

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

Case No. : 22/2019
Date of Institution : 31.12.2018
Date of Order : 28.03.2019

In the matter of:

1. Kerala State Level 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

1. M/s Peps Industries Pvt. Ltd, 49/52(1), Devakinandanam Building, Karakkamandapam, Nemom PO Trivandrum, Kerala.

Respondent

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, Additional Commissioner for the Applicant No. 2.

ORDER

1. The present Report dated 28.09.2018, has been received from the Applicant No. 2, 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 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 Peps Spring Koil Bornell Normal Maroon 75x60x6" Mattress (HSN Code 94042910), by not passing on the benefit of reduction of GST rate w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate). Thus it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of Central Goods and Service Tax (CGST) Act, 2017. In this regard, The Kerala State Screening Committee had relied on two invoices issued by M/s Peps Industries Pvt. Ltd., dated 09.08.2017(pre-revision) and other dated 30.11.2017(Post-revision).
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 DGAP has stated in his Report dated 28.09.2018 that prior to 15.11.2017 (pre-revision), the applicable GST rate on the product was 28% which was reduced to 18%, vide Notification No. 41/2017-Central Tax(Rate) dated 14.11.2017.

Period	Pre-GST rate revision (prior to 15.11.2017)	Post-GST rate revision (post 15.11.2017)
Description of the product supplied	Peps Spring Koil Bornell Normal Maroon 75x60x6 Mattress (HSN 94042910)	
Invoice No. & Date	C/0014196 dated 09.08.2017	C/009048 dated 30.11.2017
GST Rate	28%	18%
Base price (excluding GST) (in Rs.)	7986	8040
Discount	Nil	1006
Net Base Price (excluding GST) (in Rs.)	7986	7034

4. The DGAP after scrutiny of the above two invoices issued by the Respondent as shown in the table above has intimated that although there was a decrease in the rate of tax on the said product from 28% to 18% w.e.f. 15.11.2017, the base price (excluding GST) of the product was reduced from Rs. 7986/- to Rs. 7,034/- after offering a discount of Rs. 1,006/-. As the base price of the product stood reduced as detailed above, the provisions of Section 171 of the CGST Act, 2017 are not contravened and the allegation of profiteering by the Respondent is not established.
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 Kerala Screening Committee may be asked to appear before the Authority on 18.10.2018, which was further extended to 31.10.2018. 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.

6. The Authority considered the Report again in its meeting dated 05.12.2018 and decided to send it back to DGAP under Rule 133(4) of CGST Rules, 2017.
7. The Report dated 28.12.2018 received from the DGAP under Rule 133(4) of the CGST Rules, 2017 has stated that the present case is covered by Annexure-6 of the Kerala State Screening Committee's minutes, which alleged profiteering by the Respondent, pursuant to GST rate reduction w.e.f. 15.11.2017, in respect of supply of Peps Mattress(HSN 94042910) to M/s SRT and Co., Palakkad, Kerala. It also stated that GST officers had conducted enquiries with M/s SRT and Co., Palakkad, Kerala and had procured the latter's purchase and sale invoices, but as the profiteering had been alleged against the Respondent the purchase invoices of M/s SRT and Co., have been relied upon, which happen to be the sale invoices of the Respondent.
8. We have carefully considered the DGAP Report and the documents on record and find that the issue here is, whether the benefit of reduction in the rate of tax was passed on w.e.f 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017.
9. Perusal of Section 171 of the CGST Act shows that it provides as under:-
- "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."
10. It is apparent from the perusal of the facts of the case that admittedly there was a decrease in the rate of tax on the said product from 28% to 18% w.e.f. 15.11.2017 but it is also established that the base price

(excluding GST) of the product was also reduced from Rs. 7986/- to Rs. 7,034/- after offering a discount of Rs. 1,006/- which is more than the commensurate rate reduction. As the Net Base Price (excluding tax) of the above product has been reduced by the Respondent, the allegation of profiteering is not sustainable.

11. 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 we find no merit in the application forwarded by the Applicant No. 1 and the impugned application is accordingly 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.

Certified copy


(A.K. Goel)

Secretary NAA



-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/90/Peps/2018 | 2288

Date: 28.03.2019

Copy To:-

1. M/s Peps Industries Pvt. Ltd, 49/52(1), Devakinandanam Building, Karakkamandapam, Nemom PO Trivandrum, Kerala
2. Commissioner, 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/Guard File.