

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

Case No. : 02/2019
Date of Institution : 22.10.2018
Date of Order : 16.01.2019

In the matter of:

1. Shri Surya Prakash Loonker, A-8, Mandakini Enclave, Alaknanda, New Delhi-110019.
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

1. M/s Excel Rasayan Pvt. Ltd., 123, DSIDC Complex, Okhla Industrial Area Phase-1, New Delhi-110020.

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. Ms. Gayatri, Deputy Commissioner, for the Applicant No. 2.
3. Sh. Rakesh Upadhyaya, Director and Dr. Prabhat Kumar, Advocate for the Respondent.


ORDER

1. The present Report, dated 04.09.2018, has been received on 07.09.2018 from the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that an application dated 22.02.2018 was filed by the Applicant No. 1 before the Standing Committee, constituted under Rule 123 (1) of the above Rules alleging that the Respondent did not pass on the benefit of reduction in the GST rate applicable to detergents from 28% to 18% w.e.f. 15.11.2017 but increased the base prices of the detergents sold by him, so that there was no reduction in the prices to the recipients. In support of his allegation, the Applicant No. 1 submitted copies of two sale invoices of Fortune ADW Detergent 1 Kg. and Fortune Rinse Aid 500 ml. bearing No. 6413 dated 07.09.2017 and No. 17497 dated 26.12.2017 respectively, issued by the Respondent. After examining the application, the Standing Committee on Anti-Profiteering, as per the minutes of its meeting dated 28.2.2018, forwarded the same to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

2. The DGAP, on receipt of the application, issued notice to the Respondent seeking his reply as to whether the benefit of reduction of GST rate has been passed on to the consumers or not? The Respondent had replied vide his letters dated 11.04.2018 and 19.05.2018 that prior to coming into force of the GST, he was a SSI unit, manufacturing synthetic detergents falling under Chapter 34 of the erstwhile Central Excise Tariff Act, 1944 and that he had been availing SSI exemption and charging VAT @ 12.5 % on the base prices. He had further submitted that on introduction of the GST, 28% tax was levied and since this disturbed his pricing pattern he had reduced the base prices. He had also stated that w.e.f. 15.11.2017, when the GST rate on his products in question was reduced from 28% to 18%, though the base prices were increased, they were much less than the base prices in the Pre-GST era.
3. The DGAP's report submitted that the Respondent had also filed details of invoice-wise outward taxable supplies (other than zero rated) and State-wise details for all the products from 01.11.2017 to 31.03.2018 along with copies of GSTR-1, GSTR-3B, Audited Balance Sheet and the Sample invoices. The DGAP after examining the facts of the case and the record available has reported that on scrutiny of the outward sales data of the Respondent covering the period w.e.f. 01.11.2017 to 14.11.2017, it was noticed that the base prices of Fortune ADW Detergent 1 Kg. and Fortune Rinse Aid 500 ml. were Rs.171.80 and Rs.117.18 respectively, prior to 15.11.2017. Taking this base price into account the cum-tax price after reduction of GST rate from 28% to 18% should have been Rs.202.72 for

Fortune ADW Detergent 1Kg. and Rs.138.27 for Fortune Rinse Aid 500 ml. The report further states that the Respondent instead of reducing the base prices sold 20,315 units of Fortune ADW Detergent 1 Kg. and 11,214 Units of Fortune Rinse Aid 500 ml. at the increased base prices across various States. Thus, by increasing the base prices of the said products consequent to the reduction in the GST rate, the benefit of reduction in the GST rate from 28% to 18% was not passed on to the recipients. The report also submitted that the total amount of profiteering covering the period between 15.11.2017 to 31.03.2018, came out to be Rs.4,64,849.74, but the Applicant No. 1 was supplied Fortune ADW Detergent 1 kg. at the price of Rs.186.99 and Fortune Rinse Aid 500 ml. at the price of Rs.127.49 which were lower than the commensurate cum-tax prices of these products and therefore, the Applicant was not eligible for any refund.

