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LITIGATION ALERT

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Delhi HC upholds profiteering for not
reducing prices; Quantity addition/
special scheme not justified

Delhi HC upholds profiteering; Mere quantity addition/special scheme not justified

Sharma Trading Company vs. Union Of India¹

The Division Bench of Delhi HC in Sharma Trading Company (“Petitioner”) upheld profiteering against Petitioner, in respect of the sale of Vaseline VTM 400 ML. High Court found that mere increase in quantity or floating of some schemes is not a valid ground for not reducing prices of products to compensate for GST rate reduction. High Court held that such an approach is impermissible and would defeat the entire purpose of reduction of GST rates.

Facts of the Case

- The GST rate on subject goods (“Vaseline VTM 400 ML”) got reduced from 28% to 18%².
- Complaint was filed against Petitioner (a partnership firm, engaged in distribution of HUL products) alleging that despite reduction in rate, it continued to charge same MRP³.
- National Antiprofitteering Authority⁴ (“NAPA”) noted that Base Price which was earlier Rs. 158.66 per unit was increased to Rs.172.77 per unit after the reduction in GST-rate and thus profiteering has been resorted to by increasing the base price in violation of Section 171 of Central Goods and Services Tax, 2017 (“Act”).

- NAPA held that base price was increased exactly by the same amount by which the tax has been reduced, hence, Petitioner did not pass rate reduction benefit to the consumers by commensurately reducing the product price.
- Petitioner filed the writ petition against the order passed by NAPA and the Investigation Report furnished by the Director General of Anti-Profiteering.
- Additionally, Petitioner challenged Section 171 of the Act and Rule 126 of the Central Goods and Service Tax Rules, 2017 (“Rules”).

Submissions of the Petitioner

- The grammage/quantity of the subject product was increased by 100 ml after the change in GST Rates on November 14, 2017.
- The amount is justifiably charged in as much as if the quantity of the subject product increases, the price can also be increased.

Discussion and Findings

- Petitioner’s stand is not “valid” in view of co-ordinate bench observations in Reckitt Benckiser⁵ wherein it was observed that increase in volume/weight or supply of additional free material by any schemes

¹ TS-823-HC(DEL)-2025-GST

² Notification No. 41/2017-Central Tax (Rate)

³ Maximum Retail Price

⁴ NAPA originally notified under the Act to handle anti-profitteering cases was later substituted by CCI and now, GSTAT Principal Bench at Delhi is empowered to hear pre-April 2025 complaints

⁵ TS-24-HC(DEL)-2024-GST

would not satisfy the requirement of passing on the benefit to the consumers.

- The purpose of the “anti-profiteering mechanism” is to safeguard consumer interest and guarantee that businesses transfer the benefits to the final consumers.
- Challenge to the constitutional validity of the various provisions does not survive in view of co-ordinate bench ruling⁶.

Judgment

- The purpose of GST reduction would be defeated if the price is kept the same and quantity increased without consumer’s request.
- Increasing the quantity of the product unknowingly and charging the same MRP is nothing but deception. The consumer’s choice is being curtailed.
- While commercial realities have to be taken into consideration in such matters, benefits extended to consumer are also of utmost importance.
- Deadline once fixed by way of notifications, cannot be violated merely on the ground that some special scheme is launched or the product is given free or the grammage/ quantity is increased.
- All schemes which may have been in operation, ought to have been recalibrated with the reduction in GST rates.
- NAA order deserves to be upheld and the profiteered amount shall be transferred to the Consumer Welfare Fund. However, the penalty proceedings would not be applicable.

⁶ Reckitt Benckiser India Pvt. Ltd. (TS-24-HC(DEL)-2024-GST)

DHRUVA INSIGHT

In various cases NAPA has observed that increase in volume or weight would not be sufficient to satisfy the requirement of passing on benefit to the customer.

High Court's observation is relevant in the context of recent rate reductions as Industry is likely to face transitional bottlenecks.

While no fresh complaints with respect to profiteering can be accepted on account of the sunset clause for Section 171 of the CGST Act, the 56th Council Meeting have urged the Industry to voluntarily pass on the benefit of rate reductions to the consumers.

At a practical level, passing on rate reduction benefit is a challenge for some companies having long supply chains involving distributors, retailers and stockist who operate on thin margins.

It is therefore advisable for the Companies to critically evaluate the modalities of determining the benefit to be passed on to the customers and maintain proper document trail thereof.

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