

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

I.O. No. 18/2020
Date of Institution 30.09.2019
Date of Order 04.06.2020

In the matter of:

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.

Applicant

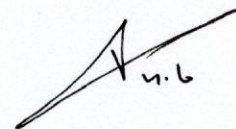
Versus

M/s Lifestyle International Pvt. Ltd. Mahagun Metro Mall, Plot No.VC3, Sector-3, Vaishali, Ghaziabad, U.P.-201010.

Respondent

Quorum:-

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



Present:-

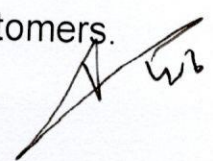
1. Sh. Bhupendra Goyal, Assistant Director (Cost) and Sh. Amit Shrivastava, Additional Assistant Director for the Applicant.
2. Sh. Jagdish Solanki, AVP-Group Tax, Sh. Sparsh Bhargava, Advocate, Ms. Jayashree Parthasarathy, Consultant, Sh. Tarun Gulati, Advocate, Sh. Neelesh Bothra, VP- Group Tax, Sh. Yashwant Singh, Advocate, Sh. Ravi Kapoor, Authorised Representative and Sh. Saravana Kumar T., Senior Manager for the Respondent.

ORDER

1. The present Report dated 30.09.2019 has been received from the Applicant 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 23.11.2017 was filed before the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017, by Ms. Neeru Varshney before the Standing Committee vide which she alleged that the Respondent had not passed on the benefit of reduction in the rate of GST to her when she had purchased "Maybelline FIT Me foundation" (hereinafter referred to as "the Product") from the Respondent. It was also stated that the GST on the product was reduced from 28% to 18% w.e.f. 15.11.2017. The complaint was investigated by the DGAP who vide his Investigation Report dated 28.03.2018 concluded that the basic price of the impugned good was increased by the Respondent as a result of which

the Respondent had not passed on the benefit of tax reduction and had thus contravened the provisions of Section 171 of the CGST Act, 2017. An amount of Rs. 15,861/- on the product was also established as the profiteered amount.

2. This Authority, vide its Order No. 08/2018 dated 25.09.2018 directed the Respondent to refund an amount of Rs. 41/- along with the applicable interest to Ms. Neeru Varshney and to get the balance amount of profiteering amounting to Rs. 15,820/- deposited in the Consumer Welfare Fund as per the provisions of Rule 133(3)(c) of the above Rules, along with the interest. Since the Respondent vide para-27 of his submission dated 18.05.2018 had admitted that the *benefit on account of reduced tax rate amounting to Rs. 1,98,46,438/- might not have been passed on by him on to certain customers who had purchased the impacted goods in the post-rate reduction period, although he had passed on excess benefit to his other customers by way of greater (more than commensurate) reduction in prices following the reduction in the rate of tax*, this Authority, after considering the same, had directed the DGAP to investigate the above admission of the Respondent. The DGAP initiated an investigation to collect the necessary evidence to investigate the above-mentioned issue and to determine whether the benefit of reduction in the rate of tax had been passed on by the Respondent to the recipients in respect of the products supplied by him. The DGAP issued a letter dated 30.10.2018 to the Respondent and asked him to furnish the requisite documents/ information about Respondent's other supplies to his other customers.



3. The Respondent submitted his replies to the DGAP vide letters/e-mails dated 12.11.2018, 25.11.2018, 29.11.2018, 10.12.2018, 01.08.2019, 16.08.2019, 26.08.2019, 27.08.2019, 09.09.2019, 14.09.2019 and 19.09.2019.
4. Vide his above-mentioned replies, the Respondent had submitted that he had not profited in any manner. He also stated that the amount of Rs. 1,98,46,436/- covered his pan-India sales and the said amount pertained to the DGAP's period of investigation and it was further taken based on the methodology adopted by the DGAP. The Respondent also intimated that he had also filed a writ petition in the Hon'ble High Court of Delhi challenging the order passed by this Authority and he was awaiting directions of the Hon'ble Court for not initiating recovery proceedings against him.
5. The Respondent further submitted that he had inadvertently computed the total amount of Rs. 1,60,80,372/- (1,19,82,835/- + 40,97,537/-) as Rs. 1,98,46,436/- while computing the amount initially. The Respondent also submitted the details of additional price reductions passed on by him and the total margin loss to him on account of the sale of Pre-GST stock and requested for the same to be taken into account in evaluating the extent of alleged benefit not passed on. The Respondent had also provided a summary of the net loss impact to him after taking into consideration the alleged GST benefit not passed on, additional price reduction passed on by him, and the margin loss impact on him on account of sale of Pre-GST stock.
6. The Respondent further submitted to the DGAP that he had multiple levels of descriptions available for internal referencing purposes and in

certain cases, he had considered the primary description and in certain cases, it had been considered as secondary description and thereby there was a difference in the description column. The Respondent also submitted that there was no difference in the details submitted during the original investigation (February 2018 & March 2018) and vide emails dated 26.08.2019 & 27.08.2019.

