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

Case No.	:	26 /2018
Date of Institution	:	03.10.2018
Date of Order	:	27.12.2018

In the matter of:

1. Kerala State Level 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 Janson, 242/2, Namakkal Road, Tiruchengode-637211, Kerala.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms R. Bhagyadevi, 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 28.09.2018, has been received from the Applicant No. 2 i.e. the Director 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 "Handloom Design-King Supreme Lungi" (HSN Code 54078460), 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 07.04.2017 (Pre-GST) and the other dated 18.08.2017 (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.

3. The DGAP has stated in his Report dated 28.09.2018 that in the pre-GST era, the applicable Value Added Tax (VAT) was nil and the Central Excise Duty on the product was exempted vide Notification No.30/2004-CE dated 09.07.2004. In the post GST era the rate of tax was levied @ 5%. The details of the invoices issued by Respondent are as per the table given below:-

Sr. No.	Description of the product supplied	Pre-GST (Invoice no. 160 dated 07.04.2017)				Post-GST (Invoice No. JI/1842 dated 18.08.2017)			
		Base Price after Discount (Rs.)	Tax Rate	Tax Amount (Rs.)	Total Selling Price (Rs.)	Base Price after Discount (Rs.)	GST Rate	GST Amount (Rs.)	Total Selling Price (Rs.)
1	King Supreme [F] 2.50 MTR LUNGI	210	NIL	NIL	210.00	200.70	5%	10.04	210.74
2	Charm Dlx [F] 2.00 Mtr Lungi	127	NIL	NIL	127.00	119.70	5%	5.99	125.69
3	Excellent Delux [F] 2.00 MTR W.O.B.Lungi	183	NIL	NIL	183.00	170.10	5%	8.51	178.61
4	Economy [F] 2.00 MTR Lungies	133	NIL	NIL	133.00	125.10	5%	6.26	131.36
5	Mourya [F] 2.00 MTR Printed Lungies	118	NIL	NIL	118.00	110.70	5%	5.54	116.24
Total Tax Pre-GST (%)			NIL	Total Tax Post-GST (%)			5%		

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 "Handloom Design-King Supreme Lungi" which was at nil rate in the pre-GST era and @ 5% in the post-GST era (GST). Further, it was also

intimated by The DGAP that as seen from the Sl. No. 54 of Annexure-7 of the minutes of the meeting of the Kerala State Screening Committee, the rate of tax in the pre-GST period was shown as 2% w.r.t. the said invoice No. 160 dated 07.04.2017, however, it was clear from the said invoice itself that there was actually nil tax. Thus, the two aforementioned supporting invoices confirm that there was an increase in the rate of tax on the product "Handloom Design-King Supreme Lungi" from nil in the pre-GST era (there was no Excise Duty or VAT) to 5% in the post-GST era. Conclusively, the DGAP has submitted 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 the allegation of profiteering by the Respondent was not established.

5. The above report was considered by the Authority in its meeting held on 03.10.2018 and it was decided that as there was no private applicant, the Kerala Screening Committee may be asked to appear before the Authority. On 31.10.2018 Smt. A.Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 and 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. Section 171 of the CGST Act reads 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.

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

(A.K.Goel)
Secretary NAA

F.No.22011/NAA/92/Jan/2018 /1307 -1311 Dated: 27.12.2018

Copy to:-

1. M/s Janson, 242/2, Namakkal Road, Tiruchengode-637211, Kerala.
2. Commissioner, State GST Department, 9th Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
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.