

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER

THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 01/2019

Date of Institution : 10.10.2018

Date of Order : 02.01.2019

In the matter of:

1. Kerala State Screening Committee on Anti-profiteering.
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. Maruti Suzuki India Ltd., Palam, Gurgaon Road, Gurugram,
Haryana

Respondent


2.1.19

Quorum:-

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

Present:-

1. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala for the Applicant No. 1.
2. Sh. Anwar Ali T. P., Additional Commissioner for the Applicant No. 2.

ORDER

1. The present Report dated 28.09.2018, has been received from the Applicant No. 2 i.e. The Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Kerala State Screening Committee on Anti-Profiteering, vide the minutes of it's meeting held on 08.05.2018 had referred the present case to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on supply of four models of Motor Car, namely, 'Wagon R VXI AMT', 'Swift VXI', 'Alto 800 LXI' & Wagon R VXI' (HSN code- 8703), by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f. 01.07.2017. In this regard, the Kerala State

Screening Committee relied on two invoices issued for each of the four products by the Respondent, the details of the invoices are furnished in Table-A below:

Table-A

Particulars	Wagon R AMT		Swift VXI (O)		Wagon R VXI		Alto 800 LXI	
	Pre-GST	Post-GST	Pre-GST	Post-GST	Pre-GST	Post-GST	Pre-GST	Post-GST
Invoice No.	11809050	11931762	11608607	1143723	11614808	1130822	11618491	1124140
Invoice Date	02.06.17	19.07.17	03.04.17	15.09.17	04.04.17	19.09.17	05.04.17	15.09.17

2. The above application was examined by the Standing Committee on Anti-Profiteering and was further referred to the DGAP vide minutes of its meeting dated 02.07.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.

The DGAP has stated in his Report dated 28.09.2018 that the two invoices issued for each of the four products by the Respondent were scrutinized and it was observed that in the pre-GST era, the products namely, 'Wagon R VXI AMT', 'Swift VXI', 'Alto 800 LXI' & Wagon R VXI' (HSN code 8703) attracted total 15.63% duty incidence which included Central Excise Duty @ 12.50%, CST @ 1%, National Calamity Contingent Duty (NCCD) @ 1%, Auto Cess @ 0.125% and Infra Cess @1%. On implementation of GST, w.e.f. 01.07.2017, the GST rate on the above models was fixed at 29% which included Central GST @ 14%, State GST @ 14% and Compensation Cess @ 1%. The pre-GST & post-GST sale invoice-wise details with the applicable tax rate and discounted price

(excluding VAT or GST) of the said products supplied by the Respondent
are furnished in Table-B below:-

Table-B

Particulars		Wagon R AMT		Swift VXI (O)		Wagon R VXI		Alto 800 LXI	
		Pre-GST	Post-GST	Pre-GST	Post-GST	Pre-GST	Post-GST	Pre-GST	Post-GST
Invoice No.		11809050	119317 62	11608607	114372 3	116148 08	113082 2	116184 91	1124140
Invoice Date		2.6.17	19.7.17	3.04.17	15.9.17	4.4.17	19.9.17	5.4.17	15.9.17
Base Price (Before Discount)	A	335,599	335,599	403,632	403,632	310,723	310,723	210,128	213,012
Freight & Admin Charges	B	559	559	559	559	559	559	559	559
Discount	C	8,135	7,945	1,814	1,604	7,601	11,054	13,959	17,930
Net Base Price (After Discount)	D=A +B-C	328,023	328,213	402,377	402,587	303,681	300,228	196,728	195,641
Assessable Value for Duty Purpose	E	326,273	326,921	399,377	400,132	301,931	298,936	194,228	193,579
Excise Duty @12.5%	F=E* 12.5 %	40,784	-	49,922	-	37,741	-	24,278	-
NCCD @ 1%	G= E*1 %	3,263	-	3,993.77	-	3,019	-	1,942	-
Auto Cess @ 0.125%	H=E* 0.12 5%	408	-	499	-	377	-	243	-
Infra Cess @1%	I= E*1 %	3,263	-	3,993.77	-	3,019	-	1,942	-
CST @ 1%	J= E*1 %	3,740	-	4,577.86	-	3,461	-	2,226	-

