

Advance Ruling & Anti Profiteering Under GST



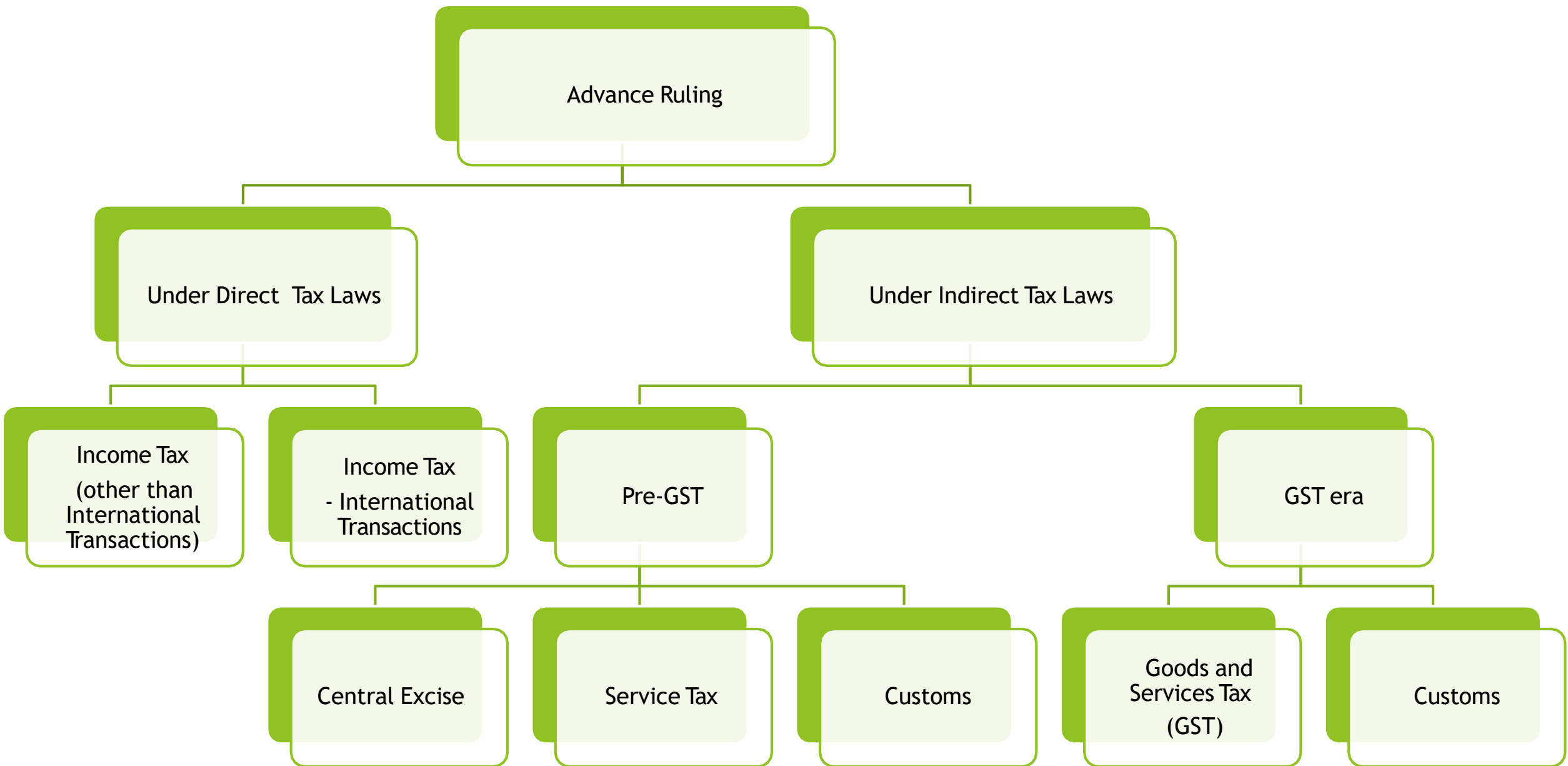
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Advance Ruling in GST

Advance Ruling

- as per OECD Report (2004) - *'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'*



Advance Ruling under GST

Chapter XVII of the CGST / SGST Act, 2017
[Sec. 95 to 106]

read with the Chapter XII [Rules 103 to 107A]
Of the CGST Rules, 2017

Sec 95 - Definitions

- (a) 'advance ruling' means a decision provided by the Authority or the Appellate Authority to an applicant on matter or on questions specified in sub-section (2) of Section 97 or sub-section (1) of section 100, *in relation to the supply of goods or services or both being undertaken or proposed to be undertaken* by the applicant.
- (b) 'Appellate Authority' - Appellate Authority for Advance Ruling u/s 99
- (c) 'applicant' means any person registered or desirous of obtaining registration under this Act;
- (d) 'application' means an application made to the Authority under sub-section (1) of Section 97;
- (e) 'Authority' means the Authority for Advance Ruling referred to in Section 96

Application for Advance ruling - Sec 97

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Classification of goods or services or both;
- ▶ Applicability of a Notification;
- ▶ 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 with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Issues related to -Application for Advance ruling - Sec 97

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Classification of goods or services or both :
 - ❖ impact of wrong classification
 - ❖ Pre-GST classification & Post-GST Classification issues
 - ❖ Comparative Analysis

- ▶ Applicability of a Notification :
 - ❖ Impact of each Notification
 - ❖ granting exemption from registration
 - ❖ waiver of taxes beyond a prescribed rate
 - ❖ date of applicability of each notification & its effect on compliance - both under GST & Statutory Compliance (Income Tax, Statutory Audits & Financial Statements)

Issues related to Application for Advance ruling - Sec 97.. Cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ 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) & 9(4)
- ❖ Determining the nature & contents of supply - 'goods' / services/ composite supply/ mixed supply/ works contract ?
- ❖ Determining the proper classification
- ❖ Evaluating the parties involved - related or unrelated
- ❖ Determining whether price would be the sole consideration for supply
- ❖ Ascertaining its value as per Sec.15

Issues related to Application for Advance ruling - Sec 97..cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ❖ 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
- ❖ Impact of Notification on ITC eligibility (say, if outward supplies, which were taxable, is notified to be nil/ exempted, what would be the impact)
- ❖ Correlation with pricing & Anti-Profiteering Issue
- ▶ Determination of tax liability to pay tax on any goods or services or both
- ❖ Ascertaining Tax Liability based on Registration,
- ❖ Time of Supply,
- ❖ Consider the eligibility of ITC to be adjusted against tax liability

Issues related to Application for Advance ruling - Sec 97..cont.

u/s 97(2) Advance Ruling can be sought for the following questions:

- ▶ Clarification on registration requirements of the applicant
- ❖ Registration requirement Sec.22/23/24/25
- ❖ Exemptions from taking registration, which were subsequently notified
- ❖ Issues related to Time period calculation for both Casual Taxable Person / Non-Resident Taxable Person
- ❖ Eligibility of ITC based on Registration
- ❖ Compliance factors based on Registration

Power / Procedure of AAR/ AAAR- Sec 105 and 106

- ▶ Deemed to be civil court;
- ▶ Proceedings treated as judicial proceedings;
- ▶ Power to enforce attendance, examining on oath, issuing commission, compelling production of books / records;
- ▶ Power to regulate its own procedure.

Important case laws on Advance Ruling

In re : Hasti Petro Chemical & Shipping Ltd.

(2025) 37 Centax 301 (A.A.R. - GST - Guj.) – AAR, GUJARAT

- Applicant registered under GST holds Container Train Operator licence to run rakes on Indian Railway Network. Applicant transports both loaded and empty containers by rail. Applicant sought ruling on GST rate for transport of empty containers, on which they are charging 12% under Entry 9(iv) Notification No. 11/2017-CT (R) contains entry 9 (i) for transport of goods by rail and 9 (iv) for transport of goods in containers by rail by persons other than Indian Railways
- **RULING:** Clause 9(iv) applies only where goods are transported in containers by non-IR providers. When empty containers are moved, intent is to move container itself, not goods, hence service falls outside Clause 9(iv). Clause 9(i) is general entry for transport of goods by rail other than 9(iv) and covers such movement
- Empty containers qualify as goods under CGST definition, reinforced by Service tax circular and Sale of Goods Act meaning. Residual Clause 9(vii) inapplicable as it excludes rail transport. Correct rate is 5% under Clause 9(i). Applicant must mandatorily forego ITC on goods or services used in supplying service as per Explanation IV. There is no alternative rate option within Entry 9(i) based on ITC availment. Clause 9(iv) addresses goods transported in containers by persons other than Indian Railways. Since movement involves container itself and not goods in container, Clause 9(iv) is not attracted. Therefore, conditions of Entry 9(i) alone govern supply

[Section 9 of CGST Act, 2017].

In re : Alleima India Pvt. Ltd.

(2025) 36 Centax 214 (A.A.R. - GST - Guj.) – AAR, GUJARAT

- Applicant an existing industrial plant expands its plant and as part of said expansion applicant require a power demand of 4500 KVA power connection at manufacturing facility
- As per options given by power supplier, applicant has chosen option involving carrying out cable laying work on their own cost under supervision of GETCO
- Applicant seeks advance ruling on question whether applicant is eligible to avail ITC on procurement of capital goods & related services in form of wires/cables, electric equipment, supervision charges & installation service used for transmission of electricity from power station of DISCOM to factory premises which are installed outside factory as per rules & policy of GETCO in accordance with provision of sections 16 & 17
- **HELD:** It is noted that similar issue came up in case of *Elixir Industries (P.) Ltd., In re [(2024) 21 Centax 12 (A.A.R. - GST - Guj.)]*, wherein it was held that applicant is eligible to take ITC on capital goods
- Accordingly applicant is ***eligible to avail ITC on procurement of capital goods & related services in form of wires/cables, electric equipment, supervision charges & installation service*** used for transmission of electricity from the power station of DISCOM to the factory premises which are installed outside the factory

[Sec 16 of CGST Act, 2017].

In re : Navalt Solar & Electric Boats Pvt. Ltd.

(2025) 37 Centax 111 (A.A.R. - GST - Ker.) – AAR, KERALA

Tax invoice - Advances - Invoices v. Receipt vouchers -

- Applicant supplies custom-built boats with staged receipts of advance, part payments, and final payment on delivery. Applicant had issued invoice only on supply and treated earlier receipts as unbilled revenue. Applicant proposed invoices on each advance for domestic and export supplies, to declare turnover and pay GST in receipt period, citing power to invoice before removal and invoice-based time of supply. Notification No. 66/2017-Central Tax, as special procedure, mandates tax on goods at time of supply reckoned by invoice parameter, not date of payment. Use of term shall renders compliance mandatory and curtails date-of payment trigger for goods, including situations of rate change. Statutory scheme for goods envisages single tax invoice for single supply and does not permit multiple invoices against advances. Receipt voucher prescribed for advances is proper document; tax invoice may be issued only at or before removal or delivery - Any contrary practice lacks legal sanction and cannot be adopted. Concerns regarding E-way bill mismatch do not justify deviation from prescribed procedure
- **RULING:** Applicant cannot issue tax invoices on receipt of advances or part payments for goods in domestic or export supplies; advances must be covered by receipt voucher; invoice only at or before removal or delivery

[Sec 31 r/w Sec 12 of CGST Act, 2017 and Rule 50 of CGST Rules, 2017]

In re : Navalt Solar & Electric Boats Pvt. Ltd.

(2025) 37 Centax 111 (A.A.R. - GST - Ker.) – AAR, KERALA

Credit and debit notes - Advances - Credit note v. Receipt vouchers

- Applicant supplying custom built boats received advances and part payments during manufacture and final payment on delivery. To avoid E-way bill mismatch at delivery, applicant proposed to issue one final invoice for total value and thereafter issue credit notes to adjust prior invoices on advances, including across financial years. It was observed that such method, though revenue-neutral in appearance, is inconsistent with statutory procedure. Credit notes are permissible only against valid tax invoices for completed supplies and within prescribed timelines - Invoices against advances for goods are not permitted and advances must be documented by receipt vouchers. Consequently, credit notes cannot be used to nullify invoices that ought not to have been issued for advances. Special procedure notified for suppliers of goods links tax liability to invoice at time of supply and excludes date-of-payment trigger. Proposed adjustment would undermine uniformity of time of supply and return reporting. Absence of intent to evade tax does not confer legal sanction on non-compliant documentation
- **RULING:** Proposal to issue final invoice for total value and thereafter issue credit notes against advance invoices is impermissible and not applicable; invoice must be issued only at or before removal or delivery and advances must be covered by receipt voucher

[Sec 34 r/w Sec 12 & 31 of CGST Act, 2017]

In re : Gujarat Narmada Valley Fertilizers & Chemicals Ltd.

(2025) 36 Centax 92 (A.A.R. - GST - Guj.) – AAR, GUJARAT

- Appellant, public sector company engaged in manufacture of fertilizers and chemicals, registered under GST. It undertook buyback of own shares pursuant to State Government resolution and incurred professional, legal, consultancy and incidental expenses. Application was filed before GAAR seeking ITC on GST paid on such expenses as incurred in course or furtherance of business. GAAR ruled that ITC was not admissible since buyback concerned securities excluded from goods and services. Appeal was filed before AAR
- **HELD:** Shares constituted securities and were neither goods nor services. Entitlement to ITC remained conditioned by statutory restrictions and did not extend to every activity undertaken in furtherance of business. Credit was confined to use for taxable supplies and costs relatable to transactions in securities, treated as exempt for apportionment, did not qualify. Blocked-credit provision further showed that not all business costs yielded ITC. Plea that expenses were in course or furtherance of business remained irrelevant where activities related to transactions in securities. Consequently, ITC on professional, legal and consultancy expenses for buyback was inadmissible and GAAR view warranted concurrence. Appeal stood rejected

[Sec 16 r/w Sec 17 of CGST Act, 2017]

In re : Gujarat Narmada Valley Fertilizers & Chemicals Ltd.

(2025) 36 Centax 92 (A.A.R. - GST - Guj.) – AAR, GUJARAT

- Appellant had undertaken buyback of own shares and incurred expenses with certain inputs and input services common to taxable operations and buyback-related activities. Appellant sought clarity on ITC implications for such common expenses in context of buyback. GAAR held that proportionate ITC reversal was required on common credits attributable to buyback, treating buyback as transaction in securities outside scope of supply. Appeal was filed before AAAR
- **HELD:** Securities stood excluded from goods and services, yet statute expressly included transactions in securities within value of exempt supplies for ITC apportionment. Explanation under ITC chapter prescribed deemed valuation by taking value of security at 1% of sale value. Conjoint reading of these provisions mandated reversal of credit attributable to exempt turnover computed with such deeming. Owing to this deeming fiction, plea that no reversal was required on common credits relating to buyback lacked legal tenability. Contention that securities were outside supply did not dispense with reversal requirement created by inclusion and deeming valuation. Accordingly, ITC attributable to buyback-related common inputs and input services required reversal per prescribed formula, affirming GAAR view
[Sec 17 of CGST Act, 2017 and Rule 42 of CGST Rules, 2017]

Anti Profiteering in GST

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 ITC, 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

Continued.....

Pre GST and Post GST

Factors to be considered while comparing

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

Pre GST and Post GST

Factors to be considered while comparing

- **Adverse Impact:**
 - ✘ Increase in rate of goods or services where ITC 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.

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.

Important case laws on Anti Profiteering

Tata Play Ltd. V/s Union of India

(2025) 36 Centax 115 (Del.) – Delhi High Court

- Petitioner, a DTH service provider, faced anti-profiteering proceedings alleging failure to pass input tax credit benefits to consumers
- DGAP furnished investigation report based on single consumer complaint, followed by SCN and NAPA order determining profiteering exceeding Rs 450 crores
- Petitioner contended GST rate on DTH increased to 18% while MRP remained unchanged, hence no occasion to pass any benefit
- Statutory regime later vested anti-profiteering functions in GST Appellate Tribunal Principal Bench

- **HELD:** NAPA finding rested on DGAP report drawn from one complaint - Since GST rate on DTH had increased and anti-profiteering function now lies with GST Appellate Tribunal, question of actual profiteering required re-look to test whether computation was based on conjecture or surmise
- Impugned NAPA order was set aside and matter was remanded to Principal Bench of GST Appellate Tribunal for fresh hearing
- Challenge to SCN was rendered infructuous

[Sec 171 of CGST Act, 2017, Rule 129 r/w 133 of CGST Rules, 2017].

Tata Play Ltd. V/s Union of India

(2025) 36 Centax 115 (Del.) – Delhi High Court

- Petitioner filed writ petitions challenging constitutional validity of anti-profiteering provision in CGST and allied Rules as violative of Articles 14, 19(1)(g), 246A, 246, 265 and 300A
- Coordinate Bench by judgment dated 29 January 2024 in batch matters had upheld validity of anti-profiteering provision and Rules 122, 124, 126, 127, 129, 133 & 134 of CGST Rules, 2017
- Challenge in present petitions concerned only prayer to strike down these provisions

- **HELD:** Constitutional validity had already stood upheld by coordinate bench
- It was noted therein that challenges to individual anti-profiteering orders must be adjudicated on merits
- Hence prayer for striking down impugned provisions did not survive

[Sec 171 of CGST Act, 2017, Rule 126 r/w 127, 128, 129 and 133 of CGST Rules, 2017 and Articles 14 r/w 19(1)(g), 246A, 246, 265 and 300A of Constitution of India, 1950]

DGAP V/s Mallikarjuna Cinema Hall, 70MM Hyderabad (2025) 35 Centax 76 (Del.) – GSTAT, PRINCIPAL BENCH, DELHI

Facts and issues of the case -

- GST rate was reduced from 28 per cent to 18 per cent and from 18 per cent to 12 per cent with effect from 1-1-2019
- DGAP found that respondent cinema hall owner profited by not reducing price of tickets for admittance to theatre upon reduction of rates of GST for period from 1-1-2019 to 30-6-2019
- Respondent contended that orders passed by High Court of Telangana and consequent Government's order fixing maximum price of tickets and giving a discretion to theatre owners of fixing prices would absolve respondent from any liability arising out of allegation of profiteering because of fact that it has not reduced price it offered to ultimate consumers

Decision -

- Respondent had profited by not reducing prices of tickets commensurately after reduction of rates of GST
- Cinemas Act, Government orders and judgment passed by High Court of Telangana, if read together would only mean that prices of ticket for admittance to cinema hall in State of Telangana are monitored by a Committee which fixes maximum price, beyond which a cinema owner cannot charge a person for admittance into a theatre to watch a cinematography film

DGAP V/s Mallikarjuna Cinema Hall, 70MM Hyderabad (2025) 35 Centax 76 (Del.) – GSTAT, PRINCIPAL BENCH, DELHI

- However, fixing of prices of a particular class, or any locality or particular show is discretion of theatre owners
- As far as this discretion is concerned, it has not been tampered with or in any way restricted by local law and Special law as mentioned above, except prescribing a higher limit
- Respondent should not be directed to pay interest on profiteered amount as provision for imposition of interest was an enabling provision and not a clarificatory or curative provision, hence, it was to be applicable only prospectively
- However, profiteering took place much prior to date of coming into force of such provision for levying interest - Interest at rate of 18 per cent was to be applicable for 3 days i.e. 28-6-2019, 29-6-2019 and 30-6-2019 and accordingly order was to be passed
- Hence, report of DGAP was acceptable and it was to be held that respondent had profiteered by not passing on benefit of reduction of rates of GST on tickets sold for admittance in to Theatre for exhibition of cinematography films to consumers
- **Thus, respondent was to be directed to deposit amount profiteered along with interest at rate of 18 per cent for 3 days calculated from 1-1-2019**

[Sec 171 of CGST Act, 2017]

DGAP V/s Hotel Babylon Inn

(2025) 35 Centax 75 (Del.) – GSTAT, PRINCIPAL BENCH, DELHI

- **Facts and issues of the Case:**

- GST rate on hotel accommodation services was reduced vide Notification No. 20/2019-Central Tax w.e.f. 1-10-2019
- Allegation against respondent was that prices of hotel accommodation service supplied by respondent remained unchanged even after said reduction of rate of GST
- DGAP calculated total amount of profiteering by respondent to be Rs. 31.28 lakhs by increasing base price of rooms and not passing benefit of tax reduction to consumers
- Respondent contended that during covid 19, rates were increased because of additional costs incurred by them and same was included in room rent

- **Decision:**

- Supplier cannot use expression of market dynamics or market forces as mere device to circumvent statutory obligation of reducing pricing in a commensurate manner
- No cogent materials/evidences/documents were found to rebut presumption that was arising against respondent
- **Respondent was guilty of profiteering, and amount of Rs. 31.28 lakh was to be paid along with interest at rate of 18% to be deposited in Consumer welfare fund**

[Sec 171 of CGST Act, 2017]

DGAP V/s Hotel Babylon Inn

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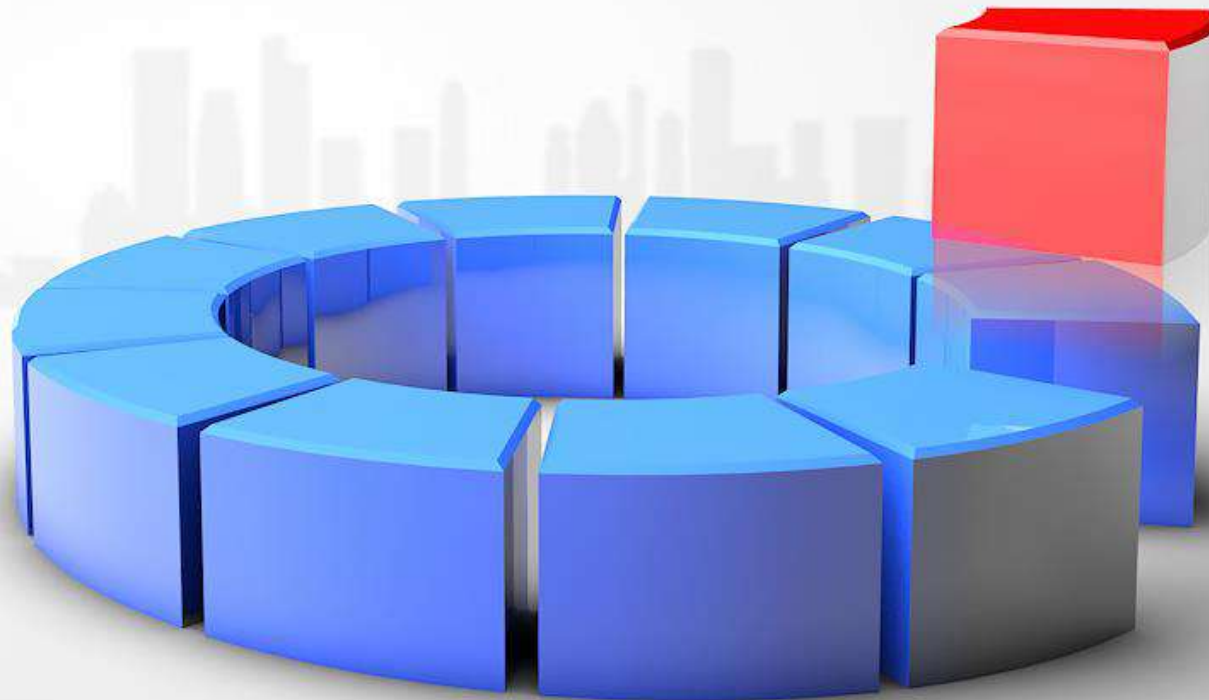
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[Sec 171 of CGST Act, 2017]

Thank you

Thanks for your Patience and Time



Manual > Filing an application (FORM GST ARA-01) for seeking Advance Ruling by Registered Taxpayers/Unregistered Persons and Tracking or Taking Action in the Subsequent Proceedings

How can Registered Taxpayers/Unregistered Persons file and act on applications related to Advance Ruling on the GST Portal?

