

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

Case No. : 3/2019
Date of Institution : 23.10.2018
Date of Order : 22.01.2019

In the matter of:

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.

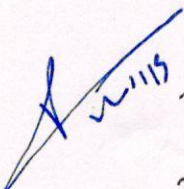
Applicant

Versus

M/s Satya Enterprises, 95, Sultanpur, M.G. Road, Near Gurudwara,
New Delhi- 110030.

Respondent

Quorum:-

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

Present:-

1. Ms. Gayatri Verma, Deputy Commissioner for the Applicant.
2. Mr Rajender Kumar Sharma Accountant, Mr. Bhagwan Dass Verma Authorised Agent of the Owner and Mr. Dushant Kumar Dubey Tally Operator, for the Respondent.

ORDER

1. The brief facts of the present case are that a reference was made by this Authority to the Director General Anti-Profiteering (DGAP), erstwhile Director General Safeguards, under rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017 intimating that certain major manufacturers of Fast Moving Consumer Goods (FMCG) have not passed on the benefit of reduction in the GST rate from 28% to 18% w.e.f. 15.11.2017, by maintaining the prices of their products at the pre-GST rate reduction levels. In this connection, the invoices issued by the Respondent, bearing No. 1429 dated 12.11.2017 and 427 dated 29.11.2017 for supply of 'Beauty Cream 50 GM', a product manufactured by M/s Patanjali Ayurveda Ltd. were sent to the DGAP for further action.
2. This reference was sent by the DGAP to the Standing Committee on Anti-profiteering on 12.03.2018 under Rule 128 of the CGST Rules, 2017 for examination, which in it's meeting held on 13.04.2018 had decided to forward this case to the DGAP for investigation.

3. The DGAP after completing the investigation for the period between 15.11.2017 to 31.05.2018 has submitted his Report under Rule 129 (6) of CGST Rules, 2017 on 16.10.2018 to this Authority.
4. The DGAP has stated in his Report that the notice under Rule 129 of the CGST Rules, 2017 was issued to the Respondent on 31.05.2018, calling upon him to intimate whether he admitted that the benefit of reduction in the rate of tax had not been passed on to the recipients by way of commensurate reduction in prices and to also suo moto determine the quantum of benefit not passed on and mention the same in his reply. The Respondent was also provided opportunity by the DGAP to inspect the non-confidential record, however, he didn't avail of this opportunity.
5. The DGAP had sought extension of time to complete the investigation, which was granted upto 08.11.2018 by this Authority on 06.08.2018 in terms of Rule 129 (6) of the CGST Rules, 2017.
6. The DGAP has mentioned in his Report that the Respondent vide his reply dated 15.06.2018 had stated that he was getting commission on the purchases he made from the manufacturer and was also getting a discount of approx. 33% when the rate of tax was 28%, which was reduced to approx. 22% when the rate of tax had come down to 18%. He has also stated that the Respondent was charging a fixed commission of 5% on the basis of the purchases made by him. The Respondent had also submitted copies of the purchase and the sale invoices for the pre-rate reduction and post-rate reduction periods to the DGAP.

7. The Respondent vide his letter dated 04.07.2018 addressed to the DGAP had also submitted the copies of the GSTR- 1 Returns for the months of December, 2017 and March, 2018 to May, 2018 and GSTR- 3B Returns for the months of November, 2017 to May, 2018. The Respondent vide his e-mails dated 15.07.2018, 31.07.2018 and 30.09.2018 had also submitted the sales register for the months of November, 2017 to May, 2018, price lists applicable as on 31.10.2017 and 15.11.2017, the details of invoice-wise outward taxable supplies (other than zero rated, nil rated and exempted) and the price list applicable for the period prior to 15.11.2017.
8. It has been observed by the DGAP in his Report that the Central Government, on the recommendation of the GST Council had reduced the GST rate on a number of FMCGs from 28% to 18% w.e.f. 15.11.2017, including the 'Beauty Cream 50 GM' vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, which had been also admitted by the Respondent.
9. The DGAP has also stated that the issue of passing on the benefit of reduction in the rate of GST to the recipients of various goods sold by the Respondent had been examined by him after determining the base prices of the products, pre 15.11.2017 and post 15.11.2017.
10. The DGAP has further stated that from the invoices made available as detailed in the Table below it was clear that the Respondent had increased the base price of the 'Beauty Cream 50 GM' when the rate of tax was reduced from 28% to 18%, so as to keep the cum-tax selling price the same as it was prior to the rate reduction on 15.11.2017:-

