

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

Case No.	1/2018
Date of Institution	27-02-2018
Date of Order	27-03-2018

In the matter of:

Sh. Dinesh Mohan Bhardwaj, Proprietor, M/s U. P. Sales & Services,
Asima House, 148, Civil Lines, Near AXIS Bank, Distt. Bareilly, UP.

Applicant

Versus

M/s Vrandavaneshwree Automotive Private Limited, Rampur Road,
Adjacent Jauharpur Railway Crossing, CB Ganj, Bareilly, UP.

Respondent

Coram:

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Bijay Kumar, Technical Member
4. Ms R. Bhagyadevi, Technical Member

ORDER

1. The present report has been received from the Director General of Safeguards (DGSG) after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of this case are that an application dated 01-11-2017 (Annexure-1) was filed by the above applicant before the Standing Committee, constituted under Rule 123 (1) of the above Rules in which he had stated that he had entered in to a contract vide Annexure-3, on 28-04-2017 for supply of a Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) through the above respondent, who was an authorised dealer of M/s Honda Car India Ltd. at Bareilly, for an amount of Rs. 9,13,300/- which included Excise Duty @ 35%, Central Sales Tax (CST) @ 02% and UP Value Added Tax (VAT) @ 14% (Total 51%). He had also stated that he had taken delivery of the Car on 11-07-2017 after coming into force of the GST w.e.f. 01-07-2017, by paying an amount of Rs. 8,98,750/-. He had further stated that after 01-07-2017 the respondent was required to reduce the Excise Duty, CST and VAT amounting to 51% from the price of the Vehicle of Rs. 9,13,300/- and then charge SGST @ 14%, CGST @ 14% and Cess @ 1% (Total 29%) on the reduced price. He has therefore alleged that he was not given benefit of reduced rate of Tax which amounted to profiteering by the above respondent and hence action should be taken against him.
2. The applicant had filed the above application with the Standing Committee vide his letter dated 01-11-2017 (Annexure-1) which was

considered by the Committee in its meeting held on 07-11-2017 (Annexure-2) and referred to the DGSG for detailed investigation under rule 129 (1) of the CGST Rules, 2017, which was received by the DGSG on 29-11-2017. The DGSG had issued notice to the above respondent on 15-12-2017 (Annexure-5) to furnish reply and also supply copies of the documents mentioned in the notice. The respondent had submitted his reply and required documents vide his letters dated 26-12-2017 (Annexure-7) and 28-01-2018 (Annexure-8). The DGSG had also given opportunity to the applicant to inspect the reply and documents submitted by the respondent vide his letter dated 30-01-2018 and after inspecting the same the applicant vide his letter dated 16-02-2018 (Annexure-6) had intimated that he was satisfied with the reply given by the respondent and therefore the case may be closed.

3. The respondent, in his replies dated 26.12.2017 and 28.01.2018 had stated that he was registered under the GST and was engaged in trading and servicing of the cars and he was bound to sell cars at the ex-showroom price fixed by M/s Honda Cars Ltd. The respondent had justified the price charged by him from the applicant and maintained that the contention of the applicant that the pre-GST duties and taxes on such cars amounted to 51% was wrong and in fact, the total pre-GST tax incidence was 29.175% only and hence, there was a very negligible difference in the incidence of tax. The respondent had also submitted that he had reduced the dealer's margin from Rs. 33,736/- to Rs. 25,826/- and the price of the car by Rs. 4,000/- on account of the change in the colour of the car from

Orchid White (premium colour) to Alabaster Silver (base colour), as per the applicant's request.

