

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	02/2022
Date of Institution	15.12.2021
Date of Order	10.05.2022

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.

Applicant

Versus

M/s Nirma Limited, Nirma House, Ashram Road, Ahmedabad, Gujarat - 380009.

Respondent

Quorum:-

1. Sh. Amand Shah, Chairman & Technical Member
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present:-

1. None for the Applicant.
2. None for the Respondent.

Brief facts of the case:

The present Report dated 15.12.2021 has been received from the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 of the Central Goods and Services Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received by the DGAP on 24.01.2020 from the Standing Committee on Anti-profiteering, on the basis of the letter dated 18.04.2019 of this Authority sent to the Standing Committee, to investigate whether the benefit of GST rate reduction in respect of supply of goods, made vide Notification No. 41/2017 (Central Rate) dated 14.11.2017 by the Respondent had been passed on to the recipients by way of commensurate reduction in the prices of the subject goods. It was alleged that the Respondent had not reduced the prices and thus the benefit of GST rate reduction was not passed on to the recipients. Accordingly, an investigation was initiated by the DGAP to collect evidence necessary to determine whether the benefit of GST rate reduction had been passed on by the Respondent to the recipients in respect of supply of subject goods.

2. Thereafter, the DGAP had issued a notice to the Respondent on 07.02.2020, under Rule 129 of the CGST Rules, 2017, asking the Respondent's reply as to whether he admitted that the benefit of GST rate reduction had not been passed on to the recipients by way of commensurate reduction in prices and if so, to suo moto determine and indicate the same in his reply to the Notice as well as to furnish all supporting documents. Vide the said Notice the Respondent was given an opportunity to inspect the non-confidential evidences/information

furnished to him on 13.02.2020 or 14.02.2020., which the Respondent didn't avail.

3. The DGAP has submitted that in response to the Notice, the Respondent did not submit all the requisite documents by the due date, hence, reminders were issued to the Respondent on 16.03.2020, 30.04.2020, 13.05.2020 & 02.06.2020. The DGAP also stated that the Respondent did not submit requisite documents even after several reminders, therefore, summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the CGST Rules, 2017 were issued on 02.07.2020 to Sh. Vikram Jhala, AGM, Indirect Taxation of the Respondent to submit the relevant documents. The DGAP has further submitted in his report that in compliance of the said summons, the Respondent replied vide e-mail dated 20.07.2020, but did not submit the relevant details/ documents. Hence 2nd summons under Section 70 of the CGST Tax Act, 2017 read with Rule 132 of the above Rules were issued on 27.07.2020 to Sh. Vikram Jhala to submit the required documents.

4. It was further submitted by the DGAP that in compliance of the 2nd summons, the Respondent submitted certain details, which were incomplete. Therefore, again letters dated 13.08.2020 & 08.09.2020 were sent to the Respondent to submit the complete details/documents. However, the Respondent filed a Writ Petition (Civil) No. 6758/2020 before the Hon'ble High Court of Delhi at New Delhi on the ground that the Notice dated 07.02.2020 issued by DGAP was not in compliance with Rule 129 (3) (a) & (b) of the CGST Rules, 2017 due to the reason that as per sub-rule (3) of Rule 129, every investigation was to be preceded by a

notice to the interested parties containing inter-alia the information on the following matters:

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations were based.

The DGAP has also intimated the Hon'ble Delhi High Court in its Order dated 30.09.2020 disposed the petition by ordering that (a) the Notice dated 07.02.2020 impugned in this petition stood withdrawn (b) with liberty to the DGAP to issue a fresh notice in accordance with law; and (c) granting liberty to the Respondent to challenge the fresh notice, if any issued, on all grounds as may be available in law but subject to what has already been held in the Order dated 22.09.2020 and with further liberty to the Respondent to raise other challenges which, in Order dated 22.09.2020, had been held to be not maintainable at the stage of issuance of the notice in accordance with the liberty granted in terms of para 8 of the Order dated 22.09.2020.

5. Further, the DGAP has stated that in compliance of the Hon'ble Delhi High Court's Orders dated 22.09.2020 and 30.09.2020, a fresh Notice was issued to the Respondent on 17.11.2020 with directions to furnish his reply on or before 01.12.2020 along with the requisite documents. Through the said Notice the Respondent was given an opportunity to inspect the relied upon documents on 26.11.2020 or 27.11.2020. Due to sudden surge in the Covid-19 cases, the Respondent vide letter dated 03.12.2020, requested the DGAP to supply the copies of

relied upon documents. The DGAP had considered the request of the Respondent and supplied the copies of relied upon documents to the Respondent vide letter dated 24.12.2020.

6. The DGAP has also submitted that in response to the Notice, the Respondent did not submit complete requisite documents by due date. Hence reminder were issued to the Respondent on 03.12.2020 and 24.12.2020. The Respondent did not submit requisite documents even after several reminders, therefore, summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the CGST Rules, 2017 were issued on 12.01.2021 to Sh. Vikram Jhala, AGM, Indirect Taxation of the Respondent to submit the requisite documents. In compliance of the said summons, the Respondent replied vide letter dated 25.01.2021, but did not submit relevant details/ documents. Hence 2nd summons under Section 70 of the above Act read with Rule 132 of the above Rules were issued on 05.02.2021 to Sh. Vikram Jhala to submit the relevant details.

7. The DGAP has further submitted that despite repetitive efforts made to obtain the requisite documents, the Respondent did not submit the documents. A letter dated 05.02.2021 was sent to the Commissioner CGST, Ahmedabad (North) to depute an officer to collect the requisite documents from the Respondent and forward the same to the DGAP. In compliance to summons dated 05.02.2021, the Respondent submitted several documents vide letters dated 19.02.2021, 19.03.2021 and 17.07.2021.

