

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

I.O. No. 37/2020
Date of Institution 28.02.2020
Date of Order 11.12.2020

In the matter of:

1. Sh. P. V. Narayanan, pvnkannur70@gmail.com
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 MRF Corp. Ltd., Tarapore Towers, V Floor, 826, Anna Salai,
Chennai-600002.

Respondent

Quorum:-

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

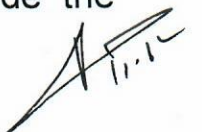


Present:-

1. Sh. P. V. Narayanan, Applicant No. 1 in person.
2. None for the DGAP.
3. Sh. Karthik Sundaram, Advocate, Ms. Anisha Gupta, Advocate, Sh. N. Nagaraja and Sh. K. Sriprasad, Authorized Representatives for the Respondent.

ORDER

1. The present Report dated 27.02.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that an application was filed before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, 2017 by the Applicant No. 1, alleging profiteering by the Respondent in respect of two products viz. "SP EP Primer Grey" and "Thinner for Finish" (here-in-after referred to as the subject goods). The above application was examined by the Standing Committee on Anti-Profiteering in its meeting held on 13.12.2018 and was forwarded to the DGAP for detailed investigation as per the provisions of Rule 129 (1), which was received by the DGAP on 02.05.2019. As complete information related to the complaint was not received by the DGAP along with the minutes of the meeting of the Standing Committee on Anti-profiteering, a letter bearing No. D-22011/AP/11/19/1232 dated 29.05.2019 was sent to the Assistant Commissioner (Anti-profiteering), Standing Committee to provide the



complete details/information in respect of the application. The Assistant Commissioner (Anti-profiteering), Standing Committee vide his letter No. GST/Delhi North/ Anti-profiteering/Misc/01/2019/6153 dated 04.06.2019 had forwarded the complete information related to the application, which was received by the DGAP on 10.06.2019.

2. It had been alleged by the Applicant No. 1 in his complaint that the prices of the subject goods, supplied by the Respondent had remained unchanged or were increased, after reduction in the rate of GST from 28% to 18% w.e.f. 27.07.2018, vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 and the benefit of tax rate reduction was not passed on by the Respondent to the recipients by way of commensurate reduction in the prices.
3. On receipt of the aforesaid complete documents from the Standing Committee on Anti-profiteering on 10.06.2019 the DGAP had issued Notice for initiation of Investigation (NOI) under Rule 129 (3) of the CGST Rules, 2017 to the Respondent on 25.06.2019, 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. 27.07.2018, had not been passed on by him to the recipients by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply as well as to furnish all documents in support of his reply.
4. Further, vide the above NOI sent by the DGAP the Respondent was afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said NOI, during the period from 01.07.2019 to 03.07.2019. However, the Respondent did

not avail of the said opportunity. The present investigation was carried out by the DGAP from 27.07.2018 to 31.05.2019.

5. The time limit to complete the investigation was extended up to 09.03.2020 by this Authority vide its order dated 02.12.2019 in terms of Rule 129 (6) of the CGST Rules, 2017.

6. In response to the NOI dated 25.06.2019 issued by the DGAP, the Respondent has submitted his replies vide letters/e-mails dated 02.07.2019, 17.07.2019, 26.07.2019, 08.08.2019, 19.08.2019, 30.09.2019, 14.10.2019, 12.11.2019, 06.12.2019, 11.12.2019, 20.12.2019, 23.12.2019, 24.01.2020 and 25.02.2020. The replies of the Respondent have been summed up by the DGAP as follows:-

- a) That the Respondent has been engaged in the business of manufacture and supply of Paints, Thinners and Varnishes and was supplying the subject goods viz. "Thinner Finish Covered under HSN Code 3814" and "SP EP Primer Grey Covered under HSN Code 3208".
- b) That the Respondent had changed the rate of GST from 28% to 18% on supply of Thinner covered under HSN Code 3814 with effect from 15.11.2017 as per the Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 and SP EP Primer Grey covered under the HSN Code 3208 with effect from 27.07.2018 as per the Notification No. 18/2018 Central Tax (Rate) dated 26.07.2018.
- c) That the basic selling rate of SP EP Primer Grey was increased from Rs. 773.09/- to Rs. 804.13/- in respect of 4 Ltr. Pack and from Rs. 198.85/- to Rs. 207.58/- for the 1 Ltr. Pack with effect from



18.06.2018, earlier than the date of Notification No. 18/2018 Central Tax (Rate) dated 26.07.2018.

- d) That there was no change/increase in the selling prices of the above products after the GST rate reduction Notification dated 26.07.2018.
- e) That the Respondent has not enjoyed any benefit on account of reduction in the rate of GST vide Notification dated 26.07.2018, in respect of the subject goods and has sold them after passing on the entire benefit arising out of reduction in the GST rate to his customers.
- f) That the products viz. IND PU (G) PRD White 20 Ltr. (V33683890), S Effect Soft Feel Clear 4 Ltr. (V48100060) and Durothane (G) Black 20 Ltr. (V33960090) were supplied only to the Industries and would not form part of his dealer's price list.

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

- (a) Copies of GSTR-1 Returns for the period from July, 2018 to May, 2019.
- (b) Copies of GSTR-3B Returns for the period from July, 2018 to May, 2019.
- (c) Invoice details of outward taxable supplies of all the products impacted by the GST rate reduction w.e.f. 27.07.2018 during the period from June, 2018 to May, 2019 as per the format mentioned in the Notice dated 25.06.2019.
- (d) Price Lists of the products under investigation, pre and post 27.07.2018.

(e) Electronic Credit Ledger for the period from June, 2018 to May, 2019.

(f) Input Tax Register for the period from June, 2018 to May, 2019.

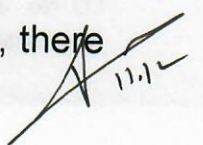
8. The Respondent had claimed confidentiality of all the data/information furnished by him, in terms of Rule 130 of the CGST Rules, 2017. The application filed by the Applicant No. 1, the various submissions of the Respondent and the documents/evidence on record had been examined by the DGAP and it was observed that the main issue for determination was whether the rate of GST on the goods supplied by the Respondent was reduced from 28% to 18% w.e.f. 27.07.2018 and if so, whether the Respondent had passed on the benefit of such reduction in GST rate to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
9. It was noted by the DGAP that the Central Government had reduced the GST tax rate of the product "SP EP Primer Grey" covered under HSN Code 3208 supplied by the Respondent by reducing the rate of GST from 28% to 18% w.e.f. 27.07.2018, vide Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018 and "Thinner for Finish" covered under HSN Code 3814 by reducing the rate of GST from 28 % to 18% with effect from 15.11.2017 (vide notification No. 41/2017 Central Tax (Rate) dated 14.11.2017). During the investigation by the DGAP, it was noticed that in the Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018, there was no change in the GST rate in respect of the goods covered under the HSN Code 3814 as the same were not mentioned in the said notification. As the said goods were not



impacted by the reduction in GST rate effective from 27.07.2018, they were kept out of the purview of the calculation of profiteering. The goods covered under the following HSN codes

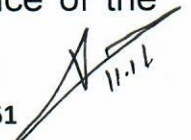
- 3208 - *Paints and Varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium;*
- 3209 - *Paints and Varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in an aqueous medium;*
- 3210 - *Other Paints and Varnishes (including enamels, lacquers and distempers); prepared water pigments of a kind used for Finishing leather”;*
- 3214 - *Glaziers’ putty, grafting putty, resin cements, caulking compounds and other mastics; painters’ fillings; non- refractory surfacing preparations for facades, indoor walls, floors, ceilings or the like”;*

were impacted by the Notification No. 18/2018-Central Tax (Rate) dated 26.07.2018, as was mentioned in the NOI and therefore only the goods with the HSN Codes as mentioned above were verified for the price changes post rate reduction w.e.f. 27.07.2018 and for the calculation of the amount of profiteering. The DGAP had also examined Section 171 (1) of the above Act, which governed the anti-profiteering provisions and stated that the legal requirement was abundantly clear under the above Section which required that in the event of benefit of input tax credit or reduction in the rate of tax, there

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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 Input Tax Credit. This was the legally prescribed mechanism to pass on the benefit of input tax credit or reduction in rate of tax to the recipients under the GST regime. Moreover, the said Section 171 simply did not provide a supplier of goods or services, any other means of passing on the benefit of input tax credit or reduction in rate of tax to the consumers.

10. The DGAP has also stated that the issue that remained to be investigated was the quantification of profiteering, if any by the Respondent, in terms of Section 171 of the CGST Act, 2017. On scrutiny of the outward sales data submitted by the Respondent, it was noticed by the DGAP that the base prices of the subject goods were increased by the Respondent when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018, so that the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in prices. The methodology adopted for determining the amount of profiteering has been explained by the DGAP by illustrating the calculation in respect of the specific item viz. "SP EP Primer Grey (V13160450)" sold during the month of July, 2018. The total taxable value of the above mentioned product (pre-GST rate reduction) was taken and an average base price was obtained by dividing the total taxable value by total quantity of this item sold during the pre-rate reduction period. The average base price of this item was compared with the actual selling price of the



same item sold during the post-GST rate reduction period i.e. on or after 27.07.2018, as has been illustrated in the Table-A below:-

TABLE- 'A'

(Amount in Rs.)