A taxpayer can file following types of Applications related to Advance Ruling on the GST Portal:

1. **Application for seeking Advance Ruling from Authority for Advance Ruling (AAR)**
2. **Application for Reply to the issued Notice**
3. **Application of Appeal before the Appellate Authority for Advance Ruling (AAAR), with Application for Condonation of Delay in Filing Appeal if applicable**
4. **Application of Rectification before the AAR or AAAR as per the case**

Based on the Applications that are filed, Advance Ruling Proceedings can be of following types:

- **Advance Ruling:** For Processing Application for seeking Advance Ruling from Authority for Advance Ruling (AAR)
- **Advance Ruling Appeals:** For Processing Application of Appeal before the Appellate Authority for Advance Ruling (AAAR)
- **Advance Ruling Reference:** For Processing Applications referred by AAR
- **Rectification Proceedings:** For Processing Applications for Rectifications of Orders issued by AAR or AAAR
- **Void Proceedings:** For Processing Disposed Applications, where it was found that the Applicant has obtained an Advance Ruling by fraud, or suppression of material facts or misrepresentation of facts.

Applicant, after filing an application, needs to participate in the related proceedings and take necessary actions as intimated by AAR or AAAR.

On the GST Portal, for ease of all Applicants, details of each Application filed by the taxpayer is organized into the following six tabs in the Case Details Screen: APPLICATIONS, NOTICES, REPLIES, ORDERS, RECTIFICATION and ADDITIONAL DOCUMENT. Applicant can easily access these tabs of an Application to track all proceedings related to that particular application and take necessary actions.

To file an application or take necessary actions related to the Proceedings of all Advance Ruling-related Applications, perform following steps:

- A. [Create an Application for seeking Advance Ruling from AAR if you are a Registered/Unregistered Person](#)
- B. [Search for Applications related to Advance Ruling and open the Case Details Screen](#)
- C. [Search and View Cause List of all Advance Ruling-related Applications](#)
- D. Take Action using APPLICATIONS tab: [View Application Details based on which the Case was created](#)
- E. Take Action using NOTICES tab: [View Issued Notices and File Reply](#)
- F. Take Action using REPLIES tab: [View Replies/Counter-replies Filed by Self or Concerned Officer \(CO\)/Jurisdiction Officer \(JO\)](#)
- G. Take Action using ORDERS tab: [View ORDERS and File Appeal/File Rectifications](#)
- H. Take Action using RECTIFICATION tab: [View Rectifications filed for Orders of an ARN](#)
- I. Take Action using ADDITIONAL DOCUMENT tab: [View Additional Documents](#)

[Click each hyperlink above to know more.](#)

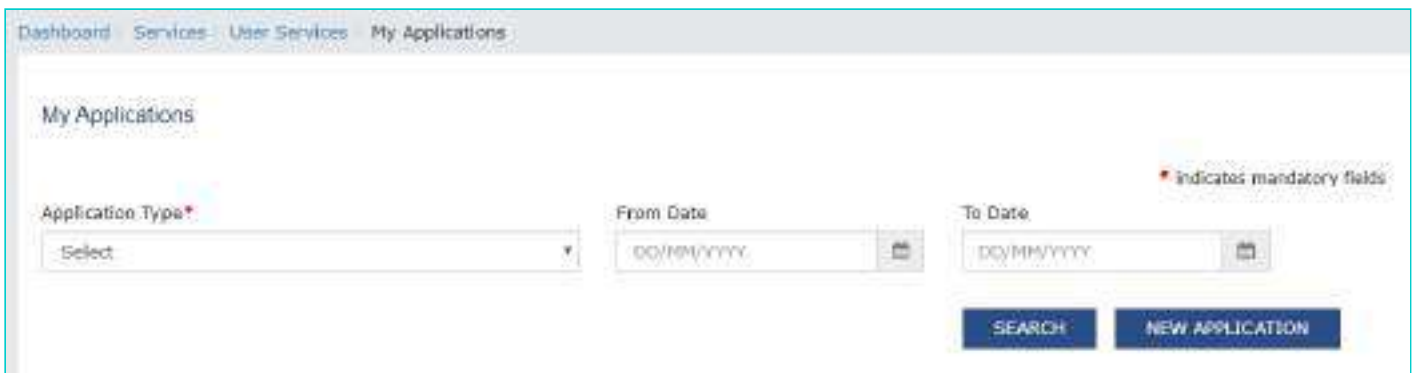
A. Advance Ruling by Registered/Unregistered Persons (FORM GST ARA-01)

To apply for advance ruling, perform the following steps:

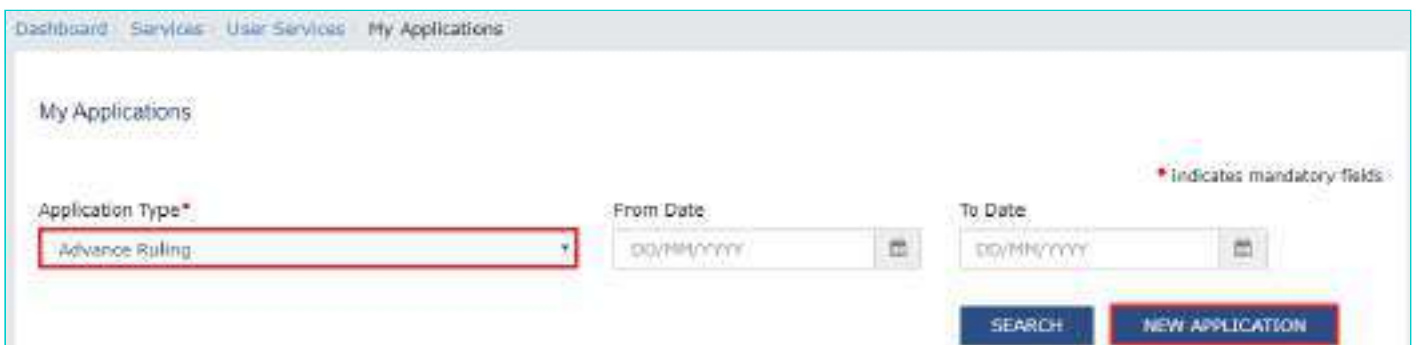
1. Access the www.gst.gov.in URL. The GST Home page is displayed. Login to the GST Portal with valid credentials i.e. your User Id and Password. Click the **Services > User Services > My Applications** option.



2. **My Applications** page is displayed.



3. Select the **Application Type** as Advance Ruling from the drop-down list. Click the **NEW APPLICATION** button.



4. Select the Act for which Advance Ruling application has to be filed. On selection of respective head, fees amount will accordingly get reflected for making payment.

Note:

- If there is not sufficient balance in Electronic Cash Ledger (under Fee head), i.e. "Amount to be paid " is not nil, then click on **DEPOSIT IN CASH LEDGER** button to deposit the required amount in Cash Ledger.
- If sufficient balance is available in Electronic Cash Ledger (under Fee head), i.e. "Amount to be paid" is nil for all the selected acts, then click on **CREATE APPLICATION FOR ADVANCE RULING** button to fill and submit the application.
- Fees for Advance Ruling application under CGST and SGST for Normal taxpayer and for OIDAR taxpayer under IGST is as per prescribed fee under the law. On selection of respective heads, fees amount will accordingly get reflected for making payment.

5(a). In case of Normal taxpayer, fees has to be paid for Advance Ruling Application under CGST and SGST heads.

Note: The respective amount, to be paid, will be auto calculated based on selection of SGST/CGST heads, as the case may be.

The screenshot shows the 'New Application' page for Advance Ruling. It includes a navigation bar, a selection area for tax heads (SGST, CGST, IGST), a table of fees, and two buttons: 'DEPOSIT IN CASH LEDGER' and 'CREATE APPLICATION FOR ADVANCE RULING'. An 'Instructions' box on the right provides detailed guidance.

Select Act(s) for which Advance Ruling Application has to be filed.

SGST CGST IGST

Acts	Fee Applicable (in ₹)	Amount available in Cash Ledger (in ₹)	Amount to be paid (in ₹)
SGST	5000.00	3500.00	1500.00
CGST	5000.00	3000.00	2000.00
IGST	-	1500.00	-
Total (in ₹)	10000.00	8000.00	3500.00

DEPOSIT IN CASH LEDGER **CREATE APPLICATION FOR ADVANCE RULING**

Instructions

1. If there is not sufficient balance in Cash Ledger (under Fee head), i.e. "Amount to be paid " is not nil, then click on **Deposit in Cash Ledger** button to deposit the required amount, in Cash Ledger.
2. If sufficient balance is available in Cash Ledger (under Fee head), i.e. "Amount to be paid" is nil for all the selected acts, then click on **Create Application for Advance Ruling** button to fill and submit the application.
3. Presently fees for Advance Ruling Application is ₹5000/- each under CGST & SGST for Normal taxpayer and ₹5000/- for OIDAR taxpayer under IGST. On selection of respective head, fees amount will accordingly get reflected for making payment.

5(b). In case of OIDAR taxpayer, fees has to be paid for Advance Ruling Application under IGST head.

Note: For an OIDAR taxpayer, only IGST payment tab would be enabled by default and would be non-editable. The respective amount, to be paid, will be auto calculated based on selection of IGST head.

Dashboard > Services > User Services > My Applications > New Application

Select Act(s) for which Advance Ruling Application has to be filed.

SGST CGST **IGST**

Acts	Fee Applicable (in ₹)	Amount available in Cash Ledger (in ₹)	Amount to be paid (in ₹)
SGST	-	3500.00	-
CGST	-	3000.00	-
IGST	5000.00	1500.00	3500.00
Total (in ₹)	5000.00	8000.00	3500.00

DEPOSIT IN CASH LEDGER **CREATE APPLICATION FOR ADVANCE RULING**

Instructions

1. If there is not sufficient balance in Cash Ledger (under Fee head), i.e. "Amount to be paid" is not nil, then click on **Deposit in Cash Ledger** button to deposit the required amount, in Cash Ledger.
2. If sufficient balance is available in Cash Ledger (under Fee head), i.e. "Amount to be paid" is nil for all the selected acts, then click on **Create Application for Advance Ruling** button to fill and submit the application.
3. Presently fees for Advance Ruling Application is ₹5000/- each under CGST & SGST for Normal taxpayer and ₹5000/- for ODAR taxpayer under IGST. On selection of respective head, fees amount will accordingly get reflected for making payment.

6. The **Create Challan** page is displayed. Select the **Payment Modes** as E-Payment/ Over the Counter/ NEFT/RTGS. Click the **GENERATE CHALLAN** button.

Note: In the Tax Liability Details grid, the **Total Challan Amount** field and **Total Challan Amount (In Words)** fields are auto-populated with total amount of payment to be made. You cannot edit the amount.

Dashboard > Payment > Create Challan English

Tax Liability

	Tax (₹)	Interest (₹)	Penalty (₹)	Fees (₹)	Other (₹)	Total (₹)
CGST(0005)				2000		2,000
IGST(0006)				0		0
CESS(0009)						0
Delhi SGST(0006)				1500		1,500
Total Challan Amount:	₹ 3,500 /-					
Total Challan Amount (In Words):	Rupees Three Thousand Five hundred Only					

Payment Modes*

- E-Payment
- Over The Counter
- NEFT/RTGS

GENERATE CHALLAN

7. The Challan is generated.

Dashboard | Payment | Generate Challan English

Challan successfully generated

GST Challan

CPIN 20100700000092	Challan Generation Date 15/10/2020 10:23:35	Challan Expiry Date 30/10/2020
Mode of Payment :-		E-Payment

Details Of Taxpayer

GSTIN/Other Id 07ALYPD6528P2Z6	Email Address XXXXXXXXXX@XXXXXXXXXX.com	Mobile Number XXXXXXXX3863
Name Gyanendra Prakash Dwivedi	Address XXXXXXXXXX Delhi, 110005	

Details of Deposit

	Tax (₹)	Interest (₹)	Penalty (₹)	Fees (₹)	Other (₹)	Total (₹)
CGST(0005)	0	0	0	2,000	0	2,000
IGST(0008)	0	0	0	0	0	0
CESS(0009)	0	0	0	0	0	0
Delhi SGST(0006)	0	0	0	1,500	0	1,500
Total Challan Amount:						₹ 3,500 /-
Total Challan Amount (In Words):						Rupees Three Thousand Five hundred Only

Select Mode of E-Payment *

Preferred Banks

Net Banking

Note:

- If amount is deducted from bank account and not reflected in electronic cash ledger, you may raise grievance under "Services>Payments>Grievance against payment(GST PMT-07)"
- * Awaiting Bank Confirmation: For e-payment mode of payment, if the maker has made a transaction and checker approval is not communicated by bank to GST System.
- * Awaiting Bank Clearance: For OTC mode of payment, if bank has acknowledged the challan but remittance confirmation is not communicated by bank to GST System.

Note:

In case of Net Banking: You will be directed to the Net Banking page of the selected Bank. The payment amount is shown at the Bank's website.

In case of successful payment, you will be re-directed to the GST Portal where the transaction status will be displayed.

In case of Over the Counter:

Take a print out of the **Challan** and visit the selected Bank. Pay using **Cash/ Cheque/ Demand Draft** within the Challan's validity period. Status of the payment will be updated on the GST Portal after confirmation from the Bank.

In case of NEFT/ RTGS:

Take a print out of the mandate form and visit the selected Bank. Mandate form will be generated simultaneously with generation of challan. Pay using Cheque through your account with the selected Bank/ Branch. You can also pay using the account debit facility. The transaction will be processed by the Bank and RBI shall confirm the same within <2 hours>. Status of the payment will be updated on the GST Portal after confirmation from the RBI i.e. based on CIN received from RBI.

[Click here to refer the FAQs and User Manual on Making Payment.](#)

8. After a successful payment, user will be redirected to Advance Ruling Application page. Click **CREATE APPLICATION FOR ADVANCE RULING** to create application for Advance Ruling.

Dashboard Services User Services My Applications New Application

Select Act(s) for which Advance Ruling Application has to be filed.

SGST CGST IGST

Acts	Fee Applicable (in ₹)	Amount available in Cash Ledger (in ₹)	Amount to be paid (in ₹)
SGST	5000.00	5000.00	Nil
CGST	5000.00	5000.00	Nil
IGST	-	1500.00	-
Total (in ₹)	10000.00	11500.00	Nil

DEPOSIT IN CASH LEDGER **CREATE APPLICATION FOR ADVANCE RULING**

Instructions

1. If there is not sufficient balance in Cash Ledger (under Fee head), i.e. "Amount to be paid" is not nil, then click on **Deposit in Cash Ledger** button to deposit the required amount, in Cash Ledger.
2. If sufficient balance is available in Cash Ledger (under Fee head), i.e. "Amount to be paid" is nil for all the selected acts, then click on **Create Application for Advance Ruling** button to fill and submit the application.
3. Presently fees for Advance Ruling Application is ₹5000/- each under CGST & SGST for Normal taxpayer and ₹5000/- for OIDAR taxpayer under IGST. On selection of respective head, fees amount will accordingly get reflected for making payment.

9. Advance ruling Application page opens. Under **Correspondence Address** section, enter your address details such as Building no./Flat no., Name of the premises/Building, Floor no., Road/Street, City/Town/Locality/Village. Select **State**, **District** from drop down menu and enter the **PIN** Code.

Note: If correspondence address is same as Registered Address, select the checkbox. Address details will be auto-populated and the fields will be non-editable in this section.

10. Select the applicable checkbox for Nature of the activity(s) (proposed/present) in respect of which Advance Ruling is being sought.

11. Select the checkbox for Issue/s on which advance ruling required (Tick whichever is applicable).

Note: Basis the act selected in previous screen for which Advance Ruling application has to be filed, Act will get auto-populated under "Application Filed For" section.

Dashboard | Services | User Services | My Applications | New Application | Advance Ruling Application

Application Type	GSTIN/UIN/Temporary ID	Legal Name	Status of the Applicant
Advance Ruling Application	07ALYPD65289226	Gyanendra Prakash Dwivedi	Registered

* indicates mandatory fields

Application Filed For

- **SGST**
- **CGST**

Correspondence Address (Same as Registered Address)

Building No./ Flat No.* 1	Name of the Premises/Building	Floor No.
Road/Street* MG	City/Town/Locality/Village* ECITY	
State* Delhi	District* Central Delhi	PIN Code* 110005

Nature of the activity(s) (proposed/present) in respect of which Advance Ruling sought*

<input checked="" type="checkbox"/> Factory/Manufacturing	<input type="checkbox"/> Bonded Warehouse	<input type="checkbox"/> Service Recipient
<input checked="" type="checkbox"/> Wholesale Business	<input type="checkbox"/> Service Provision	<input type="checkbox"/> EOU/STP/ETHP
<input type="checkbox"/> Retail Business	<input type="checkbox"/> Office/Sale Office	<input type="checkbox"/> Saz
<input type="checkbox"/> Warehouse/Depot	<input type="checkbox"/> Leasing Business	<input type="checkbox"/> Input Service Distributor(ISD)
<input type="checkbox"/> Works Contract	<input type="checkbox"/> OEDAR	<input type="checkbox"/> Others

Issue/s on which advance ruling required (Tick whichever is applicable)*

<input checked="" type="checkbox"/> Classification of goods and/or services or both
<input checked="" type="checkbox"/> Applicability of a notification issued under the provisions of the Act
<input type="checkbox"/> Determination of time and value of supply of goods or services or both
<input type="checkbox"/> Admissibility of input tax credit of tax paid or deemed to have been paid
<input type="checkbox"/> Determination of the liability to pay tax on any goods or services or both
<input type="checkbox"/> Whether applicant is required to be registered under the Act
<input type="checkbox"/> Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term

Details of Advance Ruling Application

Upload the Filled Template*
 No file chosen

Download Template
 Only PDF file format is allowed.
 Maximum file size for upload is 5MB.

Note: You can upload only PDF file with maximum file size of 5 MB for upload.

Click here to view the steps for converting the filled application Word template to PDF file format.

12. You need to upload details of Advance Ruling Application in the word template provided on the Portal. To download the template for Advance Ruling Application, Click **Download Template**.

Only PDF file format is allowed.
Maximum file size for upload is 5MB.

Details of Advance Ruling Application

Upload the Filled Template*

Choose File No file chosen

Download Template

Only PDF File format is allowed.
Maximum file size for upload is 5MB.

Click here to view the steps for converting the filled application word template to PDF file format.

Already decided in any proceedings in the applicant's case under any of the provisions of the Act.

Verification*

13. **Advance Ruling Template.docx** will be downloaded in Downloads folder. Click **Enable Editing**.

I _____ son/daughter/wife of _____ do hereby solemnly declare that to the best of my knowledge and

The screenshot shows a Microsoft Word document titled "AdvanceRulingTemplate.docx" in Protected View. The document is the "Form GST ARA-01 Application Form for Advance Ruling". The form contains several sections for data entry:

- 1. Applicant details:** Includes fields for Name, PAN, Aadhaar, and other identification details.
- 2. Registered Address:** Includes fields for State, District, and other address details.
- 3. Correspondence Address:** Includes fields for State, District, and other address details.
- 4. Details of Authorized Representative:** Includes fields for Name, PAN, Aadhaar, and other details.
- 5. Nature of activity and Category:** Includes a section for "Nature of activity (proposed/present) in respect of which Advance Ruling sought" and a "Category" section with a grid of checkboxes for different business types.

A yellow bar at the top of the document indicates "PROTECTED VIEW" and "Enable Editing" is highlighted in a red box.

14(a). Update the template with required information.



Goods and Services Tax

Form GST ARA -01

[See Rule 98]

Application Form for Advance Ruling

* indicates mandatory fields

*1. GSTIN Number if any/User-id	07ALYPD6528P226
*2. Legal Name of applicant	Gyanendra Prakash Dwivedi
3. Trade Name of applicant	Click or tap here to enter text.
*4. Status of the applicant[registered/un-registered]	registered
*5. Registered Address	
Building No./Flat No.	1
Name of the Premises/Building	Click or tap here to enter text.
Floor No.	Click or tap here to enter text.
Road / Street	MG
Locality / Village	ECITY

14(b). Under **Details of Advance Ruling Application**, upload, click the Choose file button. Navigate and select the Filled template.

Details of Advance Ruling Application

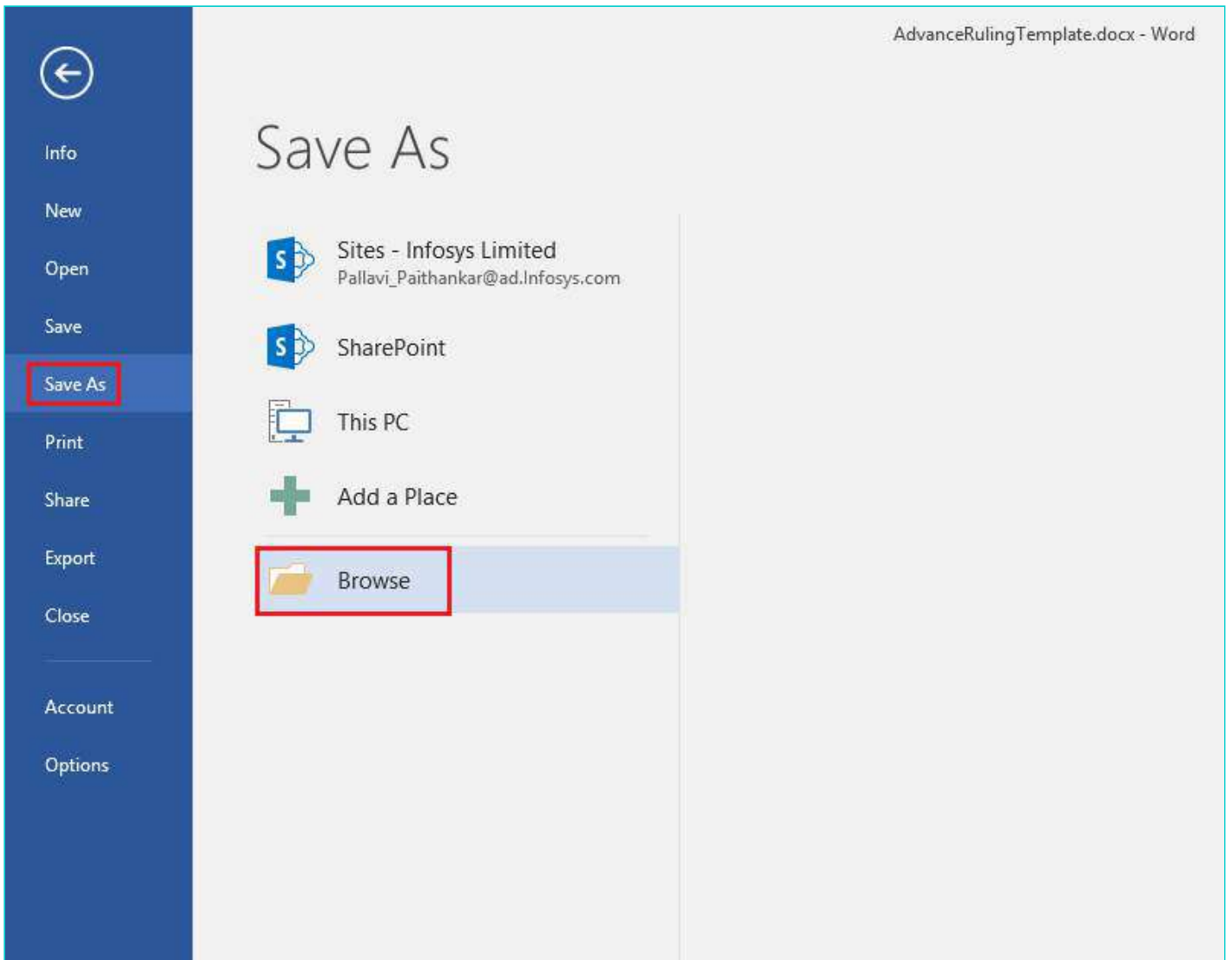
Upload the Filled Template *

No file chosen

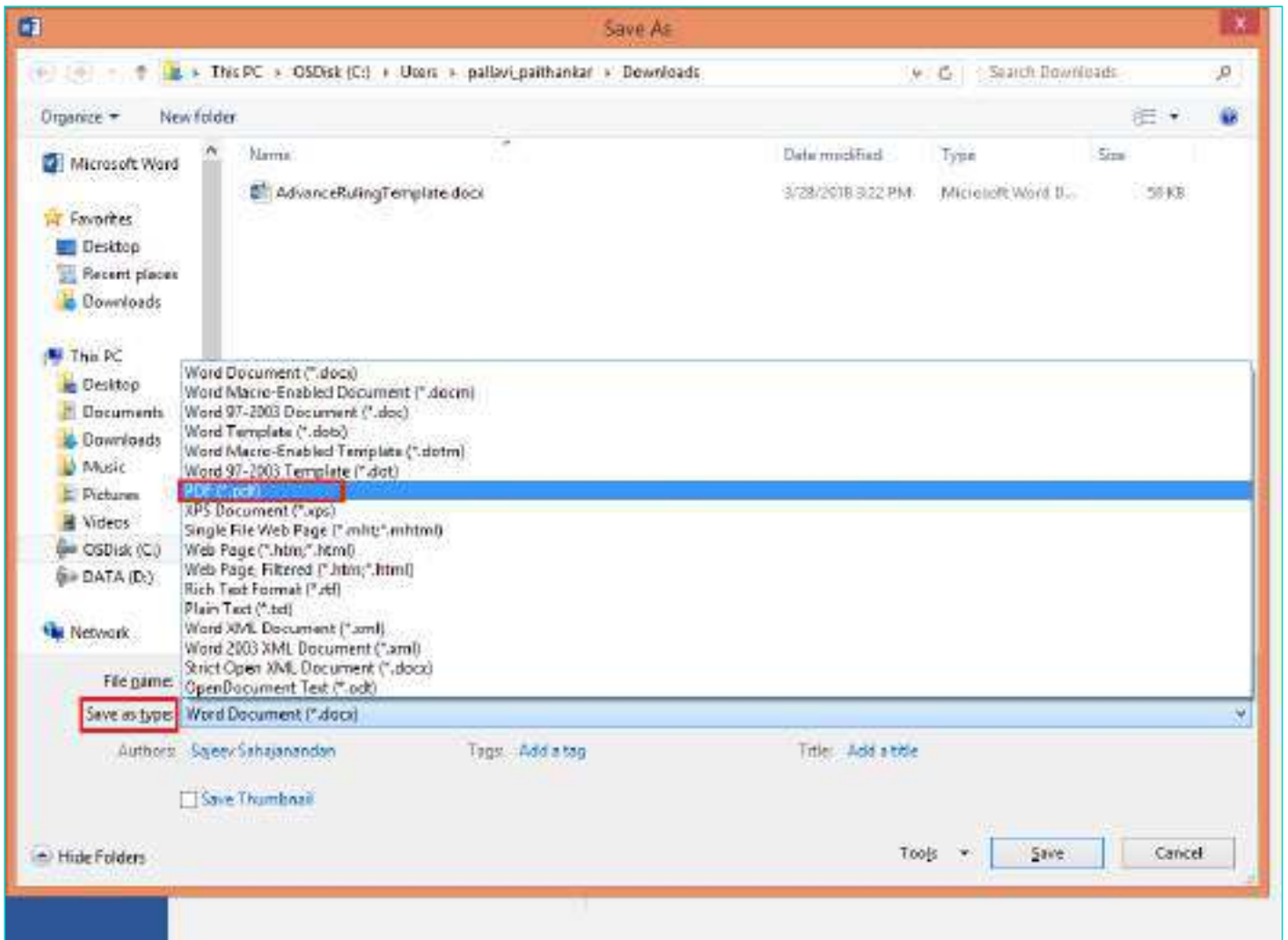
Download Template

- 1 Only PDF file format is allowed.
- 2 Maximum file size for upload is 5MB.
- 3 Click here to view the steps for converting the filled application Word template to PDF file format.

