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[2018] 97 taxmann.com 157 (NAA)

CGST : Where respondent, a HUL distributor, was fully aware of Notification dated 14-11-2017 whereby rate of GST was reduced on Vaseline VTM 400ml from 28% to 18% and was also fully aware of provisions of section 171 of CGST Act whereby he was bound to pass on benefit of reduction in rate of tax by commensurate reduction in price of product but had deliberately acted in defiance of law by not passing benefit of reduction in rate of tax by lowering price of Vaseline VTM 400 ml and, therefore, penalty was to be imposed on respondent under section 122 of the CGST Act

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[2018] 97 taxmann.com 157 (NAA)

NATIONAL ANTI-PROFITEERING AUTHORITY

Pawan Sharma

v.

Sharma Trading Company

B.N. SHARMA, CHAIRMAN
J.C. CHAUHAN AND MS. R. BHAGYADEVI, TECHNICAL MEMBER
CASE NO. 6 OF 2018
SEPTEMBER 7, 2018

Subash Joshi and **Vishal Sharma**, Advs. *for the Respondent.*

ORDER

1. This report dated 16.03.2018, has been received from the Applicant No. 2 i.e. Director General of Safeguards (DGSG) now re-designated as Director General Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that an application dated 22.11.2017 was filed by the Applicant No. 1 before the Standing Committee, constituted under Rule 123 (1) of the above Rules, alleging that the Respondent had not passed on the benefit of reduction in the rate of tax by lowering the price of Vaseline VTM 400 ml., (here-in-after referred to as the product) which he had purchased from the respondent, when the Goods and Services Tax (GST) was reduced from 28% to 18% on this product on 15.11.2017. He had also alleged that he had bought the above product from the Respondent @ Rs. 213.63/- per unit vide tax invoice No. GSA25066 on 26.09.2017 which included GST @ 28% and the Respondent had charged the same price when he had purchased the above product vide tax invoice No. GSA37782 on 15.11.2017 when the GST had been reduced to 18%. He had thus claimed that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.

2. The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the DGAP, vide minutes of it's meeting dated 29.11.2017 for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP had issued notice to the Respondent on 29.12.2017 to submit his reply on the allegation levelled by the Applicant No. 1 and also to suo moto determine the quantum of benefit which he had not

passed on after the reduction in the rate of GST. The Respondent was also requested to provide copy of the balance sheet, invoices of sales and purchases and returns filed by him. The DGAP has informed that the Respondent in his replies dated 12.01.2018, 24.01.2018, 09.02.2018, 28.02.2018 and 12.03.2018 had stated that he was a distributor and stockist of M/s Hindustan Unilever Limited (hereinafter referred to as the HUL) and had supplied 20 units of the above product to the Applicant No. 1 vide invoice No. GSA37782 dated 15.11.2017 however this supply was returned by the Applicant No. 1 vide Goods Return invoice No. 534 dated 15.12.2017 against which Credit Note No. AA021330 was issued by him on 23.12.2017 and hence the above transaction did not amount to the supply of goods and therefore, it did not fall under the ambit of Section 171 of the above Act. The DGAP has also informed that the Respondent had also contended that the peak sale period for the above product was during winters and before coming into force of the GST it was being sold under various Consumer Promotion Schemes (CPS) during the lean season by offering additional quantity or along with some additional products and such CPS were usually withdrawn during the winters. He has further informed that the Respondent had also submitted that the Scheme launched during the month of September, 2017 by offering additional quantity of the product was not withdrawn in November, 2017 and the MRP was retained at Rs. 235/- for 400 ml. of Vaseline which was the MRP for 300 ml. and thus the benefit of reduced rate of tax was passed on to the recipients through the additional quantity of 100 ml. The DGAP has also stated that the Respondent had claimed that the product was sold @ Rs. 0.59 per ml. after 15.11.2017 as compared to it's price of Rs. 0.73 per ml. during the month of November, 2017 and hence there was decrease of more than 18% in the price resulting in passing on of the benefit of reduction in the rate of the tax. The DGAP has further intimated that the Respondent had also maintained that the price of the above product was reduced from Rs. 235/- to Rs. 233/- w.e.f. 13.12.2017 which had also resulted in passing on the benefit of tax reduction along with supply of enhanced quantity of Vaseline.

