BEFORE THE COMPETITION COMMISSION OF INDIA

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

Case No.	:	19/2023
Date of Institution	:	17.09.2021
Date of Order	:	16.11.2023

In the matter of:

1. M/s Daanish Electricals & Sales Pvt. Ltd, Plot No. 247, M Dharavi Main Road, Dharavi, Mumbai-400017.
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 Eros Elevators & Escalators Pvt. Ltd., 405, Fourth Floor, Bharat Industrial Estate, T. J. Road, Sewree, Mumbai City, Maharashtra-400015.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. M/s. Sweta Kakkad, Member
4. Sh. Deepak Anurag, Member

ORDER

1. A reference was received from the Standing Committee on Anti-profiteering on 16.12.2020 by the Director General of Anti-profiteering

(DGAP) to conduct a detailed investigation in respect of an Application filed by M/s Daanish Electricals & Sales Pvt. Ltd, Plot No. 247, M Dharavi Main Road, Dharavi, Mumbai-400017 (**hereinafter referred to as "the Applicant**"), under Rule 128 of the CGST Rules, 2017 (hereinafter referred to as **"the Rules")**, alleging profiteering in respect of **Erection and Commissioning** service supplied by M/s Eros Elevators & Escalators Pvt. Ltd., 405, Fourth Floor, Bharat Industrial Estate, T. J. Road, Sewree, Mumbai City, Maharashtra-400015 **(hereinafter referred to as "the Respondent")**.

2. The DGAP after investigation has submitted his Report on 16.09.2021 in which it was stated that: -

i. The Applicant No. 1 alleged that the Respondent had not passed on the benefit of reduction in tax rate in post-GST era amounting to Rs. 1,41,224/- and further alleged that the Respondent had also not passed on the benefit of additional ITC amounting to Rs. (1,07,506/- + 44,771/-) on the materials purchased by the Respondent by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017. The Applicant No. 1 vide letter dated 07.08.2020, submitted that he had placed an Order on 31.12.2015 on the Respondent amounting to Rs. 26,00,000/-. The agreement included the cost of lift, lift materials and transportation from Daman to Mumbai Railway Staff Quarters including all direct and indirect taxes like Central Excise Duty, VAT, Service Tax, Octroi.

ii. The Respondent had delivered the material only after GST became applicable and he had charged a new rate for the supply as per the new agreement which was to be executed in due course with all the input credits on Excise, VAT, Octroi, Service Tax on all the components which he had used and received the credit from his vendors. Since GST was only applicable, the Applicant No. 1 had claimed exemption of the on Excise, VAT, Octroi, Service Tax. The Applicant No. 1 had also claimed credit of Excise Duty, VAT, Octroi, Service Tax on the materials purchased by the Respondent from his vendors.

iii. The said Application was initially examined by the State Screening Committee on Anti-profiteering, Maharashtra and upon being satisfied that the Respondent had prima facia contravened the provisions of Section 171 of the CGST Act, 2017, forwarded the same with its recommendations, to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the Rules.

iv. The aforesaid Application was examined by the Standing Committee on Anti-profiteering, in its meeting held on 02.12.2020, the minutes of which were received by the DGAP on 16.12.2020 for detailed investigation.

v. On receipt of the aforesaid reference alongwith supporting documents from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 06.01.2021, calling upon the Respondent to reply as to whether the benefit of GST rate reduction and ITC had been passed on to the Applicant No. 1 by way of commensurate reduction in prices 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 supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 18.01.2021 to 20.01.2021. The same was not availed by the Respondent.

vi. The Respondent vide his letter dated 01.02.2021, requested to provide the documents on the basis of which the Screening Committee/Standing Committee had forwarded the matter for further investigation to DGAP. Accordingly, a copy of the complaint and attached documents were forwarded to the Respondent in terms of Rule 129(5) of the Rules.

vii. Vide e-mail dated 19.07.2021, the Applicant No. 1 was given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent between 22.07.2021 and 23.07.2021. The Applicant No. 1 vide e-mail dated 19.07.2021, showed his inability to visit DGAP office at New Delhi.

