

**WELCOME**  
**to the Session on**  
**Anti Profiteering Measures in GST**  
**18<sup>th</sup> October 2020**

**Presentation by :**

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# Introductory

- By “Profiteering” what is meant is “the act of *making profit by adopting unethical methods.*”
- **Section 171** of the CGST Act, requires a registered taxable person to *pass on the benefit of every rupee accrued on account of additional input tax credit or reduced tax rate*, to the next level of supply chain.
- **Section 171(2)** of the CGST Act requires constitution of *an Authority 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.
- **Rules 122 to 137** of CGST Rules have been framed for the purpose of *constituting the Anti-Profiteering Authority and laying down the procedure* for the lodging of compliant with the Authority and the prescription of the procedure for the disposal of the compliant.

- The Anti-profiteering provisions **not only prescribe the refund** of the profiteered amount to the consumer but they also vest the anti-profiteering authority to levy interest and penalty on the defaulting industry.
- Many NAA orders have been assailed by the trade in the High Courts which have subsequently stayed the orders. **Most of the stay orders have been granted due to lack of methodology** to compute the real benefit.
- All the major Chambers of Commerce, Trade Associations, Tax Professionals in their individual capacity as well as through their associations have been repeatedly **urging the government to lay down clear cut guidelines** to compute the “profiteering”.

# Anti-Profiteering

[S.171, Rules 122 to 137 in Ch XV]

- A quasi-judicial body under GST system, with a chairman and four technical members.
- NAA **helpline number 011-21400643**, which will guide the consumer to register complaints, provide information and resolve queries related to profiteering.
- Application Form: APAF-1 [\[>>>>\]](#)
- DGAP Circular NAA File No. Admn(NAA)/P&M/81/2019, dated 4-10-2019 [\[>>>\]](#)

- S.171- Rate-reduction & ITC benefit to pass on by price reduction. An Empowered Authority to examine.
- R-122-**Constitution** of Authority [1 chairman of secretary rank + 4 technical members of Commr rank]
- R-123-GST council may constitute **Standing Committee** with Central and State officers. Every State Govt shall constitute **Screening Committee** with one nominated officer from CG & SG each.
- R-124- their Service conditions
- R-125- ADG (safeguards) will be secretary to the Authority. [now renamed as Anti- profiteering Directorate vide N/N 29/18 CT 6.7.18. Also refers DGAP Circular NAA File No. Admn(NAA)/P&M/81/2019, dated 4-10-2019]
- R-126-Authority will have **power to determine methodology** and procedure to determine profiteering.
- R-127- **Duties of the Authority** [determine profiteering, identify persons, order for price-reduction, return amt to recipient, imposition of penalty & cancellation of registration]
- R-128- **Examination of application** by Standing & Screening Committees.
- R-129- Initiation and conduct of proceedings [ Standing Committee to refer to **DGAP for investigation** and report]

- R-130- **Confidentiality** of information- S.11 of RTI Act will apply
- R-131- **Co-operation with out-agencies**/statutory authorities [DGAP can seek]
- R-132- **Power to summon** to give evidence and produce documents.
- R-133- **Order of the Authority** [within 3 months from receipt of report, PH]
- R-134- **decision by majority**
- R-135- **Compliance** by Registered person [forthwith, otherwise recovery action]
- R-136- **Monitoring** of the order [Authority may require it by CT/ST/UT tax authorities] [Also refers DGAP Circular NAA File No. Admn(NAA)/P&M/81/2019, dated 4-10-2019]
- R-137- Tenure of Authority [will cease to exist after two years, unless otherwise recommended by the Council] [in July 19, term has been changed to 4 years]
- Rule Amended in June 18- **Funds collected under GST anti-profiteering rules to be split between Centre, state**

## S.171 Anti Profiteering Measure

- **Tax rate reduction** and **ITC benefit**
  - shall be passed on to the recipient
  - by way of **commensurate price-reduction**.
- The Central Govt may
  - constitute an Authority,
  - Or empower an existing Authority (constituted under any extant law)
  - To examine whether ITC availed or tax-rate reduction has actually resulted in a commensurate price-reduction.
- Powers / functions of such authority:-
  - As prescribed
- The mechanism is a **three-stage process** —
  - state-level screening committee for local complaints and
  - a standing committee for national-level complaints,
  - besides investigation by the DGAP



## The machinery:

- **NAA** (National Anti Profiteering Authority)

[Central Govt will constitute with Secretary + 4 technical members who are or have been Commissioners of State tax or Central tax will be nominated by the GST Council. Tenure of them is for 2 yrs.]

- A **standing Committee** (at Centre)

[The GST council may constitute. Consist of such officers of the State Government and Central Government as may be nominated by it.]

- **Screening Committee** in every State &

[Constituted in each State by the State Governments which shall consist of -

- ✓ one officer of the State Government, to be nominated by the Commissioner, and
- ✓ one officer of the Central Government, to be nominated by the Chief Commissioner.

- The **Director General of Anti-Profiteering** in the CBIC

## Procedure:-

- Complaints of **local nature** will first be filed with the State screening Committee.
- Complaint of incidents of **all India ramification** could be made directly to Standing Committee.
- If it finds prima-facie element of profiteering, it will **send to DGAP** for detailed investigation.
- DGAP will **report its findings to the NAA**
- **NAA will pass orders** for-
  - ✓ reduction in prices;
  - ✓ return the profit with interest;
  - ✓ imposition of penalty;
  - ✓ cancellation of Registration.

## ➤ Method of calculating profiteering:-

The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

## ➤ Who can file complaint

- Any **consumer or organization** experiencing the non-reduction in the price of the goods or services despite reduction in the rate of GST can file the complaint with proper evidences.
- **Any supplier, trader, wholesaler or retailer**, who could not get benefit of input tax credit on account of reduction in the rate of GST, can file the complaint with proper evidences.

## ➤ How can we file complaint

1. Online complaint facility;
2. Via mail;
3. By post;

## ❖ **Online complaint**

Complainant can register an online complaint at <http://www.naa.gov.in/-complaint.php> by three steps:-

**1. Registration** - The User needs to register himself/herself by filling the required fields in the Registration-form. After successfully completing the Registration process, an e-mail will be sent to registered mail-id of the user. Click on the verification link given in the mail by the NAA. **The user will be directed to log-in page** of the website.

**2. Log-in** - The user can **log-in anytime using registered mail-ID and password**. The log-in will have the following facilities -

- make complaint;
- track complaint;
- history of complaints;
- edit the profile;

**3. Make complaint** - The user can fill up the details required in the complaint form along with the evidence. He can also **upload evidence of .jpg, .pig, .doc or .pdf format within 3 MB size**. After successfully completing the Complaint-process, the user will **receive the Complaint-ID** for tracking the complaint in the future.

## ❖ ***Complaint via mail***

- The affected person may file a complaint via mail to the Standing Committee and as well as the Screening Committee.
- The complaints of the nature of national level may be mailed to the Standing Committee to their e-mail id - [sc.antiprofitteering@gov.in](mailto:sc.antiprofitteering@gov.in).
- The complaints of the nature of State level or local level may be mailed to the Screening Committee to the respective State Screening Committee e-mail addresses which may be obtained in

*[http://www.naa.gov.in/docs/SCREENING20%-COMMITTEES\\_UPDATED.xlsx](http://www.naa.gov.in/docs/SCREENING20%-COMMITTEES_UPDATED.xlsx).*

## ❖ ***Complaint via post***

The complaint may be sent by post as detailed below -

- **To the National Anti-Profiteering Authority -**

National Anti-Profiteering Authority  
Dept. of Revenue, Ministry of Finance  
6th Floor, Tower One  
Jeevan Bharati  
Connaught Place  
New Delhi-110 001.

- **To Directorate General of Anti-Profiteering**

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.

- **To the Standing Committee -**

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.

## Flow Chart of process:



- NAA was set up in Nov 2017 for two years. In July 19, the tenure was made four years.

**Offices:-** The Authority shall function from the  
Jeevan Bharti Building,  
Connaught Place, New Delhi.

The **secretariat** for the Authority shall be as follows:

Directorate General of Anti-Profiteering,  
2nd Floor, Bhai Veer Singh Sahitya Sadan,  
Bhai Veer Singh Marg, Gole Market,  
New Delhi: 110001.

Email: [anti-profiteering@gov.in](mailto:anti-profiteering@gov.in)

Tel.: 011-23741537

- Filled up application **form is to be sent to**
- ✓ the State level Screening Committee in case issue is of local nature and
- ✓ in other cases to the Standing Committee.
- Contact details of **Standing Committee** on Anti-profiteering :  
  
2nd Floor, Bhai Vir Singh Sahitya Sadan,  
Bhai Vir Singh Marg, Gole Market,  
New Delhi-110 001.  
Tel No.: 011-23741537,  
Fax. No.: 23741542,  
*E-mail: anti-profiteering@gov.in*
- Contact details of **State Screening Committee** on Anti-profiteering are available at :

URL: [goo.gl/eYJXnK](http://goo.gl/eYJXnK)



# Maharashtra Screening Committee (Anti-Profiteering)

**Member from Central Govt:-**

**Suresh Kishnani,**

Commissioner, GST

Ph 022-22185258 / 9920753216

E-mail: [suresh.kishnani@nic.in](mailto:suresh.kishnani@nic.in)

Address- The Commissionre, CGST &CX, Audit-II Commissionerate, 30<sup>th</sup> floor,  
Centre-I, World Trade Centre, Cuffe Parade, Mumbai-400 005.

