

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

Case No. 50 /2022
Date of Institution 02/09/2021
Date of Order 27/07/2022

In the matter of:

1. Smt. Ritika Vohra, 1603, Kalypso Court-3, Jaypee Wish Town, Sector-128, Noida, Uttar Pradesh.
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 Jay Cee Chemists Pvt Ltd, G-09, Imperial Arcade, Jaypee Wish Town, Sector-128, Noida, Uttar Pradesh

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. None for the Applicant No 2.
3. None for the Respondent.

ORDER

1. The present Report dated 02.09.2021 had been received from the Applicant No. 2 i.e. the DGAP (DGAP) after detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST)

Rules, 2017. The brief facts of the present case were that an application was filed before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 by the Applicant No. 1 alleging that the Respondent did not pass on the benefit of exemption of GST on Sanitary Napkins, vide Notification No. 19/2018 –Central Tax (Rate) Dated 26.07.2018, by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax, Act, 2017.

2. The DGAP in its report dated 02.09.2021, inter-alia, has stated that:-

- i. The Standing Committee on Anti-profiteering examined the application filed by the Applicant No. 1 in its meeting held on 19.08.2020, the minutes of which were received in DGAP on 15.10.2020, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of exemption of GST had been passed on by the Respondent to the Applicant No. 1 in respect of supply of Sanitary Napkins.
- ii. After receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 09.11.2020 calling upon the Respondent to reply as to whether he admitted that the benefit of exemption of GST w.e.f. 27.07.2018 had not been passed on to his recipients by way of commensurate reduction in prices of sanitary napkins 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. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information which formed the basis of the investigation between 30.11.2020 and 01.12.2020. The Respondent had not availed the said opportunity. The Applicant No. 1 was also given opportunity to inspect the non-

confidential documents/reply furnished by the Respondent on 26.03.2021, which was not availed by the Applicant No. 1. The Applicant No. 1 requested vide email dated 21.04.2021 for another opportunity of inspection, hence the Applicant No. 1 was again granted an opportunity to inspect the Respondent's non-confidential documents on 18.06.2021. However, the Applicant did not avail of this opportunity as well.

- iii. The period covered by the current investigation was from 27.07.2018 to 31.10.2020.
- iv. The time limit to complete the investigation was 14.04.2021. However, due to force majeure caused in the light of COVID-19 pandemic, the investigation could not be completed on or before the above date. As per Hon'ble Supreme Court Orders in Suo-Moto Writ Petition (Civil) No. 3 of 2020 in cases where the limitation for any suit, appeal, application or proceeding had expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have had a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, was greater than 90 days, that longer period shall apply. The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court Order dated 27.04.2021.
- v. In response to the Notice dated 09.11.2020 and subsequent reminders, the Respondent submitted his reply vide e-mails/letters dated 27.11.2020, 11.01.2021, 17.01.2021, 23.02.2021, 10.03.2021, 04.04.2021, 14.04.2021, 28.06.2021, 14.07.2021, 20.07.2021, 3.07.2021, 18.08.2021 and 5.08.2021. The detailed submissions of the Respondent to the DGAP have been summed up below wherein, inter-alia, it was stated that:-

a) The "Stayfree Sanitary Napkin" as sold to the Applicant No. 1 (MRP Rs. 155/-) was purchased vide Invoice No. JJGST700409 dated 13.07.2017 by paying 12% GST. Accordingly, Respondent's billing system charged the same and deposited in Government Exchequer.

b) The purchase details are as below:-

Basic Purchase Price	Rs. 123.57
GST @ 12%	Rs. 14.82
Purchase Value	Rs. 138.39
MRP	Rs. 155/-
Margin on MRP	10.71%

c) He was a small retailer and he was yet to receive confirmation from the manufacturer regarding change of GST rate on sanitary napkins and subsequently on all purchases thereafter, which were sold in due course.

d) It was the manufacturer who follows change in GST rate at initial stage and Respondent sells the same as per the invoices raised to them. Government too puts and expects the manufacturers to pass on the benefit of exemption/reduction in GST to customer. As such Respondent had not received any benefit from the manufacturer which was to be passed on to the customer.

e) Respondent had not charged the customer over the MRP fixed by supplier and earned 10.71% profit and collected GST was deposited with government not earning extra profit over it.

f) There had been no sale under HSN Code 96190020 during the period.

vi. Vide the aforementioned e-mails/letters, the Respondent also submitted the following documents/information:

- (a) Drug License No. UP16200000126 and first sale w.e.f. 12.10.2018.
 - (b) Price List of Sanitary Napkin products (pre and post 26.07.2018).
 - (c) Sales invoices Post notification with no GST on Sanitary Napkins.
 - (d) GSTR-3B returns for the period from July, 2017 to October, 2020 and GSTR-1 returns for the period from July, 2018 to October, 2020.
 - (e) Invoice-wise details of all outward supplies of Sanitary Napkin from July, 2018 to October, 2020.
 - (f) Closing stock all Sanitary Napkin as on 27.07.2018.
 - (g) Sample copy of invoices.
- vii. In the Notice dated 09.11.2020, the Respondent was informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. The Respondent vide email dated 20.03.2021 claimed confidentiality of all information provided to the DGAP except Price list of Sanitary Napkins (Pre and Post 27.07.2018) and details of outward supplies of Sanitary Napkins during the period July 2018 to October 2020.
- viii. The subject application, the various replies of the Respondent and the documents/evidence on record had been examined in detail. The main issues to be looked into was whether the GST on the "Sanitary Napkins" was exempted w.e.f. 27.07.2018 and if so, whether the benefit of such exemption of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
- ix. As regards the reduction in the rate of tax, it was observed that the Central Government, on the recommendation of the GST Council, exempted the GST on the product "Sanitary towels

(pads) or sanitary napkins; tampons" w.e.f. 27.07.2018, vide Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018. This was a matter of fact which had not been contested by the Respondent.

- x. Section 171(1) of CGST Act, 2017 which governs the anti-profiteering provisions under GST states that "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 that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of the goods or services. Such reduction could obviously be only in terms of money, such that the final price payable by a consumer gets reduced commensurate with the reduction in the tax rate. This was the legally prescribed mechanism for passing 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.
- xi. The Respondent contended that "Stayfree Sanitary Napkin" as sold to the Applicant (MRP Rs. 155/-) was purchased vide Invoice No. JJGST700409 dated 13.07.2017 by paying 12% GST, accordingly his billing system charged the same and deposited with the Government Exchequer. In this regard it was observed that before 27.07.2018, the GST rate on supply of "Sanitary Napkins" was 12% and therefore the purchase made by the Respondent by paying 12% GST appears to be within the confines of law. However, the intra-state supplies of "Sanitary Napkins" was exempted from GST w.e.f. 27.07.2018, vide Notification No. 19/2018-Central Tax (Rate) dated 26.07.2018. Hence, the supply of said "Stayfree Sanitary Napkin" made to the Applicant on 18.02.2019 by charging 12% GST does not appear to be in accordance with the provisions under the CGST Act, 2017, and therefore remedial

measures as prescribed under the CGST Act, 2017 should have been taken recourse to before the appropriate authority.

- xii. The Respondent was asked to provide purchase and sales prices of all the sanitary napkins during pre and post rate reduction period. The Respondent was also requested to provide the sales data of all the outward supplies of the 'Sanitary Napkins' made from July 2018 onwards. The Respondent provided the same vide email dated 14.04.2021. The Respondent also informed that he was left with only 2 quantities of 'Stayfree Advanced XL 1*14 Sanitary Napkins' as closing stock on 27.07.2018 which he sold by charging 12% GST even after rate reduction. On the basis of the purchase and sales price, the profit margin for pre and post rate reduction had been arrived at and the same had been considered for computation of profiteering.
- xiii. Now, the issue that remains was the determination and quantification of profiteering by the Respondent for failing to pass on the benefit of the exemption of GST on the Sanitary Napkins to the recipients, in terms of Section 171 of the CGST Act, 2017. From the sales data made available, it appears that the Respondent increased his profit margin on the sanitary napkins when the GST rate was reduced from 12% to NIL w.e.f. 27.07.2018.
- xiv. To illustrate, during the pre-rate reduction period (01.07.2018 to 26.07.2018), the Respondent purchased the goods "Stayfree Advanced XL 1*14" at the base price of Rs. 123.56/- while the selling price of the same goods during the said period was Rs. 138.39/-. Thus, the profit margin for the Respondent during the pre-rate reduction period was Rs. 14.83/- per unit.
- xv. As on 26.07.2018, the Respondent had a closing stock of 2 units of the "Stayfree Advanced XL 1*14". As the rate of tax on the "Stayfree Advanced XL 1*14" was reduced from 12%

