BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	25/2019
Date of Institution	22.01.2019
Date of Order	16.04.2019

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 Dev Snacks, Cheriyela, Alummoodu, P.O. Kollam, Kerala-691577.

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. None for the Applicant No. 1.
2. Sh. Rana Ashok Rajneesh, Assistant Commissioner for the Applicant No. 2.
3. Sh. Ronak Radhakrishna Pillai, Proprietor and Sh. Fernald Fernandez, Authorized Representative for the Respondent.

ORDER

1. The present Report dated 04.12.2018 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (here-in-after referred to as the 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 the Applicant No. 1, vide the minutes of its meeting held on 08.05.2018 had forwarded an application to the Standing Committee on Anti-profiteering, alleging profiteering by the Respondent on the supply of "Snacks" (HSN Code 21069099), by not passing on the benefit of reduction in the rate of tax from 12% to 5% w.e.f. 15.11.2017. Thus it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 (1) of the CGST Act, 2017. In this regard, the Applicant No. 1 had taken in to account the two invoices

which were issued by the Respondent on 18.08.2017, before the rate of tax was changed and the other dated 21.12.2017 which was issued after the rate of tax was changed, as has been mentioned in the table given below:-

Sr. No.	Name of the Product Supplied	Pre GST rate revision on 15.11.2017			Post GST rate revision on 15.11.2017		
		Invoice No. & Date	Tax Rate	Discounted Base Price (in Rs.)	Invoice No. & Date	Tax Rate	Discounted Base Price (in Rs.)
1	Mathuraseva (HSN Code 21069099)	MG00089 18.08.2017	12%	32.40	MG01278 21.12.2017	5%	33.75
2	Kuzhalappam (HSN Code 21069099)	MG00089 18.08.2017	12%	36.00	MG01278 21.12.2017	5%	37.50
3	Mullomurukko (HSN Code 21069099)	MG00089 18.08.2017	12%	36.00	MG01278 21.12.2017	5%	37.50
4	Thatta (HSN Code 21069099)	MG00089 18.08.2017	12%	39.60	MG01278 21.12.2017	5%	41.25
5	Mixture 200gm (HSN Code 21069099)	MG00089 18.08.2017	12%	43.20	MG01278 21.12.2017	5%	45.00
6	Muruku (S.M) (HSN Code 21069099)	MG00089 18.08.2017	12%	46.80	MG01278 21.12.2017	5%	48.75
7	Mixture 400gm (HSN Code 21069099)	MG00089 18.08.2017	12%	86.40	MG01278 21.12.2017	5%	90.00

2. The above application was scrutinized by the Standing Committee on Anti-Profiteering and was sent to the DGAP vide minutes of its meeting held on 02.07.2018 for conducting detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP had called upon the Respondent to submit his reply on the above allegation and also asked him to suo moto determine the quantum of benefit which had not been passed on by the Respondent after the GST rate reduction. He had also sought extension of time for

completing the investigation which was granted by the Authority vide its order dated 09.10.2018 under Rule 129 (6) of the above Rules. The Respondent had submitted replies vide his letters/e-mails dated 27.09.2018, 05.10.2018, 15.10.2018, 28.10.2018, 29.10.2018, 06.11.2018, 19.11.2018 & 22.11.2018 and made the following submissions:-

(a) That the MRPs of the products mentioned in the complaint had not been changed before or after 15.11.2017 although there had been change in the tax rate and the Respondent was paying GST at the rate of 12% from January, 2018, therefore, there was no profiteering due to change in the GST rate after December, 2017. The GST @ 5% was chargeable only for the period w.e.f. 27.11.2017 to 31.12.2017 whereas before 27.11.2017 and after 31.12.2017, the GST was to be charged @ 12%.

(b) That the products of superior quality were being sold after observing all the prescribed Rules and after payment of GST, in competition with the unregistered manufacturers and the manufacturers who had opted for the compounding scheme.

(c) That the majority of the items sold by him had incidence of GST @ 12%, as per the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 which was reduced from 12% to 5% w.e.f. 13.10.2017, as per the Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017. According to Sr. No. 46 of Schedule II of the Notification dated 13.10.2017, the items mentioned under sub-heading No. 2106 90, being sold in unit containers and having a registered brand name

or bearing a brand name on which an actionable claim or enforceable right in a court of law was available, would attract GST @ 12% and the rest of the products shall be liable to GST @ 5% subject to certain conditions. The Respondent had claimed that the import of the above Notification was not clear to him and hence he had started paying GST @ 5% w.e.f. 27.11.2017, however, on obtaining clarification, he had got his brand name registered and started payment of GST @ 12% w.e.f. 01.01.2018 and hence, he had not profiteered.

