, Siddharaj Apartment, Opp. Sur Sagar Tower, Jodhpur Road, Satellite, Ahmedabad-380015.
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.