4. The DGAP has reported that the contention of the Respondent that no profiteering was involved in the present case as the Applicant No. 1 had returned the product on 15.12.2017 which was sold to him on 15.11.2017 and a credit note had been issued in his favour by the Respondent and hence the above transaction was null and void was not correct as Section 171 of CGST Act, 2017 required that the benefit of tax reduction should be passed on at the time of supply of the goods and services and any future event related to that supply would not render the transaction of original supply infructuous. The DGAP has also reported that the GST rate on the product had been reduced from 28% to 18% vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, with effect from 15.11.2017 and hence the benefit of tax reduction was required to be passed on by the Respondent. He has further reported that the claim made by the Respondent that the benefit of GST rate reduction had been passed on by increasing the quantity of Vaseline from 300 ml. to 400 ml. without any increase in the MRP was not tenable as the Respondent was not competent to either increase the quantity of the product or to reduce the MRP w.e.f. 15.11.2017 as it was not in his stock and on which full Input Tax Credit (ITC) of 28% had been availed by him. The DGAP has also submitted that the base price of the product, at the time of GST rate reduction w.e.f. 15.11.2017, was increased to maintain the same selling price which was prevalent before the reduction and therefore, the Respondent had indulged in the profiteering and had thus contravened the provisions of Section 171 of the CGST Act, 2017.

5. The DGAP has also intimated that the Respondent had himself admitted that the Applicant No. 1 had purchased 10 units of the product on 26.09.2017 from him, vide invoice No. GSA25066 at the base price Rs. 166.90/- per unit on which the price charged including GST was Rs. 213.63/- per unit. The Applicant No.1 had again bought 20 units of the product on 15.11.2017, vide invoice No. GSA37782 in which the base price was shown as Rs. 181.05/- and the price charged including GST was mentioned as Rs. 213.63/- per unit. Therefore, the DGAP has concluded that although the GST on the product was reduced from 28% to 18% w.e.f. 15.11.2017, the price realised by the Respondent including GST from the Applicant No. 1 had remained unchanged at Rs. 213.63/- per unit, which showed that the unit base price was enhanced by Rs. 14.15/- (Rs. 181.05-Rs. 166.90) and therefore, profiteering to the extent of Rs 14.15/- per unit was proved against the Respondent. The DGAP has also stated that the Applicant No.1 had again purchased 11 units of the product vide invoice No. GSA42046 dated 28.11.2017 from the Respondent on which the same net price of Rs. 213.63/- inclusive of GST was charged thus, profiteering of Rs 14.15/- per unit was established against him.

6. The DGAP has concluded by stating that the Respondent had profiteered to the extent of Rs. 5,50,370/- from November, 2017 to January, 2018 which included the profiteering of Rs. 184/- made by him from the

Applicant No. 1 on the sale of the 11 units of the product on 28.11.2017. He has further stated that the Respondent had profiteered an amount of Rs. 2,41,922/- @ Rs. 16.69/- Including GST @ 18% per unit on the sale of 14,495 units and Rs.3,08,448/- @ Rs. 14.88/- including GST @ 18% per unit on the sale of 20,729 units between the period of 15.11.17 to 31.01.2018. Thus an amount of Rs 5,50,370/- was profiteered by the Respondent in the supply of 35,244 units of the product as per the following chart which amounted to violation of the provisions of Section 171 of the CGST Act, 2017:-