7. Vide the aforementioned letters/e-mails, the Respondent also submitted the following documents/information:

- a. Invoice-wise and SKU-wise details of the outward taxable supplies (other than zero-rated, nil rated, and exempted) for the period November 2017 to January 2018 for all the GST registrations.
- b. Details of alleged reduction not passed on along with Reduction in LS margin & details of additional benefit passed on.

8. The DGAP after receiving the order from this Authority, the various replies of the Respondent and the documents/ evidence on record has found certain discrepancies which are given below:-

- (i) Initially, the Respondent had accepted before this Authority that an amount of Rs. 1,98,46,438/- might not have been passed on to the customers who had purchased the goods, however, the Respondent had submitted details of an amount of Rs. 1,60,80,372/- only.
- (ii) The amount of Rs. 1,60,80,372/- pertained to those goods which were purchased at 28% GST and sold at 18% GST i.e.

closing stock held as on 15.11.2017 only and do not pertain to complete sales made post 15.11.2017.

9. The DGAP also stated that concerning the Respondent's reliance on the order of the Hon'ble High Court of Delhi passed in the WP(C) 12647/2018 filed by him wherein the Hon'ble High Court had ordered that *"the proceedings pursuant to Authority's order dated 25.09.2018 might continue and even final order might be passed. However, coercive steps for recovery of demand, if any, would not be taken without permission of the Court till the next date of hearing."*, showed that there was no stay on the present proceedings.
10. The DGAP has also stated that the Respondent intimated that there was no difference in the details of outward taxable supplies submitted during the original investigation period and vide his emails dated 26.08.2019 & 27.08.2019 and both were same. Therefore, the profiteering, if any has been arrived at by the DGAP by comparing average selling prices of the goods sold during the period 01.11.2017 to 14.11.2017 with the prices post 15.11.2017 for the items similar in each aspect after taking into consideration the details of the outward taxable supplies submitted during the original investigation. Further, the DGAP's Report dated 28.03.2018 covered the product "Maybelline FIT Foundation" only while the present report covered all the impacted products of the Respondent.
11. The DGAP also stated that as regards the profiteering, the quantity sold during the period 01.11.2017 to 14.11.2017 (pre-GST rate reduction) was taken and an average base price (after discount) was obtained on dividing the total taxable value by total quantity of this ^{u/b}

item sold during this period. The average base price of this item was compared with the actual selling price of the item sold during post-GST rate reduction i.e. on or after 15.11.2017 as has been illustrated in the table below:-

Table (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.11.2017 to 14.11.2017)	Post Rate Reduction (From 15.11.2017)
1.	Product Description	A	SS17- S2 WHITE FILLERS 40X40CM (MRP-349)	
2.	Product Category	B	HC-House Hold-Soft Furnishing	
3.	Product MRP	C	349/-	349/-
4.	The total quantity of the item sold	D	657	
5.	Total taxable value (after Discount)	E	1,79,070/-	
6.	Average base price (without GST)	$F=(E/D)$	272.56/-	
7.	GST Rate	G	28%	18%
8.	Actual Selling price (post rate reduction) (including GST)	$H=128\%$ of F	348.88/-	
9.	Commensurate Selling price (post Rate reduction) (including GST)	$I=118\%$ of F		321.62/-
10.	Invoice No.(Sold in Delhi)	J		1020011596
11.	Invoice Date	K		29.12.2017
12.	Total quantity (as per invoice indicated in H)	L		5
13.	Total Invoice Value (including GST)	M		1,745/-
14.	Actual Selling price (post rate reduction) (including GST)	$N=M/L$		349/-
15.	The excess amount charged, i.e. Profiteering	$O=N-I$	27.38/-	
16.	Total Profiteering	$P= L*O$	136.90/-	

12. From the above Table, it was clear that the Respondent did not reduce the selling price when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No.41/2017 Central Tax (Rate) dated 14.11.2017 and hence he had profiteered an amount of Rs. 136.90/- on a particular invoice and thus the benefit of reduction in

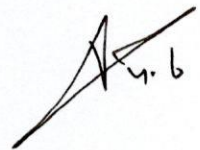
GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. Based on the above calculation and the mathematical methodology, the amount of profiteering in the case of each of the impacted goods supplied by the Respondent was separately calculated.

