

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

Case No. 26/2019

Date of Institution 04.02.2019

Date of Order 25.04.2019

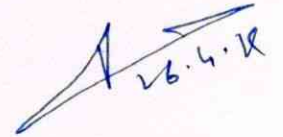
In the matter of:

1. State Level Screening Committee on Anti-Profiteering,
Kerala.
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 Mak Plywood Industries Pvt. Ltd., Kunjathur Padavu,
Post Kunjathur, Manjeshwar, Kasaragod (Distt.), Kerala-
671323.

 26.4.19

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. 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 present Report dated 26.09.2018, has been received from the Applicant No. 2 i.e. the Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The 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 "BWP Trozan Platinum Ply 19 mm 2.44x1.22" (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 and also when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. Thus, it was alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017. In this regard, the Applicant No. 1 had relied on three invoices issued by the Respondent, one was dated 24.05.2017 (Pre-GST), the second one dated 09.08.2017 (Post-GST) and the third one dated 02.12.2017 (Post GST rate reduction w.e.f. 15.11.2017).

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 in his Report dated 26.09.2018 has stated that on scrutiny of the two invoices dated 24.05.2017 (Pre-GST) and 09.08.2017 (Post-GST) issued by the Respondent, it was observed that in the pre-GST era, the applicable tax rate on the product was 28.81% (Central Excise Duty @ 12.5% and VAT @ 14.5%). The DGAP has further stated that on implementation of the GST w.e.f. 01.07.2017, the GST rate on the product was fixed at 28%. He has also furnished the pre-GST & post-GST sale invoice-wise details of the applicable tax rate and the base price with or without discount (excluding VAT or GST) of the product supplied by the Respondent, in the Table given below:-

Sr. No.	Description of the product	Pre-GST			Post-GST			Difference in price (Rs.)
		Invoice No./Date	Tax rate	Base price per M ² excluding VAT & C Ex Duty (Rs.)	Invoice No./Date	Tax rate (GST)	Discounted Base price per M ² excluding GST	
1	BWP Trozan Platinum Ply 19 mm 2.44x1.22 (HSN code 44123190)	99 dated 24/05/2017	28.81 % (12.5 % Central Excise Duty and 14.5% VAT)	1028.07 (without any discount)	115 dated 09/08/2017	28 %	1021.73 (with 17.05% discount)	- 7.34

After scrutiny of the above two invoices issued by the Respondent, the DGAP has reported that after implementation of the GST w.e.f. 01.07.2017, whilst the applicable tax rate on the product was reduced from the existing rate of 28.81% to 28%, the Respondent had reduced the per unit base price of the product (excluding tax) from Rs 1028.07 to Rs 1021.73.

4. The DGAP has also reported that on scrutiny of the two invoices dated 09.08.2017 (Pre rate revision) and 02.12.2017 (Post rate revision), issued by the Respondent, the GST rate on the said product was further reduced from 28% to 18% w.e.f 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. The DGAP has further furnished the pre & post GST rate reduction sale invoice-wise details of the applicable tax rate and the discounted base price (without GST) of the product supplied by the Respondent as per the Table given below:-

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26.4.18

Sr. No.	Description of the product	Pre revision (before 15.11.2017)			Post revision (after 15.11.2017)			Difference in price (Rs.)
		Invoice No./Date	Tax rate	Base price per M ² excluding GST (Rs.)	Invoice No./Date	Tax rate	Discounted Base price per M ² excluding GST (Rs.)	
1.	BWP Trozan Platinum Ply 19 mm 2.44x1.22 (HSN code 44123190)	115 dated 09/08/2017	28%	1021.73 (with 17.05% discount)	445 dated 02/12/2017	18%	1021.73 (with 17.05% discount)	-

After scrutiny of the above two invoices issued by the Respondent, the DGAP has reported that it was evident that when the GST rate on the product was reduced from 28% to 18% w.e.f. 15.11.2017, the Respondent did not increase the per unit base price of the product (excluding GST), which remained unchanged at Rs. 1021.73.

5. The DGAP has also reported that CGST Act, 2017 comes into play in the event if there is 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 a reduction in the per unit base price (excluding tax) in the post-GST era as compared to the pre-GST era and when the GST rate was reduced from 28% to 18% w.e.f 15.11.2017, the per unit base price (excluding GST) had remained the same at Rs. 1021.73, there has been no contravention of the above Section.