**Member from State Govt:-**

**Omnarayan Bhangdiya**

Additional Commissioner

Ph: 020-26609000 / 9028009155

Fax: 020-26609028

E-mail: [ombhangdiya@gmail.com](mailto:ombhangdiya@gmail.com)

Address: The Additional Commissioner, State Tax, Maharashtra, 4<sup>th</sup> Floor, GST  
Bhawan, Yerwada, Airport Road, Pune- 411006.

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## Anti Profiteering – Illustration

### Cost Sheet of a Trader

Description (Pre GST Regime)	Amount (INR)	Description (GST Regime)	Amount (INR)
Purchase Price of Goods (A)	1,00,000	Purchase Price of Goods (A)	1,00,000
Excise Duty on Inputs @ 12.50% (B)	12,500	GST	18,000
Value Added Tax @ 5.50%	6,188	Total Purchase Price	1,18,000
Total Purchase Price	1,18,688	Operational Exp. (Business Consumables & Services) (B)	1,000
Operational Exp. (Business Consumables & Services) (C)	1,000	Tax on Operational/ Indirect Exp.	180
Tax on Operational/ Indirect Exp. (D)	150	Total Cash Outflow	1,19,180
Total Cash Outflow	1,19,838	Sales Price for the dealer (C)	1,25,000
Sales Price for the dealer (E)	1,25,000	GST	22,500
Output Tax (VAT @ 5.50%)	6,875	Total Cost to Consumer	1,47,500
Total Cost to Consumer	1,31,875	Profit of Dealer (C – A – B)	24000
Profit of Dealer (E – A – B – C – D)	11,350	Total tax which govt. has received (CG + SG)	22,500
Total tax which govt. has received (CG + SG)	19,525		

# Definitions and Complaint Resolution philosophy

# Important Terms /Definition

- **Authority** - Authority means the National Anti-Profiteering Authority constituted in terms of rule 122
- **Accepted complaint** - A complaint that Standing committee determines falls within the scope of this SOP.
- **Assigned complaint** - An accepted complaint referred by Standing committee to Director General- Safeguards for Investigation (now DGAP)
- **Interested Party** - includes
  - a. Supplier of goods or services under the proceedings; and
  - b. recipients of goods or services under the proceedings;
- **Screening Committee** - means the state level screening committee constituted in terms of sub-rule (2) of rule 123 of the CGST rules
- **Standing Committee** - Standing committee is a committee formed under Rule 123 of the CGST rules read with Section 171 of CGST Act.

# Complaint Resolution Philosophy

- This complaint process may be adopted **by any person or a group** who believe they have a complaint to be addressed by the standing committee.
- Membership to the standing committee is not required to access the process.
- Additional processes available with the standing committee that is directly involved with a complaint.
- Standing Committee **views complaints as opportunities for improvement** and strives to work with all parties towards a successful resolution within the ambit of law.

# Complaint Acceptance

- Standing Committee to **review the complaint** form to examine if it is a case of anti-profiteering under Section 171 of the CGST Act, 2017.
- Criteria to **decide on acceptance** of Compliant:
  - Existence of **Prima-facie Evidence** (As given in Rule 129)
  - Upward Deviation in **price** is more than 10%
  - Upward deviation in **profit** is more than ten lakhs
  - Accuracy of the rate used against the HSN
- Going by the above criteria, **decide to accept or reject the complaint** and communicate the decision to the complainant

Analysis of form APAF-1 >>>

APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
A1	Name of the applicant	Mandatory Field	Even a person operating in the same line of business can initiate the complaint
A2	Category of the applicant	Mandatory Field	<p>Interested Party/Commissioner/ Any other person - <b>Specific codes for each category</b> is provided for mentioning the same in the application.</p> <p>With an option available to “any other person” to file an application, the Government has tried to ensure that the business entities do not form a supply chain cartel, wherein none of the person in the chain reduces the price but there is action initiated against the such business entities even on a complaint received from unrelated party.</p>
A3	GST Registration number. i.e. GSTIN	Non-Mandatory Field	With an option available to entities forming a part of the supply chain or persons involved in similar line of business. A specific column for mentioning their GSTIN is provided in the application.
A4 and A5	Address and Contact number	Mandatory field	These are the <b>basic details</b> of the applicant required to be submitted.



APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
A6	E-mail ID	Non-Mandatory field	The applicant has an option to submit his <b>e-mail</b> address.
A7	ID proof of the applicant (Code)	Mandatory field	The applicant is required to provide the code of the <b>ID proof</b> . The codes prescribed are as follows 1.Aadhaar Card issued by the Unique Identification Authority of India 2.Voter ID 3.Permanent Account Number (PAN) card 4.Driving Licence 5.Passport 6.Ration card having photograph of the applicant 7.Any other proof of Identity (Specify)
B1	Name of the supplier	Mandatory field	The name of the <b>supplier</b> is required to be mentioned in the application.
B2	Category of the supplier (Code)	Mandatory field	The applicant is required to mention the code of the category of the supplier, the codes are as follows 1.Manufacturer 2.Service Provider 3.Trader 4.Others (Specify) Therefore, with an option to file against any other person, not falling in the category of Manufacturer, Service provider, trader intends to expand the scope of the application.

APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
B3 and B4	Address and GSTIN of the supplier	Mandatory field	The application of the anti-profiteering <b>only intended to be filed against a person making GST supplies</b> , the GSTIN and the address of the supplier is made mandatory.
B5, B6 and B7	Contact Number, E-mail ID and Website	Non-Mandatory field	This information shall be entered in the application, if they are available with the applicant.
C1	Description of the goods/service	Mandatory field	The description of the <b>goods or services</b> as provided in the invoice or price list is required to be recorded.
C2	HSN/SAC	Non-Mandatory field	Though this being a non-mandatory field, the applicant can mention the same as it is recorded in the invoice.
C3 and C4	Actual Price charged per unit Pre-GST and Post-GST	Mandatory field	The applicant shall record the <b>price/unit</b> charged before introduction of GST and post introduction after deducting any discount or rebate given by the supplier.
C5, C5a and C5b	If goods are covered under MRP provisions, if yes then MRP pre-GST and post-GST	Non-Mandatory field	For FMCG products and other like products bearing MRP, the applicant can specify that the products are covered under MRP provisions and also specify the pre and post-GST <b>MRP</b> , if he possess knowledge about the same.

APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
C6, C6a and C6b	Comparative per unit actual Price/Value of like goods/services charged by other supplier pre-GST and post-GST (Name and GSTIN of the other supplier)	Non-Mandatory field	For few supplies, the measure of profiteering practice can be determined by the change in price of similar good/service provided by other suppliers. Therefore, any such information available with the applicant can also be provided in the application.
D2a to D2f	Excise Duty, Service Tax, VAT, Luxury Tax and Others including cesses, as applicable charged on the good/service.	Non-Mandatory field	<p>This information enables the computation the Total tax rate (effective rate) pre-GST and Post-GST.</p> <p>But, the applicant may not possess the knowledge of the taxes not specifically mentioned in invoice or product, such as Excise Duty, Cess etc., therefore it is made non-mandatory field.</p>

APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
D3	Total tax per unit (pre-GST)	Mandatory field	<p>This is a sum of Excise Duty, Service Tax, VAT, Luxury Tax and Others including cesses, as applicable is required to be included in this field.</p> <p>Though this field is made mandatory, the applicant may not possess the knowledge of the taxes not specifically mentioned in invoice or product, such as Excise Duty, Cess etc.</p>
D4a to D4e	CGST, SGST/UTGST, IGST, Compensation cess, Other cess	Non-Mandatory field	<p><b>Post-GST, the tax levied</b> can be easily identified as it is a sum of CGST+SGST/UTGST or IGST with Cess, including compensation cess, if applicable.</p> <p>However, the same is made non-mandatory field.</p>

APAF-1 Sr. no.	Field	Mandatory/ Non- mandatory	Inference/Comment & Suggestion
D5	Total tax per unit (post-GST)	Mandatory field	This is a sum <b>CGST, SGST/UTGST, IGST, Compensation cess, Other cess,</b> as applicable. This information <b>shall be available in the invoice</b> of the supplier
D6	Post-GST reduction in rate of tax/unit	Mandatory field	<b>Difference between D3 and D5</b> is reduction in rate of tax rate/unit.
D7	Benefit of Input Tax Credit - Input Taxes/ Duties Pre-GST per unit, credit of which was not available (out of the Taxes/Duties subsumed in GST) and Transitional Input Tax Credit, if any.	Non- Mandatory field	GST proposes to introduce seamless credit flow throughout the supply chain. Therefore, any benefit of excess eligibility of Input tax credit because of introduction of GST is required to be passed.  <b>Since the benefit of the excessive ITC cannot be computed easily, the same is introduced as a non-mandatory field in the application.</b>

