

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

Case No. : 09/2022

Date of Institution : 27.10.2020

Date of Order : 12.05.2022

**In the matter of:**

1. Sh. Rahul Sharma on behalf of M/s Local Circles India Pvt. Ltd.,  
4th Floor, Express Trade Tower-2, Sector-132, Noida-2013012.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs,  
2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg,  
Gole Market, New Delhi-110001.

Applicants

Versus

M/s. Mataji Paints and Hardware, 36/6 Papu Cottage, S.  
Kariappa Road, Near Yediur Lake, Bengaluru, Karnataka.

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 Applicants.
2. None for the Respondent.

### ORDER

1. The National Anti-Profiteering Authority (NAA) vide Order dated 26.06.2020 in this matter has given the following order:

*"25. It is clear from the above narration of the facts that the profiteered amount has been computed by comparing the average pre-rate reduction base prices of the impacted products with the monthly average post- rate reduction base prices in respect of both the tax reductions. The above mathematical methodology adopted by the DGAP to compute the profiteered amount is not in line with the methodology adopted by the DGAP himself in similar cases of profiteering wherein the average pre-rate reduction base price have been compared with the actual post rate reduction prices to compute the profiteered amount. Further, in case the mathematical methodology of comparing the average to average base prices employed by the DGAP is adopted, it would not be possible to compute the benefit of tax reduction which is due to each customer to each supply. The profiteered amount computed by DGAP would not be correct. Hence the above mathematical methodology adopted by the DGAP is not correct, logical, appropriate and in consonance with the provisions of Section 171 of the CGST Act, 2017. Therefore, the Reports dated 23.3.2019 and 10.10.2019 furnished by the DGAP cannot be accepted. Accordingly, the DGAP is directed to reinvestigate the above case under Rule 133 (4) of the CGST Rules, 2017. The DGAP directed to compare the average pre-rate reduction base prices of the products which were impacted by the tax rate reduction w.e.f. 27.7.2018 with the actual rate reduction base price of the impacted products."*



The above said order of the NAA was not challenged by any party on the direction of methodology for working out the profiteered amount in the instant matter; hence, the said direction of methodology in the instant case becomes final.

2. The brief facts of the case has been mentioned in the NAA Internal Order No. 20/2020 dated 26.06.2020 and the same is reproduced below:

i. A reference was received on 04.10.2018 from the Standing Committee on Anti-profiteering under Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as **“the Rules”**), to conduct a detailed investigation in respect of an application filed by Sh. Rahul Sharma(on behalf of Local Circles) (**hereinafter referred to as “the Applicant No. 1”**), alleging profiteering by M/s Mataji Paints and Hardware,36/6 Papu Cottage, Kariappa Road, Near Yediur Lake, Bengaluru, Karnataka (**hereinafter referred to as “the Respondent”**). The Applicant No.1 alleged that the Respondent had not passed on the benefit of reduction in the rate of GST on Paints, from 28% to 18% w.e.f. 27.07.2018 and increased the base price of the paints sold by them, so that there was no commensurate reduction in the cum-tax price (inclusive of 18% GST) charged from the recipients.

ii. The said reference was examined by the Directorate General of Anti- Profiteering (DGAP) and the Investigation Report dated 29.03.2019 under Rule 129(6) of the Rules,

was furnished to the Authority. Vide the said Report, it was concluded that the allegation of profiteering by way of either increasing the base prices of the products while maintaining the same selling price or by way of not reducing the selling prices of the products commensurately, despite a reduction in GST rate from 28% to 18% w.e.f. 27.07.2018 stands established against the Respondent. On this account, the Respondent have realized an additional amount to the tune of **Rs. 3,76,360/-** from the recipients during the period from 27.07.2018 to 30.09.2018 which includes both the profiteered amount and GST on the said profiteered amount. The conclusion was based on the documents and information submitted by the Respondent during the course of investigation.

