

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

Case No. : 88/2020
Date of Institution : 03.07.2018
Date of Order : 11.12.2020

In the matter of:

1. Shri Pawan Sharma c/o Kalptaru Departmental & General Stores, JP SVS-P, A-140, Saraswati Nagar, Opp. Sec-6, Malviya Nagar, Jaipur-302017.
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 Sharma Trading Company, M-129, Mahesh Colony, Tonk Phatak, Jaipur -302015.

Respondent

Quorum:-

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

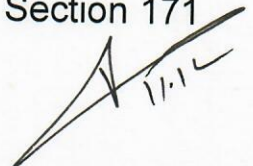


Present:-

1. None for the Applicants.
2. Shri Subhash Joshi, Partner, Shri Vivek Sharma and Ms. Ananya Sharma, Advocates 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 16.03.2018, 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 the benefit of reduction in the rate of tax to the above Applicant by way of commensurate reduction in the price of the product "Vaseline VTM 400 ml", 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 reduction in the rate of tax to the above Applicant and other customers amounting to Rs. 5,50,370/-, pertaining to the period w.e.f. 15.11.2017 to 31.01.2018 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 16.03.2018 had issued notice dated 23.03.2018 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. 06/2018 dated 07.09.2018 had determined the profiteered amount as Rs. 5,50,370/- 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 31.01.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent was issuing incorrect invoices in which the base price was deliberately enhanced exactly equal to the amount of reduced tax and thus he had denied the benefit of reduction in the rate of tax granted vide Notification dated 14.11.2017 to his customers and accordingly he had 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 13.09.2018 asking him to explain why the penalty mentioned in Section 122(1) of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
5. The Respondent vide his submissions dated 28.09.2018 has made a number of submissions for non-imposition of penalty. The main submission he has made is that the penal provisions under Section 122(1) 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 these provisions do not apply on the issue of profiteering and therefore Section 122(1)(i) or any other sub-clause of Section 122 of the CGST Act was inapplicable to the issue at hand.

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 reduction in the rate of tax to the Applicant No. 1 and other customers by way of commensurate reduction in the price of the product "Vaseline VTM 400 ml" for the period from 15.11.2017 to 31.01.2018 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 invoice 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 reduction in the rate of tax 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 31.01.2018 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 13.09.2018 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

A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/09/2018 | 6481-6483

Date: 11.12.2020

Copy to:-

1. M/s Sharma Trading Company, M-129, Mahesh Colony, Tonk Phatak, Jaipur -302015.
2. Shri Pawan Sharma c/o Kalptaru Departmental & General Stores, JP SVS-P, A-140, Saraswati Nagar, Opp. Sec-6, Malviya Nagar, Jaipur-302017.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File

A. K. GOEL
SECRETARY, NAA