APAF-1 Sr. no.	Field	Mandatory/ Non-mandatory	Inference/Comment & Suggestion
D8	Difference between actual price charged per unit - Pre-GST and Post-GST.	Non-Mandatory field	This is a difference between Sl. No. C4 and C3 of the application.
D9	Amount of benefit not passed and GST on the after adjusting difference between pre-GST and post-GST actual price/value	Non-Mandatory field	It is sum of Sl. No. D6, D7 and D8 of the application. [?]
D10	GST on the amount of benefit not passed.	Non-Mandatory field	It is equal to D9 multiplied by the rate of GST (Including cess, if any)
D11	Post GST price per unit/value to be reduced by.	Non-Mandatory field	It is sum of Sl. No. D9 and D10 of the application.
D11	Additional information.	Non-Mandatory field	The applicant can further submit any other information which may be available with him and which may enable to establish the profiteering practice of the supplier

## Guidelines from Jubilant food Case

[i.e. Dominos Franchisee Jubilant Food Works at ` 41.42 crores]

In the case of '*Kiran Chimirala v. Jubilant Food Works Limited*' - 2019 (24) G.S.T.L. J45 [i.e. *Dominos Franchisee Jubilant Food Works at ` 41.42 crores*] - the Authority held the following which may be a guideline in Anti-Profiteering cases -

- i. It amounts to profiteering under GST law when after GST rate reduction, the base prices of goods are increased though assessee is charged GST at reduced rate.
- ii. Screening Committee as well as Director General of Anti-Profiteering has jurisdiction for investigation when enhancement of base prices of goods after GST rate reduction admitted, though product purchased by complainant prior to and after GST rate reduction found to be distinct and having incomparable prices.
- iii. The investigation by Director General of Anti-Profiteering is not confined only to products in respect of which a complaint is made. It can be extended to other products in respect of which the benefit of tax reduction is not passed on to customers.
- iv. The determination of profiteered amount has to be done based on facts of each case and no general methodology can be prescribed for the same.
- v. The determination of profiteered amount, when the base prices are increased after GST reduction, is to be calculated based on actual price paid by customers and not on menu prices sold by the assessee.
- vi. The benefit in respect of a particular product cannot be denied to a customer on the ground that the assessee passed on it in respect of its another product, though not purchased by that customer.



- vii. The plea that the National Anti-Profiteering Authority cannot determine Anti-Profiteering in **absence of any prescribed methodology is not acceptable** since a full-fledged mechanism is in place under GST Act and Rules.
- viii. The **additional amount of GST charged at reduced rate on increased base prices** after reduction in GST rate is includible in profiteered amount.
- ix. Mere charging of reduced GST rate after GST rate reduction does not amount to compliance of GST provisions when **base prices are increased beyond denial of input tax credit** amount though additional input tax credit is not availed by the assessee.
- x. The methodology of '**netting off**' of positive and negative price rises as adopted in anti-dumping matters to determine dumping margins by taking into both positive and negative dumping margins, **is not applicable** in determining profiteered amount.
- xi. The profiteered amount should be calculated **product-wise and not invoice-wise**.
- xii. **Non-issuance of show cause notice cannot be termed as violation of principles of natural justice** when the Authority already issued hearing notice to the assessee intimating that a complaint has been filed against him and copy of complaint, notice for initiation of investigation by Director General of Anti-Profiteering and copy of Director General Anti-Profiteering report also had been supplied to him.

Cases Decided

## ➤ Major Cases where profiteering established:-

The Authority has passed orders against several companies following profiteering complaints which includes

- Hindustan Unilever for profiteering estimated at ` 535 crores,
- Dominos Franchisee Jubilant Food Works at ` 41.42 crores,
- Abbott Health Care at ` 96 lakhs,
- McDonald's franchisee Hard Estate Restaurant at ` 7.49 crores.

## ➤ Hindustan Unilever case:-

The National Anti-Profiteering Authority, after hearing the representatives of the parties and considering the report of DGAP, has held that **item wise profiteering computed by the DGAP**, on the basis of the data provided by the respondent himself shows that the **respondent had denied benefit of ` 419.67 crores to his customers by increasing the base prices w.e.f. 15-11-2017, the day from which the rate reductions had come into force**. The rates of tax were recommended to be reduced by the GST Council in its meeting held on 10-11-2017 and within a period of 4 days, the respondent had manipulated his software by increasing the base prices. Further, the respondent has **himself admitted that had he not increased the base prices as were existing on 14-11-2017 and charged GST @ 18% instead of 28%, the total sales realization would have been ` 5454.10 crores as against the actual realization of ` 5774.80 crores reflected in his Returns and hence, he had made extra realization of ` 320.70 crores**. By no stretch of imagination this amount of ` 320.70 crores can be termed as extra realization as this in fact is the amount the benefit which has been denied by the respondent to his customers. The Respondent **himself has also admitted the deposit of an amount of ` 124.04 crores in the CWF on 4-12-2017, 8-1-2018 and 9-3-2018 and an amount of ` 36.19 crores on 10-4-2018 recovered from his RSs, therefore, the respondent has himself admitted that he had resorted to profiteering as only the profited amount could be deposited in the CWF**. Further, perusal of the **Audited Financial Results published by the respondent also shows that the increase in his profits during the relevant period was entirely due to the increase in the base prices** made by him through which he had denied the benefit of tax reduction to his customers and appropriated the tax benefits to himself. The decisions rendered by the Hon'ble Supreme Court in the cases viz. *Badridas Daga v. CIT* - 34 ITR 10 (SC) and *CIT v. Meghalaya Steels Ltd.* - (2016) 67 taxmann.com 158 (SC) and relied upon by the respondent, have been held to be **not applicable as the same related to profit whereas Section 171 deals with profiteering and not to profit**. Profiteering as laid down in the CGST law, read with the CGST Rules, only implies that whenever there is reduction in the rate of tax or benefit of ITC is available, both of them should be passed on to the recipient in the form of commensurate reduction in the prices. Applying the ratio of the judgment passed by the Hon'ble Supreme Court on the issue of profiteering in the case of *Glaxo Smithkline Pharmaceuticals Limited* [Civil Appeal Nos. 1939 & 1940 of 2004], it has been held that the **respondent was bound to reduce the prices on the products being sold by him w.e.f. 15-11-2017 and in case he was not able to do so, he should have immediately deposited the profited amount in the CWF. Having failed to do so promptly, the respondent has to bear the consequences of the profiteering as per the provisions of the CGST Act, 2017.**

## ➤ Dominnos case:-

The National Anti-Profiteering Authority in its impugned order had held that though the GST rate on the restaurant services was reduced from 18% to 5% w.e.f. 15-11-2017 vide Notification No. 46/2017-C.T. (Rate), dated 14-11-2017 with the condition that the benefit of Input Tax Credit (ITC) would not be available on the goods and services supplied during the course of these services from the said date, **the assessee Jubilant Foodworks Ltd. who engaged in the business of operating quick service restaurants under the name and style of 'Domino's Pizza' had not passed on the tax reduction benefit to the customers by way of commensurate reduction in the prices instead they had increased the base prices of these items and had thus resorted to profiteering.** The Authority had held that since they had **increased the base prices after reduction of tax rate w.e.f. 15-11-2017, in respect of 314 items which constituted 79.90% of total 393 products** sold by them and due to such increase in the base prices, the cum-tax price paid by the consumers had not been reduced commensurately for all the above items, **the benefit of tax reduction had not been passed on to them in contravention of Section 171 of CGST Act, 2017 even though they had charged reduced rate of 5% GST on the increased base prices of all 314 items.**

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
1.	06/2018, dated 7-9-2018 [ <a href="#">2018 (19) G.S.T.L. 497</a> (N.A.P.A.)]	M/s. Sharma Trading Company.	GST rate of <b>Vaseline</b> reduced from 28% to 18% but supplier charged 28% on invoices issued to the customers.	The allegation of profiteering activity has been duly established and contravention of Section 171 of the CGST Act, 2017 established. <b>Respondent is directed to reduce the sale price</b> of the product immediately to commensurate to the reduction in the rate of tax.
2.	07/2018, dated 18-9-2018. [ <a href="#">2018 (19) G.S.T.L. 65</a> (N.A.P.A.)]	M/s. Pyramid Infratech Pvt. Ltd.	ITC benefit on <b>construction services</b> not passed on to purchaser.	The respondent had denied benefit of ITC to the buyers of the flats being constructed by him and realized more prices from them. It is clear case that the respondent acted in contravention of Section 171(1) of the CGST Act, 2017 for which <b>penalty was imposed on the respondent.</b>

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
3.	08/2018, dated 25-9-2018 [ <a href="#">2018 (19) G.S.T.L. 92</a> (N.A.P.A.)]	M/s. Lifestyle International Pvt. Ltd.	GST Rate on <b>cosmetics</b> reduced from 28% to 18% but MRP includes GST 28%.	There is no reason for the respondent to <b>increase the basic price exactly equal to the amount by which the rate of tax had been reduced</b> . Respondent not passed benefit of tax reduction to customers. It is clear violation of provisions of Section 171(1) of the CGST Act, 2017.
4.	10/2018, dated 8-10-2018 [ <a href="#">2018 (19) G.S.T.L. 84</a> (N.A.P.A.)]	M/s. Kunj Lub Marketing Pvt. Ltd.	Increase of base price of <b>Maggie</b> noodles on reduction of GST rate from 18% to 12%	The respondent had <b>denied benefit of reduction in GST rate</b> to the consumers in contravention of Section 171(1) of the CGST Act, 2017 and has realized more prices from them and NAA directed to issue show cause notice for <b>imposition of penalty</b> .

