

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY**

**UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

I.O. No. : 21/2022

Date of Institution : 15.07.2021

Date of Order : 29.09.2022

**In the matter of:**

1. 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.

Applicant

Versus

M/s J.P. and Sons, S-35, GF, Bapu Park, Kotla Mubarakpur, New Delhi - 110003.

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.
2. None for the Respondent.

**ORDER**

1. The present Report dated 14.07.2021 has been received by the National Anti-Profiteering Authority (**NAA or the Authority**) from Applicant No. 1 i.e. the Director General of Anti-Profiteering (**DGAP**) after further investigation in pursuance of this Authority's Order No. 16/2018 dated 06.12.2018. The brief

facts of the present case are that the DGAP vide its Report dated 31.07.2018, furnished to the Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had conducted an investigation against the Respondent and found that the Respondent had not passed on the benefit of reduction in the rate of tax to the customers by way of commensurate reduction in the price of the product sold by him as per the provisions of Section 171 (1) of the CGST Act, 2017. The DGAP under its investigation had covered a period from 15.11.2017 to 31.03.2018. In the Report dated 31.07.2018, the DGAP had submitted that the Respondent have not passed on the benefit of GST rate reduction to the customers and had unduly profiteered itself by an amount of Rs. 5,01,646/-, which is contravention of the provisions of Section 171 (1) of the CGST Act, 2017. After hearing both the parties this Authority vide its Order No. 16/2018 dated 06.12.2018 had confirmed the profiteered amount as Rs. 5,01,646/- as per the provisions of Section 171 (2) of the CGST Act, 2017 read with Rule 133 (1) of the CGST Rules, 2017 and it was also held that the Respondent had not passed on the benefit of rate reduction to the customers between the period from 15.11.2017 to 31.03.2018 and therefore, had violated provisions of Section 171 of the CGST Act, 2017. Further, this Authority in para no. 23 of the said Order, has directed the DGAP to further investigate the quantum of profiteering which the Respondent has made thereafter and submit its Report.

2. The DGAP in his Report dated 14.07.2021, inter-alia stated that: -
- i. On receipt of the aforesaid Order from this Authority on 07.12.2018, letter/e-mail dated 18.12.2018, followed by the reminders dated, 06.11.2020 15.12.2020, 25.01.2021, 07.04.2021, 13.04.2021 and 18.05.2021 and a summons dated 23.03.2021 were issued to Respondent seeking requisite documents/details for further investigation.
  - ii. The period covered by the current investigation was from 01.04.2018 to 30.11.2018.

- iii. The Respondent submitted his reply vide letters/e-mails dated 04.12.2020, 01.02.2021, 01.02.2021, 05.04.2021, 12.04.2021 and 25.05.2021.
- iv. Vide the aforementioned letters/e-mails; the Respondent submitted the following documents/information:
- a. Details of invoice-wise outward taxable supplies for the period of July, 2017 to November, 2017 & April, 2018 to November, 2018 for all products impacted by GST rate reduction w.e.f. 15.11.2017.
  - b. Copies of GSTR-1 and GSTR-3B for the period July, 2017 to November, 2017 & April, 2018 to November, 2018.
  - c. Copies of sample invoices for the Pre and Post rate reduction period.
  - d. Price List for the Pre and Post rate reduction period.
- v. The replies of the Respondent and the documents/evidences on record had been carefully examined. The issue for determination is whether the Respondent had reduced prices of the goods impacted by GST rate reduction vide Notification 41/2017 dated 14.11.2017, in compliance of this Authority's Order for the period subsequent to 31.03.2018, upto the period covered under this investigation in terms of section 171 of the CGST Act, 2017.
- vi. As regard the reduction in the rate of tax, it was observed that the Central Government, on the recommendation of the GST council, had reduced the GST rate on goods like Baby Shampoo, Baby Skincare Wipes 80s, Baby Soaps etc in question from 28% to 18% w.e.f. 15.11.2017, vide Notification No 41/2017-Central Tax (Rate) dated 14.11.2017. This is a matter of fact that had not been contested by the Respondent.

