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

Case No. : 13/2018
Date of Institution : 20.08.2018
Date of Order : 16.11.2018

In the matter of:

1. Smt. Mandalika Sakunthala, Flat No.107, Varun Sargam Villa, Rajbhavan Road, Somajiguda, Hyderabad-500082.
2. Director General Anti-Profitteering, 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 Fabindia Overseas Pvt. Ltd., Uma Enclave, Road No. 9, Banjarahills, Hyderabad-500034.

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. Sh. Anwar Ali, Additional Commissioner for the Applicant No. 2.
3. Sh. Shashank Goel, Advocate and Sh. Siddhant Mehra, Corporate Head-Finance & Taxation for the Respondent.

ORDER

1. The present report dated 16.08.2018 has been received from the Directorate General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that two applications, both dated 21.02.2018, were filed by the Applicant No. 1 before the Standing Committee constituted under Rule 123 (1) of the above Rules alleging that the Respondent had not passed on the benefit of reduction in the rate of tax, when she had bought 'Bathing Bar' and 'Instant Drink Powder 50 Gms.' (here-in-after referred to as the products) from the Respondent. It was also alleged by the Applicant No. 1 that these products were being sold at the MRP of Rs. 95/- and Rs. 50/- respectively, which had 12.5% Excise Duty & 14.5% Value Added Tax (VAT), total 27% incidence of tax, built in the MRP till 30.06.2017 and after the implementation of the GST w.e.f. 01.07.2017, when the rate of tax was fixed as 18% on the above products they were still being sold at the above MRP by increasing their base prices. She had further alleged that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of CGST Act, 2017 and therefore, action should be taken against him. The above Applicant had also submitted

copies of the tax invoices dated 09.01.2018 for both the products and the labels of the products showing their MRP, Batch No. and manufacturing dates in support of her claims.

2. The above applications were examined by the Standing Committee on Anti-Profiteering and were referred to the DGAP vide minutes of its meeting dated 02.05.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP had called upon the Respondent to submit reply on the above allegations and also to suo-moto determine the quantum of benefit which was not passed on by him after reduction in the rate of tax. The Respondent had submitted replies vide letters dated 25.06.2018, 06.07.2018, 13.07.2018 and 20.07.2018 informing that there was increase in the rate of tax and hence no benefit could be passed on by him. The Respondent had further contended that he was procuring both the products on inter-state basis from their sole vendors and his tax liability had increased by 3.5% post implementation of GST from 14.5% VAT to 18% GST w.e.f. 01.07.2017 and therefore, he had suffered loss in his margin on sale of both the products.

4. The DGAP has stated in his report that the Respondent had purchased the "Bathing Bar" from M/s Forever Body care Industries, Uttarakhand which was entitled to avail area based exemption from Central Excise Duty under Notification No. 50/2003-C.E. dated 10.06.2003 till 30.06.2017. The Respondent was also procuring the said "Instant Drink Powder 50 Gms." from M/s NCL Agro Foods, Rajkot which was eligible to avail the benefit of concessional Central Excise Duty @ 2% without Cenvat Credit under Notification No.16/2012-C.E.

dated 17.03.2012 before GST had come in to force. The VAT was applicable on both the products @ 14.5%. Therefore, the effective tax rate on both the products before coming in to force of the GST on 01.07.2017 was not 27% (12.5% Central Excise Duty + 14.5% VAT), as had been claimed by the above Applicant, but it was 14.5% with Nil Central Excise duty + 14.5% VAT in the case of "Bathing Bar" and 16.5% with 2% Central Excise duty + 14.5% VAT in the case of "Instant Drink Powder 50 Gms." which had been increased to 18% after the implementation of the GST w.e.f. 01.07.2017 and hence there was no reduction in the rate of tax..

5. It has also been stated by the DGAP in his Report that when the pre-GST stock of Bathing Bar in the GST regime was compared with it's stock in the pre GST regime, no change was found the in the Input Tax Credit (ITC) and the Respondent's cost price had also remained the same at Rs. 28.64 per piece. After the rate of tax had increased from 14.5% to 18% after implementation of the GST, the above product was supplied by the Respondent in the GST regime at the same MRP of Rs. 95/- by reducing his margin of profit from his base price from Rs. 82.97 to Rs. 80.51 by suffering loss of Rs. 2.46 per Bathing Bar in gross margin during the GST regime. It is also been observed by the DGAP that as the base price had been reduced so as to maintain the same MRP inspite of increase in the tax rate, the anti-profiteering provisions contained in Section 171 (1) of the Central Goods and Services Tax Act, 2017 are not attracted in respect of the Bathing Bar.

6. The DGAP has also intimated that when the sale of Bathing Bar in the pre-GST era was compared with the sale of it's new stock in GST regime, the Respondent's supplier M/s Forever Bodycare Industries had increased the transaction value of the Bathing Bar from Rs. 28.36 to Rs. 29.94.

Therefore, an additional ITC of Rs. 0.28 had become available post GST to him. The DGAP has further intimated that taking in to account the transaction value of Rs. 29.94 and the ITC of Rs. 0.28 the cost price of the above product had increased from Rs. 28.64 to Rs. 29.94, but the Respondent had reduced his base price by Rs. 2.46 from Rs. 82.97 to Rs. 80.51, so that despite an increase in tax rate from 14.5% to 18%, the MRP had remained unchanged at Rs. 95/- which had resulted in the loss of Rs. 3.76 out of gross margin to the Respondent. The DGAP has therefore, contended that as the reduction in the base Price was more than the ITC, the allegation of profiteering was not established.

