BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	21/2020
Date of Institution	10.10.2019
Date of Order	08.07.2020

In the matter of:

1. Sh. Ajay Jagga, 231, Sector 21-A, Chandigarh-160022.
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

1. M/s Bhatia Confectioners, SCO 10-11, Sector-19 C, Chandigarh.
2. M/s Kanwal Agencies, SCO 383, 2nd Floor, Sector 37-D, Chandigarh.
3. M/s S. C. Johnson Products Pvt. Ltd., 5th Floor, Plot No. 68, Sector 44, Gurugram, Haryana- 122003.

Respondents

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. None for Applicant No. 1.
2. Sh. Anwar Ali, Additional Commissioner, for the DGAP.
3. Sh. Rohit Garg, Chartered Accountant & Sh. Kunal Bhatia, Authorised Representatives for Respondent No. 1.
4. None for Respondent No. 2.
5. Sh. Rishi Garg, Sh. Rajat Bose and Sh. Atulya Kishore, Advocates for Respondent No. 3.

ORDER

1. A Report dated 31.08.2018 was received from the Director-General of Anti-Profiteering (DGAP) consequent upon a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules 2017. Vide the Report, the DGAP reported that an application dated 14.12.2017 was filed before the Standing Committee on Anti-profiteering under the provisions of Rule 128 of the Central Goods and Services Tax Rules, 2017 by Applicant No. 1 against Respondent No. 1, whereby Applicant No. 1 had alleged that Respondent No. 1 had not passed on the benefit of reduction in the GST rate on "Kiwi Shoe Polish" (hereinafter referred to as impugned product) from 28% to 18% w.e.f. 15.11.2017 and had instead increased the base price of the impugned product supplied by him so that there was no reduction in the final price of the item despite the reduction in the rate of tax. In support of his allegation, Applicant No. 1 enclosed with the

application, a copy of the invoice/bill No. CS-64964 dated 13.12.2017 in respect of the supply of "Kiwi Shoe Polish" issued by Respondent No. 1.

2. The DGAP, vide his Report dated 31.08.2018, reported that the above application was examined by the Standing Committee on Anti-profiteering in its meeting held on 28.02.2018, wherein it was decided to refer the matter to the DGAP, for initiating a detailed investigation to determine whether the benefit of reduction in the rate of tax on the said item had been passed on by the Respondent No. 1 to the applicant No. 1 and other customers. On receipt of the reference from the Standing Committee on Anti-profiteering, the DGAP observed that the said application was not accompanied by the requisite evidence of profiteering and thus concluded that the allegation of profiteering was not substantiated. Accordingly, a closure Report vide letter F.No. D-22011/API/11/2018/1023 dated 11.04.2018 was submitted by the DGAP to this Authority. In response, this Authority, vide its Order No. 2/2018 dated 24.04.2018, directed the DGAP to conduct fresh investigation in the case and submit a detailed and reasoned Report. Thereupon, the DGAP initiated fresh investigation and in that process, sent an email dated 09.05.2018 to Applicant No. 1, seeking additional details/documents available with him to substantiate his allegation. Applicant No. 1, vide email dated 12.05.2018, replied that the Respondent No. 1 had not commensurately reduced the price of the "Kiwi Shoe Polish" and enclosed a copy of invoice no. CS-64964 dated 13.12.2017 issued by the Respondent as the supporting evidence. Thereafter, the DGAP issued a letter dated 14.05.2018 to

Respondent No. 1 asking him to submit the details regarding the pre-GST and post-GST prices charged by him for the supplies of the above item and certain other details required for the investigation.

3. In response, Respondent No. 1, vide his letter dated 22.05.2018, submitted copies of sample purchase invoices and sales invoices to the DGAP. Based on the information received from him the DGAP issued a Notice to Respondent No. 1 on 18.06.2018 under Rule 129 of the Central Goods and Services Tax Rules, 2017 asking him whether he admitted that he had not passed on the benefit of reduction in the rate of tax to Applicant No. 1 by way of a commensurate reduction in prices in the post rate-reduction period and to suo moto determine the quantum of benefit not passed on by him. Besides, Respondent No. 1 was also allowed to inspect the non-confidential evidence/ information received from Applicant No. 1 on any working day from 25.06.2018 to 27.06.2018, but Respondent No. 1 did not avail of this opportunity. Similarly, Applicant No. 1 was also allowed to inspect the non-confidential evidence/reply furnished by Respondent No. 1 on any working day from 29.08.2018 to 31.08.2018. Applicant No. 1 also did not avail of the opportunity.

4. The DGAP has reported that Respondent No. 1, vide his reply dated 22.05.2018, submitted that the supply under invoice CS-64964 dated 13.12.2017 was made by him out of the stock he had purchased from Respondent No. 2 on which he had borne GST @18% and had later sold the same charging GST @ 18%, and thus, the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 were not attracted in his case.

5. Respondent No. 1 also furnished copies of his purchase invoices of the pre and post-tax rate reduction periods and based thereon, submitted that his gross profit margin relative to the percentage of MRP during the period before 15.11.2017 and the period after 15.11.2017 remained constant, but his costs had increased from Rs. 43.63 to Rs. 50. He reiterated that in the case of the item Kiwi Shoe Polish, he had not profiteered at all.

6. Further, vide his email dated 03.07.2018, Respondent No. 1 furnished before the DGAP, certain records that included the details of invoice-wise outward taxable supplies (other than zero-rated) from 01.11.2017 to 30.09.2018, copies of his GSTR-1 and GSTR-3B returns from November 2017 to March 2018, and certain sample copies of his purchase and sale invoices.

7. DGAP further reported that the details of the invoice–wise outward supplies submitted by the Respondent were for the month of November 2017 only and the submissions did not contain the description of the goods and the place of supply. Accordingly, the DGAP issued an email dated 09.07.2018 to the Respondent to submit the same. Respondent No. 1, vide email dated 02.08.2018, submitted the invoice-wise outward supply for the item in question for the period November 2017 to March 2018. Further, vide his email dated 13.07.2018, the Respondent No.1 also submitted that as his aggregate turnover was more than Rs. 1.5 Cr. but less than Rs. 5 Cr. annually, he had been maintaining (and mentioning on his invoices) the HSN details of his outward supplies at 2 digit level only.

8. Based on the case records and the submissions made by Respondent, the DGAP investigated the issues of whether the GST rate applicable to the item "Shoe Polish" was reduced w.e.f. 15.11.2017 and if so, whether the benefit of such reduction in the rate of tax had been passed on by the Respondent No. 1 to his customers in terms of Section 171 of the Central Goods and Services Tax Act, 2017. In this context, the DGAP has reported that the Central Government, on the recommendation of the GST Council, had reduced the GST rate applicable to Shoe Polish from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 and the said fact has not been contested by Respondent No. 1. The DGAP has further reported that to pass on the benefit of reduction in the rate of tax from 28% to 18%, the Respondent No. 1 was required to sell the above goods at the pre-15.11.2017 base price and charge lower GST @18% on the said base price w.e.f. 15.11.2017. The DGAP has further stated that as a supplier registered under GST No. 04ABYPK3880F1ZB, it was the Respondent No. 1's statutory responsibility and obligation to pass on the benefit of reduction in the GST rate to his customers by way of a commensurate reduction in price.

9. The DGAP has further reported that it was evident from the sales data submitted by Respondent No. 1 that he had increased the base price of "Kiwi Shoe Polish" supplied by him in the post-tax rate reduction period, i.e. w.e.f. 15.11.2017, from Rs. 38.28 to Rs. 46.61. The DGAP has also found that the base price was increased by the Respondent No. 1, immediately after the tax rate reduction, by such an extent that

even with the incidence of lower GST@18% (as against 28% in the pre-tax reduction period), the cum-tax price of the said goods increased from Rs. 47.53 (pre 15.11.2017) to Rs. 53.35 (post 15.11.2017). Thus, by increasing the base price of the goods and charging GST at the lower rate of 18% on an increased base price, the Respondent No. 1 had not passed on the benefit of the tax rate reduction to his recipients. The DGAP has also reported that as per the sales data submitted by Respondent No. 1, the place of supply in respect of all his supplies, was the Union Territory of Chandigarh and that the amount of profiteering in respect of Respondent's supplies of the item, Kiwi Shoe Polish, computed for the period from 15.11.2017 to 31.03.2018, worked out to Rs. 181/-, details of which are in the Table-A below:-

Table- A

01.11.2017 to 14.11.2017						15.11.2017 to 31.03.2018							Commensurate Price per unit	Profiteering Per unit	Total Profiteering
MRP	Rate per unit	Discount offered	Amount charged	GST Rate	Actual Selling Price	MRP	Rate per unit	Discount offered	Amount charged	GST Rate	Qty. Sold	Actual Selling price			
A	B	C	D	E	F	G	H	I	J	K	L	M= 118% of J	N=118% of D	O=M-N	P=O*L
49	38.28	1.15	37.13	28%	47.53	55	46.61	1.40	45.21	18%	19	53.35	43.81	9.53	181

10. The above-referred Report was considered by the Authority in its meeting held on 11.09.2018 and accordingly, Respondent No. 1 and the Applicants were allowed an opportunity of being heard on 26.09.2018. Whereas, Respondent No. 1 was represented by Sh. Rohit Garg, Chartered Accountant & Sh. Kunal Bhatia, Authorised Representatives, and Applicant No. 2 was represented by Sh. Anwar Ali, Additional Commissioner, none appeared for Applicant No. 1.

11. Respondent No. 1 filed his written submissions dated 26.09.2018 before this Authority as also during the hearing, whereby he submitted that he was a retail trader based in Chandigarh and was dealing in confectionery and kirana items and was engaged in the purchase of MRP based confectionery/ kirana items bought from wholesalers/manufacturers for resale thereof and that he was not a manufacturer of any item and hence he had no control on the MRP of the products supplied by him.

