

ANTI – PROFITEERING MECHANISM IN GST

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Is profits bad?

'Profit is fine, profiteering is not'. The basic premise on which Anti-profiteering mechanism under GST laws rest is 'Don't let someone profiteer at your expense'.

What is Anti-profiteering?

Profiteering is a term for the act of making profits by methods considered unethical. Hence, under GST laws, reasons provisions and mechanism have been incorporated to curb profiteering. The aim of the legislation is to prevent entities from making excessive profits *due to GST*. An Authority has been set to check that the benefit of GST is passed on to the ultimate consumer and that channel is not hiking rates inordinately citing GST as a reason.

Need for such a law?

Examples around the world have shown that the introduction of GST has led to inflation, with traders trying to keep their profit margins constant and the ultimate benefit not being passed on to the ultimate consumer.

A report of CAG named 'Implementation of VAT in India - Lessons for Transition into Goods and Services Tax' in dealing with the impact of the introduction of VAT in India stated that the introduction VAT led to an increase in prices of products, higher tax evasion, profiteering by manufacturers and dealers due to not passing benefits due to tax rate reduction.

Legal perspective

Sec. 171(1) of CGST Act, 2017 - 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.

Sec 171(2) of CGST Act, 2017 - 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.

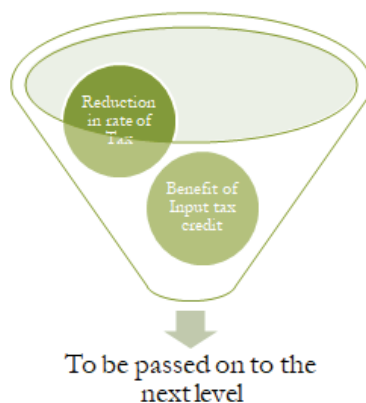
Sec 171(3) of CGST Act, 2017 - The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

Chapter XV of the CGST Rules, 2017 (Rules 122 to Rule 137) details the constitution of the Authority, its roles and responsibilities, powers and conduct of such Authority.

Anti-profiteering mechanism – The what and how?

The provisions of GST Act states 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.

Which essentially means, anti-profiteering mechanism is based on 2 broad pillars



Benefit due to reduction in rate of tax – It is clear and natural that any reduction in rate of tax is to be passed on to the next level of supply chain. Since most of the invoicing happens on Cost + Tax basis i.e. supplies are exclusive of tax there are not much of an issue. The complication arrives when prices are inclusive of tax. Back calculating the tax component and then reworking the new retail price becomes a complicated exercise.

Benefit due to input tax credit - Almost all industries and sectors benefitted due to implementation of from GST due to i) Seamless flow of input tax credit and ii) Allowing input tax credit on goods or services or both which were not allowed in the erstwhile tax regime. To ensure the benefit is passed on to the next level and the benefit of GST implementation actually reaches the end consumer, it was required that the same is passed on.

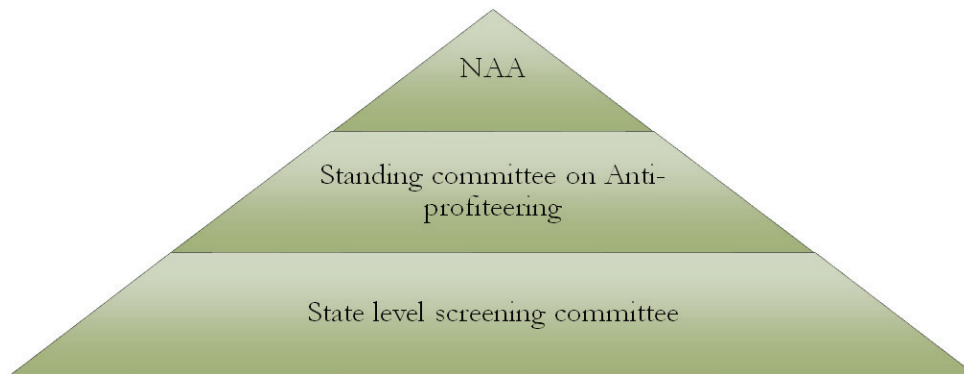
Let's understand this with an example.