Sr. No.	Description	Factors	Pre Rate Reduction (Before 27.07.2018)	Post Rate Reduction (from 27.07.2018)
1	Product Description	A	SP EP Primer Grey (V13160450)	
2	Notification No.	B	18/2018 Central Tax (Rate) dated 26.07.2018	
3	Total Quantity of item sold	C	4266	
4	Total taxable value	D	877354.2	
5	Average base price (without GST)	$E=D/C$	205.66	
6	GST Rate	F	28%	18%
7	Commensurate Selling price (post Rate reduction-with GST)	$G=E*1.18$		242.68
8	Invoice No.	H		9520012893
9	Invoice Date	I		28.07.2018
10	Total Quantity (above invoice)	J		60
11	Total Taxable Value	K		12454.8
12	Actual Selling price per unit(without GST)	$L=K/J$		207.58
13	Excess amount charged or profiteering	$M=(L-E) * 1.18$		2.26
14	Total Profiteering	$N=M*J$		135.79

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From the above Table, it was claimed by the DGAP that the Respondent did not reduce the selling price of the "SP EP Primer Grey (V13160450)" 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 and hence he has profiteered an amount of Rs. 135.79/- on the Invoice No. 9520012893 raised post GST rate reduction and thus it appeared that 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 above Act. On the basis of above calculation as illustrated in Table-A above, profiteering in case of all the impacted goods supplied by the Respondent during the period from 27.07.2018 to 31.05.2019 has been arrived at in the similar way. As per the outward sales data submitted by the Respondent, the DGAP has observed that approximately 90 products were not sold before 27.07.2018 and accordingly they were construed as new products launched by the Respondent post GST rate reduction and therefore they have been kept out of the purview of anti-profiteering provisions.

11. The DGAP has also observed that 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 impacted goods during the period from 27.07.2018 to 31.05.2019, as furnished by the Respondent, the amount of net higher sales realization due to increase in the base prices of these goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 10,52,07,669.50.

12. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 10,52,07,669.50 has been furnished by the DGAP in Table-B given below:-

TABLE- 'B'

Sr. No.	State (Place of supply)	Profiteering (Amt. in Rs.)
1	01-Jammu & Kashmir	793152.42
2	02-Himachal Pradesh	69712.00
3	03-Punjab	2803440.18
4	04-Chandigarh	506644.67
5	05-Uttarakhand	434021.94
6	06-Haryana	5505011.57
7	07-Delhi	3113577.71
8	08-Rajasthan	2546917.70
9	09-Uttar Pradesh	3799295.58
10	10-Bihar	327807.53
11	11-Sikkim	61318.16
12	13-Nagaland	55841.59
13	14-Manipur	30919.57
14	15-Mizoram	5206.88
15	17-Meghalaya	15643.36
16	18-Assam	142098.87
17	19-West Bengal	1074170.32
18	20-Jharkhand	241444.64
19	21-Odisha	85144.56
20	22-Chhattisgarh	17416.68
21	23-Madhya Pradesh	1301007.59
22	24-Gujarat	8479498.91
23	26-Dadra & Nagar Haveli	474.86

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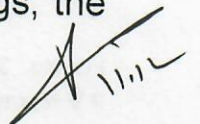
24	27-Maharashtra	3866935.01
25	29-Karnataka	7473809.83
26	30-Goa	752856.32
27	32-Kerala	35618936.68
28	33-Tamil Nadu	20452449.49
29	34-Pondicherry	1530349.49
30	35-Andaman & Nicobar Islands	147056.03
31	36-Telangana	2918964.01
32	37-Andhra Pradesh	1036545.30
	Total	105207669.50

The aforesaid profiteered amount has been calculated by the DGAP by comparing the average of the base prices of the impacted goods sold during the period from 01.07.2018 to 26.07.2018 with the actual invoice-wise base prices of such goods sold during the period from 27.07.2018 to 31.05.2019. The excess GST so collected from the recipients has also been included in the aforesaid profiteered amount as the excess prices collected from the recipients also included the GST charged on the increased base prices.

13. The DGAP has further stated that in this case, the allegation of the Applicant No. 1 was that the base prices of the subject goods were increased when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018 but the benefit of such reduction in GST rate was not passed on to the recipients by way of commensurate reduction in prices. From the investigation conducted by the DGAP he has claimed that the allegation of profiteering by way of increasing the base prices of the products w.e.f. 27.07.2018 was sustainable

against the Respondent. Thus, by increasing the base prices of the goods subsequent to the reduction in the GST rate, the commensurate benefit of reduction in the GST rate from 28% to 18%, was not passed on to the recipients. The total amount of profiteering on account of contravention of the provisions of Section 171 of the CGST Act, 2017 covering the period from 27.07.2018 to 31.05.2019 has been computed as Rs. 10,52,07,669.50 by the DGAP.

14. In view of the aforementioned findings, the DGAP has contended that Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that *"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"*, has been contravened by the Respondent in the present case.
15. The DGAP has also submitted that any reference to the Central Goods and Services Act, 2017 and the Central Goods and Service Tax Rules, 2017, would also include a reference to the corresponding provisions made under the relevant SGST/UTGST/IGST Acts and the Rules.
16. The above Report was considered by this Authority in its meeting held on 03.03.2020 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 20.03.2020. The Respondent was issued notice on 05/06.03.2020 to explain why the above Report of the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the proceedings, the



Respondent has filed written submissions dated 19.06.2020 which have been discussed in the subsequent paras.

17. The Respondent has contended that he was engaged in the business of manufacture and supply of paints, thinners and varnishes. The Respondent was supplying and has continued to supply to dealers items like "Thinner Finish" covered under HSN Code 3814 and "SP EP Primer Grey" covered under HSN Code 3208. The Respondent was selling the subject goods only to the dealers and did not sell them directly to the individual customers. The Respondent has also contended that an investigation had been initiated against him based on the complaint filed by the Applicant No. 1 who has alleged that the prices of the product "SP EP Primer Grey" and "Thinner for Finish" supplied by the Respondent remained unchanged or were increased even after reduction in the rate of GST from 28% to 18% w.e.f. 27.07.2018 vide Notification No. 18/2018- Central Tax (Rate) dated 26.07.2018 and that the benefit of such tax rate reduction was not passed on by the Respondent to the recipients by way of commensurate reduction in the prices. The relevant period in question was between 27.07.2018 to 31.05.2019. The Respondent has further contended that he was not even supplied copy of the said complaint during the proceedings before the DGAP. It was only post issuance of the Report dated 27.02.2020 and request letter and e-mail both dated 11.03.2020 to this Authority and the request letter dated 12.03.2020 from the Respondent to the DGAP, when the copy of the complaint had been furnished to him via e-mail on 19.05.2020. The Respondent has also stated that he had furnished the data



sought by the DGAP along with the letter dated 19.08.2019 annexing sample invoices, price lists, CA Certificate, data pertaining to GSTRs and Ledgers. Subsequently, the DGAP had filed the Report dated 27.02.2020 alleging that the Respondent has contravened Section 171(1) of the CGST Act, 2017 by not passing on the benefit of reduction in the rate of tax to the recipients of the goods. The main issue framed in paragraph 12 of the DGAP's Report was as under:-

"The determination of the intention of profiteering is whether the rate of GST on goods supplied by the Respondent was reduced from 28% to 18% w.e.f. 27.07.2018 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 Central Goods and Services Tax Act, 2017."

18. The Respondent has further stated that the investigation and findings of the DGAP have proceeded on a wholly erroneous basis that the base prices of the subject goods were increased by the Respondent when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018.
19. The Respondent has also claimed that the complaint clearly showed that it sought to compare the prices of SP EP Primer Gray of Batch No. 23088 manufactured in May, 2018 and Batch No. 23984 manufactured in August, 2018. The price difference in the above batches was easily explainable by the fact that the basic selling price was increased w.e.f. 18.06.2018 in the ordinary course of business

and thereafter when the GST rate was reduced from 28% to 18% vide Notification No. 18/2018-CT(R) w.e.f. 26.07.2018, the GST was reduced and consequently the MRP (inclusive of taxes) also stood reduced. Therefore, the complaint as well as the DGAP's Report was without any factual basis as was clear from the data set out in the Table No. 1 given below:-

Table No. 1

SP EP PRIMER GREY – 1 Litre

S. No.		Prior to 18.06.2018	From 18.06.2018 to 26.07.2018	From 27.07.2018 to 31.10.2018	Post 01.11.2018 till 31.05.2019
1.	Basic Price to Dealers as per Price List	Rs. 205/-	Rs. 214/-	Rs. 214/-	Rs. 220/-
2.	Discount offered to Dealers	Rs. 6.15	Rs. 6.42	Rs. 6.42	Rs. 6.60
3.	Basic rate to dealers net of discount	Rs. 198.85/-	Rs. 207.58/-	Rs. 207.58/-	Rs. 213.40/-
4.	GST %	28%	28%	18%	18%
5.	GST	Rs. 55.68	Rs. 58.12	Rs. 37.36	Rs. 38.41
6.	Total price to dealers including GST	Rs. 254.53/-	Rs. 265.70/-	Rs. 244.94/-	Rs. 251.81/-
7.	MRP	Rs. 321/-	Rs. 343/-	Rs. 323/-	Rs. 332/-

