

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

Case No. : 35/2022  
Date of Institution : 16.11.2020  
Date of Order : 20.07.2022

**In the matter of:**

1. Shri Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th Floor, Express Trade Tower-2, Sector-132, Noida-201301.
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. Portronics Digital Pvt. Ltd., B-76, Second Floor, Wazirpur Industrial Area, New Delhi-110052.

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. A Report dated 30.08.2019 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed

investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that an application dated 26.02.2019 was filed before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 by the Applicant No. 1 which alleged that the Respondent had profited in respect of Power Bank "*Portronics Power Slice 10*" supplied by the Respondent. The above Applicant also alleged that the Respondent did not reduce the selling price of the Power Bank "*Portronics Power Slice 10*", 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 remained the same at Rs. 1349/- and thus, the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price. The Applicant No. 1 along with his complaint also submitted copies of screen shots captured on the website "[www.portronics.com](http://www.portronics.com)".

2. The above reference was examined by the Standing Committee on Anti-profiteering and vides minutes of the meeting dated 22.03.2019, it was forwarded to the DGAP for detailed investigation in terms of Rule 129 of the above Rules. The period of the investigation was from 01.01.2019 to 31.03.2019 and relevant documents were called from the Respondent.
3. As regards the 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 impugned goods when the rate of GST was reduced from 28% to 18% w.e.f. 01.01.2019. The details of the impacted product sold before and after GST rate reduction has also been illustrated in the Table-A below:

**TABLE- A**

| Period   |         | Pre 01.01.2019                             | Post 01.01.2019 |
|--|---------|--|-----------------|
| Notification No.                                     | A       | 24/2018-Central Tax(Rate) dated 31.12.2019 |                 |
| Product Description                                  | B       | Por 694(Power Bank)                        |                 |
| Invoice No.  | C       | DL0010SI121                                | DL0010SI121     |
| Invoice Date.  | D       | 06.12.2018                                 | 04.01.2019      |
| Declared Price                                       | E       | 995.43                                     | 1101.70         |
| Discount Offered                                     | F       | 0  | 0               |
| Base price excluding GST                             | G=E-F   | 995.43                                     | 1101.70         |
| GST rate charged                                     | H       | 28   | 18              |
| GST Amount   | I=G*H   | 278.72                                     | 198.30          |
| Increase in Base Price / Profiteering excluding GST  | K       | 1101.70-995.43=106.27                      |                 |
| GST@18%  | L=K*18% | 19.12                                      |                 |
| Amount of Profiteering (Difference in selling price) | M=K+L   | 125.39                                     |                 |

4. Accordingly, on the basis of comparison of the 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 impugned goods during the period 01.11.2018 to 01.03.2019, as furnished by the Respondent, the amount of net higher sales realization due to increase in the base price of the impacted goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to

Rs. 5,21,965/-. The details of the computation were given in Annex-15 of the Report dated 30.08.2019. The profiteered amount had been computed by comparing the average of the base prices of the impugned goods sold during the period 01.11.2018 to 31.12.2018, with the actual invoice-wise base prices of such products sold during the period 01.01.2019 to 31.03.2019.

5. The place (State/Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 5,21,965/- has been furnished in Table-B given below:

**Table-'B'**

| S.No. | State Code | State             | Profiteering Amount<br>(in Rs.) |
|-------|------------|-------------------|---------------------------------|
| 1.    | 01         | Jammu & Kashmir   | 5662.82                         |
| 2.    | 02         | Himachal Pradesh  | 4275.02                         |
| 3.    | 03         | Punjab            | 38215.09                        |
| 4.    | 04         | Chandigarh        | 19343.97                        |
| 5.    | 05         | Uttarakhand       | 19599.6                         |
| 6.    | 06         | Haryana           | 17857.16                        |
| 7.    | 07         | Delhi             | 80227.15                        |
| 8.    | 08         | Rajasthan         | 8503.73                         |
| 9.    | 09         | Uttar Pradesh     | 69988.00                        |
| 10.   | 10         | Bihar             | 8167.07                         |
| 11.   | 11         | Sikkim            | 907.85                          |
| 12.   | 12         | Arunachal Pradesh | 161.71                          |
| 13.   | 13         | Nagaland          | 454.67                          |
| 14.   | 14         | Manipur           | 855.80                          |
| 15.   | 15         | Mizoram           | 1515.23                         |
| 16.   | 16         | Tripura           | 321.56                          |