Tariff Heading	**Goods Description**	**MRP per unit Rs.**	**01.11.2017 TO 14.11.2017**				**15.11.2017 TO 31.01.2018**				**PROFITERED AMOUNT (Rs.)**	
			Base Price per unit Rs.	**GST Rate**	**Amt. charged from retailers Rs.**	**QNTY. SOLD**	**BASE PRICE PER UNIT Rs.**	**GST Rate**	**Amount Charged from retailers Rs.**	**Qty. Sold (in No.)**	**Per Unit**	**Total**
A	**B**	**C**	**D**	**E**	**F**=(128 % OF D)	**G**	**H**	**I**	**J**=(118% of H)	**K**	**L=(J-118% of D)**	M=K*L
3304.99.30	VTM 400ML	235	166.9	28%	213.63	18744	181.05	18%	213.63	14495	16.69	2,41,922
3304.99.30	VTM 400ML	233				-	179.51	18%	211.82	20729	14.88	3,08,448
TOTAL						**18,744**				**35,244**		**5,50,370**

7. The above report was considered by the Authority in it's meeting held on 23.03.2018 and it was decided to hear the Applicant No. 1 and 2 and the Respondent on 10.04.2018. However, the Applicant No. 1 did not appear during the hearing and vide his letter dated 09.04.2018 showed his satisfaction over the investigation report. The Applicant No. 2 was represented by Sh. Akshat Aggarwal, Assistant Commissioner and Sh. Bhupender Goyal, Assistant Director (Cost). Sh. Subhash Joshi proprietor appeared on behalf of the Respondent alongwith his Counsel Sh. Vivek Sharma during the process of hearing. The Id. Counsel for the Respondent submitted detailed written submissions on 10.4.2018 as well as additional written submissions on 23.4.2018 in which it was submitted that the Respondent was a distributor of HUL and he was bound to follow the price pattern and other sale policies decided by the HUL. He has also explained the entire chain of purchase of the product made by him from the HUL and it's subsequent sale to the retailers during the period prior to 15.11.2017, from 15.11.2017 to 07.12.2017 and from 08.12.2017 to 31.01.2018 as per the table given below in which the Respondent has been mentioned as the Noticee:-

Sr. No.	**Particulars**	**Pre 15.11.2017 Transactions (Rs.)**	**Stocks held pre 15.11.2017 and Sold post 15.11.2017 (Rs.)**	**15.11.2017-07.12.2017 transactions (Rs.)**	**Post 07.12.2017 transactions (Rs.)**
1.	Base selling Price of Company (exclusive of GST)	158.66 (Noticee's base price is 166.90 = 158.66 + Margin of Rs.8.25)	172.77 (initially considered as 158.66 but revised to 172.77) (Noticee's base is 181.05 = 172.77 + margin of Rs. 8.28)	172.77 (Noticee's base price is 181.05 = 172.77 + margin of Rs.8.28)	171.30 (Noticee's base price is 179.51 = 171.30 + margin of Rs.8.21
2.	GST	44.42 (28% of 158.66)	31.10 (18% of 172.77	31.10 (18% of 172.77)	30.83(18% of 171.30
3.	Purchase price of Noticee	203.08	203.87	203.87	202.13

	inclusive of GST				
4.	Margin at the rate of **4.06%** on Purchase Price plus applicable GST	10.55 (4.06% of 203.08 = **8.25** And 28% of 8.24 = 2.30)	9.77 (4.06% of 203.87 = **8.28** And 18% of 8.28 = 1.49)	9.77 (4.06% of 203.87 = **8.28** And 18% of 8.28 = 1.49)	9.68 (4.06% of 202.13 = **8.21** And 18% of 8.21 = 1.47)
5.	Selling Price of Noticee inclusive of GST	213.63	213.64	213.64	211.82

