

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

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|---------------------|------------|
| Case No. | 19/2019 |
| Date of Institution | 27.12.2019 |
| Date of Order | 13.03.2019 |

In the matter of:

1. Kerala State Level Screening Committee on Anti-Profiteering.
2. Director General of 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


12.3.18

M/s Somany Ceramics Ltd., Morbi-Depot Kuber Cinema, 8/A National Highway, Morbi, Gujarat-363647.

Respondent

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 for the Applicant No. 2.


ORDER

1. The present Report dated 26.09.2018 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 Applicant No. 1 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 'Ceramics Glazed Wall Tiles, Printex Crema, PRM 300x600 MM HSN Code 69072300', (here-in referred to as the product) by not passing on the benefit of reduction in the

rate of tax w.e.f. 15.11.2017, granted vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 by the Central as well as the State Governments. Thus, it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017. In this regard, the above Applicant had relied on two invoices issued by the Respondent, one dated 03.08.2017 (Pre-GST rate reduction) and the other dated 30.11.2017 (Post-GST rate reduction).

2. The above reference was examined by the Standing Committee on Anti-Profitteering 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 has stated in his Report dated 26.09.2018 that on scrutiny of the two invoices issued by the Respondent, received from the Standing Committee on Anti-profitteering along with the reference, it was found that the GST rate on the product was reduced to 18% from the existing rate of 28% w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. He has also submitted the pre & post GST rate reduction sale invoice-wise details of the applicable tax rate and the discounted price of the above product as per the table below:-

| Sr. No. | Description of the product | Pre-revision (before 15.11.2017) | | | Post-revision (after 15.11.2017) | | | Difference in price (Rs.) |
|---------|--|-------------------------------------|----------|---|-------------------------------------|----------|---|---------------------------|
| | | Invoice No./Date | Tax rate | Discounted price per M ² excluding GST (Rs.) | Invoice No./Date | Tax rate | Discounted price per M ² excluding GST (Rs.) | |
| 1. | Ceramics Glazed Wall Tiles, Printex Crema PRM 300x600 MM (HSN Code 69072300) | 2917207180 dated 03.08.2017 | 28% | 374.74/- | 2917222617 dated 30.11.2017 | 18% | 374.74/- | - |

4. After scrutiny of the above two invoices issued by the Respondent, the DGAP has intimated that the Respondent did not increase the per unit taxable amount (excluding GST) of the product after GST rate reduction w.e.f. 15.11.2017, which was Rs. 374.74/- in both the periods. He has also intimated that Section 171 of the CGST Act, 2017 came into play in the event there was a reduction in the rate of tax or increased benefit of Input Tax Credit (ITC). He has further intimated that the issue of benefit of ITC was not the subject matter of this inquiry as no such benefit had accrued. He has also stated that in the present case, the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017 but there was no change in the per unit taxable amount (excluding GST) of the above product and hence, the allegation of profiteering against the Respondent was not sustainable. He has further stated that there was no change in the per unit taxable amount excluding GST of the product in the post-GST rate reduction period as compared to the pre-GST rate reduction period and thus, the provisions of Section 171 (1) of the CGST Act, 2017 relating to profiteering, were not contravened in the present case.
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 in this case, the Applicant No. 1 be asked to appear before the Authority on 18.10.2018. Since, no one appeared for the hearing on 18.10.2018, the Authority had decided to ask the above Applicant to appear before the Authority on 31.10.2018. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 on 31.10.2018. During the hearing, it was observed that the DGAP and the Applicant No. 

1 had used different set of invoices and hence the data mentioned in these invoices could not be reconciled due to which it would not be possible to record correct findings.

6. The Authority vide its order dated 13.12.2018 had sent the DGAP's Report back to him for re-investigation on the above mentioned issue under Rule 133 (4) of the CGST Rules, 2017.
7. The DGAP vide his Report dated 27.12.2018 has submitted that the details mentioned at Sl. No. 24 & 34 of the Annexure-6 of the minutes of meeting of the Applicant No. 1 dated 14.05.2018 were the same and there was no variation in the details mentioned in both the above invoices, as per the following table:-

| Sr. No. as per Ann-6 | Description of the product | Pre-revision (before 15.11.2017) | Post-revision (after 15.11.2017) |
|----------------------|--|-------------------------------------|-------------------------------------|
| | | Invoice No./Date | Invoice No./Date |
| 24. | Ceramics Glazed Wall Tiles, Printex Crema PRM 300X600 MM (HSN Code 69072300) | 2917207180 dated 03.08.2017 | 2917222617 dated 30.11.2017 |
| 34. | Ceramics Glazed Wall Tiles, Printex Crema PRM 300X600 MM (HSN Code 69072300) | 2917207180 dated 03.08.2017 | 2917222617 dated 30.11.2017 |

8. The DGAP has further stated that he had conducted the investigation on the same invoices on which the investigation was conducted by the Applicant No. 1 and hence there was no difference in the data relied upon by both the Applicants.
9. We have carefully examined the report of the DGAP and the documents placed on record and find that the issues which need consideration were

as to whether there was reduction in the rate of tax and whether the provisions of section 171 of CGST Act, 2017 were attracted in the present case. 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."


10. It is apparent from the perusal of the facts of the case that there has been reduction in the rate of tax on the above product from 28% to 18% w.e.f. 15.11.2017 as per the Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. It is also revealed from the record that the Respondent had not increased the discounted per M² price of the above product which had remained Rs. 374.74/- before and after the tax reduction, as was evident from both the invoices issued by him before and after the tax reduction and therefore, the benefit of tax reduction has duly been passed on to the customers by the Respondent. Hence, the allegation of profiteering is not established against the Respondent in terms of Section 171 of the CGST Act, 2017 as there has been no change in the base price of the product after reduction in the GST rate w.e.f. 15.11.2017. As such, we do not find any merit in the application filed by the above Applicants and the same is accordingly dismissed.

 13-3-18

11. 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


13.03.18
(A. K. Goel)
Secretary, NAA

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/78/Somany/2018 / 2150 - 2153 Date: 13.03.2019

Copy To:-

1. M/s Somany Ceramics Ltd., Morbi-Depot Kuber Cinema, 8/A National Highway, Morbi, Gujarat-363647.
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 / Guard File.