

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

Order No. : 28/2020
Date of Institution : 26.09.2019
Date of Order : 19.05.2020

In the matter of:

1. Sh. Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th floor,
Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
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 Tanya Enterprises, KG 3/92, VikasPuri, Delhi-110018.

Respondents

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member



Present:-

1. None for the Applicants.
2. None for the Respondent No.1
3. Sh. Rajesh Popli, Proprietor, Smt. Renu Bharara, Accounts Officer,
Sh. Sahihe Alam, CA for the Respondent.

ORDER

1. This Report dated 24.09.2019 has been received from the Director General of Anti-Profitteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Standing Committee on Anti-profitteering vide its communication dated 11.03.2019 had requested the DGAP to conduct a detailed investigation as per Rule 129 (1) of the above Rules on the allegation that M/s Vini Cosmetics Pvt. Ltd. had not passed on the benefit of tax reduction from 28% to 18% w.e.f. 15.11.2017 on "Fogg Deo Fougere BX 150 ml" which was supplied to M/s Big Bazaar, Inderlok on 09.11.2017 under Purchase Order (PO) No. 81149976814 with MRP of Rs. 299/- and on 19.12.2017 under PO No. 8115259654 with the same MRP of Rs. 299/- .
2. The DGAP had issued Notice under Rule 129 (3) of the CGST Rules, 2017 on 10.04.2019 to M/s Vini Cosmetics Pvt. Ltd., to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 15.11.2017, had not been passed on by him to his recipients by

way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all the documents in support of his reply. He was also afforded an opportunity to inspect the non-confidential evidence /information which formed the basis of the said Notice, during the period from 15.04.2019 to 17.04.2019 which M/s Vini Cosmetics Pvt. Ltd. did not avail.

3. The DGAP has mentioned that M/s Vini Cosmetics Pvt. Ltd. vide email dated 06.05.2019 referred to the PO's mentioned in the Application and submitted that he had not supplied the above good directly to M/s Big Bazaar, Inderlok. The DGAP then asked M/s Big Bazaar, Inderlok to provide copies of the above POs which he submitted vide his letter dated 24.05.2019. The DGAP has stated that the said POs had shown that the impugned good "Fogg Deo Fougere BX 150 ml" was supplied to M/s Big Bazaar by the Respondent, on 02.12.2017, under PO number 8115259654 with the base price of Rs. 190.04/-, on 04.11.2017, under PO number 8114996814 with the base price of Rs. 175.19/- and on 05.05.2018, under PO number 4517361778 with the base price of Rs. 173.14/-.
4. The DGAP therefore, initiated proceedings against the Respondent and included him as a co-noticee on 06.06.2019 in the already issued notice dated 10.04.2019, for collecting evidence necessary to determine whether the benefit of reduction in the rate of GST from 28% to 18%, had been passed on by M/s Vini Cosmetics Pvt. Ltd. and the Respondent to their recipients in respect of supply of all the products impacted by such GST rate reduction w.e.f. 15.11.2017, by

way of commensurate reduction in prices, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

5. The time period of the present investigation was w.e.f. 15.11.2017 to 31.03.2019. The DGAP sought extension of the time limit to complete the investigation from this Authority under Rule 126 (6), which was granted to him.
6. The DGAP has stated that M/s Vini Cosmetics Pvt. Ltd. had replied to the above Notice vide his letters/emails dated 17.04.2019, 01.05.2019, 13.05.2019, 24.05.2019, 14.06.2019, 09.08.2019, 18.09.2019 and 19.09.2019. The replies of M/s Vini Cosmetics Pvt. Ltd. as mentioned by the DGAP in his report inter alia contain the following submissions:-
 - a) That the product in respect of which his company was being alleged to have profiteered viz. "Fogg Deo Fougere BX 150 ml" was a deodorant classified under HSN 3307. The rate of GST was reduced on this product from 28% to 18% vide Notification No. 41/2017 — Central Tax (Rate) dated 14th November 2017 effective from 15th November 2017. This product was being meant to be supplied only to the super stockists who sold it further to the Modern Trade (Malls like M/s Big Bazaar) through distributors. The pricing of such products varied from party to party which meant that the same product was sold at different rates to the different parties. However, the price for supply of a specific product to a specific buyer / recipient was fixed.
 - b) That as per Section 2 (93) of the CGST Act, 2017, the person who was liable to pay consideration was a recipient. M/s Vini Cosmetics Pvt. Ltd. had not supplied the goods to M/s Big bazaar

