



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

Goods & Services Tax (GST) Certification Course

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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.

Advance Ruling under GST



What is Advance Ruling?

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- “Any advice, information or undertaking provided by a tax authority to a specific tax payer or a group of tax payers concerning their tax situation and on which they are entitled to rely” – as per OECD Report, 2004
- It is a written interpretation of tax laws, issued by tax authorities upon request, on clarification of certain tax matters. It is often requested when the taxpayer is confused and uncertain about certain provisions.
- Advance Ruling provisions are there both under Direct Tax laws and Indirect Taxes laws (pre-GST and GST era).
- Advance ruling can be obtained for a proposed transaction as well as a transaction already undertaken by the appellant. The effect, however, is prospective in nature.

Some terminologies

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- “Advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in Sec 97(2) or Sec 100(1) of the Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. *Sec 95(a) of CGST Act*
- “Authority” means the Authority for Advance Ruling referred to in Section 96 of the Act. *Sec 95(e) of CGST Act*
- “Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99 of the Act. *Sec 95(b) of CGST Act*
- “Applicant” means any person registered or desirous of obtaining registration under the Act. *Sec 95(c) of CGST Act*
- “Application” means an application made to the Authority under Section 97(1) of the Act. *Sec 95(d) of CGST Act*

Advance Ruling

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- *U/s 97(2) of CGST Act*, Advance Ruling can be sought for the following questions:
 - Classification of goods or services or both
 - Applicability of a Notification issued under the Act
 - Determination of time and value of supply of goods or services or both
 - Admissibility of Input Tax Credit of tax paid or deemed to have been paid
 - Determination of tax liability to pay tax on any goods or services or both;
 - Clarification on registration requirements of the applicant
 - whether any particular thing done by the applicant amounts to or results in a supply of goods or services or both.

Classification of goods or services or both

- Determining the nature of supply – goods/ services/ Composite supply/ Mixed supply/ Works contract?
- Impact of wrong classification
- Pre-GST classification & Post-GST Classification issues

Applicability of a Notification

- Impact of each Notification
- Granting exemption from registration
- Conditional waiver of taxes/ reduced taxes
- Date of applicability of each notification & its effect on compliance

Determination of time and value of supply of goods or services or both

- Identifying the time of supply – inherent conflicts in recording of transactions in the books of accounts
- Identifying the supplies on which tax liability arises under reverse charge u/s 9(3) and u/s 9(4)
- Evaluating the parties involved – related or unrelated person, distinct person
- Determining whether price would be the sole consideration for supply
- Ascertaining Value of Supply as per Sec 15 of CGST Act or applicability of Chapter IV of CGST Rules

Admissibility of Input Tax Credit of tax paid or deemed to have been paid

- Identifying eligibility of ITC based on Registration
- Identifying eligibility of ITC based on Supply
- Blocked Credit/ Proportionate Credit/ Reversal of Credit
- Impact of Notification on ITC eligibility
- Correlation with pricing & Anti-Profiteering provisions

Determination of tax liability to pay tax on any goods or services or both

- Ascertaining Tax Liability based on Registration
- Time of Supply/ Value of Supply
- Eligibility of ITC to be adjusted against tax liability

Clarification on registration requirements of the applicant

- Registration requirement – Chapter VI of CGST Act
- Exemptions from taking registration, which were subsequently notified
- Issues related to Casual Taxable Person/ Non-Resident Taxable Person
- Compliances based on type of Registration

