

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

Case No.	10/2019
Date of Institution	12.11.2018
Date of Order	11.02.2019

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 Emke Silks & Garments Pvt. Ltd., Thrissur.

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

Present:-

1. None 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 05.11.2018 has been received from the Directorate General of Anti-Profiteering (DGAP) on 12.11.2018 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 its 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 "Shirts" (Design 689), 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 28.05.2017 (Pre-GST) and the other dated 02.09.2017 (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 05.11.2018 that the "Shirts" (Design 689) (HSN Code 6205), were exempted from Central Excise

duty, vide Notification No. 30/2004-CE dated 09.07.2004 and attracted only VAT @ 5%. 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 VAT or GST) of the said product supplied by the Respondent are mentioned in the table below:-

Table

Description of the Product	Pre-GST				Post-GST			
	Base Price (Rs.)	Tax Rate (VAT)	Tax Amount (Rs.)	Total Selling Price (Rs.)	Base Price (Rs.)	Tax Rate (VAT)	Tax Amount (Rs.)	Total Selling Price (Rs.)
“Shirts” (Design 689)	649.52	5%	32.48	682	649.52	5%	32.48	682

4. The DGAP has submitted in his report that the rate of tax on the product remained same in the pre-GST and 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.

5. The above Report was considered by the Authority in it's meeting held on 13.11.2018 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. Kerala Screening Committee was given three opportunities to plead the case on 28.11.2018, 08.01.2019 and 28.01.2019 but none appeared on the stipulated dates.

6. The Applicant No. 1 i.e. the Kerala State Screening Committee, vide its

letter dated 25.01.2019 has observed that the Impact Shirts were exempted from the Central Excise Duty vide Notification No. 30/2004-CE dated 09.07.2004 but in this transaction, CST @2% was also involved and when this CST element of Rs. 9.5 was reduced from the base price of Rs. 649.52/- in the pre-GST sale, still there was increase of Rs. 9.5 in the sale of post-GST period.

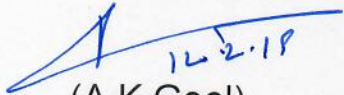
7. We have carefully considered the Report of the DGAP and the documents placed on record and find that the only issue that needs to be dwelled upon is as to whether there was a case of reduction in the rate of tax and whether the provisions of section 171 of CGST Act, 2017 are attracted in the case.
8. 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."
9. It is clear from the perusal of the facts of the case that the product was exempted from the Central Excise Duty, vide Notification No. 30/2004-CE dated 09.07.2004 and only attracted VAT @ 5%. After implementation of the GST w.e.f. 01.07.2017, the tax rate of the above product was fixed @ 5%. Therefore, there was no reduction in the rate of tax and hence provisions of provisions of section 171 are not attracted in this case.
10. As far as the submission of the Applicant No. 1 regarding deduction of an amount of Rs. 9.5 on account of CST from the pre-GST price is concerned the same does not appear to be correct as the Kerala State Screening Committee has failed to explain under which provisions of the Kerala GST Act, 2017 it can be deducted. Moreover, there has been

increase in the rate of inter-state tax as the CST was increased from 2% to 5% of IGST in respect of such sales. Therefore, the claim made by the Applicant No. 1 is misplaced and hence it cannot be accepted.

11. Based on the above discussions it implies 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 CGST Act, 2017 are not attracted. Hence, we do not find any merit in the application filed by the above Applicants and accordingly the same is dismissed.

12. 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.

Certified copy


(A.K. Goel)
Secretary NAA



Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

F. No. 22011/NAA/102/Emke Silks/2018

Date: 11.02.2019

Copy To:-

1. M/s Emke Silks & Garments Pvt. Ltd., Near KSRTC Bus Stand, Veliyannur, Trichur.
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.