and therefore the question of passing on of benefit of rate reduction to M/s Big bazaar being recipient did not arise. Moreover, the PO was a document which was being issued by the purchaser of the goods (M/s Big Bazaar in this case) and not by the supplier of goods and therefore there was no corroborative evidence that the supply of goods was made at the same MRP during pre and post rate change period.

- c) That, in line with the provisions of Section 171 of the CGST Act, 2017, he had passed on the benefit of rate reduction on the impugned product, "Fogg Deo Fougere BX 150 ml" by reducing the base price of the product and that the same could be verified from the price list issued by him for the supply of "Fogg Deo Fougere BX 150 ml" from different super stockist in pre and post rate change regimes.
- d) Over and above the reduction of even base price during the post rate change, he had simultaneously reduced the MRPs of all the impacted products. In case of the impugned product i.e. Fogg Deo Fougere BX 150 ml", the MRP of Rs. 299/- in the pre-reduction period was revised to Rs. 275/-, whereas the commensurate reduction required that the revised MRP should have been Rs. 275.64 (Rs. 299*1.18/1.28). Thus he had complied with the anti-profiteering provisions.
- e) In respect of the stock that had already been supplied to the recipients/stockists/superstockists in the further supply chain but not yet sold to the final consumers till 15th of November, 2017, reduction in the price was communicated to all the super stockists

through electronic mail, copies of which had been furnished before the DGAP to prove his intention to pass on the benefits to the end user/actual consumer.

- f) That he had also forwarded stickers with the reduced MRPs to his super stockists/stockists/distributors for being affixed on the impacted goods which had remained unsold to the end users/final consumers as on 15th November, 2017. He had also furnished copy of the invoice of the vendor who had supplied the new MRP stickers to him as also all the correspondence he had made with his super stockists/stockists/distributors.
- g) That his above submissions should be taken into account and the proceedings against him should be dropped in as much as he had not supplied any goods to M/s Big Bazaar and that he had already passed on the benefit of tax reduction, to his recipients in the supply chain and onward to the end users/final consumers.

7. M/s Vini Cosmetics Pvt. Ltd. also submitted the following documents/information:

- a. GST Certificates of all the three registered units.
- b. GSTR-1 and GSTR-3B Returns of all his registered units for the period from October-17 to March-18. GSTR-9 Return was not been filed yet for any unit.
- c. Pre and Post MRP List of the Products.
- d. Sample Invoices pre and post rate reduction showing decreased MRPs and base prices for the impacted products.

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8. The Respondent replied to the notice vide letters/emails dated 25.07.2019, 10.08.2019, 14.08.2019, 02.09.2019, 05.09.2019 and 20.09.2019 and submitted following documents/information:-
- a. GST Certificate.
 - b. GSTR-1 Return from Oct, 2017 to March, 2019.
 - c. GSTR-3B Returns from Oct, 2017 to March, 2019.
 - d. Sample Invoices.
 - e. Invoice wise Sale details.
9. The DGAP has reported that the main issues for determination were whether the rate of GST on the product "Fogg Deo Fougere BX 150 ml" supplied by M/s Vini Cosmetics Pvt. Ltd. and the Respondent was reduced w.e.f. 15.11.2017 and if so, whether M/s Vini Cosmetics Pvt. Ltd. and the Respondent had passed on the benefit of such reduction in GST rate to their recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017. The DGAP has also observed that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the product "Fogg Deo Fougere BX 150ml" from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 – Central Tax (Rate) dated 14.11.2017, was a matter of fact which had not been contested by M/s Vini Cosmetics Pvt. Ltd. and the Respondent.
10. The DGAP has also stated that M/s Vini Cosmetics Pvt. Ltd. had submitted that the impugned good was being supplied only to the super stockists who were further selling the product only to the Modern

