

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

Case No. : 10/2018
Date of Institution : 09.07.2018
Date of Order : 08.10.2018

In the matter of:

1. Shri Ankur Jain, ankurjain7912@gmail.com
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.

Applicants

Versus

M/s Kunj Lub Marketing Pvt. Ltd., Pitambar Ganj, Hardoi, Sector-1,
DC, Uttar Pradesh- 241001.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicant No. 1.
2. Sh. Bhupender Goyal, Assistant Director (Costs) for the Applicant No.2.
3. None for the Respondent.

ORDER

1. An application through email dated 29.11.2017 was filed before the Standing Committee on Anti-profiteering under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017 by the Applicant No. 1 stating that he had purchased Maggi Noodle packs, each weighing 35 Gms., having Maximum Retail Price (MRP) of Rs. 5/- (here-in-after referred to as "the product") from the Respondent on 06.11.2017 vide invoice No. N1611 and on 28.11.2017 vide invoice No. N1867. The above Applicant had also alleged that prior to 15.11.2017, the Respondent was charging 18% GST on the product's base price of Rs. 3.96/- per pack, however, after the GST rate was reduced from 18% to 12% w.e.f. 15.11.2017, the Respondent had started charging 12% GST on the product's increased base price of Rs. 4.17/- per pack. Thus, the Applicant No. 1 had further alleged that the Respondent had increased the base price of the product from Rs. 3.96/- to Rs. 4.17/- after the GST rate applicable on the product was reduced from 18% to 12%. The Applicant had also claimed that by increasing the base price of the product its cum-tax price had remained unchanged at Rs. 4.67/- which showed that the Respondent had not passed on the benefit of the reduction of GST rate to him. The application was examined by the Standing Committee on Anti-Profiteering in its meeting held on 20.12.2017, wherein it was decided to refer the matter to the Director General of Safeguards (DGSG), now re-designated as Director General Anti-Profiteering (DGAP) in order to initiate an investigation and collect evidence necessary to determine whether the benefit of reduction in the

rate of tax on the above product had been passed on by the Respondent to the Applicant or not?

2. On receipt of the reference from the Standing Committee on Anti-Profiteering, the Respondent was called upon by the DGAP to submit his reply as to whether he admitted that the benefit of reduction in the GST rate had not been passed on to the above Applicant by way of commensurate reduction in the price. The Respondent was also asked to suo-moto determine the quantum of benefit not passed on and indicate the same in his reply to the Notice. Certain documents viz. Balance Sheet, GST Returns (1 & 3B), details of outward taxable supplies etc. were also sought from the Respondent by the DGAP. Incidentally the date of invoice No. N1611 was found to be 05.11.2017 instead of 06.11.2017 on examination by the DGAP. The period covered by the current Investigation is from 15.11.2017 to 28.02.2018. The Applicant No. 1 was given an opportunity vide email dated 12.06.2018 by the DGAP to inspect the non-confidential reply furnished by the Respondent, however, he did not avail of the said opportunity, instead, he had sent a letter dated 15.06.2018, informing that he had got clarity on how the overall GST benefit had been passed on in respect of the Maggi Noodles as a whole as it was not possible to pass on the GST benefit of 25 paise on Rs. 5/- packet of Maggi Noodles. He had also informed that he was withdrawing his complaint lodged against the Respondent and with further request to close the case.
3. The Respondent had submitted replies to the Notice issued by the DGAP vide various letters and vide his letter dated 19.02.2018 he had submitted that the Applicant No. 1 was a retailer, doing business in the name and style of M/s Anil Kumar Jain & Sons and to whom the

Respondent had been selling Nestle's products. The Respondent had also submitted that he had passed on the benefit of GST rate reduction in respect of the product bearing MRP of Rs. 5/- through other packs of Maggi Noodles having different grammage. The Respondent had further submitted that in the case of the product the price reduction would have been around 21 paise to the retailer and around 25 paise to the ultimate consumer which would have been inconvenient to both the retailer and the consumer whereas on Maggi Noodles pack of 70 Gms. bearing MRP of Rs. 12/- per pack, the benefit on account of GST rate reduction for the retailer would have been approximately 56 paise against which the respondent had reduced the price by 92 paise with reduced MRP of Rs. 11/- and thus, the benefit in respect of Rs. 5/- MRP pack had been passed on by reducing the price of other packs of Maggi Noodles by more than what was required. Therefore, the Respondent had claimed that the benefit of GST rate reduction had been passed on in respect of Maggie Noodles as a whole. The Respondent had also submitted the following documents: -

- a) Balance Sheet, Profit and Loss Account for the year 2016-17.
- b) Copies of the GSTR- 3B returns for the period from October, 2017 to February, 2018.
- c) Copies of the GSTR-1 returns for the period from October, 2017 to February, 2018.
- d) GST TRAN 1 for July, 2017
- e) Purchase invoices for the period from November, 2017 to March, 2018
- f) Sales calculation sheet for the month of November, 2017.
- g) Sample sales invoices for the month of November, 2017.

h) Price lists before 15.11.2017 and w.e.f. 15.11.2017.

