BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	:	94/2020
Date of Institution	:	22.10.2018
Date of Order	:	11.12.2020

In the matter of:

1. Shri Surya Prakash Loonker, A-8, Madakani Enclave, Alaknanda, New Delhi-110019.
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 Excel Rasayan Pvt. Ltd., 123, DSIDC Complex, Okhla Industrial Area, Phase-I, New Delhi-110020.

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 04.09.2018, 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 had not passed on to his recipients, the benefit of reduction in the rate of tax of GST w.e.f. 15.11.2017 from 28% to 18% in respect of his supplies of "Fortune ADW Detergent 1Kg" and "Fortune Rinse Aid 500 ml." (hereinafter referred to as "the products"), 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 GST rate reduction to his recipients amounting to Rs. 4,64,894.74/-, 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 04.09.2018, had issued notice dated 11.09.2018 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 at length this Authority vide its Order No. 02/2019 dated 16.01.2019 had determined the profiteered amount as Rs. 4,64,849.74/-, 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

31.03.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent had not only collected extra amount on account of price of the above products from the consumers but he had also compelled them to pay more GST on the additional amount realised from them 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 24.01.2019 asking him to explain why the penalty mentioned in Section 122 read with Rule 133 (3) (d) should not be imposed on him.

5. The Respondent vide his submissions dated 27.02.2019 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 He has also interalia made a number of submissions for non imposition of penalty. The main submission he has made is that the penalty could only be imposed when there was mens rea and deliberate attempt to violate the provision. Since there was no such attempt, penalty should not be imposed on him.

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 has not passed on the benefit of reduction in GST rate from 28% to 18% on the above products w.e.f 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) of the CGST Act, 2017, it is clear that the violation of the provisions of Section 171 (1) is not covered under Section 122 (1) (i) of the CGST Act, 2017 as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the penalty prescribed under Section 122 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 31.03.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) can not be imposed on the Respondent retrospectively. Accordingly, the notice dated 24.01.2019 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.

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

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

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy

11.12.2020

(A. K. Goel)
NAA, Secretary

F.No. 22011/NAA/89/2018 /6 493-94 Dated: 11.12.2020

Copy To:-

1. M/s Excel Rasayan Pvt. Ltd., 123, DSIDC Complex, Okhla Industrial Area, Phase-I, New Delhi-110020.
2. Shri Surya Prakash Loonker, A-8, Madakani Enclave, Alaknanda, New Delhi-110019.
3. 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.
4. Guard File.

11.12.2020

A. K. GOEL
SECRETARY, NAA

d/c