

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

Case No.	24/2019
Date of Institution	08.01.2019
Date of Order	03.04.2019

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

M/s Rosata Vitrified Pvt. Ltd., Matel Village, Morbi, Gujarat (India), Morbi,
Gujarat 363621

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. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala
for the Applicant No. 1.
2. Sh. Anwar Ali, Additional Commissioner, DG Anti-Profiteering for the
Applicant No. 2.

Order

1. 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 "Vitrified Tiles Super Nano Plus (HSN Code 69072100), 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. It was therefore 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 Applicant No. 1 had relied on two invoices issued by the Respondent, invoice no. GST/577 dated 01.11.2017 issued in the pre-GST rate reduction period and invoice no. GST/742 dated 09.12.2017 issued in the Post-GST era.

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 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 CGST Rules, 2017.

4. The DGAP in his report has stated that the GST rate on the "Vitrified Tiles Super Nano Plus" (HSN Code 69072100) 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. Further, based on the scrutiny of the two invoices issued by the Respondent, received from the Standing Committee on Anti-profiteering along with the reference, the pre & post GST rate reduction sale invoice-wise details of the said product, have been furnished in the table below by the DGAP:-

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	Base Price per Box Excluding GST (Rs)	Invoice No./Date	Tax Rate	Base Price per Box Excluding GST (Rs)	
Vitrified Tiles Super Nano Plus (HSN Code 69072100)	GST/577 dated 01.11.2017	28%	294.50 /-	GST/742 dated 09.12.2017	18%	294.50 /-	-

5. The DGAP after examining the above invoices has submitted that there was no change in the per unit taxable amount (excluding GST) of the product "Vitrified Tiles Super Nano Plus" in the post-GST rate reduction period as compared to the pre-GST rate reduction period. Thus, the

provisions of Section 171(1) of the CGST Tax Act, 2017, relating to profiteering, were not contravened in the present case.

6. 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 18.10.2018 however the hearing was postponed to 31.10.2018. Smt. A. Shainaamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 and the DGAP was represented by Sh. Anwar Ali, Additional Commissioner.

7. The Authority during the course of the hearing had found that the above report had not given any findings in respect of the price of the wholesaler, which was the basis for forwarding the case by the Applicant No. 1 to the Standing Committee. Therefore, the Authority vide its order dated 11.12.2018 passed under Rule 133(4) of the CGST Rules, 2017, had directed the DGAP to investigate the above issue and send his Report accordingly.

8. The DGAP has submitted his report on 08.01.2019 under Rule 133(4) of the CGST Rules, 2017, and has stated that the present case was covered by Annexure-6 of the minutes of the meeting held by the Applicant No. 1, alleging profiteering by the manufacturer/wholesalers by the Respondent in pursuant to GST rate reduction w.e.f. 15.11.2017, in respect of supply of tiles to M/s K J Granites and Tiles. Kerala GST officers had conducted enquiries with M/s K J Granites and Tiles, Kattappana, Kerala and had procured the latter's purchase and sale invoices. However, as

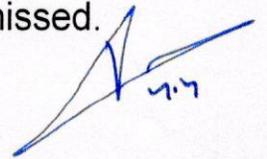
profiteering has been alleged against the Respondent the purchase invoices of M/s K J Granites and Tiles have been relied upon, which were the sale invoices of the Respondent.

9. We have carefully considered the DGAP's report and the documents on record and find that the issue here is, whether the benefit of reduction in the rate of tax was passed on by the Respondent w.e.f 15.11.2017, when the GST rate was reduced from 28% to 18% vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017.

10. We find that Section 171 of the CGST Act, 2017, reads as under:-

“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.”

11. As can be seen from the invoices given above in para 4 it is clear that the base price of the product per box was Rs. 294.50 prior to 15.11.2017 and had remained the same even after GST rate reduction w.e.f. 15.11.2017. Therefore, the benefit of rate reduction appears to have been passed on. This Authority agrees with the DGAP's Report dated 28.09.2018 and accordingly, holds that the allegation of profiteering is not sustainable. Hence, the provisions of Section 171 of the CGST Act, 2017, have not been contravened and there is no merit in the application forwarded by the Applicant No.1 and therefore 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.

Sd
(B. N. Sharma)
Chairman

Sd
(J. C. Chauhan)
Technical Member

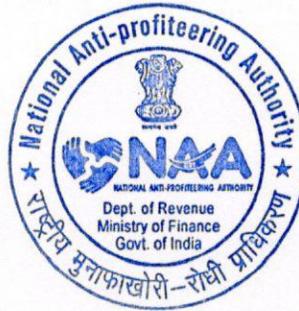
Sd
(R. Bhagyadevi)
Technical Member

Sd
(Amand Shah)
Technical Member

Certified Copy

A.K. Goel
4.4.19

A.K. Goel
(Secretary, NAA)



F. No. 22011/NAA/85/Rosata/2018/2339 - 2342

Date: 03.04.2019

Copy To:-

1. M/s Rosata Vitrified Pvt. Ltd., Matel Village, Morbi, Gujarat (India), Morbi, Gujarat 363621.
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.