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
5.	14/2018, dated 16-11-2018. <a href="#">[2018 (19) G.S.T.L. 511 (N.A.P.A.)]</a>	M/s. Hardcastle Restaurants Pvt. Ltd.	Not passing benefit of GST rate reduction from 18% to 5% on supplies of <b>burgers</b> .	The respondent had <b>increased the base prices of various items</b> supplied by them to neutralize the demand of ITC after GST rate reduction and resorted to profiteering by charging more price. It is clear case of contravention of Section 171(1) of the CGST Act, 2017 and directed to issue show cause notice for <b>imposition of penalty</b> .
6.	15/2018, dated 28-11-2018.	M/s. Theco India Pvt. Ltd., (Milling Machine Furnace)	Not passing of benefit of GST rate reduction and ITC on purchase of important machinery.	The respondent <b>did not pass on the benefit arising out of the increased ITC</b> and having profited and unfairly benefited, is contravention of Section 171(1) of the CGST Act, 2017 and liable to pay penalty.



Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
7.	16/2018, dated 6-12-2018. [ <a href="#">2019 (22) G.S.T.L. 473</a> (N.A.P.A.)]	M/s. J.P. and Sons (Johnson & Johnson Baby)	No change of MRP after reduction of GST rate from 28% to 18%.	The respondent had compelled them to pay <b>additional GST at the increased prices through the incorrect tax invoices</b> and failed to pass benefit to customers on reduction of tax rate. It is established contravention of Section 171(1) of the CGST Act, 2017 and liable to pay penalty.
8.	17/2018, dated 7-12-2018. [ <a href="#">2019 (22) G.S.T.L. 463</a> (N.A.P.A.)]	M/s. Harish Bakers & Confectioners Pvt. Ltd. (Cadbury Dairy Milk Chocolate)	Not passing of benefit of GST rate reduction from 28% to 18% ( <b>Cadbury Milk Chocolate</b> ).	The respondent have forced them to pay <b>additional GST on the increased prices</b> and earned additional profit and established respondent knowingly acted in contravention of Section 171(1) of the CGST Act, 2017 and liable to pay penalty.

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
9.	20/2018, dated 24-12-2018 [ <a href="#">2019 (21) G.S.T.L. J74</a> (N.A.P.A.)]	M/s. Hindustan Unilever Ltd.	Not passing of benefit of GST rate reduction from 28% to 18% and not charging MRP of various <b>FMCG products</b> with new reduced GST rate.	The respondent has resorted to profiteering being very well aware of the law and allegedly <b>recovered the excess realization of ITC and thereby denied the benefit of tax reductions</b> to the customers, he had <b>deliberately increase the base price by enhancing them equivalent to the amount of GST rate reductions</b> in order to keep the old MRPs. It is established contravention of Section 171(1) of the CGST Act, 2017 and liable to pay penalty.
10.	25/2018, dated 27-12-2018.	M/s. Raj & Company.	Allegation of not passing benefit of GST rate reduction and not charging MRP of various <b>FMCG products</b> considering reduced rate from 28% to 18%.	The respondent has issued incorrect invoices and compelled them to pay <b>additional GST on the increased prices</b> and failed to pass benefit to customers on tax reductions. Respondent directly and consciously acted in contravention of the provision of Section 171(1) of the CGST Act, 2017. NAA has directed to collect penalty after issuance of SCN.

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
11.	02/2019, dated 16-1-2019	M/s. Excel Rasayan Pvt. Limited.	GST rate reduced from 28% to 18% but benefit of reduction rate has not paid on purchase of <b>Fortune ADW Detergent.</b>	The allegation of profiteering has been duly established and not passed benefit of reduction in the rate of tax by way of change of prices and <b>liable to pay penalty.</b>
12.	03/2019, dated 22-1-2019	M/s. Satya Enterprises.	GST rate reduced from 28% to 18% on certain <b>(FMCG)</b> products but benefit of reduced MRP has not been passed on.	Allegation of profiteering has been duly established that <b>base prices were deliberately increased</b> by the amount by which tax rates are reduced. The supplier is liable to pay penalty.

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
13.	04/2019, dated 31-1-2019 [2019 (24) G.S.T.L. J43 (N.A.P.A.)]	M/s. Jubilant Food Work Limited.	GST rate on <b>Restaurant Services</b> was reduced from 18% to 5% but benefit of reduced rate not passed on to the consumer.	It is established that respondent has resorted to profiteering by charging more prices and denied the <b>benefit of reduction in the rate of tax.</b> Recommended for issue notice to recover penalty.
14.	12/2019, dated 27-2-2019	M/s. S3 Infra Reality Pvt. Ltd.	Not passed on the benefit of ITC by commensurate reduction in the prices (GST rate reduced from 12% to 8%).	Respondent has <b>denied benefit of ITC to the buyers of the Flats</b> and contravention of the provisions of Section 171(1) of the CGST Act, 2017 and it is directed amount of profiteered shall be paid to all buyers.

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
15.	15/2019, dated 5-3-2019	M/s. Abbatt Health Care Pvt. Ltd., M/s. Sami Labs Ltd., M/s. Viswas Medico.	Not passed the benefit of reduction in the rate of tax.	It has been established that respondents has also compelled them to pay additional GST and <b>failed to pass on benefit for reduced tax rate</b> in contravention of the provision of Section 171(1) of the CGST Act, 2017. NAA has directed to collect penalty after issuance of SCN.
16.	16/2019, dated 7-3-2019	M/s. Cloudtail India. Pvt. Ltd.	GST rate reduced from 28% to 18% but increase the base prices and not passed on benefit of reduced tax rate.	It is established that respondent has <b>profiteered by increasing his base price</b> and contravene provision of Section 171(1) of the CGST Act, 2017. He is liable to pay penalty.

Sr. No.	NAA Order No. and Date/Citation	Name of the Party against whom complaint was lodged	Nature of the complaint	Findings of NAA and order of profiteering
17.	21/2019, dated 28-3-2019	M/s. Gurukripa Developers and Infrastructures Private Ltd.	Not passed on the benefit of ITC by way of commensurate reduction in the <b>prices of the Flat.</b>	It is established that respondent has <b>denied benefit of ITC to the applicant on purchase of 64 Flats</b> in contravention of the provisions of Section 171(1) of the CGST Act, 2017.
18.	25/2019, dated 16-4-2019	M/s. Dev Snacks	Not passed on the benefit of reduction in the rate of tax by commensurate reduction in the prices ( <b>Snacks</b> ) GST rate reduced from 12% to 5% and 5% to Nil tax rate.	It is established that respondent has acted in contravention of the provisions of Section 171 of the CGST Act, 2017 and not passed on the benefit of reduction in the rate of tax and has <b>increased the base prices of the snacks</b> in contravention of the provision of Section 171 of the CGST Act, 2017 and penal provisions are also attracted.

Profiteering established / not established

Out of 28 cases decided in 2018,  
profiteering could not be established in 18  
cases.