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8.	Sample Invoice Number and Date	9400009591 dated 03.04.2018	9510007761 dated 23.07.2018	9520012893 dated 28.07.2018	9430011189 dated 08.11.2018
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Table No. 2

SP EP PRIMER GREY – 4 Litre

S. No.		Prior to 18.06.2018	From 18.06.2018 to 26.07.2018	From 27.07.2018 to 31.10.2018	Post 01.11.2018 till 31.05.2019
1.	Basic Price to Dealers as per Price List	Rs. 797/-	Rs. 829/-	Rs. 829/-	Rs. 854/-
2.	Discount offered to Dealers	Rs. 23.91	Rs. 24.87	Rs. 24.87	Rs. 25.62
3.	Basic Rate net of discount	Rs. 773.09/-	Rs. 804.13/-	Rs. 804.13/-	Rs. 828.38/-
4.	GST %	28%	28%	18%	18%
5.	GST	Rs. 216.47/-	Rs. 225.16/-	Rs. 144.74/-	Rs. 149.11/-
6.	Total price including GST	Rs. 989.56/-	Rs. 1,029.29/-	Rs. 948.87/-	Rs. 977.49/-
7.	MRP	Rs. 1,245/-	Rs. 1,327/-	Rs. 1,252/-	Rs. 1,290/-
8.	Sample Invoice Number and Date	9510006501 dated 17.05.2018	9550004559 dated 21.07.2018	9510008389 dated 28.08.2018	9190003440 dated 28.12.2018

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The Respondent has submitted from the above Tables that the MRP was affixed on the product at the time of manufacture. Hence, the batches of SP EP Primer Grey manufactured prior to 18.06.2018, but sold subsequent to 18.06.2018, would be sold at the price prevailing at the time of manufacture (and would not reflect the price change). There was no change in basic price of the product contemporaneous to Notification No. 18/2018- Central Tax (Rate) dated 26.07.2018. The rise in the basic price of the product that took place on 18.06.2018 and 01.11.2018 was in the ordinary and usual course of business. It was evident that there was a price revision of the product in the month of June 2018 in the ordinary course of business wherein the MRP of Rs. 321/- was changed to Rs. 343/-. Subsequently on 27.07.2018 the Respondent has reduced his MRP from Rs. 343/- to 323/ commensurate with the reduction in the GST. The Respondent has only made direct sales of the subject goods to the dealers and has never made any direct sales to the customers. The dealers who were independent legal entities and separately registered for the purposes of GST, in turn made sales to the customers. The Respondent has submitted the price changes in respect of the subject goods as is given below:-

Table No. 3

Subject Goods	Basic Price as per MRF Price List to Dealers	MRP (Inclusive of taxes)
Batch No. 23088 of 'SP EP Primer Grey' that reflects the price of the subject goods from 01.04.2018 to 18.06.2018	SP EP Primer Grey a. 1 Ltr. Pack – Rs. 205/- b. 4 Ltr. Pack – Rs. 797/-	SP EP Primer Grey a. 1 Ltr. Pack – Rs. 321/-

<p>(prior to basic price change in the ordinary course of business w.e.f. 18.06.2018)</p>	<p>[See the following evidences:</p> <ul style="list-style-type: none"> • MRF Net Billing Price List w.e.f. 01.01.2018, annexed herewith as <u>Exhibit A-15</u> at page 40 of the Typed set of documents. • Sample Invoices dated 03.04.2018, 12.04.2018, 23.04.2018 and 03.05.2018 reflecting the base price of SP EP Primer, 1 Ltr. Pack as Rs. 205/-, annexed as <u>Exhibit A-16 ('Colly')</u> at page 48 of the Typed set of documents; • Sample invoice dated 17.05.2018 reflecting the price of SP EP Primer Grey, 4 Ltr. Pack as Rs. 797/- annexed as <u>Exhibit A-17</u> at page 52 of the Typed set of documents] 	<p>b. 4 Ltr. Pack – Rs. 1,245/-</p> <p>[See the following evidences: Photo of the subject goods purchased by the complainant, annexed along with the complaint copy in <u>Exhibit A-5</u> at page 8 of the Typed set of documents.]</p>
<p>Batch No. 23871 of 'SP EP Primer Grey' that reflects the price of the subject goods w.e.f. 18.06.2018 (post the basic price change in the ordinary course of business w.e.f. 18.06.2018)</p>	<p>SP EP Primer Grey</p> <p>a. 1 Ltr. Pack – Rs. 214/-</p> <p>b. 4 Ltr. Pack – Rs. 829/-</p> <p>[See the following evidences:</p> <ul style="list-style-type: none"> • Sample Invoices dated 23.07.2018, 20.06.2018, 	<p>SP EP Primer Grey</p> <ul style="list-style-type: none"> • 1 Ltr. Pack – Rs. 343/- • 4 Ltr. Pack – Rs. 1,327/- <p>[See the following evidences:</p> <ul style="list-style-type: none"> • MRF's MRP List w.e.f. 01.06.2018 annexed hereto as

	<p>and 27.06.2018 reflecting the base price of SP EP Primer, 1 Ltr. Pack as Rs. 214/-, annexed as <u>Exhibit A-18 ('Colly')</u> at page 53 of the Typed set of documents;</p> <ul style="list-style-type: none"> • Sample Invoices dated 21.07.2018, 27.06.2018 reflecting the base price of SP EP Primer, 4 Ltr. Pack as Rs. 829/-, annexed as <u>Exhibit A-19 ('Colly')</u> at page 56 of the Typed set of documents] 	<p><u>Exhibit A-20</u> at page 58 of the Typed set of documents. (<u>which took effect from 18.06.2018 based on the internal discussions in the Company</u>);</p> <ul style="list-style-type: none"> • MRF's Dealers Price List dated 01.06.2018 (<u>which took effect from 18.06.2018 based on the internal discussions in the Company</u>) is annexed hereto as <u>Exhibit A-21</u> at page 66 of the Typed set of documents; • Photo of SP EP Primer Grey, 1 Ltr. Pack manufactured on 07.2018 of Batch number 23871, annexed hereto as <u>Exhibit A-22</u> at page 74 of the Typed set of documents]
<p>Batch No. 23894 of 'SP EP Primer Grey' that reflects the price of the subject goods (post GST rate reduction from 28%</p>	<p>SP EP Primer Grey a. 1 Ltr. Pack – Rs. 214/-</p>	<p>SP EP Primer Grey • 1 Ltr Pack – Rs. 323/-</p>

to 18% vide Notification no.
18/2018-CT(R) w.e.f.
26.07.2018)

**b. 4 Ltr. Pack – Rs.
829/-**

[See the following evidences:

- Sample Invoices dated 28.07.2018, and 30.07.2018, 04.08.2018 reflecting the base price of SP EP Primer, 1 Ltr. Pack as Rs. 214/-, annexed as **Exhibit A-23 ('Colly')** at page 75 of the Typed set of documents;
- Sample Invoices dated 04.08.2018 reflecting the base price of SP EP Primer, 4 Ltr. Pack as Rs. 829/-, annexed as **Exhibit A-24 ('Colly')** at page 78 of the Typed set of documents]

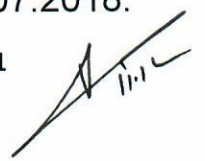
**• 4 Ltr Pack – Rs.
1525/-**

[See the following evidences:

- MRF's MRP List w.e.f. 26.07.2018 annexed hereto as **Exhibit A-25** at page 79 of the Typed set of documents;
- Copy of letter dated 27.07.2018 from MRF Corp Ltd. to dealers regarding the price reduction on account of reduction in GST rate, annexed as **Exhibit A-26** at page 87 of the Typed set of documents;
- Copy of CA certificate dated 19.08.2019 which certifies that the Company/MRF has changed the GST rate from 28% to 18% on the subject goods and that there is no change/increase in the selling price of the subject goods, is

		annexed as Exhibit A-27 at page 88 of the Typed set of documents;
'SP EP Primer Grey' - the price of the subject goods w.e.f. 01.11.2018 (post the basic price change in the ordinary course of business w.e.f. 01.11.2018)	<p>SP EP Primer Grey</p> <p>a. 1 Ltr. Pack – Rs. 220/-</p> <p>b. 4 Ltr. Pack – Rs. 854/-</p> <p>[See the following evidences:</p> <ul style="list-style-type: none"> • MRF's Dealer Price List w.e.f. 01.11.2018 annexed as Exhibit A-28 at page 89 of the Typed set of documents; • Sample Invoices dated 08.11.2018 reflecting the base price of SP EP Primer, 1 Ltr. Pack as Rs.220/-, annexed as Exhibit A-29 ('Colly') at page 97 of the Typed set of documents; • Sample Invoices dated 28.12.2018 reflecting the base price of SP EP Primer, 4 Ltr. Pack as Rs.854/-, annexed as Exhibit A-30 at page 99 of the Typed set of documents] 	<p>SP EP Primer Grey</p> <p>a. 1 Ltr. Pack – Rs. 332/-</p> <p>b. 4 Ltr. Pack – Rs. 1290/-</p>

The Respondent has also contended from the Table given above that the base prices of the subject goods had been increased much prior to the decrease in the GST rate vide Notification dated 26.07.2018.