8. The DGAP has also mentioned that the time limit to complete the investigation was 23.07.2020. However, in terms of Notification No.

55/2020-Central Tax dated 27.06.2020, which was further amended vide Notification No. 65/2020-Central Tax dated 01.09.2020 and Notification No. 91/2020-Central Tax dated 14.12.2020, the time limit for compliance was extended up to 31.03.2021. Further, the Hon'ble Supreme Court of India vide its Order dated 08.03.2021 passed in Suo-Moto Writ Petition (Civil) No. 3/2020, has ordered that in cases where the limitation would have expired during the period between 15.03.2020 till 15.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have 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, is greater than 90 days, that longer period shall apply. The above relief has been extended and the period from 14.03.2021 till further orders also stands excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020. The period covered by the current investigation is from 15.11.2017 to 31.01.2020.

9. It was further submitted by the DGAP that in response to the Notices dated 07.02.2020 & 17.11.2020 and subsequent reminders, the Respondent submitted his reply vide e-mails/letters dated 20.02.2020, 19.03.2020, 21.05.2020, 18.07.2020, 08.08.2020, 09.08.2020, 29.08.2020, 05.09.2020, 03.12.2020, 31.12.2020, 25.01.2021, 19.02.2021, 20.02.2021, 19.03.2021, 17.07.2021 and 11.11.2021. The replies of Respondent have been summed up by the DGAP as follows:-

(i) That the rate reduction had happened only in respect of 28 products by virtue of Notification No. 41/2017 dated. 14.11.2017. The GST rate was

reduced from 28% to 18% in respect of two product categories i.e. Detergent Powder and Scouring Bar w.e.f. 15.11.2017.

(ii) That as on the cut off date i.e. 15.11.2017, the Respondent was having unsold stocks at his factory and Depots which were sold after rate reduction. However, the Respondent had passed on the benefits of rate reduction by charging applicable rate without increase in its basic selling price which could be understood with the below given example:

Product : Nirma Yellow Powder - 1 Kg	(Before 15/11/2017)	(After 15/11/2017)
Basic Rate per Kg (Selling Price)	28.05	28.05
GST @28%	7.85	
GST @18%		5.05
Rate to Distributor	35.90	33.10
Distributor Margin	0.80	0.80
GST on Margin @28%	0.22	
GST on Margin @18%		0.14
Trade Rate per Kg	36.93	34.04

(iii) The Respondent had referred to the definition of Recipient, as given in Section 2 (93) of the CGST Act, 2017 which is reproduced as under:

“Recipient” of supply of goods or services or both, means-

- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay the consideration;
 - (b) Where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available;
- and

(c) Where no consideration is payable for the supply of a service, the person to whom the service is rendered

And any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

(iv) That this Authority vide its various decisions has held that if the rate reduction of GST had been passed on to the recipient, it could not be alleged that there was any profiteering as it amounted to compliance of the conditions mentioned in Section 171 of the CGST Act, 2017. The relied upon cases were cited as under:

Sr. No.	Order No.	Date	Party	File No.	Date
1	21/2018	24.12.2018	Asian Granito India Ltd. Ahmedabad	22011/NAA/82/AGL/2018/1188	24.12.18
2	27/2018	27.12.2018	Lorenzo Vitrified Tiles Pvt. Ltd, Morbi	22011/NAA/88/Lorenzo/2018/1312-1316	27.12.18
3	28/2018	27.12.2018	Ahuja Radios, Noida	22011/NAA/102/Ahuja/2018/1302-1306	27.12.18
4	29/2018	27.12.2018	Asian Paints, Kerala	22011/NAA/95/Asian Paints-2/2018/1297-1301	27.12.18
5	13/2019	01.03.2019	Velbon Vitrified Tiles, Pvt, Ltd. Morbi	22011/NAA/94/Velbon/2018/1969-1972	05.03.19
6	17/2019	13.03.2019	Ramraj Handlooms, Tamil Nadu	22011/NAA/80/ramraj/2139-2143	13.03.19
7	18/2019	13.03.2019	Asian Paints, Kerala	22011/NAA/83/Asian Paint/2018/2145-2149	13.03.19
8	19/2019	13.03.2019	Somany Ceramics, Morbi	22011/NAA/78/Somany/2150-2153	13.03.19
9	22/2019	28.03.2019	Peps Industries, Kerala	22011/NAA/90/Peps/2018/2288	28.03.19
10	23/2019	03.04.2019	Saint Gobain India	22011/NAA/84/SaintG	03.04.19

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11	24/2019	03.04.2019	Rosata Vitrified Pvt. Ltd, Morbi	22011/NAA/85/Rosata/2018/2339-2342	03.04.19
12	26/2019	25.04.2019	Mak Plywood Inds. Pvt. Ltd. Kerala	22011/NAA/77/Makply/2018	25.04.19
13	11/2020	04.03.2020	Bajaj Electricals Ltd. Mumbai	22011/NAA/69/Bajaj/2019/1353-56	04.03.20

The Respondent based on his above had stated that in his case, there was no profiteering, hence he requested to close the proceedings initiated against him.