4. The above Report was considered by the Authority in it's meeting held on 11.09.2018 and it was decided to hear the interested parties on 26.09.2018, however no one appeared on behalf of the Respondent & Applicant No.1. Another Notice dated 03.10.2018 was issued and accordingly hearing was held on 12.10.2018. Sh. Rakesh Upadhyaya, Director and Sh. Prabhat Kumar, Advocate, appeared on behalf of the Respondent, no one appeared on behalf of the Applicant No.1, and Ms. Gayatri, Deputy Commissioner appeared on behalf of the DGAP.

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5. The Respondent in his written submissions dated 10.10.2018 submitted that he was a SSI unit manufacturing detergents and was

availing benefit of SSI units granted under the Central Excise Act, 1944 and therefore, he was selling his products after charging VAT @ 12.5% on the base prices. He has also submitted that w.e.f. the introduction of the GST from 1st July 2017 his products were levied GST @ 28% which had caused confusion and disturbed his pricing pattern. He has further submitted that though in the Pre GST era of VAT, which was levied @ 12.5% the rate of tax was increased to 28% in the GST era, but he had not increased the base prices and absorbed the increased burden of taxes from 12.5% to 28% himself. He has also claimed that in the same financial year 2017-18 he had three rates of tax viz. 12.5% prior to July, 28% from July to November and 18% from 15th November onwards, however during this entire period, the prices to the consumers had remained the same and accordingly, the consumers had paid lower prices even though the rate of tax was enhanced. He has also quoted the Hon'ble Finance Minister stating that the GST rate of 28% was tax neutral and only pertained to those units which were paying 12% Central Excise Duty and VAT @ 12.5%. However, this rate did not apply to him as he was availing exemption under the SSI notification. The above submissions of the Respondent were forwarded to the DGAP for reply who vide his submission dated 22.10.2018 stated that the Respondent has reiterated the earlier submissions and nothing more was to be added by the DGAP. Final price to the consumers, as per the submissions made by the Respondent, is as per the table given below:-


12.1.19

Year	Month/Qtr.	Final price to the Consumers										
		ADW	Rinse Aid	ADW	Rinse Aid	VAT 12.5%	@	GST @ 28%	GST @ 18%			
2016	Prior to GST											
	April	220	150	195.50	133.40	24.44	16.68	0	0	0	0	
	October	220	150	195.50	133.40	24.44	16.68	0	0	0	0	
	December	220	150	195.50	133.40	24.44	16.68	0	0	0	0	
2017	January	220	150	195.50	133.40	24.44	16.68	0	0	0	0	
	April	220	150	195.50	133.40	24.44	16.68	0	0	0	0	
2017	After introduction of GST											
	July	220	150	171.87	117.19	0	0	48.12	32.81	-	-	
	October	220	150	171.87	117.19	0	0	48.12	32.81	-	-	
	Upto 14.11.2017	220	150	171.87	117.19	0	0	48.12	32.81	-	-	
	15.11.2017	220	150	186.44	127.12	0	0	0	0	33.56	22.88	
	December	220	150	186.44	127.12	0	0	0	0	33.56	22.88	
2018	January	220	150	186.44	127.12	0	0	0	0	33.56	22.88	
	February	220	150	186.44	127.12	0	0	0	0	33.56	22.88	
	March	220	150	186.44	127.12	0	0	0	0	33.56	22.88	

6. As per Section 171 of CGST Act, 2017 read with Rule 127 of CGST Rules 2017, it is the duty of the Authority to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of Input Tax Credit (ITC) has been passed on to the recipient by way of commensurate reduction in the prices or not? In the instant case the Respondent has not disputed the fact that there has been reduction in the rate of tax from 28% to 18% with effect from 15th November 2017 vide Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017 and has also not disputed the calculation made by the DGAP based on his outward sales data. The DGAP vide Annexure-11 of his report has quantified profiteered amount as Rs.4,64,849/- in which he has taken the actual selling price of