viii. The period covered in the current investigation was from 01.07.2017 to 30.11.2020.

ix. In response to the Notice dated 06.01.2021, the Respondent submitted his reply vide letters and e-mails dated 01.02.2021, 13.03.2021, 14.07.2021, 19.07.2021, 04.09.2021 and 06.09.2021. The detailed submissions of the Respondent given vide letter dated 13.03.2021 were as follows: -

a) That he is in the business of erection and maintenance of elevators (lifts). The Excise Duty was not applicable on him. Only taxes that applicable were VAT/CST (basically State Levy in nature of Sales Tax) and Service Tax (Central Government Levy). On Service Tax front he followed methodology of claiming deduction of VAT paid value from total contract value for the payment of Service Tax in terms of Rule 2A (i) (c) of Service Tax (Determination of Value) Rules 2006.

b) He was eligible to take credit for VAT paid for discharge of VAT. The Respondent was eligible to take CENVAT Credit for Service Tax paid on input services. The Respondent was not eligible to take credit of Excise Duty paid on purchase of the components. The Respondent had accordingly tried to focus on maximum possible procurement from vendors located in exempted zones or small scale vendors below threshold limits so that the Excise Duty cost was not incurred on those components.

c) Octroi was not applicable for procurement and dispatches within local limits. On procurement side, wherever components required storage and could not be dispatched directly to site without storing in his godown, The Respondent had arranged for storage in non-Octroi zone. Therefore, on procurement he never suffered any Octroi. Accordingly, he had tried to optimize contract wise supplies in a manner that would minimize Octroi cost and as would be

apparent from his financial statements the Octroi cost as percentage of revenue ranges between 1.40% to 1.60%.

d) The Applicant No. 1 had first entered into contract dated 4th July 2015 at the basic price of Rs. 11,53,249/- per unit plus taxes. As per Clause 3 of the Conditions of Contract it would be clear that the contract was valid only for 18 months. The contract had accordingly expired on 4th January, 2017. However, as a goodwill gesture the Respondent had offered to continue contract if the above Applicant paid and took delivery at site of material before 30th June 2017. The Applicant did not take delivery and accordingly the said contract stood cancelled. Further, the contract itself had price escalation clause which entitled him to claim price hike. As per Clause 3 of the Conditions of Contract, the Applicant No. 1 had specifically demanded that the price would be constant for at least one year which he had agreed to in a handwritten note. In July 2016 itself the time frame of one year had already expired and he was entitled to claim price hike in old contract price itself if old contract was honoured by the Applicant No. 1. Thus the basic reference price point taken by the complainant himself was faulty. Further attention was invited to the fact that upon expiry of contract due to default by the Applicant No. 1 the Respondent was entitled to levy penalty in terms of Conditions of Contract Clause No. 11 xi. This right to levy penalty had already accrued to him in light of default on contract from the Applicant No. 1. The fact that he agreed to waive penalty at the time of entering fresh contract in 2018 also needed to be factored in as further effective reduction in price quoted afresh.

e) The material for the said contract of the Applicant No. 1 was duly procured by the Respondent by August 2016 and it continued to lie in the inventory inflicting interest costs and storage costs on them. The copies of invoices for almost all the material purchased for the said contracts had been

submitted by the Respondent (some small value items invoices were not submitted). It was mentioned that most of the vendors duly specified OR numbers 20334 and 20335 (job numbers of Danish) in his invoices evidencing the fact that it was job specific procurement.

