



BEFORE THE COMPETITION COMMISSION OF INDIA
(AUTHORITY UNDER SECTION 171 OF THE CGST ACT, 2017)

d/c

I.O. No. : 02/2024
Date of Institution : 30.03.2022
Date of Order : 15.07.2024

In the matter of:

1. Principal Commissioner, Hyderabad Commissionerate, GST Bhawan,
LB Stadium Road, Basheer Bagh, Hyderabad-500004.
2. Director General of Anti-Profitteering, 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 Alankar Cinema, 9-1-44 Langar House, Hyderabad- 500008.

Respondent

Coram: -

1. Ravneet Kaur, Chairperson
2. Anil Agrawal, Member
3. Sweta Kakkad, Member
4. Deepak Anurag, Member

ORDER

1. The erstwhile Authority, National Anti-Profitteering Authority (NAA) had received the present Report dated 29.03.2022 from the Applicant No. 2, i.e., the Director General of Anti-Profitteering (**hereinafter referred to as “the DGAP”**) on 30.03.2022 after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profitteering on 09.10.2019 to conduct a detailed investigation in respect of an application dated 29.07.2019 filed by Applicant No. 1, under Rule 128 of the CGST Rules, 2017 (**hereinafter referred to as “the Rules”**). The Applicant No. 1 had alleged that the Respondent did not pass on the benefit of reduction in the GST rate on the movie admission tickets from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018-C.T. (Rate) dated 31.12.2018 and instead, increased the base price to maintain the same cum-tax selling price, alleging profiteering by the Respondent with regard to supply of “*Services by way of admission to exhibition of cinematography films*”.
2. Vide the above-mentioned Report, the DGAP inter-alia stated that: -
 - i. On receipt of the reference from the Standing Committee on Anti-profitteering, a notice under Rule 129 of the Rules was issued by the DGAP on 23.10.2019, calling upon the Respondent to reply as to whether he admits that the benefit of ITC had not been passed on by the Respondent by way of commensurate reduction in price and if so, to *Suo moto* determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all supporting documents for the

period from 01.01.2019 to 31.10.2019. Vide the said notice; the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 on 30.10.2019 and 31.10.2019. The Respondent did not avail the opportunity.

- ii. The DGAP stated that the Respondent did not submit complete documents/information. Reminders dated 06.11.2019, 18.12.2019 & 08.01.2020 and summons dated 10.02.2020 were issued. In response, the Respondent filed Writ Petition No. 3458/2020 before the Hon'ble High Court of Telangana challenging the Notice and the Hon'ble High Court granted an interim stay vide order dated 19.02.2020. Being aggrieved, the DGAP filed an application for vacation of stay on the investigation. Considering facts and circumstances, the Hon'ble High Court of Telangana disposed the Writ Petition no. 3458/2020 and passed an order dated 27.10.2021 as appended below: -

"As agreed to by learned Counsel for the parties, the present writ petition is also disposed of on similar lines by granting eight weeks' time to the petitioner (the Noticee) to respond to the impugned notices dated 23.10.2019 & 08.01.2020 issued by the Respondent No. 2 (The DGAP)."

- iii. After the direction given by the Hon'ble High Court, the DGAP issued reminders dated 12.11.2021, 06.12.2021, 30.12.2021, 02.02.2022, 17.02.2022 & 09.03.2022 requesting the Respondent for submission of

requisite documents. The Respondent did not submit the desired documents as stated in above reminders letters, till date.

- iv. The period of investigation covered by the DGAP was from 01.01.2019 to 30.09.2019 as the Respondent failed to submit the documents for the month of October, 2019.
- v. The DGAP stated that the rate of GST on the "*Services by way of admission exhibition of cinematograph films where price of admission ticket is above one hundred rupees*" was reduced from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission exhibition of cinematograph films where price of admission ticket is one hundred rupees or less*" were reduced from 18% to 12% w.e.f. 01.01.2019 vide Notification No. 27/2018-Central tax (rate) dated 31.12.2018.
- vi. The DGAP observed that the Respondent was selling tickets of different categories priced at Rs.100/- or less than Rs.100/- (excluding Tax). Hence the investigation was limited to reduction in rate of GST from 18% to 12% only.
- vii. The DGAP stated that there were three categories of admission tickets i.e. Rs. 30/-, Rs. 60/- and Rs. 100/- (inclusive of tax) sold by the Respondent during the pre-rate reduction period. In the post rate reduction period effective from 01.01.2019, the price of the admission tickets (inclusive of tax) in three categories was not changed or reduced and the cum tax price of three categories of admission tickets remained same after the rate reduction as is given below in Table A:-