(v) That he had a system of reviewing the cost vis-à-vis selling price of his products, normally on half yearly basis i.e. March/April and September/October unless there were some major factors affecting the cost of the products where immediate necessary changes in the selling prices of the products were to be made e.g. there was an increase in the rates in the month of December, 2017. He had also informed that the key and major components effecting the cost of Detergent including Scouring Bar were petroleum products. (a) The price of Crude Oil which governed the prices of petroleum products was at USD 52 per Barrel in April, 2017 which was substantially increased to USD 60 per Barrel in November, 2017 (b) the cost of advertisements, transportation and other overheads had also been increased substantially and (c) he had also increased the prices of detergent cake category products bearing HSN Code 34012000 where there was no reduction in rate of GST vide Notification No. 41/2017 dated November, 2017.

The Respondent vide Circular dated 15.11.2017 to his all India Distributors had informed that "w.e.f. 15.11.2017, the Government of India, Ministry of Finance (Department of Revenue) vide its Notification No. (1) 41/2017 – Central Tax (Rate), (2) 41/2017 – Union Territory Tax (Rate) and (3) 43/2017 – Integrated Tax (Rate) all dated 14.11.2017 has reduced GST rate on Detergent Powders and Scouring Bars from 28% to 18%.

To implement the effect of GST reduction, they were going to charge GST @ 18% instead of 28% w.e.f. 15.11.2017 on Detergent Powders and Scouring Bars. However, their selling prices to them will remain unchanged i.e. the price which were prevailing before the GST rate reduction will continue.

After 15.11.2017, the Distributors will make their invoices by adding margin on the purchase rate from the Respondent before GST and will charge GST @ 18% on detergent powders and scouring bar to the trade and kindly ensure that there should not be any increase in your selling price.

The Retailers/wholesalers to whom the sale is made from Distributors for detergent powders and scouring bar, you need to persuade them that they should pass on GST rate reduction benefit to the end consumers.”

10. Vide the aforementioned e-mails/letters, the Respondent had also submitted the following documents/information to the DGAP:

- a) GSTR-1 and GSTR-3B Returns for the period from October,2017 to January, 2020.
- b) Invoice wise details of outward taxable supplies reconciled with GSTR-1 & 3B for the period from July, 2017 to January, 2020.
- c) Sample Invoices pre and post 15.11.2017.
- d) Price List of all the goods (Pre and Post 15.11.2017).
- e) List of all GST registrations.

11. The DGAP has further submitted that the letter dated 18.04.2019 of this Authority received on 24.01.2020 from the Standing Committee vide Minutes of the Meeting dated 10.01.2020, the various replies of the Respondent and the documents/evidences on record had been examined by him and the main issues for determination were as under:

(i) Whether the rate of GST on the products/goods supplied by the Respondent was reduced from 28% to 18% w.e.f. 15.11.2017 and if so,

(ii) Whether the Respondent had passed on the benefit of such reduction in GST rate to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

12. The DGAP has also mentioned that on scrutiny of letter dated 18.04.2019 of this Authority received through the Standing Committee, he had observed that the Respondent had furnished a list dated 06.08.2018, wherein details of impacted products were given. Further, in the Minutes of the Meeting of the Standing Committee dated 10.01.2020, the remark given in respect of the Respondent was that there was non-reduction of prices commensurate with reduction in GST from 28% to 18%, whereas in the said list there was no indication of prices at which the products were sold by Respondent to his recipients (distributors). There was only a reference of pre-rate reduction MRP and post rate reduction MRP, effective rate of change in MRP, quantity sold at old MRP and sales value of quantity sold at old MRP. In this regard, the DGAP has submitted that Section 171 of the CGST Act, 2017 does not specifically talk about the reduction in MRP, however, it stipulates that the benefit of reduction in the rate of tax should be passed on commensurately by the supplier to the recipients by way of reduction in prices. The DGAP has also intimated that on examination of the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products during the period from 15.11.2017 to 31.01.2020, as furnished by the Respondent, he has observed that the Respondent had not increased the base price of the impacted products in the invoices issued by him to his distributors. The DGAP has stated that investigation had been done

strictly as per the provisions provided under Section 171 of CGST Act, 2017.

13. Further, it is mentioned by the DGAP that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "Detergent Powder" (HSN Code 3402 90 11) and "Scouring Bar" (HSN Code (3405) from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. The DGAP has also stated that before enquiring into the allegation of profiteering, it was important to examine Section 171 of the Central Goods and Services Tax Act, 2017 which governed 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 DGP has claimed that the legal requirement was 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 could only be in terms of money, so that the final price payable by a recipient got reduced commensurately with the reduction in the tax rate or benefit of input tax credit. This was 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, the DGAP has also mentioned that Section 171 simply did not provide a supplier of goods or services, any other means of passing on the benefit of input tax credit or reduction in rate of tax to the consumers.

14. The DGAP has further stated that based on the Respondent's submissions/documents and on perusing the invoices furnished by the

Respondent, he had observed that the Respondent had not increased the base prices of the subject goods when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017. The following **Table- A** reflects the base prices of all the products of the Respondent which were impacted vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. The table indicates that the base prices of all the impacted products were not changed after rate reduction. It also indicates that the base prices in some cases were revised and in some case were not revised at all.

