

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

Case No.	78/2020
Date of Institution	09.06.2020
Date of Order	27.11.2020

In the matter of:

1. Shri. Jagini Rohit c/o Sri Raja Rajeshwari Nilayam, Himayatnagar Street No. 6, Hyderabad, Telangana-500029.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Prasad Media Corporation Pvt. Ltd., 6-1-38, Fourth Floor, Prasad Imax, Opp. NTR Garden, Hyderabad-500063.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. None for the Respondent.



ORDER

1. The present Report dated 12.06.2019 has been received from the Director-General of Anti-Profiteering(DGAP) after an investigation in terms of Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the instant case are that a reference was received from the Standing Committee on Anti-Profiteering on 06.05.2020 recommending that a detailed investigation be conducted in respect of an Application filed by Applicant No. 1 alleging profiteering by the Respondent in respect of the supply of "Services by way of admission to exhibition of cinematograph films where the price of admission ticket is above one hundred rupees" despite a reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. Applicant No. 1 has alleged that the Respondent increased the base price of his movie tickets and thus maintained unchanged total (cum tax) prices of the movie tickets, charged by him from his customers/ recipients, and had thus not passed on to his customers/ recipients. the benefit of reduction in the GST rate from 28% to 18% effected vide Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018. In support of his claim, Applicant No. 1 had submitted a copy of a movie ticket dated 04.01.2019 along with his application.
2. The DGAP has further reported that the Respondent had already been investigated, in respect of the same cinema hall, for profiteering based on another Application dated 28.01.2019, which had been filed by the Principal Commissioner, Hyderabad CGST Commissionerate, wherein it had been alleged that the Respondent had profited by not passing on the benefit of the reduction in the rate of tax to his customers/ recipients. DGAP has further reported that based on the

investigation carried out by him for the period from 01.01.2019 to 30.06.2019, he had vide his report dated 25.10.2019 furnished under Rule 129(6) of the CGST Rules 2017, concluded that the allegation of profiteering stood confirmed against the same Respondent and that the Respondent had profited by the tune of Rs. 30,13,058/- (inclusive of GST) .The DGAP has added that said investigation had revealed that the Respondent was found to have profited during the period from 01.01.2019 to 07.02.2019 whereas no profiteering was established for the period after 08.02.2019 since the Respondent had reduced the prices commensurately for all the six screens in his cinema hall.

3. In respect of the current proceedings, the DGAP has reported that the complaint made by Applicant No. 1 was based on a copy of a movie ticket dated 04.01.2019 that he had enclosed with his Application and that the date of the said movie ticket fell within the period for which profiteering has been ascertained against the Respondent and his claim to the benefit was also established.
4. On the issue of quantification of the amount of benefit that the Respondent was required to pass on to the Applicant, the DGAP has reported as follows that there were two classes of screens within the multiplex, 2D and 3D screens; that the prices of tickets for Screens 1 to 5 (2D Movies) were different from the tickets for Screen 6 (3D Movies); that the ticket pricing varied, based on the screen where a movie was exhibited; that the case of Applicant No. 1 pertained to a 2D movie KGF screened in Screen No. 1 of Respondent's multiplex having Rs 150/- as the ticket price; that the computation of

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2 x 1

profiteering in respect of Applicant No. 1 was worked out as per

Table-A below:-

Table-'A'

(Amount in Rs.)

Sr.No	Description	Factors	Pre Rate Reduction(01.12.2018 to 31.12.2018)	Post Rate Reduction(From 01.12.2018)
1	Multiple Screens No. and Category	A	Screen-1 (2D)	
2	Base price per ticket (without GST)	B	117.18/-	127.12
3	GST Rate	C	28%	18%
4	GST Amount per ticket	D=(B*C)	32.82/-	22.88/-
5	Actual Selling Price (Post Rate Reduction) (including GST)	E=B+D	150/-	150/-
6	Commensurate Selling Price (Post Rate Reduction) (including GST)	F=118% OF B(pre)		138.27/-
7	No. of tickets purchased by the Applicant	G		1
8	The excess amount charged (or Profiteering)	H=(E-F)*G		11.73/-

5. The DGAP has thus concluded that the Respondent has realized an excess amount of Rs 11.73/- from Applicant No. 1 (inclusive of GST) and that this amount stood included in the profiteering of Rs. 30,13,058/- by the Respondent as computed in DGAP's previous Report F.No. 22011/NAA/96/PMC/2019 dated 25.10.2019. The DGAP has also submitted that in these proceedings, any reference to the CGST Act, 2017 and CGST Rules, 2017 includes a reference to the corresponding provisions under the relevant SGST/UTGST/IGST Acts and Rules.

