

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

Case No.	61/2020
Date of Institution	27.02.2020
Date of Order	08.09.2020

In the matter of:

1. Principal Commissioner, Medchal Commissionerate, 11-4-649/B, Lakdi-Ka-Pool, Hyderabad-500004.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

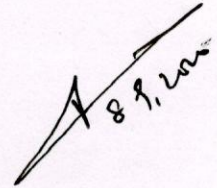
Versus

M/s Shiva Parvathi Theatre 70 MM, Plot No. 3, Survey No. 178,
Kukatpally Housing Road, Medchal, Hyderabad-500072.

Respondent

Quorum:-

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



Present:-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The present Report dated 26.02.2020 has been received by this Authority from the Applicant No. 2, i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the DGAP has received a reference from the Standing Committee on Anti-Profiteering in respect of an application filed by the Applicant No. 1, under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of "Services by way of admission to exhibition of cinematograph films" despite the reduction in the rate of GST from 28% to 12% w.e.f. 01.01.2019.
2. Vide his Report, the DGAP has reported that Applicant No. 1 had alleged that the Respondent had not passed on the benefit of reduction in the GST rate on "Services by way of admission to exhibition of cinematograph films" from 28% to 12% which came into effect on 01.01.2019 vide Notification No. 27/2018-Central Tax

(Rate) dated 31.12.2018. Along with the Application form APAF-1, Letter dated 26.03.2019 of the Respondent requesting for information regarding reduction of movie tickets prices and letter dated 29.03.2019 of the Applicant No. 1 to the Standing Committee on Anti-profiteering.

3. The DGAP has stated that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 of the Rules was issued on 08.07.2019 calling upon the Respondent to respond as to whether he admitted that he had not passed on the benefit of reduction in GST rate w.e.f. 01.01.2019 to his recipients by way of commensurate reduction in prices and, if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice as well as to furnish all documents in support of his reply. The Respondent was also allowed to inspect the non-confidential evidence/information which formed the basis of the said notice, during the period from 15.07.2019 to 17.07.2019. However, the Respondent did not avail of the said opportunity.
4. The DGAP has further stated that in response to the notice dated 08.07.2019, the Respondent did not submit the requisite documents. Hence, reminder letters dated 30.07.2019, 09.08.2019 and 04.09.2019 were issued to him. However, the Respondent did not submit any document even after the above reminder letters. Therefore, Summons dated 24.09.2019, 18.10.2019 and 18.11.2019 under Section 70 of CGST Act, 2017 read with Rule 132 of the Rules, were issued to the Director of the Respondent to appear in the

office of Directorate General of Anti-profiteering for submission of the requisite documents/information. However, no reply/submissions were given by the Respondent in reply to the notice dated 08.07.2019, reminder letters, and three Summons. However, the notices/letters sent to the Respondent by e-mails/Speed Post/Registered Post were received by him. Further, vide letter dated 16.12.2019, the Applicant No. 1 was also requested to obtain the documents/information required for investigation from the Respondent.

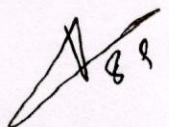
5. The DGAP has further stated that in response to the letter dated 16.12.2019, the Applicant No. 1 vide HQAE No. 266/2018-19 dated 31.12.2019 forwarded the documents required for investigation. Further, it was also informed that the GST Registration of the Respondent had been cancelled suo moto by the Range Officer, KPHB Range on 07.01.2019 as the Respondent had failed to file 6 consecutive returns. Hence, GSTR-1 and GSTR-3B Returns for the period of December 2018 to June 2019 were not available.
6. The DGAP has further reported that the time limit to complete the investigation was extended up to 27.03.2020 by this Authority vide Order dated 12.12.2019, in terms of Rule 129(6) of the CGST Rules, 2017.
7. DGAP has reported that the Applicant No. 1 has forwarded soft copy of the below-mentioned documents/information vide e-mail dated 13.02.2020:-



- (a) Invoice-wise details of all outward taxable supplies of the movie admission tickets impacted by GST rate reduction w.e.f. 01.01.2019, during the period from 01.09.2018 to 30.06.2019.
- (b) Price List of the aforesaid movie admission tickets, pre and post 01.01.2019.
- (c) Sample copies of the invoices/tickets, pre and post 01.01.2019.