Sr. No.	Invoice No. and date	Description of products	Discounted Base Price (in Rs.)	Rate of GST	Price charged (inclusive of GST) (in Rs.)
1	1429 12.11.2017	Beauty Cream 50 GM	48.60	28%	62.21
2	427 29.11.2017	Beauty Cream 50 GM	52.73	18%	62.22

11. The DGAP has also mentioned that the Respondent was registered vide GSTIN 07ACFPY9833N1ZM as a supplier and therefore he was legally bound to pass on the benefit of reduction in the GST rate to his customers which he had not done as was apparent from the invoices dated 12.11.2017 and 29.11.2017. He has further mentioned that the perusal of these invoices showed that the base price of the above product was increased by the Respondent after the rate of tax was reduced from 28% to 18% w.e.f. 15.11.2017, by maintaining the pre-GST rate reduction cum-tax price, as was evident from the price lists submitted by the Respondent which revealed that the base price of 'Beauty Cream 50 GM' was Rs. 48.60 per unit before 15.11.2017 which was raised to Rs. 52.73 per unit, during the period between 15.11.2017 to 31.05.2018 after coming in to force of the GST.

12. The DGAP has also alleged that the base prices of most of the products supplied by the Respondent were increased after 15.11.2017. He has further alleged that during the period between 15.11.2017 to 31.05.2018, the Respondent had sold a total of 361 products comprising of 65 HSN codes, out of which 154 products constituting 24 HSN codes were affected by the reduction in the rate of tax from 28% to 18% w.e.f. 15.11.2017. The DGAP has also contended that out of the above 154 products, 48 products were not

supplied during the period between 01.11.2017 to 14.11.2017 and they included 13 new products which were introduced for sale after 15.11.2017. He has further contended that for the remaining 35 products, the pre 15.11.2017 reference prices for calculating the profiteered amount were taken from the price list which was effective before 15.11.2017 and was submitted by the Respondent vide his e-mail dated 30.09.2018 and these prices were found to be lower than the post 15.11.2017 base prices. The DGAP has also submitted that out of the remaining 106 (154-48) items the base prices of 74 products were increased and the base prices of 32 products were reduced post 15.11.2017. He has also maintained that out of the total 154 products affected by the reduction in the GST rate, the base prices of 109 (74+35) products were increased post 15.11.2017 and in respect of 32 products, the base prices were reduced post 15.11.2017 whereas 13 products were newly introduced post 15.11.2017 and the amount of profiteering in respect of these 109 products supplied by the Respondent during the period 15.11.2017 to 31.05.2018, came out to be Rs. 6,06,752.72, as per the details furnished in Annexure-11 of the DGAP's Report. The DGAP has also informed that from the details furnished by the Respondent it was apparent that all the supplies were made in the NCT of Delhi.

13. After perusal of the Report of the DGAP the Authority in its sitting held on 30.10.2018 had decided to hear the Applicant and the Respondent on 15.11.2018 and accordingly notices were issued to all the interested parties. The Applicant was represented by Ms. Gayatri Verma, Deputy Commissioner and the Respondent was represented

by Mr Rajender Kumar Sharma Accountant, Mr. Bhagwan Dass Verma Authorised Agent of the owner and Mr. Dushant Kumar Dubey Tally Operator.