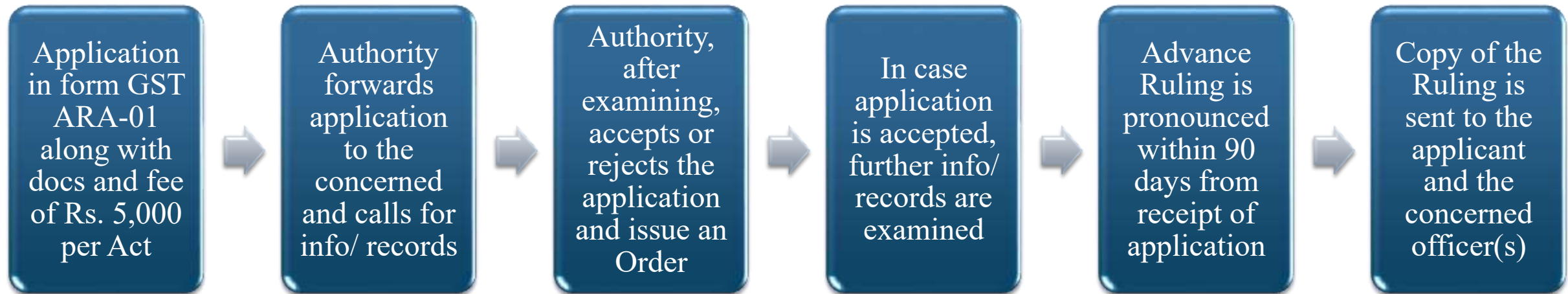
Authority for Advance Ruling

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- The Authority for Advance Ruling (AAR) constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.
Sec 96 of CGST Act
- The Government shall appoint officers not below the rank of Joint Commissioner as member of the Authority for Advance Ruling. *Rule 103 of CGST Rules*

Procedure for Advance Ruling – Sec 98

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- The Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of the Act. *1st proviso to Sec 98(2) of CGST Act*
- No application shall be rejected unless an opportunity of hearing has been given to the applicant. *2nd proviso to Sec 98(2) of CGST Act*
- Where the application is rejected, the reasons for such rejection shall be specified in the order. *3rd proviso to Sec 98(2) of CGST Act*
- Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question. *Sec 98(5) of CGST Act*

Appeal to the Appellate Authority

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- The concerned officer(s) or the applicant, aggrieved by any advance ruling by AAR, may appeal to the Appellate Authority for Advance Ruling (AAAR). *Sec 100(1) of CGST Act*
- Appeal to be filed within a period of 30 days from the date on which the ruling sought to be appealed against is communicated. *Sec 100(2) of CGST Act*
- Appellate Authority may extend the 30 days period by another period not exceeding 30 days in case of any sufficient cause preventing the appellant to act. *Proviso to Sec 100(2) of CGST Act.*
- Appeal to be filed by
 - Applicant - In form GST ARA-02 accompanied by fee of Rs. 10,000 per Act
 - Department – In form GST ARA-03 (without any fee)

Appeal to Appellate Authority

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- Order confirming or modifying the ruling appealed against or referred to shall be passed within 90 days from the date of filing of the appeal or a reference to the deadlock at the AAR level. *Sec 101(2) of CGST Act*
- Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference. *Sec 101(3) of CGST Act*
- A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members shall be sent to the applicant, the concerned officer(s) and to the Authority after such pronouncement. *Sec 101(4) of CGST Act*

National Appellate Authority – Sec 101A

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- To be constituted on the recommendations of the Council.
- National Appellate Authority shall consist of
 - A President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than 5 years,
 - Technical Member (Centre) who is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least 15 years of service in Group A.
 - Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of VAT or the Additional Commissioner of State tax with at least 3 years of experience in the administration of an existing law or the State GST Act or in the field of finance and taxation.
- The President shall be appointed by the Government after consultation with the Chief Justice of India or his nominee.
- The Technical Member (Centre) and Technical Member (State) shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

National Appellate Authority – Sec 101A

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- The President shall hold office for a term of 3 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall also be eligible for reappointment.
- The Technical Member(s) shall hold office for a term of 5 years from the date on which he enters upon his office, or until he attains the age of 65 years, whichever is earlier and shall also be eligible for reappointment.
- Subject to the provisions of Article 220 of the Constitution, the President or the members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.

Appeal before NAAAR – Sec 101B

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- Where conflicting Advance Rulings are given by the AAAR of two or more States or Union territories, or where Advance Rulings couldn't be obtained due to difference of opinion, any officer from the concerned State, authorised by the Commissioner, or an applicant may prefer an appeal to National Appellate Authority.
- Appeal to be filed
 - In case of taxpayer, within 30 days from the date on which the ruling sought to be appealed against is communicated to the applicants or the concerned officer(s).
 - In case of department, within 90 days from the date on which the ruling has been communicated.
- The NAAAR may extend the timeline by another 30 days.