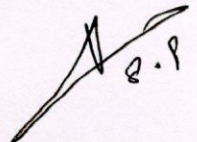
8. The DGAP has reported that vide e-mail dated 13.02.2020, the Applicant No. 1 was allowed to inspect the non-confidential documents/reply of the Respondent on 17.02.2020 to 18.02.2020, which was not availed of by the Applicant No.1. The DGAP has further reported that the period covered by the current investigation was from 01.01.2019 to 30.06.2019.

9. The DGAP also reported that he has examined the reference from the Standing Committee on Anti-profiteering and the documents/evidence on record. The main issues to be examined in the present matter were whether the GST rate on "*Services by way of admission to exhibition of cinematography films where price of admission ticket is above one hundred rupees*" was reduced from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission exhibition of cinematograph films where the price of the admission ticket is one hundred rupees or less*" was reduced from 18% to 12% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in



the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

10. It has also been mentioned by the DGAP that the Central Government, on the recommendation of the GST Council, reduced the GST rate on "*Services by way of admission exhibition of cinematograph films where price of admission ticket is one hundred rupees or less*" from 18% to 12% w.e.f. 27.07.2018, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 and this matter of fact had not been contested by the Respondent.
11. The DGAP has also stated that as per the provisions of Section 171 of the CGST Act, 2017 the legal requirement was very clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in prices of the goods or services. Such reduction could be only in terms of money, so that the final price payable by a consumer gets reduced commensurate with the reduction in the tax rate. This was the legally prescribed mechanism for passing on the benefit of ITC or reduction in the rate of tax to the recipients under the GST regime and there was no other method to pass on such benefits.
12. The DGAP has also reported that the Applicant No. 1, in his letter dated 29.03.2019 and the Annexure attached to APAF-I has furnished the details of the price being charged before 01.01.2019 and price charged from 01.01.2019 and had pointed out that the Respondent was selling tickets of different categories priced at Rs.



100/- or less than Rs.100/- (excluding Tax). Hence the investigation was limited to a reduction in the rate of GST from 18% to 12% only.

13. It has also been reported by the DGAP that as per the sales data of the Respondent, it was revealed that he was dealing in three categories of admission tickets amounting to Rs. 30/-, Rs. 70/- and Rs. 100/- (inclusive of tax) sold by him during the pre-rate reduction period. In the post rate reduction period effective from 01.01.2019 the price of the admission tickets (inclusive of tax) in three categories was not changed or reduced and the cum tax price of three categories of admission tickets remained same after the rate reduction and it appeared that the benefit of reduction in the tax rate in respect of the cinematography services to the extent of 6% (18% - 12%) was not passed on to the recipients by the Respondent.
14. The DGAP has further stated that on the issue of determination and quantification of the profiteering by the Respondent, it was observed from the details of the sales made available that the Respondent had increased the base prices of the admission ticket when the GST rate was reduced from 18% to 12% w.e.f. 01.01.2019. The same has been illustrated by the DGAP in the below Table-A:-

Table-A

(Amount in Rs.)

Sr. No.	Category of Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019				
		The amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	The amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	Commensurate Base Price(in Rs.)	The amount which was to be Charged (in Rs.)