|    |    |                           |               |
|----|----|---------------------------|---------------|
| 17 | 18 | Assam                     | 2159.96       |
| 18 | 19 | West Bengal               | 14841.95      |
| 19 | 20 | Jharkhand                 | 3615.25       |
| 20 | 21 | Orissa                    | 7614.88       |
| 21 | 22 | Chhattisgarh              | 4888.43       |
| 22 | 23 | Madhya Pradesh            | 5916.69       |
| 23 | 24 | Gujrat                    | 18332.98      |
| 24 | 25 | Maharashtra               | 77746.76      |
| 25 | 29 | Karnataka                 | 28305.28      |
| 26 | 30 | Goa                       | 2089.51       |
| 27 | 28 | Kerala                    | 7270.25       |
| 28 | 30 | Tamil Nadu                | 33756.83      |
| 29 | 32 | Pondicherry               | 823.35        |
| 30 | 35 | Andaman & Nicobar Islands | 155.08        |
| 31 | 36 | Telangana                 | 22463.75      |
| 32 | 37 | Andhra Pradesh(New)       | 15927.93      |
|    |    | <b>Grand Total</b>        | <b>521965</b> |

6. The DGAP has concluded that the allegation of profiteering against the Respondent by way of increasing the base prices of the products w.e.f. 01.01.2019 was found sustainable and the details thereof were furnished in Annexure-15 of the Report dated 30.08.2019. The DGAP has elaborated that by increasing the base price of the goods supplied by him, subsequent to the reduction in the GST rate and by not passing on the commensurate benefit of the reduction in the GST rate from 28% to 18% to his recipients, the Respondent had profiteered by an amount of Rs. 5,21,965/- and had contravened the provisions of Section 171 of the CGST Act, 2017 during the period from 01.01.2019 to 31.03.2019.

7. The above said Report dated 30.08.2019 was carefully considered by the Authority and a notice dated 06.09.2019 was issued to the Respondent to attend either in person or through some authorized person on 19.09.2019 and to show cause why the Report dated 30.08.2019 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. After carefully considered all the Reports filed by the DGAP, submissions of the Respondent and other material placed on record and after hearing the matter, the Authority vide it's Interim Order No. 12/2020 dated 27.02.2020 directed the DGAP to further investigate the following issues as per the provisions of Rule 133 (4) of the CGST Rule, 2017 and submit his Report accordingly :-

- a. To investigate the Respondent's contention that that the negative figures in his sales data actually relate to the credit notes raised by him on account of sales return and the effect thereof on the amount of profiteering, if any, after due verification.
- b. To investigate the mismatch between the Respondent's GST return for the month of January, 2019 as compared to the sales data figure for the same period and ramification thereof on the computation of the amount of profiteering.
- c. To investigate the Respondent's submissions dated 19.11.2019 vide which he has submitted his own calculation of the amount of profiteering based on his own understanding which is given in the Para 23 of this order.

- d. To investigate the data submitted by the Respondent in pen drive on 06.12.2019 which the DGAP has itself claimed to be in a different format (channel/segment wise) from the one that was submitted earlier (five types viz. Exports, inter-state, intra-state, normal and Stock transfer) during the investigation period.
8. Accordingly, the DGAP submitted his Report on 09.11.2020 under Rule 133(4) of the CGST Rules, 2017, inter alia, stating that:-
- a. On receipt of the aforesaid Order dated 27.02.2020 from this Authority on 03.03.2020, the documents/information submitted by the Respondent were re-examined and cross-verified with the Report dated 30.08.2019 submitted by the DGAP to this Authority. As directed by this Authority, vide para 29 of the I.O., vide letter dated 06.03.2020, the Respondent was requested to submit documents with respect to issues raised in Para 29 of the I.O. dated 27.02.2020.
- b. The period covered by the current investigation was same as was given in Investigation Report dated 30.08.2019, i.e. from 01.01.2019 to 31.03.2019.
- c. In response to the DGAP's letter dated 06.03.2020, the Respondent submitted his reply vide letters/e-mails dated 17.03.2020 and 24.08.2020, 21.09.2020, 22.09.2020 and 26.09.2020. Vide the aforementioned letters/e-mails; the Respondent submitted the following documents/information:




- i. Details of invoice-wise outward taxable supplies during the period November, 2018 to March, 2019 category wise reconciled with GSTR-1 and GSTR-3B returns.
  - ii. Copy of Credit Note raised by the Respondent on the account of Sales returns.
  - iii. GSTR-3B for the month of August, 2019 to September, 2019.
- d. As per the directions of NAA vide I.O. No. 12/2020, the DGAP initiated re-investigation of the case. During the period of earlier investigation under Rule 129 of the Rules, the Respondent submitted the data but did not submit the complete channel-wise sales data. However, the issue of channel-wise sales was raised during the hearing before this Authority. This Authority gave another opportunity to submit the details to the Respondent. Accordingly, during the re-investigation the Respondent was asked to submit the data again which the Respondent submitted. Hence the case had been re-investigated again on the basis of fresh data submitted by the Respondent. The main issues to be looked into were:-
- i. Whether the rate of GST in respect of Power Bank "*Portronics Power Slice 10*" was reduced from 28% to 18% w.e.f. 01.01.2019, if so, whether the benefit of such reduction in the rate of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017 and
  - ii. Investigate the points raised in I.O. dated 27.02.2020.



- e. As regards the issue of reduction in the rate of GST, it was observed that the Central Government, on the recommendation of the GST Council vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 had reduced GST rate on Power Bank from 28% to 18% w.e.f. 01.01.2019. This was a matter of fact which had not been contested by the Respondent.
- f. As regards the points to be investigated in terms of NAA's I.O., the point wise reply was as under:-

**Point-(i)** To investigate the Respondent's contention that the negative figures in his sales data actually relate to the credit notes raised by him on account of sales return and the effect thereof on the amount of profiteering, if any, after due verification:-

**Reply-** In response to the DGAP query the Respondent submitted the details of three Credit Notes issued as per Annex-7 to the Report dated 09.11.2020. Had these credit notes not been issued, the profiteering amounting of Rs. 354/- would have been added to the total profiteering. The benefit of 3 Credit Notes had been given to the Respondent in revised Anti-profiteering investigation. 

**Point-(ii)** To investigate the mismatch between the Respondent's GST return for the month of January, 2019 as compared to the sales data figure for the same period and ramification thereof on the computation of the amount of profiteering: -

**Reply:-** During the investigation under Rule 129 (6) of the CGST Rules, 2017 the Respondent was asked to

reconcile the sales data submitted by him with the monthly return (GSTR-3B). The Respondent informed that in case of Haryana GST return for the month of January, there was a difference of Rs. 2,76,349/-. As the reply was not supported by evidence at the time of investigation the issue was made part of the Investigation Report dated 30.08.2019. This Authority vide his I.O. directed to reexamine the issue. Accordingly, the Respondent was asked to clarify the same and the Respondent vide letters/mail dated 21.09.2020, 22.09.2020 & 26.09.2020 submitted his clarification and in this context he had also submitted GSTR-3B details for the month of August, 2019 & September, 2019 for Haryana and GSTR-9 for the financial year 2018-2019.

The Respondent vide the above documents had submitted that the difference in GSTR-3B (Haryana) for the month of January 2019 had been adjusted in August, 2019 & September, 2019 and the total adjustments were reflected in his Annual Return (GSTR-9).

In this context it was relevant to mention that profiteering was computed against the invoice wise sale of each product and all the invoices had been covered. Hence, the difference in January, 2019 would not had any impact on profiteering when all the impacted invoices had been covered for computation of profiteering.

**Point-(iii)** To investigate the Respondent's submissions dated 19.11.2019 vide which he had submitted his own

calculation of the amount of profiteering based on his own understanding which was given in the Para 23 of the Order: -

**Reply:** - The Respondent's contention to take the average sale price of the product by considering the sale of various products for the month of November, 2018 and December, 2018 instead of only one month of December, 2018 had been examined and it was observed that he had not put forward any logical reason behind this suggestion. The only reason given was that it should reduce the average base price of the product and lead to lesser amount of profiteering. In this context it was submitted that the average base price of the product for a month sold just before the rate reduction was taken so that such price was the best representative of the price on which the goods were sold to the recipients immediately after rate reduction. It is, therefore the nearest average base price. If the contention of the Respondent was accepted, then the Respondent might also suggest to take the average base price of the last 6 months or a year which would suit him the best. The contention of the Respondent was not based on any proper reasoning as to why the average price for last two months only should be taken and hence the computation of the Respondent might not be accepted.