Table-'A'

No.	Product Details	Pre-rate reduction		Post-rate reduction		Period from which the product rates are revised
		Invoice No./Date	Basic Price Per Kg/Box Rs.	Invoice No./Date	Basic Price Per Kg/Box Rs.	
A	B	C	D	E	F	G
1	Nirma Yellow Powder, 1 kg	701052T117000945 dated 30.10.2017	26.85	701052T117001170 dated 20.11.2017	26.85	29.11.2017
		701134T117001089 dated 14.11.2017	28.05	901002T117007590 dated 15.11.2017	28.05	13.06.2018
		-	-	701032T118001647 dated 22.03.2018	28.90	Sold Only in Post rate reduction period
2	Nirma Yellow Powder, 2 kg	701022T117001517 dated 14.11.2017	26.60	701022T117001557 dated 23.11.2017	26.60	Rates not revised
		901009T117001272 dated 13.11.2017	27.85	901009T117001289 dated 15.11.2017	27.85	25.05.2018
		-	-	901009T117001447 dated 01.12.2017	28.50	Sold Only in Post rate reduction period
3	Nirma Yellow Powder, 500 Gms	701033T117001421 dated 10.11.2017	26.55	701006T117002155 dated 16.11.2017	26.55	22.11.2017
		-	-	701134T118001336 dated 07.02.2018	25.70	Sold Only in Post rate reduction period
		701134T117001087 dated 14.11.2017	27.95	901002T117007590 dated 15.11.2017	27.95	08.06.2018
4	Nirma Yellow Powder, 230 Gms	701134T117001096 dated 14.11.2017	26.35	901002T117007590 dated 15.11.2017	26.35	16.06.2018
	Nirma Yellow Powder, 250 Gms	-	-	901009T117001401 dated 24.11.2017	25.70	Sold Only in Post rate reduction period
	Nirma Yellow Powder, 220 Gms	-	-	901002T119010087 dated 10.11.2019	29.24	Sold Only in Post rate reduction period
5	Nirma Yellow Powder, 110 Gms	701022T117001517 dated 14.11.2017	26.40	901009T117001290 dated 15.11.2017	26.40	08.06.2018
	Nirma Yellow Powder, 120 Gms	-	-	901009T117001623 dated 28.12.2017	26.40	Sold Only in Post rate reduction period
	Nirma Yellow Powder, 105 Gms	-	-	901002T119009958 dated 05.01.2019	29.87	Sold Only in Post rate reduction period
6	Nirma Yellow Powder, 18 Gms	701018T117001577 dated 17.10.2017	27.85	701018T117001895 dated 25.11.2017	27.85	Rates not revised
	Nirma Yellow Powder, 15 Gms	701022T117001517 dated 14.11.2017	31.25	901002T117007583 dated 15.11.2017	31.25	11.02.2019

	Nirma Yellow Powder, 17 Gms	-	-	901002T117008007 dated 28.11.2017	31.25	Sold Only in Post rate reduction period
7	Nirma Advance Detergent, 95 Gms	701032T117001123 dated 14.11.2017	34.15	701018T117001789 dated 16.11.2017	34.15	Rates not revised
	Nirma Advance Detergent, 85 Gms	701134T117001088 dated 14.11.2017	37.60	701035T117001703 dated 15.11.2017	37.60	30.05.2018
	Nirma Advance Detergent, 90 Gms	-	-	901004T117003871 dated 23.11.2017	38.10	Sold Only in Post rate reduction period
	Nirma Advance Detergent, 75 Gms	-	-	901004T118001892 dated 03.08.2018	44.60	Sold Only in Post rate reduction period
	Nirma Advance Detergent, 70 Gms	-	-	901008T119002368 dated 01.01.2019	47.45	Sold Only in Post rate reduction period
8	Nirma Advance Detergent, 190 Gms	701033T117001448 dated 14.11.2017	34.15	701033T117001473 dated 18.11.2017	34.15	Rates not revised
	Nirma Advance Detergent, 170 Gms	701134T117000929 dated 11.10.2017	37.60	701035T117001705 dated 15.11.2017	37.60	30.05.2018
	Nirma Advance Detergent, 180 Gms	-	-	901008T117002283 dated 26.11.2017	38.10	Sold Only in Post rate reduction period
	Nirma Advance Detergent, 165 Gms	-	-	901008T118001143 dated 04.08.2018	42.00	Sold Only in Post rate reduction period
	Nirma Advance Detergent, 155 Gms	-	-	901008T118002324 dated 29.12.2018	44.00	Sold Only in Post rate reduction period
	Nirma Advance Detergent, 150 Gms	-	-	901004T119004715 dated 16.03.2019	44.15	Sold Only in Post rate reduction period
9	Nirma Advance Detergent, 500 Gms	701031T117000311 dated 09.11.2017	34.00	701031T117000324 dated 17.11.2017	34.00	Rates not revised
		701134T117001088 dated 14.11.2017	33.90	701035T117001705 dated 15.11.2017	33.90	29.05.2018 (07.05.2019 for 25kg packing)
		-	-	901004T117003796 dated 20.11.2017	33.50	Sold Only in Post rate reduction period
10	Nirma Advance Detergent, 500 Gms + BSP70	701053T117000996 dated 13.11.2017	39.20	701025T117000211 dated 22.11.2017	39.20	Rates not revised
		901008T117002049 dated 14.11.2017	39.20	701026T117001132 dated 15.11.2017	39.20	Rates not revised
		-	-	701053T117001068 dated 29.11.2017	39.20	Sold Only in Post rate reduction period
11	Nirma Advance Detergent, 1 Kgs	701134T117001088 dated 14.11.2017	34.00	701035T117001705 dated 15.11.2017	34.00	09.06.2018 (09.05.2019 for 25kg packing)
		-	-	901008T117002259 dated 24.11.2017	34.40	Sold Only in Post rate reduction period
12	Nirma Advance Detergent, 1 Kgs + BSP 70	-	-	-	-	Product Not found
		901008T117002046 dated 14.11.2017	39.20	901008T117002051 dated 15.11.2017	39.20	11.06.2018
		701053T117000996 dated 13.11.2017	39.20	701053T117001009 dated 16.11.2017	39.20	Rates not revised
	Nirma Advance Detergent, 1 Kgs + PCK 135	-	-	901008T119003099 dated 19.03.2019	38.80	Sold Only in Post rate reduction period
13	Nirma Advance Detergent, 3 Kgs	701215T117000543 dated 14.11.2017	31.50	701012T117000797 dated 15.11.2017	31.50	Rates not revised
		701134T117001088 dated 14.11.2017	33.55	701035T117001705 dated 15.11.2017	33.55	20.07.2018
		-	-	901008T117002306 dated 04.12.2017	33.65	Sold Only in Post rate reduction period
14	Nirma Advance Detergent, 3 Kgs + LF 150	901008T117002048 dated 14.11.2017	37.65	901008T117002050 dated 15.11.2017	37.65	25.06.2018
		-	-	901008T117002376 dated 10.12.2017	38.10	Sold Only in Post rate reduction period
15	Nirma Active Powder, 1 kgs	701006T117002123 dated 10.11.2017	27.15	701006T117002167 dated 16.11.2017	27.15	Rates not revised
		901002T117007577 dated 15.11.2017	28.25	701035T117001691 dated 14.11.2017	28.25	31.05.2018
		-	-	901002T117008829	28.90	Sold Only in