- iii. DGAP vide Report dated 09.10.2019 stated that the Respondent had taken GST registration in the month of May, 2018 and perusal of the relevant records indicates that there was no sale in the month of May, 2018. Therefore, DGAP has taken average basic price (after discount) covering the period 01.06.2018 to 26.07.2018 (Pre-rate reduction period) to compare with the discounted monthly average of the supply made during the period 27.07.2018 to 30.09.2019 (Post-rate reduction period under investigation). The details of pre-rate reduction basic price, commensurate selling price, actual selling price and the amount of profiteering are in Annex-15 of the report



dated 29.03.2019. It was also submitted that the submission made by the Respondent regarding variations in the prices on account of addition of colour to his products cannot be substantiated as it is nowhere available in the details of outward taxable supplies of the Respondent. It was also observed from Annex-15 of the report dated 29.03.2019 that the Respondent have profiteered on the supply of Wall Putty (HSN 3214) and on supply of Primer, which did not involve any colour cost.

iv. However, the Authority after considering the various submissions made by the Respondent & the DGAP report, vide its Internal Order No. 20/2020 dated 26.06.2020, referred the matter back to the DGAP and directed to *compare the average pre rate reduction base prices of the products which were impacted by the tax rate reduction w.e.f. 27.07.2018 with the actual post rate reduction base prices of the impacted products.*

3. Accordingly, the DGAP has carried out necessary re-investigation and on conclusion of the same, a report dated 27.10.2020 was sent to the NAA under Rule 133 (4) of the CGST Rules, 2017. The mandate to the DGAP in the case was very limited to the extent of '*comparing the average pre-rate reduction base price of the products which were impacted by the tax rate reduction w.e.f 27.7.2018 with the actual post rate reduction base prices of the impacted products*'.

*Shul*



4. It is reported by the DGAP that despite the direction given by the Authority to the Respondent to extend necessary assistance in conducting the re-investigation, the necessary assistance or documents were not supplied by them. The Respondent were issued notices on 10.7.2020 followed by reminder on 24.7.2020, 20.8.2020, 11.9.2020 and summons dated 25.9.2020 to submit details of the outward taxable supplies (other than zero rated, nil rated and exempted) for the period June 2018 to September 2018 in the format specifying the colours/shade name and code along with the bifurcation of colouring cost and value of paint supplied in each invoice. It may be noted that during the earlier round of investigation, Respondent vide letter dated 20.05.2019 has informed that *'the dealer hereby wants to submit that the process of identifying those bills which have same colourant combination for those items which were taken as profiteering is very time-consuming process to which the dealer is only able to provide invoices of a few items only that is the dealer hereby pleased to provide some time so that the invoices in the same manner can be provided for the items left with'*. The Respondent vide three E-mails dated 11.07.2020, 22.07.2020 and 12.08.2020 sought extension of time but relevant documents were not supplied. In the above said situation, the DGAP was left with no option but to work upon the information of the outward taxable supplies provided by the Respondent vide earlier E-mails dated 30.01.2019 and 05.02.2019 and determine amount of



profiteering, if any, following the direction of methodology given by the NAA vide Internal Order 20/2020 dated 26.06.2020.

5. In the investigation Report dated 27.10.2022, it was reported by DGAP that they had carried out comparison of pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products during the period 27.07.2018 to 30.09.2018, in compliance of the directions contained in aforesaid Internal Order dated 26.06.2020. It was informed that as per the direction given by the Authority, they (DGAP) had worked out the profiteered amount by comparing the average of the base prices (after discount) of the goods sold during the period 01.06.2018 to 26.07.2018 with the actual invoice-wise base prices (after discount) of such goods sold during the period 27.07.2018 to 30.09.2018. 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. The revised amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% i.e. the profiteered amount comes to **Rs. 4,19,069/-**. The details of the computation were given in **Annex-8** of the said Report. The DGAP has explained the said methodology with the help of one illustration viz. of a particular item "*White Wood Primer 1 Ltr*", sold during the period 01.06.2018 to 26.07.2018 (pre-GST rate reduction). An average base price (after discount)



was obtained on dividing the total taxable value by total quantity of this item sold during the period. The average base price of this item was then compared with the actual selling price of this item sold during post-GST rate reduction i.e. on or after 27.07.2018 as illustrated in the table A.