6. The DGAP has also submitted that in this case, the allegation was that the benefit of reduction in the tax rate was not passed on to the recipients by the Respondent at the time of implementation of the GST and also when the GST rate was reduced from 28% to 18% w.e.f 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. He has however stated that there was a decrease in the per unit base price (excluding GST) of the product in the post-GST era as compared to the pre-GST era when the applicable tax was reduced from 28.81% to 28%, when the GST was implemented w.e.f. 01.07.2017. The DGAP has also found that the Respondent did not increase the per unit base price (excluding GST) of the product after GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, which was Rs. 1021.73 in both the periods. Therefore, 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.
7. 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 the Applicant No. 1 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 again on 31.10.2018. Ms. A. Shainamol, Additional Commissioner, SGST, Kerala appeared on behalf of the Applicant No. 1 on 31.10.2018.

8. During the hearing, it was observed that some values of the invoices enclosed with the DGAP's Report were different than those relied upon in the DGAP's Report, therefore, the Authority vide its order dated 12.12.2018 had decided to send the DGAP's Report back to him for re-investigation on the above mentioned issue under Rule 133 (4) of the CGST Rules, 2017.
9. The DGAP vide his Report dated 02.02.2019, received by the Authority on 04.02.2019 has submitted that the base price of the product was Rs. 1028.07 per square meter in the invoice dated 24.05.2017 and the price of the product was reduced to Rs. 1021.73 in the invoice dated 09.08.2017 after giving a discount of 17.05% on the base price of Rs. 1231/- per square meter (discount of Rs. 90,572/- was given on the total invoice value of Rs. 5,31,125.41 @ 17.05%). The DGAP has also submitted that the price of the product had remained Rs. 1021.73 in the invoice dated 02.12.2017 after giving a discount of 17.05% on the base price of Rs. 1231/- per square meter (discount of Rs. 6249/- was given on the total invoice value of Rs. 36646.87 @ 17.05%) and hence, there was no increase in the base price and accordingly the allegation of profiteering was not proved.
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 considered is as to whether there was a case of reduction in the rate of tax and whether the provisions of Section 171 of CGST Act, 2017 were attracted in this case. Perusal of Section 171 of the CGST Act shows that it provides 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. It is apparent from the perusal of the facts of the case that there was a decrease in the per unit base price (excluding GST) of the product in the post-GST era as compared to the pre-GST era when the applicable tax was reduced from 28.81% to 28%, when GST was implemented w.e.f 01.07.2017. Further, the base price of the product was Rs. 1028.07 per square meter in the invoice dated 24.05.2017 and the price of the product was reduced to Rs. 1021.73 in the invoice dated 09.08.2017 after giving a discount of 17.05% on the base price of Rs. 1231/- per square meter (discount of Rs. 90,572/- was given on the total invoice value of Rs. 5,31,125.41 @ 17.05%). Further, the price of the product also remained at Rs. 1021.73 in the invoice dated 02.12.2017 after giving a discount of 17.05% on the base price of Rs. 1231/- per square meter (discount of Rs. 6249/- was given on the total invoice value of Rs. 36,646.87 @ 17.05%). Thus, it is apparent that the Respondent did not increase the per unit base price (excluding GST) of the product, which was Rs. 1028.07 in the pre-GST era. Further, it was reduced to Rs. 1021.73 in the post-GST era w.e.f 01.07.2017 and it also remained at Rs. 1021.73 when the GST rate was reduced from 28% to 18% w.e.f 15.11.2017 and hence, there was no increase in the per unit base price. Therefore, the allegation of profiteering

is not sustainable in terms of Section 171 of the CGST Act, 2017.
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



(A.K. Goel)
Secretary, NAA

F.No.22011/NAA/77/Makply/2018

Dated: 25.04.2019

Copy to:-

1. M/s Mak Plywood Industries Pvt. Ltd., Kunjathur Padavu, Post Kunjathur, Manjeshwar, Kasaragod (Distt.), Kerala-671323.
2. Commissioner, State GST department, 9th floor, Tax Tower, Killipalam, Karmana, Post, Thiruvananthpuram, Kerala-695002.
3. Commissioner, GST, C.R. Building, I.S. Press Road, Ernakulam, Cochin, Kerala-682018.
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.