

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

Case No. 23/2018

Date of Institution 28.09.2018

Date of Order 24.12.2018

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

M/s Panasonic India Pvt. Ltd., Trivandrum, Kerala.

Respondent

Quorum:-

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

Present:-

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

ORDER

1. The present Report dated 27.09.2018, 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 "Panasonic LED TH43E200DX#45580" 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 CGST Act, 2017. In this regard, Kerala State Screening Committee had relied on two invoices issued by the Respondent, one was dated 15.06.2017 (Pre-GST) and the other was dated 22.07.2017 (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 it's meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.


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3. The DGAP has stated in his Report dated 27.09.2018 that after scrutiny of the two invoices issued by the Respondent, it was observed that in the pre-GST era, the said product attracted VAT @ 14.5% and Central Excise Duty @ 12.5% on 65% of abated MRP of the product, in terms of Notification No. 49/2008 Central Excise (N.T.) dated 24.12.2008. On implementation of the GST w.e.f. 01.07.2017, the GST rate on the said product was fixed at 28%. The pre-GST & post-GST sale invoice-wise details of the applicable tax rate and discounted price (excluding VAT or GST) of the said product supplied by the Respondent, are furnished in the table below:-

S. No.	Description of the product supplied	Pre GST Invoice No. 140217101517 dated 15.06.2017			Post GST Invoice No. 14021702034 dated 22.07.2017		
		Base price (Rs.)	Total Tax (Rs)	Total Price (Rs.)	Base price (Rs.)	GST (Rs.)	Total Price (Rs.)
1.	Panasonic LED TH43E200DX#45 580 (HSN code 85281211)	27,428/-	7349/- (Rs. 2945/- Central Excise Duty @ 12.5% on 65% of abated MRP of Rs. 36250/- as per Annexure-7) + Rs 4404/- VAT @14.5% on discounted price Rs. 30,373/-)	34,777/-	27818/- (after discount)	7789/- (28% GST)	35,607/-
Total Tax Pre-GST in (%)			26.79%		Total Tax Post-GST in (%)	28%	

4. After scrutiny of the above two invoices issued by the Respondent, the DGAP has intimated that there was an increase in the rate of tax on the said product from 26.79% in the pre-GST era (VAT and Excise Duty) to 28% in the post-GST era and there was no reduction in the rate of tax. Consequently, the DGAP has stated that as there was no reduction in the tax rate of the said product the provisions of Section 171 of the CGST Act,

2017 were not contravened and hence 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 since there was no complainant/other applicant in this case, the Kerala Screening Committee be asked to appear before the Authority on 09.10.2018. Ms. 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 report of the DGAP and the documents placed on record and find that the only issue that needs to be dwelled upon in as to whether there is a case of reduction in the rate of tax and whether the provisions of section 171 of CGST Act, 2017 are attracted in the case.
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 and that the rate of tax in the Post-GST era has also been increased from 26.79% to 28%, therefore, the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017. As such, we do not find any merit in the application filed by the above Applicant and the same is dismissed

9. 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

sd -
(Amand Shah)
Technical Member

Certified copy

B. Batar
24/12/18

(Bhupinder Batar)
Assistant Commissioner, NAA

F.No.22011/NAA/79/2018

Dated 24.12.2018

Copy to:-

1. M/s Panasonic India Pvt. Ltd., Trivandrum, Kerala.
2. Commissioner, State GST Department, 9th Floor, Tax Tower, Killipalam, Karamana, Post, Thiruvananthapuram, 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.