



BEFORE THE COMPETITION COMMISSION OF INDIA

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

I. O. No. : 08/2023
Date of Institution : 03.03.2023
Date of Order : 17.08.2023

In the matter of:

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

1. M/s. Rajkotia Medicare Pvt. Ltd., 19/19A Nand Deep Industrial Estate, Kondivita Lane Andheri Kurla Road, Andheri (E) Mumbai- 400059.
2. M/s. Allergan Healthcare India Pvt. Ltd., Level 6 & 7, Prestige Obelisk, No. 3, Kasturba Rd. Ambedkar Veedhi, Bengaluru, Karnataka- 560001.

Respondents

Coram:-

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

ORDER

1. The Director General of Anti-profiteering (DGAP) submitted an Investigation Report dated 03.03.2023 under Rule 129 of the Central Goods Service Tax (CGST) Rules, 2017 before the Commission, after a detailed investigation as per the directions passed under Rule 133(5) of the CGST Rules, 2017 vide the NAA's I.O. No. 69/2022 dated 31.08.2022 in the case of Respondent No. 1 and Respondent No. 2. Vide the above order the DGAP was directed to investigate profiteering in relation to all the products inclusive of the products investigated by him through his report dated 28.01.2021 manufactured/sold by the Respondent No. 1 and No. 2 where the rate of GST has been reduced till the period when the prices of the products have been reduced by both the Respondents.
2. In compliance of the above order, the DGAP has submitted his report dated 03.03.2023 and has stated that:-
 - a. On receipt of the above order, notice dated 12.09.2022, under Rule 129 of the CGST Rules, 2017, was issued to the Respondent No. 1 & No. 2 to submit their replies as to whether they admitted that the benefit of GST rate reduction had not been passed on to the recipients by way of commensurate

reduction in price and if so, to suo-moto determine and indicate the same in their reply to the Notice as well as furnish all supporting documents.

- b. In response to the notice and several reminder letters dated 12.09.2022, 27.09.2022, 10.10.2022 & 01.11.2022, both the Respondents did not submit all the requisite documents. Therefore, Summons dated 16.11.2022 were issued to Sh. Ashok Keshavlal Rajkotia (Director) of the Respondent No. 1 & Sh. Mohan Raghavan Nair (Director) of the Respondent No. 2 under Section 70 of the CGST Act, 2017 to submit the requisite information/documents. In response, the Respondent No. 1 submitted all the requisite documents/details vide e-mail dated 28.11.2022. However, the Respondent No. 2 did not submit the required information.
- c. The Respondent No. 1 submitted his reply vide e-mails/letters dated 06.10.2022, 14.10.2022, 10.11.2022 and 28.11.2022.
- d. The Respondent No. 1 also informed that he had filed a Writ Petition (Civil) No. 683/2023 before the Hon'ble High Court of Delhi wherein the Hon'ble Court vide Order dated 20.01.2023 has directed that
"In view of the above, it is directed that no coercive action be taken against the petitioner in this case till the next date of hearing".
- e. On the basis 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 goods during the period 01.10.2019 to 31.08.2022, as furnished by the Respondent No. 1 for the state of Maharashtra, the 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% or in other words, the profiteered amount, came to Rs. 55,16,397/-. 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 Respondent No. 1 had also argued that the Hon'ble High Court of Delhi had issued an Order in respect of Writ Petition filed by the Respondent No. 2 that no coercive action can be taken against the Respondent No. 2, and therefore, the DGAP couldn't proceed with the present investigation. In this matter, legal opinion was sought from the Senior Standing Counsel, who vide e-mail had opined that investigation against the Respondent No. 2 would not be a coercive action and therefore, the present investigation had been carried out.

- f. Further, the DGAP has stated that, the Respondent No. 2 had filed a Writ Petition (Civil) No. 17073/2022 before the Hon'ble High Court and prayed:

“that pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to order restrict the Respondents and/or their servants from recovering, proceeding or effecting any proceedings pursuant to the Impugned Order dated 31.08.2022 (NAA's Final Order) issued by the Respondent No. 2 and Impugned Notices dated 12.09.2022 (Notice of Initiation of Investigation) and 16.11.2022 (Summons) issued by the Respondent No. 3.”

- g. The Hon'ble Court vide Order dated 15.12.2022 had directed as follows:

“Till further orders no coercive action shall be taken against the petitioner in pursuance to the impugned order”.

The Hon'ble Court further directed vide Order dated 24.02.2023:

“Interim Orders, if any, to continue”.

The next date of hearing is scheduled on 12.05.2023.