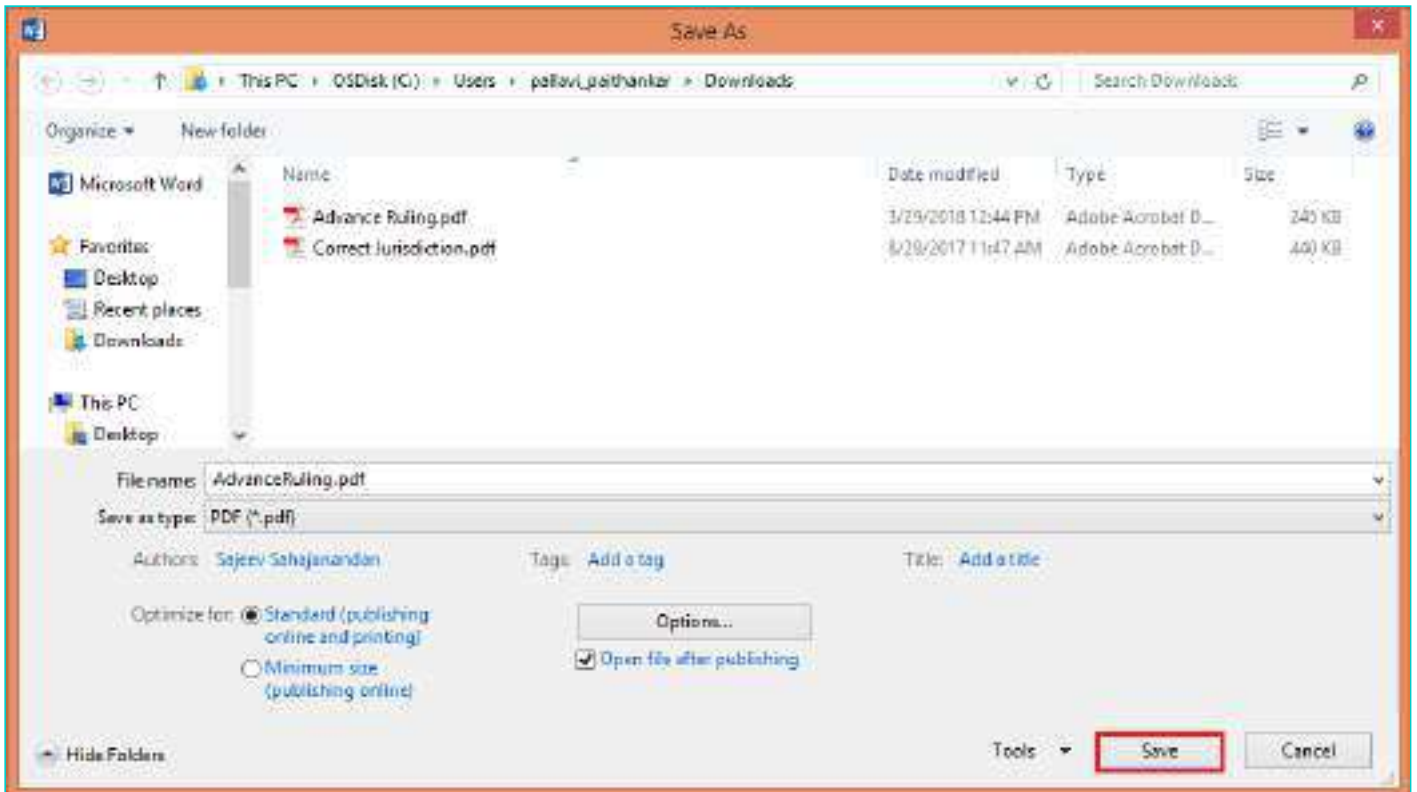
14(c). Click Save As and Choose the folder to save the Advance Ruling Template in pdf format.



14(d). Select **Save As Type** to PDF (*.pdf).



14(e). Click **SAVE**.



14(f). You can click the **click here** link to view the steps for converting the filled application Word template to PDF file format.

Details of Advance Ruling Application

Upload the Filled Template *

Choose File No file chosen

Download Template

- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.
- Click here to view the steps for converting the filled application Word template to PDF file format.

15. Under **Upload Supporting Documents**, Enter Document Description and click the **Choose File** button. Navigate and select the Supporting Documents to upload.

Upload Supporting Documents

Enter Document Description

Choose File No file chosen

- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.
- Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

16. After the document is uploaded, Click **ADD DOCUMENT** button to add the supporting document.

Upload Supporting Documents

Enter Document Description

Supporting Document

ADD DOCUMENT

- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.
- Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

17. Supporting Document is uploaded.

Upload Supporting Documents

Enter Document Description

Choose File No file chosen

Supporting Document: Supporting Document.pdf

- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.
- Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

Note:

- You can upload only PDF file with maximum file size for upload of as 5 MB.

- A maximum of 4 supporting documents in PDF format can be attached to the application for upload. The remaining documents, if any, can be handed over in hard copy during personal hearing.

18. Under **Declaration** and **Verification**, select both the checkboxes.

19. In the **Name of Authorized Signatory** drop-down list, select the name of authorized signatory. **Name**, **Son/Daughter/Wife of** and **Designation** fields gets auto-populated.

20. In the **Place** field, enter the place where the form is filed. Once Name of Authorized Signatory and Place is updated, **Designation/Status** and **Date** is auto-populated. Click the **SAVE** button.

Note: In case you want to retrieve the saved advance ruling application, you can navigate to **Services > User Services > My Saved Applications**. You can click the **EDIT** button to edit the existing application or click the **DELETE** button to delete the application.

Please note that Saved application will get automatically purged by the system after 15 days of first time save.

Creation Date	Form No.	Form Description	Expiry Date	Status	Action
10/05/2021	ARA-01	Advance Ruling Application	25/05/2021	Draft	

Dashboard Services User Services My Applications New Application Advance Ruling Application

Application Type	GSTIN/UIN/Temporary ID	Legal Name	Status of the Applicant
Advance Ruling Application	07ALYPO6528P226	Gyanendra Prakash Dawivedi	Registered

* indicates mandatory fields

Application Filed For

- SGST
- CGST

Correspondence Address (Same as Registered Address)

Building No./ Flat No.* 1	Name of the Premises/Building	Floor No.
Road/Street* HG	City/Town/Locality/Village* BCITY	
State* Delhi	District* Central Delhi	PIN Code* 110005

Nature of the activity(s) (proposed/present) in respect of which Advance Ruling sought*


<input checked="" type="checkbox"/> Factory/Manufacturing	<input type="checkbox"/> Bonded Warehouse	<input type="checkbox"/> Service Recipient
<input checked="" type="checkbox"/> Wholesale Business	<input type="checkbox"/> Service Provision	<input type="checkbox"/> EDU/STP/EHTP
<input type="checkbox"/> Retail Business	<input type="checkbox"/> Office/Sale Office	<input type="checkbox"/> Sez
<input type="checkbox"/> Warehouse/Depot	<input type="checkbox"/> Leasing Business	<input type="checkbox"/> Input Service Distributor (ISD)
<input type="checkbox"/> Works Contract	<input type="checkbox"/> OGDAR	<input type="checkbox"/> Others

Issue/s on which advance ruling required (Tick whichever is applicable)*

<input checked="" type="checkbox"/> Classification of goods and/or services or both
<input checked="" type="checkbox"/> Applicability of a notification issued under the provisions of the Act
<input type="checkbox"/> Determination of time and value of supply of goods or services or both
<input type="checkbox"/> Admissibility of input tax credit of tax paid or deemed to have been paid
<input type="checkbox"/> Determination of the liability to pay tax on any goods or services or both
<input type="checkbox"/> Whether applicant is required to be registered under the Act
<input type="checkbox"/> Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term

Details of Advance Ruling Application

Upload the Filled Template*

 Advance Ruling.pdf

Download Template

- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.

21. To preview the application before filing, click **PREVIEW**.

Click here to view the steps for converting the filled application Word template to PDF file format.

Upload Supporting Documents

Enter Document Description

No file chosen



Supporting Document: Supporting Document.pdf

Only PDF file format is allowed.

Maximum file size for upload is 5MB.

Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

Declaration*

I hereby declare that the question(s) raised in the application is/are not:

- Already pending in any proceedings in the applicant's case under any of the provisions of the Act
- Already decided in any proceedings in the applicant's case under any of the provisions of the Act

Verification*

I, son/daughter/wife of do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as (designation) and that I am competent to make this application and verify it.

Name of Authorized Signatory*

Place*

Designation / Status

Director

Date

15/10/2020

[BACK](#)

[SAVE](#)

[PREVIEW](#)

[PROCEED TO FILE](#)

Dashboard Services User Services My Applications New Application Advance Ruling Application

Application Type	GSTIN/UIN/Temporary ID	Legal Name	Status of the Applicant
Advance Ruling Application	07ALYRD6528P2Z6	Gyanendra Prakash Dwivedi	Registered

* indicates mandatory fields

Application Filed For

- **SIGST**
- **CGST**

Correspondence Address: (Same as Registered Address)

Building No./ Flat No.* 1	Name of the Premises/Building 	Floor No.
Road/Street.* MG	City/Town/Locality/Village.* ECITY	
State.* Delhi	District.* Central Delhi	PIN Code.* 110005

Nature of the activity(s) (proposed/present) in respect of which Advance Ruling sought*


<input checked="" type="checkbox"/> Factory/Manufacturing	<input type="checkbox"/> Bonded Warehouse	<input type="checkbox"/> Service Recipient
<input checked="" type="checkbox"/> Wholesale Business	<input type="checkbox"/> Service Provision	<input type="checkbox"/> EOU/STP/HTP
<input type="checkbox"/> Retail Business	<input type="checkbox"/> Office/Sale Office	<input type="checkbox"/> Sez
<input type="checkbox"/> Warehouse/Depot	<input type="checkbox"/> Leasing Business	<input type="checkbox"/> Input Service Distributor (ISD)
<input type="checkbox"/> Works Contract	<input type="checkbox"/> OIDAR	<input type="checkbox"/> Others

Issue/s on which advance ruling required (Tick whichever is applicable)*



- Classification of goods and/or services or both
- Applicability of a notification issued under the provisions of 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 the liability to pay tax on any goods or services or both
- Whether applicant is required to be registered under the Act
- Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term

Details of Advance Ruling Application

Upload the Filled Template*

 Advance Ruling .pdf

Download Template

-  Only PDF file format is allowed.
-  Maximum file size for upload is 5MB.

22. **Advance Ruling.pdf** file will be downloaded. Open the pdf file and check if all the details are correctly updated.

[Click here to view the steps for converting the filled application into PDF format for download.](#)

Advance Ruling Application

Application Type Advance Ruling Application	GSTIN/User ID 07ALYPD6528P226
Legal Name Gyanendra Prakash Dwivedi	Status of the Applicant Registered

Application filed for:
SGST, CGST

Correspondence Address: Same as Registered Address

Building No. / Flat No. 1	Name of Premises/Building ECITY	Floor No. -
Road / Street MG	City/Town/Locality/Village ECITY	
State Delhi	District Central Delhi	Pin Code 110005

Nature of the activity(s)(proposed/present) in respect of which Advance Ruling Sought

Factory/Manufacturing
Wholesale Business

Issue/s on which advance ruling required

Classification of goods and/or services or both
Applicability of a notification issued under the provisions of the Act

Details of Advance Ruling Application

Advance Ruling Application

Supporting Documents

Supporting Document

Declaration

I hereby declare that the question(s) raised in the application is/are not:

Already pending in any proceedings in the applicant's case under any of the provisions of the Act.
 Already decided in any proceedings in the applicant's case under any of the provisions of the Act.

Verification details :

I, Gyanendra Dwivedi, son/daughter/wife of Om Prakash Dwivedi do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as Director (designation) and that I am competent to make this application and verify it.

Name of Primary/ other Authorized Signatory Gyanendra Dwivedi[ALYPD6528P]	Place Delhi
Designation / Status Director	Date 15/10/2020

Only PDF file format is allowed.
Maximum file size for upload is 5MB.
Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

I hereby declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as Director (designation) and that I am competent to make this application and verify it.

SAVE
PREVIEW
PROCEED TO FILE

23. Click **PROCEED TO FILE**.

Dashboard Services User Services My Applications New Application Advance Ruling Application

Application Type	GSTIN/UIN/Temporary ID	Legal Name	Status of the Applicant
Advance Ruling Application	07AUPD6528P226	Cyanandra Prakash Dwivedi	Registered

* indicates mandatory fields

Application Filed For

- **SGST**
- **CGST**

Correspondence Address (Same as Registered Address)

Building No./ Flat No. *	Name of the Premises/Building	Floor No.
I		
Road/Street *	City/Town/Locality/Village *	
MG	ECITY	
State *	District *	PIN Code *
Delhi	Central Delhi	110005


Nature of the activity(s)(proposed/present)in respect of which Advance Ruling sought *

<input checked="" type="checkbox"/> Factory/Manufacturing	<input type="checkbox"/> Bonded Warehouse	<input type="checkbox"/> Service Recipient
<input checked="" type="checkbox"/> Wholesale Business	<input type="checkbox"/> Service Provision	<input type="checkbox"/> EDU/STP/EHTP
<input type="checkbox"/> Retail Business	<input type="checkbox"/> Office/Sale Office	<input type="checkbox"/> Sez
<input type="checkbox"/> Warehouse/Depot	<input type="checkbox"/> Leasing Business	<input type="checkbox"/> Input Service Distributor(ISD)
<input type="checkbox"/> Works Contract	<input type="checkbox"/> OIDAR	<input type="checkbox"/> Others

Issue/s on which advance ruling required (Tick whichever is applicable) *

<input checked="" type="checkbox"/> Classification of goods and/or services or both
<input checked="" type="checkbox"/> Applicability of a notification issued under the provisions of the Act
<input type="checkbox"/> Determination of time and value of supply of goods or services or both
<input type="checkbox"/> Admissibility of input tax credit of tax paid or deemed to have been paid
<input type="checkbox"/> Determination of the liability to pay tax on any goods or services or both
<input type="checkbox"/> Whether applicant is required to be registered under the Act
<input type="checkbox"/> Whether any particular thing done by the applicant with respect to any goods and/or services or both amounts to or results in a supply of goods and/or services or both, within the meaning of that term

Details of Advance Ruling Application


<p>Upload the Filled Template *</p> <p> Advance Ruling.pdf</p>	<p>Download Template</p> <ul style="list-style-type: none"> • Only PDF file format is allowed. • Maximum file size for upload is 5MB.
---	--

[Click here to view the steps for converting the filled application Word template to PDF file format.](#)

24. Click **SUBMIT WITH DSC** or **SUBMIT WITH EVC** button.

Dashboard - Submit Application English

APPLICATION TYPE	LEGAL NAME	GSTIN/UIN/Temporary ID
Advance Ruling Application	Gyanendra Prakash Dwivedi	07ALP06628P2Z6



Warning

Digital signatures are governed by the provisions of Information Technology Act, 2000 ("IT Act") and rules made thereunder. It is a mode of authenticating electronic records [Section 2(p) of IT Act]. Affixing digital signature on any document herein is deemed to be equivalent to affixing hand written signature/mark on such information/document (Section 5 of IT Act). Fraudulently/Dishonestly making use of any other person's digital signature is a punishable offence under IT Act (Section 66 C). Before attaching your digital signature certificate, please be certain that you wish to authenticate this electronic record.

- DSC is compulsory for Companies & LLP
- Facing problem using DSCP? [Click here for help](#)

SUBMIT WITH DSC
SUBMIT WITH EVC

25. Once the Verification is completed, fee amount will be auto debited from the cash ledger, ARN will be generated and status will change to "Filed". A message will also pop up as "Application for Advance Ruling is submitted successfully" and an acknowledgement would be generated. The Acknowledgement can be downloaded by clicking the **DOWNLOAD** button.

Name of Authorized Signatory*	Place*
Director	

Designation / Status	Date
Director	15/10/2020

Note: An SMS and e-mail will be sent to the applicant on the successful filing of Advance Ruling Application.

BACK
SAVE
PREVIEW
PROCEED TO FILE

Dashboard > Services > User Services > My Applications > Advance Ruling Acknowledgement

Application for Advance Ruling is submitted successfully!

[Go To My Applications](#)

Acknowledgement

You have filed the application successfully and the particulars of the application are given as under:

Application Reference No. (ARN)	AD071020000097W
Date of filing	15/10/2020
Time of filing	10:16:45 AM
Goods and Services Tax Identification Number(GSTIN)	07ALYPD6528P226
Legal Name	Gyanendra Prakash Dwivedi
Trade Name(If available)	AutomationsTest
Advance Ruling Authority	Delhi Authority for Advance Ruling
Filed By	Gyanendra Dwivedi
Form No.	GST ARA-01
Form Description	Application for Advance Ruling
Payment Reference Number	IP0710200000028

It is a system generated acknowledgement and does not require any signature.

[DOWNLOAD](#)

B. Search for Applications related to Advance Ruling and open the Case Details Screen

To search for Applications related to Advance Ruling and open the Case Details Screen, perform following steps:

1. Access the www.gst.gov.in URL. The GST Home page is displayed.
2. Login to the portal with valid credentials.
3. Dashboard page is displayed. Click **Dashboard > Services > User Services > My Applications**

Goods and Services Tax

Dashboard **Services** GST Law Search Taxpayer Help e-Way Bill System

Registration Ledgers Returns Payments **User Services** Refunds

My Saved Applications **My Applications**

View/Download Certificates View Notices and Orders

View My Submissions Contacts

Search HSN / Service Classification Code Holiday List

Feedback Grievance / Complaints

Generate User Id for Advance Ruling Furnish Letter of Undertaking (LUT)

View My Submitted LUTs Locate GST Practitioner (GSTP)

Engage / Disengage GST Practitioner (GSTP) ITC02-Pending for action

View Additional Notices/Orders

4. **My Applications** page is displayed. Select "Advance Ruling" in the Application Type, select submission period in the **From Date** field and **To Date** field and click **SEARCH**.

Dashboard Services User Services **My Applications**

My Applications

Application Type*
 select
 Select
 Advance Ruling
 Intimation of Voluntary Payment - DRC-03
 Letter of Undertaking
 Appeal to Appellate Authority
 Application for rectification of order
 Application for Deferred Payment/Payment in Instalments
 Recovery Cases
 REFUNDS

From Date: DD/MM/YYYY

To Date: DD/MM/YYYY

SEARCH NEW APPLICATION

* Indicates mandatory fields

Note: Maximum of 3 months submission period can be entered at a time and minimum one day period. Using the submission period, Taxpayer can search maximum of last 7 Years data.

5. Based on your Search criteria, all types of Advance Ruling related Applications are displayed. Click the ARN hyperlink you want to open.

Dashboard Services User Services **My Applications**

My Applications

Application Type*
 Advance Ruling

From Date: 01/06/2018

To Date: 09/08/2018

SEARCH NEW APPLICATION

* indicates mandatory fields

ARN/RFN	Form No.	Form Description	Date of Filing	Status
AD240818000009B	GST ARA-01	ADVANCE RULING	09/08/2018	Pending For Order
AD240818000002P	GST ARA-01	ADVANCE RULING	02/08/2018	Rejected
AD240618000018E	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000023N	GST ARA-01	ADVANCE RULING	12/07/2018	Rectification Submitted
AD240618000013Q	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000038C	GST ARA-01	ADVANCE RULING	13/07/2018	Rectification Submitted
AD240718000066D	GST ARA-01	ADVANCE RULING	18/07/2018	Rectification Submitted
AD2407180000112O	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000110S	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000100B	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order

< 1 2 3 4 5 6 7 8 >

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ARN/RFN	Form No.	Form Description	Date of Filing	Status
AD240718000029B	GST ARA-01	ADVANCE RULING APPEALS	12/07/2018	Rejected
AD240718000031Q	GST ARA-01	ADVANCE RULING APPEALS	12/07/2018	Pending for Order
AD240718000030S	GST ARA-01	ADVANCE RULING APPEALS	12/07/2018	Pending for Order
AD240818000010E	GST ARA-01	Advance Ruling Reference	10/08/2018	Referred by Authority
AD240818000006H	GST ARA-01	Advance Ruling Reference	09/08/2018	Disposed by Appellate Authority
AD240818000005I	GST ARA-01	Advance Ruling Reference	07/08/2018	Referred by Authority
AD240718000108D	GST ARA-01	Advance Ruling Reference	30/07/2018	Referred by Authority
AD240718000098E	GST ARA-01	Advance Ruling Reference	20/07/2018	Referred by Authority
AD240718000095F	GST ARA-01	Advance Ruling Reference	18/07/2018	Rectification Submitted
AD240718000092I	GST ARA-01	Advance Ruling Reference	19/07/2018	Referred by Authority

6. **Case Details** page is displayed. On this page, yellow header provides details of this Application. There are six tabs in the left side of the page: APPLICATIONS, NOTICES, REPLIES, ORDERS, RECTIFICATION and ADDITIONAL DOCUMENT. You can click each tab to view Application details related to the tab. APPLICATIONS tab is by default selected. You can click "View" in the Action column and download the details of the filed application.