13. The DGAP also reported that from the invoices made available by the Respondent, it appeared that the Respondent had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017, so that the commensurate benefit of GST rate reduction was not passed on to the recipients. Based on 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 impacted products during the period 15.11.2017 to 31.01.2018, as furnished by the Respondent, 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 profited amount came out to Rs. 15,37,04,697/-. The DGAP has furnished the details of the computation in Annexure 19 of his Report. The profited amount has been arrived at by comparing the average of the base prices of the goods sold during the period 01.11.2017 to 14.11.2017 with the actual invoice-wise base prices of such goods sold during the period 15.11.2017 to 31.01.2018. The excess GST so collected from the recipients has also been included in the aforesaid profited amount as the excess price collected from the recipients also included the GST charged on the

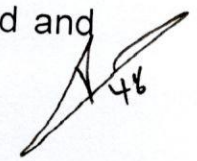
increased base price. The above-referred profiteered amount did not contain the profiteered amount in respect of the goods "Maybelline FIT Me foundation" which had already been computed by the DGAP in his report dated 28.03.2018. The DGAP has also provided the place of supply- wise (State or Union Territory wise) break-up of the total profiteered amount of Rs. **15,37,04,697/-** in his Report dated 30.09.2019.

14. The above Report was considered by this Authority in its meeting held on 01.10.2019 and it was decided to hear the Applicants and the Respondent on 25.10.2019.

15. Eight personal hearings were accorded to the parties on 25.10.2019, 22.11.2019, 13.12.2019, 17.12.2019, 26.12.2019, 22.01.2020, 11.02.2020 and 14.02.2020. During the course of the hearings, Sh. Bhupendra Goyal, Assistant Director (Cost) and Sh. Amit Shrivastava, Additional Assistant Director appeared for the Applicant while the Respondent was represented by Sh. Jagdish Solanki, AVP-Group Tax, Sh. Sparsh Bhargava, Advocate, Ms. Jayashree Parthasarathy, Consultant, Sh. Tarun Gulati, Advocate, Sh. Neelesh Bothra, VP- Group Tax, Sh. Yashwant Singh, Advocate, Sh. Ravi Kapoor, Authorised Representative and Sh. Saravana Kumar T., Senior Manager. The Applicant attended the hearing dated 14.02.2020, while the Respondent attended the hearings dated 25.10.2019, 22.11.2019, 17.12.2019, 26.12.2019, 22.01.2020 and 14.02.2020.



16. The Respondent has filed written submissions on 25.10.2019, 19.11.2019, 22.11.2019, 17.12.2019, 16.01.2020, 18.01.2020, 22.01.2020, 24.01.2020, 14.02.2020, 18.02.2020 and 24.02.2020.
17. The Respondent vide his submissions dated 25.10.2019 has stated that the DGAP had followed an inconsistent approach for conducting the present investigation from the approach that was approved by this Authority vide order dated 25.09.2018.
18. The Respondent vide his submissions dated 19.11.2019 submitted various case laws in support of his above-mentioned objections.
19. The Respondent next filed his submissions dated 22.11.2019 vide which he raised several objections on the DGAP's Report dated 30.09.2019 which are as follows:-
- i) Products bought before the implementation of GST and sold during the period of the investigation could not have been subjected to anti-profiteering scrutiny.
 - ii) Products bought after 15.11.2017 and sold after that date could not be subjected to anti-profiteering scrutiny.
 - iii) MRP reduction have been ignored by the DGAP.
 - iv) Negative values have been ignored in arriving at the profiteering.
 - v) Even if it was assumed that the methodology adopted by the DGAP of using a notional average sale price as the ideal selling price was correct, profiteering could not have been computed on the tax component, i.e. the tax collected and deposited with the Government.



vi) Benefit/profitteering ought to have been to be determined at an entity or registered person level and not on every supply.

20. Respondent filed his next submissions on 17.12.2019, vide which he interalia submitted that:-

- An amount of Rs. 1,60,64,392 was computed by him in respect of the other goods supplied by him (other than the goods incorporated by the DGAP in his report dated 02.04.2008) based on the same methodology of computation adopted by the DGAP in the above-mentioned report.
- The DGAP had failed to consider relevant data provided by him and had arrived at the profiteered amount in a completely arbitrary manner.

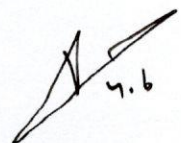
21. Thereafter, the Respondent submitted details of his own computation of profiteering in the form of CDs to this Authority on 16.01.2020 and followed up the same with his submissions dated 18.01.2020 whereby he reiterated the contentions and submissions advanced by him previously. The Respondent also furnished his sales-details for the period from 10.11.2017 to January 2018 as also his objections to the mathematical computation adopted by the DGAP.

