

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

Case No. 11/2020
Date of Institution 09.09.2019
Date of Order 04.03.2020

In the matter of:

1. Shri 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, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

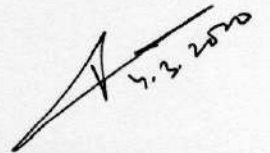
Versus

M/s Bajaj Electricals Limited, 51, Mahatma Gandhi Road, Fort, Mumbai - 400023.

Respondent

Quorum:-

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


4.3.2020

ORDER

1. The present Report dated 06.09.2019, has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The facts of the case are that an application dated 05.02.2019 was filed before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, by the Applicant No. 1, against the Respondent alleging profiteering by the Respondent in respect of supply of "Bajaj Majesty MX 20 Steam Iron" (hereinafter referred to as the product). Applicant No. 1 further stated that the Respondent increased the MRP of the product from Rs. 1099/- to Rs.1405/- or Rs.1520/-, when the GST rate was reduced from 28% to 18% w.e.f 27.07.2018, vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018. Applicant No. 1 thus submitted that the Respondent did not pass on the benefit of reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018 and instead, increased the MRP of the product. Along with the application, the Applicant No. 1 also submitted copies of screen shots captured on the website "shop.bajajelectricals.com" and "Amazon".
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 11.03.2019 for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP upon receipt of the reference from the Standing Committee on Anti-profiteering, issued a notice under Rule 129 of the CGST Rules, 2017 to 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 price of the said product and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the DGAP's Notice as well as to furnish all the supporting documents. The DGAP also offered an opportunity to the Respondent to inspect the non-confidential evidence/ information submitted by the Applicant No. 1 during the period 15.04.2019 to 17.04.2019, which the Respondent did not avail of.
4. The DGAP vide e-mail dated 07.08.2019 also offered an opportunity to the Applicant No. 1 for inspection of non-confidential documents submitted by the Respondent between 13.08.2019 and 14.08.2019. However, Applicant No. 1 did not avail of the said opportunity.
5. The DGAP had sought extension of time for completing the investigation which was extended by this Authority vide its order dated 19.06.2019 in terms of Rule 129 (6) of the CGST Rules, 2017. The period of the investigation is from 27.07.2018 to 31.03.2019.
6. The Respondent had replied to the Notice issued by the DGAP vide letters/e-mails dated 18.04.2019, 23.04.2019, 10.05.2019, 20.05.2019, 12.06.2019, 25.07.2019, 13.08.2019 and 03.09.2019 vide which he had stated that consequent to GST rate reduction w.e.f. 27.07.2018, the Respondent had reduced the MRP of the product from Rs 1520/- to Rs 1405/-. The Respondent had also

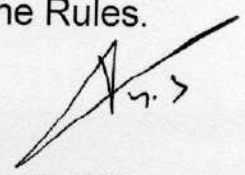
submitted copies of the advertisement given by him in different newspapers in order to spread awareness regarding GST rate reduction on the goods. The Respondent further submitted before the DGAP that the Applicant No. 1 had submitted only screenshots taken from the website and there was no other evidence like tax invoice to substantiate his claim. The Respondent also contended that notwithstanding the screenshot that showed the MRP of the impugned product as Rs. 1099/-, it remained a fact that the MRP of the impugned product changed from Rs. 1099/- from June 2015 itself, though some old stock of the said product, carrying MRP of Rs 1099/-, was lying unsold with him. He added that once the old stock was liquidated, the MRP of Rs. 1520/- was updated on his website. He also admitted that though the new stock of Rs. 1520/- had already been supplied and circulated in the market, the website still showed the MRP as Rs. 1099/- till July 2018. The Respondent also submitted that the MRP on his website sometimes took time to update as a majority of his sale was done through his distributors and that his sale through his website was negligible.

7. The Respondent further submitted that he was charging Rs. 676/- as base price without GST in respect of the product prior to 27.07.2018 and that he had not increased the base price of the goods after GST rate was reduced from 28% to 18% w.e.f 27.07.2018. The Respondent also furnished the price trend of the product for the last two years and contested that his business practice was one where revision of the base price of the products being sold was done twice a year, once at the start of the year and the second around the festival

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season of October-November every year. The Respondent had further increased the base price by Rs. 20/- in October, 2018 pursuing his business practice. The base price was also increased from January, 2018 on account of his business practice. The Respondent had also submitted the sample invoices in support of his claim.

8. The Respondent had also cited the order in the case of M/s Reckitt Benckiser India Pvt. Ltd. in WP (C) 7743/2019 wherein the investigation had been limited to the complained that product only and also the amendment by which sub-Rule 5(a) had been inserted in Rule 133 of the CGST Rules, 2017 which contemplated that the Authority on the reason to be recorded in writing could cause investigation with regard to other goods and services not mentioned in the application.
9. The Respondent has also submitted the following documents/information to the DGAP:-
 - a) GSTR-1 & GSTR-3B Returns for the period April, 2018 to March, 2019 for all his registrations all over India.
 - b) Details of invoice-wise outward taxable supplies during the period April, 2018 to March, 2019.
 - c) Price Lists (Pre and Post 27th July, 2018) for all the products.
 - d) Sample copies of invoices issued to his dealers, pre and post 27.07.2018.
10. The Respondent had also claimed confidentiality of all the data/information furnished by him, in terms of Rule 130 of the Rules.



