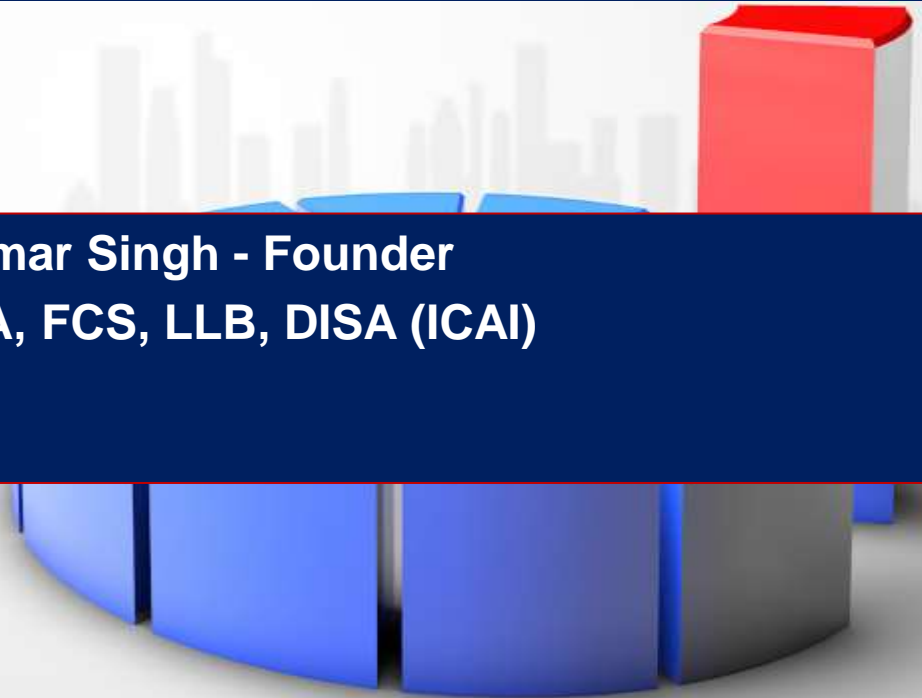


# Anti Profiteering in GST

**Rohit Kumar Singh - Founder**  
**ACA, ACMA, FCS, LLB, DISA (ICAI)**



# Anti Profiteering measure.

## Sec. 171 of the CGST Act, 2017 –

Section 171 of the Central Goods and Services Tax Act, 2017 provides for Anti Profiteering measure. As per Sub Section 1 of Sec 171 of CGST ACT, 2017 , *“Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.”*

It makes mandatory for every taxpayer to pass on the benefits arising out of following to the recipient of the goods or services or goods and services.

- Reduction of rate of tax on any supply of goods or services.
- Benefit of input tax credit.

# Pre GST and Post GST

## Factors to be considered while comparing

Major areas of benefit of input tax credit, which was not available under the subsumed tax laws:

1. Central Sales Tax
2. Stock Transfers to Depots.
3. Entry Tax, Octroi, Local Body Tax (LBT) .
4. Savings arising from non payment of Luxury Tax , Entertainment Tax.
5. Non reversal of proportionate Cenvat credit under Rule 6(3) of Cenvat Credit Rules, 2004.
6. Carrying out process which does not amount to manufacture.
7. Input tax credit is available to wholesalers, retailer hotel, restaurants, outdoor caterers etc.
8. Availability of credit on opening stock.
9. Local Body Tax on job work

Continued.....

# Pre GST and Post GST

## Factors to be considered while comparing

9. Purchase Tax/ URD
10. Cenvat Credit on Furniture, Storage racks, Assets used in Office etc capitalized in books of account.
11. Admissibility of input tax credit on inputs (ED as well VAT) used by service providers.
12. Developers, Builders, Construction contractors.
13. Price Reduction on input supplies by vendors.
14. Refund of accumulated credit on account of inverted duty structure.
15. Duty paid on captively consumed goods.
16. Abolition of Cesses.
17. Transitional provisions

# Pre GST and Post GST

## Factors to be considered while comparing

- **Adverse Impact:**
  - ✗ Increase in rate of goods or services where input tax credit is not available.
  - ✗ Impact on working capital due to delay in getting input tax credit.
  - ✗ Pruning of exemption list.
  - ✗ Compliance cost.

# How to determine Impact?

- The impact of the above factors for each organizations will vary.
- If the organization is having multiple units then unit wise impact will vary.
- The impact needs to be worked out considering the provisions of input tax credit under the erstwhile tax laws and provisions under GST.
- A comparison of provision applicable to the respective organization or unit can be prepared.
- The quantum can be worked out on the basis of past two- three years actual and also considering the budgeted product mix, sales mix , purchase mix and interstate stock transfers etc.
- The impact in terms of percentage of turnover will be more appropriate for reducing the price of the goods or services.

# Gist of Anti-Profiteering Rules

## **Duties of the Authority**

- To determine whether any reduction in rate of tax on any supply of goods or services or the benefit of the input tax credit has been passed on to the recipient by way of commensurate reduction in prices.
- To identify the registered person who has not passed on the benefit of reduction in rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

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# Gist of Anti-Profiteering Rules

- **To order**
  - Reduction in prices.
  - Return to recipient , an amount equivalent to the amount not passed on by way of commensurate reduction in prices alongwith interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount or recovery of the amount not returned in case the eligible person does not claim return of the amount or is no identifiable , and depositing the same in the fund referred in sec 57 of the CGST Act.
  - Imposition of penalty as prescribed under the Act ; and
  - Cancellation of registration under the Act.



# Gist of Anti-Profiteering Rules

## **Order of the Authority.**

- After investigation and hearings, the Authority may order
  - reduction in price
  - return amount to recipient
  - impose penalty
  - cancellation of registration under GST Act - Rule 133(3) of CGST and SGST Rules, 2017
- Rule 135 of CGST and SGST Rules, 2017 provides that if the taxable person does not comply, recovery proceedings can be initiated as per provisions of CGST, SGST and UTGST Act .

# Gist of Anti-Profiteering Rules

## **Penalty.**

- Interestingly, there is no provision for penalty for imposing penalty or recovering excess profit. Even if profiteering is discovered , maximum penalty that can be imposed is residual penalty of Rs.25000/- under Sec 125 of CGST and SGST Act.
- However, Rule 21(c) of CGST and SGST Rules,2017 provides for cancellation of registration for violation of provisions relating to anti profiteering.

## **Sunset Clause :-**

- As per Rule 137 of CGST and SGST Rules, 2017 , Anti profiteering clause has sunset clause of two years.

# Institutional Framework

Institutional Framework to ensure that the benefits of the reduction in GST rates and various benefits arising out of GST implementation are passed on to the ultimate customer by way of reduction in price.

- National Anti Profiteering Authority (NAA) under GST.
- Standing Committee
- Screening Committees in every state .
- Director General of Safeguards in CBE & C.

# Application Form

- Anti Profiteering Application Form (APAF-1) to be filed before Standing Committee / State Level Screening Committees.
- Application can be made by the recipient of goods / services, Commissioner or any other person.
- Comparison of Pre GST Taxes and Post GST Taxes to be given by applicant in the application.
- It is impossible for the applicant to provide information required in the application.

# Thank you

Thanks for your Patience and Time