8. The Respondent has stated that before 15.11.2017, the product was purchased by him from the HUL @ Rs. 158.66/- per unit on which tax at the rate of 28% i.e. Rs. 44.42/- was paid by him which was subsequently availed as ITC and thereafter, the product was sold at Rs. 213.64/- inclusive of 28% GST and 4.06% margin. He has also stated that on 14.11.2018 he had 1288 units of the product in his stock, which were bought @ Rs. 158.66/- per unit excluding GST however, On 15.11.2017 after reduction in the GST, the purchase price on the stocks was increased from Rs. 158.66/- to Rs. 172.77/-excluding GST by the HUL in its software. He has further stated that although the tax was reduced from 28% to 18%, the software supplied by the HUL showed per unit price of the product as Rs. 172.77/- per unit on which he had paid GST @18% and earned profit margin of 4.06%. He has also claimed that on the closing stock, the differential amount of Rs. 14.11/- (Rs. 172.77/- - Rs. 158.66/-), along with the ITC benefit of Rs. 0.03/- (Rs. 8.28/- - Rs. 8.25/-) due to the change in the rate of tax had been recovered by the HUL from him on 26.02.2018. He has also submitted a copy of the letter dated 21.11.2017 issued by the HUL to all it's Redistribution Stockists in which they were asked to refund the excess ITC which was available to them on the closing stocks as on 15.11.2017 to the HUL. Therefore he has further stated that profit, if any, was made by the HUL and not by him, as the excess amount of Rs. 18,217.90/- stood debited from his account on 26.02.2018 to the HUL for the 1288 units of the product which were in his stock as on 14.11.2017. He has also furnished a copy of The Bank Certificate and the Chartered Accountant's Certificate in this behalf. He has further contended that the cumulative benefit of reduction in the tax available on all the Stock Keeping Units (SKU) of which the product was part of, which came to Rs. 5,18,443.74/-, had been debited on 26.02.2018 to the account of the HUL; and the Respondent had not profited in any manner with the reduction in the rate of tax from 28% to 18% on 15.11.2017.

9. The Respondent has also submitted that during the period w.e.f. 15.11.2017 to 07.12.2017, he had bought the product from the HUL at the higher rate of Rs. 172.77/- and paid 18% GST, i.e. Rs. 31.10/-which was availed by him as ITC. He has also submitted that the product was sold for Rs. 213.64/- per unit including GST and 4.06% margin and hence his margin had remained the same, therefore, no profiteering was done by him. He has further submitted that on 08.12.2017, the MRP of the product was reduced from Rs. 235/- to Rs. 233/- by the HUL due to which his purchase price had been reduced from Rs. 172.77/- to Rs. 171.30/- excluding GST. He has also claimed that he had bought the product from the HUL @ Rs. 171.30/- per unit on which GST of 18%, i.e. Rs 30.83/- was paid by him and ITC was claimed and the product was sold for Rs. 211.82/-per unit inclusive of 4.06% margin and 18% GST and therefore, his margin had remained the same. He has also claimed that actually, he had lost Rs. 0.07/- per unit during each transaction and hence even after reduction in the MRP w.e.f. 08.12.2017, no additional profit had accrued to him. The Respondent has further claimed that he was merely an intermediary in the supply chain and had not profited due to the reduction in the rate of tax.

10. The Respondent has also argued that the notice dated 29.12.2017 and the Report by the DGAP dated 16.03.2018 were void ab-initio as the product bought by the Applicant No. 1 had been returned by him and therefore he had not suffered any loss. He has further argued that the term 'supply' was defined in Section 7 (1) (a) of the CGST Act, 2017 and under Section 34 (1) of the above Act, where the goods were returned, the supplier was required to issue a credit note and mention the details of the credit note in the GST return filed for the month in which such note was issued and hence it was evident that there was a provision in the Act

itself for negating a supply transaction and since it was not in dispute that the transaction stood annulled by the Applicant No. 1 himself on 15.12.2017 therefore, no profiteering could be alleged by him. He has also relied upon the law settled by the Hon'ble High Court of Kerala in the case of ***Grasim Industries Ltd.*** **v.** ***State of Kerala*** **[1994] 1994 taxmann.com 377 (Kerala)** in which it was ruled that a sales return meant a return of the very goods purchased by the buyer in whole or in part and it was a reversal of the sale, as if the sale had not taken place in respect of the returned goods and therefore contemplated a return before the goods were appropriated and used by the buyer. He has also contended that applying the same principle in the present case, the transaction of supply did not exist and hence the entire proceedings were contrary to the provisions of the law as the contention of the DGAP that any subsequent transaction of return of goods would not negate the original transaction of supply of goods was not correct and the proceedings were required to be set aside on this ground itself.