4. The DGAP has analysed the application, the reply of the Respondent and the documents/evidence brought on record and has also looked into whether the rate of GST on the product was reduced w.e.f. 15.11.2017 and if so, whether the benefit of such reduction in the rate of tax had been passed on to the Applicant No. 1 in terms of Section 171 of the CGST Act, 2017 or not?. He has stated in his report that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the product from 18% to 12%, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, w.e.f. 15.11.2017 which had not been disputed by the Respondent. The DGAP has also stated that the Respondent has not contested the allegation of not passing on the benefit of reduction in the rate of GST from 18% to 12% on the product w.e.f. 15.11.2017 but instead the Respondent has contended that in the case of the product the MRP of which was Rs. 5/-, the benefit of GST rate reduction to the Applicant No. 1 as retailer and to the ultimate consumer would have been 21 paise and 25 paise respectively, which would have been inconvenient to both due to legal tender issues. The DGAP has further stated that the Respondent has contended that he has passed on the benefit of GST rate reduction in respect of 70 Gm. pack of Maggi Noodles bearing MRP of Rs. 12/- by reducing the price for the Applicant No.1 and the ultimate consumer by 92 paise and Re. 1/- respectively, which was much more than the required reduction of approximately 56 paise for the above Applicant. The DGAP has also submitted that the provisions of Section 171 of the CGST Act, 2017 required that any reduction in the 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 and the recipient in this case was the purchaser of the product, therefore, the admission of the Respondent that he has not passed on the benefit of GST rate reduction to the purchaser of the product established the allegation and the Respondent has profited on account of GST rate reduction in respect of the product. The DGAP has further submitted that the Maggi Noodle pack of 35 Gms. and 70 Gms. carrying MRP of Rs. 5/- and Rs. 12/- respectively were two different products and the benefit available to the buyer on one item could not be denied by offering more than the required benefit to the buyer of the other item. The DGAP has also contended that such a proposition would work against the recipients of the product and the law did not provide for such adjustments. Therefore, the DGAP has concluded that the Respondent has not passed on the benefit of GST rate reduction to the recipients of the product including the Applicant No. 1. Accordingly, the DGAP has calculated the profited amount of Rs. 90,778/- including the profited amount of Rs. 2,253/- charged by the Respondent from the Applicant No.1 as has been shown below:-

(Amount in Rs.)

Sr. No.	Product	MRP	1st Nov. to 14th Nov. 2017				15th Nov. 2017 to 28th Feb. 2018				Commensurate Price per unit	Profiteering Per unit	Total Profiteering
			Amount Charged	Base Price	GST Rate	Qty. Sold	Amount Charged	Base Price	GST Rate	Qty. Sold			
A	B	C	D	E	F	G	H	I	J	K	L=112% of E	M=[H-L]	N=[K*M]
1	MAGGI 2-MIN Mas Nlds 35Gms	5.00	4.67	3.96	18%	12468	4.67	4.17	12%	382048	4.43	0.24	90,778/-
Total Profiteering on sale of the Product												90,778/-	

5. The DGAP has also reported that the Applicant No.1 vide his letter dated 15.06.2018 has sought to withdraw his application and requested for closure of the case, however, he has contended that as the

application filed by the above Applicant had been investigated which showed that the Respondent had indulged in profiteering, therefore, such withdrawal was of no consequence. He has further reported that the Respondent had sold the product in the State of Uttar Pradesh only and therefore, the concerned State for the purpose of distribution of the above profiteered amount of Rs. 90,778/-, was Uttar Pradesh.

6. The Investigation Report received from the DGAP was considered in the sitting of the Authority held on 12th July, 2018 and it was decided to issue notice of hearing to the Respondent for 27th July, 2018. The Respondent through his e-mail dated 23rd July, 2017, requested for adjournment of hearing due to his personal difficulties and the Authority had acceded to the request and adjourned the hearing to 9th Aug, 2018. The Respondent again requested for adjournment of the hearing through his e-mail dated 8th August, 2018 and another date of hearing was fixed on 23rd August, 2018, however, the Respondent again did not appear. A letter dated 31.08.2018 was received on 05th Sept, 2018 from the Respondent stating that he had submitted his final reply vide his email/letter dated 21st Aug, 2018 which should be taken in to account while passing order in the present proceedings. In the interest of justice, the Authority had accorded last opportunity of hearing to the Respondent on 10th Sep, 2018 but the Respondent did not attend therefore, there was no other alternative except to proceed against the Respondent ex-parte.
7. Perusal of the letter dated 21.08.2018 written by the Respondent shows that he has stated that he had already filed his submissions before the DGAP and had also submitted the necessary information/documents before him and there were no additional submissions that were intended

to be submitted over and above the one submitted earlier before the DGAP and his case should be decided keeping in view his earlier submissions. The Respondent has re-iterated that he had not profiteered and duly passed on the benefits which had accrued on account of GST rate reduction effective from 15.11.2018. He has further stated that the Applicant No.1 had already withdrawn his complaint and hence the present proceedings should be dropped.