(d) That he was selling his goods under a registered brand name till 2013, after which it was cancelled due to tax issues. The Respondent had also claimed that the contents of Notification dated 13.10.2017, were not clear and hence he had contacted the jurisdictional CGST officers, but they had failed to provide clarification and therefore, w.e.f. 27.11.2017, he had started charging GST @ 5% on the goods falling under HSN 2106 90 till 31.12.2017 and w.e.f. 01.01.2018, he had again started paying GST @ 12% as he had got his brand name registered and he had deposited the entire amount of GST in the Government account.

(e) That due to the above reasons, he was unable to reduce the MRPs of his products for a period of 35 days. He was delivering the goods at the premises of the buyers in his own vehicles all over Kerala and was also giving discounts depending upon the quantity sold, prompt payment and customer behaviour. He was unable to reduce the MRPs due to competition from the unregistered manufacturers and from those who were availing the Composition

Scheme, despite increase in the cost of production and transportation.

(f) That the Respondent has also admitted that w.e.f. 01.07.2017, the rate of GST on his products mentioned under HSN 2106 90 was 12% which was reduced to 5%, as per the Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017, however, he was not aware of the amendment till 27.11.2017 and when it was pointed out to him he had started to charge GST @ 5% w.e.f. 27.11.2017. He has also admitted that in respect of some supplies the MRPs had not been reduced by him till 31.12.2017, as it was not possible to change the MRPs printed on the packets which were in the supply chain. When he had noticed that other unregistered and compounding manufacturers were selling the same type of goods with unregistered brand names, resembling his brand name, at lesser prices, he had got his brand name registered and from 01.01.2018, he was charging GST @ 12%, without affecting the margin of profit of his buyers.

(g) That he has further contended that the price of a product was dependent not only on the element of tax, but it was fixed after considering the increase in the cost of raw materials, diesel and wages of employees, etc. and it was not possible to increase the price, once it was reduced.

(h) Through his various communications the Respondent had submitted the following documents:-

(a) Copies of GSTR-1 Returns for November, 2017 to August, 2018.

(b) Copies of GSTR-3B Returns for November, 2017 to August, 2018.

(c) Sample Copies of invoices pre & post 15.11.2017.

(d) Price Lists of the products under investigation, pre & post 15.11.2017.

(e) Sale details of the products under investigation for the period from November, 2017 to August, 2018.

(f) Copy of Trademark/ Brand registration dated 29.12.2017.

4. The DGAP through his Report dated 04.12.2018 received on 05.12.2018 has submitted that vide Notification No. 01/2017-Central Tax (Rate) dated 28.06.2018 as per Sl. No. 46 of Schedule I, the rate of GST w.e.f. 01.07.2017 on the products under investigation, viz. Snacks having HSN Code 21069099 was fixed @ 12%. He has also submitted that the above Notification dated 28.06.2018 was amended vide Notification No 34/.2017-Central Tax (Rate) dated 13.10.2017, vide which the rate of GST on the Snacks was divided into the two categories which were shown at Sl. No. 101A of Schedule I on which GST @ 5% was imposed and at Sl. No. 46 of Schedule II on which GST @ 12% was levied as per the following details:-

(i) Namkeen, bhujia, mixture, etc., other than those put up in unit containers, bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those where any actionable claim or any

enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the Annexure) attracting GST @ 5% (Sl. No. 101A of Schedule-I).

(ii) Namkeen, bhujia, mixture etc., put up in unit containers, bearing a registered brand name or bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the Annexure) attracting GST @ 12% (Sl. No. 46 of Schedule-II).

The Annexures mentioned in para (i) and para (ii) above have been quoted by the DGAP as under:-

For foregoing an actionable claim or enforceable right on a brand name,-

(a) The person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the ***jurisdictional Commissioner of Central Tax*** *that he is voluntarily foregoing an actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a): and*

(b) The person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit

containers he has foregone his actionable claim or enforceable right voluntarily.

