



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

I.O. No. : 03/2024
Date of Institution : 27.01.2023
Date of Order : 23.08.2024

In the matter of:

1. 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.

Applicant

Versus

M/s Nirma Limited, Nirma House, Ashram Road, Ahmedabad, Gujrat-380009.

Respondent

Coram: -

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

ORDER

1. The present Report dated 27.01.2023, has been received from the Director General of Anti-Profiteering (DGAP) under Rule 133(4) of the Central Goods and Service Tax Rules (CGST), Rules 2017 with reference to the Interim Order No. 02/2022 dated 10.05.2022 passed by the erstwhile Authority, National Anti-Profiteering Authority (NAA). Vide the aforesaid order, the Investigation Report dated 15.12.2021 submitted by the DGAP was remanded back to the DGAP under Rule 133(4) of the CGST Rules, 2017 with directions to reinvestigate the case on the following issues and submit a fresh report :-

- i. Whether the Respondent had reduced, re-fixed and displayed the MRPs of the impacted SKUs commensurately w.e.f. 15.11.2017 after the rate of tax was reduced on them and conveyed the same to his Dealers i.e Distributors/Wholesalers/ Retailers by whatever name known?
- ii. Whether the Respondent had affixed stickers or stamped or online printed the reduced MRPs on the stock lying with him or his dealers as on 15.11.2017 and thus passed on the benefit of tax reduction on it?
- iii. Whether the Respondent had charged 18% GST after rate reduction on the impacted SKUs after rate reduction?
- iv. On which grounds the Respondent had increased the base prices of his products in the month of November, 2017 immediately after the tax reduction on 15.11.2017?
- v. What evidence regarding increase in the prices of Crude Oil was available on the basis of which it had been claimed that the

Respondent had increased his prices due to the increase in the prices of the Crude Oil?

- vi. Whether the Respondent had violated the provisions of Section 171 of the Act and if so what was the quantum of profiteering?
2. The DGAP vide his Report dated 27.01.2023 has inter-alia submitted the following: -
- 1) i. That out of 32 impacted products; MRP was not reduced in respect of the following 5 SKUs:
 - a. Nirma Super detergent powder-1Kg
 - b. Nirma Super detergent powder-500 g
 - c. Nirma Super detergent powder-100g
 - d. Nirma Pink detergent powder-1Kg
 - e. Nirma Pink detergent powder-180 g

In respect of other impacted SKUs, the Respondent had reduced MRP in respect of 11 SKUs and increased the quantity of goods in respect of 8 SKUs. In respect of 8 SKUs, the same were discontinued in the post rate reduction period. The DGAP further stated that the Respondent had not reduced MRPs of all the impacted SKUs commensurately w.e.f. 15.11.2017 after the rate of tax was reduced.

- ii. That Respondent had not affixed sticker or stamped or online printed the MRPs on the stock lying with him or his dealers as on 15.11.2017. The DGAP stated that the Respondent passed on the benefit of tax rate reduction to his recipient (distributors) wherein there was no increase in base price as on 15.11.2017 and reduced rate of tax had been charged.

- iii. That the Respondent had charged 18% GST after tax rate reduction w.e.f. 15.11.2017 onwards and maintained the same base price as it existed during the pre tax rate reduction period.
- iv. That the price of crude oil was around \$52/barrel in April, 2017 and around \$60/barrel in November, 2017 as per the data available in website *www.macrotrends.net*. The data had also been verified from other website viz. *www.indexmundi.com* and *www.investing.com* etc., where also the prices of crude oil in April, 2017 & November, 2017 were found in the similar range.
- v. That the price of crude oil was around \$52/barrel in April, 2017 and around \$60/barrel in November, 2017. The Respondent had increased the price not only of the impacted products where rate of tax was reduced but also of Detergent Cake category, where no rates were reduced by Notification No. 41/2017 dated 14.11.2017. The Respondent had not increased the base price immediately after tax rate reduction on 15.11.2017 but during the period between 16.11.2017 and 09.05.2019.
- vi. The DGAP observed that even though the Respondent had not reduced MRP of the impacted SKUs, the Respondent had passed on the commensurate benefit to his recipient (distributors) by keeping the same base price after tax rate reduction on 15.11.2017 and by charging 18% (reduced tax-rate) on such base price. The Respondent had communicated to his distributors through circular dated 15.11.017 to further pass on the said benefit. Thus, there was no contravention of the provisions of Section 171 of the CGST Act, 2017.