Trade (Malls like M/s Big Bazaar) through distributors. The pricing of such products varied from party to party which meant that the same product was being sold at different price to the different parties. However, the price for specific product for a specific party was fixed. The DGAP has further stated that from the documents submitted by M/s Vini Cosmetics Pvt. Ltd., it was evident that he had reduced the MRP of the product from Rs. 299/- to Rs. 275/- w.e.f. 15.11.2017. The DGAP has produced the following invoices to establish this fact:-

Product Name : FOGG FRESH FOUGERE 125 GMS		
Customer Name : SMART MART		
	Pre Rate change	Post Rate change
Invoice No.	DNH0000556	DNH0000629
Invoice date	08/11/2017	29/11/2017
Base Price	153.8	153.44
MRP	299	275

Product Name : FOGG FRESH FOUGERE 125 GMS		
Customer Name : TRINISHA ENTERPRISE		
	Pre Rate change	Post Rate change
Invoice No.	DNH0000512	DNI10000635
Invoice date	27/10/2017	29/11/2017
Base Price	163.17	162.79
MRP	299	275

Product Name : FOGG FRESH FOUGERE 125 GMS		
Customer Name : MANJUSREE MARKETING		
	Pre Rate change	Post Rate change
Invoice No.	DNI10000561	DNH0000636
Invoice date	11/11/2017	29/11/2017
Base Price	163.17	162.79
MRP	299	275

11. The DGAP has further stated that since the GST rate on the impugned product was reduced from 28% to 18%, the commensurate reduction in the revised MRP should have been Rs.275.64 (Rs. 299*1.18/1.28)

whereas M/s Vini Cosmetics Pvt. Ltd. had revised the MRP of the

19.1

impugned product to Rs. 275/-, which showed that M/s Vini Cosmetics Pvt. Ltd. had indeed passed on benefit to the end user/final consumer by reducing MRP to the extent of GST rate reduction. The DGAP also reported that M/s Vini Cosmetics Pvt. Ltd. admittedly took time upto 29.11.2017 to make the necessary changes in the MRP of the impugned product and there was no sale of the impugned product during the period from 15.11.2017 to 29.11.2017.

12. The DGAP has also reported that for the purpose of the stock that had already been supplied by M/s Vini Cosmetics Pvt. Ltd. to his recipients in the further supply chain, but which had not yet been sold to the end users/final consumers till 15.11.2017, M/s Vini Cosmetics Pvt. Ltd. had communicated such reduction in price to his super stockists through electronic mail and copies of these e-mails had been submitted by M/s Vini Cosmetics Pvt. Ltd. as evidence. The DGAP has also reported that M/s Vini Cosmetics Pvt. Ltd. had also forwarded stickers of reduced MRPs to his super stockists/distributors etc. to affix the same on the impacted goods which were lying unsold with them as on 15.11.2017, in support of which M/s Vini Cosmetics Pvt. Ltd. had furnished the copy of the invoice of the vendor who had supplied the new/revised MRP stickers to him. The purpose of these new MRP stickers was that they had to be affixed by the super stockists/distributors etc. on the impacted products. The DGAP has further stated that since these goods had already been supplied by M/s Vini Cosmetics Pvt. Ltd. to his super stockists, over whom M/s Vini Cosmetics Pvt. Ltd. did not have any control. The DGAP further stated that the question of whether all the super-stockists had further passed

on the benefit to the end users/final consumers was outside the scope of the present investigation and thus had not been examined.

13. In respect of the Respondent, the DGAP has reported that perusal of the outward sales data made available by the Respondent indicated that the Respondent had increased the base prices of the impugned product "Fogg Deo Fougere BX 150 ml" while the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017, for some time. The Respondent contended that he had to supply the goods based on the PO issued by the buyers, and MRPs for the products as well as purchase prices were already mentioned in the POs itself. The Respondent had also submitted that the pricing of products varied from party to party which meant that the same product was being sold at different prices to the different parties. As a super stockist, he was supplying products only to different super-markets and channels of modern trade, and e-commerce retailers, wherein the rates and margins were pre-decided and invariably varied from one distributor to another, although price for a specific product for a specific buyer was fixed and since the supply of goods was affected only on the basis of the POs, any higher rates quoted in the PO could not be termed as profiteering on his part.

