

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

I.O. No. 12/2020
Date of Institution 02.09.2019
Date of Order 27.02.2020

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 Portronics Digital Pvt Ltd., B-76, Second Floor, Wazirpur Industrial Area, New Delhi-110052.

Respondent

Quorum:-

- Sh. B. N. Sharma, Chairman
Sh. J. C. Chauhan, Technical Member
Sh. Amand Shah, Technical Member

Present:-

1. None for Applicant No. 1.
2. None for Applicant No. 2.
3. Sh. Prakash Sinha, Company Representative, Ms. Neha Suneja, Company Representative and Ms. Archana Tayal, Chartered Accountant for the Respondent.

ORDER

1. The present Report dated 30.08.2019 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 brief facts of the case are that an application dated 26.02.2019 was filed before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 by the Applicant No. 1 which alleged that the Respondent had profited in respect of Power Bank "Portronics Power Slice 10" supplied by the Respondent. The above Applicant also alleged that the Respondent did not reduce the selling price of the Power Bank "Portronics Power Slice 10", 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 the price of the product remained the same at Rs. 1349/- and thus, the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price. The Applicant No. 1 along with his complaint

also submitted copies of screen shots captured on the website "www.portronics.com".

2. The above reference was examined by the Standing Committee on Anti-profiteering and vide minutes of the meeting dated 22.03.2019 it had forwarded the same to the DGAP for detailed investigation in terms of Rule 129 of the above Rules.
3. The DGAP on receipt of the application on 27.03.2019 issued a Notice dated 09.04.2019 under Rule 129 of the Rules calling upon the Respondent to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 01.01.2019, had not been passed on 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 documents in support of his reply. The Respondent was also afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said Notice, during the period 15.04.2019 to 17.04.2019 which the Respondent availed and inspected the documents on 16.04.2019.
4. However, the Respondent did not submit the requisite documents on the due date. Hence reminders were issued to him by the DGAP. The Respondent also did not respond to the reminders, therefore, Summons under Section 70 of the CGST Act, 2017 were issued to Sh. Jasmeet Singh, Director of the Respondent to appear before the DGAP on 07.06.2019 and to submit the requisite details/documents. Accordingly, Sh. Jasmeet Singh, along with authorised signatory appeared before the DGAP on 07.06.2019 and submitted few requisite

documents and the remaining documents were submitted subsequently.

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 01.01.2019 to 31.03.2019.
6. The DGAP also offered an opportunity to the Applicant No. 1 for inspection of non-confidential documents submitted by the Respondent on any working day between 19.08.2019 and 20.08.2019 vide e-mail dated 13.08.2019. However, Applicant No. 1 did not avail of the said opportunity.
7. The Respondent submitted his replies to the DGAP vide letters/e-mails dated 19.04.2019, 03.05.2019, 13.05.2019, 07.06.2019, 11.06.2019, 05.08.2019, 08.08.2019 and 13.08.2019.
8. Vide his above mentioned replies, the Respondent contended that the negative figures in his sales data relate to the credit notes raised by him on account of sale returns. He also admitted that the reconciliation of his sales data with the GST returns showed a minor difference between the two. In other words, he stated that in case of his GST return for the month of January, there was a difference of Rs.2,76,349/- with the sales data which needed rectification.
9. Vide the aforementioned letters/e-mails, the Respondent also submitted the following documents/information:-
 - a) GSTR-1 & GSTR-3B Returns for the period from November, 2018 to March, 2019 for all the GST registrations in India.

- b) Details of invoice-wise outward taxable supplies during the period November, 2018 to March, 2019.
- c) Price Lists (Pre and Post 01.01.2019) for all the products, specifically indicating the SKUs impacted by GST rate reduction w.e.f. 01.01.2019.
- d) Sample copies of invoices, pre and post 01.01.2019.

10. The Respondent, vide e-mail dated 08.08.2019 submitted that all the data submitted by him was to be treated as confidential in terms of Rule 130 of the Rules.

11. In his Report, the DGAP has stated that the main issues to be examined were whether the rate of GST on the products supplied by the Respondent was reduced w.e.f. 01.01.2019 and if so, whether the Respondent passed on the benefit of such reduction in GST rate to the recipients, in terms of Section 171 of the CGST Act, 2017.

