



**The Institute of
Cost Accountants
of India (ICAI)**

Goods & Services Tax (GST) Certification Course

Disclaimer

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The presentation has been prepared to provide an overview of the applicable law pertaining to the subject matter. For detailed insight and for better understanding, its is advised to refer to relevant provisions in the Act and the related rules & notifications.

Anti-profiteering mechanism



Is Profit bad?

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- Profit is fine, profiteering is not. Don't let someone profiteer at your expense.
- Profiteering is a term for the act of making profits by methods considered unethical.

What is anti-profiteering?

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- It is a mechanism to curb profiteering.
- Its aim is to prevent entities from making excessive profits **due to GST**.
- The 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 law?

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- 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.
- In June 2010, a report by 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.

CAG Report

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- Performance Audit conducted between April 2009 to November 2009
- Conducted by Accountants General of 23 states covering post VAT period ranging from April 2005 to March 2009
- Deficiencies were observed when transition from Sales Tax regime to VAT regime was initiated.
- Recommendations were made based on the observations so that the same issues doesn't arise as and when GST is rolled out.

CAG Report – Some observations

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- Lack of automation, mapping of rules, interlinking of offices
- Low percentage of scrutiny of returns leading to leakage of revenue
 - Tax evasion of Rs. 873 Cr. from 2,614 returns in 15 States
 - 7 dealers in a State granted tax exemption of Rs. 1,026 Cr. on a turnover of Rs. 25,650 Cr. from sale of tax paid goods, without any documentation.
 - 56,000 cases of evasion detected out of 1 lac dealers. Rs. 783 Cr. additional demand raised.
- Allowance of ITC without proper documents and proper format leading to *ad-hoc* credit
 - Inadmissible ITC of Rs. 829 Cr. in 53,170 cases across 16 states.
- No system of cross-verification of records with other departments like Central Excise, Customs etc.
 - 160 cases across 5 States pointed out to an evasion of tax of Rs. 56 Cr.
 - 201 cases of fake/ invalid declaration forms leading to tax evasion of Rs. 17 Cr. in 4 states

CAG Report – Some observations

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- No provision of minimum penalty in 7 states/ penalty left to the discretion of the Dept.
 - Rs. 485 Cr. penalty on non-compliance not levied
- Continuation of incentive schemes leading to excess outgo of taxpayers' money
 - Manufacturers in 3 states collected but didn't remit Rs. 6,400 Cr. tax
- Non-monitoring/ weak monitoring of VAT implementation
 - 13 manufacturers didn't reduce MRP despite sharp decline in rate of tax leading to Rs. 40 Cr. benefit retained by them.
- Clearance of legacy issues
 - Huge amount of pending assessment leading to disputes and blockage of tax revenue
- Harmonisation of tax rates
 - Variations in tax rates across States leading to tax evasion

- 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(1) 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 cases coming under the purview of Sec 171(1) of the Act – *Sec 171(2) of CGST Act, 2017*
- Penalty of profiteering – 10% of the amount so profiteered as determined by the Authority. No penalty in case the profiteered amount is deposited with 30 days of the Order. *Sec 171(3A) of CGST Act*
- “Profiteered amount” means the amount on account of not passing the benefit of reduction in rate of tax or the benefit of input tax credit to the recipient by way of commensurate reduction in the price. *Explanation to Sec 171(3A) of CGST Act*
- 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.

Reduction in rate of tax

- Any reduction in rate of tax in the new tax regime should be passed on to the next level of supply chain.
- Passing of benefits where
 - Supplies are exclusive of tax – Not much of an issue
 - Supplies are inclusive of tax – Hmmm....

Benefit of Input Tax Credit

- Almost all industries and sectors benefitted from GST due to
 - Seamless flow of input tax credit
 - Allowing input tax credit on goods and or services or both which were not allowed in the erstwhile tax regime