The DGAP further stated that under Section 171 of the CGST, Act, the Respondent was required to pass on the benefit to his recipient alone. By not increasing the base price and reducing the tax after rate reduction, the Respondent had complied with the provisions of Section 171 as long as the supply of goods by the Respondent to his recipient was concerned. In the GST regime each supply in a supply chain was separately assessed and each registered person was liable to comply with the provisions of CGST Act and Rules separately. Further, the Respondent was not obliged to reduce MRP under the CGST Act and as long as the Respondent passed on the commensurate benefit to his distributors, it would be treated as compliance of Section 171 of the CGST Act, 2017. While the point that MRP was required to be reduced or not was debatable and subject to further technical interpretation, it was evident that the price at which transaction was made between the Respondent and his recipient (Distributors) in the pre-reduction period, was commensurately reduced by way of maintaining the same base price and reduced tax rate (18%) in the post-reduction regime.

- 2) The DGAP concluded that Section 171 of the CGST Act, 2017 did not specifically stipulate that there should be a reduction in MRP. However, it envisaged that the supplier had to pass on the benefit of rate reduction to his recipient by way of commensurate reduction in prices. The said section, referred to the recipient and not to the end consumer. The Respondent had passed on the commensurate benefit of rate reduction to his recipient (distributors) by way of commensurate reduction in price (transaction value).

3) The DGAP further stated that as per the Legal Metrology Act and Rules the provision for affixing sticker for reduced MRP had already been made in the Rule 6(3) of the Legal Metrology Rules, 2011 (LMR) which mandated that :

"it shall not be permissible to affix individual stickers on the package for altering or making declaration".

However, its provision said that for reducing MRP a sticker with the revised lower MRP might be affixed. Further, vide order no WM-10(31) 2017 dated 16.11.2017, permission had been granted to affix an additional sticker or stamping or by online printing for declaring the reduced MRP. The DGAP stated that a plain reading of the Rule 6(3) of the LMR & order dated 16.11.2017 revealed that affixing of individual sticker was generally not strictly enforced but an option had been given to either affix or stamp or online print in order to declare reduced MRP, which the supplier might follow.

4) The DGAP stated that no profiteering could be attributed to the Respondent since he had sold his products to his recipient (distributors) at transaction value and in compliance of Section 171 of the CGST Act, 2017; he had not increased the base price after tax rate reduction and charged the reduced rate of tax from his recipient. Profiteering, if any, in the downward supply chain done by any supplier was not part of the present investigation. Hence, it could not be established whether the benefit of tax reduction was passed on by the distributors to their recipient and so on up to the end consumer. The Respondent had complied with the provisions of Section 171 of the CGST Act, 2017 to the extent of his supply to his recipient i.e. his distributors.

3. The Commission considered the report of the DGAP dated 27.01.2023 and issued notice dated 05.07.2023 to the Respondent directing him to file his submissions on the DGAP's report on the following points:-