**Table-'A'**

**(Amount in Rupees)**

Sl. No.	Description	Factors	Pre Rate Reduction (01.06.2018 to 26.07.2018)	Post Rate Reduction (From 27.07.2018)
1.	Product Description (Item Code)	A	White Wood Primer 1 Ltr	
2.	MRP	B	190	
3.	Total quantity of item sold	C	8	
4.	Total taxable value (after Discount)	D	1,188.56/-	
5.	Average base price (without GST)	$E=(D/C)$	148.45/-	
6.	GST Rate	F	28%	18%
7.	Commensurate Selling price (post Rate reduction) (including GST)	$G=118\%$ of E		175.17/-
8.	Invoice No.	H		0599/2018-19
7.	Invoice Date	I		28.07.2018
8.	Total quantity (as per invoice indicated in H)	J		2
9.	Total Invoice Value (including GST)	K		380/-
10.	Actual Selling price (post rate reduction) (including GST)	$L=K/J$		190/-
11.	Excess amount charged of Profiteering	$M=L-G$	14.84/-	
12.	Total Profiteering	$N= J*M$	29.68/-	

From the above table, it would emerge that the Respondent did not reduce the selling price commensurately of the "White Wood Primer 1 Ltr(HSN 3208)", when the GST rate was reduced from



28% to 18% w.e.f. 27.07.2018 vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 and hence profiteered an amount of Rs. 29.68/- on a particular invoice 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 Central Goods and Services Tax Act, 2017.

On the basis of above calculation as illustrated in table 'A' above, profiteering in case of all impacted goods of the Respondent supplied in 1415 transactions has also been arrived in similar way.

6. Based upon the above said methodology, the DGAP has worked out profiteering amount to be Rs. 4,19,069/- .
7. A copy of the investigation report dated 29.10.2020 was provided to the Respondent as per the Minutes of the meeting of Authority held on 03.11.2020 and as conveyed vide letter dated 05.11.2020. The Respondent vide E-mail dated 08.04.2021 informed that complete submissions were made during the early hearing along with the paperwork. No new document or submission was to be filed as whatever documents were placed, are on the record. Personal Hearings in the matter were scheduled on 15.03.2022 and 25.3.2022. Neither the Applicant No.1 nor Respondent appeared in the Personal Hearing. However, Respondent vide E-mail dated 25.03.2022 informed that he had already provided all the documents/details available



with them in this case to the DGAP and he did not have any additional information on it.

8. This Authority has carefully examined the DGAP's Report and various submissions placed on record. The issues to be decided by the Authority are as under:-

- i. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?
- ii. If yes, then what was the quantum of profiteering?

9. Section 171 of the CGST Act provides as under:-

- (1). *“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.”*

It is clear from the plain reading of Section 171(1) mentioned above that it deals with two situations of commensurate reduction in prices :- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC.

10. Section 171 (1) of CGST Act, 2017 provides that any reduction in the rate of tax on any supply of goods or services or benefit of input tax credit should be passed on to the recipient by way of commensurate reduction in prices. The Authority constituted under section 171(2) of the said Act is mandated to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in the



commensurate reduction in the prices of goods or services or both supplied by him. Rule 127 of the CGST Rules, 2017 empowers the Authority to determine as to whether any reduction in the rate of tax on any supply of goods or services or benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices; and to identify the registered person who has not passed on the benefit of reduction in the tax rate or the benefit of the input tax credit to the recipient and to order, inter-alia reduction in the prices or return to the recipient of an amount equivalent to the amount not passed on by way of commensurate reduction in the prices alongwith interest.