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				dated 26.12.2017		Post rate reduction period
16	Nirma Active Powder, 2 kgs	-	-	-	-	Product Not found
17	Nirma Active Powder, 500 Gms	701035T117001691 dated 14.11.2017	27.00	701035T117001714 dated 16.11.2017	27.00	25.12.2017
		901002T117007546 dated 14.11.2017	28.15	901002T117007593 dated 15.11.2017	28.15	01.06.2018
18	Nirma Active Powder, 230 Gms	901002T117007504 dated 13.11.2017	27.85	701033T117001453 dated 15.11.2017	27.85	Rates not revised
	Nirma Active Powder, 250 Gms	-	-	901002T118010348 dated 09.02.2018	27.35	Sold Only in Post rate reduction period
19	Nirma Super Powder, 1 Kgs	901002T117007536 dated 14.11.2017	49.50	901002T117007590 dated 15.11.2017	49.50	17.11.2017, 11.01.2018, 15.05.2018, 22.05.2018
		701029T117003565 dated 28.10.2017	51.05	701202T117001006 dated 17.11.2017	51.05	
20	Nirma Super Powder, 500 Gms	701134T117001082 dated 14.11.2017	49.50	901002T117007590 dated 15.11.2017	49.50	16.11.2017, 03.01.2018, 15.05.2018, 21.05.2018
		701029T117003911 dated 10.11.2017	51.05	701029T117003955 dated 16.11.2017	51.05	
21	Nirma Super Powder, 100 Gms	701020T117001048 dated 13.11.2017	59.15	901002T117007580 dated 15.11.2017	59.15	15.05.2018
22	Nirma Pink Powder, 1 kg	901002T117007560 dated 14.11.2017	25.00	901002T117007604 dated 16.11.2017	25.00	25.01.2018, 15.05.2018
23	Nirma Pink Powder, 180 Gms	701020T117001045 dated 10.11.2017	27.40	901002T117007604 dated 16.11.2017	27.40	02.02.2018, 03.01.2019
	Nirma Pink Powder, 170 Gms	-	-	901002T119010455 dated 23.01.2019	31.60	Sold Only in Post rate reduction period
24	Nirma Bartan Bar, 100 Gms (2+1 Free)	-	-	901002T119010196 dated 17.01.2019	310.60	Sold Only in Post rate reduction period
25	Nirma Bartan Bar, 200 Gms (2+1 Free)	-	-	901004T119004023 dated 21.01.2019	310.60	Sold Only in Post rate reduction period
26	Nirma Clean Cake, 200 Gms (2+1 Free)	701024T117001055 dated 11.10.2017	358.05	701024T117001273 dated 16.11.2017	358.05	Rates not revised
	Nirma Clean Cake, 175 Gms (3+1 Free)	-	-	901002T119011415 dated 23.02.2019	322.10	Sold Only in Post rate reduction period
27	Nirma Bartan Bar, 125 Gms (2+1) 12 Kg	701051T117000830 dated 12.11.2017	286.15	701032T117001144 dated 17.11.2017	286.15	Rates not revised
	Nirma Bartan Bar, 110 Gms (2+1) 10.560 Kg	701134T117001085 dated 14.11.2017	270.95	701032T117001144 dated 17.11.2017	270.95	Rates not revised
	Nirma Bartan Bar, 120 Gms (2+1) 11.520 Kg	-	-	901004T117004191 dated 15.12.2017	294.20	Sold Only in Post rate reduction period
28	Nirma Bartan Bar, 250 Gms (2+1) 12 Kg	701052T117001119 dated 10.11.2017	286.15	701052T117001150 dated 16.11.2017	286.15	Rates not revised
	Nirma Bartan Bar, 220 Gms (2+1) 10.560 Kg	701134T117001085 dated 14.11.2017	270.95	901002T117007582 dated 15.11.2017	270.95	Rates not revised
	Nirma Bartan Bar, 240 Gms (2+1) 11.520 Kg	-	-	901004T117004191 dated 15.12.2017	294.20	Sold Only in Post rate reduction period

15. The DGAP has also submitted that on examination of the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products during the period from 15.11.2017 to 31.01.2020, as furnished by the Respondent, it was observed that the Respondent had not increased the base price of the products "Detergent Powder and Scouring Bars", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017. However, the DGAP has also observed that the Respondent had increased the base price of the impacted products only

afterwards. For example out of 70 impacted product categories, prices of 16 were never revised; 23 were revised afterwards and maintained the same immediately after 15.11.2017; 29 were sold only during post rate reduction period and 2 were not found as sold.