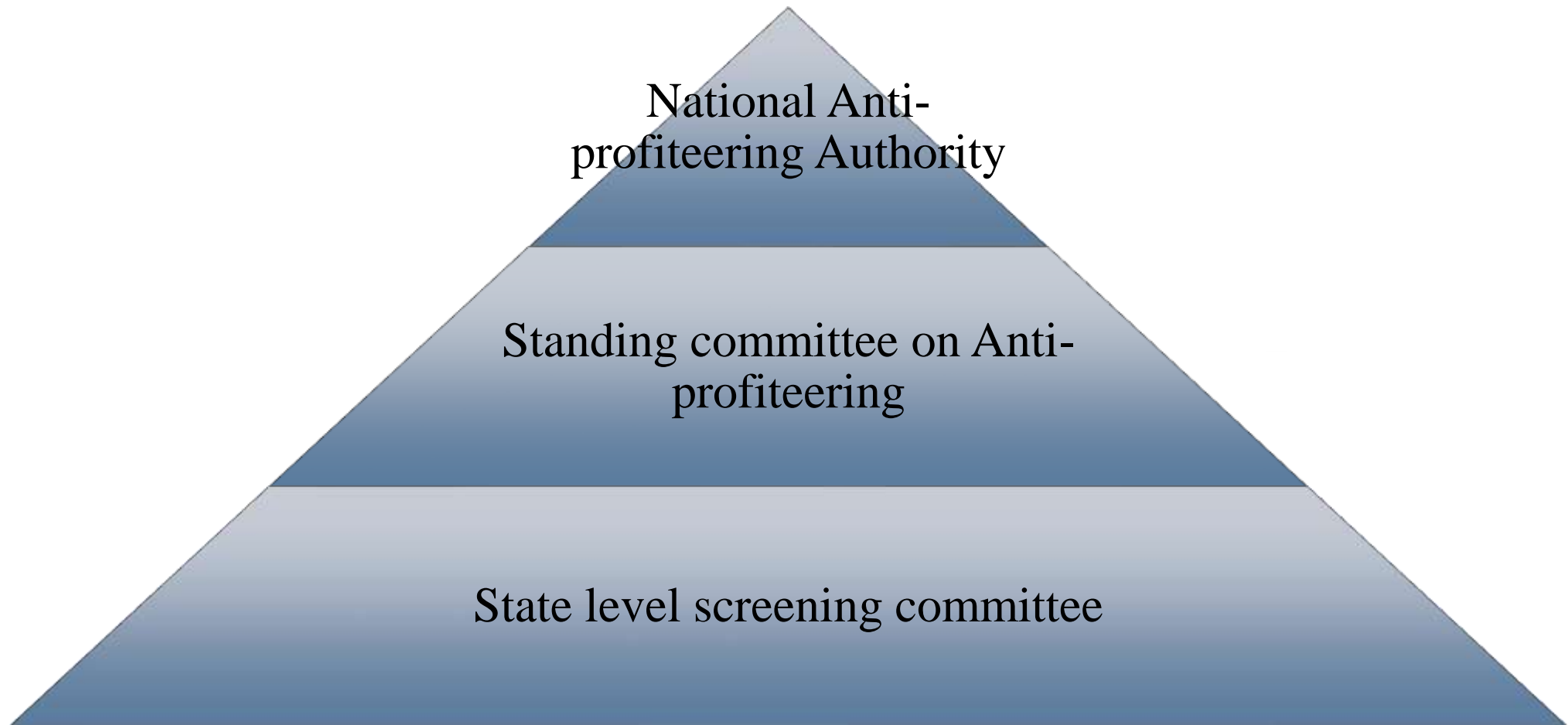
Illustration

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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 Authority

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State Level screening committee

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- Constitution of the Committee [*Rule 123(2) of CGST Rules*]
 - To be constituted in each State by the respective State Government
 - One officer each of the State Government and of the Central Government, to be nominated by the Commissioner or Chief Commissioner resp.
- First point of contact for any application under the anti-profiteering regulations concerning the State. Also takes up cases forwarded by the Standing Committee.
- Applications to be examined and, if deem okay, to be forwarded with recommendation to the Standing committee within 2 months of the date of receipt of the application. The 2 months can be extended max by 1 month if allowed by the Authority.

Standing Committee

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- Constitution of the Committee [*Rule 123(1) of CGST Rules*]
 - As may be nominated by the State Government and Central Government
- Next level to the State screening committee. Also has jurisdiction over matters relating to National levels.
- Within a period of 2 months (extendable by 1 month, if allowed the Authority) 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

National Anti-profiteering Authority

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- Constitution of the Authority (*Rule 122 of CGST Rules*)
 - A Chairman, equivalent to the rank of Secretary under GOI
 - Four technical members, who have been/ are Commissioners of State or Central Tax for at least 1 year, to be nominated by the Council
 - An officer not below the rank of Additional Commissioner shall be the Secretary to the Authority.
- Power & Duties
 - To determine the methodology and procedure for determination of compliance of Sec 171 of the Act
 - To determine whether tax rate reduction or input tax benefit has been passed on
 - To identify the registered person who have not complied to the provision of the law
 - To order, as appropriate, within 6 months of receiving investigation findings and report