4. The respondent had also intimated that the car of Orchid White colour was booked by the applicant vide Sale Contract dated 28.04.2017 when the ex-showroom price of this colour and model was Rs. 9,13,300/- and the ex-showroom price of the Alabaster Silver colour Car was Rs. 9,09,300/- at that time. Her had also intimated that after GST had been imposed w.e.f. 01.07.2017, the price list was revised and the ex-showroom price of the Alabaster Silver colour car was fixed as Rs. 8,98,749/- which was charged from the applicant.
5. The respondent had also submitted copies of the following documents with his replies:-
 - (a) Audited Balance Sheet & Profit & Loss account for the FY 2016-17.
 - (b) Copies of purchase invoices from April to September, 2017.
 - (c) Copies of retail invoices from April to September, 2017.
 - (d) Copies of returns filed with the Commercial Taxes Department from April to June, 2017.
 - (e) Price Lists (pre-GST & post-GST).
 - (f) Copies of Service Tax returns from April to September, 2017.
6. The DGSG had investigated whether the rate of tax on the car had been reduced post-GST and if so, whether there was substantial reduction in the rate of tax as had been contended by the applicant and whether the benefit of reduction in rate of tax had been passed on to the applicant.

7. The DGSG had found that the applicant had booked a car of premium colour (Orchid White) vide Sale Contract dated 28.04.2017 at ex-showroom price of Rs. 9,13,300/- (pre-GST), but he took delivery of the Car of base colour (Alabaster Silver) of the same model which had a lower ex-showroom price of Rs. 9,09,300/ (pre-GST). He had also found that since the applicant had taken delivery of the car of base colour, he was to be charged Rs. 4,000/- less than the contractual price. The DGSG had further found that the contention of the respondent that he had reduced the dealer's margin was not correct, as was evident from his reply dated 28.01.2018 enclosing therein the price list. It had also been revealed that the respondent, in his first reply dated 26.12.2017, had stated that he had reduced his margin from Rs. 33,736/- to Rs. 25,826/- but in his subsequent reply dated 28.01.2018, he had furnished a post-GST price list wherein two types of dealer's margins were shown, the first was of an amount of Rs. 26,619/- and the second was of an amount of Rs. 7,000/- shown as dealer's margin "1". The DGSG had concluded that the total dealer's margin appeared to be Rs. 33,619/- and not Rs. 25,826/-, as claimed by the respondent.
8. The DGSG had further found that the contention of the applicant that the total incidence of tax on the car was reduced from 51% to 29% post-GST, was also not correct as there was a minor reduction in the tax rate in the post-GST period and the tax rate had remained more or less the same. He had also calculated the comparative rates of pre-GST and post-GST tax on the model of car purchased by the applicant which are given in Table 'A' below:-

Table 'A'

Duty/Tax/Cess	Pre-GST Rate (%)	Post-GST Rate (%)
Excise Duty (S. No. 285 of Notification No.12/2012-CE dt. 17.03.2012, as amended)	12.5	-
National Calamity Contingent Duty (NCCD)	1	-
Auto Cess	0.125	-
Infra Cess	1	-
Total (A)	14.625	-
CST (B=0.05% on A)	0.007	-
Total (C=A+B)	14.632	-
VAT (D)=(14.5% on C)	16.622	-
GST+ Cess	-	29
Total tax rate (C+D)	31.254	29

9. The pre-GST and post-GST ex-showroom prices of the car purchased by the applicant were also worked out by the DGSG as per Table 'B' below:-

Table 'B'

Particulars	Factor	Pre-GST (in Rs)	Post-GST (in Rs)
Basic price of Honda Car Model:WR-V.1.2VX MT (i-VTEC)	A	6,59,175	6,58,718
Excise Duty @12.5%	$B=A*12.5\%$	82,397	-
NCCD @ 1%	$C= A*1\%$	6,592	-
Auto Cess @ 0.125%	$D=A*0.125\%$	824	-
Infra Cess @1%	$E= A*1\%$	6,592	-
Ex -factory Price	F= Add A to E	7,55,579	6,58,718
CST @ 0.05%	$G= F*.05\%$	378	-
Freight	H	4,452	4,260
Transit Insurance	I	121	108
Dealer Landed Price	J= Add F to I	7,60,530	6,63,086
Dealer Margin	K	33,619	33,619
Dealer Price	$L= J+K$	7,94,149	6,96,705
VAT @ 14.5%	$M= L*14.5\%$	1,15,152	
GST+Cess @ 29%	$N= L*29\%$		2,02,044
Ex-showroom price of	$O= L+M/N$	9,09,300	8,98,750