**Point-(iv)** To investigate the data submitted by the Respondent in pen drive on 06.12.2019 which the DGAP



had itself claimed to be in a different format (Channel/segment wise) from the one that was submitted earlier (five types viz. Exports, inter-state, intra-state, normal and Stock transfer) during the investigation period:-

**Reply:** - In the earlier investigation, the Respondent had not submitted the information channel/segment wise. In this regard, the Respondent apart from submitting the data in pen drive on 06.12.2019 to this Authority, had also submitted the data vide his letter/e-mail dated 24.08.2020 & 21.08.2020 which contained three sales credit notes and channel wise sale detail. The channel wise details had been examined and the detailed examination was dealt in subsequent paras.

- g. The Respondent vide above submission informed that there were various channels/segment viz. Retail, Corporate, Distributor, Retail Wazirpur HO, Online, Online Distributor, Online Snapdeal, Online Paytm, Online Flipkart, Online Amazon, Online Shopclues, Online Udaan, Online P.O, LFR, Outlet RT and Online PAR. Accordingly the profiteering had to be calculated channel/segment wise.
- h. Accordingly, in the light of new facts and data, the issue that remained was the determination and quantification of profiteering by the Respondent for failure to pass on the benefit of the reduction in the rate of GST on the goods supplied to his recipients in terms of Section 171 of the CGST Act, 2017. From the invoices made available by the



Respondent, it appeared that the Respondent increased the base price of the Power Bank when the rate of GST was reduced from 28% to 18% w.e.f. 01.01.2019, so that the commensurate benefit of GST rate reduction was not passed on to the recipients. 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 all products during the period 01.01.2019 to 31.03.2019, as furnished by the Respondent, the amount of net higher sales realization due to increase in the base price of the Power Bank, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 96,354/-. The calculations of profiteering had been done Channel/Segment wise accordingly as shown in the Annex-11 in the Report dated 09.11.2020.

- i. The said profiteered amount had been arrived at by comparing the actual invoice-wise base prices of Power Bank sold channel/segment wise during the period 01.01.2019 to 31.03.2019 with the commensurate price based on the average of the base price of Power Bank sold channel/segment wise during the period 01.11.2018 to 31.12.2018. 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 profiteering table for particular power bank was illustrated at para-16 of Investigation Report dated 30.08.2019. However, after the submission of

Channel/Segment wise details an example of profiteering for the product was once again shown in Table-C below for ready reference:-

**Table-C**

**(Amount in Rs.)**

| Sr. No. | Description                                      | Factors    | Pre Rate Reduction (Before 31.12.2018) | Post Rate Reduction (From 01.01.2019) |
|---------|--|------------|--|---------------------------------------|
| 1.      | SKU Name & Code                                  | A          | Power Bank POR491                      |                                       |
| 2.      | Category   | B          | RETAIL                                 |                                       |
| 3.      | Period   | C          | 01.12.2018 to 31.12.2018               |                                       |
| 4.      | Total quantity of item sold                      | D          | 23                                     |                                       |
| 5.      | Total taxable value                              | E          | 10873                                  |                                       |
| 6.      | Average base price (without GST) per unit        | $F=E/D$    | 473                                    |                                       |
| 7.      | GST Rate   | G          | 28%                                    | 18%                                   |
| 8.      | Commensurate Selling price (post Rate reduction) | $H=F*1.18$ |  | 558                                   |
| 7.      | Invoice No.                                      | I          |  | DL002SI011900055                      |
| 8.      | Invoice Date                                     | J          |  | 04.01.2019                            |
| 9.      | Total quantity (in the above invoice)            | K          |  | 1                                     |
| 10.     | Total Invoice Value (including GST)              | M          |  | 600                                   |
| 11.     | Actual Selling price (post rate reduction)       | $N=M/K$    |  | 600                                   |
| 12.     | Difference (per unit profiteering)               | $O=N-H$    |  | 42                                    |
| 13.     | Final Profiteering                               | $P=O*K$    |  | 42                                    |

