

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

Case No. 90/2020
Date of Institution 14.11.2018
Date of Order 11.12.2020

In the matter of:

1. Kerala State Screening Committee on Anti-Profiteering, GST Bhavan, Press Club Road, Statue, Thiruvananthpuram, Kerala-695001.
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 Win Win Appliances, T. C. 28/106, KRA-28, Kaithamukku, Trivandrum, Kerala- 695024.

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 and 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 13.11.2018, 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 on the supply of "Matchless Plus TTWG Grinder" had not passed on the benefit of reduction in the rate of tax from 28% to 12% w.e.f. 15.11.2017, vide Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017 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 the customers amounting to Rs. 1,20,194/-, pertaining to the period w.e.f. 15.11.2017 to 31.07.2018 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 13.11.2018 had issued notice 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. 20/2019 dated 22.03.2019 had determined the profited amount as Rs. 32,926.36 /- 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 15.11.2017 to 31.07.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent had not passed on the benefit of rate reduction to the consumers between the period from 15.11.2017 to 31.07.2018 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 28.03.2019 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 05.04.2019 & 23.04.2019 has stated that the penal provisions should not be invoked and penalty should not be imposed on him. He has inter-alia made a number of submissions for non-imposition of penalty. The Respondent has also stated that his profit margin was reduced, when the base price adopted for selling the product was reduced due to reduction in the GST to 12% from 28%, which should also be considered. All the aberrations were not intentional and had happened due to facts submitted through earlier submissions. He further requested to condone the lapses occurred due to increase in base price by the manufacturer. There were no wilful lapses on the part of the Respondent but they have happened due to ignorance and the GST being a new tax.
6. 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 to the customers who had purchased the "Matchless Plus TTWG Grinder"

for the period from 15.11.2017 to 31.07.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.

7. 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 benefit of rate reduction and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.
8. 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).
9. Since, no penalty provisions were in existence between the period from 15.11.2017 to 31.07.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 28.03.2019 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)
Member(Technical)



Sd/-
(Amand Shah)
Member(Technical)

Sd/-
(B. N. Sharma)
Chairman

Certified Copy


(A. K. Goel)
NAA, Secretary

F.No. 22011/NAA/113/WinWin/2018 | 6469 - 6473 . Dated: 11.12.2020

Copy To:-

1. M/s Win Win Appliances, T.C. 28/106, KRA-28, Kaithamukku, Traivandrum, Kerala- 695024.
2. The Commissioner, GST, GST Bhavan, Press Club Road, Statue, Thiruvananthpuram, Kerala-695001, Member of State Level Screening Committee.
3. Commissioner, State GST Department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala- 695001.
4. 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.
5. Guard File.

o/c


A. K. GOEL
SECRETARY, NAA