He has also pointed out that post the above Notification the subject goods lying in the stock on 27.07.2018 were printed with reduced MRP stickers as per the printed MRP List. The revision in the MRP as per the above Notification was also communicated to all the dealers vide letter dated 27.07.2019. The Respondent has further contended that the edifice of the entire DGAP Report was that the base prices of the subject goods were increased by the Respondent when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018, which was:

- a. Wholly incorrect and contrary to the facts and evidence on record led by the Respondent.
 - b. The increase in base prices of the subject goods happened w.e.f. 18.06.2018 which was much prior to the date of implementation of the above Notification w.e.f. 27.07.2018. During the period of investigation between 27.07.2018 to 31.05.2019, there was only one increase in the basic prices of the subject goods which took place on 01.11.2018, which was in the ordinary and usual course of business, and
 - c. The Department's allegation that there has been an increase in the base prices of the subject goods w.e.f. 27.07.2018 was not based on any evidence/record.
20. The Respondent has also averred that since the copy of the complaint was not provided to him during the DGAP's proceedings, the proceedings in their entirety have been conducted in violation of the principles of natural justice. While the foundation of the case against the Respondent had not been made known to the

Respondent, at the same time the Respondent had been called upon to answer allegations against him. He has also claimed that the Hon'ble Supreme Court in the case of **CCE v. Brindavan Beverages 2007 (213) ELT 487 (SC)**, has *inter-alia* held that:-

"... The show cause notice is the foundation on which the department has to build up its case. If the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/or unintelligible that is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice".

(Emphasis supplied)

21. The Respondent has further averred that during the proceedings before the DGAP, he had orally requested for a copy of the complaint but no copy had been provided to him. The DGAP vide his letter dated 25.06.2019 had permitted the Respondent to inspect the complaint between 01.07.2019 to 03.07.2019 in his office, however, since the concerned officer of the Respondent was posted at Chennai, the Respondent could not avail that opportunity. The Respondent was under the bona fide understanding that after providing the various details sought by the DGAP, a request could subsequently be made for furnishing copy of the complaint, which the Respondent did during the discussions held with the Investigating Officer. However, during the investigation, the DGAP had not shown the complaint on the pretext that the same was not available in the file and it would be sent to the Respondent at a later point in time. He



has also claimed that it was a well settled principle of law that a Respondent must be well informed of the allegations against him and must be given adequate copies of all the relevant material and evidence against him. Reliance in this regard has been placed on the following decisions by the Respondent:-

- a) ***Alembic Glass Industries Ltd. v. Union Of India 1989 (43) ELT 16 (Guj.)*** wherein the Hon'ble High Court of Gujarat has held as follows:-

"3. ... The petitioners were throughout making a grievance that the failure on the part of the department to supply the said clarification had caused prejudice as it deprived them of the opportunity of effectively answering the show cause notice issued by the department. They also complained that this conduct on the part of the department was in utter violation of the principles of natural justice. As pointed out earlier, there is a specific mention about this contention in the order of the Assistant Collector but he has failed to meet with the same. Mr. Gupta also pointed out that he has raised the same contention in the memo of appeal but even the Collector (Appeals), Bombay has failed to come to grips with the same. It is, therefore, obvious that the complaint of the petitioners that the failure on the part of the department to furnish a copy of the Ministry's clarification was in violation of the principles of natural justice and caused prejudice to the petitioners inasmuch as the petitioners were unable to effectively reply to the show cause notices went unheeded."

ground 6 of the petition this contention has been specifically raised but if we turn to paragraph 5 of the counter, we find that this ground has not been answered although grounds 1 to 5 and 7 have been answered. It follows, therefore, that the department has no answer to the contention. **In the result we feel that both the orders of the Assistant Collector as well as the Collector (Appeals), Bombay must be struck down as being in violation of the principles of natural justice.**

(Emphasis Supplied)

- b) ***Noble Import Pvt. Ltd. v. Union Of India 2017 (349) ELT 44 (AP)*** wherein the Hon'ble High Court of Andhra Pradesh has held as follows:-

"20. Even otherwise, failure to furnish the documents, referred in the adjudicating order, to the petitioner herein is in violation of principles of natural justice which are those rules laid down by Courts as affording the minimum protection of the rights of the individual against the arbitrary procedure adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent this Authority from being unjust. [Nagarjuna Construction Co. Ltd. v. Govt. of A.P. - (2008) 16 SCC 276]. Rules of natural justice are not codified canons. They are principles ingrained in the conscience of man. Justice is based substantially on natural ideals and human values. It is the substance of justice which should determine its form. Adherence



to principles of natural justice, as recognised by all civilised States, is of supreme importance when a statutory authority embarks on any administrative action involving civil consequences. (Nagarjuna Construction Co. Ltd.).

21. An order passed by a statutory authority, which would visit a person with civil or evil consequences, must meet the test of reasonableness. [Banaras Hindu University v. Shrikant_- (2006) 11 SCC 42; Kothari Filaments v. Commr. of Customs -_(2009) 2 SCC 192]. The concept of fairness would require the adjudicating authority to furnish copies of those documents on which he has placed reliance. To this extent, the principles of natural justice and concept of fairness are required to be read into the Rules. **A person, to whom a notice is issued, is always entitled to satisfy the adjudicating authority that those very documents, upon which reliance has been placed, do not make out even a prima facie case requiring any further action.** [Natwar Singh v. Director of Enforcement - (2010) 13 SCC 255].
22. **Documents, relied on by this Authority, are required to be furnished to the person, on whom a notice is served, enabling him to show proper cause as to why action should not be taken against him.** (Natwar Singh). The Customs Act does not prohibit application of principles of natural justice. The Customs authorities (adjudicating authorities) cannot pass orders on the basis of material known only to them, copies whereof were not supplied to the petitioner. **A person, against whom an order is passed, is entitled to a proper hearing which would include supply of the documents relied upon by the adjudicating**

authority. Only on knowing the contents of the documents, can he furnish an effective reply. Where the adjudicating authority intends to rely on certain documents, he should supply copies thereof to the person against whom action is intended to be taken. (Kothari Filaments). Reliance placed on documents, not made available to the assessee, violates principles of natural justice; and necessitates the impugned order being set aside on this ground also.”

(Emphasis Supplied)

- c) ***Kumho Petrochemicals Co. Ltd. v. Designated Authority 2015 (322) ELT 514 (Tri.-Del.)*** wherein the Hon'ble Tribunal has held as under:-

“20. In the light of the foregoing, we are of the view that this Authority rightly rejected the price of 4ADPA from Sinorgchem, and opted for construction of normal value, based on the international price of 4ADPA. However, having rightly rejected the 4ADPA price from China and opting for construction of normal value based on the international price of 4ADPA, it was incumbent on this Authority to make adequate disclosure, and call for information/comments from the interested parties as regards evidence of international price. We find that the domestic industry had brought on record evidence of the import prices of 4ADPA from Germany to India. But this Authority before recording the Final Findings, did not give opportunity to the

other interested parties, to comment on acceptability/appropriateness of such evidence. To this extent, this Authority has not observed due process and violated the principles of natural justice and adversely affected the rights of the Korean exporter. We also find merit in the submission of domestic industry, that the methodology followed for fixation of export price, normal value, and dumping margin has not been given in sufficient detail, to enable them to offer meaningful comments....”

(Emphasis Supplied)

The Respondent has also stated that it was well settled law that when the Respondent was not supplied with copies of documents relied upon by the Department, the demand notice was liable to be set aside for violation of principles of natural justice. Reliance in this regard was placed by the Respondent on the following decisions:-

- d. ***PGO Processors Private Limited v. Commissioner C. Ex. 2000 (122) ELT 26 (Raj.)***; and
- e. ***Commissioner of Central Excise Jorhat v. Kothari Products Ltd. 2009 (245) ELT 790 (Tri. - Kolkata)***

The Respondent has also stated that only post issuance of the Report dated 27.02.2020 of the DGAP and the request letter dated 12.03.2020 from the Respondent to the DGAP and the request letter and e-mail both dated 11.03.2020 to this Authority, was a copy of the complaint furnished by e-mail to the Respondent on 19.05.2020

which clearly showed that the proceedings before the DGAP were conducted in gross violation of the principles of natural justice.

22. The Respondent has further stated that he only made direct sales of the subject goods to the dealers and did not make any direct sales to the individual customers and therefore, the initiation of proceedings on the basis of a complaint from an individual who was not a customer or 'recipient' of supplies of the subject goods from the Respondent as defined under section 2 (93) (a) of the above Act, was without jurisdiction. The term 'recipient' of supply of goods or services has been defined under Section 2 (93) (a) as under:

“(93) “recipient” of supply of goods or services or both, means —

*(a) where a consideration is payable for the supply of goods or services or both, **the person who is liable to pay that consideration;***

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;”

(Emphasis Supplied)

23. The Respondent has also argued that the anti-profiteering provisions were also focused on passing on the benefit of reduction in the rate of tax or the benefit of ITC to the 'recipient' by way of commensurate reduction in prices which was clear from Section 171 of the CGST Act, which provided as follows:-

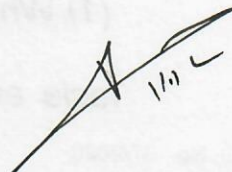
"Section 171. Anti-profiteering measure-

(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.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the **price of the goods or services or both supplied by him.**

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

[(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said subsection comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:



Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by this Authority.