12. The DGAP has observed that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "Power Bank" from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 and before enquiring into the allegation of profiteering, it was important to examine Section 171 of the CGST Act, 2017 which governed the anti-profiteering provisions under the GST. Section 171(1) of the CGST Act, 2017 states that "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 the benefit of ITC or reduction in rate of tax has to be passed on to the recipients by way of commensurate reduction in the price. The DGAP has observed that

such a 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. This was the legally prescribed mechanism to pass on the benefit of ITC or reduction in rate of tax to the recipients under the GST regime.

13. The DGAP has also reported that perusal of the invoices made available by the Respondent indicated that the Respondent had increased the base prices of the impugned goods when the rate of GST was reduced from 28% to 18% w.e.f. 01.01.2019. The details of the impacted product sold before and after GST rate reduction was also illustrated in the Table-A below:-

Table-'A'

Period		Pre 01.01.2019	Post 01.01.2019
Notification No.	A	24/2018-Central Tax (Rate) dated 31.12.2018	
Product Description	B	Por 694 (Power Bank)	
Invoice No.	C	DL001OSI12190023	DL002SI011900008
Invoice Date	D	06.12.2018	04.01.2019
Declared Price	E	995.43	1101.70
Discount Offered	F	0	0
Base Price excluding GST	G=E-F	995.43	1101.70
GST rate charged	H	28	18
GST Amount	I=G*H	278.72	198.30
Increase in Base Price/ Profiteering excluding GST	K	1101.70 – 995.43 = 106.27	
GST @ 18%	L = K*18%	19.12	
Amount of Profiteering (Difference in selling Price)	M = K+L	125.39	

14. The DGAP, on the basis of comparison of the 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 impugned goods during the period 01.11.2018 to 01.03.2019, as furnished by the Respondent has observed that the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 5,21,965/-. The profiteered amount had been computed by comparing the average of the base prices of the impugned goods sold during the period 01.11.2018 to 31.12.2018, with the actual invoice-wise base prices of such products sold during the period 01.01.2019 to 31.03.2019.

15. The DGAP has also provided the details of the State/Union Territory wise break-up of the total profiteered amount of Rs. 5,21,965/- which is furnished in Table-B given below:-

Table-'B'

S. No.	State Code	State	Profiteered Amount (Rs.)
1	01	Jammu & Kashmir	5662.823
2	02	Himachal Pradesh	4275.02
3	03	Punjab	38215.09
4	04	Chandigarh	19343.97
5	05	Uttarakhand	19599.6
6	06	Haryana	17857.16
7	07	Delhi	80227.15
8	08	Rajasthan	8503.732

9	09	Uttar Pradesh	69988.00
10	10	Bihar	8167.067
11	11	Sikkim	907.8527
12	12	Arunachal Pradesh	161.7085
13	13	Nagaland	454.6673
14	14	Manipur	855.7959
15	15	Mizoram	1515.229
16	16	Tripura	321.5581
17	18	Assam	2159.961
18	19	West Bengal	14841.95
19	20	Jharkhand	3615.247
20	21	Orissa	7614.88
21	22	Chhattisgarh	4888.434
22	23	Madhya Pradesh	5916.688
23	24	Gujarat	18332.98
24	27	Maharashtra	77746.76
25	29	Karnataka	28305.28
26	30	Goa	2089.513
27	32	Kerala	7270.249
28	33	Tamil Nadu	33756.83
29	34	Pondicherry	823.3465
30	35	Andaman & Nicobar Islands	155.0828
31	36	Telangana	22463.75
32	37	Andhra Pradesh (New)	15927.93
Grand Total			521965

16. The DGAP further stated that the allegation of profiteering against the Respondent by way of increasing the base prices of the products w.e.f. 01.01.2019 was found sustainable and the details

thereof were furnished in Annexure-15 of the DGAP's Report. The DGAP has elaborated that by increasing the base prices of the goods supplied by him, subsequent to the reduction in the GST rate and by not passing on the commensurate benefit of the reduction in the GST rate from 28% to 18% to his recipients, the Respondent had profiteered by an amount of Rs. 5,21,965/- and had contravened the provisions of Section 171 of the Central Goods and Service Tax Act, 2017 during the period from 01.01.2019 to 31.03.2019.

