

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

Case No. : 93/2020  
Date of Institution : 01.10.2018  
Date of Order : 11.12.2020

In the matter of:

Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Raj & Company, 16, DDA Market, Neeti Bagh, New Delhi-110049.

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 Applicant.
2. None for the Respondent.

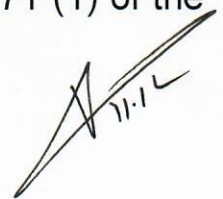
**ORDER**

1. The brief facts of the present case are that the DGAP vide his Report dated 08.08.2018, 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 and found that the Respondent had not passed on the benefit of reduction in the rate of tax to the customers by way of commensurate reduction in the price of the product "Garnier Nat Shade 3" 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. 3,43,109/-, pertaining to the period w.e.f. 15.11.2017 to 31.03.2018 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 08.08.2018 had issued notice dated 16.08.2018 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 this Authority vide its Order No. 25/2018 dated 27.12.2018 had determined the profiteered amount as Rs. 3,43,109/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules,

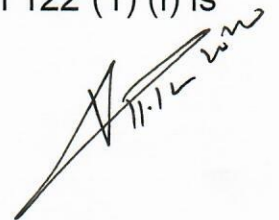
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2017 pertaining to the period from 15.11.2017 to 31.03.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent had not passed on the benefit of rate reduction to the customers between the period from 15.11.2017 to 31.03.2018 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 02.01.2019 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 was given opportunity to file his written submissions, if any, on 22.02.2019. The Respondent did not avail of the opportunity. However, no written submissions have been received from the Respondent till date. Further, the DGAP vide his submissions dated 05.03.2019 has stated that the Respondent has deposited Rs. 3,43,109/- in the Consumer Welfare Fund.
6. We have carefully considered all the material placed before us and it has been revealed that the Respondent had not passed on the benefit of reduction in the rate of tax to the customers by way of commensurate reduction in the price of the product "Garnier Nat Shade 3" during the period from 15.11.2017 to 31.03.2018 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 w.e.f. 15.11.2017 to 31.03.2018 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 02.01.2019 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.

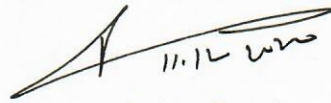


S/d  
(J. C. Chauhan)  
Technical Member

S/d  
(Amand Shah)  
Technical Member

S/d  
(Dr. B. N. Sharma)  
Chairman

Certified Copy

  
o/c A.K. Goel  
(Secretary, NAA)

F. No. 22011/NAA/63/Raj&C/2018 /6491-92

Date: 11.12.2020

Copy to:-

1. M/s Raj & Company, 16, DDA Market, Neeti Bagh, New Delhi-110049.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File



A. K. GOEL  
SECRETARY, NAA