"Provided that, if the person having an actionable claim or enforceable right on a brand name and the person undertaking packing of such goods in unit containers are two different persons, then the person having an actionable claim or enforceable right on a brand name shall file an affidavit to that effect with the jurisdictional Commissioner of Central Tax of the person undertaking packing of such goods that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and he has authorised the person [undertaking packing of such goods in unit containers bearing said brand name] to print on such unit containers in indelible ink, both in English and the local language, that in respect of such brand name he [the person owning the brand name] is voluntarily foregoing the actionable claim or enforceable right voluntarily on such brand name."

5. The DGAP has further submitted that after implementation of the GST w.e.f. 01.07.2017:-

a) The Respondent was levying GST @ 12%, as per the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017 on the supply of Snacks having HSN Code 21069099, which were put up in unit containers.

b) He was supplying his products under the unregistered brand name "Dev Snacks".

c) The Respondent had filed an affidavit on 24.11.2017 before the Commissioner of Central Tax & Central Excise, Thiruvananthapuram stating that he was voluntarily foregoing his actionable claim or enforceable rights on his brand name "Dev Snacks".

d) He had started charging GST @ 5% w.e.f. 27.11.2017, as per the Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017, subject to the conditions specified in the Annexure to the said Notification, albeit the correct effective GST rate of tax was 'NIL'.

e) He had got his brand name "Dev Snacks" registered on 29.12.2017 and started charging GST @ 12% from 01.01.2018.

6. The DGAP has also stated that when Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017 was read with the conditions specified in the Annexure to the said Notification, it was evident that the rate of GST was 12% on the Snacks (HSN 21069099) which were put up in unit containers and bore a registered brand name or a brand name on which an actionable claim or enforceable right in a court of law was available (other than those where any actionable claim or any enforceable right in respect of such brand name had been voluntarily foregone, subject to the conditions as specified in the Annexure). Therefore, he has further stated that as per the conditions prescribed in the Annexure to the said Notification, if any person had voluntarily foregone his actionable claim or enforceable right on an unregistered brand name by filing the prescribed affidavit with the jurisdictional Commissioner of Central Tax & Central Excise and had fulfilled the other specified conditions, GST @12% was not attracted

& the effective rate of GST would become NIL. Therefore, he has contended that the Respondent had charged GST wrongly on the supply of Snacks @ 5%, from 27.11.2017 to 31.12.2017.

7. The DGAP has also submitted that as per the provisions of Section 171 of the CGST Act, 2017 which reads as "*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.*", in case there was benefit of input tax credit or reduction in the rate of tax, there must be a commensurate reduction in prices and the ultimate price to be paid by a consumer must get reduced. He has further submitted that from the invoices mentioned in the Table of para 1 of his Report, it was evident that the Respondent had increased the base prices of the Snacks after the rate of tax was reduced from 12% to Nil vide Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017, and also charged GST wrongly @ 5% instead of Nil, w.e.f. 27.11.2017, and hence he had not passed on the benefit of rate reduction to his customers during the period from 27.11.2017 to 31.12.2017.

8. The DGAP has also contended that after analysing the details of sale data provided by the Respondent it was found that the base prices of the products supplied by the Respondent were increased from 27.11.2017 after filing an affidavit on 24.11.2017 with the Commissioner of Central Tax & Central Excise, as per the conditions of the Annexure attached to Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017 and the GST was wrongly charged @ 5%

instead of Nil. He has further contended that the Respondent had got his brand name registered on 29.12.2017 and, therefore, his products attracted 12% GST, as per Sl. No. 46 of Schedule-II of the above Notification. He has also averred that the Respondent had started charging GST @ 12%, w.e.f. 01.01.2018 and thus it was evident from the sale data submitted by the Respondent that he had increased the base prices of his products and had wrongly charged GST @ 5%, due to which the benefit of GST rate reduction from 12% to Nil had not been passed on to the recipients during the period w.e.f. 27.11.2017 to 31.12.2017. He has also claimed that the amount of profiteering computed for the period w.e.f. 27.11.2017 to 31.12.2017, on the supplies made during the above period came to Rs. 12,76,306/-., as per the details mentioned in Annex-14. He has further claimed that all the supplies were made in the State of Kerala only.