- National Appellate Authority, after giving an opportunity to be heard, shall pass such order as it thinks fit, confirming or modifying the rulings appealed against.
- If the members of the National Appellate Authority differ in opinion on any point, it shall be decided according to the opinion of the majority.
- The order shall be passed, as far as possible, within 90 days from the date of filing of the appeal.
- Copy of the Advance Ruling pronounced by the National Appellate Authority shall be sent to the applicant, the authorised officer(s), the Board, the Chief Commissioner and to the Authority or Appellate Authority, as the case may be.

Rectification of Advance Ruling

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- The Authority, the Appellate Authority or the National Appellate Authority may amend any order passed by it, so as to rectify any error apparent on the face of the record. Such amendment can be done on its own accord, or if brought to notice by the concerned officer(s) or the applicant within a period of 6 months from the date of the order. *Sec 102 of CGST Act*
- No rectification, which has the effect of enhancing the tax liability or reducing admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard. *Proviso to Sec 102 of CGST Act*

Applicability of Advance Ruling

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- *U/s 103(1) of CGST Act*, the advance ruling pronounced by the Authority or the Appellate Authority shall be binding only
 - On the applicant who had sought it in respect of any matter referred to for advance ruling
 - On the concerned officer or the jurisdictional officer in respect of the applicant.
- *U/s 103(1A) of CGST Act*, The Advance Ruling pronounced by National Appellate Authority shall be binding on
 - the applicant who sought the Advance Ruling, and all registered persons under the same PAN number.
 - the concerned officers and the jurisdictional officers in respect of the said applicant(s)
- Where the Authority, the Appellate Authority or the National Appellate Authority finds that advance ruling pronounced has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by Order, declare such ruling to be void *ab-initio*. *Sec 104(1) of CGST Act*
- No order shall be passed unless an opportunity of being heard has been given to the applicant or the appellant. *Proviso to Sec 104(1) of CGST Act*

- For the purpose of exercising its powers regarding
 - discovery and inspection
 - enforcing the attendance of any person and examining him on oath
 - issuing commissions and compelling production of books of account and other records,the Authority, Appellate Authority or the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908. *Sec 105(1) of CGST Act*
- The Authority, the Appellate Authority or the National Appellate Authority shall be deemed to be a civil court and every proceeding before the Authority, the Appellate Authority or the National Appellate Authority shall be deemed to be a judicial proceedings. *Sec 105(2) of CGST Act*
- The Authority, the Appellate Authority or the National Appellate Authority shall, subject to the provisions of the Act, have power to regulate its own procedure. *Sec 106 of CGST Act*

Thank You

Manmohan Daga
Daga & Associates



**KEEP
CALM
&
FOLLOW
THE RULES**



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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.

- 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*
- 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