7. In respect of the Instant Drink Powder 50 Gms. the DGAP has observed that there was no change in the ITC and the Respondent's cost price had remained the same at Rs. 18.86. The DGAP has further observed that when the sale of old pre GST stock of the above product in the GST era was compared with the sale in the pre-GST regime, although the rate of tax had increased from 14.5% to 18% after the implementation of the GST the Respondent had still sold the above product at the same MRP of Rs. 50/-, by reducing his base price from Rs. 43.67 to Rs. 42.37 and had thus suffered a loss of Rs. 1.30 in his gross margin in the GST regime. The DGAP has therefore found that since the base price had been reduced to maintain the same MRP in spite of increase in the tax rate, the anti-profiteering provisions contained in Section 171(1) of the CGST Act, 2017 were not attracted.

8. The DGAP has also informed that when the sale of the Instant Drink Powder 50 Gms. in the pre-GST era was compared with the sale of its new stock in the GST regime, the Respondent's vendor M/s NCL Agro Foods had reduced the cost price from Rs. 18.86 to Rs. 18.50 because of

additional ITC of Rs. 0.36. He has further informed that the Respondent had reduced his base price by Rs. 1.30, from Rs. 43.67 to Rs. 42.37, so that inspite of the increase in the tax rate from 14.5% to 18%, the MRP had remained unchanged at Rs. 50/- and therefore, he had suffered a loss of Rs. 0.94 out of his gross margin. The DGAP has therefore, concluded that since the reduction in the base price was more than the additional ITC, the allegation of profiteering was not proved against the Respondent.

9. The DGAP has therefore, recommended that although the rate of tax had increased in respect of both the above products but the Respondent had reduced his base prices and the profit margins to maintain the same MRP inspite of the increase in the tax rate, therefore, The anti-profiteering provisions contained in Section 171 (1) of the CGST Act, 2017 had not been contravened by the Respondent.

10. The above report was considered by the Authority in its meeting held on 21.08.2018 and it was decided to hear the Applicant No. 1 on 05.09.2018. However, she did not appear during the hearing and informed via e-mail dated 04.09.2018 that she would not be able to attend and there was nothing more to supplement her complaints except that the Authority might ascertain whether the Bathing Bars were actually manufactured in the unit located in Uttarakhand and hence were eligible for availing the benefit of area based exemption, as had been mentioned in Para 9 of the Report or from any other unit.

11. An opportunity of hearing was also accorded to the Respondents on 28.09.2018. During the course of hearing Mr. Shashank Goel, Advocate appearing on behalf of the Respondent had submitted that the Respondent mainly dealt in garments. He also submitted that MRP of the products sold by the Respondents was constant for the last 3

years and there was no rate reduction or increase, after implementation of the GST although the rate of tax had increased.

12. We have carefully examined the DGAP's Report and the written submission made by both the Applicants and the Respondent placed on record and find that the following issues were required to be settled in the present proceedings:-

- I. Whether there was reduction in the rate of tax on the products in question w.e.f. 01.07.2017?
 - II. Whether there was increase in the ITC of the above product w.e.f. 01.07.2017.?
 - III. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of tax reduction in this case?
13. Section 171 (1) of the CGST Act 2017 read 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."


14. It is apparent from the perusal of the facts of the case narrated above that the actual pre-GST tax rate on the above products was not 27% (12.5%Excise Duty + 14.5% VAT), as had been mentioned by the Applicant No. 1 in her applications, but it was 14.5% (Nil Central Excise Duty+ 14.5% VAT) in the case of "Bathing Bar" and 16.5 % (2% Central Excise Duty + 14.5% VAT) in the case of "Instant Drink Powder 50 Gms." It is also revealed that the Respondent was procuring both the above products on interstate basis from their sole vendors and this tax liability had increased by 3.5% post GST from 14.5% to 18% w.e.f. 01.07.2017 and therefore, he had

suffered loss on the supply of both the products in question. It is further revealed that the base price of these products had been reduced by the Respondent to maintain the same MRP (Pre GST MRP) inspite of the increase in the tax rate of both the above products. The anti-profiteering provisions contained in Section 171 (1) of the CGST Tax Act, 2017 are not attracted in the present case. We thus find that since the reduction in the base prices of these products is more than the additional ITC eligible thereon, the allegation of profiteering is not established.

15. Based on the above facts it is clear that the Respondent has not contravened the provisions of Section 171 (1) of the CGST Act, 2017 and hence there is no merit in the applications filed by the Applicant No. 1 and the same are accordingly dismissed.

16. 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.

Certified copy


(A.K. Goel)
Secretary NAA



Sd/-
(B. N. Sharma)
Chairman

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

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F.No.22011/NAA/65/2018 | 886-889

Dated:16-11-2018

Copy to:-

1. Smt. Mandalika Sakunthala, Flat No.107, Varun Sargam Villa, Rajbhavan Road, Somajiguda, Hyderabad-500082.
2. M/s Fabindia Overseas Pvt. Ltd., Uma Enclave, Road No. 9, Banjarahills, Hyderabad-500034.
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001
4. NAA website/Guard File