

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

Case No.	19/2018
Date of Institution	19.09.2018
Date of Order	17.12.2018

In the matter of:

1. State Level Screening Committee on Anti-Profiteering, Kerala
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 Zeba Distributors, Immanuel Stores, Elappara, 32, Kerala.

Respondent

Quorum:-

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

Present:-

1. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala
for the Applicant No. 1
2. Sh. Anwar Ali, Additional Commissioner for the Applicant No. 2.

ORDER

1. The present report dated 19.09.2018, has been received from the Applicant No. 2 i.e. The Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that The Kerala State Screening Committee on Anti-Profiteering vide the minutes of it's meeting held on 08.05.2018 had referred the present case to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of "Eastern Meat Masala" (HSN Code 0910), by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f 01.07.2017. Thus it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of Central Goods and Service Tax (CGST) Act, 2017 In this regard, The Kerala State Screening Committee had relied on two invoices issued by the Respondent, one dated 06.02.2017 (Pre-GST) and the other dated 18.12.2017 (Post-GST).
2. The above reference was examined by the Standing Committee on Anti-Profiteering and was further referred to the DGAP vide minutes of its meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP has stated in his report dated 19.09.2018 that in the pre-GST era, the applicable Value Added Tax (VAT) on the product "Eastern Meat Masala" was being levied @ 5% and there was no Central Excise Duty as per Central Excise Tariff Act, 1985. In the post GST era the rate of tax was also levied @ 5%. Details of the invoices issued by Respondent are as per the table given below:-

Sr. No.	Description of the product	Pre-GST			Post-GST			Difference in price(Rs.)
		Invoice No./Date	Tax rate (VAT)	Discounted price excluding VAT (Rs)	Invoice No./Date	Tax rate (GST)	Discounted price excluding GST (Rs)	
1.	Eastern Meat Masala (HSN Code 0910)	Z171000232 dated 06/02/2017	5%	238/-	Z1711224125 dated 18/12//2017	5%	238/-	-

4. The DGAP after scrutiny of the above two invoices issued by the Respondent has intimated that there was no reduction in the rate of tax on the product "Eastern Meat Masala" which was 5% both in the pre-GST era as well as in the post-GST era (GST). Further, it was also intimated by The DGAP that the Respondent did not increase the per unit base price (excluding tax) of the product which was Rs. 238/- during both the periods. Therefore, the selling price (cum-tax price) of the product had remained the same in both the pre-GST and post-GST period. Conclusively, The DGAP has submitted that as there was no reduction in the tax rate of the said product and the Respondent did not increase the per unit price of the product (excluding tax) the provisions of Section 171 of the CGST Act, 2017 were not contravened and the allegation of profiteering by the Respondent was not established.

5. The above report was considered by the Authority in its meeting held on 26.09.2018 and it was decided that as there was no private applicant, The Kerala Screening Committee may be asked to appear before the Authority on 09.10.2018. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing she agreed to the report submitted by the DGAP.
6. We have carefully examined the DGAP's report and the documents on record and find that the following issues are required to be settled in the present proceedings:-
- I. Whether there was reduction in the rate of tax on the product in question w.e.f. 01.07.2017?
 - II. Whether any benefit of reduction in the rate of tax was to be passed on?
7. Perusal of Section 171 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."
8. It is apparent from the perusal of the facts of the case that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017, hence the anti-profiteering provisions contained in Section 171(1) of the Central Goods and Services Tax Act, 2017 are not attracted. There is also no increase in the per unit base price (excluding tax) of the above product and therefore the allegation of profiteering is not sustainable.
9. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and

hence there is no merit in the application filed by the above Applicant and the same is accordingly dismissed.

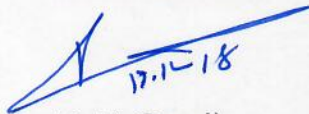
10. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(R. Bhagyadevi)
Technical Member

Certified copy


17-12-18
(A.K. Goel)
Secretary NAA



F.No.22011/NAA/75/2018/1127-1130

Dated: 17-12-2018

Copy to:-

1. M/s Zeba Distributors, Bldg.No.X-236, Chelamarttom, Rayons Qtr. Road,-Okkal P.O., Ernakulam, Kerala-683550,
2. Commissioner, State GST Department, 9th Flr.,Tax Tower, Killipalam, Karamana Post, Thiruvanthapuram, Kerala-695002.
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.