- i. That the DGAP reported that the Respondent had not reduced the Maximum Retail Prices (MRPs) i.e. Retail Sale Prices of the impacted Stock Keeping Units (SKU) w.e.f. 15.11.2017 after the tax rate reduction which appeared to be contrary to the provisions of the Section 171 of the CGST Act, 2017 as the Respondent was legally required to reduce the MRPs after the tax rate reduction.
- ii. That the DGAP also stated that the Respondent had not affixed stickers or stamped or printed reduced MRPs on the SKUs lying in the stock as on 15.11.2017, which also appeared to be against the provisions of Section 171 of the CGST Act, 2017. The Respondent was legally required to fix such stickers or stamp or on-line print the reduced MRPs on the SKUs lying in your stock as on 15.11.2017 which had resulted in denial of passing on the benefit of tax reduction to the ultimate buyers who bear the burden of tax.
- iii. That the DGAP also submitted that the Respondent had charged reduced rate of tax @18% w.e.f. 15.11.2017 from his distributors. The above findings of the DGAP was also contrary to the provisions of the Section 171 of the CGST Act, 2017 as the benefit of tax reduction was not to be passed on to the distributors but to the ultimate consumers who bear the burden of tax as per the provisions of the above Section.
- iv. That the DGAP also intimated that the price of crude oil had increased from \$52 in April 2017 to \$60 per Barrel in November, 2017 due to which the Respondent had increased his prices. However, perusal of

the investigation report showed that the prices of the various SKUs had been increased by the Respondent immediately after tax reduction which prima facie lead to believe that these prices had been increased to circumvent the provisions of Section 171 of the CGST Act, 2017.

4. The Respondent filed his submissions vide letter dated 11.08.2023 vide which he inter-alia stated as below : -

- i. That the Company had revised and reduced the MRP of the impacted SKUs except the five SKUs. The Circular was issued to all the distributors that there was no change in the present selling price to the distributors and it was instructed that the effect of the rate reduction benefit be appropriately communicated to the trade/customers.
- ii. Under Rule 6(3) of the legal Metrology (Packaged Commodities) Rules, 2011, the Respondent was not under compulsion to affix sticker or stamp.
- iii. The Respondent was selling the finished product to his distributors at selling price decided on transaction basis. Therefore, the contention that the benefit of tax reduction was not to be passed on to the distributors, but to the ultimate consumers who bear the burden of tax was not proper, legal and correct and contrary to the definition of recipient provided under Section 2(93) of the CGST Act.
- iv. That the Respondent had a system of reviewing the cost vis-à-vis selling price of products on half yearly basis i.e. April/May and October/November. There was rate increase in the month of December, 2017, the key and major factors affecting the cost of Detergents was Petroleum products i.e. basically price of Crude Oil, in

addition to cost of Advertisement, transportation and other direct overheads. There was an upward trend on a month-to-month basis, from April, 2017 to November, 2017 wherein, the price of Crude Oil was increased from USD 52 per barrel to USD 60 per barrel.

5. The Commission vide OM dated 21.08.2023 forwarded a copy of the Respondent's submissions dated 11.08.2023 to the DGAP for clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP submitted his clarifications dated 27.09.2023 vide which it was clarified that: -

- i. The Respondent had sold products to his distributors at decreased rate of GST without change of base price. The Respondent left onus only to the distributors/retailers to pass on the benefit to the consumer of reduction of MRP.
- ii. Rule 6(3) of the legal Metrology (Packaged Commodities) Rules, 2011 did not mandate that the MRP sticker could not be affixed. The Respondent's plea could not be considered for non-affixing the stickers of revised MRP.
- iii. The Respondent's obligation to the end consumer as a manufacturer was of utmost importance as only passing on the benefit to the very next stage of transaction was not the fulfillment of duties as the manufacturer as they were also obligated towards end consumer. However, the Respondent's contention that the benefit of tax reduction was passed on to their recipient was evident from the invoices issued to his distributors, wherein there was no increase in base price as on 15.11.2017 and reduced rate of tax had been charged. In the matter of Union of India v/s Mohit Minerals Pvt. Ltd. the philosophy of GST to be consumption and destination based tax and accordingly in the instant

case, the ultimate beneficiary must be the end use consumers, who were actual recipient and the burden of tax ultimately lies on them.