<b>S. No.</b>	<b>Date</b>	<b>Complaint Against</b>	<b>Issue</b>	<b>Anti-Profiteering</b>
1.	27.03.2018	M/s Vrandavaneshwree Automotive Pvt. Ltd.	Price difference on sale of <b>car</b> in GST regime booked in pre-GST regime	Not established
2.	04.05.2018	M/s KRBL Ltd	Levy of GST @5% on <b>branded rice</b> in GST regime	Not established
3.	31.05.2018	M/s Schindler India Pvt. Ltd., Mumbai	Purchase of <b>lift</b> before and after GST, GST charged on excise duty	Not established
4.	18.07.2018	M/s Flipkart Internet Pvt. Ltd., Bangalore	Discount withdrawn on sale of <b>Godrej almirah</b> on Flipkart	Not established
5.	07.09.2018	M/s Sharma Trading Company	Rate of <b>Vaseline</b> reduced from 28% to 18%, but supplier charged 28%	Upheld
6.	18.09.2018	M/s Pyramid Infratech Pvt. Ltd.	ITC benefit on <b>construction</b> not passed on	Upheld

<b>S. No.</b>	<b>Date</b>	<b>Complaint Against</b>	<b>Issue</b>	<b>Anti-Profiteering</b>
7.	25.09.2018	<a href="#">M/s Lifestyle International Pvt. Ltd.</a>	Rate on <b>cosmetics</b> reduced from 28% to 18% but MRP includes GST @28%	Upheld
8.	27.09.2018	<a href="#">M/s N.P. Foods</a> (Franchisee Subway India)	Prices increased due to ITC loss to <b>restaurant</b> , not amount to anti-profiteering	Not established
9.	08.10.2018	<a href="#">M/s Kunj Lub Marketing Pvt. Ltd</a>	Increase of base price of <b>Maggie</b> noodles on reduction of GST rate from 18% to 12%	Upheld
10.	29.10.2018	<a href="#">M/s Amway India Enterprise</a>	No passing of GST benefit of GST rate reduction from 28% to 18% on various products	Not established for want of evidence
11.	29.10.2018	<a href="#">M/s Yum Restaurant India Pvt. Ltd</a> (KFC)	No passing of benefit of GST rate reduction from 18% to 5% on supplies of <b>burgers</b>	Not established for want of evidence
12.	16.11.2018	<a href="#">M/s Fabindia</a>	Sale of <b>Bathing Bar and instant Drink Powder</b> on old MRP even after GST fixed @ 18%	Not established

<b>S. No.</b>	<b>Date</b>	<b>Complaint Against</b>	<b>Issue</b>	<b>Anti-Profiteering</b>
13.	16.11.2018	<a href="#">M/s Hard Castle</a> (McDonald's)	No passing of benefit of GST rate reduction from 18% to 5% on supplies of <b>burgers</b>	Upheld
14.	28.11.2018	<a href="#">M/s Theco India Pvt. Ltd.</a> (Milling Machine Furnace)	No passing of benefit of GST rate reduction and ITC on purchase of important <b>machinery</b>	Upheld
15.	06.12.2018	<a href="#">M/s J.P. and Sons</a> (Johnson & Johnson Baby)	Charge of <b>same MRP</b> after tax reduction	Upheld
16.	07.12.2018	<a href="#">M/s Harish Bakers &amp; Confectioners Pvt. Ltd.</a> (Cadbury Dairy Milk Chocolate)	No passing of benefit of GST rate reduction from 28% to 18 % on <b>chocolates</b>	Upheld
17.	17.12.2018	<a href="#">M/s Landmark Automobiles Pvt. Ltd.</a> (Honda Car)	Allegation of not passing of benefit of ITC on sale of <b>Honda Car</b>	Not established
18.	17.12.2018	<a href="#">M/s Zeba Distributors, Immanuel Stores (Eastern Meat Masala)</a>	Allegation of not passing of benefit of GST rate reduction	Not established

<b>S. No.</b>	<b>Date</b>	<b>Complaint Against</b>	<b>Issue</b>	<b>Anti-Profiteering</b>
19.	24.12.2018	<a href="#">M/s Hindustan Unilever Ltd.</a>	Not passing of benefit of tax rate reduction & not changing MRP of various <b>FMCG</b> products	Upheld
20.	24.12.2018	<a href="#">M/s Asian Granito India Ltd.</a>	Allegation of not passing of benefit of tax rate reduction on supply of <b>tiles</b>	Not established
21.	24.12.2018	<a href="#">M/s Peps Industries Pvt. Ltd.</a>	Allegation of not passing of benefit of tax rate reduction on supply of <b>mattresses</b> .	Not established
22.	24.12.2018	<a href="#">M/s Panasonic India Pvt. Ltd.</a>	Allegation of not passing benefit of tax rate reduction on sale of <b>Panasonic LED</b>	Not established
23.	24.12.2018	<a href="#">M/s Impact Clothing Co.</a>	Allegation of profiteering on sale of <b>garments</b>	Not established
24.	27.12.2018	<a href="#">M/s Raj &amp; Company</a>	Allegation of not passing benefit of tax rate reduction and not changing MRP of various <b>FMCG</b> products	Upheld

<b>S. No.</b>	<b>Date</b>	<b>Complaint Against</b>	<b>Issue</b>	<b>Anti-Profiteering</b>
25.	27.12.2018	<a href="#">M/s Janson</a>	Allegation of not passing benefit of tax rate reduction on supply of <b>Lungi</b>	Not established
26.	27.12.2018	<a href="#">M/s Lorenzo Vitrified Tiles Pvt. Ltd.</a>	Allegation of not passing benefit of tax rate reduction on supply of <b>Mirror Series Tiles</b>	Not established
27.	27.12.2018	<a href="#">M/s Ahuja Radios</a>	Allegation of not passing benefit of tax rate reduction on supply of <b>Ceiling / wall speaker</b>	Not established
28.	27.12.2018	<a href="#">M/s Asian Paints Ltd.</a>	Allegation of not passing benefit of tax rate reduction on supply of <b>paint product</b>	Not established

## Points of Criticism in the scheme

## Criticism:

- **Excessive Delegation:-** the legislature under Section 171 of CGST has no provision for imposition of penalties in cases of anti-profiteering. On the other hand, the APR 2017 provides for penalties, even those with grave consequences such as cancelling the registration of a company. This can be argued to be an instance of excessive delegation by the Government.
- **Draconian enactment:-** the discretion given to bureaucrats to determine the violation of law and the resultant penalty has been contended by businesses to be a 'draconian enactment'.
- **A violation of the Right to Free Trade:-** Article 301 of our Constitution provides freedom of trade, commerce, and intercourse throughout the territory of India. However, Article 302 authorises the Parliament to impose reasonable restrictions on this right. Nonetheless, Anti-Profiteering provisions or restriction on profits of trade of all goods or services may be treated as violation of fundamental right of freedom of Trade, hence may be subject to judicial review.

- **Lack of clarity on what constitutes anti-profiteering:-**the APR 2017 contains neither the methodology nor the procedure for determining whether commensurate benefit has been passed on to consumers.
- **Price has multiple determinants:-** In fact, prices and margins are not solely dependent on taxes. Rather they are only a component of price like any other components. Price determination depends on many factors such as: Internal factors such as the cost of raw material, predetermined objectives of higher profit or higher revenue, the image of the Seller, life cycle of the product, credit period offered and promotional activities. It may also get affected by external factors such as competition of consumers, government control of economic condition, price determination of any product is most complex and continuous process, cycle of which depends on nature of product. Thus, if prices or margins are being capped on account of Anti Profiteering Measures, then it may lead to disastrous situation in many industries. Further, at times there may be strategic pricing for some products which the companies don't want to share with anyone including tax authorities.



## Few cases in Details

## NAA imposes penalty on builder for not passing on the benefit of ITC to buyers

- [Sukhbir Rohilla v. Pyramid Infratech (P.) Ltd.- [2018] 97 taxmann.com 379 (NAA)]
- The Applicants, 100+ home buyers, filed an application against the builder before the Haryana State Screening Committee for not passing on the Input Tax Credit (ITC) of the GST paid on construction services. They booked flats under the Haryana Affordable Housing Policy 2013 and paid Excise Duty and Value Added Tax (VAT). After the GST roll-out, 12% tax was levied on the construction service which was further reduced to 8% from January 25, 2018. But the benefit accrued to the builder post-GST had not been passed on to the flat buyers.
- The National Anti-profiteering Authority (NAA) said that the concession given on construction services had impacted the tax revenue of Govt. and this step had been taken so as to reduce the prices charged by the builders from the vulnerable sections of society who could not afford high value apartments. The NAA held that the builder had to reduce the price of the flat to be recovered from the buyers. It also issued the show cause notice so as to levy the penalty on the builder.
- Details were as under:-



- In *[Sukhbir Rohila v. Pyramid Infratech Pvt. Ltd.](#)* (2018) 9 TMI 1107 (NAA); (2018) 97 taxmann.com 379 (NAA), the National Anti-Profiteering Authority vide its order dated 18.09.2018 has confirmed Anti-profiteering charges on sale of flats and also imposed penalty. In the instant case, [36 applications were filed alleging that the benefit of Input Tax Credit \(ITC\) had not been passed on to the Applicants in respect of the construction service supplied by the Respondent.](#)
- They had booked flats with the Respondent under the Haryana Affordable Housing Policy 2013, notified by the State of Haryana vide Notification No. PF-27/48921 dated 19.08.2013. They had alleged that before coming in to force of the [CGST Act, 2017](#) w.e.f. 01.07.2017, Excise Duty and Value Added Tax (VAT) were being collected from them as Service Tax was exempted, however, after the implementation of the above Act, 12% Goods & Services Tax (GST) was levied on the construction service in place of Excise Duty and VAT w.e.f. 01.07.2017, which was further reduced to 8% w.e.f. 25.01.2018 but the benefit of Input Tax Credit (ITC) which was available to the Respondent and which was much more than the output tax liability of the Respondent had not been passed on to them and therefore the Applicants should not have been burdened with the entire GST of 12% or 8%. It was further alleged that the Respondent had not agreed with the contention of the Applicants that the Respondent was charging 12% and 8% GST and was simultaneously also enjoying the benefit of ITC and was not giving the benefit of the ITC, had claimed that the Respondent was contravening the provisions of Section 171 of the CGST Act, 2017. Accordingly, they had filed several applications with the Haryana Screening Committee for appropriate redressal of their grievance. These applications were examined by the Screening Committee in its meeting held on 30.10.2017 and it was decided to forward these applications to the Standing Committee on Anti-profiteering for further necessary action. The Standing Committee in its meeting held on 07.11.2017 after confirming that prima facie there was evidence of non-compliance of the provisions of Section 171, had forwarded these applications to the Director General of safeguards (DGSG), now Director General of Anti-profiteering(DGAP) for detailed investigation.