A	B	C	D	E=[C/ 118%]	F	G	H	I	J=(I*112%)
1	Emerald Circle	100	18	84.75	100	12%	89.29	84.75	94.92
2	Dress Circle	70	18	59.32	70	12%	62.50	59.32	66.44
3	Emerald	30	18	25.42	30	12%	26.79	25.42	28.47

15. The DGAP has reported that from the above Table it was evident that the Respondent had increased the base prices in all three categories of admission tickets. However, the Respondent had increased the base price of the admission ticket from Rs. 84.75 to 89.29 for Emerald Circle and from Rs. 59.32 to 62.50 for Dress Circle. There wasn't any sale in the case of admission tickets for the Emerald category during the period of investigation. Thus the actual cum tax prices of the tickets were not reduced though they should have been revised as Rs. 94.92 for Emerald Circle and Rs. 66.44 for Dress Circle but the Respondent had continued to charge the pre rate reduction prices and maintained the actual cum tax prices by increasing the base prices of the tickets. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of GST rate reduction from 18% to 12% in respect of "Services by way of admission to exhibition of cinematography films" was not passed on to the recipients in case of all categories of admission tickets.

16. The DGAP has further stated that having established the fact of profiteering, the next step was to quantify the same. Based on aforesaid pre/ post reduction in GST rates and the details of outward

supplies for the period from 01.12.2018 to 30.06.2019, the DGAP has reported that profiteering during the period from January 2019 to June 2019 from the sale of tickets in three categories mentioned in table A above amounted to Rs. 3,68,534/- for Emerald Circle category and Rs. 1,63,091/- for the Dress circle category. It was also observed from the details of outward supplies that there was no sale (outward supply) of admission tickets in the Emerald category (Rs. 30/-) during the period from 01.01.2019 to 30.06.2019. Therefore, there wasn't any profiteering in the case of Emerald. The total amount of net higher sale realization due to an increase in the base prices of the movie tickets, despite the reduction in GST rate from 18% to 12% or in other words, the profiteered amount came to Rs. 5,31,625/-. The details of the computation have been furnished by the DGAP in the Table "B" below:-

Table-B

(Amount in Rs.)

Sr. No	Admission ticket	01.01.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	The excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 12%	Profiteering per unit (Rs.)	Qty. Sold	Total Profiteering (including tax @12%) (in Rs.)
A	B	C	D	E= (C-D)	F= (E*12%)	G= (E+F)	H	I= (H*G)
1	Emerald Circle	89.29	84.75	4.54	0.54	5.08	72546	3,68,534
2	Dress Circle	62.50	59.32	3.18	0.38	3.56	45812	1,63,091
3	Emerald	26.79	25.42	1.37	0.16	1.53	0	0
Grand Total								5,31,625/-

17. The DGAP has finally reported that the allegation of profiteering by way of increasing the base prices of the tickets (Services) and by not reducing the selling prices of the tickets (Services) commensurately, despite the rate reduction in GST rate on “*Services by way of admission to exhibition of cinematography films*” where price of admission ticket was one hundred rupees or less” from 18% to 12% w.e.f. 01.01.2019, appeared to be correct. From the table above, it was quite clear that the base price of the admission ticket of Emerald Circle was indeed increased from Rs. 84.75/- to Rs. 89.29/- and Dress Circle was increased from Rs. 59.32/- to Rs 62.50/-, as a result of which the benefit of reduction in GST rate from 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged (including reduced GST @ 12%). The total amount of profiteering covering the period from 01.01.2019 to 30.06.2019, was Rs. **5,31,625/- (Rupees Five Lakh Thirty One Thousand Six Hundred and Twenty Five only)**. The recipients of the services were not identifiable as no such details of the consumers had been provided. Therefore, given the aforementioned findings, it had been concluded by the DGAP that Section 171(1) of the CGST Act, 2017, requiring that “*any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices*”, had been contravened in the present case by the Respondent.



18. The investigation report was received by this Authority on 27.02.2020 and it was decided to accord opportunity of hearing to the Applicants and the Respondent on 19.03.2020. Notice dated 05.03.2020 was also issued to the Respondent directing him to explain why the Report dated 26.02.2020 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. The Respondent has been provided ample opportunities to appear before this Authority to counter the investigation carried out by the DGAP. The Respondent was accorded personal hearing and was directed to file his consolidated written submissions vide Order dated 19.03.2020, 01.06.2020 and 22.06.2020. However, the Respondent neither appeared for the hearing nor did he submit his written submissions in respect of the findings of the DGAP. Therefore, vide Order dated 24.07.2020, the Respondent was proceeded against ex-parte.

