

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

Case No.	03/2022
Date of Institution	03.03.2020
Date of Order	10.05.2022

In the matter of:

1. Principal Commissioner, Medchal Commissionerate, 11-4-6-649/B, Lakdi Ka Pool, Hyderabad.
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 Sri Rana Electronics and Home Appliances, Beside South Indian Bank, NH-44, H.No.13-120/1, Near Police Station Medchal (Village Mandal District)-501401

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present:-

1. None for the Applicant No. 1
2. Sh. Manoj Kumar, Assistant Commissioner, for the Applicant No. 2.
3. Sh. Omprakash Bagri, Proprietor, for the Respondent.

ORDER

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1. The present Report dated 28.02.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. Briefly stated, a reference was received by the DGAP from the Standing Committee on Anti-profiteering on 28.06.2019, to conduct a detailed investigation in respect of an application, filed by the Applicant No. 1, alleging profiteering by the Respondent, in respect of supply of "Monitors and TVs of screen size upto 32 inches". The Applicant No. 1 alleged that the Respondent did not reduce the selling price of the "Monitors and TVs of screen size upto 32 inches", when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018 and the price of the product was increased by the Respondent and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017.
 2. The DGAP in its Report dated 28.02.2020, inter-alia stated that:-

- (i) The Applicant No. 1 relied upon two invoices issued by the Respondent as per the details contained in Table "A" below.

Table-A

S.No.	Name of the product supplied	Pre GST rate revision on 01.01.2019			Post GST rate revision on 01.01.2019			Difference in Base Price (Rs.)
		Invoice No. & Date	GST rate (%)	Price excluding GST (Base Price)	Invoice No. & Date	GST rate (%)	Price excluding GST (Base Price)	
A	B	C	D	E	F	G	H	I=H-E
1	Monitors and TVs of screen size upto 32 inches	1622 dated 09.12.2018	28%	10546.88	1914 dated 03.02.2019	18%	12711.86	2164.98

- (ii) The aforesaid application was examined by the Standing Committee on Anti-profiteering in his meeting held on 13.06.2019, the minutes of which were received by the DGAP on 28.06.2019 whereby it was decided to refer the same to the DGAP, to conduct a detailed investigation in the matter, in terms of Rule 129 of the Rules. Accordingly, it was decided to initiate an investigation to collect evidence necessary to determine whether the benefit of GST rate reduction has been passed by the Respondent to the Applicant No. 1 and other recipients?

- (iii) On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 01.07.2019, a Notice under Rule 129 of the Rules was issued by the DGAP on 08.07.2019 calling upon the Respondent to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 01.01.2019, had not been passed on to his recipients by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all documents in support of his


reply. Further, in the said Notice dated 12.07.2019, the Respondent were also given an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 15.07.2019 to 17.07.2019 which the Respondent did not avail of.

(iv) The period covered by the current investigation was from 01.01.2019 to 30.06.2019.

(v) Time limit to complete the investigation was extended up to 27.03.2020 by this Authority, vide letter dated 12.12.2019 in terms of Rule 129(6) of the CGST Rules, 2017.

(vi) In response to the Notice dated 08.07.2019, the Respondent submitted desired details vide letters/e-mails dated 19.07.2019, 02.08.2019, 08.11.2019, 23.11.2019, 29.11.2019 and 11.01.2020.

(vii) Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:

 a. GSTR-1 & GSTR-3B returns for the period December, 2018 to June, 2019.

b. Details of invoice-wise outward taxable supplies for the period September, 2018 to June, 2019.

c. Copy of Invoices having impacted by GST rate reduction.

d. Copy of Finance charges statement.

(viii) The DGAP has further stated that the vide e-mail dated 13.01.2020 the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 16.01.2020 to 17.01.2020, which the Applicant did not avail of.

(ix) The subject application, the various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination was whether the rate of GST on the "Intex LED TV-3224HD" supplied by the Respondent was reduced from 28% to 18% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

(x) The Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "Monitors and TVs of screen size upto 32 inches" (HSN-8528) from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. As per the invoice of the Respondent the products Intex LED TV-3224HD fall under HSN 8528. This being a matter of fact which was not disputed by the Respondent, it could be concluded that the GST rates were indeed reduced in the manner stated above.