On the other hand, the Respondent had claimed that the provisions of Section 171 of the CGST Act, 2017 were not applicable in as much as there was no reduction in the rate of tax as earlier the “Affordable Housing Schemes” (AHS) executed under the ‘Affordable Housing Policy 2013’ (Policy) notified by the State of Haryana vide its Notification No. PF-27/48921 dated 19.08.2013 were exempt from the payment of Service Tax and only VAT was leviable @ 5.25%, however after 1.07.2017 an enhanced tax @12% had been imposed in the GST regime. The Respondent had also claimed that in the case of this Scheme the Respondent could charge only a fixed price not exceeding Rs. 4000/- per sq. ft. carpet area plus taxes, as had been provided under the Policy and in the present case, the maximum price had not been exceeded by him. Out of the total GST incidence, 50% (6% out of 12% GST) was towards SGST, whereas it was earlier availing ITC on the State VAT and the difference after utilizing the ITC was being paid in cash, therefore, the ITC being allowed was not an additional benefit and the GST liability was not entirely covered by the ITC available to the Respondent. Further, it was required to pay GST on the sub-contracted work which was an additional cost to him whereas Service Tax was exempted in the past. It was further claimed that there had been tremendous increase in the prices of inputs including Steel due to which no profiteering could be alleged against it.

The Authority concluded that this was a case of indulging in anti-profiteering activity by the respondent and ordered that the Respondent shall reduce the price to be realized from the buyers of the flats in commensurate with the benefit of ITC received by him as has been detailed above. Since the present investigation was only up to 28.02.2018 any benefit of ITC which shall accrue subsequently shall also be passed on to the buyers by the Respondent. It shall not only pass on the benefit to the 109 Applicants who are before us but to all the 2476 buyers as they are identifiable. Respondent was also directed to refund or reduce the amount, to the extent calculated above to each and every buyer at the time of collecting the last installment along with the interest @ 18% per annum to be calculated from the date of the receipt of the excess amount from each buyer, within a period of 3 months from the date of receipt of this order.

## ➤ D.S. Brothers Vs Durga Marketing Pvt. Ltd. (NAA)

- **GST Profiteering of Rs. 1,57,200 established in the case of supply of **Duracell Battery AA/6** by respondent. NAA asked to deposit the same in consumer welfare fund along with interest @ 18%.**
- **Facts of Case**
- The brief facts of the case are that an application was filed by the Applicant No. 1 before the Standing Committee on Anti-profiteering, under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of “Duracell Battery AA/6” supplied by the Respondent. Applicant No. 1 had alleged that the Respondent did not reduce the selling price of the product when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide [Notification No. 41/2017-Central Tax \(Rate\) dated 14.11.2017](#) and the price of the product remained the same and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017.
- **Held by Authority**
- Central Government had reduced the GST rate on the “primary cells & primary Battery” (HSN-8506) from 28% to 18% w.e.f. 15.11.2017, vide [Notification No. 41/2017-Central Tax \(Rate\) dated 14.11.2017](#) and the benefit of the same was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the CGST Act, 2017.
- From the facts and discussion, it is evident that the **Respondent did not reduce the selling price of the products mentioned above when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017** and hence. the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the prices, in terms of Section 171 of the [CGST Act, 2017](#) and therefore, he has contravened the provisions of Section 171 of the CGST Act, 2017.
- Accordingly, the profiteered amount is determined as Rs. 1,57,200/- as per the provisions of Rule 133(1) of the [CGST Rules 2017](#). The Respondent is therefore directed to reduce the prices of his products as per the provisions of Rule 133(3)(a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. **Accordingly, the Respondent is required to deposit the profiteered amount of ₹ 1,57,200/- along with the interest to be calculated @ 18%.**

## ➤ Automobile Case

These provisions had been used by the National Anti-Profiteering Authority (NAA) set up under the CGST Act, 2017 recently in *Dinesh Mohan Bharadwaj v. M/s. Vrandavaneshwree Automotive Pvt. Ltd.* vide Order dated 27-3-2018 [Case No. 1/2018 instituted on 27-2-2018 as reported in (2018) 4 TMI 1377; (2018) 92 Taxmann.com 360 (NAA)]. In its first order on anti-profiteering under Goods and Services Tax (GST), the National AntiProfiteering Authority (NAA) has dismissed the complaint against the supplier of goods, Vrandavaneshwree Automotive Pvt. Ltd. (respondent), a Bareilly-based Honda car dealer, by concluding that it did not contravene the anti-profiteering provisions of the Central GST Act, 2017. The order states that the Honda car dealer had passed on the benefit of the reduction in tax rate after GST to the applicant by way of reduction in the price of the car by ` 10,550. “We find that the respondent (Honda car dealer) has given details of all the basic components of the price of the car purchased by the applicant ... and benefit of Rs. 10,550 on account of reduction of tax by about 2 per cent viz. from 31.254 per cent (pre GST) to 29 per cent (post GST) has already been passed on to the applicant and the amount of Rs. 10,550 is inclusive of the ITC (input tax credit) ... therefore, no additional benefit on account of ITC is required to be paid by the respondent”.

It was thus **held that the respondent (Honda car dealer) has not contravened** the provisions of Section 171 of the CGST Act, 2017, and accordingly, there was no merit in the application of Dinesh Mohan Bharadwaj (complainant or applicant), which was filed under Rule 128 of the CGST Tax Rules, 2017 and the same was dismissed.

## ➤ No profiteering if discount withdrawn

- In July 2018, the Authority dismissed the allegation of profiteering against e-commerce major Flipkart Internet Pvt Ltd. Anti-Profiteering Authority was investigating a complaint against Flipkart for not passing on GST rate-cut benefits. In this particular case, a customer had placed an order for a Godrej almirah, and made a payment. Between the time the almirah was delivered to him, however, the GST rate was lowered to 18% and, in fact, at the time of delivery, Godrej had issued a fresh invoice showing a charge of Rs 700 less; this, the customer said, was Flipkart's profiteering. While this amount was refunded to the customer, the Director General Anti-Profiteering (DGAP) examined the case in detail, and found that Godrej was offering a Rs 500 discount earlier, but had withdrawn this when the GST rates fell; the DGAP concluded that withdrawing of a discount was permissible and was not a case of profiteering by changing the base price when the GST rate was lowered.



# THANK YOU

## ACS TAXCON

Lawyers and Tax Consultants



Anti-Profiteering Application Form (APAF – 1)				
[To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of <a href="#">CGST Rules, 2017</a> ]				
A. General information about the Applicant				
A1. Name				
A2. Address				
A3. Contact Number				
A4. E-mail ID				
A5. Proof of identity (Please Tick-4)	Aadhaar Card			
	Voter ID			
	Permanent Account Number (PAN) Card			
	Driving Licence			
	Passport			
	Ration Card having photograph of the applicant			
	Any other proof of Identity (Specify)			
B. General information about the Supplier who has not passed on the benefit				
B1. Name				
B2. Address				
B3. Contact Number				
C. Particulars of Goods/Services				
C1. Description				
C2. Earlier Price/ Value per unit				
C3. Present Price/ Value per unit				
C4. Earlier MRP				
C5. Present MRP				
D. Details of reduction in Tax Rate / Benefit of Input Tax Credit (ITC) (Please Tick-√)		√	√	
D1. Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of Invoice, Price List etc.)	Yes		No	
D0. Whether the benefit of ITC has been passed on (Please enclose evidence)	Yes		No	
D1. Additional information, if any.				
<b>Declaration:</b> I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information will make the application invalid. <b>Date :</b> <b>Place :</b> <b>(Signature of Applicant)</b>				

Note 1 – Fill up the application form legibly in BLOCK LETTERS only.