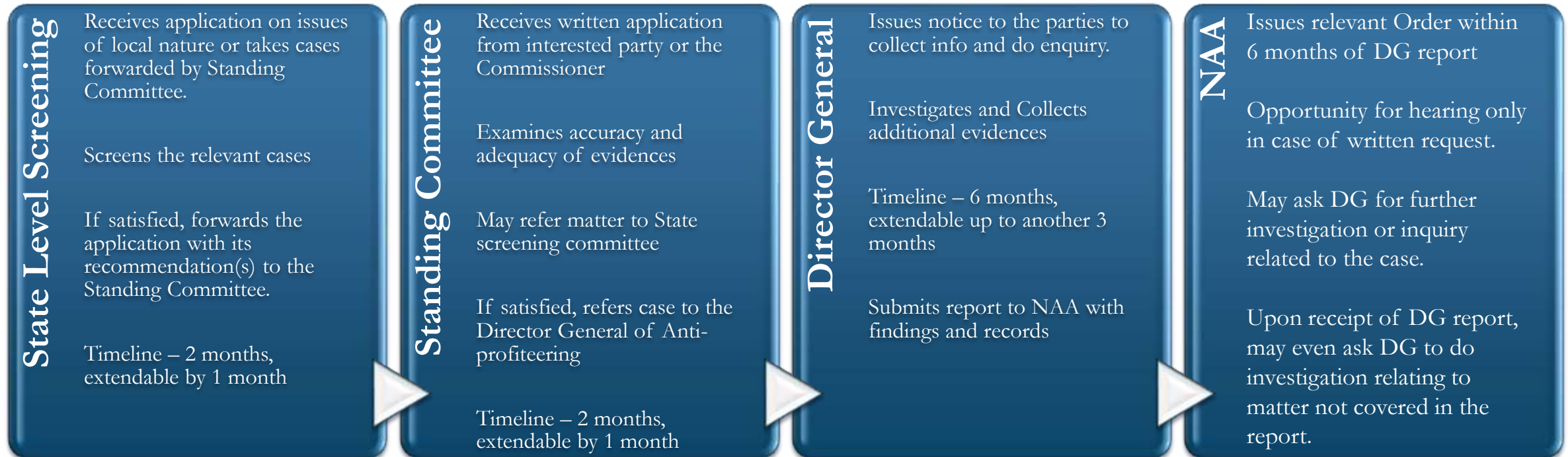
National Anti-profiteering Authority

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- Decision of the Authority
 - A minimum of 3 members of the Authority shall constitute a quorum for the meetings
 - Majority rules. In case of equality of votes, the Chairman shall have the Casting vote
- Order passed to be immediately complied by the registered person else recovery action may be initiated. 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.
- Authority to furnish performance report to the Council by the 10th of the month following the quarter
- The Chairman & the Technical members shall hold the office for a term of 2 years or until he attains the age of 65 years, whichever is earlier. They are eligible for reappointment.
- The Authority shall cease to exist after the expiry of 5 years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Procedure – Anti Profiteering investigation

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Powers of NAA - Order

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- The provisions of Sec 11 of the Right to Information Act, 2005, shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis. *Rule 130(1) of CGST Rules*
- Where the Director General of Anti-profiteering deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties. *Rule 131 of CGST Rules*
- The Authority, Director General of Anti-profiteering or an officer authorised by him in this behalf, shall have the power to summon any person and shall have power in any inquiry, as provided in the case of a Civil Court under the provisions of the Code of Civil Procedure, 1908. *Rule 132(1) of CGST Rules*
- Every such inquiry shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code. *Rule 132(2) of CGST Rules*
- Any order passed by the Authority under the rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount. *Rule 135 of CGST Rules*
- 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. *Rule 136 of CGST Rules*

How to file complaint

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- Online : www.naa.gov.in
- Helpline : 011-21400643 (on working days)
- Email : sc.antiprofitteering@gov.in (for National level complaints), secretary.naa@gov.in (NAA), for state screening committees, please refer to the website
- Physical :
 - Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance, 2nd floor, Bhai Veer Singh sahitya Sadan, Bhai Veer Singh Marg, Gole market, New Delhi -110 001.
 - National Anti-profiteering Authority, Dept. of Revenue, Ministry of Finance, 6th Floor, Tower One, Jeevan Bharati, Connaught Place, New Delhi-110 001.

Case Studies



DGAP vs. L'oreal India Pvt. Ltd.