Table-A

Sr. No.	Category of Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.09.2019					Increase the base price (% approx.)
		Amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	Amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	Commensurate Base Price (in Rs.)	Amount which was to be Charged (in Rs.)	
A	B	C	D	E=[C/118%]	F	G	H	I	J=(I*112%)	K=((H/I*100)-100)
1	Balcony	100	18	84.75	100	12%	89.29	84.75	94.92	5.36
2	Second Class	60	18	50.85	60	12%	53.57	50.85	56.95	5.36
3	Third Class	30	18	25.42	30	12%	26.79	25.42	28.47	5.36

viii. The Respondent had increased the base price in all three categories of admission tickets i.e. from Rs. 84.75 to 89.29 for Balcony, from Rs. 50.85 to 53.57 for Second Class and from 25.42 to 28.47 for Third class. The DGAP observed that the actual cum tax price of the tickets was not reduced though it should have been revised as Rs 94.92 for Balcony, Rs 56.95 for Second class and Rs 28.47 for third class but he continued to charge the pre-rate reduction prices and maintained the actual cum tax prices by increasing the base prices of the tickets. It was also observed that the Respondent had increased the base prices @ 5.36% approx. in every category of admission ticket sold. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of GST rate reduction from 18% to 12% in respect of "Services by way of admission to exhibition of cinematography films" was not passed on to the recipients in case of all categories of admission tickets. The details of the profiteered amount are given in Table B below: -

Table-B

Sr. No	Turnover from 01.01.2019 to 30.09.2019 all three categories of admission ticket	Profiteering in base price in all three categories of admission ticket @ 5.36%	GST on profiteering @12%	Final Profiteering
A	B	$C = B * 5.36\%$	$D = C * 12\%$	$E = C + D$
1	1,62,55,109/-	8,71,274/-	1,04,553	9,75,827/-

- ix. The DGAP concluded that the total amount of profiteering was Rs. **9,75,827/-** covering the period from 01.01.2019 to 30.09.2019. The recipients of the services were not identifiable as no such details of the consumers had been provided. The DGAP stated that for further period beyond 30.09.2019, the matter may be dealt by National Anti-profiteering Authority as the Respondent was not responding in any manner after repeated reminders and even the directions issued by the Hon'ble High Court.
3. The NAA issued Notice dated 20.04.2022 to the Respondent directing to explain why the DGAP's Report dated 29.03.2022 should not be accepted and his liability for profiteering amounting to Rs. 9,75,827/- should not be determined u/s 171 of the CGST Act, 2017 and penalty u/s 171(3A) of the CGST Act read with Rule 133(3) (d) of the CGST Rules, 2017 should not be imposed. Thereafter, the NAA vide Order dated 27.07.2022 directed the Respondent and the Applicant to file their written submissions by 16.08.2022.
4. The Respondent filed his submissions vide letter dated 12.08.2022 vide which he inter-alia stated that: -

- i. Alankar Cinema was a single Screen Theatre. The Box office collections from the audience from sale of tickets would be including GST. In July 2017, the rate of GST was 18% on compounding basis, and vide Notification 27/2018-Central Tax (Rate) dated 31.12.2018 the rate of tax was reduced to 12% on compounding basis.
 - ii. The allegation that the benefit of reduction from 18% to 12% was not passed on to the recipients, is not correct. As the right of admission was fixed by the Government and the prices collected was inclusive of taxes, no change in right of admission of tickets was made, whenever the rate of taxes were changed.
 - iii. The calculation submitted in the report as per Table A is not correct because the benefit would not go to the consumer as the rate of admission was fixed as per Government rates.
 - iv. The alleged profiteering amounting Rs. 9,75,827/- was denied.
5. Copy of the above submissions filed by the Respondent was forwarded to the DGAP for clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP submitted his clarifications on 06.09.2022 vide which he clarified that: -
 - i. The State Government only fixed the maximum price at which the movie tickets could be sold. The cinema management was free to sell the tickets at a lower price e.g. in the event of reduction of taxes. The State Government came into the picture only when the cinema management wanted to increase the price of tickets beyond the said maximum price. The Anti-profiteering provisions did not prescribe a

reduction of price but only to pass on the benefit of reduction of taxes. There was no conflict with the State Government directives. Thus, in the event of a reduction in rate of tax, there must be a commensurate reduction in prices of Goods & Services.

- ii. The calculations in the Report dated 29.03.2022 as per Table A are correct. Despite the tax rate reduction, the Respondent maintained the same MRP by increasing his base prices with the plea that the Government had fixed ticket prices.
6. The NAA vide Order dated 07.09.2022 forwarded the DGAP's clarifications dated 06.09.2022 to the Respondent and the Applicant for filing their rejoinder, if any, by 19.09.2022 and further directed the DGAP to complete the investigation under Rule 129 of the CGST Rules, 2017, for the period beyond 30.09.2019. The NAA also issued a letter dated 07.09.2022 to the DGAP stating that:

"it is informed that the report in the matter of M/s Alankar Cinema is for the period 01.01.2019 to 30.09.2019. For the period beyond 30.09.2019 it is stated in point no. 21 of the report that:

"the matter may be dealt by National Anti-Profiteering Authority as the Noticee is not responding in any manner after repeated reminders and even court order."

