

TAX FLASH NEWS

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Domino's pizza case – Increase made over and above the denial of ITC amounts to profiteering - National Anti-Profiteering Authority

Background

National anti-profiteering authority (NAPA)¹ has recently passed an order, directing Jubilant Food Work Ltd. (the respondent) to deposit profited amount of INR41.43 crore along with interest at 18 per cent. Corresponding show cause notice has been issued for levy of penalty.

The authority in its order has ruled that a company can increase its prices only to the extent of denial of the input tax credit, any increase made over and above the denial of ITC would amount to a denial of the benefit of tax reduction.

Facts of the case

An application was made through an email against the respondent alleging that the respondent had not reduced the price of two of its products; SGB stuffed garlic bread and Med MHT veg extra after the GST rate was reduced from 18 per cent to 5 per cent with effect from 15 November 2017². It was alleged in the application that the respondent had increased the base prices of the above food items and had charged the same price (gross) which it was charging prior to the reduction in the GST rate.

The matter was examined by the Standing committee on Anti-profiteering and thereafter the same was forwarded to Director General Anti-profiteering for detail investigation.

Ruling by NAPA

The respondent had been selling 393 products both before and after the reduction in GST rate i.e. 15 November 2017. Post the date of the reduction in GST rate, the base price of 314 items were increased and accordingly GST was levied at 5 per cent on such increased price.

The respondent had contended that it had revised the prices as a normal business decision arising out of various factors viz. inflation, non-availability of ITC, the rise in employee cost.

The said contention was not accepted on the grounds that the respondent had no reason to coincide the increase in price from the date of the reduction in the rate of GST, i.e. from mid-night of 14/15 November. It could have increased the prices anytime from April to October 2017, such action of the respondent shows that the intent was malafide and illegal.

On perusal of the financial statement published by the respondent, profits for the quarter ended on March 2018 has gone up by 406 per cent in comparison to March 2017 profits while the sales have only increased by 27 per cent. Further, profits during the FY 2017-18 have increased by 185 per cent whereas sales had increased by 17 per cent as compared to the previous year. Hence, it can be safely concluded that the abnormal increase in profits are attributable to the increase in the base prices. All claims of having suffered losses made by the respondent due to denial of ITC are not supported by the financial statements.

¹ Jubilant Food Work Ltd. [2019-VIL-04-NAA]

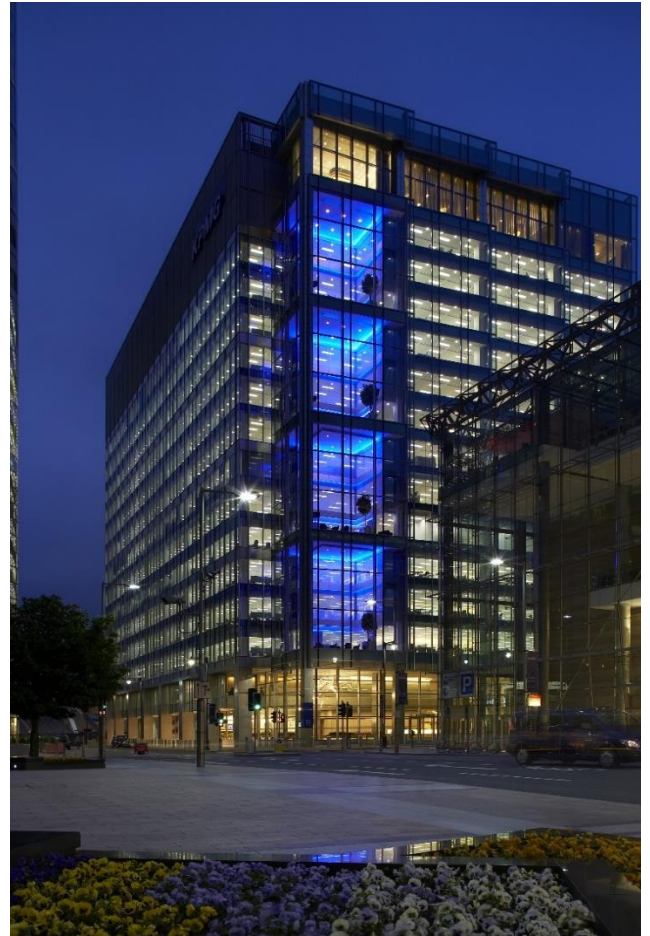
² Notification 46/2017 – Central Tax (Rate) dated 14 November 2017

During the period between 15 November 2017 to 31 May 2018 the respondent had increased the base prices anywhere between 5.75 per cent to 84.55 per cent against the denial of ITC to the tune of 5.59 per cent cannot be compared with the price rise made by the respondent. The company could increase its prices only to the extent of denial and any increase made over and above the denial of ITC would amount to a denial of the benefit of tax reduction.

In view of the above discussion, it was held that the respondent has not passed on the benefit of a reduction in the rate of tax to his recipients. The quantum of denial of such benefit or the profiteered amount determined to be INR41,42,97,635.

Our comments

The anti-profiteering authority had continued to stress that mere charging reduced rate of GST cannot mean that the benefit of reduction has been passed on to the customers when effectively the base price was increased to negate the impact of tax reduction.



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