

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

Case No.	14/2019
Date of Institution	21.12.2018
Date of Order	01.03.2019

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 Kajaria Ceramics Ltd. G-1, G-2, Aishwarya Tower, Near Hotel
Hawa Mahal, Ajmer Road, Jaipur, Rajasthan-302005

Respondent

Quorum:-

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

Present:-

1. Ms. 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 brief facts of the case are that The Kerala State Screening Committee on Anti-Profiteering vide the minutes of its meeting held on 08.05.2018 had referred the present case to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of 'Caribbean Wood Tile' (here-in referred to as the product) by not passing on the benefit of reduction in the rate of tax at the time of implementation of the Goods and Services Tax (GST) w.e.f. 01.07.2017. Thus, it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the Central Goods & Service Tax (CGST) Act, 2017. In this regard, Kerala State Screening Committee had relied on two invoices issued by the Respondent, one was dated 27.04.2017 (Pre-GST) and the other was dated 25.08.2017 (Post-GST).
2. The above reference 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.
3. The Directorate General of Anti-Profiteering (DGAP), after detailed investigation submitted its present report dated 03.10.2018 under Rule 129 (6) of the CGST Rules, 2017.

4. The DGAP has observed that in the pre-GST era, the rate of tax applicable on the product was Central Excise Duty @ 12.5% of the 60% of the MRP and there was no VAT or CST charged in the invoice whereas after implementation of the GST w.e.f. 01.07.2017, the tax rate of GST on the said product was fixed at 28%. The DGAP has further furnished the pre-GST & the post-GST sale invoice-wise details of the applicable tax rate and base price (excluding CST or GST) of the said product supplied by the Respondent in the table given below:-

Period	Pre-GST (prior to 01.07.2017)	Post-GST (post 01.07.2017)
Description of the product supplied	Caribbean Wood Tile	
Invoice No. & Date	2217100715 dated 27.04.2017	4417101296 dated 25.08.2017
MRP Per Box	800	800
Base price (in Rs.)	489.60	468
Excise Duty (12.5% on 40% of MRP)	60	Nil
Base Price (excluding Duties and Taxes)	429.60	468
GST	Nil	28%
Total Tax Rate	13.97%	28%

5. After scrutiny of the above two invoices issued by the Respondent, the DGAP has intimated that the rate of tax on the product was 13.97% in the pre-GST era (Central Excise Duty @ 12.5% of the 60% of the MRP) which was increased to 28% in the post-GST era (GST). Further, Section 171 of the CGST Act, 2017, comes into play in the event there is a reduction in rate of tax or there is an increase in the input tax credit (the

latter is not the subject matter of this enquiry). Consequently, the DGAP has stated that as there was no reduction in the tax rate of the said product the provisions of Section 171 of the CGST Act, 2017, were not contravened and hence the allegation of profiteering by the Respondent was not established.

6. The above report was considered by the Authority in its meeting held on 03.10.2018 and it was decided that since there was no complainant/other applicant in this case, the Kerala Screening Committee be asked to appear before the Authority on 18.10.2018. Since, no one appeared for the hearing on 18.10.2018, the Authority decided to ask Kerala Screening Committee to appear before the Authority on 31.10.2018. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 on 31.10.2018. During the hearing, it was observed that the DGAP report had not considered the MRP and base price (excluding VAT) of the product in question.

7. The Authority accordingly vide its letter dated 13.12.2018 had returned the report to the DGAP for re-investigation on the above mentioned issue under Rule 133(4) of the CGST Rules, 2017.

8. The DGAP vide his Report dated 20.12.2018 has submitted that as per Annexure-7 of the minutes of the Kerala Screening Committee dated 08.05.2018, profiteering was alleged against the Respondent, after introduction of GST w.e.f. 01.07.2017. The DGAP has further stated that the Respondent is listed at Sr. no. 77 of Annexure 7 to the minutes of the meeting of State level Screening Committee of Kerala dated 14.05.2018

wherein it was mentioned that the product attracts VAT @ 14.50%. On scrutiny of pre-GST invoice no. 2217100715 dated 27.04.2017, referred to in the above Annexure, it was noted that no VAT/CST was levied on the product in the said invoice. Therefore, the price per box (without VAT/CST but including Central Excise duty) was Rs. 489.60. Therefore, the rate of tax, as given at Sr. no. 77 of the Annexure-7, was not matching with the invoice details. Further, the DGAP stated that for calculation of pre-GST base price (excluding duties and taxes), the rate of Central Excise duty had been wrongly considered as 12% of the transaction value, whereas Central Excise duty was leviable @ 12.5% on 60% of the MRP(40% abatement). Since the transaction had taken place at a price lower than the MRP, the MRP has no bearing on the allegation of profiteering.

9. The DGAP has further observed that in the pre-GST invoice dated 27.04.2017, there was no VAT (transaction was exempt from CST) and the Central Excise duty amounted to 13.97%, there was no reduction in the tax rate post implementation of GST. In fact, post-GST, the tax rate increased from 13.97% to 28%. Hence, Section 171 of the CGST Act, 2017, is not attracted.

10. We have carefully examined the report of the DGAP and the documents placed on record and find that the only issue that needs to be dwelled upon is as to whether there was reduction in the rate of tax on the product in question after introduction of GST and whether the provisions of section 171 of CGST Act, 2017, are attracted. Perusal of Section 171 of the CGST Act, 2017, reads 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."

11. On perusal of the facts of the case and the details provided in the table given above in para 4 it is apparent that there was no reduction of tax with the introduction of GST. The DGAP on examining various facts has categorically mentioned that the invoices very clearly show that no VAT was levied and CST was also exempted prior to 01.07.2017. In fact the rate of tax has increased from Central Excise Duty 13.97 % to GST 28% w.e.f. 01.07.2017. Therefore, the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017 as there has been no reduction in the rate of tax. As such, we do not find any merit in the application filed by the above Applicants and the same is therefore dismissed.

12. 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.

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member



Certified copy

(Bhupinder Batar)
Assistant Commissioner, NAA

Copy to:-

1. M/s Kajaria Ceramics Limited, G-1, G-2, Aishwarya Tower, Near Hotel Hawa Mahal, Ajmer Road, Jaipur, Rajasthan-302005
2. Commissioner, State GST department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.
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.