f) He could not claim input credit on the Excise Duty component on items in inventory as on 30th June, 2017 as part of transitional credit in light of the specific restriction in Section 140(3) of CGST Act that provided that the works contractor could claim credit only if he was availing benefit of Notification No. 26/2012 in Service Tax era. Since he was not availing abatement under the said Notification No. 26/2012 but was following methodology of claiming deduction of VAT paid value from total contract value for the payment of Service Tax in terms of Rule 2A(i)(c) of Service Tax (Determination of Value) Rules 2006, he was not entitled to claim the credit of Central Excise Duty on inventory lying in stock as on 30th June, 2017. He had enclosed a copy of note prepared at the time of implementation of GST analysing eligibility of credit for inventory lying in stock as on 30th June, 2017 which would highlight reasons for non-availability of CENVAT credit on inventory lying in stock as on 30th June, 2017. He had also enclosed copies of Screenshots of TRAN-1 filed by him. It clearly showed that he had not availed any credit in TRAN-1 on account of goods lying in inventory as on 30th June, 2017. The Respondent claims made under TRAN-1 were also audited by the GST Department. It was thus clear that input credit for Excise Duty on the components purchased for contracts of the Applicant No. 1 was not available and not claimed by him.

g) It was further clarified that the credit claimed by him in TRAN-1 was on only two counts: -

A. The unutilized credit of input services available as on 30th June, 2017 as reflected in Service Tax Return. He

had also attached a worksheet showing services on which the credit was availed during the period from April 2017 to June 2017, duly supported by sample invoices from respective service providers.

B. The credit of the taxes paid under VAT and Service Tax on invoices raised by him on supply side prior to 30th June, 2017, where the contract was not completed before 30th June, 2017 in terms of Section 142(11) (c), which mandated that in such cases taxes paid in pre-GST era should be reversed by taking credit and fresh invoices charging GST on entire contract value need to be issued. The details of such claim were evident from copy of data punched in TRAN-1.

"No credit was available nor was claimed on goods lying in inventory as on 30th June, 2017, which included entire material procured for execution of Danish job."

h) The old contract with the Applicant No. 1 had expired and the fresh negotiated contract in May 2018 could not be the subject of Anti-profiteering enquiry. It was also submitted that his contract prices keep on going up in line with inflation which resulted in increase in material, labour and overhead costs. He submitted that on an average over past say 20-25 years the price hike was in the range of 5% per annum. This would mean that contract price for the Applicant No. 1 to be quoted in 2018 would be about 15% higher than the price quoted to him in 2015. Looking at costs it was clear that non execution of contract from the Applicant No. 1's side had inflicted interest costs as well as costs in the form of blocking his limited storage space thereby adversely affecting material flow for other contracts as also higher labour costs would incur due to labour cost hikes. So even keeping aside material cost hike in the price would be higher by about 7.50%. However, the Applicant No. 1 was dealing with Railways on these contracts and he was aware of hardships

he might face. He therefore agreed to enter into fresh contract by waiving penalty on earlier contract as well as by not starting on the basis of old price plus 7.50% and in fact he offered reduction of about 5% in contract price quoted 3 years back. As against old contract price of Rs.11,53,249/- per unit plus taxes, new contract was signed at the price of Rs.11,01,695/- per unit plus taxes. This would really mean that he offered an estimated 12.50% reduction in justified price apart from not levying penalty on default of old contract whereas normally he would have forfeited as penalty at least Rs.2,50,000/- if not the entire advance of Rs.5,20,000/- paid by him. In hindsight, had he levied penalty of Rs. 2,50,000/- and then quoted further lower price to that extent on new contract this matter would not had arisen. It was only the matter of form of negotiation where penalty was waived instead of charging penalty and reducing price of new contract which had enabled M/s Danish Electrical & Sales Pvt. Ltd. to lodge this complaint. The complaint was frivolous in substance not only on this count but also on the basis of above stated facts.