14. During the hearing of the case the Respondent did not file written submissions but stated that he had no control over the Maximum Retail Prices (MRPs) as the same were fixed by the manufacture viz. M/s Patanjali Ayurveda Ltd. and he was bound to charge the same as per the instructions of the manufacturer. He has also stated that he was charging margin of 5% on the sales made by him which he had not increased after the rate of tax was reduced and hence he had not profiteered. He has further stated that he was not aware whether basic prices had been increased by M/s Patanjali Ayurveda Ltd. after the reduction in the GST rate or during the regular course of business.

15. We have carefully considered the material placed before us as well as the claims made by both the parties and it has been revealed that the Central Government on the recommendation of the GST Council had reduced the rate of GST on a number of FMCGs including the 'Beauty Cream 50 GM' w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. It is also revealed from the perusal of the invoice No. 1429 dated 12.11.2017 that the discounted base price of 'Beauty Cream 50 GM' was Rs. 48.60 per unit when the rate of tax was 28% and it was being sold at the MRP of Rs. 62.21 per unit. It is further revealed from the perusal of invoice dated 29.11.2017 that the discounted base price of the above product was increased to Rs. 52.73 per item after the GST was reduced to

18% and it was again sold at the MRP of Rs. 62.22. Therefore, it is clear that the Respondent had increased the base price by Rs. 4.13 per unit and maintained the same base price which he was charging before the reduction in the rate of tax. Therefore, it is established that the Respondent had denied benefit of reduction in the rate of tax to his customers by increasing the base price exactly by the amount by which the tax was reduced and therefore, he had resorted to profiteering in violation of the provisions of Section 171 of the CGST Act, 2017. The Respondent had further compelled the recipients to pay additional GST on the increased price @ 18% and had he not increased the base price and charged additional GST his customers would have got benefit of further reduction in the MRP. Therefore, the additional amount of tax collected also amounts to profiteering made by the Respondent.

16. It is also revealed from the perusal of Annexure-11 prepared by the DGAP after examining the details of the outward taxable supplies of all the products supplied by the Respondent that the base prices of most of the products sold by him were increased after the tax was reduced from 28% to 18% w.e.f. 15.11.2017. It is also clear from the perusal of Annexure-11 that between the period w.e.f. 15.11.2017 to 31.05.2018, the Respondent had supplied a total of 361 products constituting 65 HSN codes, out of which 154 products comprising of 24 HSN codes were affected by the rate reduction w.e.f. 15.11.2017. Out of these 154 items, 48 products were not supplied during the period between 01.11.2017 to 14.11.2017 out of which 13 products were introduced for the first time after the rate was reduced w.e.f.

15.11.2017. For the rest 35 items, the pre 15.11.2017 base prices for calculating the profiteered amount were taken by the DGAP from the price list which was applicable before 15.11.2017 and these prices were found to be lower than the post 15.11.2017 base prices. It is also clear from the record that out of the remaining 106 (154-48) products, the base prices of 74 products were increased and the base prices of 32 products were reduced after 15.11.2017 and hence, out of the total 154 items affected by the reduction in the rate of tax, the base prices of 109 (74+35) items were increased w.e.f. 15.11.2017; in respect of 32 products, the base prices were reduced after 15.11.2017; whereas 13 products were newly introduced after 15.11.2017. Therefore, it is quite clear that the Respondent had not passed on the benefit of tax reduction in respect of the 109 products supplied by him during the period between 15.11.2017 to 31.05.2018 and hence, it is established beyond doubt that the Respondent had resorted to profiteering of Rs. 6,06,752.72/-, as has been elaborated in Annexure-11 of the DGAP's Report. The Respondent has not raised any objection against the calculation of the profiteered amount by the DGAP and hence this Authority determines the above amount as the profiteered amount. It has also been found that all the supplies were made by the Respondent in the NCT of Delhi.