16. The DGAP has further stated that based on the submissions of the Respondent that the Respondent had a system of reviewing the cost vis-à-vis selling prices of his products, normally on half yearly basis i.e. March/April and September/October unless some major factors affecting the cost of the products were there where immediate necessary changes in the selling price of the products were to be made. Explaining why the prices were revised afterwards, the Respondent submitted that they had increased the prices in December 2017. The Respondent had cited an example explaining why there was an increase in the rates in the month of December, 2017. Further, the DGAP has also submitted that the Respondent had increased the prices of non-impacted products namely Detergent Cakes (HSN Code 34012000) in December, 2017 where there was no reduction in rate of GST vide Notification No. 41/2017 dated November, 2017. The DGAP has further claimed that from the submissions of the Respondent the major components affecting the cost of detergent including scouring bar were variations in the prices of petroleum products, especially, the price of Crude Oil which governed the prices of petroleum products. It was at USD 52 per Barrel in April, 2017 which was substantially increased to USD 60 per Barrel in November, 2017.

From the above, the DGAP has concluded that the Respondent had not increased the base prices in respect of the impacted products immediately

after reduction in GST rate but only afterwards on account of aforementioned factor of increase in the price of crude oil or as per his price reviewing system twice in year. The DGAP has also claimed that the Respondent's submission had been corroborated by the fact that he had also issued Circular dated 15.11.2017, mentioned above to his all India Distributors informing that they should pass on the benefit of tax reduction.

17. The DGAP has further submitted that various orders of the Authority cited by the Respondent had been perused by him in which it has been held that since the base price of the impacted products was not increased after reduction in rate of tax, profiteering was not established and the provisions of Section 171 of the CGST Act, 2017 were not contravened.

18. The DGAP has also quoted the relevant paras from the Order No. 11/2020 dated 04.03.2020 in the matter of M/s Bajaj Electricals Ltd., Order No. 21/2018 dated 24.12.2018 in the matter of M/s Asian Granito India Ltd., Order No. 28/2018 dated 27.12.2018 in the matter of M/s Ahuja Radios., Order No. 13/2019 dated 01.03.2019 in the matter of M/s Velbon Vitrified Tiles Pvt. Ltd., Order No. 19/2019 dated 13.03.2019 in the matter of M/s Somany Ceramics Ltd., Order No. 18/2019 dated 13.03.2019 in the matter of M/s Asian Paints Ltd. and Order No. 24/2019 dated 03.04.2019 in the matter of M/s Rosata Vitrified Pvt. Ltd. passed by this Authority to contend that since the base prices had not been increased by the Respondent after rate reduction the allegation of violation of provisions of Section 171 was not proved against the Respondent as per the law settled in the above cases.

19. The DGAP has concluded that the Respondent had not increased the base prices of the impacted products after reduction in rate of tax made vide Notification No. 41/2017 dated 14.11.2017. The Respondent had also submitted details of invoices evidencing that the base prices of impacted products were not increased. To corroborate his intent to pass on the benefit of reduction in tax rate the Respondent had communicated it to his distributors through circular dated 15.11.2017.


20. The DGAP has also mentioned that the Standing Committee had forwarded the case against the Respondent with the following remark:

“Non-reduction of prices in commensurate with reduction of GST from 28% to 18%”

The Standing Committee had also sent the sheet submitted by the Respondent containing the details of impacted products, his pre & post rate reduction MRP etc. However, no Anti-Profiteering Application Form (APAF) or any actual invoice was forwarded by the Standing Committee. The DGAP has further stated that while investigating the case, it was observed that Section 171 of the CGST Act, 2017 did not specifically stipulate that there should be a reduction in MRP. However, it envisaged that the supplier had to pass on the benefit of rate reduction to his recipients by way of commensurate reduction in prices. The DGAP has also claimed that the said Section, referred to the recipient and not to the end customer. As there was no actual invoice on record in this case, it could not be established whether the end customer was commensurately benefitted by the rate reduction or not at this stage. The DGAP has concluded that, from the documentary evidence submitted by the Respondent, the Respondent had passed on the commensurate benefit of

rate reduction to his recipients/distributors only by way of commensurate reduction in prices.

21. The DGAP has claimed that in view of the aforementioned findings, it could be concluded that Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that *“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”*, **had not been contravened** in the present case.

22. The above Report was received by this Authority from the DGAP on 17.12.2021 and was considered in its sitting held on 23.02.2022. Perusal of the record reveals that this Authority vide its letter File No. 22011/NAA/39/2018/2663-2666 dated 18.04.2019 had sent the information, regarding pre and post 15.11.2017 MRPs of the Stock Keeping Units (SKU) which were being supplied by the Respondent, to the Standing Committee on Anti-Profiteering to examine under Rule 128 whether any profiteering was involved or not. The information stated the names of the products sold by the Respondent, the details of the 27 SKUs of Detergent and 5 SKUs of Scouring Bar, MRP before 14.11.2017, GST Rate as on 14.11.2017, GST Rate as on 15.11.2017, MRP after 15.11.2017, Effective date of change in MRP, Quantity sold at old MRP and the Sale value of quantity sold at old MRP. The Standing Committee had examined the above information in its meeting held on 10.01.2020 and forwarded the same to the DGAP on 24.01.2020 to conduct detailed investigation as per the provisions of Rule 129. 