i) The Respondent further submitted that he challenges the very validity of these proceedings on two counts. First it was submitted that such an enquiry was beyond the purview of CGST Act in as much as, on facts works contract entered post implementation of GST could not be the subject matter of such an enquiry. Secondly it was submitted that the proceedings were void, in as much as, the due process prescribed in Rule 128 of the CGST Rules, 2017 had not been followed as would be evident from the fact, that although the reduction in the base price was self-evident in these contracts, the State Level Committee had proceeded to recommend the matter without seeking any information from his side and without applying mind to the facts on record. It was crystal clear that the mind had not been applied to the basic facts like Excise Duty was not applicable

on works contract and was never quoted in price, only VAT and Service Tax were duly quoted, or the fact that Octroi applied on materials value only and not on entire contract price and was further not applicable on local supplies, or fact that contract itself included price variation clause and penalty clause, or the fact that base prices were already reduced. Thus, the recommendation had been done without verification of facts and without Application of mind to self-evident facts on record and the recommendation being void on that count the enquiry was also void.

x. On perusal of Respondent's submission, it had been observed that he had refuted the claim of the Applicant No. 1 and submitted that the allegation of the Applicant No. 1 that the Respondent had increased the base price to keep the price same even after reduction of GST rate was not correct and was without any evidence.

xi. The Applicant No. 1 vide his letter dated 07.08.2020 submitted before State Level Screening Committee that the Respondent had not passed on the benefit of reduction of tax amounting to Rs. 1,41,224.35/- after implementation of GST & further submitted that the Respondent had also not passed on the benefit of additional input credit of Rs. (44,771/- + 1,07,506/-) to him. The Applicant No. 1 claimed that the Respondent had profiteered an amount of Rs. 2,93,502/-.

xii. The Applicant No. 1 had also submitted copies of agreement alongwith estimate No. QT41092_R4 dated 04.07.2015 & QT52365_R1 & QT52268_R2 and as per agreement & QT41092_R4 dated 04.07.2015 the base price for the entire job for installation of 2 lifts was Rs. 23,06,499/- and total tax applicable was Rs. 2,93,502/-. The total price comes to Rs. 26,00,000/- (including tax). Thus total tax was calculated to be 12.72% of the base price. Whereas the agreement entered after implementation of GST the QT shows that the base price for the entire job for installation of 2 lifts was Rs. 22,03,390/- and total

applicable GST was 18% i.e. Rs. 3,96,610/-. Thus from the perusal of quotation/agreement submitted by the Respondent it was found that there was no reduction of tax after implementation of GST. The pre-GST tax rate as calculated above shows that the tax (Vat + Service Tax) was 12.72% of the base price whereas the applicable GST rate, after implementation of GST was 18% during the relevant period. Thus Applicant's allegation that the Respondent had profiteered an amount of Rs. 1,41,244/- due to reduction of tax during GST era, was not correct and not based on fact.

xiii. The Applicant No. 1 alleged that the Respondent was required to pay Excise Duty on installation of lift during the pre GST era which was not correct. During the pre-GST era Excise Duty had to be paid on the manufacture of goods. Whereas in this case the Respondent was not engaged in the manufacture of lift, hence he was not required to pay any Central Excise Duty on the installation of lift. The Respondent had procured the material from different vendors, who were supposed to pay the Central Excise Duty and he was only required to pay it if he had manufactured the component of the lift.

xiv. The Respondent claimed in his submissions that his matter did not fall in the ambit of the Anti-profiteering law as the work contract was entered in post GST era and process prescribed in Rule 128 of the CGST Rules, 2017 had not been followed. It was submitted that the Respondent's claim was not sustainable as the Standing Committee on being satisfied that there was prima-facie evidence, referred the matter to the DGAP for further investigation to determine whether there was benefit under Section 171 of the CGST Act, 2017.

xv. The second issue was whether the Respondent had got any additional benefit of ITC after implementation of GST. Prior to implementation of GST the Respondent was not entitled to avail CENVAT credit benefit on input used in installation of lift, however he was entitled for VAT credit of 12.5% or as applicable in respect

of input purchased toward installation of lift. The Respondent was also entitled for CENVAT credit in respect of taxable services used for installation of lift. As per calculation the Respondent was eligible for input credit of VAT & Service Tax @12.72% whereas after GST the Respondent was eligible for ITC of 18% at the most.