- h. In light of directions issued by the Hon'ble Court, the DGAP sought legal opinion from Sh. Zoheb Hossain, Senior Standing Counsel of NAA/DGAP to proceed with the investigation against the Respondent No. 2. In response, the Counsel replied vide e-mail dated 22.02.2023 that *"The Court has directed no coercive steps pursuant to impugned order. There is however no stay on investigation where you seek information by issuing summons. In case of non-compliance there cannot be any coercive action but court has not stayed the investigation."*
- i. Letter dated 24.02.2023 was also sent to Pr. Commissioner CGST, Bengaluru North to depute an officer and visit the premises of the Respondent No. 2 to collect the requisite information/documents sought vide Summons dated 16.11.2022 and forward the same to the office of DGAP. Another letter dated 24.02.2023 was sent to Respondent No. 2 to submit the information sought failing which the same would lead to the completion of investigation ex-parte.
- j. In response, the Respondent No.2 replied vide e-mail dated 28.02.2023 but did not submit the requisite information.
- k. The Respondent No. 2 stated that subsequent to filing of Writ Petition, a Notice has been issued by the Hon'ble High Court of Delhi in the said matter. The issuance of the same signified that the matter had been initiated for the purpose of adjudication and any other proceeding in parallel would be against the settled principles of law as the same was currently sub-judice before the Hon'ble High Court of Delhi. The Hon'ble Court has further directed that no coercive action shall be taken against him in pursuance of order and directions of the Hon'ble High Court constituted a stay in favour of

him and against the Department and completion of investigation ex parte as suggested in the letter of DGAP would also be a coercive measure and in contravention of the orders passed by the Hon'ble High Court.

- l. The Respondent No. 2 did file a reply dated 28.02.2023 but did not furnish the invoice wise details of the impacted products. However, he had submitted copies of GSTR-3B & GSTR-1 Returns for the impugned period. Therefore, in the present investigation, profiteering has been worked out solely on the strength of the figures of the turnover reflected in the GSTR-3B Returns. The Respondent No. 2 had not provided the requisite data to the DGAP. The DGAP had not taken any other step to recover data from the Respondent No. 2 as that might amount to coercive action. As the investigation had to be concluded within the time frame stipulated in Rule 129(6) read with rule 133(5)(b) of the CGST Rules, 2017, therefore, DGAP had quantified the profiteering amount on the basis of the data available with him. In order to work out the quantum of profiteering, the profiteering worked out in the initial investigation was taken into consideration and the profiteering for the period from 01.10.2017 to 31.08.2022 had been worked out proportionately as per the Table –A below:

Table- A

Period	Total Turnover (Rs.)	Profiteering (Rs.)
November, 2017 to September, 2019	2,45,08,25,820	28,50,72,358
Ratio of Profiteering to Total Turnover = 11.63%		

- m. The Respondent No. 2 had not furnished the invoice wise details to work out the turnover of impacted goods for the period from October, 2019 to August,

2022, therefore, the total turnover for the period October, 2019 to August, 2022 was taken from GSTR-3B Returns filed by the Respondent No. 2. Since, during the earlier period (November, 2017 to September, 2019), the ratio of total turnover to profiteering was 11.63%, the same percentage had been applied to the total turnover for the period from October, 2019 to August, 2022 to work out the profiteering for that period. The details of the same have been furnished by the DGAP in Table – B below:-

Table - B

Period	Total Turnover (Rs.)	Profiteering (Rs.) @ 11.63% of turnover
October, 2019 to August, 2022	3,54,27,99,239	41,20,27,551

n. As per the above Table – B, the DGAP has reported that, the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in prices by the Respondent No. 2. He had also stated that the commensurate benefit of reduction in GST rate from 28% to 18% was not passed on to the recipients by both the Respondents. The total amount of profiteering covering the period from 01.10.2019 to 31.08.2022 in respect of the Respondent No. 1 worked out as Rs. 55,16,397/- and the profiteering amount in respect of the Respondent No. 2 for the period from 01.10.2019 to 31.08.2022 was Rs. 41,20,27,551/-.