11. The Respondent has also averred that Section 171 of the CGST Act, 2017 provided that any benefit of reduction in the rate of tax should be passed on to the recipient by way of commensurate reduction in prices however there was no mechanism mentioned in the CGST Act on the factoring of commensurate reduction in the prices and the Act did not provide any methodology for determining the meaning of the term "commensurate reduction in prices." He has further averred that the Act also did not provide any time period/time frame within which such commensurate reduction in prices was to take place in the absence of which a reasonable time period was required to be given to any registered person to bring about the necessary reduction in prices in view of the reduction in the GST rate since there were various practical issues as also various legal requirements which were required to be complied with. He has further averred that it was impossible to change the entire pricing mechanism, labelling and packaging overnight as it was settled that the law could not force a person to do a thing which was impossible as was enshrined in the legal maxim *"Lex Non Cogit Ad Impossibilia"*.

12. The Respondent has also pleaded that para 16 of the Report dated 16.03.2018, had failed to consider the benefit of additional grammage as it was stated that the Respondent being an intermediary could not increase the grammage. He has contended that there was no provision in the law which debarred him from getting benefit of grammage as an intermediary and in the entire supply chain any benefit which was available to a manufacturer was also available to an intermediary and the GST law did not make any distinction on this account. He has further pleaded that had the increase in weight been considered, it would have established that the commensurate benefit had been passed-on.

13. The Respondent has also claimed that the excess ITC and the excess purchase price that was recovered by the HUL from the Respondent had been deposited by the HUL in the Consumer Welfare Fund (CWF). The Respondent has further claimed that the profit of Rs. 14.15/- had been calculated by the DGAP by presuming that the difference between the original base price and the increased base price was earned by the Respondent, which was not correct as the base price was increased by the HUL post the change in the rate of tax, and this increase in base price was also earned by the HUL, therefore, profiteering, if any, could not be attributed to the Respondent.

14. During the course of the proceedings the HUL was also asked to clarify the claims made by the Respondent in respect of the increase in the base price, recovery of excess ITC and the deposits made by it in the CWF. The HUL vide its reply dated 03.05.2018 had admitted that it had asked its Redistribution Stockist to credit the excess ITC to its account and also that it had deposited the same in the CWF after recovering the same from them.

15. The DGAP vide his reply received by the Authority on 03.07.2018 on the letter dated 03.05.2018 of the HUL has stated that the profiteered amount could not have been recovered by the HUL from its Stockists as there was no such provision in Section 171 of the CGST Act, 2017.

16. We have carefully considered the submissions made by both the parties as well the material placed on the record and it is revealed that the Respondent has himself admitted through the Table submitted by him vide his submissions dated 23.4.2018 that prior to the reduction in the GST on the product from 28% to 18% w.e.f. 15.11.2017 it was being purchased by the Respondent at the base price of Rs. 158.66/- per unit with GST of Rs. 44.42/- @ 28% and the total purchase price was Rs. 203.08/per unit and it was being sold by him on the