xvi. It had to be investigated whether the Respondent had got additional benefit of ITC during GST period. During the pre-GST era the Respondent was not eligible to take CENVAT Credit of Central Excise Duty paid towards purchase of components of lift, whereas after GST the Respondent was eligible to avail full credit of tax paid on input goods & input Service. In pre-GST era the maximum credit available (VAT + ST) was 12.72% whereas post-GST it was 18%. In this context the Respondent submitted that he had purchased most of components for lift during pre-GST era and the same was used for installation of lift after implementation of GST so he could not avail any extra ITC benefit on inputs purchased in pre-GST era. In support the Respondent submitted copies of those bills which duly quoted QR No. for the material purchased from vendors from 01.04.2015 to 30.06.2017. The Respondent also submitted that he had not availed transitional credit of Excise Duty on the stock lying as on 30.06.2017 and in support he submitted the relevant documents. On scrutiny of the documents submitted by the Applicant No. 1 alongwith his complaint one letter of the Respondent dated 08.06.2017 written to the Applicant No. 1 had been found wherein the Respondent had mentioned that GST was going to be implemented from 01.07.2017 and the material was ready with him since long but due to noncompliance of payment and non-readiness of the site and store room from the Applicant's side he was unable to dispatch and if the Applicant No. 1 made payment of material ready for shipment by 30.06.2017 he would save any increase in GST levies. This further confirmed the Respondent's claim that he had procured material in pre GST era.

xvii. The Applicant No. 1 also alleged that the Respondent had not passed on the benefit of Octroi as the same was not applicable after implementation of GST. He also submitted that due to abolition of Octroi, after implementation of GST, the Respondent got additional benefit 5.5% of base value. In this context the Respondent submitted that cost of Octroi on his product was around 1.4% to 1.6% of the base price, during the GST period. In support he had also submitted financial details during pre-GST era. The Respondent also submitted that he mostly purchased goods locally and no Octroi was levied on such locally purchased goods. Thus on perusal of documents submitted by the Respondent it had been observed that the Respondent had not got benefit of 5.5% on Octroi after implementation of GST as calculated by the Applicant No.1.

xviii. Now the question, whether the work of installation of two lifts was as per agreement dated 04.07.2015 or as per agreement dated 18.05.2018. As per the first agreement dated 04.07.2015 the base price quoted for supply of material and installation of two lifts was Rs. 23,06,499/- + VAT of Rs. 2,45,065/- + ST of Rs. 48,436/- Total cost Rs. 26,00,000/-. As per second agreement dated 18.05.2018 the base price quoted for supply of material and installation of two lifts was Rs. 22,03,389/- + GST of Rs. 3,96,610/-. Total cost Rs. 26,00,000/-. The first contract entered on 04.07.2015 was valid upto 18 month i.e. upto 04.01.2017.

xix. On further scrutiny of the documents it had been observed that the Applicant No. 1 and the Respondent again entered into a fresh contact on 18.05.2018 with the reduction of base price from Rs. 11,53,249/- to 11,01,695/-. The Estimate No. QT41092_R4 (pre GST contract) compared with the Estimate No. QT52365_R1 & No. QT52268 _R2 (post GST contract) indicated increase in tax component as compared to the first agreement. Both the persons thus appear to have re-negotiated the price after implementation of GST and agreed on new contract. After implementation of new contract old contract stand cancelled. The Applicant No. 1 vide letter dated 27.08.2021 submitted that the advance paid by the

Applicant No. 1 of Rs. (2,60,000/- + 2,60,000/-) on 04.09.2015 and 09.06.2016 was adjusted in new contract and from 29.06.2018 to 29.07.2020 remaining amount of Rs. 20,80,000/- (approx.) was paid in 4 Instalments.

xx. There was no reduction in tax rate and there was no additional benefit of ITC accrued during the relevant period i.e. 18.05.2018 to 29.07.2020.

xxi. The Applicant No. 1 in his application had referred to the agreement dated 04.07.2015 which was entered into by him with the Respondent. The fact of the case was that the agreement dated 04.07.2015 had already expired on 04.01.2017 and that no material and installation of lifts was initiated as per the agreement dated 04.07.2015. Further, a new agreement dated 18.05.2018 was signed between the Applicant No. 1 and the Respondent.