(xi) Section 171(1) of the CGST Act, 2017 read as "any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices." Thus, the legal requirement was abundantly clear that in the event of benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could only be in terms of money, so that the final price payable by a recipient got reduced commensurate with the reduction in the tax rate. This was the only legally prescribed mechanism to pass on the benefit of ITC or reduction in rate of tax to the recipients under

the GST regime and there was no other method which a supplier could adopt to pass on such benefits.

(xii) The issue with respect to increase in base price of a single product after the rate reduction of goods had been illustrated at Table "A" above.

(xiii) The details of supply of all products were analysed and it was observed that the base price of some of the products were increased after reduction in rate w.e.f. 01.01.2019. For example, in the case of LED TV-3224HD, the data of a particular item i.e., TV-3224HD sold during the period of 01.12.2018 to 31.12.2018 (pre-GST rate reduction) were taken and an average base price (without GST) was obtained on dividing the total taxable value by total quantity of this item sold during the period of 01.12.2018 to 31.12.2018. The average base price of this item was compared with the actual selling price of this item sold during post-GST rate reduction i.e. on or after 01.01.2019 as illustrated in the table-B below:

Sub

Table-B (Amount in Rupees)

Sr. No.	Description	Factors	Pre Rate Reduction (Before 01.01.2019)	Post Rate Reduction (From 01.01.2019)
1.	Product Description	A	TV-3224HD	
2.	Period	B	01.12.2018 to 31.12.2018	
3.	Total quantity of item sold	C	1	
4.	Total taxable value	D	10547.00	
5.	Average base price (without GST)	$E=D/C$	10547.00	
6.	GST Rate	F	28%	18%
7.	Commensurate Selling price (post Rate reduction)	$G=E*1.18$		12445.46
8.	Invoice No.	H		1914
9.	Invoice Date	I		03.02.2019
10.	Total quantity (above invoice)	J		1

11.	Total Invoice Value	K		15000.00
12.	Actual Selling price (post rate reduction)	$L=K/J$		15000.00
13.	Difference (Profiteering)	$M=L-G$	2554.54	
14.	Final Profiteering	$N=M*J$	2554.54	

From the above table, it was clear that the Respondent did not reduce the selling price of the "TV-3224HD", when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018 and hence profited an amount of Rs. 2554.53/- on this particular item and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. On the basis of above calculation as illustrated in table B above, profiteering in case of all impacted goods of the Respondent i.e., Monitors and TVs of screen size upto 32 inches had also been arrived in similar way. However, the average base price for other items/types of Monitors and TVs of screen size upto 32 inches would be different from the item as shown in Table-B above and accordingly, profiteering had been calculated item-wise.

(xiv) As regards the total amount of profiteering made in this case, perusal of the invoices made available by the Respondent indicated that the Respondent had increased the base price of the "Monitors and TVs of screen size upto 32 inches" when the rate of GST was reduced from 28% to 18% w.e.f. 01.01.2019. On the basis of aforesaid, pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the "Monitors and TVs of screen size upto 32 inches" during the period 01.01.2019 to 30.06.2019, as furnished by the Respondent, It was

observed that the Respondent had increased the base price in six invoices out of 144 invoices raised during the period 01.01.2019 to 30.06.2019 for the Monitors and TVs of screen size upto 32 inches and the amount of net higher sales realization due to increase in the base price of the impacted good, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount comes to Rs. 4,699/-. The details of the computation were given in the Annex-12 of the Report. The said profiteered amount had been arrived at by comparing the average of the base price of the "Monitors and TVs of screen size upto 32 inches" sold during the period 01.09.2019 to 31.12.2019, with the actual invoice-wise base prices of "Monitors and TVs of screen size upto 32 inches" sold during the period 01.01.2019 to 30.06.2019. The excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base price.

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(xv) On the basis of the details of outward supplies of the product submitted by the Respondent, it was observed that the Respondent had supplied the product in the state of Telangana only.