Alabaster Silver colour car			
Additional cost of Orchid White colour car	P	4,000	
Ex-showroom price of Orchid white colour car	Q= O+P	9,13,300	
Price charged from the applicant			8,98,750
Benefit passed on to the applicant (excluding Rs.4,000/- reduced for change in colour)			10,550

10. The DGSG had also found that the allegation of the applicant that the total tax prior to the implementation of GST was 51%, which was reduced to 29% w.e.f. 01.07.2017, was not correct. He had further found that claim of the applicant that though the price charged from him of Rs. 8,98,750/- was less than the contractual price of Rs. 9,13,300/-, still the said reduction was not commensurate with the reduction in the rate of tax was also not correct. It was also revealed that while the total incidence of tax was approximately 31.254% previously, which was fixed as 29% w.e.f. 01.07.2017, thus there was reduction of just over 2%.

11. The DGSG had also concluded that although the car of premium colour was booked at an amount of Rs. 9,13,300/- at the pre-GST tax rate,

the delivery of the car was taken on 11.07.2017 after implementation of the GST and the respondent had charged an ex-showroom price of Rs. 8,98,750/- from the applicant, taking into account the correct amounts of basic price, freight, insurance, dealer's margin etc. and had also correctly charged GST @ 29% and thus the benefit of the reduction in the tax rate was passed on to the applicant by way of reduction of price of the car by an amount of Rs. 10,550/- excluding Rs. 4,000/- which reduced on account of change of colour of the car from premium to base.

12. The DGSG had also held in his report that provisions of Section 171(1) of the CGST Act, 2017 requiring that "*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*" had not been contravened in the present case.
13. The investigation report submitted by the DGSG was considered by the Authority in its meeting held on 01.03.2018 and it was decided to accord personal hearing to the applicant on 16.03.2018 at 11 AM. Accordingly vide notice dated 01.03.2018, the applicant was informed but he did not appear but submitted his replies vide emails dated 15.03.2018 and dated 16.03.2018. The applicant vide his letter dated 16.03.2018, received through email around 4 PM had informed that he could not attend the proceedings before the Authority due to health problems. He vide his letter dated 15.03.2018 has also submitted as under:-

"At page no.:05 of subject order sheet under clause no.:16 it is mentioned as per hereunder:-

In view of the abovementioned findings the conclusion is that Section 171(1) of the Central Goods and Service Tax, 2017 requiring that "any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on the recipient by way of commensurate reduction in prices" has not been contravened in the present case.

In conclusion you have accepted that input tax credit has not been contravened to the recipient in the present case.

You are kindly requested to highlight the exact amount of input tax credit to be contravened to the recipient and advice to M/s Vrandavaneswaree Automotive Pvt. Ltd. – Bareilly to pass on the same to us."

14. We have carefully considered the relevant record of the matter and find that the following two points pertaining to the allegations of profiteering against the respondent need to be decided as per the provisions of Section 171 of the CGST Act, 2017;
 - i. Whether there was a substantial reduction in the rate of tax on the cars after the GST was implemented w.e.f. 1st July 2017 as claimed by the applicant and whether the benefit as emanating from such reduced tax rate has not been passed on to the applicant in the form of commensurate reduction in the price of the car purchased by him.
 - ii. Whether any input tax credit benefit was to be passed on to the applicant by the respondent.
15. With regard to point no. (i) above It has been found from the record that the rate of tax both during pre-GST era as well as the post GST era was a matter of fact which has been clearly delineated in detail by the DGSG in his report dated 23.02.2018 as has been

