

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

Case No.	18/2019
Date of Institution	03.01.2019
Date of Order	13.03.2019

In the matter of:

1. Kerala State Screening Committee on Anti-profiteering.
2. 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.

Applicants

Versus

M/s Asian Paints Ltd., APL Malappuram 1626, 4/394, Karad
(P.O.), Farook College, Distt. Malappuram, Kerala-673632.

Respondent


A. K. GOEL
SECRETARY, NAA

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.

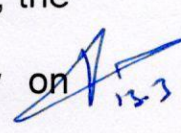
ORDER

1. The present Report dated 28.09.2018, has been received from the Applicant No. 2 i.e. the Director 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 Applicant No. 1, 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 "Paint (AP Woodtech Wood Stain Walnut 500ml (HSN Code 3213))" (here-in referred to as the product), by not passing on the benefit of reduction in the rate of tax of GST w.e.f. 15.11.2017. In this regard, the Applicant No. 1 had relied on two invoices issued by the Respondent, one dated 08.11.2017 (Pre-GST rate reduction) and the other dated 28.11.2017 (Post-GST rate reduction).
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.
3. The DGAP had stated in his Report dated 28.09.2018 that vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, the rate of

GST was reduced from 28% to 18% on the above product. He has also stated that the Respondent had reduced the selling price (including GST) of the above product from Rs. 175.40/- to Rs. 161.70/-, by maintaining the base price of Rs. 137.03/- (after discount) and charging GST at the lower rate of 18% on the said price. He has also furnished the pre and post rate revision invoice-wise details in the table given below:-

Table

Period			Pre 15.11.2017	Post 15.11.2017
1	Product Description	A	Paint (APL Woodtech Wood Stain Walnut 500ml) (HSN Code 3213)	
2	Invoice No.	B	KR1701108874	KR1701125329
3	Invoice Date	C	08.11.2017	28.11.2017
4	Base price before discount per unit (Rs.)	D	142	142
5	Discount per unit (Rs.)	E	4.97	4.97
6	Base price after discount per unit (Rs.)	F=D-E	137.03	137.03
7	GST Rate Charged (%)	G	28%	18%
8	GST Amount (Rs.)	H=F*G	38.37	24.67
9	Selling Price (Rs.)	I=F+H	175.40	161.70

4. The DGAP has further stated that after the tax rate was reduced from 28% to 18% w.e.f. 15.11.2017, the Respondent had maintained the same base price post reduction, resulting in reduction in the cum-tax price from Rs. 175.40/- to Rs. 161.70/-. Thus, there was no contravention of Section 171 of the CGST Act, 2017 relating to profiteering, he has claimed.
5. The above Report was considered by the Authority in its meeting held on 03.10.2018 and it was decided that as there was no private applicant, the Applicant No. 1 may be asked to appear before the Authority on  31.10.2018. Smt. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1. During the hearing, it was noticed that in the DGAP's Report, the observations made in Annexure-6

of the Minutes of the meeting held by the Applicant No. 1 on 08.05.2018, had not been taken into consideration which alleged profiteering by the Respondent.

6. The Authority vide its order dated 13.12.2018 had sent the DGAP's Report back to him for re-investigation on the above mentioned issue under Rule 133 (4) of the CGST Rules, 2017.
7. The DGAP vide his Report dated 01.01.2019 has submitted that as per the Annexure-6 of the minutes of the Kerala State Screening Committee's meeting dated 08.05.2018, profiteering had been alleged against the Respondent mentioned in column 4 of the said Annexure, when the GST rate was revised downwards w.e.f. 15.11.2017. He has also submitted that since the transactions relied upon in the Annexure-6 were between the manufacturer and the wholeseller or between the wholeseller and the retailer and such transactions had taken place at the prices lower than the MRP, the fact that the MRP remained unchanged even after reduction in the tax rates, could not be the basis for alleging profiteering. He had further submitted that there was no contravention of Section 171 of the CGST Act, 2017 and the allegation levelled against the Respondent was not proved.
8. We have carefully considered the DGAP's Report and the documents placed on record to consider whether there was any reduction in the GST rate 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.
9. From the invoices referred above, it is evident that the Respondent had maintained the same base price post reduction in the rate of tax w.e.f. 15.11.2017, resulting in reduction in the cum-tax price from Rs. 175.40/- to

Rs. 161.70/-. Since the benefit of tax reduction has been passed on by the Respondent by commensurate reduction in his price, therefore, the Respondent cannot be held guilty under Section 171 of the above Act.

10. 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 Applicants and the same is accordingly dismissed.

11. 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


(A.K. Goel)
Secretary, NAA

F.No.22011/NAA/83/AsianPaints/2018 /2145 - 2149 Dated: 13.03.2019
Copy to:-

1. M/s Asian Paints Ltd., APL Malappuram 1626, 4/394, Karad (P.O.), Farook College, Distt. Malappuram, Kerala-673632.
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.