

**CGST : Where applicant had ordered a Godrej Interio Almirah through respondent and tax invoice dated 7-11-2017 was issued to him for an amount of Rs. 14,852 by supplier but at time of delivery another invoice dated 29-11-2017 was issued by supplier for an amount of Rs. 14,152 and applicant had alleged that he had paid an amount of Rs. 14,852 to respondent and by not refunding differential amount, respondent was resorting to profiteering which amounted to contravention of provisions of section 171, it was held that difference in price was due to different rate of GST on both dates and supplier had charged correct rates of GST which were prevalent at time of placing of order and supply of Almirah through two invoices and, therefore, no illegality had been done by supplier while executing order placed by applicant and allegation of violation of provisions of section 171 was not established**

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**[2018] 95 taxmann.com 221 (NAA)**

**NATIONAL ANTI-PROFITEERING AUTHORITY**

**Rishi Gupta**

**v.**

**Flipkart Internet (P.) Ltd.**

**B.N. SHARMA, CHAIRMAN**

**J.C. CHAUHAN AND MS. R. BHAGYADEVI, TECHNICAL MEMBER**

**CASE NO. 5 OF 2018**

**JULY 18, 2018**

## **ORDER**

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- 1.** The brief facts of the case are that an application dated 11.01.2018 was filed by the above Applicant before the Standing Committee, constituted under Rule 123 (1) of the Central Goods & Services Tax (CGST) Rules, 2017 stating that he had ordered a Godrej Interio Slimline Metal Almirah through the Respondent vide his order No. OD 110666745976477000 on 04.11.2017 and a tax invoice dated 07.11.2017 was issued to him for an amount of Rs. 14,852/- by M/s Godrej & Boyce Mfg. Co. Ltd., Mumbai (here-in-after referred to as the Supplier). At the time of delivery, another invoice dated 29.11.2017 was issued by the Supplier for an amount of Rs. 14,152/-. The Applicant had alleged that he had paid an amount of Rs. 14,852/- to the Respondent and the excess amount charged should have been refunded to him. The Applicant had further alleged that by not refunding the differential amount, the Respondent was resorting to profiteering which amounted to the contravention of the provisions of Section 171 of the CGST Act, 2017.
- 2.** The above application was examined by the Standing Committee on Anti-Profiteering and was referred to the Director General of Safeguards (DGSG) now re-designated as Director General Anti-Profiteering (DGAP), vide the minutes of its meeting dated 28.02.2018 for detailed investigations under Rule 129 (1) of the CGST Rules, 2017.
- 3.** The DGAP had analysed the invoices dated 07.11.2017 and 29.11.2017 and found that in the case of invoice dated 07.11.2017, issued by the Supplier, the gross amount of Rs. 15,352/- could be broken into Rs. 11,993.75/- as base price and Rs. 3358.25/- as GST @ 28% and on the gross amount, a discount of Rs. 500/- was given to the applicant by the Supplier. He had also found that the discounted price of Rs.

14,852/- could be further broken into Rs. 11,603.13/- as the base price and Rs. 3248.87/- as the GST@ 28%. Therefore the DGAP had stated that the base price of the supplier was Rs. 11,993.75/- with discount of Rs. 500/-. He had also stated that in the case of the invoice dated 29.11.2017 it was apparent that the Supplier had charged GST at the reduced rate of 18% on the base price of Rs. 11,993.87/- and hence the price charged to the Applicant was Rs.14,151.87/-. The DGAP had therefore concluded that the Supplier had charged GST at the prescribed rate of 18% on the base price of Rs. 11,993.87/- and thus he had not increased the earlier base price after coming in to force of the GST. He had also concluded that the discount of Rs. 500/- which was offered earlier had been withdrawn by the Supplier vide his invoice dated 29.11.2017 which did not amount to profiteering. The DGAP had further concluded that the excess amount of GST paid by the Applicant @ 28% at the time of placing order was to be refunded by the Respondent as the same had been reduced to 18% at the time of delivery on 29.11.2017. Therefore, the DGAP had recommended that there had been no profiteering by the Supplier and hence there was no violation of the provisions of the CGST Act, 2017.

**4.** The above report was considered by the Authority in its sitting held on 27.03.2018 and it was ordered that the DGAP be asked to procure the details from the Respondent as to how many such cases were there in which at the time of booking of the orders on his e-commerce platform, the rate of GST was higher than the rate of GST at the time of delivery of the goods and whether any comprehensive system of refund was put in place by the Respondent to refund the excess amount of tax collected by him. The DGAP vide his letter dated 11.05.2018 had informed that as per the letter dated 27.4.2018 received from the Respondent the excess amount of Rs. 700/-collected from the Applicant had been refunded to him on 18.01.2018. The Respondent had also stated that he was only offering a market place which enabled the sellers to offer their products for direct sale to the customers for which it was charging commission and the sellers were entirely responsible for the supply of goods and services and for the payment of taxes. The Respondent had also informed that there were 7254 cases in which the rate of GST at the time of booking of the orders on his platform was higher than the rate of GST prevalent at the time of delivery and the Respondent had initiated the process of refund of the differential amount as per the instructions of the sellers.