12. In response to para No. 13 of DGAP's Report dated 31.08.2018, Respondent No. 1 submitted before this Authority that he increased the price charged (inclusive of GST) on his supplies of the impugned product to his recipients from Rs. 47.53/- to Rs. 53.35/- in the period after 15.11.2017 because the manufacturer (his supplier) had increased the MRP of "Kiwi Shoe Polish" from Rs. 49 to Rs.55 post 15.11.2017 and hence his own purchase price (cost), as a retailer, had increased from Rs. 44.54/- to Rs. 50/- post 15.11.2017, despite the GST rate reduction from 28% to 18%. In support of his claim, Respondent No. 1 submitted the following chart showing the comparative details of his cost sans taxes, the tax rate, the tax amount, the total cost, MRP of the product and the gross profit margin he earned in the period immediately before 15.11.2017 and the period after 15.11.2017:-

Amount (in Rs.)

Particulars	Post GST (Upto 15.11.2017)	Post GST (After 15.11.2017)
Cost without taxes	34.80	42.37
Tax Rate	28%	18%
Tax Amount	9.74	7.63
Total Cost	44.54	50
MRP	49	55
Gross Margin	4.46	5
Gross Margin (%)	9.10%	9.10%

13. Citing the above chart, Respondent No. 1 claimed that his gross profit margin as a percentage of MRP, which was 9.10% in the pre-rate reduction period, remained unchanged at 9.10% in the post rate reduction period, i.e. after 15.11.2017; that following the general trade practice, he was offering a discount to his recipients/ customers @ 3% on MRP out of his own gross margin; that it was the manufacturers/ wholesalers of "Kiwi Shoe Polish" who had profiteered by increasing the MRP of the said product despite the reduction in the GST rate and consequentially his own cost of purchase had increased despite the tax rate reduction and thus he had not profiteered; that the supply of "Kiwi Shoe Polish" affected by him vide his Bill No. CS-64964 dated 13.12.2017 was made out of the stock he had purchased from the Respondent No. 2, vide bill No. KAG-17088 dated 06.12.2017; that he had furnished a copy of the above-referred

bill, which evidenced that the MRP of item No. 6 "Kiwi PSP 40G" was Rs. 55/- and GST charged was @ 18%at the time he purchased the same; that he had, in turn, supplied the same charging MRP of Rs. 55/- (inclusive of 18% GST) vide bill No. CS-64964 dated 13.12.2017; that all his supplies of "Kiwi Shoe Polish" made during the period 15.11.2017 to 31.03.2018 were out of the stock he had purchased @ 18% GST; that, thus he had not profiteered and not contravened the provisions of Section 171 (1) of the CGST Act, 2017.

14. Given the submission of Respondent No. 1 that he had increased the price of his supplies of "Kiwi Shoe Polish" in the post-tax rate reduction period after 15.11.2017 because of the increase in his purchase price due to increase in the MRP of that product by the manufacturer, this Authority observed the need for investigation of the entire supply chain from the manufacturer to the distributor and from the distributor to the retailer from the perspective of the provisions of Section 171 of the CGST Act 2017 and accordingly ordered reinvestigation into the matter in terms of 133(4) of CGST Rules, 2017.

15. Thereafter, DGAP furnished his comprehensive Report dated 24.07.2019, which was returned to the DGAP as it was not furnished in accordance with Rule 129 (6) of the CGST Rules, 2017 and thereafter, the same was subsequently furnished to this Authority on 10.10.2019 wherein DGAP reported that the reinvestigation commenced with Respondent No. 1 submitting his purchase invoices dated 08.03.2017, 23.08.2017 and 06.12.2017 that had been issued by Respondent No. 2, i.e. the distributor in the supply chain; that the

above-referred invoices issued by Respondent No. 2 evidenced that manufacturer of the product i.e. Respondent No. 3, had increased the MRP of the impugned product after the tax rate was reduced on 15.11.2017. Consequently, the distributor's selling price had also increased, as a result of which, the price charged (inclusive of GST) from the retailer and in turn his recipients (final consumers) had, in reality, increased despite the tax rate reduction from 28% to 18% w.e.f. 15.11.2017, which indicated that the benefit of the tax rate reduction had not been passed on to the recipients. Accordingly, DGAP issued Notices to Respondent No. 2 and 3 on 26.10.2018 and 16.10.2018 respectively under Rule 129 of the CGST Rules, 2017.

16. DGAP has reported that Respondent No. 3, vide his submissions dated 30.10.2018, 22.11.2018, 07.12.2018, 24.12.2018, 10.01.2019 and 29.04.2019, furnished the invoice-wise details of his outward taxable supplies of the product "Kiwi Shoe Polish" for the period from 01.10.2017 to 30.09.2018 and copies of GSTR-1 and GSTR- 3B returns for the period October 2017 to September 2018 which were required for the investigation; Besides, the Respondent No. 3 also submitted before the DGAP that his gross margins had considerably reduced in the period after 01.07.2017 till 15.11.2017 since he had not increased the MRP of the impugned product at any stage in that period although the tax incidence on the said product had increased with the roll-out of GST w.e.f. 01.07.2017.

17. The DGAP has reported that the main issue that needed to be looked into was whether the GST rate applicable to the above product

was reduced from 28% to 18% w.e.f. 15.11.2017 and if so, whether the benefit of such reduction in the rate of tax had been passed on by the Respondent No. 3 to his recipients through the supply chain in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

18. After examining the records, DGAP has reported that the Central Government, on the recommendation of the GST Council, reduced the GST rate applicable to the above product from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017; and that though this fact has not been contested by Respondent No. 3, he has contended that his gross margins had considerably reduced in the post-GST period because he had not raised the MRP of the impugned product at the time of implementation of GST w.e.f. 01.07.2017 despite an increased tax incidence then.

19. The above contention of Respondent No. 3 was examined by DGAP and found untenable since not increasing the MRP of the above product when GST was implemented w.e.f. 01.07.2017, was a business decision taken by the Respondent No. 3 and could not be accepted as the reason for not passing on the benefit of tax rate reduction from 28% to 18% effected on 15.11.2017. The DGAP has further reported that to pass on the benefit of reduction in the tax rate w.e.f. 15.11.2017, Respondent No. 3 should have sold the above product at the pre rate reduction base price and charged the lower GST @18% on such base price in the period after 15.11.2017.

However, it transpired from the sales data submitted by the Respondent No.3 that he had raised the base price of the product post GST rate reduction w.e.f. 15.11.2017. Thus, by increasing the base price of the goods and charging GST at the lower rate of 18% on such increased base price, the commensurate benefit of GST rate reduction had not been passed on by Respondent No. 3 to his recipients; that amount of profiteering by the Respondent No. 3 in respect of the supply of the impugned product during the period 15.11.2017 to 30.09.2018 worked out to Rs. 1,10,41,026/-, as per Table-A below:-

TABLE – A

(Amount in Rs.)

Description of the goods	Post GST Sum of Total Taxable Amount	Post GST Sum of Quantity supplied (in Units)	Post GST Avg. Base Price	Pre GST Avg. Base Price	Commensurate Unit Selling Price	Post GST Actual Unit Selling Price	Profiteering per unit	Total Profiteering
	A	B	C=A/B	D	E=D + 18% GST	F=C + 18% GST	G= F-E	H = B x G
Kiwi LSP Black 40ml/60 IN	21915654.02	602460	36.38	34.44	40.64	42.93	2.29	1379633.40
Kiwi LSP Black 75ml/48 IN	48386518.54	901152	53.69	50.75	59.89	63.35	3.46	3117985.92
Kiwi LSP Brown 40ml/60 IN	3679615.79	103560	35.53	31.91	37.65	41.93	4.28	443236.80
Kiwi LSP Brown 75ml/48 IN	11492195.20	213168	53.91	49.87	58.84	63.62	4.78	1018943.04
Kiwi LSP Neutral 75ml/48 IN	11036352.12	203424	54.25	50.63	59.75	64.02	4.27	868620.48
Kiwi PSP Black 15g/240 IN	25029099.18	1238640	20.21	18.45	21.77	23.84	2.07	2563984.80
Kiwi PSP Black 40g/120 IN	45448948.80	1249440	36.38	35.57	41.97	42.92	0.95	1186968.00
Kiwi PSP Dark Tan 15g/240 IN	4819629.53	237840	20.26	19.34	22.83	23.91	1.08	256867.20
Kiwi PSP Dark Tan 40g/120 IN	5597083.46	158640	35.28	34.20	40.35	41.63	1.28	203059.20
Kiwi Wax Rich S&P Neutral 75ml/48 IN	16986.06	336	50.55	46.20	54.51	59.65	5.14	1727.04
Total Profiteering								**1,10,41,025.88**

The DGAP has reported that the place of supply-wise break up of this amount is given in Annexure-11 of his Report.

20. DGAP has further reported that Respondent No. 2, vide his replies dated 09.11.2018, 19.11.2018, 28.11.2019, 04.01.2019 and 14.01.2019, submitted the requisite documents viz. invoice-wise details of the outward taxable supplies of the above product during the period 01.10.2017 to 30.09.2018 and copies of GSTR-1 and GSTR- 3B returns for the period October 2017 to September 2018; that scrutiny thereof shows that to pass on the benefit of reduction in the rate of GST from 28% to 18%, Respondent No. 2 should have maintained his pre 15.11.2017, i.e., the pre-rate reduction profit margin and ought to have sold the above product by adding the pre 15.11.2017 profit margin to his post 15.11.2017 purchase price and should have charged lower GST @18% on such base price in the post-tax rate reduction period w.e.f. 15.11.2017; that however, the sales data submitted by Respondent No. 2 showed that he increased his profit margin in respect of some of the SKUs in the post-tax rate reduction period and thus raised his base sale prices. Thus, by increasing his profit margin and the base prices of the goods and charging GST at the lower rate of 18% on such increased base price, the commensurate benefit of GST rate reduction was not passed on by Respondent No. 2 to his recipients. The profiteering in respect of the supplies of the above product made by Respondent No. 2 during the period from 15.11.2017 to 30.09.2018, worked out to Rs. 1,819/- as per the details furnished in Annexure-17 of his report; and that the

place of supply of Respondent No. 2 was the Union Territory of Chandigarh only.

