

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

Case No. 97/2020  
Date of Institution 30.08.2018  
Date of Order 11.12.2020

**In the matter of:**

1. Crown Express Dental Lab, 2<sup>nd</sup> Floor, 201, Sumati Vihar Complex, Near Jail Chowk, Ranchi - 834001.
2. 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.

Applicants

Versus

M/s Theco India Private Limited, Office No. D, Shroff Orchards, Old No.-78, New No.-44, New Avadi Road, Kilpauk, Chennai-600010.

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. None for the Respondents.

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 30.08.2018, 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 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 of IGST to his recipients on the purchase of two items "Lava CNC 240 Milling Machine along with accessories" and "Sintering Furnace D664 (hereinafter referred to as "the products") from the Respondent based on quotation dated 28.11.2016 having taxable valued of Rs. 60,24,120/-. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of tax rate reduction to his recipients amounting to Rs. 4,78,085/- 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 30.08.2018 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 this Authority vide its Order No. 15/2018 dated 28.11.2018 had determined the profiteered amount as Rs. 4,78,085/-, as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 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 IGST on the additional amount 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 06.12.2018 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 03.01.2019 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 paid along with applicable interest thereon the amount which had been determined by this Authority vide Order No. 15/2018, which has been confirmed by the DGAP. He has also 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 provisions of law and as he had

complied with this Authority's Order No. 15/2018, which depicted his bonafide intentions, penalty should not be imposed upon 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 IGST rate on the above products 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 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 06.12.2018 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.

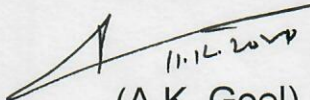
Sd/-  
(Dr. B. N. Sharma)  
Chairman

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



Sd/-  
(Amand Shah)  
Technical Member

Certified copy

  
11.12.2020  
(A.K. Goel)  
Secretary, NAA

01C

F.No. 22011/NAA/70/Theco/2019 /6500

Dated: 11.12.2020

Copy to:-

1. M/s Theco India Private Limited, Office No. D, Shroff Orchards, Old No.-78, New No.-44, New Avadi Road, Kilpauk, Chennai-600010.
2. Crown Express Dental Lab, 2<sup>nd</sup> Floor, 201, Sumati Vihar Complex, Near Jail Chowk, Ranchi – 834001.
3. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File/ NAA Website.

  
11.12  
A. K. GOEL  
SECRETARY, NAA