xxii. Moreover, it was also observed that the Respondent had supplied the material and installation of the lift at base price of Rs. 22,03,390/- as per the 2nd agreement, whereas the base price was fixed for Rs. 23,06,499/- as per the 1st agreement.

xxiii. The Investigation conducted by the DGAP revealed that:

(i) During the post GST era the Respondent could not avail the additional benefit of ITC, as the Respondent had purchased most of the material during the pre GST era. During pre GST era no CENVAT Credit was admissible on inputs used for providing work contract services. The Respondent also could not avail transitional credit in respect of inputs lying in stock as on 30.06.2017.

(ii) The Respondent had entered into a fresh agreement dated 18.05.2018, with the Applicant No. 1 for erection and commissioning of two lifts at the base price of Rs. 22,03,390/- plus GST. The advance paid by the Applicant No. 1 was adjusted towards the new amount payable as per the fresh contract dated 18.05.2018. The work was executed thereafter from 29.06.2018 to 29.07.2020 and

also the remaining payment was received during the period from 29.06.2018 to 29.07.2020. The relevant period in this case was 18.05.2018 to 29.07.2020 in which there was no reduction in tax rate and that there was no additional benefit of ITC available to the Respondent thus the provisions of Section 171 of the CGST Act, 2017 were not applicable in this case.

(iii) The Respondent had reduced the base price for erection and commissioning of the two lifts from Rs. 23,06,499/- from the pre GST period to Rs. 22,03,390/- in the post GST period, even after increase in tax rate during post GST period.

xxiv. In view of the aforementioned findings, it was concluded that Section 171(1) of the CGST Act, 2017, requiring 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", was **not applicable** in the present case.

3. The above Report of the DGAP dated 16.09.2021 was considered by NAA in its meeting held on 23.02.2022 and accordingly, a Notice dated 18.02.2022 was issued to the Applicant No. 1 to submit his written statement. He was also informed that personal hearing will be held, preferably through video conferencing, only on specific request.

4. The Applicant No. 1, vide his written submissions dated 14.04.2022, has made the following contentions against the DGAP's report: -

i. That the Respondent's scope of activities was Design, Manufacturer, Supply & Installation of Elevators & Escalators as per his ISO 9001: 2015 Certificate No.: UQ-2019110909. He was the manufacturer and supplier and had supplied the material to the Applicant No. 1 in the region of Greater Mumbai.

ii. That the Respondent had increased the base price in the post GST period and had profiteered an amount of Rs. 2,93,502/- .

iii. That the Respondent had claimed credit of Excise Duty on the manufactured components of lifts the benefit of which he was required to pass on to the above applicant.

iv. That the Respondent had not passed on the benefit of ITC on the Octroi which he had paid while transporting the material from his godown to the site. Even though if he had procured the material from other vendors his own factory was situated outside the limit of Greater Mumbai.

v. That the Respondent had failed to execute the Contract within the time limit and as the price was constant, hence overall there was a reduction in taxes from 30.72% to 18% which should reflect in the overall pricing.

vi. That the Respondent's claim of price hike of 5% per annum was unjustified and unacceptable as the price might increase or decrease due to various factors.

vii. That the Respondent had not availed transitional credit in respect of inputs lying in stock as on 30/06/2017 was the failure on the part of the Respondent due to which the Applicant should not incur losses.

5. Clarifications were sought from the DGAP on the above submissions of the Applicant No. 1 under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 25.05.2022 vide which the DGAP had submitted that as per submission of the Respondent dated 14.04.2022, he was registered under work contract and design manufacture supply and erection activities was part of work contract service. The DGAP further stated that the DGAP's investigation report might be referred for further clarifications.

6. The above said clarification of the DGAP dated 25.05.2022, was forwarded by NAA vide its Order dated 27.05.2022, to the Applicant No. 1, inviting his submissions, if any. However, the Applicant No. 1 did not respond to the Order dated 27.05.2022.