to NIL w.e.f. 27.07.2018, the Respondent were not entitled to avail ITC on this closing stock. Hence, the commensurate price of the closing stock of "Stayfree Advanced XL 1*14" as on 26.07.2018, should had been the sum total of Rs. 123.56/- (basic purchase price), Rs. 14.83/- (increase in cost due to denial of ITC @12% of the basic purchase price of Rs. 123.56/-) and Rs. 14.83/- (profit margin) i.e., Rs. 153.22/-. Since, from 27.07.2018 onwards, the GST rate was reduced from 12% to NIL, the Respondent could have sold one unit of the "Stayfree Advanced XL 1*14" at Rs.153.22/- without charging any GST on the same. However, the Respondent had sold each unit of the closing stock of "Stayfree Advanced XL 1*14" at a total price of Rs. 155/- per unit (basic price of Rs.138.39/- plus GST (@ 12%) of Rs.16.61/-). Hence it appears that the Respondent had increased the selling price by Rs. 1.78/- more than the aforesaid commensurate price of Rs.153.22/-. Hence, the profiteering in respect of closing stock of 2 units of "Stayfree Advanced XL 1*14" sold by the Respondent in post rate reduction period appears to be Rs. 3.56/-. Further, the Respondent had not reversed the ITC on closing stock as per the provisions of Section 17 of the CGST Act, 2017 read with Rules 42 and 43 of the CGST Rules, 2017. Accordingly, the Respondent was liable for action under the provisions of the CGST Act, 2017 and the Rules made thereunder by the appropriate authority.

- xvi. During the post-rate reduction period (27.07.2018 to 31.10.2020), on the basis of data for exempted outward supplies of Sanitary Napkins submitted by the Respondent, the profiteered amount was calculated on a sample consignment as illustrated below:

Invoice No.	A	589
Invoice date	B	07.04.2020
Item Name	C	WHISPER GREEN XL NORMAL 1*30
Quantity	D	02 units
Rate per unit	E	Rs. 260/-
GST charged	F	Rs. NIL @ 0%
Total Exempted Supply	$G = E * 2$	Rs. 520/-
Pre Rate Reduction Purchase Price per unit (Incl. of GST)	H	Rs. 250.43/-
Pre Rate Reduction Sale Price per unit (Incl. of GST)	I	Rs. 270/-
Pre Rate Reduction Purchase Price per unit (Excl. of GST)	$J = H/1.12$	223.60
Pre Rate Reduction Sale Price per unit (Excl. of GST)	$K = I/1.12$	241.07
Profit margin	$L = K - J$	Rs. 17.47
Post Rate Reduction Purchase Price per unit	M	Rs. 228.07
Commensurate Sale Price per unit (Fresh Stock)	$N = L + M$	Rs. 245.54
Post Rate Reduction Sale Price per unit	O	Rs. 260/-
Profiteering per Unit	$P = O - N$	Rs. 14.46
Total Profiteering	$Q = P * D$	Rs. 28.91

Thus, on this particular consignment, the amount of profiteering was calculated as Rs. 28.91/-. Following the similar methodology in respect of the rest of the consignments, where the basic sale price was more than what it should have been, keeping the margin of profit at pre-rate reduction levels, the total amount of profiteering in respect of fresh stock comes to Rs. 2,092.02/-


- xvii. On the basis of the information submitted by the Respondent, it was observed that the said service had been supplied by the Respondent in the State of Uttar Pradesh only.
- xviii. In this case, the allegation was that the base price of the Sanitary Napkin was increased when there was exemption from GST w.e.f. 27.07.2018, so that the commensurate benefit of GST exemption was not passed on to the recipients. It was

apparent that the base prices of the products under investigation were indeed increased after 27.07.2018. Thus, it appears that by increasing the base prices of the products consequent to the exemption from GST, the commensurate benefit of GST exemption was not passed on to the recipients. The total amount of profiteering covering the period 27.07.2018 to 31.10.2020 appears to be Rs. 2,095.58/- (Rs. 3.56/- for closing stock + Rs. 2,092.02/- for fresh stock), which includes the profiteering amount of Rs. 1.78/- to be passed on to the Applicant.