11. The Authority has gone through the facts and all records of the case. The Authority vide order 20/2020 dated 26.06.2020 has looked into the facts of the case and the Report of the DGAP and also the submissions of the Respondent. The Authority, in the given facts and circumstances as detailed in the Order dated 26.06.2020, has directed the DGAP to work out the amount of profiteering by comparing the pre- GST rate reduction average sale price with the actual post-GST rate reduction sale price of impacted goods. The above said direction relating to methodology to be adopted for determining the profiteering amount has not been challenged either by Respondent or Applicant No.1. As such, in the said circumstances, the Authority has to decide the matter accordingly.



12. The Authority notes that after receipt of the Order dated 26.06.2020, DGAP has written a letter dated 10.07.2020 enclosing a pro-forma seeking details in respect of the goods sold by them. It was followed by reminder dated 24.07.2020. The Respondent had sought extension of time due to prevailing Corona situation claiming that their Office was falling under the containment zone. DGAP issued reminders on 20.8.2020 and 11.09.2020 to the Respondent and a summon dated 25.09.2020 was also issued seeking the relevant information/details. However, Respondent did not respond to any of these letters/summon. The Authority also notes that during the earlier round of proceedings, when Authority was deciding the matter, Respondent was offered personal hearings on 05.11.2019, 20.11.2019, 02.12.2019, 06.12.2019 and 27.12.2019; but Respondent did not avail any of the above Personal Hearings. The Authority finds that despite giving sufficient opportunities to the Respondent, they chose not to provide necessary documents or to extend any assistance to DGAP in speedy conclusion of investigation. The Authority finds from the earlier report of the DGAP dated 29.03.2019 that relevant information relating to actual sale price of the impacted goods were already available with them (DGAP) but they chose to give their findings/conclusion based on the average pre-GST rate reduction price of the impacted goods with average post reduction price of such impacted goods. Since, the relevant information relating to the actual sale price of the impacted goods were already available with the DGAP, they have



compared the average pre-reduction sale price with the actual post reduction sale price and had arrived at profiteering amount of Rs. 4,19,069/-.

13. The DGAP have taken example of White Wood Primer to substantiate their method of calculation. The Authority has taken examples of few other impacted goods and the details of such analysis is as under:

**Table-'B'** (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.06.2018 to 26.07.2018)	Post Rate Reduction (From 27.07.2018)
1.	Product Description (Item Code)	A	AE16ACE ADVANCED 1Ltr	
2.	Rate of Item as per Invoice	B	190	
3.	Total quantity of item sold (Sr. No. 25 in Annexure 8)	C	3	
4.	Total taxable value (after Discount)	D	461	
5.	Average base price (without GST)	$E=(D/C)$	153.66	
6.	GST Rate	F	28%	18%
7.	Commensurate Selling price (post Rate reduction) (including GST)	$G=118\%$ of E		181.31
8.	Invoice No.	H		573/2018-19
7.	Invoice Date	I		25.08.2018
8.	Total quantity (as per invoice indicated in H)	J		1
9.	Total Invoice Value (including GST)	K		190
10.	Actual Selling price (post rate reduction) (including GST)	$L=K/J$		190
11.	Excess amount charged of Profiteering	$M=L-G$	8.69/-	
12.	Total Profiteering	$N= J*M$	8.69/-	