6. The instant investigation report was received by this Authority on 15.06.2020. It was decided to hear Applicant No. 1 and thus a notice dated 23.06.2020 was issued to him to explain as to whether he agreed with the above said Report of the DGAP and to file his submissions on the matter by 03.07.2020. However, since Applicant No. 1 did not respond, this Authority, its vide Orders dated 14.07.2020 and 30.07.2020, again directed Applicant No. 1 to file his

submissions. Applicant No. 1, vide e-mail dated 12.08.2020, filed his submissions and stated that he agreed with the DGAP's report and requested that it be accepted. Given the above submissions of Applicant No. 1, further hearings were closed by this Authority vide its Order dated 20.08.2020.

7. Further, vide its Order dated 25.09.2020, hearings in the instant case were re-opened to grant the Respondent an opportunity of being heard in the interest of natural justice. Thus the Respondent was asked to file his submissions against the report of the DGAP, if any, by 12.10.2020. In response thereto, the Respondent, vide his submissions dated 08.10.2020, submitted that the earlier report of the DGAP on the same matter had culminated in Order No. 37/2020 dated 07.07.2020 of this Authority, vide which the allegation of profiteering against him had stood confirmed. He also submitted that he had filed a writ petition (Diary No. 600763 of 2020) before the Hon'ble Court of Delhi challenging this Authority's Order No. 37/2020 dated 07.07.2020 on various legal grounds, including the constitutional validity of the Anti-Profiteering provisions. The respondent further submitted that the DGAP report has itself found that the allegedly profited sum of Rs. 11.73/- already stood included in the earlier proceedings and that the instant case was only an issue of overlap of the period and the quantum of profiteering. The Respondent further submitted that since the Writ petition was sub-judice before the Hon'ble High Court of Delhi, the present proceedings might be disposed of as being duplication.
8. Thereafter, vide its Order dated 12.10.2020, this Authority forwarded the above-mentioned submissions of the Respondent to the DGAP

seeking clarification thereon under Rule 133(2A) of the CGST Rules, 2017. The DGAP, vide his clarification furnished under Rule 133(2A) of the CGST Rules 2017, reported that aggrieved with the Authority's order No. 37/2020 dated 07.07.2020, the Respondent had filed a Writ Petition (Civil) No. 7736/2020 before the Hon'ble High Court of Delhi at New Delhi. The Hon'ble High Court vide order dated 08.10.2020 directed the Respondent *"to deposit the principal profiteered amount i.e. Rs. 25,53,454/- (Rs. 30,13,058/- minus Rs.4,59,604/-) in six equated installments commencing 02nd November, 2020. The interest amount directed to be paid by the Respondents as well as penalty proceedings are stayed till further orders"*.

9. Further, the Respondent, vide his subsequent submission dated 29.10.2020, reiterated his previous submissions dated 08.10.2020 and submitted that he was depositing the profiteered amount as directed by the Hon'ble High Court in its interim order dated 08.10.2020. After considering the above submissions of the Respondent, hearings were closed in the instant matter.

10. On examining the various submissions of the Applicants, the Respondent, and the case records, we are clear that the report of the DGAP dated 12.06.2019, is acceptable, not only because it has been agreed to by both, the applicant No. 1 and the respondent, but also because the main issue of profiteering by the Respondent has already been addressed and settled by this Authority vide its Order No. 37/2020 dated 07.07.2020 on the same matter, whereby the Respondent was found to have profiteered in terms of Section 171 of the CGST Act 2017. It is pertinent that the above Order was passed

in pursuance of an earlier complaint filed by Principal Commissioner, Central Tax & Central Excise Hyderabad, GST Commissionerate, GST Bhavan, LB Stadium Road, Basheerbagh, Hyderabad-500004 and the resultant investigation Report of the DGAP dated 25.10.2019 which covered the period from 01.01.2019 to 30.06.2019. Based on the same, vide its Order No. 37/2020 dated 07.07.2020, this Authority had upheld that the allegation of profiteering against the Respondent and determined that the Respondent had realized an additional benefit amounting to Rs. 30,13,058/- (inclusive of GST). The Respondent had therefore been directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit was passed on to the recipients. Further, the Respondent had been directed to deposit the profiteered amount of Rs. 30,13,058/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount was deposited, Since the recipients, in this case, were not identifiable, the Respondent had been directed to deposit the amount of profiteering of Rs. 15,06,529/- (along with interest thereon at the applicable rate) in the Central Consumer Welfare Fund (CWF) and Rs. 15,06,529/- (along with interest thereon at the applicable rate) in the Telangana State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017.