- iv. The contention of the Respondent that the Crude Oil prices were increased internationally was true but to a certain extent since the prices were increasing during April, 2017 to November, 2017 and not only during the month of November, 2017 and the half yearly price were due during October/November itself and the Respondent increased prices after rate revision in the month of December, 2017.
6. The Commission considered the DGAP's clarifications dated 27.09.2023 and forwarded a copy of the same vide OM dated 11.10.2023 to the Respondent for filing his rejoinder. The Respondent filed his rejoinder dated 03.11.2023 and reiterated his earlier submissions.
7. The Commission vide OM dated 28.11.2023 forwarded the Respondent's rejoinder dated 03.11.2023 to the DGAP for providing clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarification vide letter dated 14.2.2024 and reiterated his earlier submissions.
8. The Commission considered the DGAP's clarifications dated 14.2.2024 and vide OM dated 05.06.2024 directed the DGAP to calculate profiteering on the following three points :-
 - i. Where the Respondent had not reduced, re-fixed, and displayed the MRPs of the impacted SKUs commensurately after the rate of tax was reduced w.e.f. 15.11.2017.
 - ii. Where the Respondent had not affixed stickers or stamped or online printed reduced MRPs on the SKUs lying in stock as of 15.11.2017.
 - iii. Where the Respondent had increased the prices of various SKUs immediately after tax reduction which prima facie led to believe that

these prices had been increased to circumvent the provisions of Section 171 of the CGST Act, 2017 i.e. on dated 16.11.2017, 17.11.2017, 22.11.2017 and 29.11.2017.

9. The DGAP vide letter dated 01.07.2024 submitted his point-wise reply to the OM dated 05.06.2024 and inter-alia stated as below: -

- i. That the Respondent had reduced and re-fixed the price of the impacted SKUs commensurately after the reduction of tax rate w.e.f. 15.11.2017 by way of circulars dated 15.11.2017 & 17.11.2017 respectively to his immediate recipient i.e. the distributor, to pass on the benefit of tax reduction to the consumers. The base price had not been increased. However, the revised stickers could not be fixed on the items due to the fact that the subject goods had been dispatched from the manufacturer's place to the distributor's place.
- ii. That the Rule 6(3) of the Legal Metrology (Packaged Commodities) Rules, 2011 read with Advisory no WM-1093102017 dated 16.11.2017 of the Department of Consumer Affairs provided to affix an additional sticker or stamping or online printing for declaring the reduced MRP on the pre-packaged commodity. The relaxation had also been provided in the case of unsold stocks manufactured/packed/imported after 1st July 2017 where the MRP would reduce due to the reduction in the rate of GST post 1st July, 2017.
- iii. That the price of Crude Oil was 52\$ per barrel in April, 2017 and around 60\$ per barrel in November, 2017. There was increase in the prices of Petroleum Products having cascading effect coupled with increase in cost of advertisement and transportation. Therefore, the

Respondent was compelled to increase the prices of his Products. Further, the DGAP observed that not only impacted products price was revised but the price revision was carried out for non-impacted products also.

10. The Commission has gone through the full facts of the case and records including the DGAP's Investigation Report dated 15.12.2021, replies and emails of the Respondent, I.O. No. 02/2022 dated 10.05.2022, the Report dated 27.01.2023 submitted by the DGAP under Rule133(4) of the Rules and the submissions made by the Respondent and clarifications made by the DGAP.
11. Vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 the GST rate on the 'Detergent Powder' and 'Scouring Bar' was reduced from 28% to 18% w.e.f. 15.11.2017. Therefore, the Respondent is liable to pass on the benefit of tax reduction to the consumers as per the provisions of Section 171 of the CGST, Act, 2017.
12. The relevant provisions of the law to decide the matter in the given facts and circumstances as discussed hereinabove are as under:-

Section 171 of CGST Act 2017 states that :-

“(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 sub-section 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 the 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."

13. Further, the Hon'ble Delhi High Court vide its judgment dated 29.01.2024 in W.P. © 7743/2019 & others 106 connected matters stated as under:-

"SECTION 171 MANDATES THAT TAX FOREGONE HAS TO BE PASSED ON AS A COMMENSUREATE REDUCTION IN PRICE.

