



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

I. O. No. : 03/2023
Date of Institution : 31.08.2022
Date of Order : 31.07.2023

In the matter of:

1. Dr. Meenakshi Agrawal, 168, Vidhya Apartments, Near Hinduja Hospital, Veer Savarkar Marg, Mahim West, Mumbai-400016.
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. S. R. Lifesciences, B-306, Royal Enclave Building, Near Sona Udhyog, Parsi Panchayat Road, Andheri East, Mumbai-400069.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Dr. Sangeeta Verma, Member
3. Sh. Bhagwant Singh Bishnoi, Member

ORDER

1. The present Report dated 31.08.2022 has been received from 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 the DGAP had received a reference under the provisions of Rule 129(1) of the Central Goods and Services Tax (CGST) Rules, 2017 from the Standing Committee on Anti-profiteering on 09.10.2019, to conduct a detailed investigation under Rule 129(6) of the Rules on the basis of an application filed under Rule 128 of the Rules by the Applicant No. 1, alleging profiteering by the Respondent, in respect of supply of "ECLAT SERUM" (hereinafter referred to as "the subject Goods"), supplied by the Respondent. The Applicant No. 1 has alleged that the Respondent had not reduced the selling price of the "ECLAT SERUM", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 and thus, the benefit of reduction in the GST rate was not passed on to the Applicant No. 1 by way of commensurate reduction in the price in terms of Section 171 of the CGST Act, 2017. Along with the Application, the above Applicant had submitted copies of invoices of pre-rate reduction and post rate reduction. On the basis of above, the DGAP had investigated and submitted an Investigation Report dated

23.03.2020 (covering period from 15.11.2017 to 30.09.2019) under Rule 129(6) before the erstwhile National Anti-profiteering Authority (NAA).

2. The NAA passed Order No. 07/2022 dated 10.05.2022 in the context of the DGAP's investigation report dated 23.03.2020. The Respondent claimed before the NAA during the hearing held on 31.03.2022 that the rate reduction benefit was not passed on to him by his supplier/s while supplying the product "Eclat Serum" to him and therefore, he could not pass it on further to his buyers. The Authority, vide Para 14 (Para no. repeated after Para 24) of the aforesaid order, accordingly, issued following directions:-

"14. Further, during the hearing held on 31.03.2022, the Respondent has stated that the rate reduction benefit was not passed on to him by his supplier/s while supplying the product "Eclat Serum" to him. Therefore, there arises a need to check whether his supplier has passed on the above benefit to him or not so that the investigation can be taken to its logical end in terms of Section 171 of the CGST Act, 2017 and the Rules framed thereunder. Accordingly, this Authority directs the DGAP to gather the information of the Respondent's supplier/s from the Respondent and investigate the entire supply chain under Rule 133(5) of the CGST Rules, 2017 and submit the investigation report within 3 months of passing of this order."

3. Accordingly, the DGAP vide letter dated 24.05.2022, requested the Respondent to provide the details of all the suppliers who supplied the subject goods to him after rate reduction along with all the necessary evidence substantiating the supplies made by suppliers to him after reduction in rate of tax. However, the Respondent did not submit the requisite documents despite several reminder letters. Therefore, summons under Section 70 of CGST Act, 2017 read with Rule 132 of the Rules were issued to Sh. Suresh Mali, Proprietor of the Respondent to submit the requisite details/documents on or before 24.06.2022. In compliance,

the Respondent, vide his email dated 25.07.2022, had furnished two invoices dated 11.09.2015 & 02.11.2017 of the supplier M/s Shree Suktam Enterprise, Ahmedabad and one invoice dated 04.12.2017 of the supplier M/s Baxium Health Science, Ahmedabad.

