

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

Case No. : 62/2020
Date of Institution : 03.04.2019
Date of Order : 10.09.2020

In the matter of:

1. Sh. Saurabh Gahoi, gahoi.saurabh@gmail.com.
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

M/s Pinky Sales, LSL G-2, Ground Floor, Plot No. 10, Vardhman Gee Dee Plaza, Sector-12, Dwarka, New Delhi-110078.

Respondent

Quorum:-

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



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Present:-

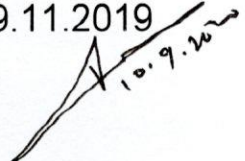
1. None for the Applicants.
2. Sh. Sachin Kumar, Proprietor and Sh. Rishabh Aggarwal, CA for the Respondent.

ORDER

1. The brief facts of the present case are that the Applicant No. 2 (here-in-after referred to as the DGAP) vide his Report dated 02.04.2019, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaint of the Applicant No. 1 and found that the Respondent had not passed on the benefit of rate reduction when the rate of GST was reduced from 18% to 5% in the foot wear (Shoes), as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of rate reduction to his customers amounting to Rs. 6,55,307/-, pertaining to the period w.e.f. 27.07.2018 to 30.11.2018 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.
2. This Authority after careful consideration of the Report dated 02.04.2019 had issued notice dated 03.04.2019 to the Respondent to show cause why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After hearing both the parties at length this

Authority vide its Order No. 40/2019 dated 26.06.2019 had determined the profiteered amount as Rs. 6,55,307/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 27.07.2018 to 30.11.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. During the course of the hearing, it was also held that the Respondent had not only collected extra amount on account of price of the 'foot wear' from his customers but he had also compelled them to pay more GST on the additional amount realised from them between the period from 27.07.2018 to 30.11.2018 and therefore, he had apparently committed an offence under Section 122 (1) (i) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section.
4. The Respondent was issued notice dated 03.07.2019 asking him to explain why the penalty mentioned in Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
5. The Respondent vide his submissions dated 24.09.2019 has stated that the penal provisions under Section 122 of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as he had accepted and deposited the entire profiteered amount which had been determined by this Authority in the Consumer Welfare Funds (CWFs) within 1 month from the date of the order issued by this Authority. Further, the Respondent vide his e-mails dated 27.11.2019 and 29.11.2019



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has submitted copies of two Demand Drafts in support of the deposition of the interest on the profiteered amount in the CWFs and the acknowledgement of the said Demand Drafts respectively. The DGAP has verified the above claim of the Respondent and vide his submissions dated 13.03.2020 has enclosed the letter No. PAO/CBIC HQrs/CWF/Misc/2019-20/4117 dated 06.03.2020 in relation to the confirmation of the deposition of Rs. 6,55,310/- in the CWFs by the Respondent vide Challan Nos. 594 & 595 of SBI, IP Estate, New Delhi dated 19.07.2019 and the Challan Nos. 568 & 569 of an amount of Rs. 42,946/- and Rs. 42,947/- of the Central Bank of India, Udyog Bhavan, New Delhi dated 12.03.2020 in relation to the confirmation of the deposition of Rs. 85,892/- as interest by the Respondent vide Demand Draft Nos. 500798 & 500799 dated 28.02.2020 to the CCA, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

6. The Respondent has interalia made a number of submissions for non- imposition of penalty. The main submission he has made is that the penalty should not be imposed as he has complied with this Authority's Order No. 40/2019 .
7. We have carefully considered the submissions of the Respondent and all the material placed before us and it has been revealed that the Respondent had not passed on the benefit of rate reduction when the rate of GST was reduced from 18% to 5% on foot wear, as per the provisions of Section 171 (1) of the CGST Act, 2017 for the period w.e.f. 27.07.2018 to 30.11.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

It is also clear from the record that the Respondent has also paid the entire profiteered amount in the Consumer Welfare Funds of the Central and the State Governments along with interest.

8. It is also revealed from the perusal of the CGST Act and the Rules framed under it that no penalty had been prescribed for violation of the provisions of Section 171 (1) of the above Act, therefore, the Respondent was issued show cause notice to state why penalty should not be imposed on him for violation of the above provisions as per Section 122 (1) (i) of the above Act as he had apparently issued incorrect or false invoices while charging excess consideration and GST from the buyers. However, from the perusal of Section 122 (1) (i) it is clear that the violation of the provisions of Section 171 (1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.
9. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A). Since, no penalty provisions were in existence between the period w.e.f. 27.07.2018 to 30.11.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) also cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 03.07.2019 issued to the Respondent for imposition of penalty under Section 122 (1) (i) is hereby withdrawn and the

present penalty proceedings launched against him are accordingly dropped.

10. Copy of this order be supplied to both the parties. File be consigned after completion.

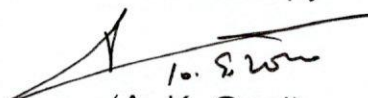


Sd/-
(J. C. Chauhan)
Technical Member

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy


10.9.2020
(A. K. Goel)
NAA, Secretary

F.No. 22011/NAA/22/Pinky/2019 | 2020 - 2023 Dated: 10.09.2020

Copy To:-

1. M/s Pinky Sales, LSL G-1, Ground Floor, Plot No. 10, Vardhman Gee Dee Plaza, Sector- 12, Dwarka, New Delhi- 110078.
2. Shri Saurabh Gahoi, email- gahoi.saurabh@gmail.com.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.


10.9.2020
A. K. GOEL
SECRETARY, NAA