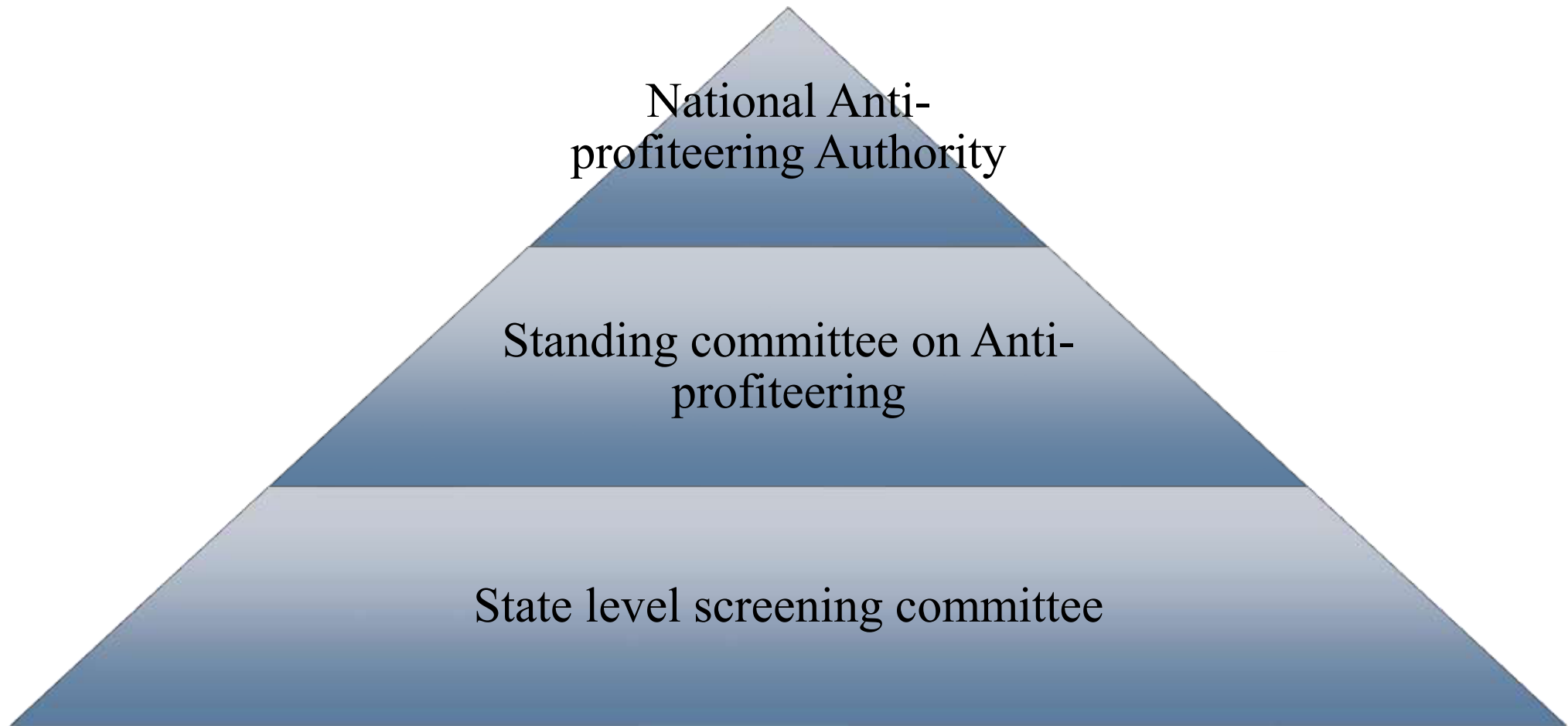
Illustration

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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 by the respective State
 - 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 those who have not complied to the provision of the law
 - To order, as appropriate, within 6 months of receiving investigation findings and report