9. The above Report was considered by the Authority in its sitting held on 04.12.2018 and it was decided to hear the interested parties on 20.12.2018, which was further adjourned to 11.01.2019 on the request of the Respondent. Sh. Ronak RadhaKrishna Pillai, Proprietor and Sh. Fernald Fernandez, Authorized Representative appeared on behalf of the Respondent however, the Applicant No. 1 did not appear. The DGAP was represented by Sh. Rana Ashok Rajneesh, Assistant Commissioner. The Respondent vide his written pleadings dated 13.12.2018, 18.12.2018, 01.01.2019, 11.01.2019, 16.01.2019 and 11.04.2019 submitted that he was manufacturing

Bakery items, most of which were having NIL rate of tax or 2% Central Excise Duty prior to coming in to force of the GST and he was charging GST @ 12% on most of his products w.e.f. 01.07.2017 without increasing the MRPs. He has also submitted that he was facing stiff competition from the exempted or the compounding manufacturers and he could not increase his MRPs though GST at higher rates was required to be paid w.e.f. 01.07.2017 and there was also increase in the cost of raw materials, diesel and the employee's salaries. He has further submitted that he was supplying his products at the premises of his customers on which substantial amount was being spent and discounts ranging from 25 to 35%, were also being offered by him. He has also argued that his customers were having their own Association and any increase in the MRPs would have been challenged by them therefore, to maintain good relationship with them he was providing them maximum profit margin. He has further argued that the Government of India, vide Notification No. 34/2017-Central Tax (Rates) dated 13.10.2017 had reduced the rate of GST on the products listed under HSN Code 2106 90 from 12% to 5% with certain conditions and the revised rate of 5% was chargeable on the goods which were being supplied without a registered brand name. He has claimed that he was not informed about this change by the GST officers and no Trade Notice or press release was issued by the Govt. He has also stated that due to the information received by him from his dealers he had started paying GST @ 5% on the products mentioned under HSN Code 210690. He has also admitted that for a short period of 35 days the MRPs had remained unchanged as it was

not possible to change them as the packets had already been dispatched. He has also contended that he had got his brand name registered and started payment of GST @ 12% on his products w.e.f. 01.01.2018. He has further contended that the entire amount of GST collected @ 5% during the period from 27.11.2017 to 31.12.2017 was deposited in the Govt. account. He has also objected to the calculation of the profiteered amount on the total taxable value of Rs. 1,03,25,326/- as Rs. 12,76,305/-, instead of Rs. 12,39,039/ calculated @ 12%, without taking into account the amount of GST (@5%) already paid by him, which worked out to Rs. 5,16,266/-. He has also stated that he had already paid GST on the goods supplied by him under HSN Code 2106 90 during the period from 27.11.2017 to 31.12.2017 and hence the amount of profiteering should have been Rs. 7,22,773/- (1239039 - 5,16,266) only, as the amount already paid by him could not be included in it. The Respondent has also submitted that the allegation made in para 17 of the Report that the base prices were enhanced and GST was levied on the increased base prices was not fully correct, as there was increase of Rs. 1/- only per packet in respect of only one item which was inclusive of GST. He has further submitted that the GST had been collected on the MRP minus discount and the nominal increase had nothing to do with the reduction in the rate of GST and therefore, the provisions of Section 171 of CGST, 2017 could not be invoked.

10. The above submissions filed by the Respondent were forwarded to the DGAP who vide his Report dated 18.01.2019 received on

22.01.2019 has stated that the Respondent has wrongly calculated the profiteered amount as he had tried to make it a case of short payment of GST. He has also stated that the Respondent had wrongly claimed that he was required to pay GST @ 12% on the taxable value of Rs. 1,03,25,326/-, but had paid GST @ 5% and therefore, the difference of GST @ 12% and 5% (Rs. 12,39,039/- - Rs. 5,16,266= Rs. 7,22,772/-) would be his tax liability. The DGAP has also contended that after filing the affidavit on 24.11.2017, the effective rate of GST had become nil but the Respondent had increased the base prices and wrongly charged GST @ 5% on the base prices, during the period w.e.f. 27.11.2017 to 31.12.2017, hence, the profiteered amount had been calculated as the difference of the actual selling price (inclusive of 5% GST) and of the ideal selling price (inclusive of 0% GST) which has been illustrated below:-