- j. To sum up, it appeared that the amount of profiteering by the Respondent on account of contravention of provisions of Section 171 of CGST Act, 2017 was Rs. 96,354/-. The place (State or Union Territory) of supply-wise break-up of the total profited amount of Rs. 96,354/- was furnished in Table-D below:

**Table-D**

| Sr. No | State             | State Code | Final Profiteering (in Rs.) |
|--------|-------------------|------------|-----------------------------|
| 1      | Jammu and Kashmir | 1          | 526                         |
| 2      | Himachal Pradesh  | 2          | 710                         |
| 3      | Punjab            | 3          | 3436                        |
| 4      | Chandigarh        | 4          | 3134                        |
| 5      | Uttarakhand       | 5          | 1617                        |
| 6      | Haryana           | 6          | 2989                        |
| 7      | Delhi             | 7          | 20358                       |
| 8      | Rajasthan         | 8          | 562                         |
| 9      | Uttar Pradesh     | 9          | 13253                       |
| 10     | Bihar             | 10         | 536                         |
| 11     | Nagaland          | 13         | 60                          |
| 12     | Manipur           | 14         | 261                         |
| 13     | Mizoram           | 15         | 420                         |
| 14     | Tripura           | 16         | 3                           |
| 15     | Assam             | 18         | 451                         |
| 16     | West Bengal       | 19         | 2556                        |

|              |                |    |                 |
|--------------|----------------|----|-----------------|
| 17           | Jharkhand      | 20 | 46              |
| 18           | Odisha         | 21 | 1392            |
| 19           | Chhattisgarh   | 22 | 360             |
| 20           | Madhya Pradesh | 23 | 696             |
| 21           | Gujarat        | 24 | 2800            |
| 22           | Maharashtra    | 27 | 18446           |
| 23           | Karnataka      | 29 | 5173            |
| 24           | Goa            | 30 | 86              |
| 25           | Kerala         | 32 | 1235            |
| 26           | Tamil Nadu     | 33 | 9286            |
| 27           | Telangana      | 36 | 3757            |
| 28           | Andhra Pradesh | 37 | 2207            |
| <b>Total</b> |                |    | <b>96,354/-</b> |

9. Therefore, the DGAP has concluded that in this case, the allegation was that the base price of the goods was increased when there was reduction in the GST rate from 28% to 18% w.e.f. 01.01.2019, so that the benefit of such reduction in GST rate was not passed on to the recipients by way of commensurate reduction in price. From the details furnished in Annex-11 of the Report dated 09.11.2020, it appeared that the base price of the Power Bank under investigation was indeed increased post GST rate reduction w.e.f. 15.11.2017. Thus, by increasing the base price of the Power Bank consequent to the reduction in GST rate, the commensurate benefit of reduction in 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 31.03.2019 had been worked out as



Rs. 96,354/- (Rupees Ninety Six Thousand Three Hundred and Fifty Four only).

10. The Investigation Report dated 09.11.2020 was received by this Authority on 16.11.2020 and it was decided to direct the Applicant No. 1 and the Respondent to file consolidated reply/written submissions and any specific request for hearing, if required. Accordingly, a notice dated 24.11.2020 was issued to the Respondent to explain why the Report dated 09.11.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed and the Respondent was directed to file written submissions by 07.12.2020. The Authority has granted enough opportunities vide Order dated 05.01.2021, 09.03.2021 and 31.03.2021 to the Respondent to file his written submissions. In response, the Respondent vide letter dated 16.01.2021 has submitted that he had already made his submissions before the DGAP and based on that the DGAP has submitted the Report. After that he has nothing more for submission.
11. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022 and the minimum quorum was restored only w.e.f. 23.02.2022. The Respondent vide letter dated 23.03.2022 reiterated his earlier submissions dated 16.01.2021 i.e. he has already made his submissions and he has nothing more to add.
12. 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 finds 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?

13. 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."*

*(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITCs availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.*

*(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*

*(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:*

*PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the Order by the Authority.*

*Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."*

14. 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 the Central Government, on the recommendation of the GST Council vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 had reduced the GST rate on "Power Bank" from 28% to 18% w.e.f. 01.01.2019. 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 31.03.2019.