- vii. Before enquiring into the allegation of profiteering, it was important to examine Section 171 of the Central Goods and Services Tax Act, 2017 which governs the anti-profiteering provisions under GST. Section 171(1) of the Central Goods and Services Tax Act, 2017 reads as "*any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" Thus, the legal requirement is abundantly clear that in the event of benefit of input tax credit or reduction in rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction can only be in terms of money, so that the final price payable by a recipient gets reduced commensurate with the reduction in the tax rate or benefit of input tax credit. This is the legally prescribed mechanism to pass on the benefit of input tax credit or reduction in rate of tax to the recipients under the GST regime. Moreover, it was also clear that the said Section 171 simply did not provide a supplier of any goods or services, any other means of passing on the benefit of input tax credit or reduction in rate of tax to the consumers.
- viii. In order to explain the methodology adopted for determining the amount of profiteering, an illustration is given in the Table-A below, in which the calculation in respect of a specific item i.e. " Baby Skincare Wipes 80s" sold during the month of November, 2017 (pre GST rate reduction) was taken. The average base price of the said product was obtained by dividing the total taxable value with total quantity of this item sold during the period 01.11.2017 to 14.11.2017. The average base price of this item was then compared with the actual selling price of the same item sold post-GST rate reduction i.e. on or after 01.04.2018 as illustrated in the Table-A below:



Table-A

(Amount in Rs.)

Sl. No.	Description	Factors	Pre Rate Reduction (From 01.11.2017 to 14.11.2017)	Post Rate Reduction (From 01.04.2018 onwards)
1.	Product Description	A	Baby Skincare Wipes 80s	
2.	Notification No.	B	41/2017-Central Tax (Rate) dated 14.11.2017	
3.	Total quantity of item sold	C	652	
4.	Total taxable value	D	90150.12	
5.	Average base price (without GST)	$E=D/C$	138.27	
6.	GST Rate	F	28%	18%
7.	Average Selling price (pre rate reduction with GST)	$G=E*1.28$	176.98	
8.	Commensurate Selling price (post Rate reduction-with GST)	$H=E*1.18$		163.16
9.	Invoice No.	I		JJGST1801121
10.	Invoice Date	J		17.04.2018
11.	Total Billed Quantity (above invoice)	K		6
12.	Transaction Value in the invoice	L		1137.90
13.	Actual Selling Price per unit (post rate reduction with GST)	$M=L/K$		189.65
14.	Excess amount charged or profiteering	$N=M-H$	26.49	
15.	Total Profiteering	$O=N*K$	158.94	

From the above Table, it was observed that the Respondent did not reduce the selling price of the "Baby Skincare Wipes 80s", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 C.T. (Rate) dated 14.11.2017 and hence profiteered an amount of Rs. 158.94/- on the Invoice No. JJGST1801121 dated 17.04.2018 and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. The profiteering of the remaining transactions had been carried out in the same manner and was given in Annexure-7 of the Report dated 14.07.2021.

- ix. In this case, the allegation is that the base prices of the subject goods were increased when there was a reduction in the GST rate from 28% to 18% w.e.f. 15.11.2017, 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 Annexure-7 of the Report, it appeared that the base prices of the goods under investigation were indeed increased post GST rate reduction w.e.f 15.11.2017. Thus, by increasing the base prices of the goods 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 01.04.2018 to 30.11.2018 had been worked out as Rs. 6,49,824/-.
- x. In view of the aforementioned findings, the conclusion is that the provision of Section 171(1) of the CGST Act, 2017 requiring that "a reduction in rate of tax on any supply of good or services or the benefit of input tax credit shall be passed on to the recipient by the way of commensurate reduction in prices", had been contravened in the present case.
3. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.02.2022. The above Report was carefully considered by this Authority and it was decided to allow the Respondent to file his consolidated written submissions by 15.03.2022. A notice dated 25.02.2022 was issued to the Respondent to explain why the Report dated 15.07.2021 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.
4. The Respondent vide letter dated 09.05.2022 has filed his submissions in which he interalia stated that :-