21. Further, DGAP has reported that Respondent No. 1, vide his reply dated 12.06.2019, has submitted the details of his invoice-wise outward taxable supplies of the above product for the period 01.10.2017 to 30.09.2018. The DGAP has found that to pass on the benefit of reduction in the rate of GST from 28% to 18%, Respondent No. 1 ought to have maintained his pre-rate reduction profit margin and sold the impugned product by adding the pre 15.11.2017 profit margin to his post 15.11.2017 purchase price and ought to have charged lower GST @18% on such base price w.e.f. 15.11.2017; that however, the sales data submitted by Respondent No. 1 showed that he had increased his profit margin in respect of some of the SKUs of the above product post-GST rate reduction from 28% to 18% w.e.f. 15.11.2017 and had raised his base prices; that thus, by increasing his profit margin and the base prices of the goods and charging GST at the lower rate of 18% on such increased base price, the commensurate benefit of GST rate reduction was not passed on by Respondent No. 1 to his recipients. The profiteering in respect of the supplies of the above product made by Respondent No. 1 during the period from 15.11.2017 to 30.09.2018 worked out to Rs. 413/- as per the details furnished in Annexure-20 of his report and that the place of supply of Respondent No. 1 was the Union Territory of Chandigarh only.

22. Consequently, the DGAP has concluded his report by stating that the base prices of the SKUs of the above product were increased and the commensurate benefit of reduction in the GST rate from 28% to 18% w.e.f. 15.11.2017 was not passed on to the recipients by all the three Respondents and hence all the Respondents have profiteered.

23. The above Report was considered by this Authority in its meeting held on 11.10.2019 and accordingly, the Applicants and the Respondents were allowed an opportunity of being heard. The first hearing was scheduled for 05.11.2019. In all, seven hearings were granted to the Applicants and the Respondents. None of the Applicants attended the hearings. Further, Respondent No. 1 and 2 also did not attend the hearings. Respondent No. 3 was represented in the hearings by Sh. Rishi Garg, Sh. Rajat Bose and Sh. Atulya Kishore, Advocates.

24. Respondent No. 3 filed his submissions dated 18.11.2019 wherein he interalia contended:-

a) The Application filed by Applicant No. 1 was concerning the supply of a specific product by Respondent No. 1 to Applicant No. 1; that Applicant No. 1 had not alleged any wrongdoing against him (Respondent No. 3) in the Application; that the matter before DGAP was the alleged profiteering by Respondent No. 1; that during the course of the investigation, Respondent No. 1 had furnished various documents to the DGAP, including his purchase invoices dated 08.03.2017, 23.08.2017 and 06.12.2017, which had been issued by Respondent No. 2; that out of these invoices furnished by

Respondent No. 1, i.e. invoice dated 23.08.2017, did not even mention the product i.e. 'Kiwi Paste Shoe Polish Black - 40gm', in respect of which the Application had been filed by Applicant No. 1; that none of the invoices submitted by Respondent No. 1 mentioned Respondent No. 3 to be the seller/supplier of the impugned product; that the DGAP, upon completion of the investigation in the matter of alleged profiteering by Respondent No. 1 had submitted a Report dated 31.08.2018 to this Authority in terms of Rule 129 (6) of the CGST Rules; that instead of proceeding with that Report this Authority made a wrongful reference to the DGAP vide its letter F. No. 22011/API/12/2018 dated 27.09.2018 ordering reinvestigation under Rule 133 (4) of the CGST Rules, without even receiving any complaint against the Respondent No. 3 and without any evidence and had merely speculated that the entire supply chain from the manufacturer to the retailer had profiteered; that the action of the Authority directing the DGAP to reinvestigate the matter in respect of the entire supply chain from the manufacturer to the distributor was without any authority.

b) That even though Applicant No. 1 in the present case had filed the application concerning the supply of only one product i.e. 'Kiwi Paste Shoe Polish Black - 40gm', this Authority had wrongly increased the scope of the investigation to the supply of all kinds of 'Kiwi Shoe Polish', including paste shoe polish, liquid shoe polish and wax shoe polish; that the application was filed by the Applicant No. 1 only against Respondent No. 1, however,

the DGAP incorrectly decided to initiate investigation against the Respondent No. 3 on account of the aforementioned letter dated 27.09.2018 from this Authority.

c) That one of the primary submissions made by him (Respondent No.3) before the DGAP was that before the introduction of GST w.e.f. 01.07.2017, the supply of 'Kiwi Shoe Polish' attracted tax at an average rate of 14.5% (including Central Sales Tax @ 2% and Value Added Tax @ 12.5%) whereas the impugned product was being manufactured in an excise exempt area whereby there was no incidence of excise duty on the product; that the net tax incidence on the said SKU saw a steep increase with the introduction of GST after which the supply of the impugned product started attracting GST @ 28%; that despite such a huge increase in the applicable tax, the Respondent No. 3 did not increase the MRP of the impugned product and continued to supply the same at the pre-GST MRP till October 2017, which was done with the objective that till the time the GST law stabilized and there was better clarity with respect to the procurement and distribution channel not only for the Respondent No. 3 but also for his distributors and retailers down the supply chain, the base price of the goods would remain the same; that after discussion with his distributors and to stem the accruing losses, he had increased the base price of his goods around October 2017; that he continued to affect his supplies at the increased MRP till February 2018, after which it was again reduced; that the MRP for most of his products was

brought down to the pre-GST level; that instead of benefitting after the introduction of GST, the tax incidence on the impugned product had actually increased, even after the rate of tax was reduced to 18% w.e.f. 15.11.2017; that the increase in the base price of the goods occurred much before the above date and hence there was no correlation between the increase in the base price and the reduction of the GST w.e.f. 15.11.2017.

d) That in terms of GST Rules, any investigation into alleged profiteering could only be initiated based on a written complaint received by the Standing Committee or the Screening Committee, in terms of Rule 128 of the CGST Rules, 2017; that in the present case, since no application had been received alleging profiteering by him, no proceedings could be initiated against him; that in case any application was filed against him under Rule 129 of the CGST Rules 2017, a copy of the same might be provided to him.

e) That, the Report submitted by the DGAP to this Authority was beyond the statutory time limit; that investigation and adjudication was a time-bound process which could not go beyond the time limit prescribed in the CGST Rules 2017; that since the DGAP had submitted his report after the expiry of the prescribed statutory time limit of 6 months this proceedings were liable to be quashed as time-barred in terms of the provisions of Rule 129 of the CGST Rules 2017 which provided for initiation and conduct of proceedings.

f) That Rule 129 (1) of the above Rules provided that the DGAP could initiate investigation for any alleged violation of Section 171 of the above Act, upon receiving a reference from the Standing Committee; that Rule 129 (3) of the above Rules provided for issue of a notice to the interested parties before initiating such investigation; further that Rule 129 (6) of the above Rules provided for the time limit within which the DGAP was required to complete his investigation and submit his Report to the Authority for further action under Rule 133 of the above Rules; that in the present case no reference was received by the DGAP from the Standing Committee to investigate any alleged violation of Section 171 of the above Act by him; that if it was assumed, without admitting, that the letter dated 27.09.2018, issued to the DGAP by this Authority under Rule 133 (4) of the above Rules, was nothing but a reference in terms of Rule 129 (1) of the CGST Rules and hence the DGAP was still required to submit his Report to this Authority within the prescribed time limit prescribed under Rule 129(6) of the said Rules which was not done since Rule 129 (6) reads as follows:-

"The Director General of Anti-profiteering shall complete the investigation within a period of three months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant

records…"; that in the present case, since the DGAP received the reference from the Authority vide its order dated 27.09.2018, the investigation should have been necessarily completed by the DGAP and the Report submitted to this Authority on or before 26.03.2019; that the Report was submitted by the DGAP to the Authority only on 25.07.2019 i.e. after a delay of about 4 months. Thus, the Report submitted by the DGAP to the Authority was time barred and liable to be set aside on this ground alone; that the amendment bought about in Chapter XV with effect from 28.06.2019 allowing extension of the period of investigation by another three months had not come into effect at the time of the present investigation and that there was also no evidence to indicate that this Authority had recorded the reasons in writing for extending the time limit of the investigation beyond a period of 6 months; hence DGAP was required to submit his report within the period of six months from the date of receipt of the reference; that the changes made vide the Amendment Notification should have had no bearing on the proceedings against him in the present case; that even if it is assumed that the Amendment Notification was applicable in the present case, even then the Report was submitted beyond the statutory time limit under Rule 129 (6) of the CGST Rules since the DGAP was required to conclude the investigation and submit his Report on or before 26.06.2019, however, the Report was submitted almost a month after the prescribed time limit; that thus he wished to reiterate that the report of the

DGAP was time barred and liable to be quashed on this ground alone, since this Authority did not have the statutory power to condone the above delay; that he placed reliance on the decision of the Hon'ble Supreme Court in the case of **Singh Enterprises v. Commissioner of Central Excise, Jamshedpur 2007 (12) TMI 11,** wherein the Hon'ble Supreme Court, while discussing the power of Commissioner (Appeals) to condone delay beyond the time limit provided under the Central Excise Act 1944, has held that once the statute provided for a time limit, the delay cannot be condoned; that the said decision reads as follows:-

"...8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of Statute were vested with jurisdiction to condone the delay beyond the permissible period provided under the Statute. The period upto which the prayer for condonation could be accepted was statutorily provided. It was submitted that the logic of Section 5 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') could be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner was satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he could allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within