15. It is also evident that the Respondent has used various channels/segment viz. Retail, Corporate, Distributor, Retail Wazirpur HO, Online, Online Distributor, Online Snapdeal, Online Paytm, Online Flipkart, Online Amazon, Online Shopclues, Online Udaan, Online P.O, LFR, Outlet RT and Online PAR to sell his products. The DGAP has calculated profiteering by comparing the actual invoice-wise base price of particular model of Power Bank sold through channel/segment wise during the period 01.01.2019 to 31.03.2019 with the commensurate price based on the average of the base price of particular Power Bank sold through channel/segment wise during the period 01.12.2018 to 31.12.2018. To arrive at the base prices of the particular model of the product before rate reduction, sales during the period 01.12.2018 to 31.12.2018 had been considered. If the sale of any particular model of the product/item was not found during that period then, in that case, the sales of that particular model of the product/item during previous months in a sequential manner beginning from November, 2018 had been considered to arrive at the base price of that product/item. Since the sales of all models of the product were not found during the period 01.12.2018 to 31.12.2018, therefore, the sales of that particular model



of the product during the month of November, 2018 had been considered. The DGAP has thus calculated the profiteered amount on each particular model of product/item i.e. Power Bank. 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.

16. Further, this Authority takes note of the fact that the Respondent has not submitted any objections against the allegations made in the DGAP's Report dated 09.11.2020. Therefore this Authority does not 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.
17. On perusal of Table-C supra and Annexures of the Report dated 09.11.2020, it has been established that the Respondent has increased the base price of the product i.e. Power Bank, despite the reduction in the GST rate from 28% to 18% during the period 01.01.2019 to 31.03.2019. 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. It is also clear that the Respondent has not passed on the benefit amounting to Rs. 96,354/- (inclusive of GST) to his customers/ recipients. Thus the profiteering is determined as Rs. 96,354/- as per the provisions of Section 171 read with Rule 133 (1) of the CGST Rules 2017 and accordingly the Respondent is directed to commensurately reduce the prices of his product i.e. Power Bank in line



with the provisions of Section 171(1) read with Rule 133 (3) (a) of the CGST Rules 2017.

18. Further, since the customers/recipients, in this case, are not identifiable, the Authority under the provisions of Section 171(1) read with Rule 133 (3) (c) of the CGST Rules, 2017 directs that fifty percent of the amount of Rs. 96,354/- i.e. Rs. 48,177/- along with interest at the rate of 18% (from the date of collection of such amount until the dates on amount is deposited) be deposited in the Central Consumer Welfare Fund and the balance amount is to be deposited in the CWF of the concerned State and U.T., as per the amount indicated here under:-

| Sr. No | State             | State Code | Amount (in Rs.) |
|--------|-------------------|------------|-----------------|
| 1      | Jammu and Kashmir | 1          | 263.00          |
| 2      | Himachal Pradesh  | 2          | 355.00          |
| 3      | Punjab            | 3          | 1718.00         |
| 4      | Chandigarh        | 4          | 1567.00         |
| 5      | Uttarakhand       | 5          | 808.50          |
| 6      | Haryana           | 6          | 1494.50         |
| 7      | Delhi             | 7          | 10179.00        |
| 8      | Rajasthan         | 8          | 281.00          |
| 9      | Uttar Pradesh     | 9          | 6626.50         |
| 10     | Bihar             | 10         | 268.00          |
| 11     | Nagaland          | 13         | 30.00           |
| 12     | Manipur           | 14         | 130.50          |
| 13     | Mizoram           | 15         | 210.00          |
| 14     | Tripura           | 16         | 1.50            |
| 15     | Assam             | 18         | 225.50          |

|              |                |    |                 |
|--------------|----------------|----|-----------------|
| 16           | West Bengal    | 19 | 1278.00         |
| 17           | Jharkhand      | 20 | 23.00           |
| 18           | Odisha         | 21 | 696.00          |
| 19           | Chhattisgarh   | 22 | 180.00          |
| 20           | Madhya Pradesh | 23 | 348.00          |
| 21           | Gujarat        | 24 | 1400.00         |
| 22           | Maharashtra    | 27 | 9223.00         |
| 23           | Karnataka      | 29 | 2586.50         |
| 24           | Goa            | 30 | 43.00           |
| 25           | Kerala         | 32 | 617.50          |
| 26           | Tamil Nadu     | 33 | 4643.00         |
| 27           | Telangana      | 36 | 1878.50         |
| 28           | Andhra Pradesh | 37 | 1103.50         |
| <b>Total</b> |                |    | <b>48,177/-</b> |