Note 2 – Fields marked with asterisk (\*) are optional.

Note 3 – In case the applicant wants to keep his name and details confidential, please specify it.

Note 4 – Filled up application form is to be sent to the State level Screening Committee in case issue is of local nature and in other cases to the Standing Committee.

Note 5 – Contact details of Standing Committee on Anti-profiteering :

2nd Floor, Bhai Vir Singh Sahitya Sadan,  
Bhai Vir Singh Marg, Gole Market,  
New Delhi-110 001.

Tel No.: 011-23741537,

Fax. No.: 23741542,

*E-mail: anti-profiteering@gov.in*

Contact details of State Screening Committee on Anti-profiteering are available at :

URL: [goo.gl/eYJXnK](https://goo.gl/eYJXnK)

**Directorate General of Anti-Profiteering (DGAP) — Guidelines for effective and smooth discharge of functions and responsibilities assigned under Section 171 of CGST Act, 2017**

**NAA File No. Admn(NAA)/P&M/81/2019, dated 4-10-2019**

Government of India

Ministry of Finance (Department of Revenue)

Central Board of Indirect Taxes & Customs, New Delhi

*Bringing Directorate General of Anti-Profiteering under superintendence, direction and control of the National Anti-profiteering Authority - Notification of detailed guidelines by NAA.*

In exercise of the powers conferred by Rule 126 of the Central Goods and Services Tax Rules, 2017 and in terms of the Office Memorandum No. F. No. 13/1/2017-Ad-I, dated 9th September, 2019, issued by the Department of Revenue, the National Anti-profiteering Authority (NAA) hereby notifies the following guidelines to be followed by the Directorate General of Anti-Profiteering (DGAP) with immediate effect for effective and smooth discharge of its functions and responsibilities assigned to it under section 171 of the Central Goods and Services Tax Act, 2017.

1. The Authority shall exercise superintendence, direction and control over the Director General of Anti-profiteering and may issue the directions/instructions in this regard from time to time.
2. All Reports, to be furnished to the Authority, under Rule 129(6), 133(2A), 133(4) or 133(5) of the Central Goods and Services Tax Rules, 2017, shall be furnished by the Director General of Anti-Profiteering himself.
3. The Director General of Anti-Profiteering shall defend his Reports during the hearings before the Authority in which he shall be represented by a Gazetted Officer who should be well versed with the facts of the case. A notice shall be issued to the Director General of Anti-Profiteering, intimating the date, time and place fixed for the hearing.
4. For monitoring the performance of the Standing Committee on Anti-Profiteering and the State Screening Committees, the Director General of Anti-Profiteering shall compile the details of the cases received and disposed of by them every quarter which shall be laid before the Authority, before the tenth of the succeeding month of every quarter.
5. To ensure the effective monitoring of the implementation and compliance of the Authority's orders, the Director General of Anti-Profiteering shall monitor the compliance and implementation of Authority's orders under Rule 136 of the CGST Rules, 2017, and shall furnish a consolidated status report on the Orders passed by the Authority, by the tenth of every month. The concerned jurisdictional Commissioners of the Central and State tax vertical shall send compliance reports to the Director General of Anti-profiteering to enable him to compile the consolidated monthly report.
6. The Authority shall review the following every month :
  - a. The status of pendency of investigations and other Reports to be furnished under Rule 129(6), 133(2A), 133(4) or 133(5) of the CGST Rules, 2017;
  - b. Status of judicial proceedings pending against Authority's orders before any higher judicial fora;
  - c. Performance of the State Screening Committees on Anti-profiteering and Standing Committee on Anti-Profiteering including the matter of reconstitution of these Committees, if required;
  - d. Status of implementation of the Authority's Orders;
  - e. Any other matter, as may be directed by the Authority.
7. During the review meetings, the Director General of Anti-Profiteering shall be present himself along with the assisting staff as he may deem fit.
8. The Director General of Anti-Profiteering shall furnish Clarifications under Rule 133(2A), within the time limit prescribed by the Authority. In the event of delay, the Director General of Anti-Profiteering shall, after furnishing the reasons for such delay shall request the Authority in writing to extend the time limit.
9. The Director General of Anti-Profiteering shall furnish his Report under Rule 133(4), within the time limit as prescribed by the Authority, in the event of delay, the Director General of Anti-Profiteering shall, after stating the reasons for such delay, request the Authority to extend the time limit by a further period as deemed fit by the Authority.
10. It is clarified that the Reports submitted by the Director General of Anti-profiteering, under Rule 133(4), shall be construed to be fresh Reports for the purposes of Rule 133(1).
11. The Director General of Anti-Profiteering shall act as the coordinating/liaison office between the Authority and the government legal counsels defending the Authority's orders before any higher judicial fora. All the tasks incidental to ensuring a proper defence before the judiciary, including but not limited to making the para-wise reply/comments, shall be the responsibility of the Director

General of Anti-Profiteering.

12. All the Reports/replies to the submissions made by the other parties shall be furnished by the Director General of Anti-Profiteering within the time limit fixed by the Authority in its orders. In case any extension of the time for filing them is required, the same shall be requested for in writing. In case no reply/Report is proposed to be filed, the same shall also be intimated to the Authority, in writing.
13. The Reports of the Director General of Anti-Profiteering, furnished under Rule 129(6), 133(2A), 133(4) or 133(5) of the above Rules, shall contain his clear findings duly supported by the evidence or documents or statements or affidavits or analyses relied upon by him which shall be placed before the Authority.  
Provided that wherever considered necessary, the Director General of Anti-Profiteering may, for maintaining confidentiality, submit his Report in two parts, one of which may contain the documents to which access to the other parties may be allowed and another which shall contain the confidential information to which access may be partially or totally restricted.
14. The Director General of Anti-Profiteering shall furnish his Reports in seven copies, along with electronic version in document format, to the Authority.
15. All cases of sanction of leave; approval of the tour programmes, including private foreign visits; and initiation/review/acceptance of the APARs, of all the Group 'A' officers, including the AD (Cost), working in the Directorate General of Anti-Profiteering, for approval and sanction, shall be put up on file before the Chairman of the Authority. The detailed guidelines in this regard will be issued separately.  
All such administrative functions and powers over the other officers/staff of the Directorate General of Anti-Profiteering stand delegated to the Director General himself, in accordance with the general administrative and financial delegation within government.
16. The Director General of Anti-Profiteering and all his officers shall provide all the necessary secretarial and administrative assistance to the Authority as directed by it from time to time, in furtherance of the mandate of the CGST Act, 2017 and the CGST Rules, 2017.

## Anti-Profiteering Application Form (APAF - 1)

[To be filed before Standing Committee/State level Screening Committee in terms of Rule 128 of CGST Rules, 2017]

Please follow the accompanying instructions for filling up the form. Fields marked with asterisk (\*) are mandatory.

<b>A. General information about the Applicant</b>									
A.1*	Name								
A.2*	Category (Provide code)								
A.3	GST Registration No. (GSTIN)								
A.4*	Address								
A.5*	Contact Number								
A.6	E-mail ID								
A.7*	Proof of identity (Provide code)								
<b>B. General information about the Supplier who has not passed on the benefit</b>									
B.1*	Name								
B.2*	Category (Provide code)								
B.3*	Address								
B.4*	GST Registration No. (GSTIN)								
B.5	Contact Number								
B.6	Email ID								
B.7	Website address								
<b>C. Particulars of Goods/Services</b>									
C.1*	Description								
C.2	HSN/SAC								
C.3*	Actual Price/Value charged per unit Pre-GST	₹							
C.4*	Actual Price/Value charged per unit Post-GST	₹							
C.5	If Goods are covered under MRP Provisions								
C.5a	MRP Pre-GST	₹							
C.5b	MRP Post-GST	₹							
C.6	Comparative per unit actual Price/Value of like Goods/Services charged by other supplier	Name							
		GSTIN							
C.6a	Pre-GST	₹							
C.6b	Post-GST	₹							
<b>D. Details of reduction in Tax rate/ benefit of Input Tax Credit</b>									
D.1	Particulars of Taxes on output Goods/ Services	Rate of Tax (%) [1]	Per Unit value for Tax (in ₹) [2]				Per unit amount of Tax (in ₹) [3 = (1*2)]		
D.2*	<b>Taxes - Pre GST/Earlier Rate</b>								
D.2a	Excise Duty								
D.2b	Value Added Tax (VAT)/Central Sales Tax (CST)								
D.2c	Service Tax								
D.2d	Luxury Tax								
D.2e	Others including Cesses (Specify)								
D.2f	Earlier GST Rate (Including compensation cess)								
D.3*	<b>Total Tax per unit [Total of D.2a to D.2e] or [D.2f]</b>						₹		
D.4*	<b>Taxes - Post GST/Later Rate</b>								
D.4a	CGST								
D.4b	SGST/UTGST								
D.4c	IGST								
D.4d	Compensation Cess								
D.4e	Others including Cesses (Specify)								
D.5*	<b>Total Tax per unit [Total of D.4a to D.4e]</b>						₹		
D.6*	<b>Post-GST reduction in amount of Tax per unit (D.3 - D.5)</b>						₹		
D.7	<b>Benefit of Input Tax Credit</b> Input Taxes/Duties Pre-GST per unit, credit of which was not available (out of the Taxes/Duties subsumed in GST) and Transitional Input Tax Credit, if any. Attach working sheets.							₹	
D.8	Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit [C.4 - C.3]							₹	
D.9	Amount of benefit not passed on after adjusting difference between Post-GST and Pre-GST actual price/value [D.6 + D.7 + D.8]							₹	
D.10	GST on amount of benefit not passed on [D.9 x Rate of GST (including compensation cess, if any)]							₹	
D.11	<b>Post-GST per unit price/value to be reduced by [D.9+D.10]</b>							₹	
D.12	Additional information, if any								

**Note-1:** Self-attested copies of all documentary evidences like proof of identity, invoice, Price List, detailed working sheet etc. are to be attached.