(xvi) From the details furnished in Annex-12 of the Report dated 28.02.2020, it appeared that the base price of the "Monitors and TVs of screen size upto 32 inches" was indeed increased post GST rate reduction w.e.f. 01.01.2019. Thus, by increasing the base price of the goods subsequent to reduction in the GST rate, the commensurate benefit of reduction in the GST rate from 28% to 18%, was not passed

on to the recipients. The total amount of profiteering covering the period 01.01.2019 to 30.06.2019 was Rs. 4,699/-.

(xvii) The DGAP has concluded that Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that “any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”, has been contravened in the present case.

3. The investigation Report submitted by the DGAP was received by this Authority on 03.03.2020 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 24.03.2020. Notice dated 05.03.2020 was also issued to the Respondent directing him to explain why the Report dated 28.02.2020 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. But, in the wake of the Corona pandemic and subsequent lockdowns in Delhi, the hearing scheduled on 24.03.2020 could not be held.

4. Vide e-mail dated 01.06.2020, the Respondent has submitted that he agreed with the DGAP's Report dated 28.02.2020 and had deposited the profiteered amount i.e. Rs. 4,699/- in the Consumer Welfare Funds (CWFs) and to support his claim he has furnished the copy of the Demand Draft No. 090392 for Rs. 4,699/- dated 18.05.2020. Vide letter dated 24.08.2020, the Respondent has submitted that he has voluntarily paid the interest amount of Rs. 1500/- in the Consumer Welfare Funds (CWFs) and also furnished copy of the Demand Draft No. 090400 for Rs. 1500/- dated 21.08.2020 as an evidence to support his claim. Vide e-mail dated 15.01.2021, the Respondent has

submitted that he don't want to file any submissions i.r.o. the DGAP's Report and requested to close the case.

5. Verification Report was also sought from the DGAP on the Respondent's claim regarding the deposition of the profiteered amount along with applicable interest. The DGAP vide verification Report dated 01.07.2020 has submitted that the Sr. Account Officer, Pay and Account Office, Department of Consumer Affairs has confirmed the receipt of payment of the profiteered amount.
6. Further, vide Order sheet dated 01.10.2020, the Authority directed the DGAP to submit his clarifications on the following issues under Rule 133(2A) of the CGST Act, 2017:-
 - i. Whether the Respondent has issued only 144 invoices in total during 01.01.2019 to 30.06.2019, i.r.o. Monitors & TVs of screen size upto 32 inches?
 - ii. Whether the supplier of the Respondent had passed on the benefit of GST rate reduction to the Respondent or not?
7. The DGAP vide letter dated 15.12.2020 has submitted his clarifications on points mentioned in the Order sheet dated 01.10.2020 in which he has stated:-
 - i. That the Respondent had issued 124 invoices in total during 01.01.2019 to 30.06.2019 in respect of Monitors & TVs of the screen size upto 32 inches. However, the Respondent had submitted list of total 144 invoices in reply of notice of the DGAP. During investigation 124 invoices were found impacted by the Notf. No. 24/2018-C.T. (Rate) dated 31.12.2018 and considered for calculation of profiteering in the Report of DGAP dated

28.02.2020. 20 invoices that had not been impacted by the above Notification had been excluded.

ii. That the suppliers of the Respondent had passed on the benefit of GST rate reduction to the Respondent.

8. The Authority has carefully considered the Report furnished by the DGAP, the submissions made by the Respondent and the other material placed on record. On examining the various submissions the Authority find that the following issues need to be addressed:-

a. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?

b. If yes, then what was the quantum of profiteering?

9. A plain reading of Section 171 (1) of the CGST Act, 2017 indicates that it deals with two situation:- one relating to the passing on the benefit of reduction in the rate of tax and the second about the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the record that there has been a reduction in the rate of tax from 28% to 18% on " Monitors and TVs of screen size upto 32 inches" w.e.f. 01.01.2019, vide Notification No. 24/2018- C.T.(Rate) dated 31.12.2018. Therefore, the Respondent is liable to pass on the benefit of the above tax rate reduction to his customers in terms of Section 171 (1) of the above Act. It is also apparent that the DGAP has carried out the present investigation w.e.f. 01.01.2019 to 30.06.2019.