Dashboard > Services > User Services > My Applications > **Case Details**

ARN	GSTIN/UIN/Temporary ID	Date Of Application/Case Creation	Status
AD240718000112O	24ARCPME147P126	31/07/2018	Pending For Order

PRN: IP2407180000063 Date Of Debit: 31/07/2018

Type of Document	Action
Advance Ruling Application	View

Navigation tabs: APPLICATIONS (selected), NOTICES, REPLIES, ORDERS, RECTIFICATION, ADDITIONAL DOCUMENT

[Go back to the Main Menu](#)

C. Search and View Cause List of all Advance Ruling-related Applications

To search and view Cause List of all Advance Ruling-related Applications, perform following steps:

1. Access the www.gst.gov.in URL. The GST Home page is displayed.
2. Navigate to **Services > User Services > Cause List**.

Note: You can access Cause List without logging to the GST Portal with your credentials.



3. **Cause List** Screen is displayed.

The screenshot shows the 'Cause List' form on the dashboard. The form includes the following fields: 'Type of Authority*' (a drop-down menu with 'Select' as the current value), 'State*' (a drop-down menu with 'Select' as the current value), 'Jurisdiction' (a drop-down menu with 'Select' as the current value), and 'Date' (a date input field with the format 'DD/MM/YYYY'). A red asterisk indicates that 'Type of Authority*' and 'State*' are mandatory fields. A 'SEARCH' button is located at the bottom right of the form.

4. From the Type of Authority drop-down list, select **Authority for Advance Ruling (u/s 96)** or **Appellate Authority for Advance Ruling (u/s 99)**.

The screenshot shows the 'Cause List' form with the 'Type of Authority*' dropdown menu open. The dropdown menu displays the following options: 'Select', 'Authority for Advance Ruling (u/s 96)', 'Appellate Authority for Advance Ruling (u/s 99)', and 'Appellate Authority (u/s 107)'. The 'Authority for Advance Ruling (u/s 96)' and 'Appellate Authority for Advance Ruling (u/s 99)' options are highlighted with a red box. The 'State*' and 'Date' fields remain unchanged from the previous screenshot.

5. From the **State** drop-down list, select **State** in which Application was filed.

6. From the **Jurisdiction** drop-down list, select **Jurisdiction** in which Application was filed. This is not mandatory field.

7. Select **Date**.

8. Click **SEARCH** and Cause List of the day will be displayed. In case of no hearing scheduled for the day, following message will appear "No hearings are scheduled for date".

Dashboard

Cause List

Indicates mandatory fields

Type of Authority*
Authority for Advance Ruling (u/s 95)

State*
Jharkhand

Jurisdiction
Select

Date
13/08/2018

SEARCH

No hearings are scheduled for date - 13/08/2018

Note: In case you don't select any date, System will search and display the Cause List of the current day.

D. View Application Details based on which the Case was created

To view Application Details based on which this Case was created, perform following steps:

1. On the **Case Details** page of that particular application, select the **APPLICATIONS** tab, if it is not selected by default. This tab provides you an option to view the filed application in PDF mode. The PRN (Payment Reference Number) along with Date of Debit and Status of Applicant is also displayed here

Dashboard - Services - User Services - My Applications - Case Details

ARN	GSTIN/UIN/Temporary ID	Date of Application/Case Creation	Status
AD2407180001120	24ABCPME147P176	31/07/2018	Pending For Order

PRN: IP2407180000063 Date Of Debit: 31/07/2018

Type of Document	Action
Advance Ruling Application	View

Navigation Menu: APPLICATIONS, NOTICES, REPLIES, ORDERS, RECTIFICATION, ADDITIONAL DOCUMENT

2. Click the **View** link under Action to download and view the application in PDF mode.

[Go back to the Main Menu](#)

E. View Issued Notices and File Reply

To view issued Notices and File your Reply, perform following steps:

1. On the **Case Details** page of that particular application, select the **NOTICES** tab. This tab displays all the notices (Hearing/Adjournment) issued by AAR or AAAR against this ARN to you.

Note: You can click the link under Attachments column to download any attachment, if uploaded.

ARN	GSTIN/UIN/Temporary ID	Date Of Application/Case Creation	Status
AD060421000077R	06BEFPC0077R4Z8	15/04/2021	Referred by Authority

APPLICATIONS	Notice No	Subject	Issued On	Issued By	Attachments	Action
NOTICES	ZD0604210004609	Admission of Advance Ruling Application	15/04/2021	Haryana Authority for Advance Ruling	-NA-	Reply
REPLIES						
ORDERS						
RECTIFICATION						
ADDITIONAL DOCUMENT						

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Note:

Following types of Notices can be issued against the filed Applications related to Advance Ruling:

Notices Issued by Authority for Advance Ruling (AAR)	Notices Issued by Appellate Authority for Advance Ruling (AAAR)
<ul style="list-style-type: none"> ▪ Notice of Personal Hearing for Admitting or Rejecting Filed Application seeking Advance Ruling ▪ Notice of Adjournment ▪ Notice of Personal Hearing in respect of rectification application ▪ Notice of Personal Hearing in respect of Suo Moto rectification ▪ Notice of Personal Hearing in respect of declaring advance ruling order void 	<ul style="list-style-type: none"> ▪ Notice of Personal Hearing for Admitting or Rejecting Appeals ▪ Notice of Adjournment ▪ Notice of Personal Hearing in respect of in respect of reference application ▪ Notice of Personal Hearing in respect of rectification application ▪ Notice of Personal Hearing in respect of Suo Moto rectification ▪ Notice of Personal Hearing in respect of declaring advance ruling order void

2. Click **Reply** hyperlink in the **Action** column against the Notice for which reply is to be filed.

ARN	GSTIN/UIN/Temporary ID	Date Of Application/Case Creation	Status
AD2407180001120	24ABCPMB147P126	31/07/2018	Pending For Order

APPLICATIONS	Notice No	Subject	Issued On	Issued By	Action
NOTICES	ZA2408180000490	Advance ruling order	11/08/2018	Gujarat Authority for Advance Ruling	Reply
REPLIES					
ORDERS					
RECTIFICATION					
ADDITIONAL DOCUMENT					

10 25 50 100

3. **Reply** application is displayed. Application Details and your details are auto-populated. The remaining details must be filled manually. To go to the previous page, you can click **BACK**.

Dashboard Services User Services My Applications Case Details

ARN
AD2407180001120

GSTIN/UIN/Temporary ID
24ABCPM8147P1Z6

Date Of Application/Case Creation
31/07/2018

Status
Pending For Order

APPLICATIONS

NOTICES

REPLIES

ORDERS

RECTIFICATION

ADDITIONAL DOCUMENT

* Indicates mandatory fields

Application Details

Notice No: ZA2400100000490

Application Type: Reply

Details of Respondent

Legal Name of the Respondent: PRAVINBHAI KALIDAS MISTRY

Trade Name of the Respondent: SUN LIGHT(PAID)

Status of the Respondent: Registered

Contact Details of Respondent

Email Id of the respondent: dhanashree.hardc@infosys.com

Mobile Number of the respondent: 9513107112

Details of Reply*

Upload the filed template

Choose File No file chosen

Download Template

- Click here to view the steps for converting the filed application Word template to PDF file format.
- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.

Upload Supporting Documents

Enter Document Description

Choose File No file chosen

- Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.
- Only PDF file format is allowed.
- Maximum file size for upload is 5MB.

Verification*

I, [Redacted] son/daughter/wife of [Redacted] do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as [Redacted] (designation) and that I am competent to make this application and verify it.

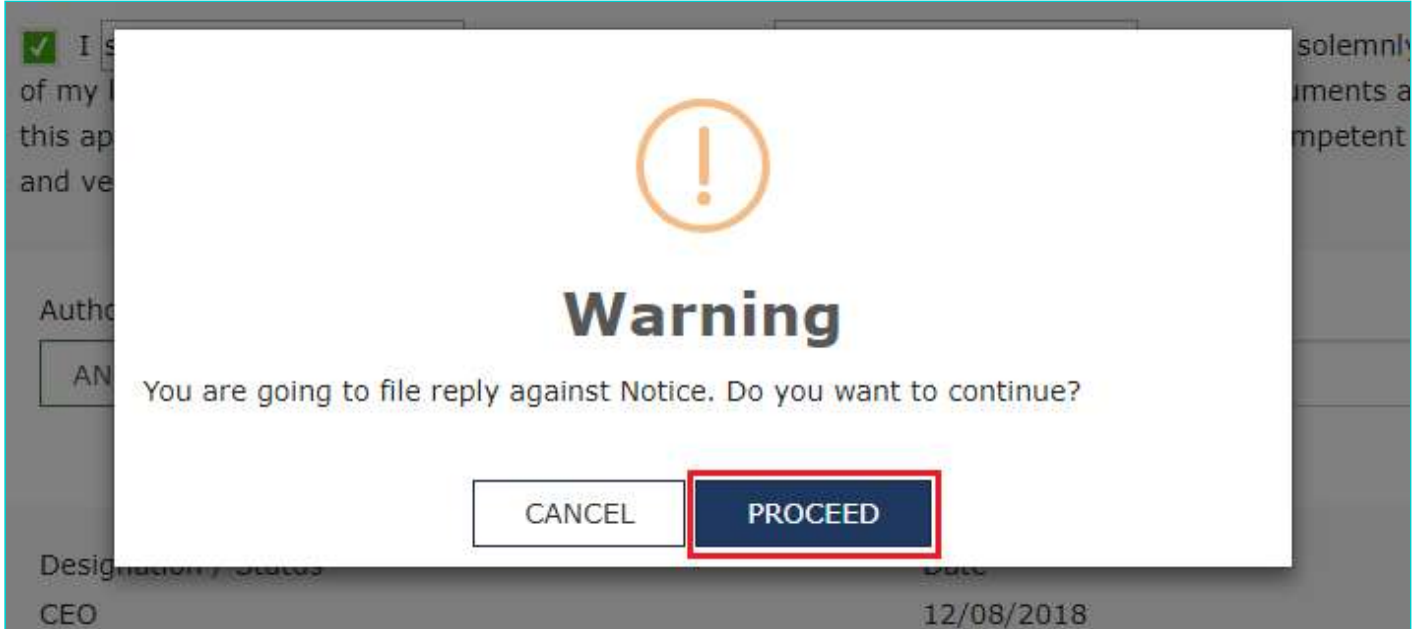
Authorized Signatory*
Select

Place*
Enter Place

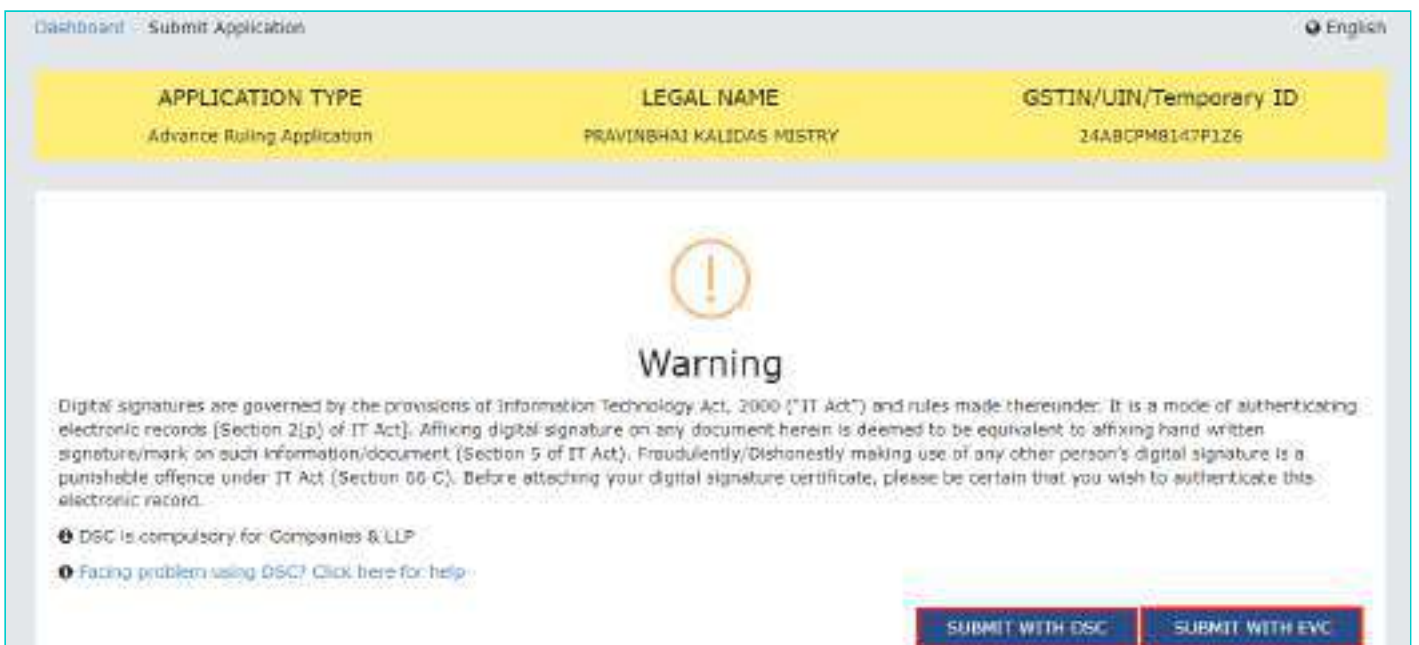
Designation / Status
Date

BACK PREVIEW PROCEED TO FILE

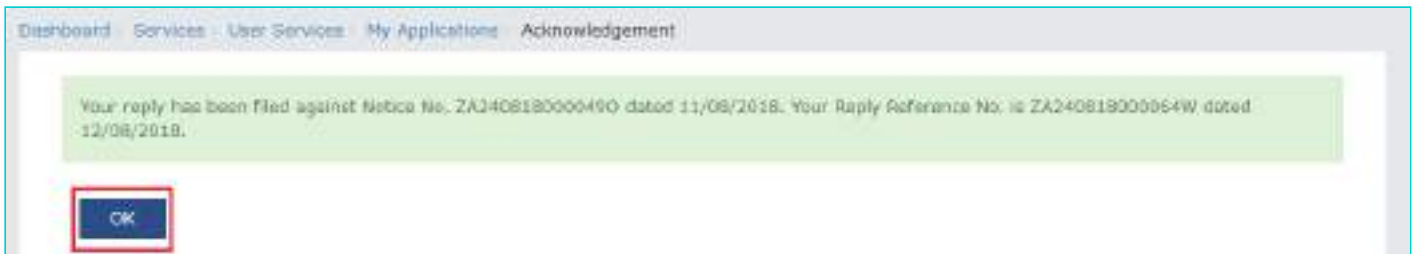
4. Click **Download Template** to download and manually fill details of Reply and then upload the converted PDF using **Choose File** button under **Details of Reply** field.
5. If required, you can also upload supporting documents. This is not a mandatory field. To upload, first fill **Enter Document Description** field and then click **Choose File** to upload them.
6. Enter **Verification** details and click **PREVIEW** to download and review your Reply. Once you are satisfied, click **PROCEED TO FILE**.
7. A Warning message popup is displayed. Click **PROCEED**.



8. **Submit Application** page is displayed. Click **SUBMIT WITH DSC** or **SUBMIT WITH EVC**.



9. **Acknowledgement** page is displayed. Click **OK**.



Note: You will also receive an email acknowledging receipt of this Counter reply, along with generated Reply Reference Number.

10. GST System automatically directs you to the REPLIES tab where the reply you just filed will be displayed in a table. Also, system generated email is automatically sent to the JO/CO intimating them about successful submission of the reply and the generated Reply Reference Number.



Note: Once the reply is submitted, the Reply link in the NOTICES tab will get disabled. You can submit only one reply per each Notice.



[Go back to the Main Menu](#)

F. View Replies/Counter-replies Filed by Self or Concerned Officer (CO)/Jurisdiction Officer (JO)

Dashboard Services User Services My Applications

My Applications

Application Type* * Indicates mandatory fields

From Date: To Date:

ARN/RFN	Form No.	Form Description	Date of Filing	Status
AD240818000009B	GST ARA-01	ADVANCE RULING	09/08/2018	Pending For Order
AD240818000002P	GST ARA-01	ADVANCE RULING	02/06/2018	Rejected
AD240818000019E	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000023N	GST ARA-01	ADVANCE RULING	12/07/2018	Rectification Submitted
AD240618000013Q	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000038C	GST ARA-01	ADVANCE RULING	13/07/2018	Rectification Submitted
AD240718000066C	GST ARA-01	ADVANCE RULING	18/07/2018	Rectification Submitted
AD240718000012D	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000110S	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000100B	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order

< 1 2 3 4 5 6 7 8 >

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2. On the **Case Details** page of that particular application, select the **ORDERS** tab. This tab displays all the Orders issued by AAR or AAAR against this case. Click **File Appeal** hyperlink to initiate your Appeal Application. You can file an Appeal against only the Advance Ruling Order issued by AAR.

Note:

- You can file an Appeal against only the Advance Ruling Order issued by AAR.
- In the column "Linked Rectification Order", Order number of Rectification Order passed against this Order, if any, is displayed. If Rectification application is filed against this Order (Advance Ruling Order, Rectification Order, Void Order, Rejection of Rectification Order, Appeal Order (Confirming Advance Ruling) etc.), but no Rectification Order has yet been issued, then "Order Awaited" status is displayed. If there is no Rectification application filed against this Order, then NA will be displayed. "Linked Rectification Order" column can be any type of Rectification Order i.e. "Rectification Order" or "Rejection of Rectification Application".
- In the column "Linked Appellate Order", Order number passed by the Appellate Authority for Advance Ruling, if any is displayed (if an appeal was filed against Advance Ruling Order). If Appeal is filed against the Advance ruling Order passed by AAR, then any one of the following types of Appellate Orders, will be displayed against this AR Order – Appeal Order (Confirming Advance Ruling) or Appeal Order (Modifying Advance Ruling) or Rejection of Condonation of Delay. If Appeal was filed against this Order, but no Appeal Order has yet been issued, then "Order Awaited" status is displayed. If Appeal has not been filed against this Order and there is no Appeal Order passed against this Advance Ruling Order, then NA will be displayed.
- In the "Linked Void Order" column, Void Order issued by the Authority / Appellate Authority against the Advance Ruling Order, if any, is displayed. If Void Proceedings were initiated, but no Order has yet been issued, then "Order Awaited" status is displayed. If Void Proceedings are not initiated against any Advance Ruling Order, then NA will be displayed. There can be two types of Void Order - "Order Declaring Advance Ruling Void" or "Order Dropping Void Proceedings". Void Order can be issued against - Advance Ruling Order, Rectification Order (when Advance

Ruling order is rectified), Appeal Order (Modifying Advance Ruling), and Appeal Order (Confirming Advance Ruling).

- You can click the Order No. displayed in the respective columns to download the Order as PDF.

Dashboard Services User Services My Applications Case Details									
ARN ADD0708200002620		GSTIN/UDN/Temporary ID 07ALYPD6528P226		Date Of Application/Case Creation 28/06/2020			Status Disposed by Authority		
APPLICATIONS	Order No.	Type of Order	Passed On	Passed By	Uploaded Order Annexure	Linked Rectification Order	Linked Appellate Order	Linked Void Order	Action
NOTICES	230000992	Advance ruling order	12/02/2021	Gujarat Authority for Advance Ruling	ARN_RECEIPT_GST RFD-01_07ALYPD6528P226_EXDCL (10).pdf	NA	Order Awaited	NA	File Appeal
REPLIES									
ORDERS									
RECTIFICATION									
ADDITIONAL DOCUMENT									

Note 1: Here are the types of Orders issued by AAR and AAAR.

Orders Issued by Authority for Advance Ruling (AAR)	Orders Issued by Appellate Authority for Advance Ruling (AAAR)
<ul style="list-style-type: none"> Declaring Advance Ruling Void Dropping Void Proceedings Admission of Advance Ruling Application Rejection of Advance Ruling Application Advance Ruling Order Rectification of Order Rejection of Rectification Application 	<ul style="list-style-type: none"> Declaring Advance Ruling Void Dropping Void Proceedings Acceptance of Condonation of Delay Rejection of Condonation of Delay Appeal Order (Confirming Advance Ruling) Appeal Order (Modifying Advance Ruling) Rectification of Order Rejection of Rectification Application

Note 2: You can file an Appeal against only the Advance Ruling Order issued by AAR, within the specified period from the date of order or within the period as extended by Appellate Authority, as per law.

3. **New Application** page is displayed. Act(s) for which Appeal against the Advance Ruling has to be filed is auto-selected. In case, there is no sufficient balance in Cash Ledger, click **DEPOSIT TO CASH LEDGER** button to deposit the required amount of the displayed **Total Fee Applicable** in Cash Ledger. [Click here to refer the FAQs and User Manual on Making Payment](#). Otherwise, click **CREATE APPLICATION FOR APPEAL**.

Note:

- In case of Normal taxpayer, fee has to be paid for filing an appeal against the Advance Ruling order passed by AAR, under CGST and SGST heads.

- In case of OIDAR taxpayer, fee has to be paid for filing an appeal against the Advance Ruling order passed by AAR, under IGST head.
- The respective amount, to be paid, will be auto calculated based on selection of SGST/CGST/IGST heads, as the case may be.

Dashboard Services User Services My Applications New Application

Select Act(s) for which Appeal against the Advance Ruling has to be filed

SGST CGST IGST

Cash Balance as on 15/10/2020

Acts	Fee Applicable (in ₹)	Amount available in Cash Ledger (in ₹)	Amount to be paid (in ₹)
SGST	10000.00	33984.20	Nil
CGST	10000.00	15007.00	Nil
IGST	-	110965.00	-
Total (in ₹)	20000.00	160956.20	Nil

Instructions

1. If there is not sufficient balance in Cash Ledger (under Fee head), i.e. "Amount to be paid" is not nil, then click on **Deposit To Cash Ledger** button to deposit the required amount, in Cash Ledger.
2. If sufficient balance is available in Cash Ledger (under Fee head), i.e. "Amount to be paid" is nil for all the selected acts, then click on **Create Application for Appeal** button to fill and submit the application.
3. Presently fees for Appeal against Advance Ruling Order is ₹ 10000/- each under CGST, SGST and IGST for Normal taxpayer and ₹10000/- for OIDAR taxpayer under IGST. On selection of respective head, fees amount will accordingly get reflected for making payment.

4. Advance Ruling Appeal Application page is displayed.

Note:

- System auto-calculates the number of days delay in filing appeal from the date when Advance Ruling Order was passed by the AAR. If the **No. of days delay in filing appeal** field is not 0, you must attach the Details of Condonation of Delay (COD) in the **Upload Supporting Documents** field.
- Basis the act selected in previous screen for which Advance Ruling application has to be filed, Act will get auto-populated under "Application Filed For" section.
- Appeal can be filed even after 30 days and up to 60 days (even without COD) or even after 60 days from the date of communication of the order appeal against. In case of delay, please attach the Application for COD in "Upload Supporting Document" section of the Appeal Application.

5. Enter details in the **Address of Appellant at which notices may be sent** field in case the address for communication of Notice is different than the registered address. If the Address is same as registered address, then select the **Same as Registered Address** check-box and the already registered address will get pre-filled.

6. Select the radio buttons **Yes** or **No**, based on your choice of being heard in person or not.

7. Click **Download Template** to download and manually fill details of Appeal and then upload the converted PDF using **Choose File** button under **Details of Appeal for Advance Ruling Application** field.

8. To upload supporting documents, first fill **Enter Document Description** field and then click **Choose File** to upload them.

Note: You must upload the Details of Condonation of Delay (COD) if **No. of days delay in filing appeal** field is not 0.

9. Enter **Verification** details. In the **Name of Authorized Signatory** drop-down list, select the name of authorized signatory. **Name, Son/Daughter/Wife of** and **Designation** fields gets auto-populated. Click **PREVIEW** to download and review your Appeal Application.

Application Type Appeal to the Appellate Authority for Advance Ruling	GSTIN/UIN/Temporary ID 07ALYFD05328P225	Legal Name Gyanendra Prakash Dwivedi
Trade Name AutomationsTest	Status of the Applicant Registered	

* indicates mandatory fields

Order Details

Advance Ruling Order Number
ZD070820000886F

Date of Communication of Order
28/08/2020

Appeal Details

No. of days delay in filing Appeal
18

① No. of days delay in filing Appeal is calculated after expiry of 30 days, from the date of communication of Advance Ruling order.