11. In the present case, we find that investigation by the DGAP had revealed that the Application filed by Applicant No. 1 against the Respondent also covers the same issue and the same period as the previous case and that the Respondent had realized an additional

amount of Rs. 11.73/- from Applicant No. 1 (inclusive of GST). It is also clear to us that this amount of Rs. 11.73/- stands already included in the total profiteering amount of Rs. 30,13,058/- determined against the Respondent vide its Order No. 37/2020 dated 07.07.2020 which had been ordered to be deposited in the CWFs because, at that time, no recipient could be identified for receiving the benefit. However, now that the entitlement of Applicant No.1 has been established, we hold that Applicant No. 1 is entitled to be passed on an amount of Rs 11.73/- along with interest as applicable thereon.

12. Further, we take note of the decision of the Hon'ble High Court of Delhi in the matter arising out of the Writ Petition (Civil) No. 7736/2020, filed by the Respondent against Order No. 37/2020 dated 07.07.2020 of this Authority, and observe that the Hon'ble High Court, vide its interim order dated 08.10.2020, has directed the Respondent as follows - *"to deposit the principal profiteered amount i.e. Rs. 25,53,454/- (Rs. 30,13,058/- minus Rs.4,59,604/-) in six equated installments commencing 02nd November, 2020. The interest amount directed to be paid by the Respondents as well as penalty proceedings are stayed till further orders"*. Accordingly, the Respondent has deposited an amount of Rs. 2,12,788/- in the Central Consumer Welfare Fund and a similar amount of Rs. 2,12,788/- in the Telangana State Consumer Welfare Fund. Further, as has been explained by us in above paras, the Applicant No. 1 is entitled to be passed on an amount of Rs 11.73 along with interest as applicable thereon since the amount has to be passed on equally from the Central CWF and the Telangana State CWF, the amount to

be paid from each of the above two CWFs works out to be Rs. 5.865/-, which, on rounding off, has to read as Rs. 6/- (Rupees Six Only). Therefore, we order that an amount of Rupees Six only shall be paid to the Applicant No. 1 from the Central Consumer Welfare Fund and Rupees Six only from the Telangana State Consumer Welfare Fund alongwith the interest as applicable thereon.

13. While deciding this matter as above, we take note of the fact that in terms of Para 30 of the Procedure and Methodology notified by this Authority in terms of Rule 126 of the CGST Rules 2017, any clerical, arithmetical, or factual mistake apparent from the record needs to be corrected within a period of 3 months from the passing of the order. In this case, this Authority had passed Order No 37/2020 on 07.07.2020 and hence three months period stipulated for any such correction has lapsed. However, due to the prevalent pandemic of COVID-19 in the Country, this order could not be passed within the stipulated period of three months from the date of Order No. 37/2020 dated 07.07.2020 of this Authority on the same matter due to force majeure in line with Para 30 of the 'Procedure and Methodology' notified by this Authority. Accordingly, this Order is being passed today i.e. 27.11.2020 in terms of the Notification No. 65/2020-Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.



14. A copy each of this Order be supplied to the Applicants, the Respondent, Commissioners CGST/SGST for necessary action. File be consigned after completion.


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



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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

ok

(A.K Goel)
NAA, Secretary

File No. 22011/NAA/164/Prasad(2)/2020 /6232-39 Date:- 27.11.2020

Copy To:-

1. M/s Prasad Media Corporation Pvt. Ltd., 6-1-38, 4th Floor, Prasad Imax, Opp. NTR Garden, Hyderabad-500063.
2. Jagini Rohit C/o Sri Raja Rajeshwari Nilayam, Himayatnagar Street No. 6, Hyderabad, Telangana-500029.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Pr. Commissioner, Central Tax & Central Ex., Hyderabad GST Commissionerate, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad-500004.
5. Commissioner of State Taxes, CT Complex, Nampally Station Road, Hyderabad-500001 (cst@tgct.gov.in).
6. PAO, Ministry of Consumer Affairs, Food and Public Distribution, Room 1-A, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001.
7. PAO, Consumer Affairs, Food and Civil Supplies Department, Civil Supplies Bhavan, Hyderabad-500082 (commr_cs@telengana.gov.in).
8. Guard File.


A. K. GOEL
SECRETARY, NAA