price of Rs. 213.63/-per unit after adding his margin @ 4.06% of Rs. 10.55/-. He had 1288 units of the product in stock on 14.11.2017. He has also admitted that after 15.11.2017 he had sold the product at the base price of Rs. 172.77/- after levying GST of Rs. 31.10/- @ 18% and charging margin of Rs. 9.77/- per unit and the product was sold by him at the price of Rs. 213.64/-. Therefore, it is clear that there was no reduction in the sale price charged by him although the rate of GST was cut by 10%, rather the base price was increased by Rs. 14.11/- per unit by the Respondent. The same price was charged by him on all the transactions made by him between 15.11.2017 to 7.12.2017. The base price was reduced by Rs. 21- w.e.f. 8.12.2018 by the HUL after which sale price of Rs. 211.82/-was charged by the Respondent whereby there was excess realisation of Rs. 12.11/- per unit. The Respondent has further admitted that he had sold 10 units of the product to the Applicant No. 1 vide invoice No. GSA25066 dated 26.9.2017 on which the base price was charged as Rs. 166.90/- and the sale price including the GST @ 28% was realised as Rs. 213.63/-. It is also acknowledged by the Respondent that he had sold 20 units of the product to the above Applicant vide invoice No. GSA37782 dated 15.11.2017 in which the base price was shown as Rs. 181.05/- and the selling price was Rs. 213.63/- and hence the base price was enhanced by Rs. 14.15/- per unit by the Respondent. It has further been acknowledged by the Respondent that the above Applicant had purchased 11 units of the product from the Respondent vide invoice No. GSA42046 dated 28.11.2017 in which again an amount of Rs. 14.15/-per unit was over charged from him. The Respondent was also aware that the rate of tax had been reduced from 28% to 18% w.e.f. 15.11.2017 on the above product which has been correctly charged by him in the above 3 tax invoices issued by him to the above Applicant. Therefore, it is established from the record as well as the admission of the Respondent himself that he had resorted to profiteering by increasing the base price in violation of the provisions of Section 171 of the above Act and had thus not passed on the benefit of reduction in the rate of tax by commensurately reducing the price of his product rather the base price was increased by him exactly by the same amount by which the tax had been reduced. The Respondent has claimed that the HUL had changed the base price in its software and hence he was bound to charge the increased base price at the time of issuing invoices. However, the Respondent being a registered dealer having GSTIN 08AAEFS7072E1Z4 under the CGST/SGST Acts 2017 was fully aware of the reduction in the rate of tax of the product issued vide Notification No. 41/2017- Central Tax (Rate) dated 14.11.2017, with effect from 15.11.2017 and Section 171 of the above Act and hence he was legally bound not to charge the enhanced base price resulting in negation of the effect of reduction in the rate of tax and thus he cannot escape his accountability of passing on the benefit of the reduction in the rate of tax to his customers. The Respondent has also not produced any evidence to show that he had objected to the increase made by the HUL in the base price or under what provisions of the above Acts he was bound to follow the instructions given to him by the HUL vide it's letter dated 21.11.2017, vide which the excess amount of ITC was credited by him to the HUL in respect of the above product, in contravention of the provisions of Section 171 of the Act and also charge the increased base price. Thus it is established that he had profiteered to the extent of Rs. 5,50,370/- on account of the increased base price charged by him including GST from 15.11.2017 to 31.1.2018 as has been mentioned in the table shown in para 6 supra. It has also been proved that the Respondent had profiteered an amount of Rs. 184/- @ Rs 16.69/-per unit including GST @ 18% by supplying 11 units of the product to the Applicant No. 1 on 28.11.2017, therefore, he has violated the provisions of Section 171 of the above Act.

17. The Respondent has also claimed that all the units of the product bought by the above Applicant on 15.11.2017 had been returned by him on 15.12.2017 and accordingly the transaction of supply had become infructuous and hence no profiteering could be alleged against him. However, this contention of the Respondent is not correct as the supply of goods stood completed on 15.11.2017 as soon as the tax invoice was issued by him after receipt of entire consideration and delivery of the goods was made to the above Applicant. This transaction was admittedly reflected by Respondent in his return for the month of November, 2017. The goods were returned by the above Applicant on 15.12.2017 on which the Respondent had issued a credit note in favour of the above Applicant vide which the cost of the goods as well as the GST charged was refunded to the above Applicant, which was again mentioned by him in his return for the month of December, 2017 as per the provisions of section 34 of the CGST Act, 2017. In case the transaction made on 15.11.2017 had been negated there was no question of its having been reflected in the return filed for the month of November, 2017 and hence this averment of the Respondent cannot be accepted. As soon as the Respondent had issued the tax invoice on 15.11.2017 after increasing the base price he had violated the provisions of Section 171. The law settled in the case of **Grasim Industries Ltd.** Supra cited by the Respondent is of no

help to him as the same is based on entirely different facts as the issues involved in this case were whether the returned goods were of the same quality which was supplied and whether return of these goods to the headquarter and not to the branch from where they were supplied made the Grasim Industries entitled for deduction of their value from its turnover or not. The issue in the present case is whether the supply made by Respondent on 15.11.2017 was nullified or not and hence the findings recorded in the above case are not being relied upon.