3. This Commission has carefully considered the DGAP's Report dated 03.03.2023 and the documents placed on record. The Commission finds that the erstwhile National Anti-profiteering Authority vide its Order No. 69/2022 dated 31.08.2022 in the matter of Meenakshi Agrawal vs. Respondent No. 1 & No. 2 had directed

the Director General of Anti-profiteering under Rule 133(5) of the Central Goods and Services Tax Rules, 2017 *"to investigate profiteering in relation to all the products inclusive of the impugned products manufactured/sold by the Respondent No. 1 & 2 where the rate of GST has been reduced till the period when the prices of the products have been reduced by both the Respondents"*. Thus, in compliance of the above Order the DGAP has submitted the present Report dated 03.03.2023 and stated that the profiteered amount established in respect of the Respondent No. 1 & No. 2 came to Rs. 55,16,397/- and Rs. 41,20,27,551/- respectively. It is further revealed from the report of the DGAP that the Respondent No. 1 and No. 2 had also filed Writ Petition (C) No. 683/2023 and 17073/2022 respectively before the Hon'ble High Court of Delhi. The Hon'ble Court vide its orders dated 21.01.2023 and 15.12.2022 passed in respect of the Writ Petitions filed by the Respondent No. 1 and No. 2 has directed that no coercive action may be taken against the Respondents in pursuance of the above order. In light of directions issued by the Hon'ble Court, the DGAP had sought legal opinion from Sh. Zoheb Hossain, Senior Standing Counsel of NAA/DGAP for obtaining requisite documents to proceed with the investigation against the Respondent No. 2. In response, the Senior Standing Counsel replied vide e-mail dated 22.02.2023 that *"The Court has directed no coercive steps pursuant to impugned order. There is however no stay on investigation where you seek information by issuing summons. In case of non-compliance there cannot be any coercive action but court has not stayed investigation."*

4. In compliance to the above Order of the NAA, the Respondent No. 1 supplied all the details required to establish whether he had profiteered or not and thus,

upon verification of the documents/info supplied by the Respondent No. 1, the DGAP has reported that the Respondent No. 1 has profiteered and thus, contravened the provisions of Section 171 of CGST Act, 2017.

5. However, in reply to the notice of the DGAP, the Respondent No. 2 did not supply the information/documents required to establish whether he has passed on the benefit of reduction in the rate of tax to his customers or not. However, the Respondent No. 2 has submitted copies of GSTR-3B & GSTR-1 Returns for the period from October-2019 to August-2022. The DGAP has not taken any other step to recover data from the Respondent No. 2 as that might amount to coercive action. Therefore, the DGAP has calculated profiteering solely on the strength of the figures of the turnover reflected in the GSTR-3B Returns. Thus, the DGAP has arrived at profiteered amount on the basis of the data available with him. The profiteering worked out in the initial investigation dated 28.01.2021 was taken into consideration and the profiteering for the period 01.10.2017 to 31.08.2022 has been worked out proportionately.
6. Thus, in the absence of the requisite information/data, the DGAP has calculated the profiteered amount by considering the total turnover for the period from October, 2019 to August, 2022 from GSTR-3B Returns filed by the Respondent No. 2. Since, during the earlier period (November, 2017 to September, 2019), the ratio of total turnover to profiteering was 11.63%, the same percentage was applied to the total turnover for the period from October, 2019 to August, 2022 to work out the profiteering for that period.
7. The Commission finds that the Respondent had not supplied the invoice wise details to the DGAP and has not co-operated during the investigation. Thus, profiteering for the period from October-2019 to August-2022 has been

calculated by the DGAP in the absence of the requisite data/information by applying the total Turnover to Profiteering ratio of 11.63% for the period from November-2017 to September-2019. It is also apparent from the Order dated 15.12.2022 of the Hon'ble High Court of Delhi that ".....Till further orders **no coercive action shall be taken against the petitioner in pursuance to the impugned order**". It is also apparent that the Respondent No. 2 has not supplied the required information on the ground that no coercive action can be taken against him. The profiteered amount computed by the DGAP against the Respondent No. 2 is not based on the actual data of supplies made by him and hence the same cannot be relied upon.

8. Hence, the Commission directs the DGAP to further investigate the case again and submit report to the Commission under Rule 133(4) of the CGST Rules, 2017 after obtaining the required information from the Respondent No. 2. In case the Respondent No. 2 does not co-operate and provide the required data, appropriate legal remedial measures may be taken by the DGAP including bringing the non-cooperation of the Respondent to the notice of the Hon'ble High Court.
9. 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

ok


(Jyoti Jindgar Bhanot)
Secretary

F. No. M/AP/25/Allergan-Rajkoti-OP/2023-Sectt./562-565

Date: 17.08.2023

Copy to:-

1. M/s Rajkotia Medicare Pvt. Ltd., 19/19A Nand Deep Industrial Estate, Kondivita Lane Andheri Kurla Road, Andheri (E) Mumbai- 400059.
2. M/s. Allergan Healthcare India Pvt. Ltd., Level 6 & 7, Prestige Obelisk, No. 3, Kasturba Rd. Ambedkar Veedhi, Bengaluru, Karnataka- 560001
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.