10. It is also evident that for computing the profiteered amount the DGAP has calculated item-wise profiteering during the pre rate reduction period and calculated the average base price (without GST) of particular item by dividing the total taxable value with the total quantity

of that item sold. He has compared the average pre rate reduction base price of the item with the actual selling prices of that item sold during the post reduction period i.e. after 01.01.2019 and assessed the profiteered amount on particular item. The mathematical methodology employed by the DGAP to compute the profiteered amount is correct, appropriate, reasonable and in consonance with the provisions of Section 171 (1) and the same has not been challenged by the Respondent in any of his submissions.

11. It is also revealed from perusal of Table-B supra and Annexures of the Report dated 28.02.2020 that the Respondent had increased the base price in six invoices out of 144 invoices raised during the period 01.01.2019 to 30.06.2019. Thus the benefit of reduction in the GST rate has not been passed on to the recipients by way of commensurate reduction in the prices by the Respondent, in terms of Section 171 (1) of the CGST Act, 2017 during the above period. The amount profiteered is determined as Rs. 4,699/-. It has been confirmed by the DGAP that the Respondent has deposited an amount of Rs. 4,699/-, as profiteered amount in the CWFs of the Central and the State Government. The Respondent has also claimed to have deposited an amount of Rs. 1500/- as interest in the CWFs of the Central and the State Government. The DGAP vide letter dated 01.07.2020, has submitted verification report vide which it has been stated that the Sr. Account Officer, Pay and Account Office, Department of Consumer Affairs has confirmed the receipt of payment of the profiteered amount i.e. Rs. 4,699/-. However, the interest amount paid by the Respondent has not been verified by the DGAP.

12. Further, we take note of the fact that the Respondent has not submitted any argument against the charges framed in the DGAP's Report. Therefore we don't find any basis to differ from the findings of the DGAP that the Respondent had indeed contravened the provisions of Section 171 of the CGST Act 2017.
13. Based on the above facts, the profiteered amount is determined as Rs. 4,699/- for the period from 01.01.2019 to 30.06.2019 as mentioned in the DGAP's Report dated 28.02.2020 as per the provisions of Section 171 (1) read with Rule 133 (1) of the CGST Rules, 2017. Further, since the recipients to whom the benefit of rate reduction as determined above is required to be passed on, are not identifiable, the Respondent has deposited the profiteered amount of Rs. 4,699/- along with interest of Rs. 1,500/- in the CWFs of the Central and the State Government.
14. Further, it is also revealed from the submissions of the Respondent that the Respondent has voluntarily paid the interest amount of Rs. 1500/-. However, the same has not been verified by the DGAP. Accordingly, the DGAP is directed to ensure that the interest, at the applicable rate, is paid by the Respondent and submit his report confirming payment of the interest within three months of this Order.
15. It is evident from the above that the Respondent has contravened the provisions of Section 171 (1) of the CGST Act, 2017. However, since, the penalty prescribed under Section 171 (3A) of the CGST Act, 2017 for violation of the above provisions has come in to force w.e.f. 01.01.2020 and the infringement pertains to the period from 01.01.2019 to 30.06.2019 and the Respondent has also deposited the

profiteered amount along with the interest therefore, no penalty is proposed to be imposed on the Respondent.

16. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this Order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 03.03.2020 the Order was to be passed on or before 02.09.2020. However, due to prevalent pandemic of COVID-19 in the Country this order could not be passed on or before the above date. In this regard it would be relevant to mention that the Hon'ble Supreme Court in Miscellaneous Application No 21 of 2022 in MA 665 of 2021 in Suo Moto Writ Petition (Civil) No. 3 of 2020 vide its Order dated 10.1.2022 has directed that:-

" I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event

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the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, the longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.


17. A copy each of this Order be supplied to the Applicants and the Respondent for necessary action. File be consigned after completion.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/142/Sri Rana/2020 | 4679 — 4682 Dated: 10.05.2022

Copy to:-

1. M/s. Sri Rana Electronics and Home Appliances, Beside South Indian Bank, NH-44, H.No. 13-120/1, Near Police Station Medchal (Village Mandal District)- 501401.

2. Principal Commissioner, Medchal Commissionerate, 11-4-649/B, Lakdi ka Pool, Hyderabad-500004.
3. 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.
4. Guard File.