② In case of delay in filing Appeal, please attach Details for Condonation of Delay (COD) in the supporting document section.

Application Filed For

- + SGST
- + CGST

Address of Appellant at which notices may be sent (Same as Registered Address)

Building No. / Flat No.* 1	Name of the Premises/Building 	Floor No.
Road/Street* HG	City/Town/Locality/Village* ECITY	
State* Delhi	District* Central Delhi	PIN Code* 110005

Whether the Appellant wishes to be heard in person? Yes No

Details of Appeal for Advance Ruling Application

Upload the Filled Template*

 Advance Ruling.pdf


[Download Template](#)

- ① Only PDF file format is allowed.
- ② Maximum file size for upload is 5MB.
- ③ Click here to view the steps for converting the filled application Word template to PDF file format.

Upload Supporting Documents.

Enter Document Description

No file chosen

 Details of delay: Details of Delay.pdf

- ① Only PDF file format is allowed.
- ② Maximum file size for upload is 5MB.
- ③ Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

Verification*

10. **Advance Ruling.pdf** file will be downloaded. Open the pdf file and check if all the details are correctly updated.

I, **Gyanendra Dwivedi**, son/daughter/wife of **Om Prakash Dwivedi** do hereby solemnly declare that to the best of my knowledge and belief, the information furnished in the application is true and correct and I am making this application in my capacity as **Director** (designation) and that I am competent to make this application and verify it.

Name of Authorized Signatory* **Gyanendra Dwivedi** Place* **Delhi**

Designation / Status: **Director** Date: **15/10/2020**

BACK **PREVIEW** **PROCEED TO FILE**

Appeal for Advance Ruling Application		
Application Type Appeal to the Appellate Authority for Advance Ruling	GSTIN/UIN/Temporary ID 07ALYP06528P2Z6	Legal Name Gyanendra Prakash Dwivedi
Trade Name AutomationsTest	Status of the Applicant Registered	
Order Details		
Advance Ruling Order Number ZD070820000886F	Date of Communication of Order 28/08/2020	
Appeal Details		
No. of days delay in filing Appeal 18		
Application filed for SGST, CGST		
Address of Appellant at which notices may be sent: <input checked="" type="checkbox"/> Same as Registered Address		
Building No. / Flat No. 1	Name of Premises/Building -	Floor No. -
Road / Street MG	City/Town/Locality/Village ECITY	
State Delhi	District Central Delhi	Pin Code 110005
Whether the Appellant wishes to be heard in person?		
<input checked="" type="checkbox"/> Yes		
<input type="checkbox"/> No		
Details of Appeal for Advance Ruling Application		
Appeal for Advance Ruling Application		
Supporting Documents		
Details of delay		
Verification details :		
<input checked="" type="checkbox"/> I, Gyanendra Dwivedi, son/daughter/wife of Om Prakash Dwivedi do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as Director (designation) and that I am competent to make this application and verify it.		
Name of Primary/ other Authorized Signatory Gyanendra Dwivedi[ALYP06528P]	Place Delhi	
Designation / Status Director	Date 15/10/2020	

11. Once you are satisfied, click **PROCEED TO FILE**.

Application Type Appeal to the Appellate Authority for Advance Ruling	GSTIN/UIN/Temporary ID 07ALYPD9325PZZ6	Legal Name Grenendra Prakash Dwivedi
Trade Name AutomationsTest	Status of the Applicant Registered	

* indicates mandatory fields

Order Details

Advance Ruling Order Number: **Z00708200000067**
 Date of Communication of Order: **26/08/2020**

Appeal Details

No. of days delay in filing Appeal:
18

1 No. of days delay in filing Appeal is calculated after expiry of 30 days, from the date of communication of Advance Ruling order.

2 In case of delay in filing Appeal, please attach Details for Condonation of Delay (COD) in the supporting document section.

Application Filed For

- SGST
- CGST

Address of Appellant at which notices may be sent (Same as Registered Address)

Building No./ Flat No. * 1	Name of the Premises/Building 	Floor No.:
Road/Street * HG	City/Town/Locality/Village * ECITY	
State * Delhi	District * Central Delhi	PIN Code * 110005

Whether the Appellant wishes to be heard in person? * Yes No

Details of Appeal for Advance Ruling Application**Upload the Filled Template ***

Advance Ruling.pdf

Download Template

- 1 Only PDF file format is allowed.
- 2 Maximum file size for upload is 5MB.
- 3 Click here to view the steps for converting the filled application Word template to PDF file format.

Upload Supporting Documents:**Enter Document Description**

No file chosen

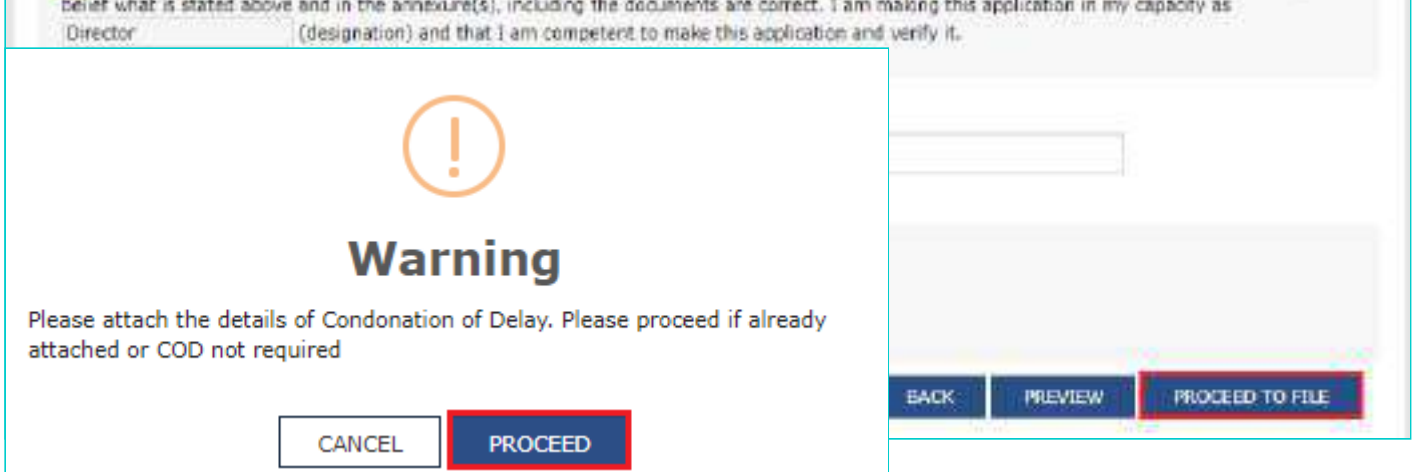


Details of delay: Details of Delay.pdf

- 1 Only PDF File format is allowed.
- 2 Maximum file size for upload is 5MB.
- 3 Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.

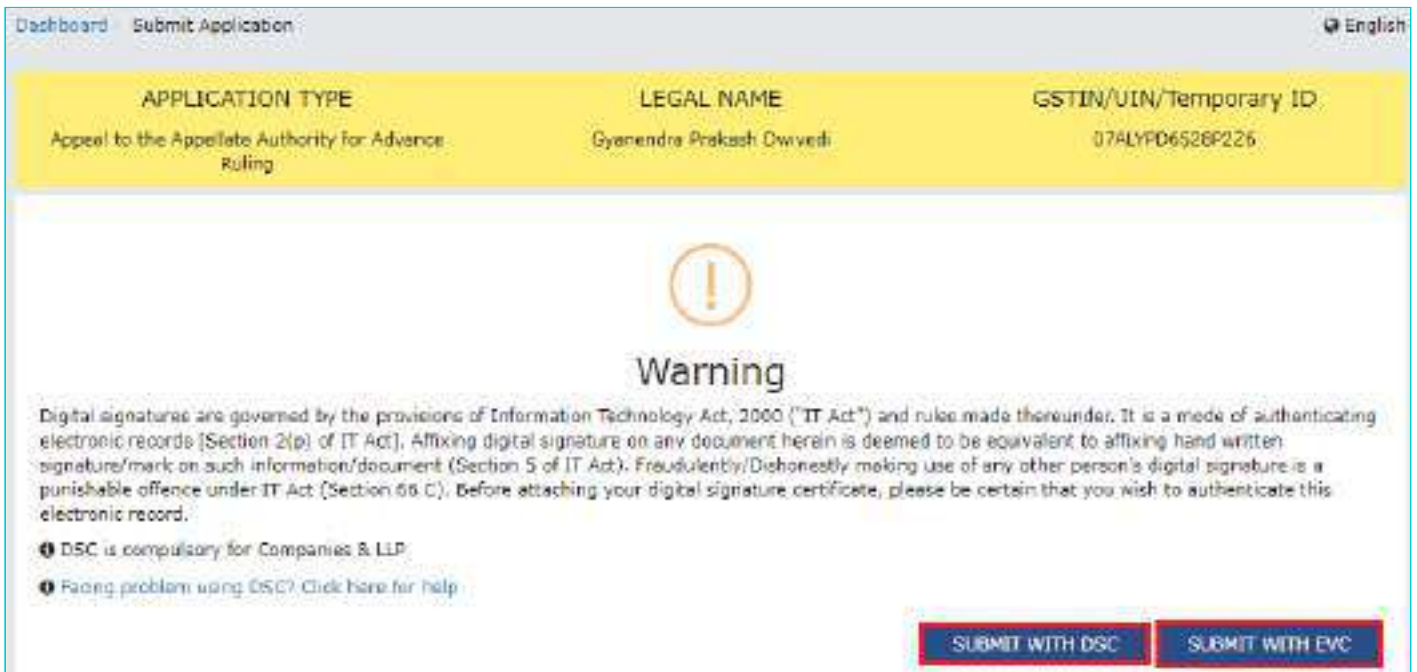
Verification *

12. In case, **No. of days delay in filing appeal** field is not 0; a Warning message popup is displayed. Click **PROCEED**.



The image shows a warning popup dialog box with a yellow background and a red border. At the top center is a large orange exclamation mark icon. Below the icon, the word "Warning" is written in bold black text. Underneath, a message reads: "Please attach the details of Condonation of Delay. Please proceed if already attached or COD not required". At the bottom of the dialog, there are two buttons: a white "CANCEL" button and a blue "PROCEED" button with a red border. In the background, a portion of the application form is visible, showing a "No. of days delay in filing appeal" field and buttons for "BACK", "PREVIEW", and "PROCEED TO FILE".

13. **Submit Application** page is displayed. Click **SUBMIT WITH DSC** or **SUBMIT WITH EVC**.



The image shows the "Submit Application" page. At the top, there is a navigation bar with "Dashboard" and "Submit Application" links, and a language selector set to "English". Below the navigation bar is a yellow header section containing application details:

APPLICATION TYPE	LEGAL NAME	GSTIN/UIN/Temporary ID
Appeal to the Appellate Authority for Advance Ruling	Gyanendra Prakash Dwivedi	07ALYPD6526P226

Below the header, a warning message is displayed with a yellow background and a red border. It features a large orange exclamation mark icon and the word "Warning" in bold. The text reads: "Digital signatures are governed by the provisions of Information Technology Act, 2000 ('IT Act') and rules made thereunder. It is a mode of authenticating electronic records [Section 2(p) of IT Act]. Affixing digital signature on any document herein is deemed to be equivalent to affixing hand written signature/mark on such information/document (Section 5 of IT Act). Fraudulently/Dishonestly making use of any other person's digital signature is a punishable offence under IT Act (Section 66 C). Before attaching your digital signature certificate, please be certain that you wish to authenticate this electronic record." Below this text are two links: "DSC is compulsory for Companies & LLP" and "Facing problem using DSC? Click here for help". At the bottom right of the warning box, there are two buttons: "SUBMIT WITH DSC" and "SUBMIT WITH EVC".

14. **Advance Ruling Acknowledgement** page is displayed. In the top section of this page, success message is displayed in green. New generated ARN and its details are displayed in the **Acknowledgement** section. You can click the **DOWNLOAD** button to download the filed Appeal or you can click **GO To My Applications** hyperlink on the top-right side to open this new ARN.

Dashboard > Services > User Services > My Applications > Advance Ruling Acknowledgement

Application for Advance Ruling Appeal is submitted successfully!

[Go To My Applications](#)

Acknowledgement

You have filed the application successfully and the particulars of the application are given as under:

Application Reference No: (ARN)	AD071020000098U
Date of filing	15/10/2020
Time of filing	10:52:45 AM
Goods and Services Tax Identification Number(GSTIN)	07ALYRD6528P2Z6
Legal Name	Gyanendra Prakash Dwivedi
Trade Name(If available)	AutomationsTest
Advance Ruling Appellate Authority	Delhi Appellate Authority for Advance Ruling
Filed By	Gyanendra Dwivedi
Form No.	GST ARA-02
Form Description	Appeal to the Appellate Authority for Advance Ruling
Payment Reference Number	IP0710200000029

It is a system generated acknowledgement and does not require any signature.

[DOWNLOAD](#)

Note 1:

Following actions take place on the GST Portal after Appellant successfully files an Appeal Application against the Advance Ruling Order passed by AAR:

- ARN gets generated along with Acknowledgement and is communicated to the Appellant through an email and SMS.
- An email is sent to the CO and JO informing them about receipt of application along with ARN and application date.
- The application will land in the AAAR's queue under Application inbox and will be available to all tax officials and Appeal Proceedings will follow.

Note 2:

Following actions take place on the GST Portal after a CO/JO successfully files an Appeal Application against the Advance Ruling Order passed by AAR:

- ARN gets generated along with Acknowledgement and is communicated to the Appellant through an email and SMS.
- An email is sent to the Appellant informing him/her about filing of an Appeal Application against the Advance Ruling Order passed by AAR along with ARN and application date. He/she can navigate to **Dashboard > Services > User Services > My Applications** and search for the Application and open the Case Details Screen. Status of the ARN will be "Pending for Order".
- The application will land in the AAAR's queue under Application inbox and will be available to all tax officials and Appeal Proceedings will follow.

15. On clicking **GO To My Applications** hyperlink, **My Applications** page is displayed. Once you search with today's date, the new ARN will be displayed with Status as "Pending for Order". Click ARN hyperlink.

Dashboard Services User Services My Applications

My Applications

Application Type* From Date To Date * Indicates mandatory fields

ARN/RFN :-	Form No. :-	Form Description :-	Date of Filing :-	Status :-
AD071020000097W	GST ARA-01	ADVANCE RULING	15/10/2020	Pending For Order
AD071020000098U	GST ARA-01	ADVANCE RULING APPEALS	15/10/2020	Pending for Order

10 25 50 100

16. **Case Details** page of your Appeal Application is displayed. You will be able to track all proceedings related to this Appeal Application and take necessary actions from this page using the tabs provided on the left.

Dashboard Services User Services My Applications Case Details

ARN AD071020000098U	GSTIN/UIN/Temporary ID 07ALYPD6528P226	Date Of Application/Case Creation 15/10/2020	Status Pending for Order
------------------------	---	---	-----------------------------

PRN: DP0710200000029 Date Of Debit: 15/10/2020

APPLICATIONS	Type of Document	Action
NOTICES	Advance Ruling Appeal Application (ARA-02)	View
REPLIES	Advance Ruling Appeal Application (Auto generated)	View
ORDERS	Details of delay	View
RECTIFICATION		
ADDITIONAL DOCUMENT		

Note:

Key-steps of the Proceedings related to an Appeal Application are:

If COD is required:

- AAAR reviews the COD Application and issues "Hearing Notice" for Admission/Rejection of Condonation of Delay. Its intimation is sent by a system-generated email to the Appellant and Respondents, with date, place and time of hearing.
- On the date of hearing, parties appear before the authority. AAAR can also issue an Adjournment Notice to the parties with details of new date, new place and new time of hearing.
- After hearing the parties and examining the application and records received during Personal Hearing, if any, AAAR can take following actions:
- Issue "Acceptance of Condonation of Delay" Order if AAAR is satisfied that the Appellant was prevented by sufficient cause to present the appeal within 30 days from the date of the communication of the order of the AAR. In this case, its intimation is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Admitted".

- Issue "Rejection of Condonation of Delay" Order if AAAR is **not** satisfied that the Appellant was prevented by sufficient cause to present the appeal within 30 days from the date of the communication of the order of the AAR. In this case, its intimation is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Rejected".

If COD is not required or if COD is condoned and Appeal is admitted:

- AAAR reviews the Appeal and issues "Hearing Notice" for Disposal of Advance Ruling Appeal Application. Its intimation is sent by a system-generated email to the Appellant and Respondents, with date, place and time of hearing.
- If required, Respondents can submit their Counter-replies on the GST Portal. System will send an intimation regarding the submission of counter reply by respondent to the appellant through an email.
- On the date of hearing, parties appear before the authority. AAAR can also issue an Adjournment Notice to the parties. Its intimation is sent by a system-generated email to the Appellant and Respondents, with details of new date, new place and new time of hearing.
- After hearing the parties and examining the application and records received during Personal Hearing, if any, AAAR can take following actions:
- Issue "Appeal Order (Confirming Advance Ruling)". Intimation of the Order is sent by a system-generated email to the Appellant, Respondents and AAAR and the Status of the ARN is changed from "Pending For Order" to "Disposed by Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.
- Issue "Appeal Order (Modifying Advance Ruling)". Intimation of the Order is sent by a system-generated email to the Appellant, Respondents and AAAR and the Status of the ARN is changed from "Pending For Order" to "Disposed by Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.

[Go back to the Main Menu](#)

G. (2) File Rectification

To file Rectification and view them, perform following steps:

1. Login to the GST Portal with valid credentials i.e. your User Id and Password. Click the **Services > User Services > My Applications >** Select "Advance Ruling" in the Application Type > select submission period in the **From Date** field and **To Date** field and click **SEARCH**. Click the ARN hyperlink you want to open.

Dashboard Services User Services My Applications

My Applications

Application Type* From Date: To Date: * indicates mandatory fields

ARN/RFN	Form No.	Form Description	Date of Filing	Status
AD240818000009B	GST ARA-01	ADVANCE RULING	09/08/2018	Pending For Order
AD240818000002P	GST ARA-01	ADVANCE RULING	02/06/2018	Rejected
AD240818000019E	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000023N	GST ARA-01	ADVANCE RULING	12/07/2018	Rectification Submitted
AD240618000013Q	GST ARA-01	ADVANCE RULING	14/06/2018	Rectification Submitted
AD240718000038C	GST ARA-01	ADVANCE RULING	13/07/2018	Rectification Submitted
AD240718000066C	GST ARA-01	ADVANCE RULING	18/07/2018	Rectification Submitted
AD2407180000112D	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000110S	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order
AD2407180000109B	GST ARA-01	ADVANCE RULING	31/07/2018	Pending For Order

< 1 2 3 4 5 6 7 8 >

2. On the **Case Details** page of that particular application, select the **ORDERS** tab. This tab displays all the Orders issued by AAR or AAAR against this case. Click **File Rectification** hyperlink to initiate your Rectification Application.

Dashboard Services User Services My Applications **Case Details**

ARN: AD2407180000112D GSTIN/VIN/Temporary ID: 24ABCN8147P126 Date of Application/Case Creation: 31/07/2018 Status: Referred by Authority

APPLICATIONS	Type of Order	Passed On	Passed By	Uploaded Order Annexure	Linked Rectification Order	Linked Appellate Order	Linked Void Order	ACTION
NOTICES								
REPLIES								
ORDERS	92 Advance ruling order	12/02/2021	General Authority for Advance Ruling	ARN_RECEIPT_GSTINFD-01_07ALYD6328P226_ENSCL (10).pdf	NA	Order Awaited	NA	File Appeal File Rectification
RECTIFICATION								
ADDITIONAL DOCUMENT								

Note: In case the difference between the date of the order and rectification application filed is more than 6 months, the information message will pop up asking for confirmation if you still want to file the Rectification Application as the period exceeds 6 months from the date of the order. In case, you select "YES", System will allow you to proceed with the application. In case, you select "NO", System will bring you back to the earlier screen.

3. **Rectification** application is displayed. Your details, Order Details, Details of JO are auto-populated. The remaining details must be filled manually. To go to the previous page, you can click **BACK**.

ARN AD2407180001120	GSTIN/UIN/Temporary ID 24AECPM8147P1Z6	Date Of Application/Case Creation 31/07/2018	Status Referred by Authority
-------------------------------	--	--	--

- APPLICATIONS
- NOTICES
- REFILES
- ORDERS**
- RECTIFICATION
- ADDITIONAL DOCUMENT

Application Type: **Rectification of Order**

* Indicates mandatory fields

Applicant Details

Legal Name PRAVINBHAI KALIDAS HISTRY	Status of the Applicant Registered
--	--

Order Details

Order Number ZA240818000067Q	Date of Communication of Order 12/08/2018
--	---

Details of Jurisdictional Officer

Application Filed For*

Name MUKESH DHANUBHAI KARSHALA	Designation Commercial Tax Officer	Email ID rohltash_singh@infosys.com
Address NA	Jurisdiction Details Ghatak 1 [Ahmedabad], Range - 1, Division - 1, Gujarat	

Details for Rectification of Order

Upload the Filled Template*
 No file chosen

[Download Template](#)

- 1 Click here to view the steps for converting the filled application Word template to PDF file format.
- 2 Only PDF file format is allowed.
- 3 Maximum file size for upload is 5MB.

Upload Supporting Documents

Enter Document Description

No file chosen

- 1 Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy during personal hearing.
- 2 Only PDF file format is allowed.
- 3 Maximum file size for upload is 5MB.

Verification *

I son/daughter/wife of do hereby solemnly declare that to the best of my knowledge and belief what is stated above and in the annexure(s), including the documents are correct. I am making this application in my capacity as (designation) and that I am competent to make this application and verify it.

Name of Authorized Signatory/ Applicant*

Place*

Designation / Status	Date
----------------------	------



4. Click **Download Template** to download and manually fill details of Rectification and then upload the converted PDF using **Choose File** button under **Details of Rectification of Order** field.
5. If required, you can also upload supporting documents. This is not a mandatory field. To upload, first fill **Enter Document Description** field and then click **Choose File** to upload them.
6. Enter **Verification** details and click **PREVIEW** to download and review your Reply. Once you are satisfied, click **PROCEED TO FILE**.
7. **Submit Application** page is displayed. Click **SUBMIT WITH DSC** or **SUBMIT WITH EVC**.

8. Acknowledgement page is displayed. Click **OK**.

Note: You will also receive an email and SMS confirming successful filing of Rectification, along with generated Rectification Reference Number.

9. GST System automatically directs you to the RECTIFICATIONS tab where the Rectification of Order you just filed will be displayed in a table. You can click hyperlinks in the Rectification No. and Order No. to download their related documents. Also, intimation for submission of rectification application is sent to the JO/CO through an email and alert will go to the AAR/AAAR.

Dashboard Services User Services My Applications Case Details

ARN: AD2407180001120 | GSTIN/UDN/Temporary ID: 24ABCPM8147P1Z6 | Date Of Application/Case Creation: 31/07/2018 | Status: Rectification Submitted

Rectification No.	Order No.	Filed By	Date of Rectification	Supporting Documents
ZA2408180000680	ZA240818000067Q	PRAVINEHAI KALIDAS MISTRY 24ABCPM8147P1Z6	12/08/2018	NA

10 25 50 100

Note: Rectification of Order can also be filed by CO/JO or AAR and AAAR.

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H. View Rectifications filed for Orders of an ARN

To view Rectifications you have filed, perform following steps:

1. On the **Case Details** page of that particular application, select the **RECTIFICATIONS** tab. This tab displays the Rectifications you or CO or JO or AAR or AAR have filed.