Fortune ADW Detergent 1 Kg. i.e. Rs. 220/- and worked out the base price and the commensurate cum-tax price. The base price of the above product before rate reduction on 14.11.2017 was Rs. 171.80 and the Post-GST rate reduction it was Rs. 186.44 which has not been disputed as can be seen from the written submissions filed by the Respondent on 10.10.2018. Similarly in the case of Fortune Rinse AID 500 ml. the selling price was Rs.150/- while the base price before rate reduction was Rs. 117.18, the base price Post-GST rate reduction was Rs.127.12 which has also not been disputed by the Respondent. The only claim made by the Respondent is that from April 2016 to June 2017 though his selling price was constant at Rs.220/- for Fortune ADW Detergent 1Kg., the base price of the product has varied from Rs. 195.50 (April to December 2016) to Rs. 171.87 (July to November 2017) and then Rs. 186.44 (15.11.2017 to March 2018). Thus claiming that though the base price has increased from Rs. 171.87 to Rs. 186.44 after the rate reduction in November 2017 the base price still had remained less than Rs. 195.50 which was prior to introduction of GST. Similarly the selling price had remained constant at Rs.150/- for Fortune Rinse AID 500 ml. however, the base price has varied from Rs.133.40 (April to December 2016) to Rs.117.19 (July to November 2017) and Rs. 127.12 (15.11.2017 to March 2018). For this product also he has claimed that though the base price has increased from Rs. 117.19 to Rs. 127.12 after rate reduction in November 2017, the base price had remained less than Rs. 133.40 which was prevalent prior to the introduction of GST. Thus the Respondent has claimed that the consumer had effectively paid the same price or less price which was

prevalent in pre GST era. However, this argument of the Respondent does not hold good as not to increase the MRPs when tax rates were increased on account of implementation of the GST, was the business call taken by him and therefore he cannot claim any concession on this ground. The benefits arising due to the GST rate reduction cannot be denied to the consumers just because in the earlier scenario MRPs were not changed to extend some extra benefit to the consumers. It has also been found that the base price of both the above products has been increased irrespective of the fact that there was GST rate reduction from 28% to 18%, which is reflected in the table given below:-

Product	Base price post rate reduction per unit	Actual selling price	Base price Pre rate reduction per unit	Commensurate price per unit	Profiteering per unit
Fortune ADW	186.44	220.00	171.80	202.72	17.28
Fortune Rinse Aid	127.12	150.00	117.18	138.27	11.73

7. Therefore, the Authority is in agreement with the DGAP's finding that the cum-tax selling price of Fortune ADW Detergent 1 Kg. at Rs. 220/- prior to the GST rate reduction should have commensurately been reduced to Rs. 202.72 with GST rate reduction by 10%. Similarly in the case of Fortune Rinse AID 500 ml. the cum-tax selling price should have been commensurately reduced from Rs. 150/- to Rs. 138.27 after the GST rate reduction from 28% to 18%. By keeping the selling price constant at Rs. 220/- and Rs. 150/- per unit for the above products the Respondent has profited an amount of

Rs.4,64,849.74 for the period w.e.f. 15.11.2017 to 31.03.2018. However as far as the Applicant No. 1 is concerned he has bought both the above products @ Rs.186.99 (Fortune ADW Detergent 1Kg.) and at Rs.127.49 (Fortune Rinse AID 500 ml.) which are lower than the commensurate cum tax prices. Therefore there is no profiteering in respect of the products purchased by him.

8. From the above discussions, it is clear that the Respondent has admittedly not passed on the benefit of tax reduction since the base prices of the above two products were increased to maintain the same selling prices which were existing before the reduction in the rate of tax. The Respondent, who is a registered manufacturer, is liable to pass on the benefit to the recipients irrespective of the fact whether the base prices are still lower as compared to the pre-GST price or not. Moreover, from the documents submitted to the DGAP by the Respondent it is also established that the base prices of the two products in question were increased to maintain the same selling prices (inclusive of GST), although there was a reduction in the GST rate from 28% to 18% w.e.f. 15.11.2017. In the present case, the Respondent has admittedly accepted the fact that there was no reduction in the prices post 15.11.2017 on any of the products sold by him. Therefore, the Authority holds that the Respondent has violated the provisions of section 171 in as much as the prices have remained the same inspite of reduction in the tax rate. His plea that the base prices were drastically lowered when GST came in effect cannot absolve him from not passing on the benefit.