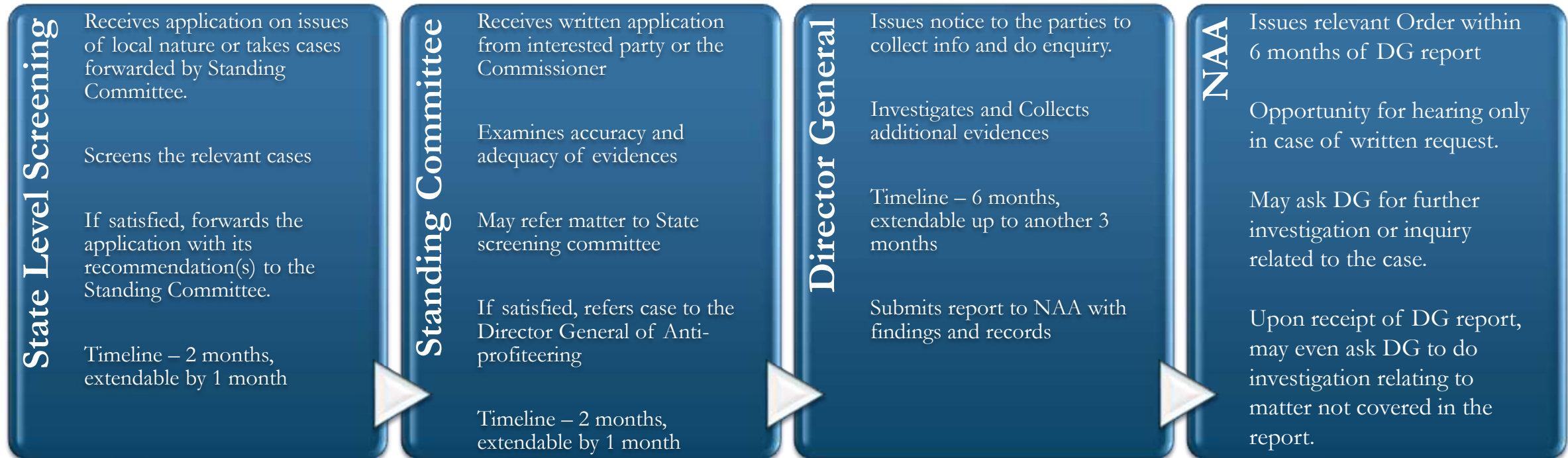
National Anti-profiteering Authority

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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 4 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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- 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*

Powers of NAA - Order

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How to file complaint

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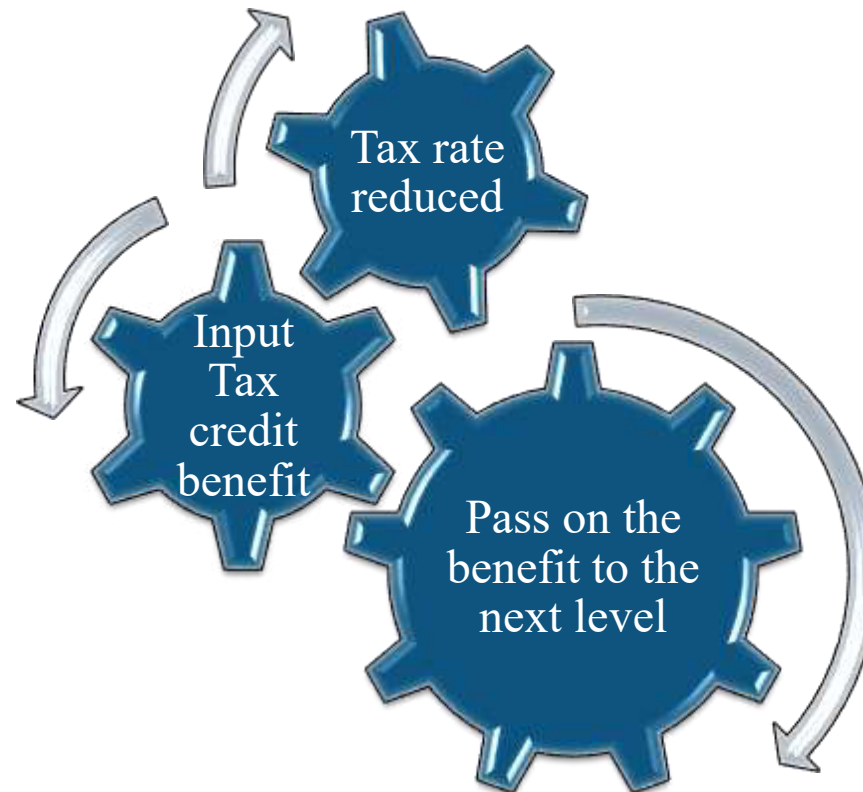
- Online : www.naa.gov.in
- Helpline : 011-21400643 (on working days)
- Email : sc.antiprofitteering@gov.in (for National level complaints), secretary.naa@gov.in (NAA), for state screening committees, please refer to the website
- Physical :
 - Directorate General of Anti-profiteering, Dept. of Revenue, 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.

- 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

Manmohan Daga
Daga & Associates



**KEEP
CALM
&
FOLLOW
THE RULES**