ANTI-PROFITEERING AND ITS AUDIT CONTROL

CMA S VAITHEESWARAN
Assistant Manager of Indirect Taxation in D Arvind & Associates LLP

I begin this article with my own quote "**Profit is good but not profiteering**". The Indian Constitution does not restrict any businessman to earn profit in their business but subject to public interest. Earning profit is a main fundamental scenario for every business activities but making excess profit legally or illegally is restricted. So the government has designed the Anti-Profiteering Provision as per section 171 of CGST Act 2017 in order to protect the Consumer by restricting the company to get the benefits. Let us thoroughly discuss the Anti-Profiteering provision here.

Statutory Provision under GST Law: As Per Section 171 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. ''The Main objective of this provision is to pass on the benefits to the ultimate consumer due to reduction in rate of output tax and reduction in rate of Input tax''.

The Benefit of ITC:

Mr. DAA, a Work Contractor provided a Construction of Building service to Mr. Y on 01-06-2017 and Mr. Z on 01-07-2017 respectively. The work contractor could not avail the Cenvat Credit on Purchase of Cements and Bricks for Mr. Y's Service because as per Rule 2(k) CCR-2004, it can't be considered as Input so the cost of the work contract would have got increased because of the non availment of Inputs but the same work contractor can get the ITC on purchase of Cements and Bricks as per Section 17 of CGST Act 2017 so the cost of Work Contract should be reduced according to the reduction in Input tax.

Reduction in Output Tax:

CMA Ltd in Chennai, a manufacturing company has sold the goods to CA ltd in Coimbatore on 01-06-2017 and 01-07-2017 respectively. On 01-06-2017, MCC would have charged around 31% taxes which include (ED - 12.5% VAT - 14.5% and Octroi + LBT + Other taxes 4%) but on 01-07-2017 the MCC has charged taxes at 28% only. The reduction in Output tax of 3% will have to set off against the cost of production then the final price should be reduced.

Twelve Possibilities of Anti-Profiteering:

Particulars	Increase in Input tax	Constant in Input tax	Decrease in Input tax
Decrease in Output tax	Depends on variation	Yes	Yes
Increase in Output tax	No	No	Depends on variation

Particulars	Increase in output tax	Constant in output tax	Decrease in output tax
Decrease in Input tax	Depends on variation	Yes	Yes
Increase in Input tax	No	No	Depends on variation

Factors to be considered for the reduction in Cost of Production:

The following steps have to be noted and should reduce/add from the Current Cost of Production of the final product so that it will help us for the good comparison.

- ✓ Central Sales Tax (2%) paid on Inter State Sales
- ✓ If you are Trader– Non creditable of entire CVD 12.5% on Imports.
- ✓ If you are Service Provider- Non Creditable of entire SCVD of 4% Imports.
- ✓ Entry tax,
- ✓ Octroi Duty
- ✓ Local Body Tax
- ✓ Cenvat Credit of Taxes paid on Cements and other items which are used in the Construction of factory building.
- ✓ Transportation Cost from Place of removal to Factory Building.
- ✓ Cenvat credit on Office equipments

- ✓ Tax Paid on Captively Consumption Products
- ✓ Abolition of Cesses
- ✓ Any reduction in taxes on Inputs purchased
- ✓ Taxable in Previous regime but now exempted

Factors to be considered for the Inflation in Cost of Production:

- ✓ Compliance Cost Increased
- ✓ Increase in tax by 3% on many services
- ✓ Exempted in previous regime but now taxable and credit can't be availed

Checklist for Anti-Profiteering Audit:

No	Particulars	Reason
1	Cost Audit Report	To Know about the inadmissible Inputs/Inputs Service used
2	CAS-4 Certificate	To know about the Cost of Production of Captively Consumption
3	Income Tax Audit Report	To Know about the Capital goods and its cenvat details
4	VAT Return	To Know about the CST Payment
5	ER-1	To know about the stock/branch transfers To know about the imports and other related payments
6	ST-3	To know about the Work contract Service and RCM Details
7	Trail Balance	To Know about the other payment of tax which has subsumed under GST?
8	Fixed Asset Register	To know about the details of Asset purchased in office
9	Other documents if any	Tran-1, Financial Statement and Purchase orders If any

Analysis need to be done from Auditor's side:

- ✓ Prepare a Comprehensive Cost Sheet of the final product by considering all the factors which has mentioned above and find out the corrected Cost of Production.
- ✓ Ask the client about the pre GST regime details and prepare a cost sheet based on that.
- ✓ Make a Comparison with both and finalize the solution whether cost has to be reduced or not.

Consequences for violating this Provision:

- ✓ Cancellation of Registration
- ✓ The Authority will ask us to reduce the price along with 18% interest.
- ✓ Penalty.

Recent Order from National Profiteering Authority:

National Anti-Profiteering Authority Vs KRBL ltd (Case no.03/2018 dated on 04-05-2018)

Issue: The Increase in final Price of ''India Gate Basumathi Rice'' and Input tax credit was not passed on.

Fact: The Output tax at 5% was levied for the final product on 01-07-2017 so the Input tax credit would be available for the company. The Cost of the paddy has been increased by 30% in 2017. There was no possibility to pass on the credit and due to increase in cost of paddy the price of basumathi rice has been increased. Total Input tax availed for the company were from 2.66% to 3% but the output tax was 5%. Prices of rice will depend upon the market factors.

Decision: Due to the imposition of the GST on the above product as well as the increase in the purchase price of the paddy does not appear to be denial of benefit of ITC as has been alleged by the Applicant as there has been no net benefit of ITC available to the Respondent which could be passed on to the consumers.

Conclusion and Suggestion:

- ✓ The Intension of this article is to identify the practical challenges involved in the Anti-Profiteering and I would suggest the GST Council to prescribe the manner of conducting the proper audit for the business betterment.
- ✓ The GST Council has to prescribe the Applicability of this provision based on turnover basis.