97. Section 171 of the Act, 2017 mandates that the suppliers shall pass on the benefit of reduction of the rate of Goods and Services Tax or Input Tax Credits by way of commensurate reduction in prices to the recipient. Section 171 deals with amounts that the Central and State Governments have foregone from the public exchequer in favor of the consumers. This Court is of the view that the amounts foregone from the public exchequer in favor of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. To allow them to do so would amount to unjust enrichment. Consequently, when the Goods and Services Tax rate gets reduced or the benefit of input tax credit, becomes available as a necessary consequence the final price paid by the recipient obviously requires to be reduced. In the absence of such anti-profiteering provisions, there would be no legal obligation to pass on the benefit of the Goods and Services Tax regime and, consequently, the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.

98. The expression 'profiteered' has been defined in the Explanation to Section 171 of the Act, 2017 to 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." According to Collins English Dictionary Complete and Unabridged, 12th Edition 2014, the word commensurate means "1. having the same extent or duration; 2. corresponding in degree, amount, or size, proportionate; 3. able to be measured by a common standard, commensurable." The word 'commensurate' has been used in several judgments of the Supreme Court for laying down yardsticks in different contexts, from determining the rightfulness of the posting of a public servant, to assessing the correctness of criminal sentencing and calculating maintenance amounts indicating that the Courts too have a clear and definite understanding of this word.

99. The obligation of effecting/making a "commensurate" reduction in prices, as mentioned hereinabove, is relevant to the underlying objective of the Goods and Services Tax regime which is to ensure that suppliers pass on the benefits of reduction in the rate of tax and Input Tax Credit to the consumers, especially since the Goods and Services Tax is a consumption-based tax (as adopted in India) and the recipient (consumer) practically pays the taxes which are included in the final price. Section 171 of the Act, 2017, therefore, is not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the Goods and Services Tax regime. Consequently, the word 'commensurate' in Section 171 of the Act, 2017 means that whatever actual saving arises due to the reduction in rates of tax or the benefit of the Input Tax Credit, in rupee and paisa terms, must be reflected as equal or near about reduction in price. In other words, tax foregone by the authorities has to be passed on to the consumer as commensurate reduction in price.

100. Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers/suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients. The said Section further enables the establishment of an Authority to determine whether Suppliers have passed on the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.

102. To summarize, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e, to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer.”

14. From a bare perusal of the provisions of Section 171 of the Act and also the interpretation of Section 171 by the Hon'ble Delhi High Court vide its judgment dated 29.01.2024 it emerges that the benefit of tax reduction must be passed on to the consumer by the manufacturer and sellers. The amount foregone from the public exchequer in favor of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. When the Goods and Services Tax rate gets reduced the final price paid by the recipient requires to be reduced. The obligation of effecting/making a “commensurate” reduction in prices, is relevant to the underlying objective of the Goods and Services Tax which is to ensure that manufacturer/suppliers pass on the benefit of reduction in the rate of tax to the consumers, especially since the Goods and Services Tax is a consumption-based tax and the recipient (consumer) practically pays the taxes which are included in the final price. The tax foregone by the authorities has to be passed on to the consumers as commensurate reduction in price.
15. The Respondent is selling Detergents and Scouring Bars as pre-packaged commodities, therefore, the provisions of Section 18 of the Legal Metrology Act, 2009 duly apply on him. Section 18 of the Legal Metrology Act, 2009 states that :-

“(1) No person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed.”