*but*



**Table-'C'****(Amount in Rupees)**

Sl. No.	Description	Factors	Pre Rate Reduction (01.06.2018 to 26.07.2018)	Post Rate Reduction (From 27.07.2018)
1.	Product Description (Item Code)	A	Birla Wall Care Putty 20 Kg	
2.	Rate of Item as per Invoice	B	700/-	
3.	Total quantity of item sold (Sr. No. 43 in Annexure 8)	C	7	
4.	Total taxable value (after Discount)	D	3883/-	
5.	Average base price (without GST)	$E=(D/C)$	554.71	
6.	GST Rate	F	28%	18%
7.	Commensurate Selling price (post Rate reduction) (including GST)	$G=118\%$ of E		654.56
8.	Invoice No.	H		0894\2018-19
7.	Invoice Date	I		31.08.2018
8.	Total quantity (as per invoice indicated in H)	J		1
9.	Total Invoice Value (including GST)	K		700/-
10.	Actual Selling price (post rate reduction) (including GST)	$L=K/J$		700/-
11.	Excess amount charged of Profiteering	$M=L-G$	45/-	
12.	Total Profiteering	$N= J*M$	45/-	

On random verification of the calculation compiled by DGAP in pursuant to the direction contained in its order dated 27.06.2020, The Authority finds that the calculation carried out by DGAP is correct. As stated in the earlier paragraphs, the Respondent was provided with adequate opportunity to provide relevant documents and records and also to extend necessary assistance to DGAP in the matter, but, they chose to remain



inactive and did not extend necessary assistance. The Respondent has not raised any objection to quantification of profiteered amount of Rs. 4,19,069/- calculated in the DGAP Report dated 27.10.2020, a copy of which was provided to them.

For the reasons mentioned hereinabove and in the given facts and circumstances and also stated position of law, we find no reason to differ from the Report of the DGAP and we therefore agree with the findings of the DGAP that the provisions of Section 171 of the CGST Act 2017 have been contravened in this case and the Authority determine the profiteered amount at Rs. 4,19,069/- under the provision of Rule 133 (1) of the CGST Rules.

14. Based on the above facts, the profiteered amount is determined as Rs 4,19,069/- as has been computed in Annexure-8 of the DGAP's Report dated 27.10.2020. Accordingly, the Respondent is directed to reduce his prices commensurately in terms of Rule 133 (3) (a) of the CGST Rules, 2017. Further, since the recipients of the benefit, as determined, are not identifiable, the Respondent is directed to deposit an amount of Rs. 4,19,069/- in two equal parts of Rs. 2,09,534.50/- each in the Central Consumer Welfare Fund and the Karnataka Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules 2017, along with interest payable @ 18% to be calculated from the dates on which the above amount was realized by the



Respondent from his recipients till the date of its deposit in the said fund. The above amount of Rs. 4,19,069/- shall be deposited, as specified above, within a period of 3 months from the date of receipt of this order failing which it shall be recovered by the jurisdictional CGST/SGST Commissioners.

15. It is evident from the above narration of facts that Respondent has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 27.07.2018 to 30.09.2018, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him is not required to be issued.

16. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been deposited an amount of Rs. 4,19,069/- in two equal parts of Rs. 2,09,534.50/- each in the Central Consumer Welfare Fund and the Karnataka Consumer



Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules 2017, along with interest payable @ 18%.

17. 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 05.03.2020 the order was to be passed on or before 04.09.2020. 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 Suo moto Writ Petition (C) No. 3/2020 vide its Order dated 10.01.2022 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 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.”*

A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.

S/d.  
(Amand Shah)  
Technical Member &  
Chairman

S/d.  
(Pramod Kumar Singh)  
Technical Member

S/d.  
(Hitesh Shah)  
Technical Member

Certified Copy

  
(Dinesh Meena)

OIC

F.No. 22011/NAA/21/Mataji/2019 / 4931-36 Dated: 12.05.2022  
Copy to:-

1. M/s. Mataji Paints and Hardware, 36/6, Papu Cottage, S Kariappa Road, Near Yedipur Lake, Bengaluru, Karnataka.
2. Sh. Rahul Sharma, 4th floor, Express Trade Tower-2, Sector-132, Noida-201301.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009.
5. Chief Commissioner of Central Goods & Services Tax, Bengaluru Zone, C.R. Building, Queen's Road, Bengaluru-560001.
6. Guard file /NAA Website.