18. The Respondent has also averred that Section 171 of the Act did not provide for any methodology for determining the commensurate reduction in the prices. The argument advanced by the Respondent appears to be frivolous as it involves only mathematical calculation of the amount by which the tax had been reduced i.e. by 10% and after subtracting the same from the existing Maximum Retail Price (MRP), the MRP was to be re-fixed as per the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011. It was also mandatory for the Respondent to declare the reduced MRP by affixing additional sticker or stamping or online printing as per the letter No. WM-10(31)/2017 dated 16.11.2017 issued by the Ministry of Consumer Affairs, Food and Public Distribution. Govt, of India which he has failed to do. The GST law requires that the commensurate benefit as a result of reduction in the rate of tax or ITC has to be passed on to the recipients on each and every product which the Respondent has not done. It would also be pertinent to mention here that this Authority has already promulgated the "Methodoloy and Procedure" as required under Rule 126 of the CGST Rules, 2017 for determining whether both the above benefits have been passed on or not vide it's Notification dated 27.03.2018. It is further made clear that this Authority is not mandated to be a price regulator. Section 171 only stipulates that any benefit of reduction in the rate of the tax or the ITC which accrues to a supplier must be passed on to the consumers as both are the concessions given by the Government from its own revenue and the suppliers cannot appropriate them as they are not entitled to do so. Both the benefits must go to the consumers and in case they are not identifiable the amount so collected by the suppliers should be deposited in the CWF so that it can be used in the public interest. In case of any legal or logistical difficulties the amount of benefit collected by the suppliers can always be deposited in the CWF but cannot be retained by the suppliers as it does not belong to them. The Respondent has made no effort to pass on the benefit which had become due after reduction in the rate of tax to his customers rather he had increased the base price and had infact illegally collected an amount equal to the reduction which had accrued due to the change in the rate of tax. He has also not followed the 2011 Rules supra citing his practical and logistical problems, which does not appear to be correct and hence he has contravened the provisions of the Section 171. The Respondent was at no stage required to perform an impossible act and hence the doctrine of "Lex non cogit ad impossibilia" does not apply in his case.

19. The Respondent has also claimed that the HUL had enhanced the quantity of Vaseline from 300 ml. to 400 ml. and charged the same MRP of Rs. 235/- after the tax was reduced and hence the benefit of reduction had been passed on to the customers. The contention of the Respondent made in this regard is completely untenable as the Respondent was in no position to enhance the quantity of the product as he was only an agent and not the manufacturer of the product and the units of product sold by him w.e.f. 15.11.2017 were from the stock on which he had availed full ITC of 28% and hence he was duty bound to pass on the benefit by reducing his base price.

20. The Respondent has also contended that the excess ITC credited by him to the HUL as per the letter dated 21.11.2017 had been deposited in the CWF and hence he could not be held accountable for profiteering. However it is apparent from the record that the Respondent had been instrumental in issuing incorrect tax invoices on 15.112017 and 28.11.2017 as well as in the case of supply of 35,244 units of the product sold by him between the period of 15.11.2017 to 31.01.2018 in which he had increased the base price of the product in order to negate the benefit of reduction in the rate of tax and extract illegal profit from his customers which was exactly equal to the amount of reduction in the rate of tax and hence any subsequent deposit of such excess amount in to the CWF cannot absolve him of the allegation of profiteering.