Explanation. — For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit **to the recipient** by way of commensurate reduction in the price of the goods or services or both.]”

(Emphasis Supplied)

He has also claimed that the fact that the anti-profiteering provisions were focused on ‘recipient’ was also evident from Rule 127 (1) (i) & (ii), 129 (1) and 129 (2) of the CGST Rules, which provided as under:

“Rule 127. Duties of this Authority. — It shall be the duty of this Authority,-

(i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been **passed on to the recipient by way of commensurate reduction in prices;**

(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit **to the recipient by way of commensurate reduction in prices;**

Rule 129. Initiation and conduct of proceedings. —

(1) Where the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the



benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation.

(2) The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.”

(Emphasis Supplied)

24. The Respondent has further argued that the complainant was not even an ‘interested party’ in the facts of the present case and there was no allegation or finding in the DGAP’s Report that the complainant was an ‘interested party’ in the present case. An ‘interested party’ has been defined under Explanation (c) to Rule 137 of the CGST Rules, which reads as under:

“Rule 137- Tenure of this Authority-

Explanation. — For the purposes of this Chapter,

(c) “interested party” includes -

a. suppliers of goods or services under the proceedings; and

b. recipients of goods or services under the proceedings;

[c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input



tax credit to the recipient by way of commensurate reduction in prices.]

(Emphasis Supplied)

Thus, even for the complainant to be an 'interested party' in the present proceedings, the DGAP's Report should have established that the complainant was the 'recipient' of the goods from the Respondent under the present proceedings. In the absence of such a finding, the complaint against the Respondent itself was without any basis in law and was not maintainable. The Respondent has also submitted that since he has not made any supply of the subject goods to the Applicant No. 1, nor has he paid any consideration to the Respondent, therefore, he was not a recipient in terms of section 2 (93) (a) of the CGST Act.

The Respondent has also contended that as there was no transaction of supply of subject goods between him and the Applicant No. 1 nor any relationship of 'supplier' and 'recipient' between the parties, the question of passing on the benefit of reduction in the rate of tax did not arise and there was no foundational basis for the invocation of the provisions of Section 171 of the CGST Act. The DGAP could not assume jurisdiction without first determining this jurisdictional fact. Reliance in this regard has been placed by the Respondent on the following decisions:-

a. ***Arun Kumar and Others v. Union of India and Others (2007) 1***

SCC 732, wherein the Hon'ble Supreme Court has held as follows:

“41. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

42. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.”

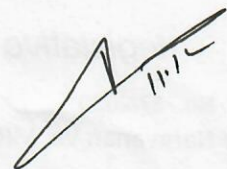
b. New Decent Footwear Industries v. Union Of India 2002 (150)

ELT 71 (Del.), wherein the Hon'ble Delhi High Court held as follows:

“29. A statutory authority, as is well known, must exercise its jurisdiction within the four corners of the Statute. It is indeed trite that before a statutory authority exercises its jurisdiction, the jurisdictional facts therefore must exist.

30. It is also well settled that with a view to ascertain as to whether such jurisdictional facts exist or not, the statutory authority must pose onto itself the right question so as to enable it to arrive at correct findings of fact.”

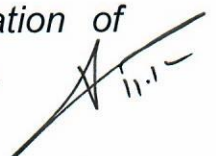
The Respondent has therefore submitted that the very initiation of proceedings on the basis of a complaint from an individual who was not a customer or 'recipient' of supplies of subject goods from the Respondent, was without jurisdiction.



25. The Respondent has also stated that in the absence of prescription of any methodology to compute the anti-profiteering, the initiation of proceedings was ex-facie illegal. No methodology for computation of anti-profiteering has been prescribed under the CGST Act. It was well settled law that the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices, was an essential legislative function, and, the same couldn't be delegated. Reliance in this regard has been placed on the following decisions:-

c. Decision of the Hon'ble Supreme Court in ***In re: The Delhi Laws Act AIR 1951 332 SC*** wherein it has *inter-alia* been held that:-

"The essentials of a legislative function are the determination of the legislative policy and its formulation as a rule of conduct and these essentials are the characteristics of a legislature by itself. Those essentials are preserved when the legislature specifies the basic conclusions of fact upon the ascertainment of which from relevant data by a designated administrative agency it ordains that its statutory command is to be effective. The legislature having thus made its laws, every detail for working it out and for carrying the enactment into operation and effect may be done by the legislature or may be left to another subordinate agency or to some executive officer. While this is also sometimes described as delegation of legislative powers, in essence it is different from delegation of



legislative power as this does not involve the delegation of the power to determine the legislative policy and formulation of the same as a rule of conduct.”

d. Decision of the Hon'ble Supreme Court in ***Hamdard Dawakhana v. Union of India AIR 1960 SC 554*** wherein it has *inter-alia* been held that:-

“33. ...Consequently, when the rule-making authority specifies conditions and diseases in the Schedule it exercises the same delegated authority as it does when it exercises powers under subsection (1) and makes other rules and therefore it is delegated legislation. **The question for decision then is, is the delegation constitutional in that the administrative authority has been supplied with proper guidance. In our view the words impugned are vague. Parliament has established no criteria, no standards and has not prescribed any principle on which a particular disease or condition is to be specified in the Schedule.** It is not stated what facts or circumstances are to be taken into consideration to include a particular condition or disease. The power of specifying diseases and conditions as given in Section 3(d) must therefore be held to be going beyond permissible boundaries of valid delegation. As a consequence the Schedule in the rules must be struck down. But that would not affect such conditions and diseases which properly fall within the four clauses of Section 3 excluding the portion of clause (d) which has been declared to be unconstitutional.”

(Emphasis Supplied)

e. Decision of the Hon'ble Supreme Court in **Godavat Pan Masala v. Union of India 2004 (7) SCC 68** wherein it has *inter-alia* been held that:-

"70. In our view, this is an argument of desperation. We cannot conceive of such wide-ranging powers vested in a local authority without there being sufficient guidelines as to the manner of deciding the policy and implementing it and elucidated in the statute itself. We may hasten to point out that even the power of the Central Government for making the rules under Section 23 is subject to the condition of consultation with the Central Committee for Food Standards constituted under Section 23 and placing of the rules before Parliament. If the power of the Food (Health) Authority is such as contended by the learned counsel for the State of Maharashtra, then its power would range sky-high without any limitation whatsoever. This Authority could ban any article, irrespective of whether it is used as food or otherwise, and irrespective of whether it is injurious to health or otherwise. To take an extreme illustration, if a State Food (Health) Authority in some local area had taken it into its head that consumption of tea, coffee or milk is not "in the interest of public health", it can issue an order of absolute prohibition irrespective of whether it is injurious to health or not. We do not think that the scheme of the Act warrants such an interpretation.

(Emphasis Supplied)



26. The Respondent has further stated that the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices, did not form part of the CGST Act and hence, no anti-profiteering proceedings could be initiated without an adequate machinery provision as the charge in itself would fail. Reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in *CIT v. B. C. Srinivasa Shetty (1981) 2 SCC 460*, *CCE v. Larsen and Toubro (2016) 1 SCC 170* and the decision of the Hon'ble Delhi High Court in *Suresh Kumar Bansal v. Union of India 2016 (43) STR 3 (Del.)*.

The Respondent has also claimed that without prejudice to the above, there were the following further legal infirmities in the Report of the DGAP:

- a. No methodology or procedure was prescribed in the CGST Rules or the "The National Anti-Profiteering Authority under the Goods and Services Tax (here-in-after referred to as this Authority) Methodology and Procedure, 2018."
- b. The legal requirement under section 171 (3) read with Rule 129 of the CGST Rules was for this Authority to determine the requisite methodology and procedure, which has not been done till date.

Rule 129 of the CGST Rules reads as under:



“126. Power to determine the methodology and procedure.- This Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.”

c. Absence of a prescribed methodology would lead to different methodologies being adopted for similar cases, leading to arbitrary approaches *qua* similarly placed assesses, which would be violative of Article 14 of the Constitution of India.

d. In the absence of the determination of the requisite methodology and procedure by this Authority, no anti-profiteering proceedings could be initiated as without an adequate machinery provision, the charge in itself would fail. Reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in ***CIT v. B. C. Srinivasa Shetty (1981) 2 SCC 460***, ***CIT v. Vatika Township 367 ITR 446 (SC)*** and ***Sunil Siddarthbhai v. CIT AIR 1986 SC 368***.

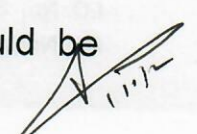
27. The Respondent has further claimed that reference could also be made to anti-dumping laws under the Customs Tariff Act, 1975 under which detailed guidelines to determine margin of dumping, injury margin, non-injurious price and the like have been provided in the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 which ensured that the adjudicating authority was not adopting arbitrary approach but rather, followed a legally fair process.

