

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

Case No. : 27/2018
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

M/s Lorenzo Vitrified Tiles Pvt. Ltd. 8-A, National Highway, Lalpar,
Morbi-363642, Gujarat.

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 T.P., Additional Commissioner 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 & 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 "Mirror Series Tiles", by not passing on the benefit of GST at the time of implementation of the GST w.e.f. 01.07.2017 and w.e.f. 14.11.2017 when the GST rate was reduced from 28% to 18% vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017. 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, the Kerala State Screening Committee had relied on two invoices issued by the Respondent, one dated 18.04.2017 (Pre-GST) and the other dated 14.07.2017 (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 its meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.
3. The DGAP vide his report dated 28.09.2018 has stated that after scrutiny of the two invoices issued by the Respondent, it was observed that in the pre-GST era, the applicable tax on the product "Mirror Series Tiles" was CST @ 2% and Central Excise Duty @ 12.5% on 55% of the MRP. On implementation of the GST w.e.f. 01.07.2017, the GST rate on the said product was fixed at 28% which was reduced to 18% w.e.f 15.11.2017. The DGAP has further observed that no sale invoice issued by the Respondent after the reduction of GST rate from 28% to 18% w.e.f. 15.11.2017, has been examined by the Kerala State Screening Committee. The invoice dated 18.04.2017, relied on by the Kerala State Screening Committee, was actually issued in the pre-GST era. Further, it was also intimated by The DGAP that in the absence of any invoice issued post 15.11.2017 when the GST rate on the said product was reduced from 28% to 18%, it was not possible to compare the pre-rate revision and post-rate revision actual selling prices. Therefore, the DGAP has also examined whether the allegation of profiteering was sustainable at the time of implementation of the GST w.e.f. 01.07.2017 comparing the pre-GST & post-GST sale invoice-wise details of the applicable tax rate and the base price (excluding CST or Central Excise Duty or GST) of the said product supplied by the Respondent as has been furnished in the table below:-

Particulars		Pre-GST	Post-GST
Product Description		Mirror Series Tiles (HSN Code 6907)	
Invoice No.		0075	GST0042
Invoice Date		18.04.2017	14.07.2017
M.R.P (in Rs.)	A	550	-
55% of M.R.P. (45% Abatement) (in Rs.)	B= 55% of A	302.50	-
Central Excise Duty	C	12.5%	-
Central Excise Duty (in Rs.)	D= C*B	37.81	-
Base Price (excluding Excise Duty or CST or GST) (in Rs.)	E	310	310
Base Price for Central Sales Tax (CST) (in Rs.)	F= E+D	347.81	-
Central Sales Tax (CST)	G	2%	
Central Sales Tax (in Rs.)	H= G*F	6.96	
GST	I	-	28%
Total Tax (in Rs.)	J= D+H or I	44.77	86.8
Total Tax in terms of percentage of Base Price	L= (J/ E) * 100	14.44%	28%

4. Conclusively, The DGAP has submitted that as there was no reduction in the tax rate of the said product which was increased from 14.44% to 28% as could be seen from the above table and also 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 made by the Respondent was not established. The DGAP has also stated that though the tax rate was reduced from 28% to 18% w.e.f. 15.11.2017, no supporting documents were provided to prove that the reduction in rate of tax was not passed on to the recipient.
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 should 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 and during the hearing she agreed with the report submitted by the DGAP.
6. We have carefully examined the DGAP's report and the documents placed on record and find that the following issues are required to be settled in the present proceedings as per the provisions of Section 171 of the CGST Act:-
- I. Whether there was reduction in the rate of tax on the product in question w.e.f. 01.07.2017 or 14.11.2017?
 - II. Whether any benefit of reduction in the rate of tax was to be passed on?

III. Whether the benefit of reduction in tax was passed on to the recipient by way of commensurate reduction in prices?

7. 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, as could be seen from the table given above. 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 established.
8. Though the rate of tax has been reduced from 28% to 18% w.e.f. 14.11.2017 the Kerala Screening Committee has failed to produce any invoice and has not examined any documents to establish that the benefit of tax reduction has not been passed on by the Respondent to the recipient hence DGAP has rightly observed that no supporting documents or invoices of the product 'Mirror Series Tiles' for the period post 15.11.2017 have been either examined or presented before the Standing Committee. Hence the allegation that the benefit of rate reduction has not been passed on is not sustained.
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 either on implementation of the GST w.e.f. 01.07.2017 or w.e.f. 14.11.2017 after the introduction of GST rate reduction and hence there is no merit in the application filed by the above Applicant and the same is accordingly dismissed.

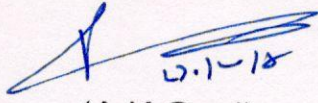
10. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.

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/88/Lorenzo/2018 /1312 -1316 Dated: 27.12.2018

Copy to:-

1. M/s Lorenzo Vitrified Tiles Pvt. Ltd. 8-A, National Highway, Lalpar, Morbi-363642, Gujarat.
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.