

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

Case No. : 46/2019
Date of Institution : 30.05.2019
Date of Order : 04.07.2019

In the matter of:

1. Sh. Rahul Sharma M/s Local Circles India Pvt. Ltd., 4th Floor,
Express Trade Tower-2, Sector-132, Noida-201301.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs,
2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi-110001.

Applicants

Versus

M/s H P India Sales Pvt. Ltd., 2F, Building No. 2, Tower D & E, DLF
Cyber Green, DLF Cyber City, Phase III, Gurugram, Haryana
122002.

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



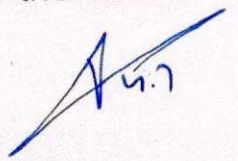
Present:-

1. None for the Applicant No. 1.
2. None for the Applicant No. 2.

ORDER

1. The brief facts of the case are that an application dated 15.02.2019 was filed before the Standing Committee on Anti-profiteering, under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017 by the Applicant No. 1 alleging profiteering by the Respondent in respect of "HP V202b 19.5 inch Computer Monitor" (hereinafter referred to as the product) supplied by him. The Applicant No. 1 alleged that the Respondent had maintained the same selling price of Rs. 6,869/- for the product when the GST rate was reduced from 28 % to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and did not pass on the benefit of reduction in the GST rate to the recipients by way of commensurate reduction in the price. Along with his application, the Applicant No. 1 had submitted copies of screen shots captured from the website "www.hpshopping.in".

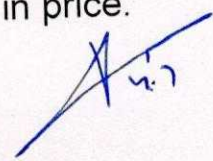
2. The above reference was examined by the Standing Committee on Anti-profiteering in its meeting and vide its minutes dated 11.03.2019 it had forwarded the same to the DGAP to conduct a detailed investigation in order to examine the allegation made by the above Applicant.



3. On receipt of the above reference from the Standing Committee on Anti-profiteering, The DGAP had issued notice to the Respondent under Rule 129 of the CGST Rules, 2017 on 09.04.2019 calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in the GST rate from 28% to 18% had not been passed on to the recipients by way of commensurate reduction in the prices of the said product and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice along with all the supporting documents. The DGAP had also gave an opportunity to inspect the non-confidential evidence/information submitted by the Applicant during the period 15.04.2019 to 17.04.2019, which was availed and the documents were inspected by the Respondent on 18.04.2019. The Applicant was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent which was not availed.

4. The DGAP in his Report had stated that the period of investigation was from 01.01.2019 to 31.03.2019. It was also stated that the Respondent vide letters dated 17.04.2019 and 06.05.2019 had placed his detailed submissions as follows:-

(a) The Respondent stated that the above Applicant had alleged that he had maintained the same selling price of Rs. 6,869/- for the product when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018- Central Tax (Rate) dated 31.12.2018 and did not pass on the benefit of reduction in the GST rate to the recipients by way of commensurate reduction in price.



(b) The Respondent has further submitted that as per the Rules only the recipient who had purchased the product was eligible for the benefit of the notification referred above and in this case the Applicant No. 1 was not the actual buyer of the product and therefore he could not make claim for the benefit of GST rate reduction.

(c) The Respondent further stated that the above Applicant's allegation that the price for the product which fitted into the size bracket of 17 inches to 20 inches was reduced from 28% to 18% w.e.f. 01.01.2019. Vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 was baseless and incorrect because the GST rate was reduced only on the "Computer Monitor of size bracket 20 inches to 32 inches". Since there was no change in the rate of tax on the product referred to by the above Applicant in his application the complaint itself was baseless and incorrect.

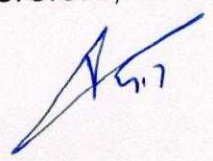
(d) The Respondent has also stated that the above Applicant had relied upon screen shots of prices from the website www.hpshopping.in, serviced by M/s Savex Technologies Private Limited (Channel Partner of the Respondent), which formed the basis for the DGAP to issue a notice. The Respondent had stated that he sold his products to M/s Savex Technologies Private Limited, who, in turn, sold it to his customers on HP Shopping website and collected payments and therefore, he was not party to any of the transactions between M/s Savex Technologies Private Limited and the customers on the HP Shopping website.

5. The Respondent vide his letter dated 06.05.2019, submitted the following documents:-

- (a) List of all their GST Registrations.
- (b) Copies of GSTR-1 returns for the period November, 2018 to January, 2019.
- (c) Copies of GSTR-3B returns for the period November, 2018 to January, 2019.
- (d) Copies of tax invoices issued to M/s Savex Technologies Pvt. Ltd. during the period December, 2018 to March, 2019.