60 days but in terms of the proviso further 30 days time could be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only upto 30 days after the expiry of 60 days which was the normal period for preferring appeal. Therefore, there was complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days period…"

25. Respondent No. 3 has also contended that no proceedings could be initiated against him in the absence of a specific complaint against him; that the anti-profiteering provisions, as provided under Section 171 of the CGST Act read with Chapter XV (Rule 122 to Rule 137) of the CGST Rules, necessitated that the application filed by an Applicant has to be concerning a specific supply and a specified supplier and that proper evidence was needed to be produced that the benefit arising out of a reduction in rate of tax or increase in input tax credit had not been passed on to the recipient and that such a complaint has to be first forwarded to the Standing Committee to examine the accuracy and adequacy of the evidence along with the application; that hence an application filed under Rule 128 of the CGST Rules could not allege profiteering against the entire supply

chain with respect to that supply; that in the present case, the Applicant No. 1, vide his application had alleged profiteering by Respondent No. 1 with respect to a specific product (i.e. Kiwi Paste Shoe Polish Black - 40gm) sold by Respondent No. 1 to the Applicant No. 1 and there was no allegation against him; that the proceedings initiated against him were without any jurisdiction and liable to dropped in terms of GST laws as he (Respondent No. 3) and Respondent No. 1 were two distinct legal entities, undertaking transactions on a principal to principal basis; that no proceedings under Section 171 of the above Act could be held against him; that to support his contention that the proceedings against him were bad in law, he relied on the decision of this Authority in the case of **Amway India Enterprises Pvt. Ltd. 2018 (10) TMI 1614** where it was held as follows:- *".....5. We have carefully considered the Report filed by the Applicant No. 2 as well as the submissions made by the Respondent and it was revealed from the facts stated above that the Applicant No. 1 had not supplied details of the products or the invoices vide which he had bought them from the Respondent inspite of repeated requests made by the Applicant No. 2 and therefore, the investigation conducted in the allegation levelled by the Applicant No. 2 against the Respondent could not establish profiteering for want of cogent and reliable evidence and hence no violation of the provisions of Section 171 of the CGST Act, 2017 has been found in this case. Accordingly, the application filed by the Applicant requesting for action against the Respondent for alleged violation of the provisions of the above Section was not maintainable and hence the same was dismissed.*

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

26. Respondent No. 3 has further contended that no other products supplied by him, other than 'Kiwi Paste Shoe Polish Black - 40gm', could have been made subject of the present investigation by DGAP; that neither did the DGAP have the authority to widen the scope of the investigation to include him and Respondent No. 2 (i.e. the entire supply chain), the DGAP as also this Authority had no authority to include any other goods (impacted products), i.e. other than 'Kiwi Paste Shoe Polish Black - 40gm' within the scope of the investigation; that thus the entire investigation is liable to be quashed since the application filed by Applicant No. 1 was only with respect to supply of a specific product i.e. 'Kiwi Paste Shoe Polish Black - 40gm' effected by Respondent No. 1; that the scope of the investigation had been improperly widened to include him and all his supplies; that he wished to place his reliance on the order of the Hon'ble Delhi High Court in the case of **Reckitt Benckiser India Pvt. Ltd. v. Union of India & Ors. W.P.(C) 7743 of 2019**. In the said case an application was filed by a person alleging profiteering by the petitioner concerning the supply of 'Dettol HW Liquid Original 900 ml'. However, even though the application was filed only with respect to the above product, the DGAP had issued notice to the petitioner directing to submit necessary information for all the products dealt with by the petitioner.

The Petitioner had approached the Hon'ble Delhi High Court which held as follows:-

"....4. It was pointed out by Mr. P. Chidambaram, learned Senior Counsel for Petitioner, that the National Anti-Profiteering Authority has ordered an inquiry as regards one of the products of the Petitioner i.e. Dettol HW Liquid Original 900 ml ('Complained Product'). The grievance of the Petitioner was that the Director General of Anti Profiteering (DGAP) has by the impugned notice dated 8th/9th April, 2019 sought information on all products of the Petitioner. In this context, he has referred to the recent amendment by which Sub-Rule 5 (a) has been inserted after Sub-Rule 4 in Rule 133 of the Central Goods and Service Tax Rules 2017 ('CGST Rules') which contemplates the NAPA, for reasons to be recorded in writing, and that too after receipt of the report of the DGAP on the Complained Product, to require the DGAP to cause 'investigation and inquiry with regard to such other goods or services or both' in accordance with the provisions of the Central Goods and Services Tax Act, 2017. It was the case of the Petitioner that without there being a report of the DGAP on the complained product followed by an order of NAPA in terms of Rule 133 (5) (a) of the CGST Rules, the DGAP cannot suo motu issue a notice requiring the Petitioner to submit information on all its products which were approximately 3500 in number.

.....

6. The Court was of the view that the Petitioner has made out a prima facie case for granted of limited interim relief. It was directed that, till the next date, it will not be required to furnish information to the DGAP pursuant to the impugned notice other than information pertaining to the Complained Product. It is, however, clarified that the NAPA's inquiry as far as the Complained Product was concerned will proceed in accordance with law……."

27. Citing the above decision, Respondent No. 3 has contended that no investigation could have been conducted against him, especially in respect of his supplies of products other than 'Kiwi Paste Shoe Polish Black - 40gm'; that accordingly, the following products being supplied by him other than 'Kiwi Paste Shoe Polish Black - 40gm' were liable to be excluded from the purview of the Report: -

S. No.	Description of the goods	Alleged profiteering amount (INR)
1.	Kiwi LSP Black 40ml/60IN	13,79,633.40
2.	Kiwi LSP Black 75ml/48IN	31,17,985.92
3.	Kiwi LSP Brown 40ml/60IN	4,43,236.80
4.	Kiwi LSP Brown 75ml/48IN	10,18,943.04
5.	Kiwi LSP Neutral 75ml/48IN	8,68,620.48
6.	Kiwi PSP Black 15g/240IN	25,63,984.80
7.	Kiwi PSP Dark Tan 15g/240IN	2,56,867.20
8.	Kiwi PSP Dark Tan 40g/240IN	2,03,059.20
9.	Kiwi Wax Rich S&P Neutral 75ml/48IN	1,727.04
Total		98,54,057.88

Accordingly, an amount equal to Rs. 98,54,057.88/- was liable to be excluded from the scope of the DGAP's Report as the same pertained to the supply of goods other than the product specifically mentioned by the Applicant in his written complaint to the Standing Committee.

28. Respondent No. 3 has also argued that the amendment brought about in Chapter XV vide vide Notification No. 31/2019 – Central Tax dates 28.06.2019, amending Rule 133 of the CGST Rules and introducing Rule 133 (5) of the CGST Rules to give power to this Authority to include other supplies of goods and services within the scope of an investigation was not in force at the time of the present investigation; that since the said provision was introduced only with effect from 28.06.2019, prior to that date this Authority did not have the power to direct the DGAP to investigate supplies of goods or services, for possible contravention of Section 171 of the CGST Act other than those goods or services which formed part of the original complaint; that thus the directions issued by this Authority to DGAP under Rule 133 (4) of the CGST Rules vide its letter dated 27.09.2018 were improper; that in any case no order had been passed by this Authority under Rule 133 (5) of the CGST Rules instructing the DGAP to include other supplies of goods or services within its scope of investigation other than 'Kiwi Paste Shoe Polish Black - 40gm' i.e. the goods in respect of which the original application was filed by the Applicant No. 1 and hence the action of the DGAP to include his supplies of other products in the scope of its investigation was beyond its authority; also that this Authority did not

have the power to order initiation of a fresh investigation against any person other than ordering further investigation in an ongoing matter where a complaint has already been filed under Rule 128 of the CGST Rules; that accordingly, the letter dated 27.09.2018 issued by this Authority was bad in law in terms of Rule 133 of the CGST Rules, which provided the detailed procedure to be followed by this Authority after receiving a Report from the DGAP; that this Authority, after receiving the Report from the DGAP, had to independently determine whether a registered person had passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices and that such determination has to be completed by this Authority within a specified period of time; that in case this Authority came to a conclusion that the registered person had contravened the provisions of Section 171 of the CGST Act, it could pass an appropriate order under Rule 133 (3) of the CGST Rules. However in terms of Rule 133 (4) of the CGST Rules, in case the Authority was of the opinion that further investigation or inquiry was called for in the matter, it could (with reasons to be recorded in writing) refer back the matter to the DGAP to cause further investigation in accordance with the provisions of Rule 133 (4) of the CGST Rules which reads as follows:- *".....(4) If the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129 recommends that there was contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority was of the opinion that further investigation or inquiry was*

called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Anti-profiteering to cause further investigation or inquiry in accordance with the provisions of the Act and these rules……"; that Rule 133 (4) could only be invoked by this Authority to direct DGAP to conduct further investigation as might be necessary in an ongoing matter; that the power granted under the said Rule to the Authority was a special power which had to be used sparingly, in cases where this Authority was not satisfied with the conclusions/findings or the methodology adopted by the DGAP during the course of a particular investigations; that in any case Rule 133 (4) of the CGST Rules could not be legally used for increasing the scope of an investigation beyond the original complaint to include the entire supply chain; that thus, in the absence of any enabling power, the order passed by this Authority under Rule 133 (4) of the CGST Rules, ordering initiation of fresh inquiry against the Respondent No. 3 was without any authority and was therefore liable to be quashed and set aside along with subsequent proceedings.

