

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

| | |
|---------------------|------------|
| Case No. | 24/2018 |
| Date of Institution | 03.10.2018 |
| Date of Order | 24.12.2018 |

In the matter of:

1. Kerala State Screening Committee on Anti-profiteering.
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 Impact Clothing Co., 2nd Floor , 4th Cross , K.S. Garden, Lal Bagh Main Rd, Raja Ram Mohanroy Extension, Sudhama Nagar, Bengaluru, Karnataka 560027

Respondent

R
24/12

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, DG Anti-Profiteering for the Applicant No. 2.

Order

1. The present report dated 28.09.2018 has been received from the Directorate General of Anti-Profiteering (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 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 Readymade Garments, namely, (a) Impact Shirts 700-800 H/S M.R.P. Rs. 439; (b) Impact Shirts 700-800 F/S M.R.P. Rs. 449; (c) Impact Shirts 900 H/S M.R.P. Rs. 489; (d) Impact Shirts 900 F/S M.R.P. Rs. 499; (e) Impact Shirts 1500 H/S M.R.P. Rs. 689; and (f) Impact Shirts 1500 F/S M.R.P. Rs. 699, by not passing on the benefit of reduction in the rate of tax at the time of

implementation of the 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 Act, 2017. In this regard, the Kerala State Screening Committee has relied on two invoices issued by the Respondent, one dated 02.06.2017 (Pre-GST) and the other dated 14.08.2017 (Post-GST).

2. The above application was examined by the Standing Committee on Anti-Profiteering and was 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 28.09.2018 that in the pre-GST era, Readymade Garments, viz., (a) Impact Shirts 700-800 H/S M.R.P. Rs. 439; (b) Impact Shirts 700-800 F/S M.R.P. Rs. 449; (c) Impact Shirts 900 H/S M.R.P. Rs. 489; (d) Impact Shirts 900 F/S M.R.P. Rs. 499; (e) Impact Shirts 1500 H/S M.R.P. Rs. 689; and (f) Impact Shirts 1500 F/S M.R.P. Rs. 699; were exempted from Central Excise duty, vide Notification No. 30/2004-CE dated 09.07.2004 and attracted only Central Sales Tax @ 2%. After implementation of the GST w.e.f. 01.07.2017, the tax rate of the above product was fixed 5%. The pre-GST & the post-GST sale invoice-wise details of the applicable tax rate and the base prices (excluding CST or GST) of the said products supplied by the Respondent are mentioned in the table below:-

Table

| S. No. | Description of the Product | Pre-GST | | | Post-GST | | | Difference in Price (Rs.) |
|--------|--------------------------------------|----------------------|----------------|-----------------|----------------------|----------------|-----------------|---------------------------|
| | | Invoice No./Date | Tax Rate (CST) | Base Price (Rs) | Invoice No./Date | Tax Rate (GST) | Base Price (Rs) | |
| 1. | Impact Shirts 700-800 H/S M.R.P. 439 | 211 dated 02/06/2017 | 2% | 303/- | 493 dated 14/08/2017 | 5% | 303/- | - |
| 2. | Impact Shirts 700-800 F/S M.R.P. 449 | 211 dated 02/06/2017 | 2% | 310/- | 493 dated 14/08/2017 | 5% | 310/- | - |
| 3. | Impact Shirts 900 H/S M.R.P. 489 | 211 dated 02/06/2017 | 2% | 338/- | 493 dated 14/08/2017 | 5% | 338/- | - |
| 4. | Impact Shirts 900 F/S M.R.P. 499 | 211 dated 02/06/2017 | 2% | 345/- | 493 dated 14/08/2017 | 5% | 345/- | - |
| 5. | Impact Shirts 1500 H/S M.R.P. 689 | 211 dated 02/06/2017 | 2% | 475/- | 493 dated 14/08/2017 | 5% | 475/- | - |
| 6. | Impact Shirts 1500 F/S M.R.P. 699 | 211 dated 02/06/2017 | 2% | 482/- | 493 dated 14/08/2017 | 5% | 482/- | - |

4. The DGAP has submitted in his report that the rate of tax on the Readymade Garments namely (a) Impact Shirts 700-800 H/S M.R.P. Rs. 439; (b) Impact Shirts 700-800 F/S M.R.P. Rs. 449; (c) Impact Shirts 900 H/S M.R.P. Rs. 489; (d) Impact Shirts 900 F/S M.R.P. Rs. 499; (e) Impact Shirts 1500 H/S M.R.P. Rs. 689; and (f) Impact Shirts 1500 F/S M.R.P. Rs. 699; (HSN code 6205) was actually increased from 2% in the pre-GST era to 5% in the post-GST era. Moreover, the pre-GST and post-GST base prices (excluding tax) had remained the same. Therefore, the provisions of Section 171 of the CGST Act, 2017 have not been contravened and the allegation of profiteering by the Respondent was not established.

24/12 5. The above Report was considered by the Authority in its meeting held on 03.10.2018 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 31.10.2018, Ms. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing she agreed with the report submitted by the DGAP.

6. We have carefully considered the Report of the DGAP and the documents placed on record and find that the only issue that needs to be dwelled upon is as to whether there was a case of reduction in the rate of tax and whether the provision 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 clear from the perusal of the facts of the case that there was no reduction in the rate of tax on the above products w.e.f. 01.07.2017, hence the anti-profiteering provisions contained in Section 171 (1) of the CGST Act, 2017 are not attracted. Also, there is no increase in the per unit base price (excluding tax) of the above products and 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 accordingly, the same is dismissed.

Handwritten signature
24/11/2

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



F. No. 22011/NAA/93/ImpactClothing/2018 / 1193
Copy To:-

Date: 24.12.2018

1. M/s Impact Clothing Co., 2nd Floor, 4th Cross, K.S. Garden, Lal Bagh Main Rd, Raja Ram Mohanroy Extension, Sudhama Nagar, Bengaluru, Karnataka 560027
2. Commissioner, State GST Department, 9th Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
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.