Dashboard Services User Services My Applications Case Details

ARN: AD240818000002P | GSTIN/UDN/Temporary ID: 24ABCPM8147P1Z6 | Date Of Application/Case Creation: 02/08/2018 | Status: Rejected

Rectification No.	Order No.	Filed By	Date of Rectification	Supporting Documents
ZA240818000026W	ZA2408180000216	MUKESH DHANIBHAI KARSHALA	09/08/2018	NA
ZA240818000029Q	ZA2408180000216	Firoz Abdulrazak Bhatkar	09/08/2018	NA

10 25 50 100

2. Click hyperlinks in the Rectification No. and Order No. to download their related documents.

Note: Once the Rectification Application is filed, following steps occur:

If Rectification is filed by a Taxpayer or CO/JO:

AAR/AAAR reviews the Application and can take the following actions:

- Issue "Rejection of Rectification Application" Order, with reasons for rejection:** If the AAR/AAAR is satisfied that the rectification is not required or the application is time barred, it will provide an opportunity of being heard and issue "Hearing Notice" for Acceptance/Rejection of Rectification Application to the Applicant and CO and/or JO, with date, place and time of hearing. Based on the hearing, it will pass the Order. Also, Status of the ARN is updated to "Rectification Rejected". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

ii. Proceed with Rectification:

- AAR/AAAR issues "Hearing Notice" for Disposal of Rectification Application. Its intimation is sent by a system-generated email to the Applicant and CO/JO, with date, place and time of hearing. AAAR can also issue an Adjournment Notice to the parties. Its intimation is also sent by a system-generated email to the Applicant and CO/JO, with details of new date, new place and new time of hearing.
- On the date of hearing, parties appear before the AAR/AAAR. AAR/AAAR after giving the persons concerned an opportunity of being heard can rectify the order. Status of the ARN is updated to "Application Disposed ". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

If Suo moto Rectification is done by AAR/AAAR:

CASE 1 - In case opportunity of being heard is required because the rectification has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit, following steps take place:

1. AAR/AAAR issues "Hearing Notice" along with the grounds of rectification. Its intimation is sent by a system-generated email to the Applicant and CO/JO, with date, place and time of hearing. AAR/AAAR can also issue an Adjournment Notice to the parties. It's intimation is also sent by a system-generated email to the Applicant and CO/JO, with details of new date, new place and new time of hearing.
2. On the date of hearing, parties appear before the AAR/AAAR. AAR/AAAR after giving the persons concerned an opportunity of being heard can rectify the order. Status of the ARN is updated to "Application Disposed". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

CASE 2 - In case opportunity of being heard is **not** required, AR/AAAR will rectify the order. Status of the ARN is updated to "Application Disposed". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer or AAR, if Order is rectified by AAAR) will be informed about such order through email.

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H. View Additional Documents

To view Additional Documents related to a case uploaded by AAR/AAAR, perform following steps:

1. On the **Case Details** page of that particular application, select the **ADDITIONAL DOCUMENT** tab. This tab displays the additional documents submitted physically by any party (i.e. Applicant or Jurisdictional Officer or Concerned Officer) during the hearing.

Dashboard Services User Services My Applications **Case Details**

ARN: AD240818000009B GSTIN/UIN/Temporary ID: 24ABCPM8147P126 Date Of Application/Case Creation: 09/08/2018 Status: Referred by Authority

APPLICATIONS
NOTICES
REPLIES
ORDERS
RECTIFICATION

ADDITIONAL DOCUMENT

Date of Hearing	Document Description	Document Submitted By	Download Document
09/08/2018	doc1	docA	01test (2).pdf
09/08/2018	doc1	jim	01test (1).pdf
10/08/2018	doc2	jim	01test (1).pdf

2. Click hyperlinks in the **Download Document** Column to download and view.

[Go back to the Main Menu](#)

FAQs > Filing an application (FORM GST ARA-01) for seeking Advance Ruling by Registered Taxpayers/Unregistered persons and Tracking or Taking Action in the Subsequent Proceedings

1. Who can apply for Advance Ruling?

An application for Advance Ruling can be filed by a registered taxpayers as well as an unregistered persons. However, in case of an unregistered user, the application can be filed after getting a temporary ID for Advance Ruling.

Click [here](#) to know more about how to create a Temporary ID for Advance Ruling.

2. On what matters we can file an application for Advance Ruling?

A registered person as well as any other person desirous of obtaining registration can apply for Advance Ruling on the following matters, as prescribed under the act with the prescribed fee.

- a) Classification of any goods or services or both;
- b) Applicability of a notification issued under the provisions of this Act;
- c) Determination of time and value of supply of goods or services or both;
- d) Admissibility of input tax credit of tax paid or deemed to have been paid;
- e) Determination of the liability to pay tax on any goods or services or both;
- f) Whether applicant is required to be registered;
- g) Whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

3. What are the pre-condition for applying the Advance Ruling by a registered taxpayer?

1. Applicant wants to obtain Advance Ruling in respect of any specified matter(s) from the Authority.
2. Registered applicant has obtained registration (GSTIN) on the GST portal.
3. Applicant has deposited fee amount in his Electronic Cash Ledger.

4. What is the process to apply for seeking Advance Ruling? OR What steps must be followed to seek hearing for Advance Ruling?

1. Applicant logs in to the GST Portal and navigate to **Services > User Services > My Applications** command..
2. Select the **Application Type** as Advance Ruling from the drop-down list and click the **NEW APPLICATION** button.
3. If there is no sufficient balance in Cash Ledger under Fee head and "Amount to be paid" is not nil, then click **Deposit in Cash Ledger** button to deposit the required amount in Cash Ledger. If taxpayer has sufficient balance in Cash Ledger under Fee head, click **CREATE APPLICATION FOR ADVANCE RULING**.
4. Fill the required details in the application form.
5. Click **Download Template** to download the template for Advance Ruling Application,
6. Update the template with required information.
7. Under **Details of Advance Ruling Application**, upload, click the Choose file button. Navigate and select the Filled template.
8. Under **Upload Supporting Documents**, enter Document Description and click the **Choose File** button. Navigate and select the Supporting Documents.
9. Under **Verification** Tab, enter the details.

10. Click **PREVIEW** to preview the Application before filing,
11. After filling the enrolment application, you need to digitally sign the application using Digital Signature Certificate (DSC)/ E-Signature or EVC.
12. Once the Verification is completed, fee amount will be auto debited from the cash ledger and ARN will be generated and status is changed to Filed.

5. Under which acts fee is to be paid for filing Advance Ruling Application by normal and OIDAR taxpayer?

- In case of Normal taxpayer, fees has to be paid for Advance Ruling Application under CGST and SGST heads. On selection of respective heads, fees amount will accordingly get reflected for making payment.
- In case of OIDAR taxpayer, fees has to be paid for Advance Ruling Application under IGST head. On selection of respective heads, fees amount will accordingly get reflected for making payment.

Note: The respective amount, to be paid, will be auto calculated based on selection of SGST/CGST/IGST heads, as the case may be.

6. On what basis should I select Nature of business activities?

Applicant need to select the nature of business activity(s) in which Advance Ruling is sought. Applicant can also select multiple nature of business activity(s) if required.

7. Can I provide the other supporting documents along with the application?

Yes, applicant can upload relevant supporting documents which he is required to submit along with the application form. However, he can upload only 4 documents with the maximum size of 5 MB each, the remaining documents can be handed over in hard copy. In case the Authority requires further documents, Applicant can provide the necessary documents at the time of Personal Hearing.

8. Can I track the status of my application for the Advance Ruling?

Yes, after successful submission of application, ARN will get generated along with Acknowledgement. Applicant can view the status from "My Applications" menu under "User Services" tab available on the dashboard, using the ARN and submission period.

Navigate to **Services > Payment > Track Payment Status** command to track the status of application for Advance Ruling.

9. How many types of Applications related to Advance Ruling can I file on the GST Portal?

A taxpayer can file following types of Applications related to Advance Ruling on the GST Portal:

- Application for seeking Advance Ruling from Authority for Advance Ruling (AAR).
- Application for Reply to the issued Notice
- Application of Appeal before the Appellate Authority for Advance Ruling (AAAR), with Application for Condonation of Delay in Filing Appeal if applicable
- Application of Rectification before the AAR or AAAR as per the case

10. How many types of Advance Ruling Proceedings are conducted by Tax Officials?

Based on the Applications that are filed, Advance Ruling Proceedings can be of following types:

- **Advance Ruling:** For Processing Application for seeking Advance Ruling from Authority for Advance Ruling (AAR)
- **Advance Ruling Appeals:** For Processing Application of Appeal before the Appellate Authority for Advance Ruling (AAAR)
- **Advance Ruling Reference:** For Processing Applications referred by AAR
- **Rectification Proceedings:** For Processing Applications for Rectifications of Orders issued by AAR or AAAR
- **Void Proceedings:** For Processing Disposed Applications, where it was found that the Applicant has obtained an Advance Ruling by fraud, or suppression of material facts or misrepresentation of facts.

11. What do I need to do after filing an Advance Ruling Application on the GST Portal?

Applicants, after filing an application, need to participate in the related proceedings and take necessary actions as intimated by AAR or AAAR.

On the GST Portal, for ease of all Applicants, details of each Application filed by the taxpayer is organized into the following six tabs in the Case Details Screen: APPLICATIONS, NOTICES, REPLIES, ORDERS, RECTIFICATION and ADDITIONAL DOCUMENT. Applicant can easily access these tabs of an Application to track all proceedings related to that particular application and take necessary actions.

12. What happens after the successful filing of an Application for seeking Advance Ruling?

Following actions take place on the GST Portal after successful filing of an Application for seeking Advance Ruling:

1. ARN gets generated along with Acknowledgement and is communicated to the Applicant through an email and SMS.
2. An email is sent to the Tax Officials—Concerned Officer (CO) and Jurisdictional Officer (JO)—informing them about receipt of application along with ARN and application date.
3. Applicant can navigate to **Dashboard > Services > User Services > My Applications** and search for the Application and open the Case Details Screen. Status of the ARN will be "Pending for Order"
4. The Application will land in the queue of Authority for Advance Ruling (AAR) under Application Inbox and the following Advance Ruling Proceedings will take place.
5. AAR examines the relevant records and information obtained from the CO and/or JO and hears the applicant/the authorized representative of the applicant as well as the CO/JO or his/her authorized representative.
6. AAR reviews the Application and issues "Hearing Notice" for Admission/Rejection of Advance Ruling Application to the Applicant and CO and/or JO, with date, place and time of hearing.
7. Applicant and CO and/or JO can also submit their Replies, if required, on the GST Portal and appear on the date of Hearing.
8. On the date of hearing, parties appear before the AAR. AAR can also issue an Adjournment Notice to the parties with details of new date, new place and new time of hearing.
9. After hearing the parties and examining the application and records received during Personal Hearing, if any, AAR shall issue an order either admitting or rejecting the application.

13. What actions take place on the GST Portal if AAR rejects a Submitted Application for seeking Advance Ruling?

If AAR rejects a submitted Application for seeking Advance Ruling, following actions take place on the GST Portal:

- Status of the ARN is changed from "Submitted" to "Rejected"
- Email and SMS is sent to the Applicant, CO and JO intimating them of application rejection

14. What actions take place on the GST Portal if AAR admits a Submitted Application for seeking Advance Ruling?

If AAR admits a submitted Application for seeking Advance Ruling, following actions take place on the GST Portal:

- Status of the ARN is changed from "Submitted" to "Admitted"
- Email and SMS is sent to the Applicant, CO and JO intimating them of application admission

15. What actions can I take if AAR rejects my Application for seeking Advance Ruling?

Once AAR rejects an Application for seeking Advance Ruling, the Applicant can file an application for Rectification using "File Rectification" link on the ORDERS tab.

16. Can I file an Appeal on the GST Portal if AAR rejects my Application for seeking Advance Ruling?

No, you cannot file an appeal on the GST Portal if AAR rejects your Application for seeking Advance Ruling.

17. What are the steps involved in Processing of an Admitted Application for seeking Advance Ruling?

Once the AAR issues an order admitting the Application for seeking Advance Ruling, following steps take place:

1. AAR issues "Hearing Notice" for Disposal of Advance Ruling Application to the Applicant and CO and/or JO, with details of date, place and time of hearing. Status of the ARN is changed from "Admitted" to "Pending For Order".
2. Applicant and CO and/or JO can also submit their Replies/Counter-replies, if required, on the GST Portal and appear on the date of Hearing.
3. On the date of hearing, parties appear before the authority. AAR can also issue an Adjournment Notice to the parties with details of new date, new place and new time of hearing.
4. After hearing the parties and examining the application and records received during Personal Hearing, if any, AAR can take following actions
 - a. In case of concurrence, AAR shall issue order disposing the Advance Ruling Application. Status of the ARN is changed from "Pending For Order" to "Disposed by Authority".
 - b. In case of difference of Opinion among the AAR Members, AAR shall refer the case to AAAR. AAR can make partial reference or complete reference. Partial reference is made if there is partial difference of opinion among the AAR Members. In this case, both Order and Reference is made. Order is passed in regards of concurrent points and Reference is made to AAAR on non-concurrent points. In both the cases, Status of the ARN is changed from "Disposed by Authority" to "Referred by Authority".
5. AAAR reviews the Reference made and issues "Hearing Notice" for Disposal of Advance Ruling Application to the Applicant and CO and/or JO, with date, place and time of hearing.
6. Applicant and CO and/or JO can also submit their Replies/Counter-replies, if required, on the GST Portal and appear on the date of Hearing.
7. On the date of hearing, parties appear before the authority. AAAR can also issue an Adjournment Notice to the parties with details of new date, new place and new time of hearing.
8. After hearing the parties and examining the application and records received during Personal Hearing, if any, AAAR can take following actions:
 - **Issue "Appeal Order (Confirming Advance Ruling)":** Intimation of the Order is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Disposed by

Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.

- **Issue "Appeal Order (Modifying Advance Ruling)":** Intimation of the Order is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Disposed by Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.

18. What actions take place on the GST Portal once AAAR disposes my Application (referred by AAR) for seeking Advance Ruling?

Once AAAR disposes the Application for seeking Advance Ruling, following actions take place on the GST Portal:

- Status of the ARN is changed from "Referred by Authority" to "Disposed by Appellate Authority".
- Email is sent to the Applicant, Concerned Officer (CO) and Jurisdictional Officer (JO) intimating them of application disposal.

19. What actions can I take once AAAR disposes my Application (referred by AAR) for seeking Advance Ruling?

Once AAAR disposes the Application for seeking Advance Ruling, the Applicant can file an application for Rectification (if the nature of order is such that it requires rectification) using "File Rectification" link on the ORDERS tab.

20. What is Rectification of an Order?

Rectification of an Order is correcting mistake(s) in the order passed under Section 98 or 101 respectively by the AAR or AAAR.

- In case the mistake(s) is apparent from the record, the AAR or AAAR can themselves pass a Suo Moto rectification order for rectifying such mistake(s).
- In case, mistake(s) is brought to its notice by the CO/JO/Taxpayer within a period of six months from the date of the order, the AAR or AAAR can pass a rectification order for rectifying such mistake.

Note: If the rectification has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit, the AAR/AAAR shall make the rectification only after giving a notice and a reasonable opportunity of being heard to the Applicant.

21. From where can I file application for Rectification of an Order?

Once AAR/AAAR disposes an Application related to Advance Ruling, the Applicant can file an application for Rectification using "File Rectification" link on the ORDERS tab.

22. Will the system allow me to file Rectification even after 6 months of the issue of that Order?

In case the difference between the date of the order and rectification application filed is more than 6 months, the information message will pop up asking for confirmation if you still want to file the Rectification Application as the period exceeds 6 months from the date of the order. In case, you select "YES", System will allow you to proceed with the application. In case, you select "NO", System will bring you back to the earlier screen.

23. What actions take place on the GST Portal once I file Rectification of an Order?

Once you file Rectification of an Order, following actions take place on the GST Portal:

- Status of the ARN is updated to "Rectification Submitted"
- Rectification Reference Number is communicated to the applicant through an email and SMS. Also, intimation for submission of rectification application is sent to the JO/CO through an email and alert will go to the AAR/AAAR.

24. What are the steps involved in Processing of an Application for Rectification of Advance Ruling?

Following steps are involved in Processing of an Application for Rectification of Advance Ruling:

If Rectification is filed by a Taxpayer or CO/JO:

AAR/AAAR reviews the Application and can take the following actions:

i. **Issue "Rejection of Rectification Application" Order, with reasons for rejection:** If the AAR/AAAR is satisfied that the rectification is not required or the application is time barred, it will provide an opportunity of being heard and issue "Hearing Notice" for Acceptance/Rejection of Rectification Application to the Applicant and CO and/or JO, with date, place and time of hearing. Based on the hearing, it will pass the Order. Also, Status of the ARN is updated to "Rectification Rejected". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

ii. Proceed with Rectification:

- AAR/AAAR issues "Hearing Notice" for Disposal of Rectification Application. Its intimation is sent by a system-generated email to the Applicant and CO/JO, with date, place and time of hearing. AAAR can also issue an Adjournment Notice to the parties. Its intimation is also sent by a system-generated email to the Applicant and CO/JO, with details of new date, new place and new time of hearing.
- On the date of hearing, parties appear before the AAR/AAAR. AAR/AAAR after giving the persons concerned an opportunity of being heard can rectify the order. Status of the ARN is updated to "Application Disposed ". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

If Suo moto Rectification is done by AAR/AAAR:

CASE 1 - In case opportunity of being heard is required because the rectification has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit, following steps take place:

1. AAR/AAAR issues "Hearing Notice" along with the grounds of rectification. Its intimation is sent by a system-generated email to the Applicant and CO/JO, with date, place and time of hearing. AAR/AAAR can also issue an Adjournment Notice to the parties. Its intimation is also sent by a system-generated email to the Applicant and CO/JO, with details of new date, new place and new time of hearing.
2. On the date of hearing, parties appear before the AAR/AAAR. AAR/AAAR after giving the persons concerned an opportunity of being heard can rectify the order. Status of the ARN is updated to "Application Disposed". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer) will be informed about such order through email.

CASE 2 - In case opportunity of being heard is **not** required, AR/AAAR will rectify the order. Status of the ARN is updated to "Application Disposed". The parties (i.e. the applicant and the jurisdictional officer and/or concerned officer or AAR, if Order is rectified by AAAR) will be informed about such order through email.

25. Once AAR/AAAR initiates Rectification proceedings or CO/JO files Application for Rectification of Order, will I receive its auto-intimation?

Yes, once AAR/AAAR initiates Rectification proceedings or CO/JO files Application for Rectification of Order, GST portal will automatically send you an email informing about receipt of the application of Rectification of Order or Suo moto initiation of Rectification along with Rectification Reference Number and application date.

26. How many Applications of Rectifications of Order can I file?

Application for rectification of the order can be filed multiple times.

27. Once CO/JO files a Counter Reply, will I receive its auto-intimation?

Yes, once CO/JO files a Counter Reply, GST portal will automatically send you an email informing about receipt of the Counter Reply, along with Reply Reference Number and Reply date.

28. Can I submit more than one Reply to a Notice?

No, you cannot submit more than one Reply to a Notice. Once the reply is submitted, the Reply link in the NOTICES tab will get disabled. In case you want to modify your reply or submit any additional documents, you can do so during Personal Hearing and submit the hardcopy of the documents. These additional documents will be uploaded by the tax official on the GST Portal.

29. What actions take place on the GST Portal once I file a Reply?

Once you file a reply, following actions take place on the GST Portal:

- REPLIES tab is automatically updated with a table containing details of the reply.
- A Reference Number is generated and is sent to you through an email. Also, intimation for submission of the reply is sent to the Jurisdictional Officer / Concerned Officer through an email.

30. Is there a limit on Adjournments, during Processing of all Applications related to Advance Ruling?

There is no limit on Adjournments. Hearing can be adjourned any no. of times.

31. Can I file an Appeal against the Advance Ruling Order passed by AAR, in case of Partial reference?

Yes, in case of Partial reference also, Appeal can be filed against the Advance Ruling Order passed by Authority for Advance Ruling.

32. Do I need to deposit any fee to file an Appeal against the Advance Ruling Order passed by AAR?

Yes, you need to deposit the applicable fee to file an Appeal against the Advance Ruling Order passed by AAR. The applicable fee will be displayed on the New Application page once you initiate filing of Appeal against Advance Ruling. Without depositing the required fee you won't be able to proceed further and file appeal.

33. I am filing an Appeal on 01/04/2018 against the Advance Ruling Order passed by AAR on 01/03/2018. Do I need to need to attach the Details of Condonation of Delay (COD) along with the Appeal Application?

Yes, you need to attach the Details of Condonation of Delay (COD) along with the Appeal Application. This is because the number of days delay in filing Appeal is calculated after expiry of 30 days and in your case the number of days delay in filing Appeal is '1'. This will be displayed in **No. of days delay in filing appeal** field of the **Advance Ruling Appeal Application** screen when you initiate filing of appeal.

34. What are the types of Orders that can be issued against the filed Applications related to Advance Ruling?

Following types of Orders that can be issued against the filed Applications related to Advance Ruling:

Orders issued by AAR:

- Declaring Advance Ruling Void
- Dropping Void Proceedings
- Admission of Advance Ruling Application
- Rejection of Advance Ruling Application
- Advance Ruling Order
- Rectification of Order
- Rejection of Rectification Application

Orders issued by AAAR:

- Declaring Advance Ruling Void
- Dropping Void Proceedings
- Acceptance of Condonation of Delay
- Rejection of Condonation of Delay
- Appeal Order (Confirming Advance Ruling)
- Appeal Order (Modifying Advance Ruling)
- Rectification of Order
- Rejection of Rectification Application

35. Against which all Orders issued by AAR can I file an Appeal?

You can file an Appeal against the Advance Ruling Order and Rectification Order (in case the Advance Ruling Order is rectified) issued by AAR.

36. What actions take place once I file an Appeal against the Advance Ruling Order passed by AAR?

Following actions take place on the GST Portal after successful filing of an Appeal Application against the Advance Ruling Order passed by AAR:

1. ARN gets generated along with Acknowledgement and is communicated to the Appellant through an email and SMS.
2. An email is sent to the Concerned officer and Jurisdictional Officer informing them about receipt of application along with ARN and application date.
3. Appellant can navigate to **Dashboard > Services > User Services > My Applications** and search for the Application and open the Case Details Screen. Status of the ARN will be "Pending for Order"
4. The application will land in the AAAR's queue under Application inbox and will be available to Registrar, Authority Members and Steno and Appeal Proceedings will follow.

37. What actions take place once Concerned Officer or Jurisdictional Officer files an Appeal against the Advance Ruling Order passed by AAR?

Following actions take place on the GST Portal after successful filing of an Appeal Application against the Advance Ruling Order passed by AAR:

- ARN gets generated along with Acknowledgement and is communicated to the Appellant through an email and SMS.
- An email is sent to the Taxpayer informing him/her about receipt of application along with ARN and application date. He/she can navigate to **Dashboard > Services > User Services > My Applications** and search for the Application and open the Case Details Screen. Status of the ARN will be "Pending for Order".
- The application will land in the AAAR's queue under Application inbox and will be available to all tax officials and Appeal Proceedings will follow.

38. Once I file an Appeal against the Advance Ruling Order passed by AAR, to whom all GST Portal will send its auto-intimation?

Once you file an Appeal against the Advance Ruling Order passed by AAR, GST portal will automatically send an acknowledgement email and SMS to the Appellant and email intimation to the jurisdictional officer and Concerned Officer informing about receipt of appeal application along with ARN and application date.

39. Once CO/JO files an Appeal against the Advance Ruling Order passed by AAR, will I receive its auto-intimation?

Yes, once CO/JO files an Appeal against the Advance Ruling Order passed by AAR, GST portal will automatically send you an email informing about receipt of appeal application along with ARN and application date.

40. Can I file an Appeal against the Advance Ruling Order after 60 days without COD?

Yes, Appeal can be filed even after 30 days and up to 60 days (even without COD) or even after 60 days from the date of communication of the order appeal against. In case of delay, please attach the Application for COD in "Upload Supporting Document" section of the Appeal Application.