21. It is clear from the narration of the facts stated above that the Respondent has indulged in profiteering in violation of the provisions of Section 171 of the CGST Act, 2017 and has not passed on the benefit of reduction of tax as per the Notification dated 14.11.2017 supra in respect of the above product to his customers and therefore, he is liable for action under Rule 133 of the CGST Rules, 2017, the relevant provisions of which state as under:-

"133. ** ** **

(3) Where the Authority determines that a registered person has not passed on the benefit of the 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, the Authority may order -

(*a*) reduction in prices:

(*b*) return to the recipient, an amount equivalent to the amount not passed on by the way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(*c*) the deposit of an amount equivalent to fifty percent of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty percent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(*d*) imposition of penalty as specified under the Act; and

(*e*). ** ** **

22. Accordingly, the Respondent is directed to reduce the sale price of the product immediately commensurate to the reduction in the rate of tax as was notified on 14.11.2017 and pass on the benefit of reduction in the rate of the tax to his customers.

23. Since the price of the product and the GST charged by him from the above Applicant in respect of the tax invoice issued on 15.11.2017 has been returned by him to the Applicant No. 1 the amount of profiteering is not being determined however, in respect of the tax invoice issued by him to the above Applicant on 28.11.2017 the amount of profiteering is determined as Rs. 184/-as has been mentioned in para 16 supra which shall be returned by him to the Applicant No. 1 with interest @ 18% w.e.f. 28.11.2017 till the same is paid. Based on the details of the supplies made by the Respondent to the other recipients who are not identifiable the amount of profiteering is determined as Rs. 5,50,186/-excluding the amount of Rs. 184/-, which shall be deposited by him along with interest @ 18% to be calculated from the first of the subsequent month in which the profiteering was done as per the amount which has been mentioned in the Table shown in para 6 above, till it is paid. The DGAP shall ensure that in case the above amount pertaining to the Respondent in respect of the above product has been deposited by the HUL in the CWF, the balance amount due as interest is calculated and got deposited from the above Respondent. In case the above amount has not been deposited or short deposited, the same shall be got deposited from the Respondent by the DGAP alongwith the interest. The above amount shall be further got deposited in the respective CWF of the Central or the State Government as per the provisions of Rule 133 (c) of the CGST Rules, 2017 by the DGAP as per the ratio prescribed under the above Rule.

24. We have also carefully considered the issue of imposition of penalty on the Respondent as the allegation of profiteering has been duly established against him. It is clear from the facts of the present case that the Respondent was fully aware of the Notification dated 14.11.2017 whereby the rate of GST was reduced on the above product from 28% to 18%. He was also fully aware of the provisions of Section 171 of the above Act whereby he was bound to pass on the benefit of reduction in the rate of tax by commensurate reduction in the price of the above product. However, the Respondent has deliberately acted in defiance of the above law and hence he is guilty of the conduct which is contumacious and dishonest. He has further acted in conscious disregard of the obligation which was cast upon him by the law, by issuing incorrect invoices in which the base price was deliberately enhanced exactly equal to the amount of reduced tax and thus he had denied the benefit of reduction in the rate of tax granted vide Notification dated 14.11.2017 to his customers. Accordingly he has committed offence under Section 122 (1) of the CGST Act, 2017 which states as under:-

"122. Penalty for certain offences

(1) Where a taxable person who-

(i) Supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply; (Emphasis supplied)

** ** **

He shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not reduced under section 51 or short-deducted or deducted but not paid to the Government or tax not collected under section 52 or short-collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher."

25. Accordingly, it is proposed to impose penalty on the Respondent under Section 122 of the CGST Act, 2017 read with Rule 133 (d) of the CGST Rules, 2017. However, before the penalty is imposed the Respondent is hereby given notice as to why such penalty should not be imposed on him.

26. Any amount ordered to be paid or deposited by the Respondent under this order shall be paid or deposited by him within a period of 3 months from the date of receipt of this order and in case the same is not paid or deposited by him within the prescribed time the same shall be recovered by the DGAP as per the provisions of the CGST Act, 2017 and paid to the entitled person or deposited in the concerned head of account of the Central or the State Government.

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

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