In the absence of requisite methodology and procedure, the conduct



of proceedings before the DGAP/other authorities was without jurisdiction. The edifice of the entire DGAP's Report that the base prices of the subject goods were increased by the Respondent when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018, was entirely erroneous. There has been no increase in the prices of 'SP EP Primer Grey' w.e.f. 27.07.2018. The change in basic prices took place on 18.06.2018 in the ordinary and usual course of business, much prior to the Notification dated 26.07.2018. During the period of investigation between 27.07.2018 to 31.05.2019, there was only one increase in the basic prices of the subject goods which took place on 01.11.2018, which was in the ordinary course of business. At the outset, the DGAP has only looked at the prices at which supplies of the subject goods were made by the Respondent to his dealers. The Applicant No. 1 was not a dealer or 'recipient' of supplies of subject goods made by the Respondent. The increase in basic prices applied to all the goods manufactured by the Respondent on or after 18.06.2018.

28. The Respondent has also stated that the methodology adopted by the DGAP based on the average prices of the subject goods prior to 27.07.2018 and post 27.07.2018 was wholly erroneous. When the actual prices of the subject goods were made available to the DGAP, the calculations made by using average prices were wholly erroneous. The average prices of the subject goods taken for the period prior to 27.07.2018 would have included the old base prices for the goods manufactured prior to 18.06.2018 but supplied thereafter and the new base prices for goods manufactured post 18.06.2018 and supplied post such date. The average would be

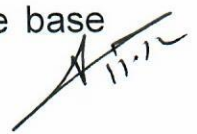


lesser than the average base prices of goods post 27.07.2018 as the price increase had happened for all the goods manufactured on or after 18.06.2018. During the period from 01.07.2018 to 26.07.2018 (pre 27.07.2018), the goods which were supplied by the Respondent to his dealers would have consisted of goods manufactured prior to 18.06.2018 and goods manufactured post 18.06.2018. Therefore, the supply would have been at different prices for this interregnum period alone. However, from the invoices of the goods manufactured post 18.06.2018 and supplied by the Respondent to the dealers, it was clear that the basic prices of subject goods manufactured and supplied post 18.06.2018 and manufactured and supplied post 27.07.2018, were one and the same.

29. The above submissions of the Respondent were supplied to the DGAP for filing clarifications under Rule 133 (2A) of the CGST Rules, 2017. Accordingly, the DGAP has filed his clarifications dated 27.07.2020 which have been discussed in subsequent paras.

On the issue of the benefit already passed on and factual errors in DGAP report:

In this regard the DGAP has mentioned that the extent of profiteering was arrived at, on a case to case basis, by adopting suitable method based on the facts and circumstances of each case as well as the nature of the goods or services supplied. There could not be any fixed methodology for determination of the quantum of benefit to be passed on under section 171 (1). In the present case profited amount has been arrived at by comparing the average of the base



prices of the impugned products sold during the period from 01.07.2018 to 26.07.2018, with the actual base prices on the invoices of such products sold during the period from 27.07.2018 to 31.05.2019. The DGAP has taken the average base prices of the products on the basis of details submitted by the Respondent himself. The period from 01.07.2018 to 26.07.2018 was taken to compute the average base prices so that it was almost equal to the actual prices and this average was taken as the base prices of the impugned products for the pre-rate reduction period. The average base prices had been computed as the Respondent was not selling his products on a single base price and was charging different prices from different buyers. It was required to compare the pre rate reduction prices with the actual post rate reduction prices as the benefit was required to be passed on to each buyer and it could not have been calculated by computing the average base prices post rate reduction.

The DGAP has further stated that there were three variants of the product "SP EP PRIMER GREY" sold post rate reduction period with unique product codes 500124, 500127 and V13160450. On scrutiny of the data it was observed that the product variants of "SP EP PRIMER GREY" with codes 500124 and 500127 had not been sold prior to 27.07.2018 and accordingly they were construed as new products launched by the Respondent post GST rate reduction and therefore they had been kept out of the purview of anti-profiteering. Further, the methodology adopted for determining the amount of profiteering was explained by illustrating the calculation in respect of specific item i.e. "SP EP Primer Grey (V13160450)" sold during the

month of July, 2018. The total taxable value of the above mentioned product (pre-GST rate reduction) was taken and an average base price was obtained by dividing the total taxable value by total quantity of this item sold during the pre-rate reduction period. The average base price of this item was compared with the actual selling price of same item sold during the post-GST rate reduction i.e. on or after 27.07.2018 as has been illustrated in the Table given below:-

Sr. No.	Description	Factors	Pre Rate Reduction (Before 27.07.2018)	Post Rate Reduction (from 27.07.2018)
1	Product Description	A	SP EP Primer Grey (V13160450)	
2	Notification No.	B	18/2018 Central Tax Rate	
3	Total Quantity of item sold	C	4266	
4	Total taxable value	D	877354.2	
5	Average base price (without GST)	$E=D/C$	205.66	
6	GST Rate	F	28%	18%
7	Commensurate Selling price (post Rate reduction-with GST)	$G=E*1.18$		242.68
8	Invoice No.	H		9520012893
9	Invoice Date	I		28.07.2018
10	Total Quantity (above invoice)	J		60
11	Total Taxable Value	K		12454.8
12	Actual Selling price per unit(without GST)	$L=K/J$		207.58
13	Excess amount charged of profiteering	$M=(L-E) * 1.18$	2.26	
14	Total Profiteering	$N=M*J$	135.79	

The DGAP has further stated that the average base price of the above product sold before rate reduction period was 205.66 and not 214/- as mentioned by the Respondent. The reason for this discrepancy was that the Respondent had not maintained uniform

base price in the outward sales invoices across states and the product SP EP Primer Grey had been sold at base/basic price of 214/- per item (for example in the invoices 9520012166, 9520012168, 9520012185, 9520012185, 9540004944 etc.) and also at the base/basic price of 205/- per item (for example in the invoices 9530006412, 9190002050, 9510007437, 9510007451, 9530006427, 9530006432). On the basis of data shown in the Table submitted by the Respondent it was observed by the DGAP that the base/basic price of the product "SP EP PRIMER GREY 1 Litre" was shown as 214/- per item from 18.06.2018 to 26.07.2018 and also from 27.07.2018 to 31.10.2018. The main intention behind the provision of Section 171 of the Central Goods and Services Tax Act, 2017 which governed the anti-profiteering provisions under GST was that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should 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 benefit of input tax credit or reduction in 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 input tax credit. This was the legally prescribed mechanism to pass on the benefit of input tax credit or reduction in rate of tax to the recipients under the GST regime. Moreover, it was also clear that Section 171 simply did not provide a supplier of goods or services, any other means of passing on the benefit of input tax credit or reduction in the rate of tax to the consumers. As the base price of the

product "SP EP PRIMER GREY -1 Litre" was kept same before and after the rate reduction notification, it was apparent that the Respondent had not commensurately reduced the price of the product and the benefit of rate reduction was not translated into proportionate benefit across the supply chain and ultimately to the end consumer. Had the Respondent reduced the base prices of the impacted products as per the rate reduction notification when the GST rate was reduced from 28% to 18% vide Notification dated. 26.07.2018, proportionate benefit would have trickled down to the buyers/end consumers.

The DGAP has further submitted that the contention of the Respondent regarding the product "SP EP PRIMER GREY-4 Litre" was of no relevance to the process of investigation as the product was not found to be sold in the period from 01.07.2018 to 26.07.2018 and was also not in the list of the complete products sold prior to rate reduction i.e. before 26.07.2018 submitted by the Respondent vide e-mail dated 24.01.2020. As the product "SP EP PRIMER GREY-4 Litre" with product code 500125 was found neither in the outward invoice data from the period from 01.07.2018 to 26.07.2018 nor in the products list submitted by the Respondent, it was considered to be a new product which was launched post rate reduction and hence was completely kept out of the purview of calculation of profiteering and accordingly the calculation of the amount of profiteering for the said product was NIL.

It was further submitted by the DGAP on the contention of the Respondent that the MRP was affixed on the products at the time of

manufacture hence, the batches of SP EP Primer Grey manufactured prior to 18.06.2018, but sold subsequent to 18.06.2018, would be sold at the price prevailing at the time of manufacture and that the rise in the basic price of the product that took place on 18.06.2018 and 01.11.2018 was in the ordinary and usual course of business, it was observed by the DGAP that the price of the product was revised twice in 6 months however, in the usual course of business, the same practice of frequent revision of prices was not followed from 01.11.2018 to 31.05.2019 which raised questions on the necessity of increase in the price immediately post rate reduction period and the same was not explained by the Respondent in any of the written submissions made to the DGAP.

On the issue of the copy of complaint was not provided to the Respondent during the DGAP proceedings:

The DGAP has stated that the Respondent was afforded opportunity to inspect the non-confidential evidence/information (including the complaint) during the period from 01.07.2019 to 03.07.2019 vide notice dated 25.06.2019. However, the Respondent did not avail of the said opportunity. This was the normal practice adopted by the DGAP while conducting investigations. It was only in compliance of natural justice that the Respondent was afforded opportunity to inspect the documents (including complaints) invariably. In his submission dated 19.06.2020 at para 17 the Respondent has admitted that he was awarded opportunity to inspect the complaint between 01.07.2019 to 03.07.2019 but he did not avail of the same.