29. Respondent No. 3 also reiterated his submission made before the DGAP that the tax rate leviable on 'Kiwi Show Polish Black – 40 gm', before the rollout of GST, i.e. before 01.07.2017, was lower than the post rate reduction tax rate, i.e. after 15.11.2017 and thus he had not profiteered; that before the introduction of the GST laws, his supplies were subject to the tax incidence of 2% Central Sales Tax, 12.5% Value Added Tax and zero Excise Duty, since he was operating in an Excise Exempt Area, that however, with the introduction of the GST w.e.f. 01.07.2017, the tax incidence on the goods became 28%, but

he did not increase the price of his products and absorbed the higher tax; that based on his discussion with his distributors and to stem his accruing losses, he increased the base prices of his products w.e.f. 03.10.2017; that through this increase he was only able to maintain the same profit level as he was having in the period before the introduction of GST; that in the intervening period, his gross profit margins had reduced significantly on account of the increased tax incidence as is evident from the Table below:-

Comparison of gross margin percentage (quarter by quarter comparison)					
Period	Quarter-1	Quarter-2	Quarter-3	Quarter-4	Total
FY 2016-17 (Pre-GST)	51.4%	46.0%	44.8%	42.4%	**45.4%**
FY 2017-18 (Post-GST)	50.4%	N.A.	N.A.	N.A.	**42.5%**
FY 2017-18 (Post -GST)	N.A.	35.2%	44.2%	40.6%	
Reduction in gross margin (Pre-GST less Post-GST)	N.A.	10.8%	0.6%	1.8%	**2.9%**

30. Citing the above Table, Respondent No. 3 has contended that DGAP has ignored the fact that he had not increased prices of his products with effect from 01.07.2017 although the tax rate had increased significantly; that the interpretation given by the DGAP was not only against the concept of profiteering, but was overreach and an arbitrary exercise of power because the genesis of profiteering was to ensure that with the implementation of GST, in case the tax incidence on certain goods was reduced when compared with the tax incidence in the earlier indirect tax regime, the benefit of such reduction in the tax incidence should reach the ultimate customer; that in his case, tax incidence on his supplies post rate reduction on 15.11.2017 continued to remain more than the tax incidence prior to 01.07.2017 and hence the cumulative impact was that the tax rate on his supplies

had increased despite the rate reduction on 15.11.2017; that hence he was under no obligation to reduce his base price as he had not benefitted from the tax rate reduction; that he could not be penalized for not increasing his base prices at the time of introduction of GST and be made to suffer while trying to get his business back to normal profit levels by ensuring that the increased tax incidence was offset; that in order to compute profiteering, the tax incidence on SKUs could not be restricted to the period immediately prior to and post rate reduction and the tax incidence had to be compared with the tax incidence in the pre-GST regime; that the end customers should also not profiteer unjustly; that thus the entire investigation was bad in law and based on an incorrect application of Section 171 of the CGST Act since Section 171 of the CGST Act clearly provided that only a benefit on account of reduction of rate or increased input tax credit was required to be passed on to the recipients; that in view of the above, in order to compute the 'benefit' correctly, the tax incidence on each of the SKUs supplied by him was required to be computed by factoring in the tax incidence on goods on the reference dates viz. prior to 01.07.2017, 01.07.2017 to 14.11.2017 and after 15.11.2017 and that unless the entire period mentioned was taken into account, it was statistically impossible to calculate the 'benefit' accrued to him on account of introduction of GST per SKU; that he has worked out the tax incidence on Kiwi Paste Shoe Polish Black – 40 gm (SKU) for the aforesaid period in the Table below:-

S. No.	Period	Effective tax incidence
1.	Prior to 01.07.2017	14.5% (2% CST + 12.5% VAT)

2.	01.07.2017 to 14.11.2017	28%
3.	15.11.2017 onwards	18%

31. Citing the above Table, Respondent No. 3 further contended the DGAP should have considered the net impact after the introduction of GST and not just the time period between October 2017 and September 2018, that DGAP has adopted an erroneous methodology to compute the alleged profiteering amount.

32. Respondent No. 3 has also inter-alia argued that the DGAP's computation of the profiteered amount was erroneous because it was based on the cum-tax basis which was nothing but his notional income and that DGAP had erred in taking into account the amount of GST which was either recovered or would have been recovered by him from his customers; that the allegation contained in Para 7 of the Report has no basis as it suggested that the computation was based on the full invoice value charged by him inclusive of GST despite the fact that the GST collected by him on his supplies had been deposited by him as evidenced by the returns furnished by him; that in any case his customers were eligible to claim input tax credit of the GST charged by him and the tax amount was neither a cost to the distributor nor a profit for him (Respondent No.3); that he wished to rely on the judgment of the Hon'ble Uttarakhand High Court passed in the case of **Director of Income Tax v. M/s Schlumberger Asia Services**, wherein the Court has held that taxes collected by a service provider did not constitute his income as such taxes were to be deposited with the Government, the relevant extract of which is reproduced below for ease of reference:-

"43. The provider of the service, i.e. the assessee, could collect service tax from the users of the service as contemplated under Sections 12A and 12B of the Central Excise Act, 1944. (All India Tax Payers Welfare Association; Pearey Lal Bhawan Association). Like excise duty and sales tax, service tax was also an indirect tax and was recovered by the assessee on behalf of, and as the agent of, the Government (Lakshmi Machine Works) at such rates as were specified. Neither the State nor the agent was entitled to collect tax at a rate higher than that specified. (M/s Saraswati Abharansala). When an assessee recovers indirect tax (such as excise duty, sales tax or service tax), it was required to pay such tax to the appropriate Government within the stipulated time. In the meanwhile, the assessee holds the money not as the owner, but in trust for the Government.

33. Citing the above case, Respondent No. 3 has asserted that the provisions of Chapter V of the Finance Act obligated an assessee (a service provider registered under the Act) to pay service tax on the amount received as consideration for the services rendered by him to the service recipient. Since Service Tax, an indirect tax, could be passed on by a service provider to the service recipient, reimbursement thereof, by the service recipient to the service provider, could not be treated as the presumptive income, of the service provider under Section 44BB of the Act.

34. Accordingly, Respondent No. 3 has averred that any GST collected by him was merely held in trust by him for the appropriate

Government. It was not in dispute that he has discharged his GST liability on the entire amount collected by him from his distributors. Therefore, to the extent of the GST amount collected on sales, no profiteering could be said to have occurred. The profiteering amount, if any, was therefore liable to be reduced by the amount of GST collected.

35. Respondent No. 3 has also argued that the trade discounts already given by him to his customers were required to be deducted from the amount of profiteering computed by the DGAP. Respondent No. 3 has also submitted that the Report of the DGAP had erred in computing the alleged profiteering amount in so far as trade discounts given by him to his customers had not been considered for appropriate deduction. In this regard, Respondent No. 3 has also submitted that he had provided a 'secondary discount' to his customers at the end of each month which had a direct impact on the price per unit sold by him to his customers. In this regard, Respondent No. 3 has placed reliance on the order of this Authority passed in the case of the Kerala State Level Screening Committee on Anti-profiteering & Ors. v. M/s Peps Industries Pvt. Ltd. 2019 (3) TMI 1566. In the said case, the assessee had increased the base price from Rs. 7986/- to Rs. 8040/- while there was a decrease in the GST rate from 28% to 18%. The assessee took the argument that the increase in base price was reduced to the commensurate levels by giving a discount to the buyer. The Authority had accepted the argument of that party and had held that there was no profiteering by the assessee. He contended that in his case also, he had given trade

discounts to his customers during the period from 15.11.2017 to 30.09.2018, and accordingly, the said amount was liable to be adjusted while calculating the alleged profiteering amount.

36. Respondent No. 3 has also contended that the methodology adopted by the DGAP was incorrect as profiteering ought to have been computed on a per-customer and per-SKU basis but had been wrongly computed by arbitrarily selecting values across the entire line of business and has also submitted that while there was no internal methodology prescribed by this Authority, it has held in various orders that the profiteering amount was to be computed based on each transaction/ supply to each recipient to accurately detect if there was a profiteering qua the recipient. In this regard, he has placed reliance on the order of this Authority passed in the case of **Kiran Chimirala and another v. M/s Jubilant Foods Works Ltd. 2019 (2) TMI 295**, wherein the Authority has held as below:-

"Each and every customer was entitled to receive both the above benefits without discrimination. Therefore, the provisions of anti-profiteering have to be applied at each and every Product/SKU level and the Respondent has no unfettered discretion to allow them selectively or as per his own whims and fancies."

37. Respondent No. 3 has stated that while the Authority had propounded the above principle, the DGAP has failed to apply the same principle in his case in as much as the alleged profiteering amount has been calculated by the DGAP on a broad basis and not on an SKU level and customer level. Given the above, the methodology adopted by the DGAP was incorrect and the

computation of the amount of profiteering was erroneous and arbitrary and was therefore liable to be set aside.

38. Respondent No. 3 has also stated that the computation offered by him taking into consideration the accurate pricing methodology was correct and should be accepted by this Authority. Respondent No. 3 has submitted that he had adopted the following approach to compute the alleged profiteering amount:-

Basis of computation	Rationale
Respondent No. 3 has taken the highest average base price per product per customer before the Effective Date.	*Since the base price was revised before the Effective Date, i.e. 15 November 2017, without taking into account the reduction in GST rate, such increased base price was the most relevant for comparing with the base prices post the Effective Date.*
Respondent No. 3 has only considered the net selling price of goods which excludes the trade discounts offered by Respondent No. 3 to its customers on a month to month basis.	*Trade discounts have the effect of reducing the sale consideration and the Respondent No. 3 cannot be said to have profiteered to the extent that the average unit base price was reduced by Respondent No. 3. This was also propounded in the case of Peps.*
Respondent No. 3 has considered the net sale prices to its customers excluding GST as against the invoice price.	*GST recovered by Respondent No. 3 has already been deposited with the Government. Moreover, such GST recovered from customers was available as input tax credit to the customers and was therefore not borne by the recipients/ customers.*
Respondent No. 3 has considered the alleged profiteering amount on a per-customer per-SKU basis as that was the true reflection of any profiteering done by Respondent	*Correct computation of profiteering could only be done on a per-customer and per - SKU basis. The DGAP has incorrectly taken into account data from even those customers to whom a particular product has not been sold either pre or post the*

No. 3	*Effective Date, which has resulted in skewed findings.*

Based on the above methodology, he submitted that the alleged profiteering in respect of Kiwi Paste Shoe Polish Black 40 gm, worked out to Rs. 2,71,064/- and accordingly his computation may be accepted to determine the alleged profiteering.