17. The above Report was considered by this Authority in its meeting held on 03.09.2019 and it was decided to hear the Applicants and the Respondent on 19.09.2019.

18. Seven personal hearings were accorded to the parties on 07.10.2019, 30.10.2019, 13.11.2019, 05.12.2019, 19.12.2019, 03.01.2020 and 08.01.2020. During the course of the hearing, none appeared for the Applicant No. 1 and none appeared for the Applicant No. 2 while the Respondent, represented by Sh. Prakash Sinha, Company Representative, Ms. Neha Suneja, Company Representative and Ms. Archana Tayal, Chartered Accountant, attended the hearings.

19. The Respondent filed his written submissions on 19.09.2019 vide which he submitted that the profiteered amount has been calculated by comparing two invoices, one which is pre 01.01.2019 and another which is post 01.01.2019. However the following important factor has not been considered by the DGAP while comparing the two invoices:-

Period	Pre 01.01.2019	Post 01.01.2019
Notification No.	24/2018-Central Tax (Rate) dated 31.12.2018	
Product Description	POR 694 (Power Bank)	
Invoice No.	DL001OSI12190023	DL002SI011900008
Invoice Date	06.12.2018	04.01.2019
Declared Price	995.43	1101.70
Place of Sale	Wazirpur Corporate Office	Pacific Mall
Invoice Series	DL001- Supply made from Wazirpur corporate office to distributors, corporates, retailers or through E-commerce industry	DL002-Supply made from different outlets others than corporate office.
Place of Sale	Wazirpur Corporate Office	Pacific Mall

He further stated that thus, the DGAP has not considered various relevant facts particularly in the electronic industries where prices of the goods are driven by fast changing technology, demand and supply and terms of sale like cash, debit/credit card and credits. He also submitted that the location of the sale was also important as price in a mall may be different from the price at a warehouse. He further enclosed the copy of invoices showing such locations of sales and stated that the comparison has not been made on the same set of invoices but on a different set of invoices.

20. Clarification was also sought from the DGAP on the Respondent's above mentioned submissions. The DGAP, vide his supplementary Report dated 30.09.2019 has stated that the Respondent has raised the following issues in his submissions, viz.:-
- (i) The DGAP has not considered various facts prevailing in the electronic industries where prices of goods were driven by fast

changing technology, demand and supply and terms of sale like cash, debit/credit card and credits. However, in this case, the Respondent supplied 26 models/SKU of power banks and base price & profiteering computation has been done separately for each model/SKU. Hence, the said contention of the Respondent was not relevant.

(ii) Regarding the Respondent's contention that the location of sale was also important as the price in a mall may vary than the price at warehouse, the DGAP has clarified that at time of furnishing data and records for the investigation, the Respondent had provided data for only 5 types of sale viz. Exports, Inter-state, Intra-state, Normal sale & Stock transfer and that the Respondent had not submitted the data relating to the warehouse sales through mall etc. separately and thus the profiteering has been calculated on the basis of data supplied by the Respondent during the investigation.

21. In response to the above Report of the DGAP, the Respondent filed his next written submissions dated 30.10.2019 vide which he reiterated his previous submissions dated 19.09.2019 and also made the following contentions:-

- DA*
- (i) That there was different supply chains for sale of his products and the price for each such sale for each vendor segment varied depending upon various marketing forces and factors.
 - (ii) That the calculation of profiteering based on a product wise common base rate was erroneous and incomparable.
 - (iii) That since the complaint was with respect to "Power Slice 10" and therefore the investigation should be confined to this product

only.

He further submitted the complete data in the CD and requested to verify it again.

22. The Respondent filed next written submissions on 13.11.2019 and stated that in a majority of cases, the average price for each product code of power bank has been reduced post 01.01.2019. He also submitted a table in support of his claim. He further made the following submissions:-

(i) That the DGAP has considered the model no POR 694 for the purpose of comparison and determination of the amount of profiteering. However, the average price of that model for the period Nov-December 2018 has not been compared with the average price in January-March 2019. The DGAP has considered only the average of December pricing and not the Nov-December average pricing.

