

# Anti Profiteering in GST

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# TAX Reforms

- GST has replaced the tax system.
- Profit is fine, profiteering is not.
- Unique provision for anti-profiteering under GST Act to pass on the benefits arising out of GST to consumers and prevent undue profit to industry.

# Major defects in earlier structure of indirect taxes

- India did not have a national market due to invisible barriers of Central Sales Tax, Entry Tax and State Vat and visible barriers of check posts.
- Central Sales Tax (CST) was payable @ 2% for every movement of goods from one State to other.
- Stock transfers or branch transfers were taxable, however set off was not available fully.
- Cascading effect of taxes could not be avoided due to CST and Entry Tax.
- State Vat was payable on Central Excise element also.
- Movement of goods from one State to other was not tax free due to entry tax.

# 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.

# Taxes to be subsumed

## Central Taxes

- ✕ Central Excise Duty,
- ✕ Additional Excise Duties on Goods of special importance, Textile
- ✕ CVD, SAD
- ✕ Excise Duty levied under the Medicinal and Toilet preparations (Excise Duties) Act, 1955.
- ✕ Service Tax,
- ✕ Central Surcharges and Cesses on Excise/Service tax

## States Taxes

- ✕ State VAT/Sales Tax, Purchase Tax
- ✕ Entertainment tax (unless it is levied by the local bodies), Central Sales tax (levied by Centre and collected by States)
- ✕ Octroi and Entry Tax, Luxury Tax, Taxes on lottery, betting and gambling.
- ✕ State Surcharges and Cesses

# 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

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# 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.

# Documents for assessing impact

Document	Purpose
ER-1	Reversal under Rule 6 of CCR Clearance of Exempt Goods.. Stock Transfers. Duty paid on captively consumed goods.
ER-4	Discounts, Freight, Valuation.
ST-3	Service Tax under RCM. In-admissible service tax on rent a cab, Works contract, Repairs & Maintenance, Employee related services etc.
Cost Audit Report	Indirect Taxes reconciliation. Impact of disallowance of Cenvat credit u/r 6 of CCR, inadmissible inputs and input services.

# Documents for assessing impact

Document	Purpose
Summary of VAT Returns	Disallowance of set off on account of Interstate stock transfers.
VAT Audit Report	Purchase Tax, Disallowance of set off, CST payment etc.
Trial Balance	Payment of LBT, Octroi , Entry Tax , Purchase Tax. Other Taxes and Cesses Repairs and Maintenance Cost.
Tax Audit Report	Details of capital goods on which Cenvat Credit is not availed. Furniture Fixture etc.

# Other useful details for assessing financial impact.

- Comparison of inputs under Cenvat Credit Rules and GST
- Comparison of input services under Cenvat Credit Rules and GST
- Comparison of capital goods under Cenvat Credit Rules and GST
- Details of capital goods received from customers, Financial Institutions etc.
- Standard Operating Procedures (SOP) followed by the organization.
- Pending cases under Excise, VAT, Customs and Service Tax and other indirect Taxes.
- Details of Warehouses, C & F Agents and stock transfers – intra state and interstate.

# Other useful details for assessing financial impact.

- Details of imports.
- Inventory at Warehouses, C & F Agents outside state.
- Open contracts, Purchase Orders.
- Price Lists – pre GST and post GST
- Discount Structure and various discount schemes – pre GST and post GST.
- Tax rates – pre GST and post GST.

# 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

## Scrutiny of the applications and investigation :-

- Applications will be scrutinized by **Standing Committee** within two months. Applications of local nature will be scrutinized by **State Level Screening Committee** and then forward to Standing Committee for further action
- The Standing Committee will scrutinize the cases. If prima facie evidence of profiteering is found, the matter shall be referred to **Director General of Safeguards**.
- The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of 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.

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# Gist of Anti-Profiteering Rules

- Before initiation of investigation, the Director General of Safeguards will issue notice to interested parties who may have information. He will collect evidence within three months. He will submit his report within three months to standing committee.
- Director General of Safeguards can take assistance of other authorities. He has powers to summon persons to give evidence and produce documents.
- As per Rule 130 of CGST and SGST Rules, 2017, provisions of section 11 of RTI Act relating to disclosure of confidential information supplied by third party will apply to information received by Director General of Safeguards -
- On receipt of report of Director General of Safeguards, the Authority will give opportunity of hearing to interested parties.

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# 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.

# Order of N A A

After detailed scrutiny of the application, in the event the N A A finds that there is a necessity to apply anti profiteering measures, it has the authority to order the following

- Order the supplier to reduce the prices or return the undue benefit availed by the supplier, with interest to the recipient of the goods or services.
- If the benefit cannot be passed on to the recipient , it can be ordered to be deposited in the Consumer Welfare Fund.
- Impose a penalty on the defaulting business entity or even order the cancellation of its registration under GST.



### Professional Qualifications:

Rohit is a **Chartered Accountant (CA)**, **Company Secretary (CS)**, **Cost Accountant (CMA)** and **Gold Medallist Law (LLB) Graduate**. He has also passed **Diploma in Information Systems Audit** (ICAI) and **Associate of Insurance Institute of India** (AIII)

## CA Rohit Kumar Singh – TaxMarvel Consulting

CA Rohit Kumar Singh is founder of **TaxMarvel Consulting Services LLP**, a niche consulting firm which provides GST, Corporate Laws, Income Tax and outsourcing services to Corporates and MSME.

He was head of **GST Business (GST Suvidha Provider) of Karvy Data Management Services Limited (KDMSL)**. KDMSL was ranked as one of the Top 5 GSPs in India. He was credited to have set up the GST Compliance and advisory services for several niche Corporates and Public Sector Undertakings (PSU's).

Earlier, Rohit was Manager at **PriceWaterHouse Coopers Private Limited (PwC)**, Hyderabad, and has headed Commercial Functions (Indirect Taxes, Insurance and Internal Audit) function of Transmission and Distribution Division of **Gammon India Limited**.

Rohit is regular presenter and speaker at various national seminars for GST/Indirect Taxes. He is an empanelled **faculty for GST at ICAI and ICMAI**. He has taken more than 75 national seminars on GST and regularly conducts online GST Sessions for professionals and Senior Management. He represents clients for Advance Rulings and Departmental appeals.

He is a regular blogger and contributes to articles on GST and Indirect taxes in various online forums such as caclubindia.com, taxguru and other online platforms.

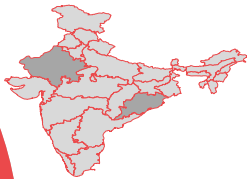
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# About us

Who we are, what we do and contact us!



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- ❖ Our Mission is to make available GST solution with utmost care and client satisfaction
- ❖ We adopt client first approach

❖ TaxMarvel is a Consulting firm focussed on providing GST services to small and medium enterprises. We make GST easy for businesses by bringing in technology and subject matter expertise.

❖ TaxMarvel is founded by Chartered Accountants, Company Secretaries and Management Graduates who have extensive industry expertise.

❖ The founders have experience in Big4 consulting firm at a managerial level and has also headed a leading GST Suvidha Provider (GSP).

# Thank you

Thanks for your Patience and Time