14. The DGAP has also claimed that notwithstanding the above contentions of the Respondent if he had kept the base prices across channels constant, it would have led to passing on of the benefit of rate reduction to the buyers. Further, M/s Vini Cosmetics Pvt. Ltd. had not only revised downwards his prices of the impacted products commensurately, he had also communicated the same to all his super-

stockists to re-sticker the product and pass on the benefit to end users/final consumers and had thus not contravened the provisions of Section 171 of the CGST Act, 2017. On the other hand however, the Respondent had increased the base prices of the products when they were sold to distributors/modern trade, and hence had not passed on the benefit of rate reduction to his recipients and hence the benefit had not been passed to the end users/final consumers.

15. The DGAP, on the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the Respondent for the products supplied by M/s Vini Cosmetics Pvt. Ltd. to him during the period 15.11.2017 to 31.03.2019, has computed the profiteered amount by comparing the average of the base prices of the impacted products sold during the pre-rate revision period, i.e. from 01.07.2017 to 14.11.2017, with the actual invoice-wise base price of such products sold after the rate reduction, i.e. during the period 15.11.2017 to 31.03.2019. The DGAP has detailed the computation methodology adopted for arriving at the quantum as below:-

Product - DEO FOGG FOUGERE 125GM	(in Rs.)
Pre-rate reduction average base price during 01.11.2017 to 14.11.2017 (A)	175.19/-
Post-rate reduction base selling price during (B)	190.04/- (00003169 dated 16.11.2017)
Commensurate Price (C=A x 1.18)	206.73/-
Post-rate reduction selling price (Invoice No. and Date) (D=B x 1.18)	224.25/- (00003169 dated 16.11.2017)

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Profiteering (E=D-C)	17.52/-
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16. The DGAP has thus concluded that the amount of net higher sales realization on account of the increase in the base price of the product, despite the reduction in the GST rate from 28% to 18%, came to Rs. **8,50,442/-** inclusive of the excess GST so collected by the Respondent from Recipient.

17. After perusal of the DGAP's Report, this Authority in its meeting held on 25.09.2019 decided to hear the Applicants and the Respondent on 22.10.2019 and accordingly notice was issued to all the interested parties. A Notice was also issued to the Respondent on 26.09.2019 asking him to reply why the Report dated 24.09.2019 furnished by the DGAP should not be accepted and why his liability for profiteering under Section 171 of the CGST Act, 2017 should not be fixed. On the request of the Respondent, the hearing was adjourned to 11.11.2019. None appeared for the Applicants whereas the Respondent was represented by Sh. Rajesh Popli, Proprietor, Smt. Renu Bharara, Accounts Officer, Sh. Sahihe Alam, CA in the hearing.

18. The Respondent vide his submissions dated 11.11.2019 stated that he was selling two products viz. Deo Fogg Woody (150 ml) and Deo Fogg Fresh Spicy (150 ml) under combo offer between the period January, 2018 to March, 2018 and the basic price of the product was as follows:-

Before change in rate (i.e. GST Rate 28%) - Rs. 175.19 each (MRP Price Rs. 299)

After change in rate (i.e. GST Rate 18%) - Rs. 174.79 each (MRP Price Rs. 275)

But the DGAP had taken a different base price in the computation of profiteering.