39. Respondent No. 3, vide his further submissions, dated 04.12.2019 contended that for computing profiteering, the highest average base price per product per customer for the period before 15.11.2017 should have been taken and compared with the average base price in the post 15.11.2017 period; that the DGAP had directed him to submit invoice-wise details of the outward taxable supplies of the product 'Kiwi Shoe Polish' during the period 01.10.2017 to 30.09.2018, which he had furnished but DGAP had wrongly calculated the average base price of the goods supplied by him during the period from 1.10.2017 to 14.11.2017 and compared the same with the average base price of the goods sold by him in the post 15.11.2017 period, thus ignoring the fact that during the month of October 2017 he had increased the MRP (along with the net base prices charged by the Respondent No. 3 from his customers) of his various products including Kiwi Shoe Polish Black– 40gm. He also stated that DGAP has also ignored the fact that he had decreased the MRP of his products during the month of February 2018 intending to pass on the benefit of tax rate reduction, details of which in respect of Kiwi Shoe Polish Black – 40gm are as follows:-

Table A

Name of the product	Period	MRP (INR)	Approx. base price charged (before factoring trade discounts)	Base price as per DGAP
Kiwi Shoe Polish Black – 40gm	Prior to October 2017	49	32.17	35.57
	October 2017 to 14.11.2017	55	36.02	
	15.11.2017 to February 2018	55	39.31	36.38
	Post-February 2018	49	35.03	

40. Respondent No. 3 contended that while calculating the average base price of the goods sold by him before 15.11.2017, the DGAP had incorrectly taken an average of the base prices charged by him across all his customers which was charged before the price increase in October 2017 and compared the same with the average base price charged by him across all his customers which was charged post 15.11.2017, whereas DGAP should have taken the highest base price charged before 15.11.2017 and the base price existing before the price increase in October 2017 should not have been taken into consideration. To substantiate the above contention, Respondent No. 3 has furnished invoices that show the MRP, along with the base price, charged by him for supplies of the product 'Kiwi Shoe Polish Black – 40 gm' as proof of the upward revision of prices effected by him starting October 2017 and the downward revision of prices after February 2018:-

Customer	Invoice		MRP	Price per case (A)	Units per case (B)	Base Price Per Unit (C= A/B)	Reduction in Base Price
	Date	No.					
Kanwal Agencies	06.11.2017	ZIRIN0001791	55	4464.29	120	37.20	**1.25**
	05.03.2018	ZIRIN0002712	49	4314.32	120	35.95	
Future Retail Ltd.	21.10.2017	AMBIN0000921	55	4445.04	120	37.04	**1.51**
	17.03.2018	AMBIN0001817	49	4264.12	240	35.53	
CISF Unit Vizag	20.10.2017	VIJIN0001862	55	3643.20	120	30.36	**0**
	27.03.2018	VIJIN0003712	49	3643.25	120	30.36	
Bhaijiwala & Co.	14.10.2017	AHMIN0001138	55	4464.29	120	37.20	**1.25**
	14.03.2018	AHMIN0002882	49	4314.32	120	35.95	
Future Retail Ltd.	25.10.2017	DELIN0001063	55	4445.04	120	37.04	**1.51**
	07.03.2018	DELIN0002136	49	4264.12	120	35.53	
Madhav Marketing	05.10.2017	AHMIN0001072	55	4418.83	120	36.82	**1.24**
	07.03.2018	AHMIN0002770	49	4270.40	120	35.58	

41. Respondent No. 3 reiterated his contention that the trade discount already given to his distributors/ customers amounting to Rs. 1,23,61,660/- by way of credit notes, during the period October 2017 to September 2018, for market promotion, ought to be deducted from the alleged profiteering amount. He also furnished the details of the trade discounts given by him in respect of Kiwi Shoe Polish Black – 40 gm, which are as under:-

Trade Discounts Passed By the Respondent No. 3 for Kiwi Shoe Polish Black – 40gm	
Discounts passed to distributors for the period 01.10.2017 to 14.11.2017	230,655

Discounts passed to distributors for the period 15.11.2017 to 30.09.2018	29,33,762
Total trade discount passed	31,64,417

He submitted that these trade discounts were communicated by him to his distributors every month and the details thereof were available to the distributors on the Distribution Management Software available with them. Basis the actual sales made by them, the distributors filed a claim on him for passing the trade discounts. He has furnished the following documents as supporting evidence in respect of this contention that since the trade discounts offered by him amounted to reduction in the base price of his supplies, hence, the aggregate discount given by him was liable to be reduced from the computation of the amount of profiteering:-

a. Copy of sales promotion scheme and percentage of trade discount which would be passed on to the distributors every month
b. Copy of the claim form filed by M/s Kanwal Agencies every month from October 2017 to September 2018
c. Copy of the credit notes issued by Respondent No. 3 to M/s Kanwal Agencies during the period October 2017 to September 2018.
d. A screenshot of his Distribution Management System indicating the active sales scheme for M/s Kanwal Agencies as proof that his distributors were aware of the sales promotion scheme.

42. Respondent No. 3 also reiterated his contention that the computation of profiteering should have been made at the invoice level, i.e. for each product sold to each customer, as repeatedly held by this Authority; that the computation suggested by him had taken into consideration, only those distributors to whom a product had been supplied by him in both the periods, i.e. before 15.11.2017 and after the said date; that the computation suggested by him excluded the supplies made to those distributors, to whom no product was sold post 15.11.2017, as there was no comparable price for such distributor's pre and post 15.11.2017; and that he relied on the Order of this Authority passed in the case of **M/s Signature Global Developers Pvt. Ltd.,** wherein it has held as below:-

> "51...*the method of computation of this provision has been given in the text of Section 171 of the CGST Act, 2017 itself. We observe that the said provision clearly links profiteering to be a function of each supply of goods or services or both and hence, profiteering needs to be computed at the level of each tax invoice...*"

43. Respondent No. 3 also stated that the computation of the profiteered amount required to be reduced by the amount of GST collected and discharged by him and has given detailed computation thereof and also illustrated the same as below:-

> *If the base price of Kiwi PSP Black-40gm would have remained unchanged at Rs. 35.57 post 15.11.2017, the applicable GST would have been Rs. 6.4/-. However, since as per the Report, the price was increased to Rs. 36.38/-, the GST actually*

discharged by the Respondent No. 3 has been Rs. 6.54/-. Thus admittedly, the Respondent No. 3 has discharged an increased amount of Rs. .14/- on each unit sold which he had already deposited with the Government.

44. Respondent No. 3 also reiterated the legal submissions made by him previously *vide* his letter dated 19.11.2019, highlighting that in the present case the complaint was only concerning the supply of Kiwi Paste Shoe Polish Black – 40 gm by Respondent No. 1 and hence the investigation against him, incorporating the other supplies of the above product was improper; that he placed reliance on the FAQs issued by this Authority wherein it has been provided as follows:-

"Q 11. Whether one form was sufficient for multiple goods or services?

Ans. No, the prescribed application form APAF-01 was with reference to a single Good/Service. In case of application for multiple Goods/Services, separate application for each Good/Service was required to be filed."

45. During the hearings, on being asked, Respondent No. 3 clarified a few issues relating to different product codes of his different products and submitted that even for the same product there could be different product codes. For instance, product code '697577' – sold at an MRP of Rs. 55/- and product code '305674' – sold at an MRP of Rs. 49/- were both for the same product, i.e. Kiwi Paste Shoe Polish Black – 40gm, that had been supplied by him during the period October 2017 to September 2018 and that the same product having different product codes was for the reasons that the same product had been

supplied by him at two different MRPs, i.e. Rs. 49/- and Rs. 55/-. To keep track of the products in his online systems, he had assigned different product codes for the same product and the invoices issued by him during that period also mentioned the two different product codes and two different MRPs. He contended that since he had increased the MRP of his product, Kiwi Paste Shoe Polish Black – 40gm before 15.11.2017, only the highest base price of the impugned product existing before 15.11.2017 should have been taken to compute the profiteered amount, which he elaborated in the manner as is contained in the table below:-

Customer	Invoice		MRP	Price per case (A)	Units per case (B)	Base Price Per Unit (C= A/B)	Reduction in Base Price
	Date	No.					
Kanwal Agencies	06.11.2017	ZIRIN0001791	55	4464.29	120	37.20	1.25
	05.03.2018	ZIRIN0002712	49	4314.32	120	35.95	
Future Retail Ltd.	21.10.2017	AMBIN0000921	55	4445.04	120	37.04	1.51
	17.03.2018	AMBIN0001817	49	4264.12	240	35.53	
CISF Unit Vizag	20.10.2017	VIJIN0001862	55	3643.20	120	30.36	0
	27.03.2018	VIJIN0003712	49	3643.25	120	30.36	
Bhaijiwala & Co.	14.10.2017	AHMIN0001138	55	4464.29	120	37.20	1.25
	14.03.2018	AHMIN0002882	49	4314.32	120	35.95	
Future Retail Ltd.	25.10.2017	DELIN0001063	55	4445.04	120	37.04	1.51
	07.03.2018	DELIN0002136	49	4264.12	120	35.53	
Madhav Marketing	05.10.2017	AHMIN0001072	55	4418.83	120	36.82	1.24
	07.03.2018	AHMIN0002770	49	4270.40	120	35.58	

46. DGAP, in his supplementary Report dated 08.01.2020, in response to the Respondent No. 3's submissions dated 18.11.2019, stated that the Respondent No. 3's contention regarding the Report dated 24.07.2019 being time-barred held no ground since the Report had been submitted to this Authority in terms of Rule 133 (4) of the Rules

and not under Rule 129 (6) of the Rules as contended by Respondent No. 3. DGAP further submitted that while a time limit of six months had been specified under Rule 129 (6), there is no such time limit specified under Rule 133 (4) of the CGST Rules 2017.