Description	Pre GST	Post GST (price constant)	Post GST (Adjusted)
Purchase price of goods	1,00,000	1,00,000	1,00,000
Excise Duty @ 12.5%	12,500	-	-
VAT @ 5.5%	6,188	-	-
GST @ 18%	-	18,000	18,000
Landed Cost	1,18,688	1,18,000	1,18,000
Operations Expenses	5,000	5,000	5,000
Tax on above (15%/ 18%)	750	900	900
Total Cost	1,24,438	1,23,900	1,23,900
Sale Price	1,25,000	1,25,000	1,11,750
VAT @ 5.5%	6,875	-	-
GST @ 18%	-	22,500	20,115
Total Invoice Value	1,31,875	1,47,500	1,31,865
Profit to dealer	6,750	20,000	6,750
Tax to Government	20,125	22,500	20,115

The Government's endeavour, as clearly evident, is to have the benefit of lower tax passed on to the next level and to the end consumer.

The Authority

The authority dealing with Anti-profiteering is a three-tier structure involving State level screening committee, Standing Committee on anti-profiteering and National Anti-profiteering Authority (NAA).



State Level Screening Committee

- The Committee shall be constituted by the respective State Government
- The Committee shall have one officer each of the State Government and of the Central Government, as nominated.
- First point of contact for any application under the anti-profiteering regulations concerning the State.
- Primary role is to examine all application received and, if deem okay, forwarded with recommendation to the Standing committee

Standing Committee

- The Committee shall be constituted by as many representatives as may be nominated by the respective State Government and Central Government
- This is the next level to the State screening committee. It also has jurisdiction over matters relating to National levels.
- Within a period of 2 months from the receipt of written application (received from an interested party or from the Commissioner), examine the accuracy and adequacy and determine whether there is prima-facie evidence to support the claim.
- If the Standing Committee is satisfied, it shall refer the matter to the Director General of Anti-profiteering (working under National Authority) for a detailed investigation.

National Anti-profiteering Authority

- Constitution of the Authority
 - A Chairman, equivalent to the rank of Secretary under Government of India
 - Four technical members, equivalent to tax commissioners, to be nominated by the Council
- Duties
 - To determine whether tax rate reduction or input tax benefit has been passed on
 - To identify those who have not complied to the provision of the law
 - To order, as appropriate, within 3 months of receiving report
- Decision of the Authority
 - A minimum of 3 members of the Authority shall constitute a quorum
 - Majority rules. In case of equality of votes, the Chairman shall have the Casting vote
- Orders Passed by the Authority
 - The Authority may order – i) Reduction in prices, ii) Return to the buyer, the benefit amount not passed on along with 18% interest, iii) Payment of penalty and iv) Cancellation of registration
 - The Authority will pass order within 3 months from the date of the receipt of the report from the Director General of Anti-profiteering.
- Authority shall furnish performance report to the GST Council by the 10th of the month following the quarter
- The Authority may require any authority of Central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.
- The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Procedure under Anti-profiteering mechanism

Process Workflow



Power of National Anti-profiteering Authority



How to file complaint with the Authority

Online: www.naa.gov.in

Helpline: 011-21400643

Email: State committee: http://www.naa.gov.in/docs/SCREENINGS%20COMMITTEES_UPDATED.xlsx
Standing Committee: sc.antiprofitteering@gov.in (for National level complaints)
secretary.naa@gov.in (For grievance redressal)

Physical: Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance, New Delhi

Some practical consideration

Whilst Anti-profiteering provisions are a welcome step to ensure curbing unwanted profiteering at the cost of the consumers, there are certain practical considerations which needs to be kept in mind.

- ✓ How much we try, it is very difficult to establish one-to-one correlation between input tax credit on inward supplies and tax payable on outward supplies. So, ultimately, it will come to the margins. How it will be determined? Absolute number, % of Cost price, % of sale price?? It becomes a very subjective matter.
- ✓ Benefits in inward supplies negated with increase in operational costs. How this will be viewed from an anti-profiteering perspective. The Law is clear, benefit of lower input tax credit needs to be passed on. But it is not clear what happens if there is increase elsewhere.
- ✓ There are no detailed rules relating to computation mechanism, documents to be maintained, limitation period etc. This keeps the door ajar for the authority to exercise its discretionary powers!!