4. On scrutiny of these invoices, the DGAP has observed that since the rate reduction was made by the Government vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 which was effective from 15.11.2017, the invoice dated 11.09.2015 of the supplier M/s Shree Suktam Enterprise, Ahmedabad has no relevance with the GST as the same pertained to the pre-GST regime. Further, the invoice dated 02.11.2017 of the same supplier has also no relevance with the rate reduction w.e.f. 15.11.2017 as same pertained to pre-rate reduction period. Though, the invoice dated 04.12.2017 of the supplier M/s Baxium Health Science, Ahmedabad pertained to the post-rate reduction period but the Respondent failed to provide any other invoice of the same supplier for the pre-rate reduction period authenticating that the benefit of reduction in rate of GST was not passed on by the supplier M/s Baxium Health Science, Ahmedabad to the Respondent. However, on comparing the invoice dated 04.12.2017 (post-rate reduction period) of M/s Baxium Health Science, Ahmedabad with the invoice dated 02.11.2017 (pre-rate reduction period) of M/s Shree Suktam Enterprise, Ahmedabad (though such comparison of two different suppliers was not correct), the DGAP has observed that M/s Baxium Health Science, Ahmedabad had supplied 450 pieces of "ECLAT Serum 30 GM" at the base price of Rs. 175/- per piece whereas M/s Shree Suktam Enterprise, Ahmedabad supplied 80 pieces of the "ECLAT Serum 30GM" at the base price of Rs. 310/- per piece. Hence, the DGAP has stated that M/s Baxium Health Science, Ahmedabad had supplied

“ECLAT Serum 30GM” at the reduced rate after reduction in rate of GST. However, the information furnished by the Respondent vide his email dated 25.07.2022 was insufficient to conclude whether both these suppliers have passed on the benefit of rate reduction to the Respondent or not. The DGAP vide letters dated 01.08.2022 and 16.08.2022 had requested the jurisdictional Deputy Commissioner of State Tax to depute an officer to procure the requisite documents/information from the Respondent and forward the same to the DGAP. However, no reply had been received by the DGAP till date.

5. The DGAP in his Report dated 31.08.2022 furnished under Rule 133 (4) & 133 (5) of the CGST Rules, 2017 read with Section 171 (2) of the CGST Act, 2017 has concluded that in absence of any documentary evidence which substantiates that the benefit of rate reduction was not passed on by these two suppliers to the Respondent and also keeping in view the specific submission made by the Respondent that he had not received the benefit of rate reduction from the suppliers, the matter could not be investigated further. The DGAP has also mentioned that the Respondent was neither willing to cooperate with the DGAP nor share any information/document. He has also stated that since the details of the above two suppliers were available, further directions may be issued to investigate the matter under Rule 133(5) of the CGST Rules, 2017 read with Section 171 (2) of the CGST Act, 2017.
6. This Commission has carefully examined the Report dated 31.08.2022 of the DGAP and the case records and it has been observed that the Respondent has not cooperated with the DGAP to furnish the necessary information required for completing the investigation. Therefore, the DGAP could not take the above investigation to its logical end since both the invoices (pre-rate reduction and

post-rate reduction) of the suppliers viz. M/s Shree Suktam Enterprise, Ahmedabad and M/s Baxium Health Science, Ahmedabad were not supplied to the DGAP for comparison and to arrive at a conclusion so the DGAP could not investigate whether the suppliers have passed on the benefit of rate reduction to the Respondent or not and which could only be ascertained after getting the complete information/data from these two suppliers of the Respondent. It is also a fact that the DGAP was allowed time to complete his investigation till 09.11.2022 by the NAA vide Order dated 03.08.2022. However, the DGAP has concluded his investigation prematurely in respect of the two suppliers of the Respondent without exhausting all available legal resources at his command under the CGST Act, 2017, however, he has recommended further investigation against both the above suppliers.

7. In view of the above facts, this Commission having carefully considered the above report directs the DGAP to further investigate the two suppliers namely M/s Shree Suktam Enterprise, Ahmedabad and M/s Baxium Health Science, Ahmedabad and submit his Report in terms of the Section 171 of the Act read with Rule 133(5) of the CGST Rules, 2017.
8. The Respondent and the above two suppliers namely M/s Shree Suktam Enterprise, Ahmedabad and M/s Baxium Health Science, Ahmedabad are directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.
9. Further, the Jurisdictional Commissioners CGST/SGST are also directed to assist the DGAP in the matter to conclude his investigation.


10. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Bhagwant Singh Bishnoi)
Member

Sd/-
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

F. No. 22011/NAA/148/SRL/2020

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Date: 01.08.2023

Copy to:-

1. M/s S.R. Lifesciences, B-306, Royal Enclave Building, Near Sona Udhyog, Parsi Panchayat Road, Andheri East, Mumbai-400069.
2. Dr. Meenakshi Agrawal, 168, Vidhya Apartments, near Hinduja Hospital, Veer Savarkar Marg, Mahim West, Mumbai-400016.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.