19. The above amounts shall be deposited into the concerned CWF along with interest @18% (from the date such amount was profiteered by them until the date such amount is deposited in the respective CWF) by the Respondent within a period of 3 months from the date of this Order failing which the same shall be recovered by the concerned Commissioner CGST/SGST/UTGST as per the provisions of the relevant GST Act, 2017.
20. 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). Since, no penalty provisions were in existence between the period from **01.01.2019 to 31.03.2019** 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.

21. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the concerned Commissioners of CGST/SGST/UTGST to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is deposited in the respective Consumer Welfare Funds (CWFs). A Report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this Order.
22. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in *Suo Moto Writ Petition (C) no. 3/2020*, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

*"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."*

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

*"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 of special laws in respect of all judicial or quasi-judicial proceedings."*

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

23. A copy of this order be sent, free of cost to the Applicants, the Respondent and the concerned Central and State/U.T. GST Commissioners for necessary action.

Sd/-  
(Amand Shah)  
Technical Member &  
Chairman

Sd/-  
(Pramod Kumar Singh)  
Technical Member



Certified Copy

  
(Dinesh Meena)  
Secretary, NAA

File No. 22011/NAA/68/Portronics /2019

7559 - 7620  
Dated: 21.07.2022

Copy To:-

1. M/s Portronics Digital Pvt Ltd., B-76, Second Floor, Wazirpur Industrial Area, New Delhi-110052.
2. Sh. Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th Floor, Express Trade Tower-2, Sec-132, Noida -201301.
3. Commissioner of Commercial Taxes, Office of the Chief Commissioner of State Tax, Eedupugallu, Krishna District, Andhra Pradesh.
4. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.



5. Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001
6. Commissioner of Commercial Taxes, Office of Commissioner of Commercial Tax, Vikrikar Bhavan, Old High Court Building, Panji, Goa- 403 001
7. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.
8. Commissioner of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula. PIN - 134 151.
9. Commissioner of Commercial Taxes, Excise & Taxation Commissioner, Government of Himachal Pradesh, B-30, SDA Complex, Kasumpti, Shimla.
10. Commissioner of Commercial Taxes, Excise & Taxation Complex, Rail Head Jammu.
11. Commissioner of Commercial Taxes, Commercial Taxes Department, Project Bhawan, Dhurva, Ranchi- 834 004.
12. Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009
13. Commissioner of Commercial Taxes, Government Secretariat, Thiruvananthapuram -695001.
14. Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore
15. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010
16. Commissioner of Commercial Taxes, Department of Taxes, Old Guwahati High Court Complex, North AOC, Imphal West, Manipur - 795 001.
17. Commissioner of Commercial Taxes, Office of the Commissioner of State Taxes, Dimapur, Nagaland - 797112.
18. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, Banijyakar Bhawan, Old Secretariat Compound, Cuttack - 753 001.
19. Commissioner of Commercial Taxes, Office of Excise and Taxation Commissioner, Bhupindra Road, Patiala- 147 001
20. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.

*N.*

21. Commissioner of Commercial Taxes, PAPJM Building, Greams Road, Chennai - 600 006.
22. Commissioner of Commercial Taxes, O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001.
23. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes & Excise, Head of the Department, Revisional Authority, P.N. Complex, Gurkhabasti, Agartala - 799 006.
24. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)
25. Commissioner of Commercial Taxes, State Tax Department, Head Office Uttarakhand, Ring Road, Near Pulia No. 6, Natthanpur, Dehradun
26. Commissioner of Commercial Taxes, 14, Beliaghata Road, Kolkata - 700 015.
27. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin: 110 002
28. Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna - 800 001
29. Additional Commissioner of State Tax, Mizoram, O/o the Commissioner of State Tax, New Secretariat Complex, Aizawl - 796005.
30. Department of Excise & Taxation, Additional Townhall Building, Sector 17-C U.T., Chandigarh.
31. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES TAX, BHOPAL ZONE 48, ADMINISTRATIVE AREA, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL M.P. 462 011
32. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICE TAX C.R.BUILDING RAJASWA VIHAR, BHUBANESWAR-751007
33. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICE TAX CHANDIGARH ZONE C.R. BUILDING, PLOT NO.19A, SECTOR17C, CHANDIGARH160017