19. We have carefully examined the submissions of the Applicants as also the case record placed before us and it has been revealed that the Central and the State Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate)

dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.

20. On examining the various submissions placed on record, we need to find whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.

21. Section 171 of the CGST Act provides as under:-

“(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.”

(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITCs availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has

profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the Order by the Authority.

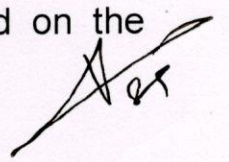
Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."

22. It is clear from the investigation carried out by the DGAP that the base price of the admission ticket has been increased from Rs. 84.75 to Rs. 89.29 for the Emerald Circle category and from Rs. 59.32/- to Rs. 60.50/- for the Dress Circle category as mentioned in Table-A above. Therefore, the Respondent has not reduced the base prices of the admission tickets in respect of the Emerald Circle and Dress Circle categories, instead maintained the pre-rate reduction cum tax prices by increasing the base prices of the above categories of admission tickets. Further, in respect of the prices of admission tickets for the Emerald category, it was found that no sales had been made by the Respondent during the period of investigation. Therefore, it can be concluded that there was no profiteering in the Emerald category of admission tickets.

23. Since the Respondent has not submitted any written submissions against the DGAP's report, we don't find any reason to differ from the findings of the DGAP that the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017.
24. On the basis of the facts discussed above, it has been established that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019 to 30.06.2019. On this account, the Respondent has realized an additional amount to the tune of Rs. 5,31,625/- from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteering is determined as Rs. 5,31,625/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 5,31,625/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients, in this case, are not

identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 5,31,625/- in the Central Consumer Welfare Fund (CWF) and the Telangana State CWF in two equal parts as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the Commissioner CGST/SGST as per the provisions of the SGST Act, 2017.

25. It is also evident from the above narration of the facts that the Respondent has denied the benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus resorted to profiteering. Hence, he has committed an offence for violation of the provisions of Section 171(1) during the period from 01.01.2019 to 30.06.2019 and therefore, he is apparently liable for imposition of penalty under the provisions of the above Section. However, perusal of the provision of Section 171 (3A) of the CGST Act, 2017 under which penalty has been prescribed for the above violation shows that Section 171 (3A) of the Act has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from 01.01.2019 to 30.06.2019 when the Respondent had committed the above violation and hence, the penalty prescribed under Section 171 (3A) of the Act cannot be imposed on the



Respondent retrospectively. Accordingly, notice for imposition of penalty is not required to be issued to the Respondent.

26. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is deposited in the respective Consumer Welfare Funds (CWFs). A report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this Order.
27. 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 27.02.2020 the order was to be passed on or before 26.08.2020. However, due to 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. 65/2020-Central Tax dated 01.09.2020 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.



28. A copy each of this Order be supplied to the Applicants, the Respondent, Commissioners CGST/SGST for necessary action. File be consigned after completion.



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

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

(A.K Goel)
NAA, Secretary

File No. 22011/NAA/139/STP/2020 / 4999 - 5005 Date:- 08.09.2020
Copy To:-

1. M/s Shiva Parvathi Theatre 70 MM, Plot No. 3, Survey No. 178, Kukatpally Housing Road, Medchal, Hyderabad-500072.
2. Pr. Commissioner, Medchal Commissionerate, 11-4-649/B Lakdi-Ka-Pool, Hyderabad-500004.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Pr. Commissioner, Central Tax & Central Ex., Hyderabad GST Commissionerate, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad-500004.
5. Commissioner of State Taxes, CT Complex, Nampally Station Road, Hyderabad-500001 (cst@tgct.gov.in).
6. Guard File.

A. K. GOEL
SECRETARY, NAA