Particulars	**Calculation of Profiteering as per DGAP report dated 04.12.2018 (amount in Rs.)**
Base price per unit of Tea Time prior to 27.11.2017	27.24
Base price per unit of Tea Time post 27.11.2017	30.99
Ideal selling price per unit of Tea Time w.e.f 27.11.2017	(27.24=0%GST)= 27.24
Actual Selling price per unit of Tea Time post 27.11.2017	(30.99+5%GST)= 32.54
Amount of Profiteering per unit	(32.54-27.24)= 5.30
Total Profiteering	(5.30*15)= 79.51

11. We have carefully considered the DGAP's Report, the written submissions of the Respondent and all other material placed on record and it is revealed that the Applicant No. 1 vide the minutes of its meeting held on 08.05.2018 had forwarded 2 invoices to the Standing Committee, bearing No. MG00089 dated 18.08.2017 which was issued by the Respondent before the tax reduction w.e.f. 15.11.2017 and No. MG01278 dated 21.12.2017 which was issued after the tax reduction and reported that the base prices of 7 products, the details of which have been mentioned by the DGAP in the Table given in para 1 of his Report, had been increased by the Respondent inspite of the fact that the rate of tax had been reduced from 12% to 5%. The above claim of the Applicant No. 1 was forwarded by the Standing Committee to the DGAP vide the minutes of its meeting held on 02.07.2018 for detailed investigation.

12. It is also revealed that vide Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017, as per Sr. No. 46 of Schedule II of the above Notification, the rate of tax was fixed @ 12% in respect of the products having HSN Code 21069099 viz. "Namkeens, bhujia, mixture, chabena and similar edible preparations in ready for consumption form" which were being sold by the Respondent. It is further revealed from the record that the rate of tax was changed on the above products vide Notification No. 34/2017-Central Tax (Rate) dated 13.10.2017 and the tax @ 5% was imposed on the above products as per the following criteria:-

"(A) in Schedule I-2.5%-(iv)

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Namkeen, bhujia, mixture, chabena in ready for consumption form, other than those put up in unit containers and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the Annexure I).

Rate of tax was fixed as 12% on the following products as per the Notification dated 13.10.2017:-

(B) in Schedule II-6%

(iii) in Sr. No. 46 for the entry in column (3), the following entry shall be substituted namely:-

Namkeen, bhujia, mixture chabena and similar edible preparations in ready for consumption form (other than roasted gram), put up in unit container and,-

(a) bearing a registered brand name; or

(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available (other than those

where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as specified in the Annexure I).

The Annexure I mentioned above is reproduced below:-

"For foregoing an actionable claim or enforceable right on a brand name,-

(a) The person undertaking packing of such goods in unit containers which bears a brand name shall file an affidavit to that effect with the **jurisdictional Commissioner of Central Tax** that he is voluntarily foregoing an actionable claim or enforceable right on such brand name as defined in Explanation (ii) (a): and

(b) The person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed on the unit containers he has foregone his actionable claim or enforceable right voluntarily.

Provided that, if the person having an actionable claim or enforceable right on a brand name and the person undertaking packing of such goods in unit containers are two different persons, then the person having an actionable claim or enforceable right on a brand name shall file an affidavit to that effect with the jurisdictional

Commissioner of Central tax of the person undertaking packing of such goods that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and he has authorised the person {undertaking packing of such goods in unit containers bearing said brand name] to print on such unit containers in indelible ink, both in English and the local language, that in respect of such brand name he [the person owning the brand name] is voluntarily foregoing the actionable claim or enforceable right voluntarily on such brand name."

13. It is clear from the record that the Respondent was charging GST @ 12% as per the Notification dated 28.06.2017 on the supply of his products covered under HSN Code 21069099 which were put up in the unit containers. He was also using the unregistered brand name of "Dev Snacks". He had also filed an affidavit on 24.11.2017 which is placed on record as Annexure-13 before the Commissioner of Central Tax & Central Excise Thiruvanathapuram claiming that he was voluntarily foregoing his actionable claim or enforceable rights on his brand name "Dev Snacks". Therefore, it is clear that w.e.f. 24.11.2017 the rate of tax on the products being sold by the Respondent had become nil. It is also evident that the Respondent had started charging GST @ 5% from his customers w.e.f. 27.11.2017 as per the Notification dated 13.10.2017. Perusal of the evidence placed on record also shows that the Respondent had got his brand name registered as "Dev Snacks" on 29.12.2017 and had started correctly charging GST @ 12% as per the Notification dated

13.10.2017 w.e.f. 01.01.2018. Therefore, it is established that the Respondent had wrongly charged GST @ 5% from his buyers w.e.f. 27.11.2017 to 31.12.2017 and had thus denied them the benefit of tax reduction as per the provisions of Section 171 (1) of the above Act.