The DGAP has further stated that the case of **CCE v. Brindavan**

Beverages was not relevant as the Respondent was attempting to twist the facts of the case and mislead. A Show Cause Notice, which has been held to be the foundation in the above case could be likened only with the Investigation Report of the DGAP and not with the complaint filed by the above Applicant. The other cases cited by the Respondent were also distinguishable from the case in hand as there has been absolute compliance of natural justice in the case of the Respondent.

On the issue of sale of products to dealers and not to end consumers:

The DGAP has stated that the allegations of the Respondent that the complainant was not the recipient of the goods supplied by the Respondent was wrong. A dealer was only a channel used for distribution of goods to the ultimate customer. As a logistical support, channel partners like dealers were necessary for big manufacturers who made supplies to far and wide areas. Such channel partners were not the actual customers or consumers of the goods and therefore could not be called recipients of goods. Section 171 of the CGST Act reads 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.”

The word ‘recipient’ has been further defined under Section 2 (93) as below:



“(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration”

It was further stated by the DGAP that the benefit of deduction in tax rate has to be passed on to the recipient, who was the customer or consumer of the goods and who was liable to pay the consideration. A channel partner neither bought nor paid for the goods. Its only job was to help in transportation, storage and distribution of goods sold by the Respondent to the recipients or through the retailer to the recipients. In para 24 of Respondent's submission dated 19.06.2020 the term recipient has been stated as the person who is liable to pay the consideration. The Respondent has been trying to distort the facts by reiterating that he was making no direct sales to the customers and hence the complainant was not the direct customer.

On the issue of absence of prescribed methodology:

In this regard, the DGAP has stated that the main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states that "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." It was clear from the perusal of the above provision that it mentioned "reduction in the rate of tax on any supply of goods or services". One formula which fits all could not be set while determining such a "Methodology and Procedure" as the

facts of each case were different. For example, in the case of a real estate project, the date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project, timing of purchase of inputs, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realized before and after the GST implementation would always be different than any other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to another project. Therefore, no set parameters could be fixed for determining methodology to compute the benefit of reduction in tax rate or of ITC which would be required to be passed on to the buyers of such units.

The methodology adopted by the DGAP was in line with the legal principles and has been consistent throughout in all his reports which has been settled by this Authority. The procedure and methodology for determination of profiteering and intent thereof has been determined by this Authority on case to case basis by adopting the most appropriate and accurate method based on facts and circumstances of each case as well as the nature of the goods and services supplied.

30. A copy of the clarifications of the DGAP was supplied to the Respondent for filing re-joinder. Accordingly, the Respondent has filed re-joinder dated 04.08.2020 which has been discussed in the subsequent paras.

31. The Respondent has reiterated his previous submissions dated 19.06.2020 and has further submitted that the DGAP in his



submissions dated 27.07.2020 has clearly accepted in para 5 that the basic price of the relevant product in question SP EP Primer Grey 1 Litre was Rs. 214/- for the period from 18.06.2018 to 26.07.2018 and from 27.07.2018 (*date when notification 18/2018-CT took effect*) to 31.10.2018. Therefore, the DGAP has clearly accepted that there was no change in the basic price immediately pre and post Notification dated 26.07.2017. As regards the submissions on the methodology to be adopted, it was submitted and reiterated by the Respondent that:

- a. No methodology for computation of anti-profiteering has been prescribed under the CGST Act.
- b. The statutory mandate under Section 171 (3) of the CGST Act read with Rule 129 of the CGST Rules was for this Authority to determine the requisite methodology and procedure, which has not been done till date. This prescription was not to prescribe different methodologies depending upon the nature of goods and services.
- c. No authority was conferred on the DGAP as opposed to this Authority to determine the requisite methodology and procedure.
- d. The determination of profiteering on a case to case basis by adopting suitable methods based on facts and circumstances of each case as well as the nature of goods or services supplied was:
 - i. Against the provisions of Section 171 (3) of the CGST Act read with Rule 129 of the CGST Rules.



- ii. Inter-se discriminatory as it would lead to varying results in similar cases.
 - iii. Conferred very wide discretion on the DGAP without adequate guidelines, which was against the well settled position in law that the Legislature could not delegate essential legislative functions in the absence of any guiding policies as the same would result in arbitrary action by this Authority.
 - iv. Contrary to the powers conferred on the DGAP, under Rule 129 of the CGST Rules only this Authority could determine the requisite methodology and procedure
32. The Respondent has also stated that the average price of the subject goods taken for the period prior to 27.07.2018 would have included the old base prices of the goods manufactured prior to 18.06.2018 but supplied thereafter and the new base prices of the goods manufactured post 18.06.2018 and supplied post such date. The average would be lesser than the average base prices of the goods post 27.07.2018 as the price increase had happened for all the goods manufactured on or after 18.06.2018. During the period from 01.07.2018 to 26.07.2018 (pre 27.07.2018), the goods which were supplied by the Respondent to his dealers would have consisted of goods manufactured prior to 18.06.2018 and goods manufactured post 18.06.2018. Therefore, the supply would have been at different prices for this interregnum period alone. The Respondent has reiterated that he maintained a uniform pre-discount price for all the dealers to whom he made sales. In para 4 of the DGAP's submissions, there was a reference to different prices in different invoices. This was easily explainable and was for the reasons that the

batches of SP EP Primer Grey manufactured prior to 18.06.2018 but sold subsequent to 18.06.2018 were sold at the prices prevailing at the time of manufacture w.e.f. 18.06.2018.

33. The Respondent has also stated that the DGAP has grossly erred in his submissions made in para 5 that as the base price has been kept the same before and after the GST rate change notification, the Respondent has not passed on the benefit of GST rate reduction. In this regard the Respondent has claimed that:

a. The base price at which the Respondent had sold goods to his dealers was a pre-GST price.

b. The reduction due to rate reduction in GST would happen not in the base price (pre GST price) but in the GST component which has fully happened in the present facts.

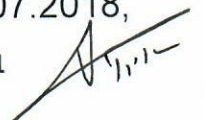
c. In the present facts, the net price to dealers including GST was reduced from Rs. 265.70 to Rs. 244.94 after the reduction in the rate of GST from 28% to 18% *vide* Notification No. 18/2018-CT dated 26.07.2017.

d. Therefore, the full benefit of the 10% reduction in the GST rate (*from 28% to 18%*) has been passed on by the Respondent to his dealers.

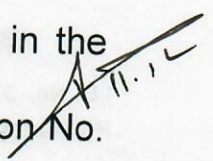
34. The Respondent has also submitted that the first price change was made on 18.06.2018 which was much prior to the issuance of the Notification dated 26.07.2017. At that point in time, the Respondent never knew or could have known that the GST rate in relation to the products in question would be reduced post one month. The said price increase which was in the usual and normal course of business was also even prior to the period of investigation, which was between

27.07.2018 to 31.05.2019. The only price increase during the 'Period of investigation' was on 01.11.2018, which was in the ordinary course of business. The pricing of a product depended on a variety of factors such as the raw material costs and market conditions etc. and this change was in the normal course of business. This price increase which was only an increase in the base price from Rs. 214/- to Rs. 220/- was only a Rs. 6/- increase in the basic price which translated to a 2.8% (approx.) change in the base price. The said price change was more than 3 months after the date of issue of Notification dated 26.07.2017 and was in no way related to the issue of such notification. In fact, immediately after the issue of the Notification, full benefit of GST rate reduction was passed on to the customers. The change in base prices was matter of commercial wisdom of the Respondent which couldn't be questioned by the authorities. Reliance in this regard has been placed on the observations of this Authority in ***Deputy Commissioner of State Tax v. Le Reve Pvt. Ltd.***, dated 11.03.2020 in Case No. 14/2020, wherein it has been *inter-alia* observed that this Authority has no legislative mandate to fix prices or the amount of profit, which were the rights of the supplier and were to be determined by the supplier. There was no profiteering whatsoever in the present facts as the benefit of entire 10% reduction in the GST rate has been passed on by the Respondent to his dealers.

35. The Respondent has further reiterated that the methodology adopted by the DGAP based on the average prices of the subject goods prior to 27.07.2018 and post 27.07.2018 was wholly erroneous. The actual prices of the subject goods as set out in Table No. 1 above clearly reflected the commensurate reduction in MRP on 27.07.2018,

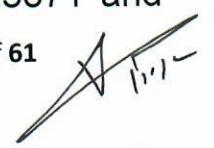


pursuant to the reduction in GST rate vide Notification dated 26.07.2018. The Respondent has also claimed that a comparison had been made in the DGAP's workings between the average price pre 27.07.2018 with the price of one invoice (Invoice No. 9520012893) post 27.07.2018. If the price change w.e.f. 18.06.2018 had correctly been factored in, then there would be no difference in the base price on an invoice to invoice basis. The comparison should have been made on an invoice to invoice basis. Since the fact that the stock manufactured pre 18.06.2018 was sold at the old price was not disputed, the taking of an average price for the period prior to 27.07.2018 without factoring in this key issue, would lead to wrong results. Therefore, the averaging methodology has led to wrong results as adjustments for various key factors have not been made. This was reflected by the key fact that the actual base price prior to the Notification dated 26.07.2018 was Rs. 214/- which continued to be Rs. 214/- even after 27.07.2017.