7. The Applicant No. 1 was directed by the Commission to appear before it on 26.10.2023. However, despite the service of the notice the

Applicant No. 1 has not appeared for the hearing. Hence, there is no other alternative except to proceed ex-parte against him.

8. This Commission has carefully examined the DGAP's Report including documents enclosed therewith and the written submissions of the Respondent and the Applicant No. 1 and clarifications filed by the DGAP. On examining the various submissions the Commission finds that the following issues need to be addressed: -

a. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?

b. If yes, what was the additional benefit that had to be passed on to the Applicant No. 1?

9. The Applicant No. 1 has raised several contentions in the matter on which findings of the Commission are as under:-

i. The Applicant No. 1 has claimed that the Respondent's scope of activities was Design, Manufacturer, Supply & Installation of Elevators & Escalators as per his ISO 9001: 2015 Certificate No.: UQ-2019110909. Perusal of the above Certificate shows that the Respondent has been issued a Certificate of Registration by a United Kingdom based agency in which he has been shown as manufacture of the lifts. However, during the course of the investigation it has been found by the DGAP that the Respondent had not manufactured the lifts which he has supplied to the Applicant No. 1. He had procured the material from the other manufacturers locally and had supplied the same and installed the lifts. Hence the above claim of the Applicant is not correct.

ii. The above Applicant has also claimed that the Respondent had increased the base price in the post GST period and had profiteered an amount of Rs. 2,93,502/-. However, perusal of the initial agreement dated 04.07.2015 executed in the pre GST period and the Quotation Nos. QT41092_R4 dated 04.07.2015, QT52365_R1 dated 3.05.2015 and QT52268_R2 dated 30.05.2015, shows that the base price for the installation of both the lifts was Rs. 23,06,499/- and the total tax applicable was Rs.

2,93,502/- and hence the total price was Rs. 26,00,000/-. Therefore, the total pre-GST tax was 12.72%. However, as per the subsequent agreement dated 18.05.2018 which was executed in the post GST period the base price of both the lifts was Rs. 22,03,390/- which shows that the Respondent had reduced his base price in the post GST period inspite of the fact the rate of tax in the post GST period had been increased to 18%. Therefore, there is no question of the Respondent having profiteered and hence both the above allegations of the Applicant No. 1 are incorrect and untenable.

iii. The Applicant No. 1 has also stated that the Respondent had claimed credit of Excise Duty on the manufactured components of lifts, the benefit of which he was required to pass on to him. In this regard, the Commission finds that the Respondent had not manufactured the lifts, hence he was not required to pay any Central Excise Duty on the same. The Respondent had procured the material from other manufactures locally who were liable to pay the Central Excise Duty on which no ITC was available in the pre GST period. Accordingly, the Respondent has neither paid Central Excise Duty nor got any ITC on the same at the time of purchasing the material for the lifts in the pre GST period .It is also revealed from the documents submitted by the Respondent that he has also not availed any Transitional Credit of Excise Duty on the material lying in his stock as on 30.06.2017 at the time of closure of the earlier tax regime. It is also apparent from the Respondent's letter dated 09.06.2017 addressed to the Applicant No. 1 that the material was ready with him and since the GST was going to be implemented w.e.f. 01.07.2017 due to which the rate of tax may increase he should lift the material immediately and hand over the site. However, the above Applicant had neither made balance payment nor handed over the site for installation of lifts and therefore the Respondent could not complete the installation before the implementation of GST. Accordingly, the above claim of the Applicant is wrong and frivolous.