8. We have carefully examined the DGAP's Report, the written submissions of both the Applicants and the Respondent placed on record and find the following issues are to be settled in the present proceedings:-

- 1) Whether the benefit accrued due to reduction in the rate of tax of one product can be passed on via another product or not?
- 2) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?
- 3) If yes then what was the quantum of profiteering?

9. Perusal of Section 171 of the CGST Act shows that it provides as under:-

- (1). "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."
- (2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually

resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

171. (1)

10. It is apparent from the perusal of the facts of the case as well as the invoices dated 05.11.2017 and 28.11.2017 that the base price of the product was Rs.3.96/- per pack before 15.11.2017 which was increased to Rs. 4.17/- per pack by the Respondent after the rate of tax on the product was reduced from 18% to 12% vide Notification dated 14.11.2017 and the product was sold to the recipients @ Rs. 4.67/- per pack. The Respondent was required to sell the product @ Rs. 4.43/- per pack due to reduction in the tax rate and hence he has resorted to profiteering of Rs. 0.24/- per pack. Therefore, there is no doubt that the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price charged by the Respondent which amounts to violation of the provisions of Section 171 of the above Act.

11. It is also apparent from the facts of the case that the Respondent had no legal sanction to increase the base price of the product on his own and what was required of him was that he should have only reduced the MRP of the product by taking in to account the effect of the reduction in the rate of tax. The Respondent was further required to fix the MRP keeping in view the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 which prescribe the methodology of fixing the MRP keeping in view the rounding off the price. The Respondent had no mandate to deny the benefit of reduction of the tax rate due to

the problem of legal tenders as he had no legal authority to fix MRP arbitrarily. It was for the customers to furnish the required legal tenders and therefore, the Respondent can not be allowed to resort to profiteering. The Ministry of Consumer Affairs has already issued detailed instructions vide its Notification dated 16.11.2017 for notifying the reduced MRP which have not been followed by the above Respondent.

12. It is further apparent from the record that the Respondent has contended that he had passed on the benefit in respect of the product by way of reducing the MRP of the 70 Gms. products. The Respondent has no such liberty to arbitrarily decide in respect of which products he would pass on the benefit and in respect of which products he would not pass such benefit. As per the provisions of Section 171 of the Act the benefit has to be passed on to each recipient and the same can not be selectively granted or denied. It is also clear that the Maggi Noodle pack of 35 Gms. is distinct from a 70 Gms. pack and both the packs may be bought by the different recipients/customers and hence the benefit accruing to one customer can not be given or denied to another nor can the benefit given to one set of customers arbitrarily enhanced and set off against the another. No such adjustments are permissible under the Act.

13. Based on the above discussion the quantum of profiteering is determined as Rs. 90,778/- including the profiteering of Rs. 2,253/- made by the Respondent from the Applicant No. 1. Accordingly, the Respondent is directed to reduce the price of the product commensurate to the reduction in the rate of tax. He is also directed to refund an amount of Rs. 2,253/- to the Applicant No. 1 alongwith

interest @ 18% P. A. from the date from which the above amount was collected by the Respondent from him. Since the other customers of the product are not identifiable, the Respondent is hereby directed to deposit the balance amount of Rs. 88,525/- along with the interest at 18% P.A. till the date of deposit in the respective Central or State Consumer Welfare Fund within a period of 3 months from the date of receipt of this order.

14. It is evident from the above that the Respondent had denied benefit of the reduction in GST rate to the consumers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has thus realized more price from them than he was entitled to collect and had also compelled them to pay more GST than that they were required to pay by issuing incorrect tax invoices and hence he has committed offence under section 122 (1) (i) of the CGST Act, 2017 and therefore, he is liable for imposition of penalty. Accordingly, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under Section 122 of the above Act read with rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

15. Further, the Authority, as per Rule 136 of the CGST Rules 2017, directs the Commissioner of State Tax, Uttar Pradesh to monitor this order under the supervision of the DGAP by ensuring that the amount profited by the Respondent as ordered by the Authority is refunded or deposited within the above period failing which the same shall be recovered by him as per the provisions of the CGST Act, 2017. A report in compliance of this order shall be submitted to this Authority by the Commissioner within a period of 4 months from the date of receipt of this order. A copy each of this order shall be supplied to both the

Applicants as also the Respondent and the Commissioner State Tax
Uttar Pradesh for necessary action.

-Sd-

(B. N. Sharma)
Chairman




-Sd-

(J. C. Chauhan)
Technical Member

-Sd-

(Amand Shah)
Technical Member

Certified copy


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(A.K. Goel)
Secretary NAA

F.No.22011/NAA/58/2018

Dated: 08.10.2018

Copy to:-

1. M/s Kunj Lub Marketing Pvt. Ltd., Pitambar Ganj, Hardoi, Sector-1, DC, Uttar Pradesh- 241001.
2. Shri Ankur Jain, ankurjain7912@gmail.com
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001,
4. Commissioner of State Tax, Uttar Pradesh
4. NAA website.
5. Guard File.