mentioned above. It has also been found that the applicant's contention that the pre-GST rate of tax which was 51% was reduced to 29% in post GST era, was factually incorrect as the pre-GST rate of tax, on the car contracted to be purchased by the applicant, was leviable at 31.254% which was rationalized to 29% (CGST-14%+SGST-14%+Cess-1%), thus there was a reduction of only about 2%. It is also clear from the Table 'B' above that though the car of premium colour was booked at an amount of Rs. 9,13,000/- at pre-GST tax rate but when the applicant took delivery of the 'base colour' car on 11.7.2017 in the post GST period, the respondent had charged the applicant an ex-showroom price of Rs. 8,98,750/-, which correctly included basic price of the car, freight, insurance, dealer's margin etc. and GST @ 29%. Thus, the benefit of reduction in the tax rate was passed on to the applicant by way of reduction in the price of the car of base colour by an amount of Rs. 10,550/-. We also find that the DGSG had also given opportunity to the applicant to inspect the reply and other documents submitted by the respondent and the applicant after inspecting them had submitted vide his letter dated 16.2.2018 that he was satisfied with the reply given by the respondent and therefore his case may be closed.

16. In respect of point no. (ii), we find that though the applicant in his initial application dated 1.11.2017 had not mentioned anything with regard to not passing of the Input Tax Credit (ITC) benefit and it was only after the Investigation Report of the DGSG dated 24.02.2018 was sent to him, when he had mentioned in his letter dated 15.03.2018 that ITC has not been contravened to the

recipient in his case and he had requested to highlight the exact amount of ITC to be contravened to him.

17. We have carefully considered the submissions made by the applicant in his letter dated 15.3.2018 and we are of the view that the applicant has not understood the provisions of Section 171 of the CGST Act, 2017 and the DGSG's report in its true spirit and context. The entire scheme of GST is ITC based i.e. the recipient of the goods and services takes credit of GST paid by him on purchase of goods and services and uses such ITC while discharging GST output tax liability on supply of goods and services. We also find that the respondent has given details of all the basic components of the price of the car purchased by the applicant as has been mentioned in Table 'B' above and benefit of Rs. 10,550/- on account of reduction of tax by about 2% viz. from 31.254% (pre GST) to 29% (post GST), as discussed above, has already been passed on to the applicant and the amount of Rs. 10,550/- is inclusive of the ITC as has been calculated in Table 'B'. Therefore, no additional benefit on account of ITC is required to be paid by the respondent. Thus, the contention of the applicant made in his letter dated 15.03.2018 is not valid and deserves to be rejected.

18. Based on the above facts we find that the respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 and accordingly we do not find any merit in the application of Sh. Dinesh Mohan Bharadwaj filed under Rule 128 of the CGST Tax Rules, 2017 and we accordingly dismiss the same. A copy of this

order be sent to the applicant, the respondent and the DSSG free of cost. File of the case be consigned after completion.

Sd/-

(B. N. Sharma)

Chairman

Sd/-

(J. C. Chauhan)

Technical Member

Sd/-

(Bijay Kumar)

Technical Member)

Sd/-

(R. Bhagyadevi)

Technical Member



Certified Copy

(Samanjasa Das)
Secretary, NAA

F.No. 22011/NAA/07/2018/15-17. dated 28.3.2018

Copy to :

1. Sh. Dinesh Mohan Bhardwaj, Proprietor, M/s U. P. Sales & Services, Asima House, 148, Civil Lines, Near AXIS Bank, Distt. Bareilly, (UP)
Pin:243001
2. M/s Vrandavaneshwree Automotive Private Limited, Rampur Road, Adjacent Jauharpur Railway Crossing, CB Ganj, Bareilly, (UP)
Pin:243502
3. Director General, Safeguards, CBEC(DOR), Ministry of Finance, New Delhi-110001