(ii) That the DGAP has also included the GST during calculation of the profited amount, which he has already been paid to the Government.

23. The Respondent filed another submission on 19.11.2019 vide which he reiterated his previous submissions. He also filed his further submissions in the matter, the relevant portions of which are as follows:-

(i) That on comparing the product wise average price of Nov-December 2018 with the average price of Jan-March, 2019, in 95% of the cases of the impugned SKU, the prices have been reduced post 01.01.2019 and therefore, there could not be any

profiteering in these cases. Further he submitted his own calculation of the amount of profiteering based on his own understanding which is as follows:-

Goods or Service Code	DGAP Calculation			Our Calculation	Difference (3-4)
	Nov Average (1)	Dec Average (2)	Nov-Dec Average (3)	Nov- Dec Average (4)	
POR 007	557.61	561.83	558.47	558.47	0
POR 010	722.19	751.97	733.34	733.33	0.01
POR 386K	930.11	667.21	672.29	672.29	0
POR 386W	706.16	683.54	705.59	705.59	0
POR 491	376.98	376.79	376.85	376.84	0.01
POR 540	732.4	717.63	726.44	726.44	0
POR 548B	1049.11	1042.68	1043.3	1043.3	0
POR 629W	689.48	672.27	676.41	676.41	0
POR 640B	203.13	227.24	206.37	206.38	-0.01
POR 640K	195.06	272.66	195.82	195.82	0
POR 694	764.18	755.37	762.23	762.23	0
POR 695	1214.69	1331.3	1246.91	1246.91	0
POR 783	1673.08	1812.05	1712.91	1712.91	0
POR 823	904.49	959.49	955.61	955.61	0
POR 838	1046.26	977.06	982.5	982.49	0.01
POR 943B	773.47	693.88	723.2	723.2	0
POR 944	795.97	682.45	712.73	712.73	0
POR-619BG	737.2	713.32	713.96	713.96	0
POR 548D	0	1015.63	1015.63	1015.63	0
POR629C	0	824.12	824.12	734.01	90.11*
POR 720K	0	1093.75	1093.75	1093.75	0
POR619WB	0	692.6	692.6	692.6	0

In support thereof, he submitted copies of invoices on a sample basis.

- (ii) He has also filed written submissions which related to various issues that did not have a direct bearing on the computation of

profiteering and hence they deserved to be appropriately considered at the time when the issues relating to computation of profiteering were to be finalised and the amount of profiteering, if any, was to be determined.

24. Clarification was sought from the DGAP on the Respondent's submissions dated 13.11.2019 and 19.11.2019. The DGAP, vide his supplementary Report dated 02.12.2019 has mentioned that in respect of the Respondent's submission dated 13.11.2019, the profiteering has been calculated only for those SKUs where the Respondent has increased the base prices after GST rate reduction. Further, the Respondent supplied 26 models/SKU of power banks and base prices & profiteering computation has been done separately for each model/SKU. The Respondent had not submitted the information/details of the data relating to his warehouse/office sale and mall sales etc. and at the time of the investigation and the Respondent had provided data for only 5 types of sale viz. Exports, Inter-state, Intra-state, Normal sale & Stock transfer. Thus, the profiteering has been calculated on the basis of data supplied by the Respondent during the investigation. So the contention of the Respondent was not relevant. The DGAP, in respect of the Respondent's submission dated 19.11.2019, stated that the contention of the Respondent that the DGAP has not considered the average sale prices of various products by taking into consideration the average prices of two months i.e. November & December was not correct. If this contention of the Respondent was accepted then Respondent may also ask to take average price for the last 6 months or a year. The DGAP has taken

the average prices of the products of a month just sold before the GST rate reduction period so as to arrive at the nearest average price before rate reduction. Further, where comparable base prices for pre-rate reduction period were not available during the last month then the DGAP had computed the average base prices by taking into account the sale transactions which had taken place before the above period.