9. Accordingly, the Respondent is directed to reduce the sale price of the above products immediately, commensurate to the reduction in

the rate of tax, as was notified on 14.11.2017 so as to pass on the benefit of reduction in the rate of the tax to his customers as per Rule 133(3)(a) of the CGST Rules, 2017. The Respondent is also directed to deposit the profiteered amount of Rs.4,64,849.74 into the Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) in the ratio of 50:50 in the Central and the State Consumer Welfare Funds, along with interest at the rate of 18% to be calculated from the date of collection of the higher amount till the date of deposit into the Consumer Welfare Fund. Out of the entire profiteered amount of Rs. 4,64,849.74, an amount of Rs. 2,32,424.87 will be deposited into the Central Consumer Welfare Fund and the balance amount shall be deposited into the State Consumer Welfare Fund as per the Table-1 given below. The Authority, as per Rule 136 of the CGST Rules, 2017, directs the DGAP and the respective Commissioners of both CGST and SGST to monitor this order by ensuring that the amount profiteered by the Respondent as ordered by the Authority, is deposited in the Consumer Welfare Funds within a period of 3 months from the date of receipt of this order, along with interest failing which the same shall be recovered by the concerned Commissioner CGST or SGST as per the provisions of their respective Acts :-

Table-1

S. No.	State/ Union Territory	Profiteering (Rs.)
1.	Andhra Pradesh	6996.04
2.	Assam	5112.21
3.	Andaman & Nicobar Islands	23.135
4.	Bihar	299.325

5.	Chandigarh	1211.795
6.	Chattisgarh	953.445
7.	Daman & Diu	109.16
8.	Delhi	18696.08
9.	Goa	1118.68
10.	Gujarat	12110.97
11.	Haryana	10337.095
12.	Himachal Pradesh	959.86
13.	Jammu & Kashmir	873.585
14.	Jharkhand	842.875
15.	Karnataka	50389.505
16.	Kerala	4967.74
17.	Maharashtra	50796.785
18.	Manipur	46.1
19.	Meghalaya	138.02
20.	Madhya Pradesh	1989.225
21.	Odisha	653.49
22.	Puducherry	538.235
23.	Punjab	4397.285
24.	Rajasthan	3434.85
25.	Sikkim	75.55
26.	Tamil Nadu	22009.61
27.	Telangana	16388.405
28.	Tripura	2912.635
29.	Uttar Pradesh	11290.365
30.	Uttarakhand	1601.4
31.	West Bengal	8467.565
32.	Dadar & Nagar Haveli	28.37
Grand Total		232424.87

10. It is clear from the narration of the facts stated above that the Respondent has indulged in profiteering in violation of the provisions of Section 171 of the CGST Act, 2017 and has not passed on the benefit of

appropriate to issue him fresh notice asking him to explain why penalty should not be imposed on him.

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

Certified copy
16.1.19
(A.K.Goel)
Secretary NAA



Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

F.No.22011/NAA/ 89 /2018 / 1476-1530
Copy to :-

Dated: 16-01-2019

1. Shri Surya Prakash Loonker, A-8, Mandakini Enclave, Alaknanda, New Delhi-110019
2. M/s Excel Rasayan Pvt. Ltd., 123, DSIDC Complex, Okhla Industrial Area Phase-1, New Delhi-110020.
3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-11000.
4. Commissioner of Commercial Taxes, Office of the Chief Commissioner of State Tax, Eedupugallu, Krishna District, Andhra Pradesh.
5. Chief Commissioner of Central Goods & Services Tax, Vishakhapatnam Zone GST Bhavan, Port Area, Vishakhapatnam 530 035.
6. Commissioner of Commercial Taxes, Department of Tax & Excise, Kar Bhawan, Itanagar, Arunachal Pradesh - 791 111
7. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.
8. Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna - 800 001
9. Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001
10. Commissioner of Commercial Taxes, Office of Commissioner of Commercial Tax, Vikrikar Bhavan, Old High Court Building, Panji, Goa-403 001
11. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhawan, Near Times of India, Ashram Road, Ahmedabad.
12. Commissioner of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula, PIN - 134 151.