41. Can I file an Appeal against the Advance Ruling Order which is modified or issued by AAAR (in case of Reference)?

No, you cannot file an Appeal against the Advance Ruling Order which is modified or issued by AAAR (in case of Reference)

42. What are the steps involved in Processing of an Appeal Application against Advance Ruling?

Following are the key-steps of the Proceedings related to an Appeal Application:

If COD is required:

- AAAR reviews the COD Application and issues "Hearing Notice" for Admission/Rejection of Condonation of Delay. Its intimation is sent by a system-generated email to the Appellant and Respondents, with date, place and time of hearing.
- On the date of hearing, parties appear before the authority. AAAR can also issue an Adjournment Notice to the parties with details of new date, new place and new time of hearing.
- After hearing the parties and examining the application and records received during Personal Hearing, if any, AAAR can take following actions:

(i) **Issue "Acceptance of Condonation of Delay" Order** if AAAR is satisfied that the Appellant was prevented by sufficient cause to present the appeal within 30 days from the date of the communication of the order of the AAR. Also, he/she may allow appeal for a further period of 30 days and condone the delay upto a period of 30 days. In this case, its intimation is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Admitted".

(ii) **Issue "Rejection of Condonation of Delay" Order** if AAAR is not satisfied that the Appellant was prevented by sufficient cause to present the appeal within 30 days from the date of the communication of the order of the AAR or the delay period is more than 30 days. In this case, its intimation is sent by a system-generated email to the Appellant and Respondents and the Status of the ARN is changed from "Pending For Order" to "Rejected".

If COD is not required or if COD is condoned and Appeal is admitted:

- AAAR reviews the Appeal and issues "Hearing Notice" for Disposal of Advance Ruling Appeal Application. Its intimation is sent by a system-generated email to the Appellant and Respondents, with date, place and time of hearing.
- If required, Respondents can submit their Counter-replies on the GST Portal. System will send an intimation regarding the submission of counter reply by respondent to the appellant through an email.
- On the date of hearing, parties appear before the authority. AAAR can also issue an Adjournment Notice to the parties. Its intimation is sent by a system-generated email to the Appellant and Respondents, with details of new date, new place and new time of hearing.
- After hearing the parties and examining the application and records received during Personal Hearing, if any, AAAR can take following actions:
- Issue "Appeal Order (Confirming Advance Ruling)". Intimation of the Order is sent by a system-generated email to the Appellant, Respondents and AAAR and the Status of the ARN is changed from "Pending For Order" to "Disposed by Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.
- Issue "Appeal Order (Modifying Advance Ruling)". Intimation of the Order is sent by a system-generated email to the Appellant, Respondents and AAAR and the Status of the ARN is changed from "Pending For Order" to "Disposed by Appellate Authority". If there is difference of Opinion among the AAAR Members on any point, AAAR will mention in the order that no advance ruling can be pronounced in respect of such point or points.

43. I have filed an Application related to Advance Ruling. By when can I expect the Order from the concerned Authority?

AAR or AAAR, as the case may be shall pass the order within <<90>> days from the date of filing of any application related to Advance Ruling.

44. What is Void Proceedings?

Void Proceedings are conducted on Disposed Applications, where it is found that the Applicant has obtained an Advance Ruling by fraud, or suppression of material facts or misrepresentation of facts. In such a case, the AAR/AAAR can declare such ruling to be void *ab initio*. However, before declaring any order to be void the AAR/AAAR shall give an opportunity of being heard to the Applicant.

45. Who can initiate Void Proceedings against an Applicant?

Only AAR/AAAR members can initiate Void Proceedings

46. What are the steps involved in Void Proceedings?

Steps involved in Void Proceedings are

- AAR/AAAR issues "Hearing Notice" for declaring advance ruling order void. Its intimation is sent by a system-generated email to the Applicant and CO/JO, with date, place and time of hearing. AAR/AAAR can also issue an Adjournment Notice to the parties. Its intimation is also sent by a system-generated email to the Applicant and CO/JO, with details of new date, new place and new time of hearing.
- On the date of hearing, parties appear before the AAR/AAAR.
- After hearing the parties and examining the application and records received during Personal Hearing, if any, AAR/AAAR can take following actions:
 - i. Issue "Advance Ruling Declared Void" Order. In this case, it's intimation is sent by a system-generated email to the Applicant and CO/JO and AAR (if Order is passed by AAR) and the Status of the ARN is updated to "Order issued"
 - ii. Issue "Void Proceedings Dropped" Order. In this case, it's intimation is sent by a system-generated email to the Applicant and CO/JO and AAR (if Order is passed by AAR) and the Status of the ARN is updated to "Order issued".

47. What are the types of Notices that can be issued against the filed Applications related to Advance Ruling?

Following types of Notices can be issued against the filed Applications related to Advance Ruling:

Notices issued by AAR:

- Notice of Personal Hearing for Admitting or Rejecting Filed Application seeking Advance Ruling
- Notice of Personal Hearing in respect of rectification application
- Notice of Personal Hearing in respect of Suo Moto rectification
- Notice of Personal Hearing in respect of declaring advance ruling order void
- Notice of Adjournment

Notices issued by AAAR:

- Notice of Personal Hearing for Admitting or Rejecting Appeals
- Notice of Personal Hearing in respect of in respect of reference application
- Notice of Personal Hearing in respect of rectification application
- Notice of Personal Hearing in respect of Suo Moto rectification
- Notice of Personal Hearing in respect of declaring advance ruling order void
- Notice of Adjournment

48. From where can I retrieve the saved advance ruling application?

You can retrieve the saved advance ruling application by navigating to **Services > User Services > My Saved Applications**. Saved application will get automatically purged by the system after 15 days of first time save.

49. What details are covered in Orders tab?

Orders tab displays all the Orders issued by AAR or AAAR against the case. You can click **File Appeal** hyperlink to initiate your Appeal Application. You can file an Appeal against only the Advance Ruling Order issued by AAR.

- In the column "Linked Rectification Order", Order number of Rectification Order passed against this Order, if any, is displayed. If Rectification application is filed against this Order (Advance Ruling Order, Rectification Order, Void Order, Rejection of Rectification Order, Appeal Order (Confirming Advance Ruling) etc.), but no Rectification Order has yet been issued, then "Order Awaited" status is displayed. If there is no Rectification application filed against this Order, then NA will be displayed. "Linked Rectification Order" column can be any type of Rectification Order i.e. "Rectification Order" or "Rejection of Rectification Application".

- In the column “Linked Appellate Order”, Order number passed by the Appellate Authority for Advance Ruling, if any is displayed (if an appeal was filed against Advance Ruling Order). If Appeal is filed against the Advance ruling Order passed by AAR, then any one of the following types of Appellate Orders, will be displayed against this AR Order – Appeal Order (Confirming Advance Ruling) or Appeal Order (Modifying Advance Ruling) or Rejection of Condonation of Delay. If Appeal was filed against this Order, but no Appeal Order has yet been issued, then "Order Awaited" status is displayed. If Appeal has not been filed against this Order and there is no Appeal Order passed against this Advance Ruling Order, then NA will be displayed.
- In the “Linked Void Order” column, Void Order issued by the Authority / Appellate Authority against the Advance Ruling Order, if any, is displayed. If Void Proceedings were initiated, but no Order has yet been issued, then “Order Awaited” status is displayed. If Void Proceedings are not initiated against any Advance Ruling Order, then NA will be displayed. There can be two types of Void Order - “Order Declaring Advance Ruling Void” or “Order Dropping Void Proceedings”. Void Order can be issued against - Advance Ruling Order, Rectification Order (when Advance Ruling order is rectified), Appeal Order (Modifying Advance Ruling), and Appeal Order (Confirming Advance Ruling).
- You can click the Order No. displayed in the respective columns to download the Order as PDF.

**GUJARAT AUTHORITY FOR ADVANCE RULING
GOODS AND SERVICES TAX
D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,
AHMEDABAD – 380 009.**



ADVANCE RULING NO. GUJ/GAAR/R/2023/14
(IN APPLICATION NO. Advance Ruling/SGST&CGST/2022/AR/54)

Date: - 31.03.2023

Name and address of the applicant	:	M/s. Cadila Pharmaceuticals Ltd, Plot No. 1389, Trasad Road, Dholka, Ahmedabad, Gujarat - 382225.
GSTIN of the applicant	:	24AAACC6251E1Z5
Date of application	:	15.11.2022
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(c)(d)(e)(g)
Date of Personal Hearing	:	09.02.2023
Present for the applicant	:	Mitesh Jain (C.A.), Mihir Patel

Brief facts:

M/s. Cadila Pharmaceuticals Ltd, Plot No. 1389, Trasad Road, Dholka, Ahmedabad, Gujarat 382 225 [for short –‘applicant’] is registered under GST and their GSTIN is 24AAACC6251E1Z5.

2. The applicant is engaged in the business of manufacture, supply and distribution of various pharmaceutical products. The applicant has employed around 2745 full time permanent employees in their factory and corporate office. They are also registered under the Factories Act, 1948.

3. The applicant provides canteen facility to its employees at the factory and its corporate office. The reasons provided by the applicant for providing the aforementioned facility is that in terms of section 46 of the Factories Act, 1948, they are mandated to provide and maintain canteen for the use of its employees.

4. Since the factory premises is located far away from the city limits, the applicant provides canteen facility by appointing a canteen service provider [for short - **CSP**]. The employees are issued an ID card while joining which can be used to avail this canteen facility. They are charged only for the days on which an employee has punched his ID card and a pre-determined percentage is deducted



from the salary payable to the respective employee. The facility is tabulated below for ease of reference:

Sr. No.	Type of employee	Mode of availing facility	Basis of recovery	Mode of recovery	Book treatment	ITC availment	GST payment
1	Full time employees [at factory and corporate office].	ID card or biometric.	Based on consumption	Subsidized value	Amount deducted from employee is credited to canteen expense account. Amount charged by CSP is booked as an expense in P&L A/c.	No ITC is being availed	GST is paid @ 5% on the basis of no. of punches in the system on the value charged by the CSP.

5. The applicant has further set up the canteen facility in a demarcated area within its factory premises & also at their corporate office. The scope of work agreement [SOW], depicting the responsibilities of the applicant vis-à-vis that of the CSP is as under:

Responsibility of the Applicant	Responsibility of the CSP
<ol style="list-style-type: none"> 1. Provide suitable premises for kitchen to prepare food. 2. Provide utensils and other equipments necessary for preparing food. 3. Make available power, water and infrastructure facility. 4. Provide vehicle for pick up of food & sending empty vessels back to the kitchen. 5. Arrange for pest control on regular basis. 	<ol style="list-style-type: none"> 1. Regularly preparing and serving breakfast, lunch and dinner. 2. Fortnightly prepare and fix menu. 3. Maintain food safety, hygiene & cleanliness. 4. Selecting appropriate staff for maintaining the kitchen and providing food. 5. Maintain proper record of receipt, issues, consumption, stock, etc. 6. Follow proper procedure, system, parameter.

6. It is the applicant's contention that since it is practically not possible to enter into a contractual agreement with every employee, the CSP has entered into an agreement with the applicant; that the applicant shall be paying full to the CSP in respect of goods served during the prescribed period on behalf of the employees; that a portion of the said amount is recovered from the employees and the remaining part is borne by the applicant; that the amount so borne by the applicant is treated as *staff welfare expenses* towards subsidized food served to employees.

7. Presently the applicant is liable to pay CSP who raises invoices with GST @ 5%; that the applicant does not avail input tax credit [ITC] on the GST component paid.

8. The appellant has further contended as follows:



No GST on canteen facility

- the amount recovered from salary of the employees for providing subsidized canteen facility cannot be considered as supply;
- merely setting up a canteen facility for employees and deducting nominal cost would not tantamount to supply u/s 7 of the CGST Act;
- that to levy tax the activity is required to qualify as supply in the first place;
- that the term supply includes all forms of supply of goods & services & includes agreeing to supply when the supply is for a consideration and is in the course or furtherance of business;
- that provision of canteen facility to employees is mandatory in terms of the Factories Act;
- that the applicant merely provides a demarcated space ;
- that the supply is by the CSP to the employees & not from the CSP to the applicant;
- that no GST is to be levied on the third party canteen charges collected by employer from employee;
- that they wish to rely on the below mentioned case laws/rulings

- [a] Amneal Pharmaceuticals P Ltd [TS-569-AAAR (Guj)-2021-GST]
- [b] Troika Pharmaceuticals Ltd [Advance Ruling no. Guj/GAAR/R/22/38]
- [c] Cadila Healthcare [Advance Ruling Guj/GAAR/R/22/19]
- [d] Dishman Carbogen Amcis Ltd [Advance Ruling Guj/GAAR/R/22/2021]
- [e] Dakshina Kannada Coop Milk Producers Union Ltd [2021 (8) TMI 352]
- [f] R J Tolsma vs Inspecteur der Omzetbelasting Leewarden (C-16/93 (judgement of sixth Court, sixth chamber)
- [g] Bai Mumbai Trust [Commercial suit (I) MP/ 236/2017]
- [h] IIT [1976(38) STC 428 (All);
- [i] University of Delhi [AIR 1963 SC 1873]
- [j] Cricket Club of India [AIR 1969 SC 276]
- [k] TATA Motors Ltd [GST-ARA-23/2019-20/B-46]
- [l] TATA Power Company Ltd [GST-ARA-99/2019-20/B-92]
- [m] Posco India Pune Processing Centre P Ltd [GST-ARA 36/18-19/B-110]
- [n] Jotun India P Ltd [2019 (10) TMI 482]
- [o] Troikaa Pharmaceuticals Ltd [Guj/GAAR/R/2022/38]
- [p] Hindustan Coca Cola Beverages P Ltd [2014-TIOL-2460-CESTAT-Mum]

- that there was no intention on the part of the applicant to contract with its employees with respect to the service of food and beverages in its canteen premises; that this basic requirement of qualifying as a supply is not satisfied;
- that there must be a legal intention to enter into a contractual relationship with its recipient which casts roles and responsibility on each of the contractual party to fall within the ambit of supply under GST;
- that in terms of section 7, *ibid*, an activity can be considered as supply only if it is made or agreed to be made for a consideration; that consideration is defined u/s 2(31) *ibid*;
- that supply must involve enforceable reciprocal obligations; that a receipt of payment without an agreement, cannot be linked to a supply for the purpose of levying GST; similarly deduction in employees salary is only a transaction in money between applicant and its employees;
- that the activity of provision of canteen facility, does not fall within the ambit of business; that it is termed as an expense and therefore the activity of setting up canteen facility & subsequent deduction of nominal value would not tantamount to supply u/s 7 *ibid*;
- that there is no independent contract with the employee for setting up canteen facility; that the canteen facility has been set up on account of a legal obligation; that it is only to their employees and in the course of employment relationship; that in terms of Schedule III and press release dated 10.7.2017, supply by employer to employee in terms of contractual agreement entered into between the employer and the employee, is not subject to GST;
- that even in terms of the circular dated 6.7.2022, prerequisites provided by employer to employee, as per contractual agreement is not subject to GST;



ITC of the GST paid by the applicant to CSP

- the proviso to section 17(5)(b) *ibid*, ITC in respect of such goods or services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force;
- that in terms of Troikaa Pharmaceuticals Ltd [Guj/GAAR/R/2022/38] and Hindustan Coca Cola Beverages P Ltd [2014-TIOL-2460-CESTAT-Mum] there is no doubt that a taxpayer is allowed to avail ITC on procurement of food & beverages when the same is made under any existing and enforceable law; that the provision of canteen facility is not made out of the free will of the applicant & is provided solely on account of a statutory obligation case on the applicant.

9. The applicant has filed this application for advance ruling to ascertain the GST implication on the existing arrangement of canteen facility being provided to all the employees at the factory and the corporate office of the applicant. Vide the aforesaid application, the applicant has raised the following question for advance ruling *viz*

- (i) Whether the subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017?
- (ii) If yes, whether GST is applicable on the amount deducted from the salaries of its employees?
- (iii) If yes, on what portion GST will be applicable *ie* amount paid by the applicant to the canteen service provider or only on the amount recovered from the employees?
- (iv) Whether ITC of GST charged by the canteen service provider would be eligible for availment to the applicant?

10. Personal hearing was granted on 9.2.2023 wherein Shri Mitesh Jain and Shri Mihir Patel appeared and reiterated the facts as stated in the application. They further stated that they would be providing copies of relevant contracts to substantiate their plea. Thereafter, vide their letter dated 28.2.2023, the applicant has provided copy of contract with CSP and copy of the agreement or policy document for cafeteria/canteen service to employees [only one page].

11. Assistant Commissioner, CGST, Division V, Ahmedabad North, vide their letter dated 6.2.2023, has relying on Sections 7 and 16 of the CGST Act, 2017, stated that the issue raised should be viewed in light of the various ruling & facts & circumstances submitted by the applicant and has requested that it may be decided on merits.

Discussion and findings

12. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions,



reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

13. We have considered the submissions made by the Applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

14. Before adverting to the submissions made by the applicant, we would like to reproduce the relevant provisions/circular for ease of reference:

• **Section 7. Scope of supply.-**

(1) For the purposes of this Act, the expression –

"supply" includes-

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

¹[(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation -For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or furtherance of business; ²[and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[****]

(d) ⁴[****].

⁵[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of ⁶[sub-sections (1), (1A) and (2)], the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as -

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.



• **Section 17. Apportionment of credit and blocked credits.- [relevant extracts]**

5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

²[(a);

(aa).....;

(ab);

(b) ³[the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

• **CBIC's press release dated 10.7.2017**

Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

• Circular No. 172/04/2022-GST

S. No.	Issue	Clarification
3.	Whether the proviso at the end of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the entire clause (b) or the said proviso is applicable only to sub-clause (iii) of	1. Vide the Central Goods and Service Tax (Amendment Act) 2018, clause (b) of sub-section (5) of section 17 of the CGST Act was substituted with effect from 01.02.2019. After the said substitution, the proviso after sub clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act provides as under: "Provided that the input tax credit in respect of



	<p>clause (b)?</p>	<p>such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”</p> <p>2. The said amendment in sub-section (5) of section 17 of the CGST Act was made based on the recommendations of GST Council in its 28th meeting. The intent of the said amendment in subsection (5) of section 17, as recommended by the GST Council in its 28th meeting, was made known to the trade and industry through the Press Note on Recommendations made during the 28th meeting of the GST Council, dated 21.07.2018. It had been clarified “that scope of input tax credit is being widened, and it would now be made available in respect of Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.”</p> <p>3. Accordingly, it is clarified that the proviso after sub-clause (iii) of clause (b) of sub-section (5) of section 17 of the CGST Act is applicable to the whole of clause (b) of sub-section (5) of section 17 of the CGST Act.</p>
5	<p>Whether various prerequisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?</p>	<p>1. Schedule III to the CGST Act provides that “services by employee to the employer in the course of or in relation to his employment” will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.</p> <p>2. Any prerequisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows there from that prerequisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.</p>

Factory

15. The facts having been enumerated *supra* we do not intent to repeat the same for the sake of brevity.



16. The first issue to be decided is whether the subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017. Now, in terms of Section 7 of the CGST Act, 2017, supply means all forms of 'supply' of goods/services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. The exception being Schedule I, which includes the activities made or agreed to be made without a consideration and Schedule III, which includes activities which shall be treated neither as a supply of goods or services. The applicant's case is that they employ 2745 persons who are full time employees and who have been provided with canteen facility in terms of section 46 of the Factories Act, 1948. We find that the applicant is paying GST @ 5% in terms of the invoices raised by the CSP. The applicants primary role is that he provides a demarcated space and that the amount is paid by him to the CSP [a part of which is collected from the employees] on behalf of the employees for administrative convenience. As is already mentioned, the applicant's contribution is treated as staff welfare expenses in his books of accounts.

17. Now in terms of Circular No. 172/04/2022-GST, it is clarified that perquisites provided by the 'employer' to the 'employee' in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. We find that factually there is no dispute as far as [a] the canteen facility is provided by the applicant as mandated in Section 46 of the Factories Act, 1948 is concerned; and [b] the applicant has provided [one page] a copy of the agreement for cafeteria /canteen services to employees wherein in terms of Para 14.3, it is stated as follows:

"Policy

In corporate and plant locations, Cadila provides employees multiple options on the variety of food served. There are snacks, mini-meals as well as regular balanced meals that are served. Meals and snacks are provided on a cost sharing basis while business meetings are borne by the Company.

Type of Food /Drink	Timings		Location
Meals	Breakfast	8.00 am to 9.00 am	Corporate /Plant
	Lunch	12.30 pm to 1.30	



	Evening snacks Dinner	pm 6.30 pm to 7.00 pm 8.00 pm to 9.00 pm	
Business Meeting Refreshments	Tea and Cookies available on request		All meeting rooms

In view of the foregoing, we hold that the subsidized deduction made by the applicant from the employees who are availing food in the factory would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017.

18. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

Corporate Office

19. We find that the appellant has sought a ruling for canteen services provided at his Corporate Office also. Before adverting to the contention we would like to reproduce the relevant sections of the Factories Act, 1948 viz

(m) "factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—

but does not include a mine subject to the operation of 5 [the Mines Act, 1952 (35 of 1952)], or 6 [a mobile mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place].

On going through the website of the applicant <https://www.cadilapharma.com>, the Corporate Office of the applicant is situated at Sarkhej-Dholka Road, Bhat, Ahmedabad, India, 382210. The factory of the applicant is located at Ankleshwar, Dholka, Kadi. The corporate office of the applicant is not located within the precincts of the factory. However, the corporate office would fall within the ambit of the term 'establishment' as defined under section 2(c) of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019, which states as follows:



(c) "establishment" means an establishment which carries on, any business, trade, manufacture or any journalistic or printing work, or business of banking, insurance, stocks and shares, brokerage or exchange or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession or manufacture; and includes, -

- (i) establishment of any medical practitioner (including hospital, dispensary, clinic, polyclinic, maternity home and such others), architect, engineer, accountant, tax consultant or any other technical or professional consultant;
- (ii) a society registered under the Societies Registration Act, 1860, and a charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto;
- (iii) shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment; to whom the provisions of the Factories Act, 1948 do not apply ;
- (iv) such other establishment as the State Government may, by notification in the *Official Gazette*, declare to be an establishment for the purposes of this Act;

Further, section 23 of the said Act states as follows:

23. The employer shall provide and maintain in the shop or establishment, wherein not less than one hundred workers are employed or ordinarily employed to maintain a canteen for the use of its workers:

Provided that, if a group of shops or establishments decide to provide a common canteen, then the same shall be permitted by the Inspector by an order, subject to such conditions as may be specified in the order.

On a conjoint reading of the above, it is evident that [a] the canteen facility is provided by the applicant to the full time employees of its corporate office as mandated in Section 23 of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019, is concerned; and [b] the applicant has provided [one page] a copy of the agreement for cafeteria /canteen services to employees. Hence, in terms of the clarification issued by the Board vide Circular No. 172/04/2022-GST, at para 5, we hold that the subsidized deduction made by the applicant from the employees who are availing food in the Corporate Office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 .



20. Again, since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

Input Tax Credit

21. The next question on which the applicant has sought ruling is whether Input Tax Credit of GST charged by the CSP would be eligible for availment by the applicant. In this connection, before proceeding further, certain factual aspects which we would like to mention, though at the cost of repetition are *viz*

- that they employ 2745 full time employees working on permanent basis at their factory and the corporate office;
- that section 17(5)(b) *ibid*, was amended on 1.2.2019, and is reproduced *supra*;
- that the applicant is mandated vide section 46 of the Factories Act, 1948 to provide canteen facility to its employees within the factory premises and in terms of Section 23 of the Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019 to provide canteen facility to its employees at the Corporate office;
- that circular no. 172/4/2022-GST clearly clarifies that post substitution, effective from 1.2.2019, based on the recommendation of the GST council in its 28th meeting, the proviso after sub clause (iii) of clause (b) of Section 17(5) of the CGST Act, 2017 is applicable to the whole of clause 17(5)(b), *ibid*.

22. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019 as far as provision of canteen service for full time/direct employees working on permanent basis at the factory/corporate office is concerned. It is further held that the ITC on GST charged by the canteen service provider will be restricted to the extent of cost borne by the appellant only. Our view is substantiated by the Ruling of the Gujarat Appellate Authority for Advance Ruling order No. GUJ/GAAAR/Appeal/2022/23 dated 22.12.2022 in the case of M/s. Tata Motors Ltd, Ahmedabad.

22. In view of the foregoing, we hold that Input Tax Credit will be available to the appellant in respect of food and beverages as canteen facility is



obligatorily to be provided under the Factories Act, 1948, read with Gujarat Factories Rules, 1963 as far as provision of canteen service for full time/direct

23. In the light of the foregoing, we rule as under:


RULING

1. The subsidized deduction made by the applicant from the employees who are availing food in the factory/corporate office would not be considered as a 'supply' under the provisions of section 7 of the CGST Act, 2017 and the GGST Act, 2017.