14. The Respondent has vehemently argued that the rate of tax applicable on his products w.e.f. 27.11.2017 was 5% and not nil. However, the argument advanced by him is not correct due to the fact that he had filed an affidavit before the Commissioner Central Tax Thiruvananthapuram, vide Annexure-13 stating that he was voluntarily forgoing his actionable claim or enforceable right in respect of his unregistered brand name as defined in Explanation (ii) (a) of the Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 as amended from time to time (as it stood on 15.11.2017) and there no GST was chargeable on the products which were sold by him w.e.f. 27.11.2017 to 31.12.2017.

15. It is also revealed from the perusal of the invoices dated 18.08.2017 and 21.12.2017 mentioned in para 1 of the Report that the Respondent had increased the base prices of his products inspite of the fact that the rate of tax had been reduced from 12% to Nil vide the Notification dated 13.10.2017. However, the claim made by the Respondent No. 1 that the rate of tax was reduced on the products being sold by the Respondent w.e.f. 15.11.2017 is not correct as the rate was reduced w.e.f. 13.10.2017.

16. It is further evident from the perusal of Annexure-14 attached with the Report of the DGAP that the Respondent had increased the base prices of his products w.e.f. 27.11.2017 to 31.12.2017 and had also charged GST @ 5% although no GST was to be charged on them as per the provisions of the Notification dated 13.10.2017 as he had foregone his claim on his brand name as per the terms of the Annexure I attached with the above Notification through the affidavit filed by him 24.11.2017. The Respondent had again got his brand name registered on 29.12.2017 and started charging GST @ 12% w.e.f. 01.01.2018 as per the Notification dated 13.10.2017 which proves that he had not passed on the benefit of tax reduction from 12% to nil to his recipients w.e.f. 27.11.2017 to 31.12.2017. The total amount, the benefit of which was denied by the Respondent to his customers has been meticulously computed by the DGAP vide Annexure-14 mentioned above, the correctness of which has not been disputed by the Respondent and hence the same can be relied upon for determining that the Respondent had profiteered an amount of Rs. 12,76,306/- in violation of the provisions of Section 171 (1) of the above Act.

17. The Respondent's claim that the changes brought out in the rate of tax were neither communicated to him by the local officers who were handling GST nor any Trade Notice or press release was issued by the concerned GST authorities is not legally tenable because he as a manufacturer registered under the GST was legally bound to charge the appropriate rate of GST and pass on the benefit of rate reduction

in terms of Section 171 (1) of the CGST Act, 2017, which clearly mandates that every registered person has to pass on the benefit of reduction in the rate of tax on any supply of goods and services to the recipients by way of commensurate reduction in prices. The ordinary consumers can not be allowed to be denied the benefit of tax reduction, granted by both the Central and the State Govt. out of their own tax revenue, due to the ignorance of the Respondent. Moreover his claim that it was difficult to alter the MRPs printed on the packets also does not hold good as the Government of India in the Ministry of Consumer Affairs, Food and Public Distribution vide its circular No. WM-10(31)/2017 dated 16.11.2017 has outlined the procedure for changing the MRPs after reduction in the tax rate by affixing an additional sticker or stamping or by online printing for declaring the reduced MRPs on the pre-packaged commodities which the Respondent had failed to follow. The Respondent has further admitted vide his submissions dated 11.01.2019 that he had not changed his MRPs during a period of 35 days and therefore, there is hardly any scope of his escaping the rigors of allegation of profiteering.