6. The DGAP in his Report has stated that the Central Government, on the recommendation of the GST Council, had levied 28% GST on "Computer Monitors exceeding 17 inches" (Sl. No. 154 of Schedule-IV), vide Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017. The GST rate on "Computer Monitor exceeding 17 inches but not exceeding 20 inches" (Sl. No. 154 of Schedule-IV) was reduced from 28% to 18%, vide Notification No. 27/2017-Central Tax (Rate) dated 22.07.2017. Further the Central Government, on the recommendation of the GST Council had reduced the GST rate on "Computer Monitors of size ranging between 20 inches to 32 inches" from 28% to 18%, vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018, w.e.f. 01.01.2019.

7. The Report further states that the product "HP V202b 19.5 inch Computer Monitor" on which allegation was made by the Applicant No. 1 related to the category of "Computer Monitors exceeding 17 inches but not exceeding 20 inches" which was already attracting GST @ 18% w.e.f. 22.07.2017 and there was no reduction in the GST rate on the said product, w.e.f. 01.01.2019. Therefore, the



DGAP has contended that the allegation itself was completely misplaced as there was no reduction in the rate of tax.

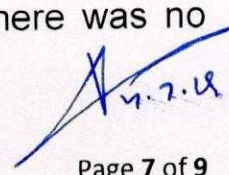
8. The Report has also claimed that from the documents submitted by the Respondent it was noticed that the base price of the product was Rs. 4,230/- during the month of December, 2018 and also during the period January, 2019 to March, 2019 and he had charged GST @18% on the said base price. The DGAP has further claimed that the allegation of not passing of the benefit of GST rate reduction itself was baseless since there was no rate reduction on the alleged product and the provisions of Section 171 of the CGST Act, 2017 could be invoked only if there was reduction in the GST rate or an increase in the ITC.

9. The above Report was received on 30.05.2019 and was considered by the Authority in its sitting held on 04.06.2019 and it was decided to hear only the Applicant on 20.06.2019 as the DGAP had found that the application was not sustainable for the reasons discussed above. The above Applicant did not appear but vide letter dated 20.06.2019 stated that it appeared that the DGAP was justified in stating that there was nil profiteering.

10. We have carefully considered the material placed before us and the submissions made by the Respondent before the DGAP at the time of investigation. From the record it is revealed that the Central Government, on the recommendation of the GST Council, had levied 28% GST on "Computer Monitors exceeding 17 inches" (S. No. 154 of Schedule-IV and Sl. No. 384 of Schedule-III), vide Notification No.

01/2017-Central Tax (Rate) dated 28.06.2017. The GST rate on "Computer Monitors exceeding 17 inches but not exceeding 20 inches" (Sl. No. 154 of Schedule-IV and Sl. No. 384 of Schedule-III) was reduced from 28% to 18%, vide Notification No. 27/2017-Central Tax (Rate) dated 22.07.2017. Further the Central Government, on the recommendation of the GST council had reduced the GST rate on "Computer Monitors of size ranging between 20 inches to 32 inches" from 28% to 18%, vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018, w.e.f. 01.01.2019.

11. The allegation of the Applicant No. 1 was that the Respondent had not passed on the benefit of rate reduction for the product "Computer Monitor of 19.5 inch" w.e.f. 01.01.2019. We find that there was no rate reduction in tax on the product "Computer Monitor of 19.5 inch" as has been alleged by the Applicant. We also find that the rate reduction from 28% to 18% vide Notification No. 24/2018 w.e.f. 01.01.2019 was only effective in the case of "Computer Monitors of size ranging between 20 inches to 32 inches" which is entirely different from the product in respect of which the above Applicant has alleged profiteering. The provisions of Section 171 of the CGST Act, 2017 can be invoked only in cases where there was a reduction in the rate of tax or where the additional benefit of ITC was made available to the Respondent, that needed to be passed on to the recipients. Apparently in this case, the only allegation is that the benefit of rate reduction has not been passed on to the above Applicant by the Respondent. However as per the facts mentioned above the allegation made by the Applicant is not correct since there was no

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reduction in the rate of tax during the relevant period (between December 2018 to March 2019) on the "Computer Monitor of 19.5 inch". We also find that the Applicant has alleged profiteering by the Respondent during the period of January 2019 whereas no such rate reduction has been affected on the said product after 22.07.2017. In view of the above discussions it has been found that the allegation of the Applicant No. 1 is not sustainable hence it stands dismissed.

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.

Sd/-
(B. N. Sharma)
Chairman



Certified Copy

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/42/HP India/2019

Date: 04.07.2019

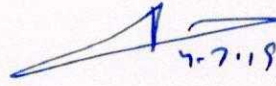
Copy To:-

1. M/s H P India Sales Pvt. Ltd., 2F, Building No. 2, Tower D & E, DLF Cyber Green, DLF Cyber City, Phase III, Gurugram, Haryana 122002.
2. Sh. Rahul Sharma M/s Local Circles India Pvt. Ltd., 4th Floor, Express Trade Tower-2, Sector-132, Noida-201301.

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.

5. Guard File.

A handwritten signature in blue ink, followed by the date "7-7-19".