47. DGAP has also reported that the submission made by Respondent No. 3 that any changes in the provisions effected vide the amendment brought about in Chapter XV of the Rules w.e.f. 28.06.2019, should have no bearing on this investigation was correct since the said amendment had the effect of extending the time period for completing fresh investigations that were referred to the DGAP by Standing Committee under Rule 129 (1) of the Rules and also resulted in the insertion of the new Rule 133 (5) in the Rules, ibid. However, these amendments have no bearing on the DGAP Report dated 24.07.2019 which was issued in pursuance of the order of this Authority under Rule 133 (4) of the CGST Rules 2017, which implied that the contention of Respondent No. 3 was baseless and hence liable to be rejected.

48. Referring to the contention of Respondent No. 3 that no proceedings could have been initiated against him in the absence of a specific complaint, DGAP has reported that this contention of Respondent No. 3 was based on an incorrect interpretation of the anti-profiteering provisions contained in the CGST Act 2017 and the Rules framed thereunder since Rule 133(4) of the CGST Rules read with Section 171 of the CGST Act 2017 provided that if this Authority was of the opinion that further investigation or inquiry was required in a matter, it could refer the matter back to the DGAP to cause further investigation

or inquiry in accordance with the provisions of the Act and the Rules. Hence, the Report was legal and in line with the said Act and the Rules. The DGAP also reported that in so far as the Respondent No. 3's reference to the Order of this Authority passed in case of **Amway India Enterprises Pvt. Ltd.** was concerned, the DGAP submitted that Report was in accordance with the applicable Rules and in the absence of any reliable and cogent evidence to establish profiteering by that party, this Authority had decided that case accordingly but that the facts of the present case were different and hence, the ratio decidendi of the case cited by Respondent No. 3 could not be applied to the case in hand.

49. Regarding the contention of Respondent No. 3 that no products supplied by him other than 'Kiwi Paste Shoe Polish Black-40 gm', could have been subjected to the present investigation by the DGAP since the application was only concerning the supply of a specific product i.e. 'Kiwi Paste Shoe Polish Black-40 gm', DGAP has submitted that the investigation was conducted by him and Report was submitted in line with anti-profiteering provisions of Section 171 of the CGST Act 2017 and the Rules framed thereunder, which provided for initiation of an investigation by the DGAP upon receipt of the recommendation of the Standing Committee on a complaint, or as the case might be, a reference from this Authority under Rule 133 (4) to revisit the investigation already conducted by the DGAP. If the investigation revealed that the case was one of profiteering, then in terms of Section 171 of the Act and Rules made thereunder, all the recipients who ought to have benefitted but have been denied the

same by the supplier are identified and the quantification of the benefit denied, to each of the recipients/ beneficiaries, was worked out by the DGAP along with the computation of the total amount of profiteering by the supplier. In case the beneficiaries were not identifiable, the profiteered amount was quantified which was liable to be deposited with the Consumer Welfare Funds. DGAP reiterated that in terms of Section 171 of the CGST Act 2017, the investigation could not be confined to the Applicant alone, but has to cover all supplies made by a supplier to all his other recipients/ customers also. Once the investigation was completed, DGAP submitted his Report to this Authority. Referring the present case, DGAP has submitted that the process adopted by the DGAP was the same as that was adopted in the similar investigations conducted under Rule 133(4) of the CGST Rules 2017 and was in line with the legal principles and that the methodology of the DGAP was the same as was adopted in all similar cases investigated hitherto.

50. Regarding the contention of the Respondent No. 3 that the present case was not a case of profiteering since the pre-GST (before 01.07.2017) tax rate leviable on the impugned product, i.e. Kiwi Shoe Polish Black- 40 gm was lower than post-tax rate reduction period (after 15.11.2017), DGAP has reported that in terms of anti-profiteering provisions, the scope of the investigation in respect of the said Respondent was confined to the question of whether he had passed on to his recipients/ customers, the benefit of the reduction in the tax rate from 28% to 18% w.e.f. 15.11.2017, by way of commensurate reduction in the prices of the products supplied by

him. Hence, the issue that needed to be investigated was whether the prices of products supplied by the Respondent No. 3 had been reduced by him in the post-tax rate reduction period, i.e. after 15.11.2017, commensurately as compared to the product prices of his supplies before that date. Therefore, the contention of Respondent No. 3 that profiteering ought to have been computed based on the tax rate of the pre-GST era has no basis. DGAP has also submitted that the contention of Respondent No. 3 that he had not increased the prices of his products despite the increase in the tax rate on 01.07.2017 upon the rollout of GST and thus suffered losses, was irrelevant for computing profiteering as on 15.11.2017. DGAP has also submitted that the decision of Respondent No. 3 of not increasing his product prices in the post GST rollout period after 01.07.2017 was nothing but a commercial decision that has no bearing on the present investigation which was confined to profiteering on account of reduction in the tax rate w.e.f. 15.11.2017 and therefore prices of the impacted products/ SKUs immediately before the rate reduction and prices thereof after the said reduction were only relevant. DGAP has further stated that for the tax rate reduction effective from 15.11.2017, the pre-GST tax incidence has no relevance.

51. Responding to the contention of Respondent No. 3 relating to the methodology adopted by the DGAP, DGAP has stated that the process adopted by the DGAP in his Report under Rule 133 (4) of the Rules was in line with the legal principles relating to anti-profiteering

and that the methodology being followed by the DGAP has been consistent and the has also been upheld constantly by this Authority.

52. In response to the contention of Respondent No. 3 that profiteering has been wrongly computed by the DGAP on cum tax (i.e. inclusive of GST) basis, DGAP stated that since the investigation has revealed that despite the tax rate reduction, Respondent No. 3 had raised the base prices of his products and then charged GST on the increased base prices, he had forced his recipients/ consumers to pay more and hence the benefit arising out of the reduced tax rates w.e.f. 15.11.2017, was denied to them and thus the end consumers were made to pay more. Further, the contention that the excess tax so collected was paid to the Government was also irrelevant to the present investigation since it remained a fact that the recipients/ customers/ end consumers were denied the benefit of the tax rate reduction by Respondent No. 3. DGAP has further reported that by raising the base prices of his products and charging GST on the increased price, the Respondent No. 3 has profiteered at the expense of the end consumer and therefore this contention of the Respondent No. 3 was incorrect and baseless. DGAP has also submitted that the process adopted by the DGAP for the investigation was in line with settled legal principles.

53. Regarding the contention of Respondent No. 3 that trade discounts given by him to his recipients/ customers ought to have been deducted from the computation of profiteering, DGAP has stated that extending trade discounts was Respondent No. 3's commercial decision and the same has no relation to the issue of reduction in

prices/ MRPs for passing on the commensurate benefit to recipients/ customers, therefore, the said contention of Respondent No. 3 was baseless.

54. Responding to the contention related to the methodology adopted by DGAP for the computation of profiteering, whereby Respondent No. 3 has argued that profiteering ought to have been computed on a per-customer and per-SKU basis, i.e. on each invoice level, DGAP has reported that the methodology adopted by the DGAP, in this case, was in consonance with the established legal principles. DGAP has added that no fixed/uniform mathematical methodology could be applied to all cases of profiteering since facts of each case were unique and differ from other cases. DGAP has further stated that profiteering has been computed in the present case by taking the average base prices of the impugned products before the tax rate reduction and comparing the same with the post-rate reduction price thereof.

55. In response to the contention of Respondent No. 3, made vide his submissions dated 04.12.2019, that the computation suggested by him be accepted, DGAP has, vide his supplementary Report dated 10.02.2020, stated that Respondent No. 3's contention (that the highest average base price per product in the pre-rate reduction period ought to have been taken and compared with the post-tax rate reduction selling price excluding the GST component) was not maintainable since the average base price of the products immediately before the tax rate reduction provided the most accurate basis for computation of the benefit arising out of such tax rate

reduction, hence, the same has been consistently adopted by DGAP in all similar cases. DGAP had added that as per the provisions of Section 171 of the CGST Act, 2017 the effective cum-tax price of the product to the customer should commensurately come down whenever tax rate was reduced and hence for computing the amount profiteering in the present case, the base price of a product was the taxable value of the product immediately before the tax rate reduction. In the present case, the base prices of all the variants of the Impugned product, i.e. "Kiwi Black", have been determined by taking the average of the SKU wise prices existing in the period from October 2017 to 14.11.2017, and comparing the same with the average post rate reduction base prices for each of the SKUs. The DGAP has also reported that the Respondent No. 3 has himself admitted that he had been supplying his products at the increased MRPs, despite the tax rate reduction that took effect from 15.11.2017, which evidenced the non-compliance of Section 171 of the CGST Act, 2017 on the part of Respondent No. 3.

56. DGAP has further reported that the claim made by Respondent No. 3, relating to trade discounts offered by him to his distributors in the form of Credit Notes during the period October 2017 to September 2018, was not backed by documentary evidence since no such credit notes had been furnished as evidence by Respondent No. 3 before the DGAP. Thus the validity of the said claim was not verifiable and hence not considered in the computation of profiteering.

57. DGAP has further stated that the Respondent No. 3's contention that profiteering in his case ought to be calculated only for those distributors to whom the product was supplied by him in both the periods, i.e. before 15.11.2017 and after that date was illogical and unacceptable. DGAP has also stated that profiteering on account of any reduction in the rate of tax has to be determined by verifying as to whether the cum-tax price of the impugned product in the post-tax rate reduction period had been reduced commensurately with the reduction in the rate of tax or not and whether the benefit has been passed on through the supply chain to the end consumers. The DGAP has added that in the current investigation, he has correctly covered all the supplies of the impacted products made by Respondent No. 3 and that the same was in line with the anti-profiteering provisions.