22. The next hearing was held on 14.02.2020. During this hearing, the Respondent filed further written submissions to support his contentions. At the same time, DGAP submitted that the data provided by the Respondent during the previous hearings did not contain certain details, i.e. the sales data/ register incorporating the item-wise "Goods/services Code" and item-wise "Item Codes" despite being asked to do so on 26.07.2019 and 16.09.2019 and stated that without

these details, the Sales register furnished by the Respondent was of no use for mathematical computation of profiteering and also could not be used to verify the submissions/ contentions advanced by the Respondent. Besides, during the hearing, the DGAP also pointed out certain discrepancies in the submissions/ data dated 14.02.2020 of the Respondent. The said discrepancies are mentioned below:-

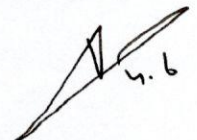
- a. Item descriptions mentioned were not in a comprehensible format, such as "FMFCN030-00:MIX: MIX".
 - b. The data/ sales register submitted by the Respondent showed the total MRP (MRP x the number of units) in the MRP column for supply lines where more than 1 quantity of an item had been sold.
 - c. In the column Sales from Stock, the sales register/ data showed "0" in several cases.
 - d. The Respondent had put "Unspecified" as remark in S.No.", "Customer Name" and "Customer GSTIN" columns.
23. In response to the submissions made by the Applicant No. 2, the Respondent acknowledged that he will submit the data with the requisite details as required by the DGAP which he also confirmed the vide his submissions dated 14.02.2020.
24. Since the data submitted by the Respondent was still not in the requisite format and further details were required to verify and incorporate Respondent's submissions (including objections of the mathematical computation done by the DGAP), the Respondent was permitted time up to 18.02.2020 to furnish the requisite details in a format that was required for incorporating his submissions and contentions and for computing the quantum of profiteering accordingly.

25. Thereafter, the Respondent, vide his email dated 18.02.2020 furnished before this Authority, a soft copy of the data, endorsing a copy thereof to the DGAP. The Respondent filed his further submissions on 24.02.2020 whereby he submitted soft copy of his B2C supply data for the period from November 2017 to January 2018.
26. We have carefully considered all the Reports filed by the DGAP, submissions of the Respondent including the submissions made during the hearings and other material placed on record. We observe that the Respondent's submissions dated 18.02.2020 and 24.02.2020 and the accompanying data/information are voluminous and require thorough scrutiny and may entail a revised mathematical computation of the amount of profiteering, notwithstanding the previous clarifications of the DGAP contained in his supplementary reports dated 02.12.2019, 08.01.2020 and 07.02.2020. Therefore, we find that the matter needs further investigation based on the complete data that has been submitted by the Respondent only on 18.02.2020 and 24.02.2020. We also find that all the contentions and submissions made by the Respondent during the hearings need to be verified and if found substantiated and correct by the DGAP. Needless to say that the discrepancies in Respondent's submissions, as pointed out by the DGAP during the process of hearings, will also need to be ironed out by the Respondent, which would necessitate the Respondent to fully cooperate with the DGAP during the process of further investigation. In such circumstances, we conclude that the matter needs to be reinvestigated accordingly in the interest of justice.

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27. Therefore, without going into the merits of the case and without considering the contentions and submissions of the Respondent at this stage, we find it imperative that there is a need for revisiting the investigation and recomputation of the profiteered amount. All the other submissions made by the Respondent will be duly considered after the final computation of the profiteered amount is done after a thorough investigation by the DGAP following provisions of Section 171 of the CGST Act, 2017. Given the above facts, this Authority directs the DGAP to reinvestigate the present case as mentioned in the preceding paragraphs of this Order, under Rule 133(4) of the CGST Rules 2017 and to furnish his Report accordingly under Rule 129 (6) of the CGST Rules, 2017 within a period of three months. 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 in the requisite format as and when required by the DGAP

28. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was to be passed on or before 29.03.2020 as the investigation Report was received from the DGAP on 30.09.2019. However, due to the COVID-19 pandemic prevailing in the Country the order could not be passed on or before the above date. Hence the same 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.



29. A copy of this order be supplied to the Applicant and the Respondent.

File of the case be consigned after completion.



Certified copy

(A. K. Goel)
Secretary, NAA

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

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

Sd/-
(Amand Shah)
Technical Member

File No. 22011/NAA/92/Lifestyle Int./2019/

Dated: 04.06.2020

Copy To:-

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1. M/s Lifestyle International Pvt. Ltd. Mahagun Metro Mall, Plot No.VC3, Sector-3, Vaishali, Ghaziabad, U.P.-201010.
2. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. NAA Website/Guard File.

A. K. GOEL
SECRETARY, NAA