13. Commissioner of Commercial Taxes, Excise & Taxation Commissioner, Government of Himachal Pradesh, B-30, SDA Complex, Kasumpti, Shimla.
14. Commissioner of Commercial Taxes, Excise & Taxation Complex, Rail Head Jammu.
15. Commissioner of Commercial Taxes, Commercial Taxes Department, Project Bhawan, Dhurva, Ranchi- 834 004.
16. Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009
17. Commissioner of Commercial Taxes, Government Secretariat, Thiruvananthapuram -695001.
18. Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore
19. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010
20. Commissioner of Commercial Taxes, Department of Taxes, Old Guwahati High Court Complex, North AOC, Imphal West, Manipur - 795 001.
21. Commissioner of Commercial Taxes, Office of the Commissioner, GST&CX Commissionerate, Morellow Compound, M.G.Road, Shillong- 793001.
22. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, New Secretariat Complex, Aizawl – 796005.
23. Commissioner of Commercial Taxes, Office of the Commissioner of State Taxes, Dimapur, Nagaland - 797112.
24. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, Banijyakar Bhawan, Old Secretariat Compound, Cuttack - 753 001.
25. Commissioner of Commercial Taxes, Office of Excise and Taxation Commissioner, Bhupindra Road, Patiala- 147 001
26. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.
27. Commissioner of Commercial Taxes, SITCO Building, Block-D, above A.G. Office, Gangtok, East, Sikkim - 737 101.
28. Commissioner of Commercial Taxes, PAPJM Building, Greams Road, Chennai – 600 006.
29. Commissioner of Commercial Taxes, O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001.
30. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes & Excise, Head of the Department, Revisional Authority, P.N. Complex, Gurkhabasti, Agartala - 799 006.
31. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)
32. Commissioner of Commercial Taxes, State Tax Department, Head Office Uttarakhand, Ring Road, Near Pulia No. 6, Natthanpur, Dehradun
33. Commissioner of Commercial Taxes, 14, Beliaghata Road, Kolkata - 700 015.
34. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin: 110 002
35. Commissioner of Commercial Taxes, First Floor, 100 feet Road, Ellapillaichavady, Pondicherry - 605 005.


 16.1.18
A. K. GOEL
SECRETARY, NAA

36. Commissioner, Excise, Excise Department, Daman, Moti Daman-396220.
37. Commissioner, Excise, Forest office Compound, Opp. Gujarat Industrial Bank, Dadra and Nagar Haveli, Silvassa.
38. Commissioner of taxation, Additional Townhall Building, Sector 17-C U.T, 235, Jan Marg, Bridge Market, 17C, Chandigarh, 160017
39. Chief Commissioner of Central Goods & Services Tax, Bhopal Zone 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal M.P. 462 011.
40. Chief Commissioner of Central Goods & Services Tax, C.R.Building Rajaswa Vihar, Bhubaneshwar 751007.
41. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone C.R. Building, Plot No.19A, Sector 17C, Chandigarh 160017.
42. Chief Commissioner of Central Goods & Services Tax, Cochin Zone, C.R.Building, I.S.Press Road, Ernakulam Cochn 682018
43. Chief Commissioner of Central Goods & Services Tax, Delhi Zone C.R. Building, I.P. Estate, New Delhi 110 109
44. Chief Commissioner of Central Goods & Services Tax, Hyderabad Zone GST Bhavan, L.B.Stadium Road, Basheer Bagh, Hyderabad 500 004
45. Chief Commissioner of Central Goods & Services Tax, Jaipur Zone, New Central Revenue Building, Statue Cicle, Cscheme Jaipur 302 005
46. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. CCS University, Mangal Pandey Nagar, Meerut 250004
47. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building ,115 M.K. Road, Opp. Churchgate Station, Mumbai 400020
48. Chief Commissioner of Central Goods & Services Tax,, Telangkhedi Road, Civil Lines, Nagpur 440001
49. Chief Commissioner of Central Goods & Services Tax, Panchkula SCO 407408, Sector 8 Panchkula
50. Chief Commissioner of Central Goods & Services Tax, Pune Zone GST Bhawan Ice House, 41A, Sasoon Road, Opp. Wadia College, Pune 411001
51. Chief Commissioner of Central Goods & Services Tax, (Ranchi Zone) 1st Floor, C.R. Building, (ANNEX) Veerchand Patel Path Patna, 800001
52. Chief Commissioner of Central Goods & Services Tax, Shillong Zone North Eastern, 3rd Floor, Crescens Building, M.G. Road, Shillong 793 001
53. Chief Commissioner of Central Goods & Services Tax, Vadodara Zone 2nd Floor, Central Excise Building, Race Course Circle, Vadodara 390 007
54. NAA Website.
55. Guard File.


A. K. GOEL
 SECRETARY, NAA