iv. One of the Contentions raised by the Applicant No. 1 was that the Respondent had not passed on the benefit of ITC on the Octroi which he had paid while transporting the material from his godown to the site. In this regard, the Commission finds from the report of DGAP, that during the pre-GST period, the rate of Octroi on the product being supplied by the Respondent was around 1.4% to 1.6% of the base price. Further, the Respondent has claimed to have purchased the supplied material locally and no Octroi was levied on such locally purchased material. In support, the Respondent has submitted financial details of pre-GST era. On perusal of the documents submitted by the Respondent the DGAP has observed that the Respondent has not got benefit of 5.5% of Octroi after implementation of GST as calculated by the above Applicant. Moreover, since the material had been purchased in the pre-GST period no ITC was available on Octroi in the above period. Therefore, the contention raised by the Applicant No. 1 is wrong and is not tenable.

v. Another contention raised by the Applicant No. 1 is that the Respondent had failed to execute the contract within the time limit. He has also stated that as the price was constant, and overall there was a reduction in taxes from 30.72% to 18% it should reflect in the overall pricing. In this context, perusal of the record shows that the above Applicant had executed an agreement in the pre-GST period with the Respondent for installation of two lifts on 04.07.2015 which was valid for a period of 18 months till 04.01.2017. However, he had not followed the terms of the above agreement as he had neither made payment of the agreed price nor handed over the site to the Respondent and hence the above agreement could not be executed by the Respondent. It is also apparent from the record that the above Applicant had entered in to a fresh agreement dated 18.05.2018 with the Respondent. In case the above agreements were not executed by the Respondent as per their terms the above Applicant is at liberty to take appropriate legal action against the Respondent, however, the same does not fall under the purview of Section 171 of the above Act and hence no

action can be taken by the Commission in respect of this claim.

It has also been found from the material placed before the Commission that during the pre-GST era the rate of tax (VAT + Service Tax) was 12.72% whereas in post-GST period it was 18%. Therefore, it is clear that the pre GST rate of tax was not reduced from 30.72% to 18% in the post GST era. Rather the rate of tax in the pre GST era was 12.72% which was increased to 18% and hence there was no reduction in the rate of tax. Therefore, the Respondent was not required to reduce his prices in the post GST period. However, the Respondent had infact reduced the base price of the lifts from Rs. 23,06,499/- in the pre GST period to Rs. 22,03,390/- in the post GST period. Therefore, both the above contentions of the Respondent are incorrect and are non-maintainable.

vi. The Respondent has also contended that the present case did not fall under the ambit of anti-profiteering provisions as it pertained to the post GST period and the process prescribed under Rule 128 of the CGST Rules, 2017 had not been followed. In this connection perusal of Rule 128 (1) shows that the Standing Committee on Anti-profiteering is only required to examine the accuracy and adequacy of the evidence submitted by the Complainant and if it is prima facie satisfied that the benefit of ITC or tax reduction has not been passed then it has to forward the complaint to the DGAP for detailed investigation as per Rule 129(1) of the above Rules. Since the evidence produced by the Applicant No. 1 was found to be adequate and accurate by the Standing Committee it had correctly recommended investigation in the complaint. The Respondent has been given due opportunity to present his case by the DGAP during the investigation and has also been allowed to defend himself as per the provisions of the principles of natural justice by the Authority, on the basis of which no allegation has been established against him. Therefore, he should have no grievance on this account.

10. For the reasons recorded above, the Commission finds that the instant

case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, the proceedings initiated against the Respondent under Rule 133 of the CGST Rules, 2017, are hereby dropped.

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

S/d.	S/d	S/d.
(Deepak Anurag)	(Sweta Kakkad)	(Anil Agrawal)
Member	Member	Member

S/d.
(Ravneet Kaur)
Chairperson

Certified Copy

(Anupama Anand)
Secretary, Anti-profiteering

F. No. 22011/NAA/Eros/41/2022 | 1213 - 1216 Date: 29.11.2023

Copy To:-

1. M/s Daanish Electricals & Sales Pvt. Ltd.,Plot No. 247, M Dharavi Main Road, Dharavi, Mumbai - -400017
2. M/s. Eros Elevators & Escalators Pvt. Ltd., 405,Forth floor, Bharat Industrial Estate, T.J Road, Sewree, Mumbai City, Maharashtra-400015.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File.