58. Respondent No. 3, in his submissions dated 25.02.2020 responded to the clarifications of the DGAP, whereby he reiterated all his previous contentions. He, interalia, highlighted his contention that the investigation in his case could not have been extended to include his other products since the application involved only one of his products. He also highlighted that profiteering should be computed at the invoice level as has been repeatedly held by this Authority and added that DGAP has denied this contention without any sound basis. He further contended that the principle of law laid down by this Authority was that Section 171 provided that profiteering was a function of each supply and hence it needed to be computed at the level of each tax invoice and thus the computation should exclude his supplies to those

distributors to whom no products were sold post 15.11.2017 as there was no comparable price for such distributors in the pre-tax rate reduction period before 15.11.2017 and the post-tax rate reduction period, i.e. after 15.11.2017.

59. We have carefully heard the Applicants, the Respondents and have also perused the record placed on the file and we take note of the facts that Respondent No. 3 is involved in the procurement and supply of various products in India including 'Kiwi Paste Shoe Polish Black-40 gm' and supplies his products through his distributors. Respondent No. 2 is one of the distributors in his supply chain whereas Respondent No. 1 is a retailer in the supply chain. It is further revealed that the Central and the State Governments vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 had reduced the rates of GST from 28% to 18% w.e.f. 15.11.2017. This fact has also not been contested by the Respondents. Therefore, there is no dispute that the Respondents were liable to pass on to their recipients, the benefit of the tax reduction effected w.e.f. 15.11.2017.

60. On perusal of the Reports submitted by the DGAP and various submissions made by the Respondent No. 3, we interalia observe that for the mathematical computation of the profiteered amount, the DGAP has worked out the product-wise average base price of the impugned products supplied by the Respondent No. 3 during the pre-tax rate reduction period from 01.10.2017 to 14.11.2017 and compared the same with the average base price of the goods supplied by him during the post-tax rate reduction period after

15.11.2017. In this context, we observe that Respondent No. 3 has submitted before this Authority that he had increased the MRPs (along with the net base prices charged by him from his recipients in the supply chain) of his various products including Kiwi Shoe Polish Black – 40gm in October 2017 and that this fact had been ignored by the DGAP while computing the profiteered amount in his case. We also find that the Respondent No. 3 has submitted before this Authority that in the post-tax rate reduction period, he had reduced the prices of the impugned products in February 2018 to pass on the benefit of the tax rate reduction to his recipients, which has also not been considered by the DGAP. Respondent No. 3 has submitted certain documents (including invoices issued by him in the pre-tax-rate reduction period) before this Authority to substantiate his above claims, which are as below:-

S. No.	Invoice No.	Date of supply invoice issued by Respondent No. 3	MRP of Kiwi PSP Black MER-40 gm (in Rs)
1.	AHMIN0001072	05.10.2017	55
2.	AHMIN0001138	14.10.2017	55
3.	VIJIN0001862	20.10.2017	55
4.	AMBIN0000921	21.10.2017	55
5.	DELIN0001063	25.10.2017	55
6.	ZIRIN0001791	06.11.2017	55
7.	ZIRIN0002712	05.03.2018	49
8.	DELIN0002136	07.03.2018	49
9.	AHMIN0001770	07.03.2018	49
10.	AHMIN0002882	14.03.2018	49
11.	AMBIN0001817	17.03.2018	49
12.	VIJIN0003712	27.03.2018	49

Given the above-mentioned facts, we find that in terms of Section 171 of the CGST Act 2017, profiteering merits to be computed based on comparison of the extant prices of various SKUs/ products

immediately before and after a tax-rate reduction. Hence the submissions of the Respondent No. 3 and the evidence furnished by him in support of his claim needs to be examined in detail, for which DGAP will have to revisit the investigation and recompute the amount of profiteering accordingly if the submission made by the Respondent No. 3 is found to be factual on verification of the supporting evidence furnished by him. The said reinvestigation will entail not only the examination of the issue of whether the benefit was passed on by Respondent No. 3 to his recipients by way of reduction in MRP but also whether the benefit was passed on by the other Respondents in the supply chain to their respective recipients.

61. We also observe that Respondent No. 3 has contended before this Authority that DGAP has incorrectly computed the profiteered amount by comparing the average pre rate reduction base prices of the impacted products with the average post rate reduction base prices since the same is not in consonance with the methodology adopted by this Authority in similar cases of profiteering. We find that Respondent No. 3 has relied on several decisions of this Authority on this issue. A scrutiny of the computation of profiteering contained in the DGAP report and annexures thereto confirms that the above contention of Respondent No. 3 is correct. It is clear to us that the computation of profiteering done by the DGAP, in this case, is not in consonance with the methodology adopted by DGAP himself in similar cases of tax rate reduction wherein the amount of profiteering has been determined by comparison of the average pre rate reduction base prices with the actual post rate reduction prices. We

also opine that the mathematical methodology of comparing the average to average base prices employed by the DGAP cannot be accepted since adopting this methodology will make it impossible to compute the commensurate benefit of tax reduction which is due to each recipient/ customer on each of the supplies made by Respondent No. 3. Besides, the aggregate profiteered amount in respect of Respondent No. 3 is also likely to change once the correct methodology is adopted. In such circumstances, we hold that the mathematical methodology adopted by the DGAP for computation of profiteering needs to be revised so that it aligns with the provisions of Section 171 (1) and Section 171 (2) of the CGST Act, 2017. Hence, without going into the merits of the case and without dwelling on any of the contentions made by Respondent No. 3, we are of the view that reinvestigation is necessary in the present case. It is pertinent that since the case will be reinvestigated, DGAP may consider all the submissions made by the Respondent No. 3 during the course of the hearings on merits.

62. Further, we observe that vide their submissions dated 5/6.11.2019 and 4.11.2019, Respondent No. 1 and Respondent No. 2 had claimed that they had deposited certain amounts in the Consumer Welfare Fund. However, the details thereof had to be verified. For verification of the above claims, copies of the above submissions made by Respondent No. 1 and Respondent No. 2 were sent to DGAP and reminders were issued vide this Authority Orders dated 23.12.2019, 03.01.2020, 17.01.2020, 10.02.2020, 26.02.2020 and 12.03.2020. However, no verification report regarding the same was

received from the DGAP. The said verification also needs to be carried out by the DGAP while reinvestigating the matter.

63. Therefore, the Report dated 24.07.2019 furnished by the DGAP cannot be accepted and without going into other facts of the case and the other contentions of Respondent No. 3, this Authority, under powers conferred on it under Rule 133(4) of the CGST Rules read with Section 171of the CGST Act 2017, directs the DGAP to reinvestigate the above case in entirety, and particularly on the following lines:-

(i) DGAP, as done by him as in all such previous cases, shall compute the profiteered amount afresh after comparing the average pre-tax rate reduction base prices with the actual post-tax rate reduction prices in respect of all the supplies of all the impacted products made by Respondent No. 3 as also the other Respondents during the period of investigation.

(ii) While reinvestigating the matter, DGAP shall take into consideration, after due verification of the evidence including sale invoices of Respondent No. 3, his claim of having increased the prices of the impacted products in October 2017, i.e. the period just before the tax rate reduction that took effect from 15.11.2017. Similarly, the contention of Respondent No. 3 that he had reduced the prices of his various products in the month of February 2018 shall be verified with the necessary evidence, and if found correct, the same shall also be

considered appropriately while computing the amount of profiteering.

(iii) While reinvestigating the matter, all the other contentions made by Respondent No. 3 before this Authority during the course of the hearings, especially those relating to mathematical computation of the profiteered amount in his case, shall also be considered by the DGAP on their merits keeping the view the anti-profiteering provisions contained in Section 171 of the CGST Act 2017.

64. While reinvestigating the matter on the above lines, he shall also recompute the profiteering in respect of Respondent No. 1 and Respondent No. 2, on the same lines as in the case of Respondent No. 3, if the same is merited. Further, the DGAP shall also verify the claims of the Respondent No. 1 and Respondent No. 2 of having deposited the profiteered amount and applicable interest thereon in the CWF(s).

65. The DGAP shall submit his Report after reinvestigation under Rule 129 (6) of the above Rules. The Respondents are directed to extend necessary assistance to the DGAP and furnish him necessary documents or information required during the course of the investigation.

66. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this

Authority on 10.10.2019 the order was to be passed on or before 09.04.2020. However, due to the prevalent pandemic of COVID-19 in the Country, this order could not be passed on or before the above date due to force majeure. Accordingly, this order is being passed today in terms of the Notification No. 55/2020-Central Tax dated 27.06.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

67. A copy of this order be supplied to all the parties and file of the case be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

(A.K.Goel)
Secretary,NAA

F. No. 22011/NAA/94/Bhatia/2019 3585/3590 Dated: 08.07.2020

Copy for information and necessary action to:-

1. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai ViR Singh Marg, New Delhi-110001.
2. M/s Bhatia Confectioners, SCO 10-11, Sector 19-C, Chandigarh. Email id :- rpga.info@gmail.com
3. M/s Kanwal Agencies, SCO 383, 2nd Floor, Sector 37-D, Chandigarh. Email:- kanwal37.chd@gmail.com.
4. M/s S.C. Johnson Products Pvt. Ltd., 5th Floor, Plot No. 68, Sector 44, Gurugram, Haryana- 122003. Email:- indiainfo@scj.com, aarora@scj.com, carora@scj.com.
5. Sh. Ajay Jagga, 231, Sector 21-A, Chandigarh- 160022. Email id :- apjagga@yahoo.com,
6. Guard File/NAA website

A. K. GOEL
SECRETARY, NAA