23. The DGAP in his Report has stated that Section 171 of the CGST Act, 2017 does not mention reduction in MRP but stipulates that the benefit of reduction in the rate of tax should be passed on commensurately to the recipients by way of commensurate reduction in prices. He has also stated that it was apparent from the examination of

details of taxable supplies furnished by the Respondent that he had not increased the base prices of his products therefore, there was no violation of the provisions of Section 171 of the above Act.

24. In this regard it would be relevant to refer to the provisions of Section 171 (1) which state as under:

*“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**. (Emphasis supplied)*

It is clear from the plain reading of the above provision that whereas it refers to **any supply** in a singular manner, it does not refer to the price in the same manner but refers to the **prices** in plural term for one supply. Had the intention been only to reduce one price, the word ‘prices’ would not have been mentioned in the above Section in respect of one item of supply. Therefore, it is clear that all prices fixed by a manufacturer/supplier, in respect of each SKU, have to be reduced commensurately and not only the base price. It is well established that, a SKU may have different prices due to the legal provisions, pricing strategy adopted, geographical reasons, availability of tax benefits in a particular State or provision of transport, electricity, capital or other subsidies by the Central or the State Governments. Therefore, a supplier may fix different prices for the same SKU all of which he is required to be reduced due to tax reduction as per the above provision.

25. As per the Section 18 of the Legal Metrology Act, 2009 (2009 Act) the following provision has been made :

18. Declaration on pre-packaged commodities.

“(1) No person shall manufacture, pack sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or

number and bears thereon such declarations and particulars in such manner as may be prescribed.”

Since the Respondent is selling Detergents and Scouring Bars as pre-packaged commodities, the provisions of the above Section duly apply on him. Therefore, as per the provisions of Rule 6 (e) of the Legal Metrology (Packaged Commodities) Rules, 2011 framed by the Central Government under the 2009 Act, the retail price of the package has to be fixed and declared as defined under Rule 2 (m), which states as under:

“2 (m) “retail sale price” means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and the price shall be printed on the package in the manner given below;

maximum or max. retail price Rs...../₹..... inclusive of all taxes or in the form MRP Rs...../₹.....incl., of all taxes after taking in to account the fraction of less than fifty paise to be rounded off to the preceding rupee and fraction of above 50 paise and upto 95 paise to be rounded off to fifty paise;”

As per the letter No. WM-10 (31)/2017 dated 16.11.2017, the Respondent was further under legal obligation to affix an additional sticker or stamp or online print by declaring the MRP on all the SKUs which were lying unsold with him or his dealers as on 15.11.2017.

Therefore, it is clear that the Respondent was required to re-fix, declare and re-print the MRPs on all the SKUs, which he is selling. Since the Respondent has fixed two different prices, which he is charging to his Distributors and his ultimate consumers respectively, he has to reduce both of them to pass on the benefit of tax reduction. There is no provision in Section 171 which states that only base price is required to be maintained or reduced. A supplier has no discretion to claim that he has not violated the provisions of Section 171 as he has not increased his base price when he has not reduced the MRP of the same product on

which he is selling his product to the ultimate buyer. The benefit extended on one hand cannot be withdrawn by another. Accordingly, the finding recorded by the DGAP that the Respondent has not increased his base prices and passed on the benefit of tax reduction on the impacted SKUs is not substantiated and hence it cannot be accepted.

It is also apparent from the letter dated 18.04.2019 addressed to the Standing Committee by this Authority, which was sent to the DGAP by it on 24.01.2020 for detailed investigation that the information supplied by the Respondent pertained to the pre and post 15.11.2017 rate reduction MRPs of the impacted SKUs being sold by the Respondent. It was specifically mentioned that the data received may involve some profiteering. Again vide letter File No. 22011/NAA/39/Nirma/2018/5886 dated 06.11.2020, detailed information pertaining to the Respondent was again supplied to the DGAP by this Authority which does not appear to have been properly examined as it is apparent from the information supplied by the Respondent that he had re-fixed the MRPs but not w.e.f. 15.11.2017. Keeping in view the observations of this Authority mentioned above, it was obligatory on the DGAP to investigate whether the Respondent had commensurately reduced his MRPs or not and from which date and whether it involved profiteering or not which has not been done in the present case.

26. Perusal of Table-A of the Report shows that the Respondent has not increased his base prices in respect of his products except 23 SKUs after the rate reduction. However, it does not show whether the Respondent has charged the reduced rate of tax on them or not w.e.f. 15.11.2017, in the absence of which it cannot be concluded that the Respondent has reduced his prices commensurately.

27. The DGAP has also claimed that the Respondent was reviewing his costs and selling prices on half yearly basis unless they required immediate review due to some major factors. He has further claimed that

the Respondent had increased his prices in the month of December, 2017 post rate reduction due to increase in the prices of the Crude Oil. However, it has not been explained how the prices of the SKUs mentioned at Sr. No. 1, 3, 17, 19 and 20 of Table-A were increased in the month of November 2017 immediately after the rate reduction on 15.11.2017, when the prices of Crude Oil had been increased in the month of December, 2017. There is also no evidence on record which shows that the prices of Crude Oil had infact been increased. Mere assertion of the Respondent in this regard cannot be relied upon. Accordingly, the claim made by the DGAP in this regard cannot be accepted.