**Note-2:** Pre-GST includes earlier GST Rates **and** Post-GST includes later GST Rates after implementation of Goods & Services Tax.

### Declaration:

I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information in this application form will make the application invalid.

Date:

Place:

Signature of the Applicant

### Instruction for filling Anti-Profiteering application form

The table below provides row-wise detailed instruction for filling up the application form. The fields marked with asterisk (\*) are mandatory.

S. No. of Form	Field name	Instruction
<b>General Instruction</b>		
1	Fill up the application form legibly in <b>BLOCK LETTERS</b> only.	
2	Terms used in application form:	
	GSTIN	Goods and Services Tax Identification Number
	CGST	Central Goods and Services Tax
	SGST	State Goods and Services Tax
	UTGST	Union Territory Goods and Services Tax
	IGST	Integrated Goods and Services Tax
	HSN	Harmonized System Nomenclature
	SAC	Services Accounting Code
3	This application form is with reference to a single Good/Service. In case of application for multiple Goods/Services, please make separate application for each Good/Service.	
4	After admitting the application, applicant may be asked to furnish any additional details as deemed necessary.	
5	Application filled without attaching required documents/working sheets will not be treated as a valid application.	
6	Filled application form must be send to State level Screening Committee (in case issues is of local nature) or to Standing Committee.	
7	<b>Contact details of Central Standing Committee on Anti-profiteering:</b> 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110 001. Tel No.: 011-23741537 Fax. No.: 23741542, E-mail: <a href="mailto:anti-profiteering@gov.in">anti-profiteering@gov.in</a> <b>Contact details of State Screening Committee on Anti-profiteering:</b> Contact details of State Screening Committee on Anti-profiteering are available at URL: <a href="http://goo.gl/eYJXnK">goo.gl/eYJXnK</a>	
<b>A</b>	<b>General information about the Applicant</b>	
A.1*	Name	Enter name as recorded on proof of identity submitted with this application form.
A.2*	Code of Applicant	01 Interested party <sup>+</sup>
		02 Commissioner
		03 Any other person
		<sup>+</sup> Interested Party includes suppliers or recipients of goods or services under this application.
A.3	GST Registration No.	Enter the 15 digit alphanumeric GSTIN of the applicant. Eg. 07ABCPM1234R1ZF.
A.7*	Proof of identity	Attach a copy of any one proof of identity listed below:
		<b>Code</b> <b>Proof of Identity</b>
		01 Aadhaar Card issued by the Unique Identification Authority of India
		02 Voter ID
		03 Permanent Account Number (PAN) card
		04 Driving Licence
		05 Passport
		06 Ration card having photograph of the applicant
		07 Any other proof of Identity (Specify)
<b>B</b>	<b>General information about the Supplier who has not passed on the benefit</b>	
B.1*	Name	Enter name of supplier as mentioned on the supporting documents like Invoice etc.
B.2*	Code of Supplier	01 Manufacturer
		02 Service Provider
		03 Trader
		04 Others (Specify)
<b>C</b>	<b>Particulars of Goods/Services</b>	
C.1*	Description	Specify the nature of goods/services as mentioned in invoice/price list etc.
C.2	HSN/SAC	Specify HSN/SAC of goods/services as mentioned in invoice/price list/GST rate list etc.
C.3*	Actual Price/Value charged per unit Pre-GST	Provide Pre-GST actual price/value and Post-GST (current) actual price/value charged per unit of the goods/service (of the same quantity) after considering any discount/rebate given by the supplier.
C.4*	Actual Price/Value charged per unit Post-GST	
C.5	If Goods are covered under MRP Provisions	Provide Pre-GST MRP and Post-GST (current) MRP of the goods printed on the pack of the goods of the same quantity.
C.5a	MRP Pre-GST	
C.5b	MRP Post-GST	
C.6	Comparative per unit actual Price/Value of like Goods/Services charged by other supplier	Mention name and GSTIN of other supplier. Provide Pre-GST and Post-GST (current) actual price/value charged per unit of the like goods/service after considering any discount/rebate given by other supplier.
C.6a	Pre-GST	
C.6b	Post-GST	

D	Details of reduction in Tax rate/ benefit of Input Tax Credit	
D.2*	Taxes - Pre GST/Earlier GST Rate	Specify the Rate of Pre-GST Indirect Taxes (Such as Excise Duty, Value Added Tax, Central Sales Tax, Luxury Tax, Service Tax etc.) or earlier Goods & Service Tax (Including compensation cess) applicable on the goods/services and the assessable/taxable/base amount per unit to the extent possible on which such rate of Indirect Taxes were applied in arriving at effective Pre-GST amount of Tax per unit or earlier GST (Including compensation cess) amount of Tax per unit.
D.4*	Taxes - Post GST/Later GST Rate	Specify the GST Rates viz. CGST, SGST/UTGST, IGST, Compensation Cess and other indirect taxes effective after change in Rates, if any by Central Government on recommendation of Goods & Services Tax Council after GST implementation applicable on the goods/services and the assessable/taxable/base amount per unit on which such rate of Indirect Taxes are applied in arriving effective Post-GST/later GST amount of Tax per unit.
D.6*	Post-GST reduction in amount of Tax per unit.	Specify the Post GST reduction in Tax per unit by deducting Post-GST tax amount per unit from Pre-GST tax amount per unit as calculated above.
D.7	Input Taxes/Duties Pre-GST per unit, credit of which was not available (out of the Taxes/Duties subsumed in GST). Attach working sheets.	<p>Specify and attach working sheets for computation of the Input Taxes/Duties Pre-GST per unit, credit of which was not available to the supplier before implementation of GST (out of the Taxes/Duties subsumed in GST, Illustrative list is given below):</p> <ol style="list-style-type: none"> <li>Central Excise duty</li> <li>Duties of Excise (Medicinal and Toilet Preparations)</li> <li>Additional Duties of Excise (Goods of Special Importance)</li> <li>Additional Duties of Excise (Textiles and Textile Products)</li> <li>Additional Duties of Customs (commonly known as CVD)</li> <li>Special Additional Duty of Customs (SAD)</li> <li>Service Tax</li> <li>Central Surcharges and Cesses so far as they relate to supply of goods and services</li> <li>State VAT</li> <li>Central Sales Tax</li> <li>Luxury Tax</li> <li>Entry Tax (all forms)</li> <li>Entertainment and Amusement Tax (except when levied by the local bodies)</li> <li>Taxes on advertisements</li> <li>Purchase Tax</li> <li>Taxes on lotteries, betting and gambling</li> <li>State Surcharges and Cesses so far as they relate to supply of goods and services.</li> </ol> <p>Do not include details of Taxes/Duties, credit of which was available prior to GST and provide information only in respect of Input Taxes/Duties, credit of which was not available to the supplier before implementation of GST.</p> <p>Also specify Transitional Input Tax Credit availed in terms of Section 140(3) of CGST Act, 2017 read with Rule 117 of CGST Rules, 2017 which is not passed on to the recipient.</p>
D.8	Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit	Specify the change in actual price/value charged per unit by deducting Actual price/value charged per unit Pre-GST (C.3) from Actual price/value charged per unit Post-GST (C.4).
D.9	Amount of benefit not passed on after adjusting difference between Post-GST and Pre-GST actual price/value	Specify the total amount of benefit not passed on by adding Post-GST reduction in amount of Tax per unit (D.6) + Post-GST benefit of Input Tax Credit per unit on inputs (D.7) + Difference (+/-) between Post-GST and Pre-GST actual price/value charged per unit (D.8).
D.10	GST on amount of benefit not passed on	Specify the 'GST on amount of benefit not passed on' by multiplying amount of benefit not passed on as calculated in D.9 and total GST rate (in percentage) calculated in D.5.
D.11	Post-GST per unit price/value to be reduced by	Specify the Post-GST per unit price/value to be reduced from actual price/value charged per unit Post-GST by adding D.9 & D.10 as calculated above.