25. The DGAP further observed that the Respondent has not passed on the benefit of rate reduction in terms of Section 171 for the other categories of Power Banks falling under same HSN i.e. 8507 and accordingly, the DGAP has covered these categories or types of Power Banks falling under same HSN to arrive at the profiteering amount. The DGAP further contended that the facts of the case of M/s Reckitt Benckiser India Pvt. Ltd. were different from the present case and interim stay has not been granted in all cases and the issue is still sub-judice. Further in this case only those products have been considered in the investigation which had been impacted vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018.

26. The Respondent filed further submissions dated 06.12.2019 via pen drive vide which he has submitted the invoices of sale from different locations/segments along with detailed segment wise invoice details in excel sheets. Clarification was also sought from the DGAP on the Respondent's above mentioned pen drive submissions dated 06.12.2019. The DGAP, vide his supplementary Report dated 23.12.2019 has mentioned that the DGAP's Report dated 30.08.2019 was based on the data submitted by the Respondent to the DGAP during the course of the investigation. However, the data submitted by

the Respondent on 06.12.2019 was examined and it was found to be in a different format (channel/segment wise) than the one submitted earlier (five types viz. Exports, inter-state, intra-state, normal and Stock transfer). The fresh set of segment/location wise sales data submitted by the Respondent has been analysed, and it appeared that the profiteered amount may vary if the same is determined segment-wise.

27. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent and other material placed on record and it is revealed that the Respondent did not submit the supply chain wise data to the DGAP during the period of investigation. He has also accepted it during the hearings before this Authority and stated that he had not supplied supply chain wise data. However, the Respondent vide his submissions dated 06.12.2019 has furnished the invoices of sale from different locations/segments along with detailed segment wise invoice details in excel sheets before this Authority. The DGAP, after examining the same has reported vide his supplementary Report dated 23.12.2019 that the fresh set of segment/location wise (or in other words supply channel wise) sales data submitted by the Respondent during the hearings before this Authority has been analysed, and that the profiteered amount may vary if the same was determined segment-wise.

28. In such circumstances, we are of the opinion that justice cannot be done if the aforementioned supply chain wise data is not re-examined and the profiteered amount is not recomputed. Therefore, without going into merits of the case and without considering the other

submissions of the Respondent and the Applicant No.1 at this stage, we find it imperative that there is need of recomputation of the profiteered amount. All other submissions of the Applicants and the Respondent will be duly considered after the final computation of the profiteered amount is done.

29. In view of the above facts, this Authority under rule 133(4) of the CGST Rules 2017 directs the DGAP to further investigate the following issues and to furnish his Report accordingly under Rule 129 (6) of the CGST Rules, 2017:-

- (a) To investigate the Respondent's contention that that the negative figures in his sales data actually relate to the credit notes raised by him on account of sales return and the effect thereof on the amount of profiteering, if any, after due verification.
- (b) To investigate the mismatch between the Respondent's GST return for the month of January, 2019 as compared to the sales data figure for the same period and ramification thereof on the computation of the amount of profiteering.
- (c) To investigate the Respondent's submissions dated 19.11.2019 vide which he has submitted his own calculation of the amount of profiteering based on his own understanding which is given in the Para 23 of this order.
- (d) To investigate the data submitted by the Respondent in pen drive on 06.12.2019 which the DGAP has itself claimed to be in a different format (channel/segment wise) from the one that was submitted earlier (five types viz. Exports, inter-state, intra-state, normal and Stock transfer) during the investigation period.

30. Hence, we direct the DGAP to re-compute the profiteered amount keeping in view our above observations and to furnish his report within a period of three months.

31. It is further directed that the Respondent shall fully cooperate during the course of the investigation to be carried out by the DGAP and shall supply the requisite data/information required by the DGAP in the appropriate format with all the details promptly.

32. A copy of this order be supplied to the Applicant and the Respondent. File of the case be consigned after completion.



Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

(Signature)
(Dev Kumar Rajwani)

NAA, Secretary

File No. 22011/NAA/68/Portronics/2019/1232-35

Dated: 27.02.2020

Copy for information and necessary action to:-

1. 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.
2. M/s Portronics Digital Pvt Ltd., B-76, Second Floor, Wazirpur Industrial Area, New Delhi-110052
3. Shri Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th Floor, Express Trade Tower-2, Sector-132, Noida-201301
4. Guard File.