28. The DGAP has also contended that the Respondent vide his Circular dated 15.11.2017 had informed his Distributors that his selling prices to them would remain unchanged and they should charge 18% GST instead of 28% and should also persuade their Retailers to pass on the benefit of GST to the consumers. However, it is on record that the DGAP has not conducted any investigation on the issue whether the Respondent had reduced the MRPs commensurately and w.e.f. 15.11.2017 and conveyed them to his Retailers who had to further pass on the benefit of rate reduction. It is the Respondent who is liable to fix and declare the MRPs on each SKU as per the provisions of the 2009 Act and the same cannot be done by his Distributors or Whole Salers or Retailers. The Respondent cannot delegate the legal duty imposed on him by Section 171 to pass on the benefit, to his Distributors/Wholesalers/Retailers. Therefore, there is no evidence to establish that the Respondent had reduced the MRPs commensurately and immediately after tax reduction and the ultimate consumer had got the benefit of tax reduction. Accordingly, the claim made by the DGAP in this regard cannot be accepted.

29. In view of the above findings, the law settled by this Authority vide Order No. 11/2020 dated 04.03.2020 in the matter of M/s Bajaj Electricals Ltd., Order No. 21/2018 dated 24.12.2018 in the matter of M/s Asian Granito India Ltd., Order No. 28/2018 dated 27.12.2018 in the matter of M/s Ahuja Radios., Order No. 13/2019 dated 01.03.2019 in the matter of M/s Velbon Vitrified Tiles Pvt. Ltd., Order No. 19/2019 dated 13.03.2019 in the matter of M/s Somany Ceramics Ltd., Order No. 18/2019 dated 13.03.2019 in the matter of M/s Asian Paints Ltd. and Order No. 24/2019 dated 03.04.2019 in the matter of M/s Rosata Vitrified Pvt. Ltd. does not apply to the facts of the present case.

30. The DGAP has also contended that, no Anti-Profiteering Application Form (APAF) or any actual invoice was sent by the Standing Committee. In this connection it would be relevant to mention that the APAF and invoice as per Rule 128 is required by the Standing Committee and once it is satisfied that prima-facie there is denial of benefit of tax reduction, it can refer the case to the DGAP for investigation.

31. It has further been contended that, Section 171 does not specifically stipulate that there should be reduction in the MRP. However, the above Section also does not state that there should be reduction in the base price. As has been elaborated in paras supra, all prices of a product including its MRP have to be reduced for passing on the benefits of tax reduction and hence the above claim is not tenable.

32. The DGAP has also stated that, Section 171 refers to the recipient and not the ultimate consumer. In this connection it would be relevant to mention that this Authority in a number of its Orders has consistently held that the benefit of tax reduction has to be passed on to the ultimate consumer, who bears the burden of tax and not only to the Distributors/Whole Salers/Retailers who do not actually bear its burden. They can also not be enriched at the expense of the voiceless, vulnerable and unorganized customers. Reference in this regard can be made to

Para 86 of one of the Orders passed by this Authority bearing No. 76/2020 dated 23.11.2020 in the case of **DGAP Vs. Proctor & Gamble Home Products Pvt. Ltd.** vide which it has been ruled that "it has been clarified several times by the Union Finance Ministers, the Central Government and the GST Council that the benefit of tax reduction is required to be passed on to the ordinary customer who bears the burden of tax" and hence the claim made in this regard by the DGAP is not in accordance with the law settled by this Authority and also against the public policy and hence the same is untenable.

33. The DGAP has further stated that there was no actual invoice on record which could prove whether the end consumer was commensurately benefitted or not. In this regard it would be appropriate to mention that no such invoice was required. Since the MRPs were to be re-fixed by the Respondent himself, his record was only required to be investigated whether he had commensurately re-fixed them w.e.f. 15.11.2017 and conveyed them to his Dealers including his Retailers or not and whether the MRPs fixed were declared on the packages of the SKUs or not and whether additional stickers were affixed or stamping or online printing was done on the stock lying with him or his Dealers as on 15.11.2017. Therefore, the above claim cannot be accepted.

34. Based on the above findings, the Report of the DGAP stating that the Respondent has not violated the provisions of Section 171 of the above Act cannot be accepted and accordingly, the same is rejected and the DGAP is directed to reinvestigate the case as per the provisions of Rule 133 (4) of the CGST Rules, 2017 on the following issues and submit a fresh Report as per the provisions of Rule 129:

(i) Whether the Respondent has reduced, re-fixed and displayed the MRPs of the impacted SKUs commensurately w.e.f. 15.11.2017 after the rate of tax was reduced on them and conveyed the same to his Dealers i.e. Distributors/Whole Salers/Retailers by whatever name known?

(ii) Whether the Respondent has affixed stickers or stamped or online printed the reduced MRPs on the stock lying with him or his Dealers as on 15.11.2017 and thus passed on the benefit of tax reduction on it?

(iii) Whether the Respondent has charged 18% GST after rate reduction on the impacted SKUs after rate reduction?

(iv) On which grounds the Respondent has increased the base prices of his products in the month of November, 2017 immediately after the tax reduction on 15.11.2017?

(v) What evidence regarding increase in the prices of Crude Oil is available on the basis of which has been it has been claimed that the Respondent has increased his prices due to the increase in the prices of the Crude Oil?

(iv) Whether the Respondent has violated the provisions of Section 171 of the Act and if so what is the quantum of profiteering?

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member



Certified Copy

(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/Nirma/81/2022 /4744 — 4746 Dated: 10.05.2022

Copy To:-

1. M/s Nirma Limited, Nirma House, Ashram Road, Ahmedabad, Gujarat- 380009.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.