3. A copy of the investigation report dated 02.09.2021 was provided to the Respondent and to the Applicant No. 1 as per the Minutes of the Meeting of Authority held on 05.01.2021 and as conveyed vide letter dated 25.02.2022. The Respondent vide the letter dated 16.03.2022 and 05.04.2022 submitted that he agrees to deposit with the Government Exchequer the benefits/credits amounting to Rs. 2095.58/- as he did not have the details of the Customers to whom benefit was to be passed on. However, the Applicant No. 1 did not submit any submissions against the DGAP's report.
4. 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 matter was taken up for further proceedings vide Order dated 25.02.2022.
5. This Authority has carefully considered the Reports of the DGAP, submissions made by the Respondent and the case record. It is on record that Applicant No. 1 had filed a complaint alleging that the Respondent did not pass on the benefit of exemption of GST on Sanitary Napkins, vide Notification No. 19/2018 –Central Tax (Rate) Dated 26.07.2018, by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax, Act, 2017.

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

“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 :- 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. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been reduction in the rate of tax (exempted of GST) after 26.07.2018. The Authority finds that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible recipients works out to Rs. 2096. The DGAP has calculated the amount of benefit to be passed on to all the eligible recipients as Rs.2096/- on the basis of the information supplied by the Respondent. The Respondent has not disputed the methodology adopted by the DGAP or the amount of profiteering worked out by the DGAP. 

7. In view of the above discussions, the Authority concur with the DGAP report dated 02.07.2021. The Authority determines that the Respondent have profited by an amount of Rs. 2096/- as has been computed in Annexure - 21 of the DGAP report for exemption of GST w.e.f. 27.07.2018 and had not been passed on to his Recipients by way of commensurate reduction in prices of “Sanitary Napkins” during the period of investigation i.e. 27.07.2018 to 31.10.2020. Further, since the recipients of the benefit, as determined, other than the Applicant, are not identifiable, the Respondent is directed to deposit an amount of Rs. 2,094/- in two equal parts of Rs. 1047/- each in the Central Consumer Welfare Fund and the Uttar Pradesh 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 Respondent is also directed to return/pass on the

benefit of Rs. 1.78 along with interest @18% as prescribed to the Applicant.

8. The Authority has also taken note of DGAP letter dated 25.05.2022 regarding claim of the Respondent that they have submitted Demand Draft of Rs. 1,048/- to PAO, Consumer Affairs, New Delhi for the payment in Central CWF. Further, vide letter dated 23.03.2022, the Additional Commissioner of Commercial Tax, Uttar Pradesh informed to DGAP that the constitution of State Consumer Welfare fund was under process at the level of State Government.
9. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the recipient commensurate with the benefit exemption received by him.
10. It is evident from the above narration of facts that Respondent has denied the benefit of exemption of GST w.e.f. 27.07.2018 on Sanitary, Napkins Section 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. Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. As the period of investigation was 27.07.2018 to 31.10.2020, therefore, the Respondent is liable for imposition of penalty under the provisions of the above Section. Accordingly, notice be issued to him to explain why penalty as prescribed under Section 171 (3A) should not be imposed on him.
11. 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. 2094/- in two equal parts of Rs. 1047/- each in the Central Consumer Welfare Fund and the Uttar Pradesh Consumer Welfare Fund as per the provisions

of Rule 133 (3) (c) of the CGST Rules 2017, along with interest payable @ 18% and an amount of Rs. 1.78 along with interest @ 18% as prescribed is passed on to the Applicant.

12. The concerned commissioner of SGST/Commercial Taxes is also directed to get expedite the constitution of State Consumer Welfare Fund Account and forward the details thereof to the Respondent, this Office as well as to DGAP at the earliest.

13. 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 or 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.

14. A copy of this order be sent, free of cost, to the Applicant No.1, the DGAP, the Respondent and Commissioners CGST/SGST Uttar Pradesh for necessary action.


S/d
(Amand Shah)
Technical Member &
Chairman



S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/JayCee/42/2022

Date: 27.07.2022

Copy to:

1. Smt. Ritika Vohra, 1603, Kalypso Court-3, Jaypee Wish Town, Sector-128, Noida, Uttar Pradesh-201304
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. M/s Jay Cee Chemists Pvt Ltd., G-09, Imperial Arcade, Jaypee Wish Town, Sector-128, Noida, Uttar Pradesh-201304
4. Chief Commissioner of Central Goods & Services Tax, Lucknow Zone, 7-A, Ashok Marg, Lucknow-226001
5. Commissioner of Commercial Taxes, Office Of The Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomi Nagar, Lucknow (U.P).