Respondent profited Rs. 186.40 Cr on account of denial of benefit to customers by not reducing prices in commensurate with reduction in tax rate

Case findings

- Reference received on 7.1.2019 from the Standing Committee stating benefit of rate reduction from 28% to 18% vide Not. 41/2017 – CT Rate dt. 14.11.2017 not passed.
- DGAP submitted its initial findings on 5.7.2019. After hearings and submissions, final report submitted on 28.8.2020
- Initial amount worked out to Rs. 216.50 Cr. for the period 15.11.2017 to 31.12.2018 which was reduced to Rs. 186.40 Cr. after rectification of certain discrepancies
- Matter was further discussed & deliberated by NAA and Order passed on 23.6.2022 directing 50% of the amount with interest to be paid to respective state CWF (in proportion to the profiteering) and the balance to Central CWF.

DGAP vs. DLF Limited

Respondent profited Rs. 25.09 Cr on account of not passing benefit of ITC to the customers of 3 projects received upon transition to GST regime

Case findings

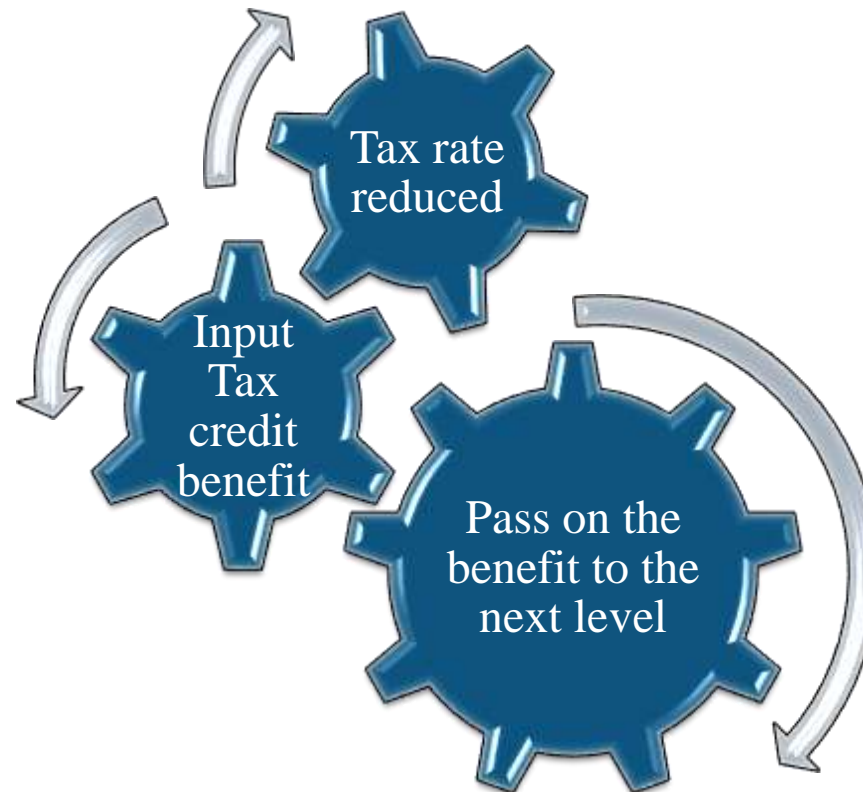
- Haryana State Screening Committee received application from an individual alleging profiteering by the respondent in one of the project undertaken.
- DGAP submitted its report on 31.08.2020 to which the NAA passed interim order ordering the DGAP to investigate 2 more projects undertaken by the same respondent.
- DGAP investigated the benefit of ITC which the respondent should have passed on upon migration from erstwhile tax regime to GST regime. This was calculated project wise.
- Matter was further discussed & deliberated by NAA and Order passed on 13.5.2022 directing the respondent to refund the excess amount along with interest to the impacted home-buyers.

- 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 a anti-profiteering perspective. The Law is clear, benefit of lower input tax credit needs to be passed on.
- 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!!

- With no room for any deviation prescribed, the law may be viewed as straightjacketing and may lead to unwanted harassment by the authorities.
- Article 301 of our Constitution provides freedom of trade and commerce. Can putting restrictions on the profits of trade be seen as violation of our fundamental rights?
- The appointment of NAA lies with the Central Government. Due to the concurrent nature of the tax laws, some taxpayers are under State jurisdiction. How will the jurisdiction of State Tax be determined by the Central Government?

Summing Up

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Thank You

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**KEEP
CALM
&
FOLLOW
THE RULES**