- i. The Respondent was a distributor of products manufactured by Johnson & Johnson Pvt. Ltd. The Respondent has stated that any change in the pricing was a sole discretion of the manufacturer which was Johnson & Johnson Pvt. Ltd. in this case.
  - ii. He had simply bought the products from the manufacturer and sold it further if any so called profiteering arose then that was in the hand of Johnson & Johnson Pvt. Ltd. (Manufacturer) not us.
  - iii. The DGAP has failed to appreciate the fact that the prices were increased by the M/s Johnson & Johnson Pvt. Ltd. (Manufacturer) and being the distributor, he had to buy the products on the increased prices where he had no control. Sales made during the period (01.04.2018 to 30.11.2018) was totally from the purchases made form by M/s Johnson & Johnson Pvt. Ltd. (Manufacturer) on the increased prices after 15.11.2017. There was not even a sale of single product from the purchases made before 15.11.2017. Therefore, no question arose of profiteering.
5. Further, the Respondent vide his submissions dated 09.05.2022 has requested for personal hearing. The said request was allowed by the Authority and personal hearing was granted through video conferencing on 09.06.2022. However, the same could not be held as the Respondent vide e-mail dated 08.06.2022 had requested for extension due to non-availability his Counsel. Hearings were granted for 06.07.2022 and 10.08.2022. The Respondent sought extension of 8 weeks. Since the Respondent were granted 3 opportunities of hearing and the contention of the Respondent regarding his supplies i.e. M/s Johnson and Johnson Pvt. Ltd. was examined with respect to the Authority Order No. 77/2019 dated 23.12.2019.
6. We have carefully considered the Report furnished by the DGAP, the submissions filed by the Respondent and the records of the case. There is no dispute with regard to the reduction of the tax in respect of subject products supplied by the Respondent with effect from 15.11.2017. The

Government by Notification No 41/2017-CT (Rate) dated 14.11.2017 has reduced rates on subject products. In view of the above said facts and the records, the Authority has observed that the Respondent, M/s J.P. and Sons was a distributor of M/s Johnson & Johnson Pvt. Ltd. The Authority finds that M/s Johnson & Johnson Pvt. Ltd. was investigated by the DGAP for allegations of profiteering is as much he has not passed on the benefit of reduction of GST rate after the said Notification dated 14.11.2017 and the Authority has found him violating the provisions of Section 171 of the CGST Act, 2017 for the products sold by him for the period from 15.11.2017 to 31.12.2018, and, this Authority vide Order No. 77/2019 dated 23.12.2019, has also confirmed profiteering to the tune of Rs. 230,40,74,132/- against M/s Johnson & Johnson Pvt. Ltd. for the period from 15.11.2017 to 31.12.2018.

7. In view of the above facts, wherein the period of investigation of the Respondent i.e. 01.04.2018 to 30.11.2018 is overlapping with the Authority's Order No. 77/2019 dated 23.12.2019, this Authority is of the opinion that the amount of profiteering calculated against the Respondent may have been already calculated and confirmed against M/s Johnson & Johnson Pvt. Ltd. as the period of investigation in the present case is already covered in the period of investigation in case of M/s Johnson & Johnson Pvt. Ltd. and the products on which profiteering has been calculated in the present case, have been included in the case of M/s Johnson & Johnson Pvt. Ltd.
8. Based on the above reasons and without going into the merits of the other submissions filed by the Respondent at this stage and to avoid the duplication and doubling of confirming of profiteered amount, this Authority directs the DGAP to re-investigate/re-examine the matter and make sure whether the amount of profiteering calculated in the present case has already been considered in the case of M/s Johnson & Johnson Pvt. Ltd. or not, under Rule 133(4) of the CGST Rules, 2017 strictly in respect of the findings made in para 6 and 7 above.



9. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that: -

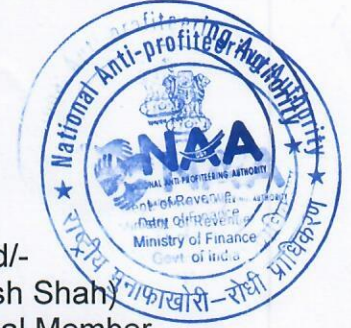
*"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."*

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


Sd/-  
(Amand Shah)  
Technical Member &  
Chairman

Sd/-  
(Pramod Kumar Singh)  
Technical Member

Sd/-  
(Hitesh Shah)  
Technical Member



Certified Copy

  
(Rajarshi Kumar)  
Secretary, NAA

F.No. 22011/NAA/60/JP Sons/2018 | 8911 — 8913 Dated: 30.09.2022

Copy To:-

1. M/s J.P. and Sons, S-35, GF, Bapu Park, Kotla Mubarkpur, New Delhi - 110003.
2. Director General Anti-Profit, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.