17. The only argument advanced by the Respondent is that the MRPs were fixed by the manufacturer viz. M/s Patanjali Ayurveda Ltd. which he was bound to charge and he could not reduce the same on his own. However, this plea of the Respondent is not tenable as he was bound to reduce the MRPs of the products which were sold by him

post 15.11.2017 keeping in view the reduction in the rate of tax as he was a registered under the CGST/SGST Acts and thus he was legally bound to faithfully implement the provisions of Section 171 of the above Act being the supplier of the goods. He has not produced any evidence to show that he was not aware of the Notification dated 14.11. 2017 vide which the rate of tax was reduced from 28% to 18% or he had made any correspondence with the manufacturer to reimburse him the amount of benefit which he was required to be passed on to his customers. The best course for him would have been to pass on the benefit as per the provisions of Section 171 of the above Act and then to claim compensation from the manufacturer. The Respondent can not be absolved of his legal obligation on the plea that he had no control on the fixing of the MPRs.

18. The Respondent has also claimed that he had only charged commission @ 5% on the sales made by him which he was charging before and after coming in to force of the GST and hence he had not profiteered. However, it is clear from the narration of the facts mentioned above that the Respondent had increased the base prices of 109 products which were being supplied by him after the rate of GST was reduced w.e.f. 15.11.2017 and forced his customers to pay more prices than what they should have paid and thus he had denied the benefit of rate reduction to them. He had also compelled them to pay additional GST on the increased quantum of base price otherwise this would also have further resulted in passing on the benefit of rate reduction to them. Mere charging of the fixed

commission does not amount passing on the above benefit and hence the above plea of the Respondent is frivolous and can not be accepted.

19. Accordingly, the Respondent is directed to reduce the sale prices of all the products the base prices of which he has increased w.e.f. 15.11.2017 immediately commensurate to the reduction in the rate of tax and pass on the benefit to his customers. He is also directed to deposit an amount of Rs. 6,06,752.72 along with interest @ 18% payable from the date when this amount was realised by him from his customers till the date of deposit in the Central Consumer Welfare Fund (CCWF) and the CCWF of the NCT of Delhi in the ration of 50:50 as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, failing which the above amount shall be recovered by the concerned Commissioner CGST and SGST as per the provisions of the CGST/SGST Acts under the supervision of the DGAP. The above amount shall be deposited within a period of 3 months by the Respondent from the date of receipt of this order.

20. We have also carefully considered the issue of imposition of penalty on the Respondent as the allegation of profiteering has been duly established against him. It is clear from the facts of the present case that the Respondent was fully aware of the provisions of Section 171 of the CGST Act, 2017 as well as the Notification dated 14.11.2017 whereby he was bound to pass on the benefit arising due to reduction in the rate of tax to his customers. However, the Respondent has deliberately acted in defiance of the above law and hence he is guilty of the conduct which is contumacious and violative of the provisions

of the above Section. He has further acted in conscious disregard of the obligation which was imposed upon him by the law, by issuing incorrect invoices in which the base prices were deliberately increased by the amount by which the rate of tax was reduced and thus he had denied the benefit of reduction in the prices to his customers. He has further forced them to pay additional GST on the increased base prices which they were legally not required to pay, by issuing incorrect tax invoices. Accordingly, he has committed offence under Section 122 (1) (i) of the CGST Act, 2017. Therefore, notice be issued asking him to explain why penalty should not be imposed on him.

21. A copy of this order to be sent to the Applicant 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
22.1.19
(A.K.Goel)
Secretary NAA



F.No.22011/NAA/99/2018/ 1600
Copy to:-

Dated: 22-01-2019

1. M/s Satya Enterprises, 95, Sultanpur, M.G. Road, Near Gurudwara, New Delhi-110030.
2. 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
3. Chief Commissioner, CGST, Delhi Zone, C.R. Building, ITO, New Delhi-110001
4. Commissioner, Commercial Tax, NCT, Delhi.
5. NAA website.
6. Guard File.