36. We have carefully considered the complaint lodged by the Applicant No. 1, all the Reports furnished by the DGAP and the detailed submissions filed by the Respondent and it is revealed that the Respondent is manufacturing Paints, Varnishes and Thinners and is marketing them through his dealers. It is also revealed that a complaint was filed by the Applicant No. 1 before the Standing Committee on Anti-Profiteering under Rule 128 (1), against the Respondent, alleging that the prices of the products "SP EP Primer Grey" and "Thinner for Finish" supplied by the Respondent had remained unchanged or were increased even after reduction in the rate of GST from 28% to 18% w.e.f. 27.07.2018, vide Notification No. 

18/2018- Central Tax (Rate) dated 26.07.2018 and that the benefit of such tax rate reduction was not passed on by the Respondent to the recipients by way of commensurate reduction in the prices. The Standing Committee after prima facie being satisfied by the evidence submitted by the above Applicant, had forwarded the above complaint to the DGAP for detailed investigation in terms of Rule 129 (1). The DGAP has accordingly carried out investigation w.e.f. 27.07.2018 to 31.05.2019 and submitted his Report under Rule 129 (6) on 27.02.2020. The Respondent has filed his objections against the above Report of the DGAP vide his submissions dated 19.06.2020.

37. Perusal of Table No. 1 furnished in Para 11 of the submissions of the Respondent dated 19.06.2020 shows that the Respondent has claimed that the basic/base price of SP EP Primer Grey 1 Litre was Rs. 205/- prior to 18.06.2018, it was Rs. 214/- from 18.06.2018 to 26.07.2018, Rs. 214/- from 27.07.2018 to 31.10.2018 when it was increased to Rs. 220/- w.e.f. 01.11.2019. He has also claimed that the MRP of the above product was Rs. 321/-, 343/-, 323/- and 332/- respectively during the periods mentioned above which showed that the MRP was reduced from Rs. 343/- to Rs. 323/- after the tax rate reduction w.e.f. 27.07.2018. Based on the above Table the Respondent has insisted that the basic/base price of the above product was Rs. 214/- per Litre w.e.f. 18.06.2018 to 26.07.2018 in the pre rate reduction period and it has remained the same after the rate reduction w.e.f. 27.07.2018 to 31.10.2018. The same claim has been made by him vide Table No. 3 mentioned in Para 12 of his submissions dated 19.06.2020 in respect of Batch Nos. 23871 and



23894 of the above product vide which he has contended that the basic/base piece of the above product was Rs. 214/- w.e.f. 18.06.2018 to 26.07.2018 and from 27.07.2018 to 31.10.2018. He has also attached Invoices dated 23.07.2018, 20.06.2018 and 27.06.2018 as Exhibit-A-18 (Colly) at page 53 and Invoices dated 28.07.2018, 30.07.2018 and 04.08.2018 as Exhibit-A-23 (Colly) at page 75 of his submissions dated 19.06.2020 to prove his above claim.

38. However, the DGAP while submitting his clarifications vide his Report dated 27.07.2020, on the above claim of the Respondent in Para 5 has stated as under:-

“As the base price of the product “SP EP PRIMER GREY – 1 Litre” was kept same before and after the rate reduction notification, it is apparent that the noticee has not commensurately reduced the price of the product and the benefit of rate reduction has not translated into proportionate benefit across the supply chain and ultimately to the end consumer. Had the noticee reduced the base prices of the impacted products as per the rate reduction notification when the GST rate was reduced from 28% to 18% vide Notification No. 18/2018-CT(R) w.e.f. 26.07.2018, proportionate benefit would have trickled down to the buyers/end consumers.”

It is clear from the above clarification that the DGAP has admitted that the base price of Rs. 214/- of the above product which was prevailing in the pre rate reduction period has been kept as the same

in the post rate reduction period. In case it is correct then there is no issue of not passing on the benefit of tax reduction by the Respondent as he has maintained the same base price in the post reduction period which he was charging in the pre rate reduction period. Hence, the claim of the DGAP made in his Report dated 27.02.2020 that the Respondent has not passed on the benefit of tax reduction by increasing base price of the above product in the post rate reduction period is contrary to his clarification given above. Therefore, the DGAP is required to explain the contradiction made by him in his Reports dated 27.02.2020 and 27.07.2020.

39. Perusal of Table No. 2 mentioned in Para 11 of the submissions dated 19.06.2020 of the Respondent shows that he has claimed that the basic/base price of the SP EP PRIMER GREY-4 Litre product was Rs. 797/- prior to 18.06.2018, it was Rs. 829/- during the period from 18.06.2018 to 26.07.2018, was again Rs. 829/- during the period from 27.07.2018 to 31.10.2018 and was raised to Rs. 854/- w.e.f. 01.11.2018 and hence there was no increase in the base price after the rate reduction. Vide Table No. 3 mentioned in Para 12 of his above submissions the Respondent has mentioned the basic/base price of above product in respect of Batch No. 23871 w.e.f. 18.06.2018 to 26.06.2018, during the pre rate reduction period, as Rs. 829/- as per the Invoices dated 21.7.2018 and 27.06.2018 attached as Exhibit-A-19 (Colly) at page 56 of his submissions dated 19.06.2020. He has also mentioned the basic/base price of the above product in respect of Batch No. 23894, w.e.f. 27.07.2018 to 31.10.2018 as Rs. 829/-. He has also attached invoice dated

04.08.2018 as Exhibit-A-24 (Colly) at page 78 to prove his above claim.

40. However, while submitting his clarifications dated 27.07.2020 vide Para 6 of his Report dated 27.02.2020 the DGAP has stated as under:-

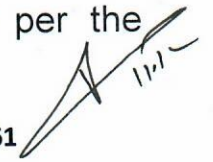
“6. The submission of the noticee regarding the product “SP EP PRIMER GREY – 4 L” as mentioned in Table-2 is of no relevance to the process of investigation as the product was not found to be sold in the period 01.07.2018 to 26.07.2018 and was also not in the list of the complete products sold prior to rate reduction i.e. before 26.07.2018 submitted by the noticee vide e-mail dated 24.01.2020. As the product “SP EP PRIMER GREY – 4 L” with product code 500125 was found neither in the outward invoice data from the period 01.07.2018 to 26.07.2018 nor the products’ list submitted by the noticee, it was considered to be a new product which was launched post rate reduction and hence was completely kept out of the purview of calculation of profiteering and accordingly the calculation of the amount of profiteering for the said product is NIL.”

However, perusal of the invoice dated 04.08.20218 issued in favour of M/s Rajesh Hardwares, Kanyakumari, attached as Exhibit-A-24 at page 78 of the submissions dated 19.06.2018 and mentioned in Table No. 3, in respect of Batch No. 23894, shows that the product SP EP PRIMER GREY – 4 L” was having product Code V13160460 and the Respondent was not referring to the product having Code 500125 while substantiating his above claim. The DGAP vide Annexure-19 of his Report has also computed profiteering of Rs. 20/-

in respect of the above product. Therefore, it is evident that the DGAP has not examined the above claim of the Respondent carefully and the clarification given above is wrong. Therefore, the DGAP is required to re-examine the above claim of the Respondent and submit fresh findings on the same.

41. The DGAP vide Para 15 of his Report dated 27.02.2020 has also stated that "as per the outward sales data submitted by the Noticee, it has been observed that approximately 90 products were not sold before 27.07.2018 and accordingly they are construed as new products launched by the Noticee post GST rate reduction and therefore, they have been kept out of the purview of anti-profiteering." In this connection perusal of the Report dated 27.02.2020 of the DGAP shows that it has not been mentioned in it whether any effort was made to examine the details of the outward taxable supplies of the Respondent made during the previous months of May 2018, April 2018, March, 2018 and so on to confirm that the above 90 products have not been sold by the Respondent in the pre rate reduction period. These details were also not summoned by the DGAP vide NOI dated 25.06.2019. Therefore, the DGAP is required to conduct fresh investigation to ascertain that the above 90 product have been launched post 27.07.2018 and they have not been sold during the above period.

42. Based on the above findings and without going in to the other merits of the case, the Report dated 27.02.2020 furnished by the DGAP cannot be accepted and accordingly, the DGAP is directed to conduct further investigation on the issues mentioned above, as per the



provisions of Rule 133 (4) read with Section 171 (2) of the above Act and submit fresh Report under Rule 129 (6). The Respondent is also directed to render all assistance to the DGAP while conducting such investigation.

43. A copy of this order be sent to the Applicants and the Respondent for further action. File of the case be consigned after completion.

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

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



Sd/-
(Amand Shah)
Technical Member

Certified Copy

(A.K. Goel)
Secretary, NAA

F. No. 22011/NAA/141/MRF/2020 / 6465-6468

Date: 11.12.2020

Copy To:-

1. Sh. P. V. Narayanan, pvnkannur70@gmail.com.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh SahityaSadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. M/s MRF Corp. Ltd., Tarapore Towers, V Floor, 826, Anna Salai, Chennai-600002.
4. NAA Web/Guard File.

A. K. GOEL
SECRETARY, NAA