11. The DGAP after examining the application, the various replies of the Respondent and the documents/evidence on record observed that the main issue for determination was as to whether the rate of GST on the products supplied by the Respondent was reduced w.e.f. 27.07.2018, and if so, whether the Respondent had passed on the commensurate benefit of such reduction in GST rate to the recipients, in terms of Section 171 of the CGST Act, 2017. The DGAP also observed that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "electro-thermic appliances of a kind used for domestic purposes" from 28% to 18% w.e.f. 27.07.2018, vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018. The DGAP further stated that Section 171(1) of the CGST Act, 2017 reads as follows -"*any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*"

Thus, the legal requirement was abundantly clear that in the event of the benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could only be in terms of money, so that the final price payable by a recipient got reduced commensurate with the reduction in the tax rate or benefit of ITC. The DGAP also reported that this was the legally prescribed mechanism to pass on the benefit of ITC or reduction in the rate of tax to the recipients under the GST regime.

12. The DGAP also perused the invoices furnished by the Respondent and observed that the Respondent had not increased the base prices of the product when the rate of GST was reduced

5/3/2020

from 28% to 18% w.e.f. 27.07.2018. The DGAP also furnished the details of the impacted product sold before and after GST rate reduction vide Table-A given below:

Table-'A'

Period		Pre 27.07.2018	Post 27.07.2018
Notification No.	A	18/2018-Central Tax (Rate) dated 26.07.2018	
Product Description	B	Bajaj Majesty MX 20 Steam Iron	
Invoice No.	C	S20180003838	S40180002457
Invoice Date	D	06.07.2018	03.08.2018
Declared Price	E	676	676
Discount Offered	F	0	0
Base Price excluding GST	G=E-F	676	676
GST rate charged	H	28	18
GST Amount	I=G*H	189.28	121.68
Increase in Base Price/ Profiteering excluding GST	K	676-676 = 0	
GST @ 18%	L = K*18%	0	
Amount of Profiteering (Difference in selling Price)	M = K+L	0	

13. 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 product during the period 01.04.2018 to 31.03.2019, as furnished by the Respondent, observed that the Respondent had not increased the base price of the product "Bajaj Majesty MX 20 Steam Iron" when the GST rate was reduced from 28% to 18% w.e.f. 27.07.2018. However, the Respondent had increased the base price of the product from Rs. 676/- to Rs. 696/- in the month of October, 2018 as the Respondent's business practice was that of revising the base price of the product twice a year, once at the start of the year and second generally near

October-November based on festival season. Thus, since there was no profiteering in the complained product, the scope of investigation had been limited to the product mentioned in the application only. The DGAP thus stated that the allegation of profiteering by Applicant No. 1 by way of increasing the base prices of the products w.e.f. 27.07.2018 was not sustainable against the Respondent and that Section 171(1) of the CGST Act, 2017 *has* not been contravened.

14. The above Report was received on 09.09.2019 and was considered by the Authority in its meeting held on 11.09.2019 and it was decided to hear the Applicant on 30.09.2019.

15. During the hearing held on 30.09.2019, none appeared for the Applicant No. 1, and the Applicant No. 2 and the Respondent.

16. However, Applicant No. 1, vide his email dated 30.09.2019 submitted to the Authority informed that he agreed with the DGAP's report dated 06.09.2019. Accordingly, the hearing was concluded.

17. We have carefully examined the DGAP's Report and the documents placed on record and find that the following issues are required to be settled in the present case:-

I. Whether there was a reduction in the rate of tax on the product in question after implementation of GST i.e. w.e.f. 01.07.2017?

II. Whether any benefit of reduction in the rate of tax was to be passed on?

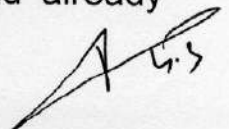


18. A perusal of Section 171 of the CGST Act shows that it provides as under:-

(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."

19. In the present case, we observe that the allegation of Applicant No. 1 is that the Respondent had increased the MRP of the said product from Rs. 1099/- to Rs. 1405/- or Rs. 1520/- in respect of supplies of the said product and after coming into force of Notification No. 18/2018-Central Tax (Rate) dated 27.07.2018 and he had not passed on the benefit of reduction in the GST rate to the recipients. In this context, we have perused the invoices of the product dated 06.07.2018 and 03.08.2018, and we observe that the base price of the product was kept unchanged same by the Respondent despite the reduction in the rate of tax and that he did not increase the base price after coming into force of Notification No. 18/2018-Central Tax (Rate) dated 27.07.2018.

20. After examining the screenshots that were enclosed with the application, we observe that the MRP of Rs. 1099/- shown on the screenshot, pertained to the stock of the goods carrying an MRP of Rs. 1099/-, which was lying with the Respondent and that the Respondent has himself stated that once the old stock was liquidated, the MRP of Rs. 1520/- was updated on the website. But since the new stock carrying the MPR of Rs. 1520/- had already



circulated in the market, the website of the Respondent showed MRP of Rs. 1099/- till July, 2018.

21. We also observe that the Applicant No. 1, vide his email dated 30.09.2019, has also agreed with the DGAP's conclusion recorded in his Report dated 06.09.2019.

22. As such, we do not find the present case to be a case of profiteering as had been alleged by the Applicant No. 1.

23. In view of the above discussion, the allegation of the Applicant No. 1 is not tenable and therefore the application alleging violation of provisions of Section 171 of the CGST Act, 2017 is hereby dismissed.

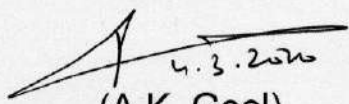
24. A copy of this order be sent to both the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Member (Technical)

Certified Copy


4.3.2020
(A.K. Goel)
Secretary, NAA



File No. 22011/NAA/69/Bajaj/2019/1353-56

Dated: 04.03.2020

Copy To:-

1. M/s Bajaj Electricals Limited, 51, Mahatma Gandhi Road, Fort, Mumbai – 400023.
2. Shri 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. Guard File.