	1% of (E to I)								
GST @ 29%	K=E* 29%	-	94,807	-	116,038		86,691	-	56,138
Total Duty/Tax	L=Su m of (F to J) or K	51,457	94,807	62,987	116,038	47,618	86,691	30,632	56,138
Ex-Factory Price	M= D +L	379,480	423,020	465,364	518,625	351,299	386,919	227,360	251,779
Tool kit & Jack including tax	N	463	458	550	545	458	458	438	438
Freight including Service tax	O	25,201	24,116	27,144	25,975	25,201	24,116	23,432	21,942
Service Charge including Service Tax	P	784	682	839	730	743	642	80	503
GST @ 29% on Freight and Service Charge	Q=2 9% of O+P	-	7,191	-	7,745	-	7,180	-	6,509
Dealer Landed Price	R= M to Q	405,928	455,467	493,897	553,620	377,701	419,314	251,309	281,170

3. The DGAP has further stated that the aforementioned supporting invoices show that there was an increase in the rate of tax on the products namely, 'Wagon R VXI AMT', 'Swift VXI', 'Alto 800 LXI' & 'Wagon R VXI' (HSN code- 8703) from 15.63% in the pre-GST era to 29% in the post-GST era.

The DGAP also stated that as per the Section 171(1) of the CGST Act,

2017 the anti-profiteering provisions are attracted only when there is a reduction in the rate of tax or increase in the input tax credit and therefore in the present case as there has been no reduction in the rate of tax, the allegation of profiteering by the Respondent was not established. The DGAP further observed that the selling price of the Respondent to his dealer had increased primarily because of the incidence of rate of tax had gone up from 15.63% to 29% as the afore mentioned transactions were in inter-state sale (Sale from Haryana State to Kerala State) where 1% CST was charged in pre-GST period whereas in post-GST 29% tax was charged. Therefore, the cum-tax price had increased.

4. The DGAP also stated from the above Table-B that the Respondent had changed the net base price (after discount) and charged effective rate of tax post implementation of GST and details of such change are furnished in the Table-'C' given below:-

Table-C

Motor Car model	Pre-GST net base price (in Rs.)	Post-GST net base price (in Rs.)	Increase/ (Decrease) post-GST (in Rs.)	Increase/ (Decrease) post-GST (In %)
A	B	C	D= (C-B)	E=D/B
Wagon R AMT	3,28,023	3,28,213	190	0.06%
Swift VXI (O)	4,02,377	4,02,587	210	0.05%
Wagon R VXI	3,03,681	3,00,228	(3,453)	(1.14%)
Alto 800 LXI	1,96,728	1,95,641	(1,087)	(0.56%)

5. The DGAP further observed that the Respondent had reduced the base price by Rs. 3453/- in respect of Wagon R VXI and by Rs. 1087/- in respect of Alto 800 LXI. However, there was an increase in the net base

price in the cases of models Wagon R AMT & Swift VXI (O) which was very negligible and it was also observed from Table-'B' given above that even this negligible increase was on account of reduction in discount while the base prices excluding discounts had remained same.

6. The above Report was considered by the Authority in its meeting held on 16.10.2018 and it was decided that as there was no private applicant, the Kerala Screening Committee should be asked to appear before the Authority and accordingly on 30.10.2018. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing she agreed to the Report submitted by the DGAP.
7. We have carefully considered the DGAP's Report and the documents placed on record to examine whether there was any reduction in the rate of tax during the implementation of the GST and whether the benefit of reduction in the rate of tax was passed on or not to the recipient as provided under Section 171 of the CGST Act, 2017. First of all it is observed that the rate of tax was 15.63% in the pre-GST era which was increased to 29% in the post-GST era, as could be seen from the tabulation shown in Table-B above. Secondly from the invoices referred above, it is evident that before discount base prices of all the products had remained the same. These facts have also not been disputed by the representative of the Applicant No.1. Hence the provisions of Section 171 of the CGST Act 2017 are not attracted.
8. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and hence there is no merit in the application filed by the above Applicant and the same is accordingly dismissed.

9. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.



Certified Copy



(A. K. Goel)

Additional Commissioner

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/82/AGL/2018/1358 - 1361

Date: 02.01.2019

Copy To:-

1. M/s. Maruti Suzuki India Ltd., Palam, Gurgaon Road, Gurugram, Haryana.
2. Commissioner, Commercial Tax, State GST Department, 9th Flr., Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
3. 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.
4. NAA Website.
5. Guard File.