In this regard, please refer to Rule 132 of the CGST Rules, 2017 and the Order XVI, Rule 10 of the Code of Civil Procedure, 1908 wherein procedure is provided where witness fails to comply with summons.

In view of above, the matter of M/s Alankar Cinema is referred back to the Director General of Anti-profiteering under Rule 129 of the CGST Rules, 2017 to provide the Anti-Profiteering amount information against M/s Alankar Cinema for the period beyond 30.09.2019.”

7. The DGAP vide letter dated 26.9.2022 informed the NAA as follows :-
- i. A reference was received from the Standing Committee on 09.10.2019 for investigation and a Notice under Rule 129 of the CGST Rules, 2017 was issued on 23.10.2019 to furnish all desired documents up to 31.10.2019. The Respondent had submitted part documents up to 30.09.2019 vide letter dated 11.11.2019. Reminders were issued on 18.12.2019 & 08.01.2020 for the remaining documents. When the Respondent did not cooperate, summons dated 10.02.2020 were issued.
 - ii. The Respondent filed a Writ Petition no. 3458/2020 in the Telangana High Court and the Hon'ble High Court granted an interim stay on proceedings vide its Order dated 19.02.2020. The Hon'ble High Court disposed the Writ Petition and granted the Respondent 8-weeks time to submit desired documents vide its order dated 27.10.2021.
 - iii. Letters dated 12.11.2021, 06.12.2021, 30.12.2021, 02.02.2022, 17.02.2022 & 09.03.2022 were written to the Respondent for submission of desired documents as per Hon'ble High Court's Order dated 19.02.2020. But the Respondent did not submit the documents.
 - iv. To comply with the limitation period, the investigation Report dated 29.03.2022 was prepared on the basis of available records/documents,

which were up to September 2019. The data of October 2019 could not be incorporated in the Report as no data was made available by the Respondent to DGAP and the same has been mentioned in the para 21 of the Report dated 29.03.2022. The DGAP submitted that one-month period that is October, 2019 had been excluded from the investigation.

- v. The DGAP sought further directions/orders in the matter for investigation beyond 30.09.2019.

8. The DGAP again vide letter dated 04.03.2024 requested to issue directions as up to which period investigation is to be completed starting from 01.10.2019.
9. The Commission has carefully considered the Report of the DGAP and the other material placed on record and found that the DGAP has reported profiteering of Rs 9,75,827/- for the period from 01.01.2019 to 30.09.2019.
10. The erstwhile NAA vide Order dated 07.09.2022 directed the DGAP to complete the investigation under Rule 129 of the CGST Rules, 2017 for the period beyond 30.09.2019.
11. The Commission considered all the facts placed on record and found that the DGAP issued Notice to the Respondent under Rule 129 of the CGST Rules, 2017 dated 23.10.2019 to furnish all desired documents from 01.01.2019 to 31.10.2019. However, the Respondent did not submit the documents despite repeated reminders and summons and therefore, the DGAP concluded the investigation and submitted investigation Report dated 29.03.2022 on the basis of available records/documents, which were up to

September, 2019. The DGAP stated that the data of October, 2019 could not be incorporated in the Report as no data was made available by the Respondent to the DGAP.

12. In view of above, it is observed that the DGAP report dated 29.03.2022 is incomplete as the DGAP issued notice under Rule 129 of the CGST Rules, 2017 to the Respondent to furnish all desired documents of the period from 01.01.2019 to 31.10.2019. However, the DGAP concluded profiteering of Rs. 9,75,827/- for the period from 01.01.2019 to 30.09.2019 without including profiteering of one-month period i.e. October, 2019 in the period of investigation. Accordingly, the DGAP is directed to complete the investigation up till 31.10.2019 under Rule 133(4) of the above Rules and submit a complete report. The Respondent is also directed to supply the required information to the DGAP promptly.
13. A copy of this order be supplied to all the parties free of cost and file be consigned after completion.


s/d
(Deepak Anurag)
Member

s/d
(Sweta Kakkad)
Member

s/d
(Anil Agrawal)
Member

s/d
(Ravneet Kaur)
Chairperson

Certified Copy


(I.P.S Bindra)
(Secretary)

File No. 22011/NAA/Alankar Cinema/97/2022/627-80

Date: -25.07.2024

Copy to:-

1. M/s Alankar Cinemas, 9-1-44, Langar House, Hyderabad-500008.
2. The Principal Commissioner, Hyderabad Commissionerate, GST Bhawan, LB Stadium Road, Basheerbagh, Hyderabad-500008.
3. The 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.
4. Guard File.