**5.** It was decided to hear the Applicant as well as the Respondent on 29.05.2018 during which Sh. Gopi Krishna Obulam, Director, Sh. Prasanth Bhat, authorized representative and Sh. Pankaj Bathla, Sr. Manager appeared for the Respondent however the Applicant did not put an appearance. During the hearing the Respondent reiterated the stand taken by him in his letter dated 27.4.2018 and stated that he was only providing a market platform to the various supplier to offer their products directly for sale to the buyers and he was charging commission for the same. He had also stated that the excess amount of Rs. 700/- of GST charged from the Applicant had already been refunded to him by the Supplier through the Respondent on 18.1.2018. He had further denied allegation of profiteering made against him on the ground that he was not the Supplier of the Almirah and hence he had not violated the provisions of Section 171 of the above Act.

**6.** The DGAP had further informed vide his letter dated 18.6.2018 that the discount of Rs. 500/- which was subsequently withdrawn by the Supplier was given out of the profit margin by the Supplier and hence it could not be treated as an act of profiteering. He had also informed that the Respondent was not a Supplier and hence the refund of excess tax was distinct from profiteering and hence it did not fall under the ambit of Section 171 of the Act.

**7.** We have carefully heard the Respondent and have also perused the material placed on the record and it is revealed that the Applicant had placed an order for supply of a Godrej Interio Slimline Metal Almirah on the Supplier through the Respondent on 4.11.2017 for which a tax invoice was issued by the Supplier on 7.11.2017. The gross amount of Rs. 15,352/- shown in the invoice could be broken up into Rs. 11,993.75/- as base price and Rs. 3358.25/- as GST @ 28%. It is also revealed that on this gross amount a discount of Rs. 500/- was offered and the discounted price of Rs. 14,852/- was further broken up into Rs.

11,603.13/- as base price and Rs. 3248.87/- as GST @ 28%. Therefore it is apparent that the base price of the Supplier was Rs. 11,993.75/- and on the cum tax price a discount of Rs. 500/- was offered. It is also revealed that the Almirah was supplied to the Applicant by the Supplier vide invoice dated 29.11.2017 in which the base price was again shown as Rs. 11,993.87/- and GST of Rs. 2158/- was charged @ 18%, as the same had been reduced by the Govt, of India on 14.11.2017 from 28% to 18%. Therefore, it is clear that the Supplier had charged correct rates of GST which were prevalent at the time of placing of the order and the supply of the Almirah through the above two invoices, therefore, no illegality had been done by the Supplier while executing the order placed by the Applicant. It is also apparent from the record that the Supplier had not changed the base price of Rs. 11,993.75/- which was prevalent at the time of booking on 4.11.2018, at the time of delivery on 29.11.2017. Hence the Supplier has not resorted to profiteering by increasing his base price or appropriated the excess amount of tax charged from the Applicant and hence the allegation of violation of the provisions of Section 171 of the above Act is not established.

**8.** It is also apparent that the Respondent was not the Supplier/manufacturer of the Almirah and was only an agent who had offered his platform to the Supplier to sell the Almirah by charging commission, and was also not responsible for collection or refund of GST and hence he cannot be held accountable for contravention of Section 171 of the CGST Act, 2017. It has also been found that the Supplier has refunded an amount of Rs. 700/- through the Respondent which was charged as tax in excess from the Applicant at the time of the placing of the order. It has also come to the notice from the perusal of the letter dated 27.4.2018 that the Respondent had charged 28% GST in the case of 7254 orders which were placed on his platform by the various buyers before 15.11.2017 and in which the supply was made after reduction of GST to 18%. The Respondent has claimed that he had already initiated the process of refund of excess tax collected from the recipients. Keeping in view the interest of the buyers the Respondent is directed to ensure that the refund of the excess tax is made without delay.

**9.** We have also carefully considered the issue of denial of discount of Rs. 500/- which was offered by the Supplier to the Applicant at the time of placing of the order on 4.11.2017 and which was withdrawn by him at the time of supply of the Almirah on 29.11.2017 and it is revealed that the withdrawal of discount does not amount to profiteering as the same was offered from his profit margin by the Supplier and does not form part of the base price and therefore, also the Supplier cannot be held guilty under Section 171 of the Act.

**10.** The Authority is also conscious of the fact that there may be several such cases in which the e-platforms had collected excess GST from the buyers and have not refunded the same after the tax was reduced on various products on 15.11.2017. Therefore, it has already directed the Director General of Audit, Central Board of Indirect Taxes and Customs vide letter No. NAA/2018/DO/08/211 dated 24.5.2018 to audit the major e-platforms and submit it's findings to the Authority.

**11.** Based on the above facts the allegation of profiteering made by the Applicant against the Respondent as well as the Supplier is not established and hence the present application is not maintainable and the same is accordingly dismissed. A copy of this order be supplied to all the parties free of cost. File of this case be consigned after completion.

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