Further, as per the provisions of Rule 6 (e) of the Legal Metrology (Packaged Commodities) Rules, 2011, framed by the Central Government the retail price of the package has to be fixed and declared as defined under Rule 2(m), which states that :-

“2(m) “retail sale price” means the maximum price at which the commodity in packaged form may be sold to the ultimate consumer and the price shall be printed on the package in the manner given below;

Maximum or max. retail price Rs...../₹.....inclusive of all taxes or in the form MRP Rs...../₹.....incl..., if all taxes after taking in to account the fraction of less than fifty paise to be rounded off to the preceding rupee and fraction of above 50 paise and upto 95 paise to be rounded off to fifty paise;”

15.1. Therefore, as per Legal Metrology Act and Rules stated above the Respondent was legally required to display the revised MRPs i.e. Retail Sale Prices of the impacted SKUs (after commensurate tax reduction) on the stock available as on 15.11.2017, which was not done by the Respondent.

15.2. Further, as per order no. WM-1093102017 dated 16.11.2017 of the Department of Consumer Affairs, the Respondent was under further legal obligation to affix an additional sticker or stamp or online print the reduced MRPs on the SKUs lying in stock as on 15.11.2017;

WM-10(31)/2017
Government of India
Ministry of Consumer Affairs, Food and Public Distribution
Department of Consumer Affairs
Legal Metrology Division

Krishi Bhawan, New Delhi
Dated: 16.11.2017

To,
The Controllers of Legal Metrology,
All States/UTs

Subject: Labelling of MRP of pre-packaged commodities due to reduction in GST-reg.

Sir/ Madam,

Reference is invited to this office letter No. WM-10(31)/2017 dated 29.09.2017 regarding declaration of MRP on unsold stock of pre-packaged commodities manufactured/packed/imported prior to 1st July, 2017. Subsequent to that, Government has reduced the rates of GST on certain specified items. Consequent upon that, permission is hereby granted under sub-rule (3) of rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011, to affix an additional sticker or stamping or online printing for declaring the reduced MRP on the pre-packaged commodity. In this case also, the earlier Labelling/ Sticker of MRP will continue to be visible.

2. Further, this relaxation will also be applicable in the case of unsold stocks manufactured/ packed/ imported after 1st July 2017 where MRP would reduce due to a reduction in the rate of GST post 1st July 2017.

3. This order would be applicable up to 31st December. 2017.

Yours faithfully

(B.N.Dixit)
Director of Legal Metrology
Tel:011-23389489/ Fax,-011-23385322
Email: dirwm-ca@nic.in

Copy to: All Industries/ Industry Associations/ Stake Holders

16. In view of the above, the Respondent was legally required to reduce, re-fix and display the MRPs of the impacted SKUs commensurately w.e.f. 15.11.2017 and was also legally required to affix sticker or stamp or online print the reduced MRPs on the stock lying with him as on 15.11.2017. By doing so the Respondent would have passed on the benefit of tax reduction to the ultimate consumers who bear the burden of tax as per the provisions of Section 171 of the CGST Act, 2017.

17. The DGAP vide its report dated 27.01.2023 has stated that out of 32 impacted products, MRP was not reduced in 5 SKUs. In respect of other impacted SKUs, the Respondent had reduced MRP in respect of 11 SKUs, increased the quantity of goods in respect of 8 SKUs and 8 SKUs were discontinued in the post rate reduction period. The DGAP also stated that the Respondent had not reduced MRPs of all the impacted SKUs commensurately w.e.f. 15.11.2017 after the rate of tax was reduced. In this regard, it has been observed that the DGAP has not informed whether the MRP of the impacted SKUs was reduced from the date of rate reduction or not. Also, since the final price paid by the end consumer has not been reduced commensurately, as per Section 171, the Report of the DGAP stating that the Respondent has not violated the provisions of Section 171 of the CGST Act, 2017 cannot be accepted.
18. Therefore, in view of the above, the DGAP is directed to re-investigate the case in terms of the Hon'ble Delhi High Court judgment dated 29.01.2024 and submit report under Rule 133(4) of the CGST, Rules, 2017.
19. 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/39/NIRMA/298

22010921
27/08/24

Date: - 23.08.2024

Copy to:-

1. M/s Nirma Limited, Nirma House, Ashram Road, Ahmedabad, Gujrat-380009.
2. 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.
3. Guard File.