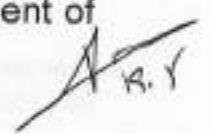
19. The Authority gave another opportunity to the Respondent to attend the hearing on 19.11.2019 and furnish his consolidated submissions. However, the Respondent did not appear for the hearing held on 19.11.2019 but vide his email dated 18.11.2019 accepted that he had profited to the extent of Rs. 8,50,442/- and that he did not wish to contest the same. He also stated that the said profiteering was done by mistake and not intentionally and that the same would not be repeated in future.
20. We have carefully considered the Report furnished by the DGAP and the submissions made by the Respondent and the record of the case and it is revealed that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the impugned good "Fogg Deo Fougere BX 150 ml" from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 – Central Tax (Rate) dated 14.11.2017. It is also revealed that the DGAP has calculated the amount of net higher sales realization due to increase in the base price of the impacted good/products, despite the reduction in the GST rate from 28% to 18% as **Rs. 8,50,442/-** only (inclusive of the excess GST collected by the Respondent from his recipients) in respect of the Respondent. The said profited amount had been arrived at by the DGAP by comparing the average of the base prices of the impacted goods sold during the period 01.07.2017 to 14.07.2017, with the actual

invoice-wise base prices of such goods/products sold by the Respondent during the period from 15.11.2017 to 31.03.2019.

21. We also observe from the invoices issued by M/s Vini Cosmetics Pvt. Ltd. to his super-stockists, as referred by the DGAP in the table in the Table mentioned in the preceding paragraph show that M/s Vini Cosmetics Pvt. Ltd. had indeed commensurately reduced the MRPs of the products supplied by him consequent upon the tax rate reduction w.e.f. 15.11.2017. But the Respondent as is evident from his invoices provided by the DGAP had not passed on the benefit of rate reduction to his recipients and this fact has also been accepted by the Respondent.
22. Based on the above facts the profiteered amount is determined as Rs. 8,50,442/- (inclusive of the GST) as per the provisions of Rule 133 (1) of the above Rules as has been computed vide Annexure-25 of the Report dated 24.09.2019. Accordingly, the Respondent is directed to reduce his prices commensurately in terms of Rule 133 (3) (a) of the above Rules. The Respondent is also directed to deposit an amount of Rs.8,50,442/- in the Consumer Welfare Fund of the Central and the Delhi State Governments, where the Respondent has made his supplies, as the recipients are not identifiable, as per the provisions of Rule 133 (3) (c) of the above Rules alongwith 18% interest payable from the dates from which the above amount was realised by the Respondent from his recipients till the date of its deposit. The above amount shall be deposited within a period of 3 months from the date of passing of this order failing which it shall be recovered by the concerned Commissioners CGST/SCST.



23. It is evident from the above narration of facts that the Respondent has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and has thus profiteered as per the explanation attached to Section 171 of the above Act. Therefore, he is apparently liable to be penalised as per Section 171(3A) of the CGST Act, 2017. Therefore, a show cause notice be issued directing him to explain why the penalty prescribed under the above sub-Section should not be imposed on him.
24. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is deposited in the CWFs of the Central and the State Governments as per the details given above. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioner within a period of 4 months from the date of receipt of this order.
25. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 26.09.2019 the order was to be passed on or before 25.03.2020. However, due to prevalent pandemic of COVID-19 in the Country this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance (Department of



Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

26. A copy each of this order be supplied to the Applicants, the Respondent and all the concerned Commissioners CGST /SGST for necessary action.

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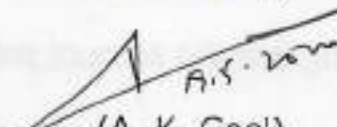
Sd/-
(Dr. B. N. Sharma)
Chairman

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



Sd/-
(Amand Shah)
Technical Member

Certified Copy


(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/82/tanya/2019

Date: 19.05.2020

Copy To:-

1. M/s Tanya Enterprises, KG 3/92, Vikas Puri, Delhi-110018.
2. Sh Rahul Sharma, on behalf of M/s Local Circle (I) Pvt Ltd, 2413, 4th Floor, Tower-2 Express Trade Towers 2, Sector-132, Noida-20130.
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. Chief Commissioner of central Goods & Services Tax Delhi zone C.R. Building, I.P. Estate, new delhi 110 109.
5. Commissioner of commercial Taxes, deptt of trade & Taxes, vyapar bhavan, ip estate, new delhi-2 pin: 110 002.
6. NAA Website/Guard File.


A. K. GOEL
SECRETARY, NAA