34. CHIEF COMMISSIONER CENTRAL GOODS & SERVICE TAX ,  
COCHIN ZONE C.R.BUILDING, I.S.PRESS ROAD,  
ERNAKULAM COCHIN-682018
35. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAXDELHI ZONE C.R. BUILDING, I.P. ESTATE, NEW  
DELHI110 109
36. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICE  
TAX, HYDERABAD ZONE GST BHAVAN, L.B.STADIUM  
ROAD, BASHEER BAGH, HYDERABAD 500 004
37. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX JAIPUR ZONE,NEW CENTRAL REVENUE BUILDING,  
STATUE CIRCLE, CScheme JAIPUR 302 005
38. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX, MUMBAI ZONE GST BUILDING, 115 M.K. ROAD, OPP.  
CHURCHAGATE STATION, MUMBAI400020
39. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX PANCHKULA SCO 407408, SECTOR8, PANCHKULA
40. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX, VADODARA ZONE 2ND FLOOR, CENTRAL EXCISE  
BUILDING, RACE COURSE CIRCLE, VADODARA 390 007
41. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX VISAKHAPATNAM ZONE GST BHAVAN, PORT AREA,  
VISAKHAPATNAM-530 035.
42. Commissioner of Commercial Taxes, Additional  
Commissioner (GST), Commercial Tax Department, Ground  
Floor, Vikas Bhawan, Baily Road, Patna - 800 001
43. CHIEF COMMISSIONER OF CENTRAL GOODS & SERVICES  
TAX, (Ranchi Zone) 1st Floor, C.R. Building, (ANNEX)  
Veerchand Patel Path Patna-800001.
44. Office of the Commissioner, GST & CX Commissionerate,  
Sethi Trust Building,5th Floor, G.S. Road, Bhangagarh,  
Guwahati - 781 005.
45. Commissioner of Goods and Service Tax,ICE House, EDC  
complex, Plot no .6, Pattoo, Panaji, Goa-403001.
46. Commissioner of Goods and Service Tax ,2nd Floor,  
Custom House Building, Near Income Tax Char Rasta,  
Navrangpura, Ahmedabad - 380009.
47. Commissioner of Goods and Service Tax ,1st Floor, C.R.  
Building, Plot No. 19, Sector-17-C, Chandigarh.





48. Commissioner of Goods and Service Tax, OB-32, Rail Head Complex, CGST Commissionerate, Jammu - 180 012.
49. Pr. Commissioner of Goods and Service Tax, Ranchi 6<sup>th</sup> floor Central Revenue building, 5A Main Road Ranchi.
50. Commissioner of Goods and Service Tax, 1st Floor, Central Revenue Building, Queen's Road, Bengaluru-560001
51. Office of the Commissioner, Central GST, Central GST Bhawan, Al-Noor Tower, Kabo Leikai, Nongpok 25/A, North AOC, Imphal East,
52. Office of the Commissioner, GST & CX Commissionerate, Central Tax Building, House No. D-31A, M.G. Road, Upper Khatla, Aizawl - 796001.
53. Office of the Commissioner, GST & CX Commissionerate, Naga Cemetery Road, Kharmahal, Dimapur -797 112.
54. Commissioner of Goods and Service Tax, Central Excise House, F-Block, Rishi Nagar, Ludhiana.
55. Office of the Commissioner, GST & CX Commissionerate, GST Bhavan, 26/1, Mahatma Gandhi Road, Chennai - 600034.
56. Office of the Commissioner, GST & CX Commissionerate, Kiran Medical Hall's Building, 1st, 2nd & 3rd Floor, Old RMS Choumohani, Agartala - 799 001.
57. Office of the Commissioner, GST & CX Commissionerate, 7-A, Ashok Marg, Lucknow - 226 001.
58. Commissioner of GST & CX Commissionerate , Dehradun, 'E' Block, Nehru Colony, haridwar Road, Dehradun-248001.
59. Office of the Commissioner, GST & CX Commissionerate, 3rd Floor, Shantipally, Rajdanga Main Road, Kolkata - 700 107.
60. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
61. Guard File.