18. The claim of the Respondent that he could not have reduced his prices after the tax reduction due to stiff competition from other exempted and compounding manufacturers, resistance from his customers, increase in the raw material and transportation costs and he was providing robust profit margins and discounts to his dealers cannot be accepted as the present proceedings are only concerned

with ascertaining whether the Respondent had passed on the benefit of rate reduction to his customers or not and have no concern with the above factors mentioned by him. The commensurate benefit of tax reduction was required to be passed on by him by reducing his prices irrespective of the above factors, which he had failed to do. The contention of the Respondent that there was increase of only Rs. 1/- in the MRP of only one product is also not borne out from the data of sales which has been mentioned in Annexure-14 and hence the same cannot be accepted. The Respondent has also argued that the amount of GST payable by him on the taxable turnover of 1,03,25,326/- has been shown as Rs. 12,76,305/-, instead of Rs. 12,39,039/ (@ 12%), without taking into account the amount of GST (@ 5%) which had been already paid by him in the Govt. account, which worked out to be Rs. 5,16,266/- during the period from 27.11.2017 to 31.12.2017 and thus, the total difference to be included in the DGAP's Report was Rs. 7,22,773/- (1239039 - 5,16,266) only. However, the claim made by the Respondent is not correct as the computed profiteered amount of Rs. 12,76,306/- includes both the amount of the increased base prices which the Respondent had increased after 27.11.2017 as well as the amount of GST charged @ 5% by him whereas he was required not to charge any GST on his supplies as per the Notification dated 13.10.2017 as he had complied with the conditions of the Annexure I mentioned in the above Notification. The extra amount of GST charged @ 5% by the Respondent forms part of the profiteered amount as had he not done so it would have resulted in reduction in the price to be paid by a

customer and by charging it he has denied him the benefit of tax reduction.

19. It is also on record that the Respondent vide his written submissions dated 16.01.2019 has asked for permission to remit the profiteered amount in three instalments. Therefore, there is absolutely no doubt that the Respondent has resorted to profiteering and has not passed on the benefit of tax reduction to his customers.

20. 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 (1) of the CGST Act, 2017 and has not passed on the benefit of reduction in the rate of tax as per the Notification No. 34/2017- Central Tax (Rate) dated 13.10.2017 supra in respect of the products being supplied by him to his customers and therefore, he is liable for action under Rule 133 of the CGST Rules, 2017, the relevant provisions of which state as under:-

"133. x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-x-x-x-x-x

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order –

(a) reduction in prices:

(b) return to the recipient, an amount equivalent to the amount not passed on by the way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty percent of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty percent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) Imposition of penalty as specified under the Act; and

(e) x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-x-x-x-x-x-

21. Based on the above facts it is established that the Respondent has acted in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has not passed on the benefit of reduction in the rate of tax to his recipients by commensurate reduction in the prices. Accordingly, the amount of profiteering is determined as Rs. 12,76,306/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is directed to deposit the profiteered amount of Rs. 12,76,306/- along with the interest to be calculated @ 18% from the date from which the above amount was collected by him

from the recipients till the above amount is deposited. Since the recipients in this case are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 6,38,153/- in the Central Consumer Welfare Fund (CWF) and Rs. 6,38,153/- in the Kerala State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of receipt of this order failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017 under the supervision of the DGAP. A report shall be filed by the concerned Commissioner stating the action taken by him in compliance of this Order within a period of 4 months.

22. It is also established from the above facts that the Respondent had issued incorrect tax invoices while making supplies of the products to his recipients as he had incorrectly shown the base prices in them and had also compelled them to pay additional GST although they were not required to pay it, and thus had denied them the benefit of tax reduction. It is also established from the record that the Respondent has deliberately and consciously acted in contravention of the provisions of the CGST Act, 2017 by issuing incorrect tax invoices which is an offence under Section 122 (1) (i) of the above Act and hence he is liable for imposition of penalty under the above Section read with Rule 133 (3) (d) of the CGST Rules, 2017. A notice has already been issued to him on 10.12.2018 to show cause why penalty should not be imposed upon him. However, no detailed submissions have been filed by him on the issue of penalty.

Therefore, keeping in view the principles of natural justice a fresh notice be issued to him before imposition of penalty.

23. 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

Certified copy

16.4.19

(A.K.Goel)
Secretary NAA

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/118/Dev Snacks/2018 / 2645 – 2649 Date: 16.04.2019

Copy To:-

1. M/s Dev Snacks, (GSTIN 32AGHPR6222N1Z5), Cheriyela, Alumoodu, P.O. Kollam, Kerala-691577.
2. Commissioner, State GST Department, 9th Flr, Tax Tower, Killipalam, Karamana Post, Thiruvananthapuram, Kerala- 695 002.
3. The Commissioner, GST, GST Bhavan, Press Club Road, Statue, Thiruvananthpuram, Kerala-695001.
4. 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.
5. NAA Website.
6. Guard File.