

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I. O. No. 20/2022

Date of Institution 28.01.2021

Date of Order 28.09.2022

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

1. **M/s. Raj & Company**, 16, DDA Market, Neeti Bagh, New Delhi-110049.

Respondent

Quorum:-

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

Present :-

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

ORDER

1. The present report dated 25.01.2021 had been received by the National Anti-Profiteering Authority (NAA or the Authority) from the Director General of Anti-Profiteering (DGAP), i.e. Applicant No. 1, after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case were that the DGAP vide his

report dated 08.08.2018 had alleged profiteering of Rs. 3,43,109/- against the Respondent for the period 15.11.2017 to 31.03.2018. the Authority vide his Order no. 25/2018 dated 27.12.2018 had determined the profiteered amount as Rs. 3,43,109/- and further, directed the DGAP to further investigate the quantum of profiteering for the period subsequent to 31.03.2018.

2. The DGAP in his report dated 25.01.2021 had inter alia, stated that:
 - a. The DGAP vide his Report dated 08.08.2018, furnished to the Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had conducted an investigation 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.
 - b. DGAP under his investigation had covered a period from 15.11.2017 to 31.03.2018. The DGAP in his Report had submitted that the Respondent had not passed on the benefit of reduced rate to the customers and had unduly profiteered itself by an amount of Rs. 3,43,109/-, which was contravention of the provisions of Section 171 (1) of the CGST Act, 2017.
 - c. After hearing both the parties Authority vide his Order No. 25/2018 dated 27.12.2018 had determined the profiteered amount as Rs. 3,43,109/- as per the provisions of Section 171 (2) of the above Act 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, Authority had directed the DGAP to further investigate the quantum of profiteering which the Respondent had made thereafter and submitted his Report.
 - d. On receipt of the aforesaid Order from the Authority on 28.12.2018, letter dated 07.01.2019, followed by the reminders dated 19.08.2020,



03.09.2020, 28.09.2020, 30.09.2020, 27.10.2020 and 16.12.2020 were issued to Respondent seeking requisite documents/details for further investigation.

- e. In para-17 of the aforesaid Order, DGAP was directed by Authority to further investigate the quantum of profiteering which the Respondent had made thereafter and submitted his report accordingly. Hence, for the compliance of the same, letter dated 07.01.2019 was issued to M/s. Raj & Company to submitted details.
- f. The period covered by the current investigation was from 01.04.2018 to 31.12.2018.
- g. The Respondent submitted his replies to the said Notice, vide letters and e mails dated 14.01.2019, 05.04.2019, 28.08.2020, 21.09.2020, 25.09.2020, 10.10.2020, 16.10.2020, 05.11.2020, 20.11.2020, 21.12.2020, 23.12.2020, 29.12.2020 & 01.01.2021.
- h. Vide the aforementioned e-mails/letters, the Respondent submitted the following documents/information:
 - i. Details of invoice-wise outward taxable supplies from 01.04.2018 to 31.12.2018 for all products impacted by GST rate reduction w.e.f. 15.11.2017.
 - ii. Copies of GSTR-1 and GSTR-3B for the period from April 2018 to December 2018.
 - iii. Sample invoices and price list.
- i. The replies of the Respondent and the documents/evidences on record had been carefully examined. The issue for determination was whether the Respondent reduced prices of the products impacted by rate reduction vide Notification 41/2017 dated 14.11.2017, in compliance of NAA'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.
- j. As regard the reduction in the rate of tax, it was observed that the Central Governments, on the recommendation of the GST council,

had reduced the GST rate on FMCGs 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 was a matter of fact that had not been contested by the Respondent,

- k. During the course of investigation, the Respondent submitted the invoice wise details of the products impacted by GST rate reduction w.e.f 01.04.2018 to 31.12.2018. The details submitted by the Respondent revealed that a total of 396 products (8 HSN) were supplied by the Respondent during the impugned period, out of which, 388 products (6HSNs) were impacted by rate reduction vide the said notification. The details of all these products were detailed as Annex-XIV.
- l. In order to explain the methodology adopted for determining the amount of profiteering, an illustration was given in the Table below, in which the calculation in respect of a specific item Le. "LP HEX 6 OIL SHAMPOO 360 ML" 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 below:

Sl. No.	Description	Factors	Pre Rate Reduction (From 01.11.2017 to 14.11.2017)	Post Rate Reduction (From 15.11.2017 onwards)
1	Product Description	A	LP HEX 6 OIL SHAMPOO 360 ML	
2	Notification No	B	41/2017-Central Tax (Rate) dated 14.11.2017	
3	Total quantity of item sold	C	35	

4	Total Taxable Value	D	6260.85	
5	Average base price (Without GST)	$E=D/C$	178.88	
6	GST Rate	F	28%	18%
7	Average selling price (pre rate reduction with GST)	$G=E * 1.28$	228.97	
8	Commensurate Selling price (post Rate reduction-with GST)	$G=E * 1.18$	228.97	211.08
9	Invoice No.	I		LCBL039761807494
10	Invoice Date	J		24.12.2018
11	Total Billed quantity (above invoice)	K		4
12	Transaction Value in the invoice	L		946.43
13	Actual Selling price per unit (post rate reduction with GST)	$M=L/K$		236.61
14	Excess amount charged or profiteering	$N=M-H$	25.53	
15	Total profiteering	$O=N*K$	102.12	

From the above table, it was observed that the Respondent did not reduce the selling price of the "LP HEX 6 OIL SHAMPOO 360 ML", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 and hence profiteered an amount of Rs.102.12/- on the Invoice No. LCBL039761807494 dated 24.12.2018 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.

From the sales details submitted by the Respondent, 201 products were sold in the period from 01.07.2017 to 14.11.2017. The total amount of profiteering with respect to these 201 products for the period 01.04.2018 to 31.12.2018, comes to Rs.3,31,879/-,

- m. In this case, the allegation of the Applicant No. 1 was 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, it appears that the base prices of the goods under investigations 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 31.12.2018 had been worked out as Rs.3,31,879/-.
- n. In view of the aforementioned findings, the conclusion was 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 ITC 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 23.2.2022, and the Respondent was granted personal hearing on

15.06.2022. However, the Respondent neither appeared for the hearing nor did he file his written submissions. It was noted that the Respondent is distributor of the M/s L'Oreal India Pvt. Ltd. and the Authority has recently passed an Order against them.

4. We have carefully considered the Report furnished by the DGAP, the clarifications filed by him 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 Raj & Company was a distributor of M/s L'Oreal India Pvt. Ltd. The Authority finds that M/s L'Oreal India Pvt. Ltd. was investigated by the DGAP for allegations of profiteering and not passed on the benefit of reduction of GST rate after the said Notification dated 14.11.2017 and the Authority has found them violating the provisions of Section 171 of the CGST Act, 2017 for the products sold by them for the period from 01.04.2018 to 31.12.2018, and, this Authority vide Order No. 26/2022 dated 23.06.2022, has also confirmed profiteering to the tune of Rs. 186,39,57,058/- against M/s L'Oreal India Pvt. Ltd. for the period from 15.11.2017 to 31.12.2018.

5. In view of the above facts, this Authority is of the opinion that the amount of profiteering calculated against the Respondent might have been already calculated and confirmed against M/s L'Oreal India Pvt. Ltd. as the period of investigation in the present case is already covered in the period of investigation in case of M/s L'Oreal India Pvt. Ltd. and the products on which profiteering has been calculated in the present case, have been included in the case of M/s L'Oreal India Pvt. Ltd.

6. Hence, considering the above facts on record 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 L'Oreal

India Pvt. Ltd. or not, under Rule 133(4) of the CGST Rules, 2017 strictly in respect of the findings made in para 4 and 5 above.

7. 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."

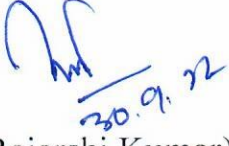
8. A copy of this order be supplied free of cost to all the Applicants, the Respondent and the concerned Central and State GST Commissioners and the file of the case be consigned after completion.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


30.9.22
(Rajarshi Kumar)
Secretary, NAA



File No. 22011/NAA/21/Raj&Co./2021

Dated: 30.09.2022

Copy To:-

1. M/s Raj & Company, 16, DDA Market, Neeti Bagh, New Delhi – 110049.
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.