2 & 3. Since the answer to the above is not in the affirmative, the ruling sought in respect of the second and the third question is rendered infructuous.

4. Input Tax Credit (ITC) will be available to the applicant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory and the corporate office, in view of the provisions of Section 17(5)(b) as amended effective from 1.2.2019 and clarification issued by CBIC vide circular No. 172/04/2022-GST dated 6.7.2022 read with provisions of section 46 of the Factories Act, 1948 and read with provisions of Gujarat Factory Rules, 1963 and Gujarat Shops and Establishment (Regulation of Employment and Condition of Service) Act, 2019. ITC on the above is restricted to the extent of the cost borne by the applicant for providing canteen services to its direct employees, but disallowing proportionate credit to the extent embedded in the cost of goods recovered from such employees.


(MILIND KAVATKAR)
MEMBER (SGST)


(AMIT KUMAR MISHRA)
MEMBER (CGST)

Place: Ahmedabad

Date: 31/03/2023





TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)

Present:

Sri J. Laxminarayana, Additional Commissioner(Grade-I) (State Tax)

Sri B. Raghu Kiran, IRS, Joint Commissioner (Central Tax)

A.R.Com/23/2018

Date.02 -03-2020

TSAAR Order No.03/2020

(Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order)

1. M/s. Penna Cement Industries Limited, Lakshmi Nivas 705, Road No. 3, Banjara Hills, Hyderabad- 500 034, Telangana, (GSTIN No. 36AABCP2290D1ZP) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules, seeking Advance Ruling seeking clarification as to what tax should be charged by them on ex-factory inter-State sales made by them.
2. At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
3. It is observed that the query raised by the applicant falls within the ambit of Section 97(2)(e) of the GST ACT read with 20(xviii) of the IGST Act, 2017. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. Brief facts:

The facts, in brief, that were reported by the applicant are as follows:

- a. They are manufacturers of cement having two cement plants in Telangana;

- b. They occasionally make inter-State sale of cement on ex-factory/works basis from their plants in Telangana;
- c. As per Sec. 10(1)(a) of IGST Act, 2017, place of supply shall be where movement of goods terminates; When they make ex-factory sales from their plant, delivery terminates at their factory gate itself and therefore, CGST and SGST should be charged on such type of supplies.
- d. However, in the said section it is also mentioned that the movement of goods can be by supplier or the recipient or any other person and place of supply shall be location of recipient where delivery terminates to recipient. In respect of ex-factory sale, though for them supply terminates at factory gate, yet further movement is carried by the recipient or transporter (other person) of goods up to the billing address state. Thus, the delivery in such cases terminates in another that State and therefore they should charge IGST in respect of such supplies.

5. Questions raised:

With the above background, the applicant raised the following query:

- i) What tax should be charged on ex-factory inter-State supplies made by them?

6. Contention of the concerned officer :

The concerned Officer opined that in the light of the provisions contained under Sec. 10(1)(a), IGST should be charged in respect of the supplies mentioned in the application.

7. Personal Hearing:

Mr. K. Raghava Reddy, DGM & M. Ramakrishna, AGM, authorized representative of M/s. Penna cement Industries Limited, appeared for the personal hearing held on 20.12.2019 and reiterated the facts mentioned above and sought for ruling in respect of the query raised in their application.

8. Discussion & Findings:

8.1 We have considered the submissions made by the applicant in their application for advance ruling as well as at the time of personal hearing. The applicant sought for advance ruling on the nature of tax chargeable on ex-factory inter-State supplies. To determine the said point, reference shall be made to the legal provisions concerning levy of IGST and CGST& SGST.

8.2 Sec. 9(1) of GST Act provides for levy of CGST and SGST on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption. Further, Sec. 5(1) of the IGST Act, 2017 prescribes the levy of IGST on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.

8.3 'Inter-State' and 'intra-State' supplies have explicitly been defined in Section 7(1), 7(2) and 8(1), 8(2) of the IGST Act respectively. These provisions in essence lay down that where the 'location of the supplier' and the 'place of supply' are in the same State or Union Territory, the supply shall be considered as intra-State supply and where they are in different States or in different Union Territories or in a State and a Union Territory, the supply shall be classified as inter-State supply. Thus, 'place of supply' and

'location of supplier' determine whether a supply can be treated as an intra-State supply or an inter-State supply. In the case on hand, the applicant has no uncertainty as regards to 'the location of supplier' and they sought clarity only with regard to the 'place of supply'. This leads us to refer to Sec. 10(1)(a) of IGST Act, 2017 which contains provisions relating to determination of 'place of supply' of goods where the supply involves movement. The same is reproduced below:

*“10. (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under –
(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time movement of goods terminates for delivery to the recipient.”*

In terms of the above provision, it is apparent that place of supply in respect of goods (where supply involves movement of goods) shall be the location of goods at the time when movement of goods terminates for delivery to the recipient.

8.4 As stated by the applicant, there is a scope for inference that in case of ex-factory sales, since the delivery of goods to recipient takes place at factory gate so far as supplier is concerned, location of the supplier's factory can be reckoned as place of supply. However a careful appraisal of the provisions of Sec. 10(1)(a) does not suppose such inference. We noted that the usage of the words 'whether by the supplier or by recipient' after the words 'where the supply involves movement of goods' under the said section perceptibly indicates that the movement can be effected by the supplier or by the recipient or by any other person authorized by the recipient. This leads to the conclusion that, in terms of Sec. 10(1)(a), movement of goods in case of ex-factory inter-State sales does not conclude at factory gate but terminates at the place of destination where the goods finally are destined as per the billing address. Accordingly, it can be inferred that the place of supply in respect of goods where the supply involves movement of goods whether by the supplier or by the recipient or by any other person authorized by him has to be determined with reference to the location where the movement of goods ultimately terminated.

8.5 What we perceive from the statement made by the applicant, is that, in case of ex-factory inter-State sales affected by the applicant, the goods are made available by the supplier to the recipient at the factory gate, but this is not the point where movement terminates since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Thus, termination of the movement of goods evidently takes place at the location (in a different state) to which the goods are consigned/destined and such movement is effected by the recipient or by any other person such as transporter authorized by the recipient. Applying the inference made by us in the preceding para to the facts of the case on hand, the place (in the other state) where the goods are destined turns out to be the 'place of supply' in terms of Sec. 10(1)(a) *ibid*. Consequently, the 'location of supplier' and the 'place of supply' fall under different states and the supply qualifies as inter-State supply. Accordingly, we hold that, the supplier in the stated instance is liable to charge IGST in respect of ex-factory inter-State supplies made by them.

Advance Ruling

9. In view of the observations stated above, the following ruling is issued :

Q1. What tax should be charged on ex-factory inter-State supplies?	Ans: IGST is chargeable on ex-factory inter-State supplies.
---	--

Sd/- J. Laxminarayana
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghukiran
JOINT COMMISSIONER (Central Tax)

To
M/s. Penna Cement Industries Limited,
Lakshmi Nivas 705, Road No. 3,
Banjara Hills, Hyderabad- 500 034.

Copy submitted to :

1. The Commissioner (State Tax) for information

Copy to:

1. The Commissioner (Central Tax), Medchal Commissionerate
11-4-649/B, 1st, 2nd, 3rd and 4th Floors, Opp. Mehedi Function Palance,
Lakdikapool, Hyderabad - 500 004.
2. The Joint Commissioner (State Tax), Nalgonda.
3. The Dy. Commissioner (ST) (LTU), Nalgonda.

//t.c.f.b.o//

Additional Commissioner (ST) (Grade-I)



**TELANGANA STATE AUTHORITY FOR ADVANCE RULING
CT Complex, M.J Road, Nampally, Hyderabad-500001.
(Constituted under Section 96(1) of TGST Act, 2017)**

Present:

Sri B. Raghu Kiran, IRS, Additional Commissioner (Central Tax)

Sri S.V. Kasi Visweshwar Rao, Additional Commissioner (State Tax)

A.R.Com/27/2018

Date.06-08-2021

TSAAR Order No.06/2021

[ORDER UNDER SECTION 98(4) OF THE CENTRAL GOODS AND SERVICES TAX ACT, 2017 AND UNDER SECTION 98(4) OF THE TEALANGANA GOODS AND SERVICES TAX ACT,2017]

- 1.** M/s. SHV Energy Private Limited, Super Gas House, IV Floor, SDE Serene Chamber, 8-2-334, Road No.7, Banjara Hills, Hyderabad – 500 034, Telangana, (GSTIN No. 36AACCS8676D1Z3) have filed an application in **FORM GST ARA-01** under Section 97(1) of TGST Act, 2017 read with Rule 104 of CGST/TGST Rules,
- 2.** At the outset, it is made clear that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to any dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provision under the TGST Act. Further to the earlier, henceforth for the purposes of this Advance Ruling, the expression 'GST Act' would be a common reference to both CGST Act and TGST Act.
- 3.** It is observed that the query raised by the applicant falls within the ambit of Section 97(2)(e) of the GST ACT read with 20(xviii) of the IGST Act, 2017. The Applicant enclosed copies of challans as proof of payment of Rs. 5,000/- for SGST and Rs. 5000/- for CGST towards the fee for Advance Ruling. The Applicant has declared that the questions raised in the application have neither been decided by nor are pending before any authority under any provisions of the GST Act. The application is therefore, admitted.

4. Facts of the Case:

M/s. SHV Energy Private Limited are suppliers of LPG to domestic and industrial users. In the application they have submitted that they enter into LPG supply agreement with industrial users for longer period ranging from 5 to 10 years. They setup a structure called manifold at the premises of the recipient for supply of LPG. This manifold consists of LPG cylinders, regulators, primary piping, pressure regulator systems, -- etc., the ownership of the structure lies with the applicant. The purchaser pays rental charges at the rate of Rs.5,000/- per month for this structure.

Since setting up of this system involves substantial investment the customer is obliged to purchase LPG exclusively from the applicant and the conditions of the agreement specify the minimum quantity lifted from SHV. In the event of the purchaser not lifting the minimum quantity such purchaser has to pay commitment charges at the rate of Rs.2,900/- per metric ton of such shortfall in quantity.

5. Clarification Sought:

Based on the facts mentioned hereinafter, the applicant sought Advance Ruling on the following issues:

- a. Whether the impugned supply can be regarded as 'composite supply' and whether the rate of tax of the principal supply could be adopted for the whole of supplies?
- b. The applicant hereby seeks determination in respect of the following specific questions:
 - i. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act, 2017?
 - ii. Whether supply/sale of LPG be treated as principal supply for above mentioned transaction?

On Verification of basic information of the applicant, it is observed that the applicant, it is observed that the applicant falls under State Jurisdiction, i.e. Assistant Commissioner(State Tax), Khairatabad Circle,. Accordingly, the application has been forwarded to the jurisdictional officer. and a copy marked to the central tax authorities to offer their remarks as per the Section 98(1) of TSGST Act, 2017.

6. Personal Hearing:

Mr. Rahul Bhavani, CA & B. Rajitha Boorgu, CA, authorized representative of M/s. SHV Energy Private Limited, appeared and Partially heard the case on 20.01.2020 and reiterated the facts mentioned above and sought for ruling in respect of the query raised in their application.

However,The State member was retired from Government Service on Superannuation on 31.01.2021 and hence order were not passed. Government vide GO. Rt. No. 216, Rev(CT-II) Dept, Dt.16.06.2021 have nominated Sri S.V. Kasi Visweshwar Rao as member to The Authority for Advance Ruling and hence the case was posted a fresh on 09.07.2021. Heard the case

The authorized representative Smt. Rajitha Boorugu, CA & AR reiterated their averments in the application submitted and contended as follows:

1. That they are making supply of LPG to their industrial customers and for this purpose they have erected a supplier gas system which is a movable property. That they can supply of LPG only through this structure. That they would like to ascertain if the 'lease rentals' form a component of composite supply, wherein the principal supply is supply of LPG.
2. That they are entering into an agreement with their customers for lifting a specific quantity of LPG. Whenever the customer defaults to lift the minimum quantity they are levying 'Take or Pay charges' on such defaulters. That they would like to ascertain if the 'Take or Pay charges'

form a component of composite supply, wherein the principal supply is supply of LPG.

In the additional grounds submitted at the time of hearing the authorized representative made additional submissions in order to buttress their contentions as follows:

- a. That they primarily supply LPG to industrial consumers and in order to facilitate them SGS supply system is installed in the premises of their consumers.
- b. That LPG is sent to the consumers premises in form of liquid and the apparatus installed by them vaporises it into gaseous form.
- c. That the SGS cannot be installed to any customer standalone. And that the ownership of SGS remains with the applicant and the recipient of supply pays lease rental on the same.
- d. That to ensure minimum quantity of purchase by their customers there is a clause in the agreement which obliges the purchaser to pay 'take or pay' charges at specified rates. Where the recipient is unable to purchase the agreed quantity then he has to pay the said 'take or pay' charges for the deficit quantity not purchased.
- e. For the reason that all the above 3 supplies are made in conjunction with each other i.e., LPG, SGS & 'Take or Pay' Charges, these are naturally bundled supplies amounting to composite supply of which LPG is the principal supply and the rate of tax applicable to LPG apply to other 2 components of bundled supply.
- f. The applicant relied on the following to buttress his arguments
 - i. Diebold Systems (P) Ltd V. CST (2008 (12) STT 346)
 - ii. Kone Elevators India (P) Ltd v. CST, [2009 (20) STT 447]
 - iii. M/s. Kingfisher Training & Aviation Service Ltd Vs CST Mumbai [2016 (46) S.T.R. 254 (Tri. – Mumbai)]
 - iv. NIKHIL COMFORTS 2020(41) G.S.T.L. 417 (App. A.A.R. – GST Mah.)
 - v. Mfar Hotels & Resorts Pvt. Ltd., 2020 (42) G.S.T.L. 470 (A.A.R. – GST-T.N.)
 - vi. Marco Media Digital Imaging Pvt. Ltd., 2020 (42) G.S.T.L. 401 (A.A.R. – GST – T.N.)
 - vii. Ambara 2020 (42) G.S.T.L. 314 (A.A.R. – GST – Kar.)
 - viii. NEC Technologies India Pvt. Ltd., 2020 (38) G.S.T.L. 222 (A.A.R. – GST – Guj.)
 - ix. Doctors Academy of Educational Society 2020 (38) G.S.T.L. 186 (Appellate Authority – A.P)
 - x. Aquaa Care (Surat) RO Technologies Pvt. Ltd., 2020 (36) G.S.T.L. 115 (A.A.R. – GST – Guj.)
 - xi. Torrent Power Ltd.2020 (34) G.S.T.L. 385 (Guj.)
 - xii. In Re : Nr Energy Solutions India Pvt. Ltd., 2019 (26) G.S.T.L. 280 (A.A.R. – GST)
 - xiii. In re : Khedut Hat 2018 (18) G.S.T.L. 75 (A.A.R. – GST)
 - xiv. M/s Radhey Krishna Technobuild (P) Ltd 2019-VIL-760-CHESAT-ALH-ST.

7. Discussion & Findings:

We have considered the submissions made by the applicant in their application for advance ruling as well as the additional submissions made

by Smt. Rajitha Boorugu, CA & AR during the personal hearing. We also considered the issues involved on which advance ruling is sought by the applicant and relevant facts. At the outset, we would like to state that the provisions of both the CGST Act and the TGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the TGST Act.

1. The applicant is in the business of sale of LPG to industrial customers.
2. They have installed Supplier Gas System (SGS) consisting of 30 Nos of LPG cylinders, Regulators, Primary pressure regulating systems, Vaporizers etc.
3. As seen from the agreement a minimum quantity of LPG has to be necessarily purchased by the buyer. And if such minimum amount is not purchased they shall pay by way of commitment charges i.e., 'Take or Pay' Charges at the rate of Rs.2900/MT of such shortfall in quantity. This amount shall be paid once in a quarter.
4. As seen from the Section 2(31) of the CGST Act, monetary value of any act or forbearance constitutes consideration of supply. Therefore the above commitment charges are taxable under GST Act.
5. Now the applicant wants a clarification as to whether the sale of LPG, lease of SGS manifold and 'Take or Pay' Charges together form a composite supply and if they form a composite supply whether LPG is the principal supply.
6. Composite supply is defined in the GST Act in Section 2(30) as follows "Composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.
Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.
7. As seen from the definition a composite supply is essentially a naturally bundled supply where two or more different supplies invariably exist along with each other.

The Hon'ble High Court of Kerala in the case of Abott Health Care Pvt. Ltd., (2020) 74 GSTR 37 (Kerala) held that a composite supply must take into account supplies as affected at a given point in time on "as is where is" basis.

Therefore a naturally bundled supply should possess the following attributes (as mentioned in Education Guide on Taxation of Services published by CBE & C on 20.06.2012 at Para 9.2.4):

- a. There is a single price or the customer pays the same amount, no matter how much of the package they actually receive or use.
- b. The elements are normally advertised as a package.
- c. The different elements are not available separately
- d. The different elements are integral to one overall supply - if one or more is removed, the nature of supply would be affected.

Further the illustration in the definition clarifies the context of composite supply. As seen from the illustration the supply of service i.e., insurance and goods go alongside each other. The Hon'ble Supreme court of India in a catena of case law has ruled that

illustrations in a statute are part of the statute and help to elucidate the principle of the Section (Dr. Mahesh Chandra Sharma Vs Smt. Raj Kumari Sharma – AIR 1996 SC 869). Therefore a composite supply should be similar to a supply mentioned in the illustration to the definition in Section 2(30), where two or more taxable goods or services are supplied along with each other to constitute a composite supply.

'Take or Pay' contract is a contract which requires the buyer to either purchase and receive a minimum amount of product at a set price("take") or pay for this minimum without taking immediate delivery("pay"). 'Take or Pay' clauses in a contract ensure compensation for the seller in the event buyer does not purchase a specified quantity of goods or services in the course of a continuous supply. The Hon'ble Courts of India in a catena of cases held that 'Take or Pay' charges are meant to compensate for breach of a contract.

8. In the case of applicant 'Take or Pay' Charges are evidently compensation for breach of contract and a penalty stipulated to be paid to the applicant by his buyer for not purchasing the minimum quantity specified in the agreement. Thus these charges come into existence only when there is no supply of LPG. That means supply of LPG and 'Take or Pay' Charges are mutually exclusive and can never exist together. The forbearance comes into existence only upon breach and hence the requirements of a composite contract mentioned above are not fulfilled. Further the cases relied by the applicant do not contain a supply in which breach of contract is adjudged.

Hence 'Take or Pay' Charges cannot form a part of composite supply along with other components of composite supply.

Advance Ruling

8. In view of the observations stated above, the following ruling is issued :

Question Raised	Advance Ruling Issued
1. Whether sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for Supplier Gas System installed at the customer premises to store the LPG which is a condition precedent for supply of LPG be treated as composite supply under section 2(30) of GST Act,2017?	Sale of LPG, Collection of Take or Pay Charges for not lifting minimum assured quantity and rental charges for supplier gas system installed at the customer premises do not form a composite supply.
2. Whether supply/sale of LPG be treated as Principal Supply for above mentioned transaction?	Do not arise in view of the above.

Sd/- S.V. Kasi Visweshwar rao
ADDL. COMMISSIONER (State Tax)

Sd/- B. Raghu Kiran
JOINT COMMISSIONER (Central Tax)

[Under Section 100(1) of the CGST/TGST Act, 2017, any person aggrieved by this order can prefer an appeal before the Telangana State Appellate Authority

for Advance Ruling, Hyderabad, within 30 days from the date of receipt of this Order]

To
M/s. SHV Energy Private Limited,
Super Gas House, IV Floor,
SDE Serene Chamber, 8-2-334,
Road No.7, Banjara Hills,
Hyderabad – 500 034.

Copy submitted to:

1. The Commissioner (State Tax) for information

Copy to:

1. The Commissioner (Central Tax), Medchal Commissionerate, 11-4-649/B, 1st, 2nd, 3rd and 4th Floors, Opp. Mehedi Function Palace, Lakdikapool, Hyderabad - 500 004.
2. The Joint Commissioner (State Tax), Punjagutta
3. The Assistant Commissioner (ST), Khairatabad Circle.

//t.c.f.b.o//

Superintendent (Grade-I)



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Guide to register complaint



Online complaint



Anti-Profiteering

What is an 'Anti-profiteering' activity?

Any reduction in rate of GST tax on any supply of goods or services or the benefit of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices. The wilful action of not changing the final price of the good or service by various means, despite the reduction in the rate of the tax for that particular good or service, is amount to "profiteering".

How is the anti-profiteering mechanism under CGST act?

CGST mandate a 3-tier structure for investigation and adjudication of the complaints regarding profiteering.

- a) National Anti-profiteering
- b) Authority Directorate General of Safeguards
- c) State-level screening committees and standing committee

How does the screening committee and Standing committee work?

GST council may constitute a standing committee, having members from both state and central government.

Every state shall constitute one state-level screening committee. It will have one member from state government and one-member from central government as nominated by respective appropriate authority. The complains or issues of local nature will be first examined by the screening committee.

State-level screening and standing committee will examine the complaint and determine the prime facie evidence to support the validity of the complaint. If any committee satisfies that supplier has contravened the section 171 of CGST Act, the case shall be transferred to DG Safeguards for further investigation.

The committees shall complete the investigation within a period of a month from the date of the receipt of the application.

What is the role of DG Safeguards in the Anti-profiteering mechanism?

DG safeguards is the main investigation arm in the anti-profiteering mechanism. It can summon the interested parties or make inquiry or call the relevant documents. It can seek help from technical experts in the due course of investigation.

DG safeguards shall complete the investigation within a period of three-months from the date of receipt of the report from either screening or standing committee. The period can be extended for another three months.

Who can file the complaint against profiteering?

Any consumer or organisation experiencing the non-reduction in the price of the goods or service 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 also file the complaint with proper evidences.

How can I file complaint against profiteering?

A person can download the complaint from the website dgsafeguards@gov.in and post the filled complaint at,

Directorate General of Safeguards,
Dept. of Revenue, Ministry of Finance,
2nd floor,
Bhai Veer singh sahitya sadan,
Bhai Veer singh marg,
Gole market, New Delhi -110 001.
Email-id: dgsafeguards@nic.in
(online complaint facility is under progress)

How can I know the status of my complaint against profiteering?

Complainant can contact at:
Directorate General of Safeguards,
Dept. of Revenue, Ministry of Finance,
2nd floor,
Bhai Veer singh sahitya sadan,
Bhai Veer singh marg,
Gole market, New Delhi -110 001.
Contact no.: 011- 2374 1544, 011- 2374 1542,
Email-id: dgsafeguards@nic.in
(online complaint-tracking facility is under progress)

Will I be eligible to recover the amount on account of my complaint against profiteering?

National Anti-profiteering has power (under Rule No. 127 of CGST Rules 2018) to compel the defaulter to return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent from the date of collection of higher amount till the date of return of such amount.
Only the recipient is the eligible to receive the amount.

Will NAA provide opportunity of personal hearing to whom complaint is been made?

Yes. Under Rule No.133 (2) of CGST Rules 2018, an opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

What is the consumer welfare fund?

A separate fund has been created by the central government under to section 57 and 58 of the CGST act, which would be utilised for the welfare of the consumers in the country.

When the recovery of the amount including interest not returned in case the eligible person does not claim return of the amount or the recipient is not identifiable, in such conditions, the recovered amount is deposited in the consumer welfare fund.



Anti-Profitteering 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.

A. General information about the Applicant				
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. General information about the Supplier who has not passed on the benefit				
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			
C. Particulars of Goods/Services				
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		
C.6a	Pre-GST	GSTIN		
C.6b	Post-GST	₹		
D. Details of reduction in Tax rate/ benefit of Input Tax Credit				
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*	Taxes - Pre GST/Earlier Rate			
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*	Total Tax per unit [Total of D.2a to D.2e] or [D.2f]			₹
D.4*	Taxes - Post GST/Later Rate			
D.4a	CGST			
D.4b	SGST/UTGST			
D.4c	IGST			
D.4d	Compensation Cess			
D.4e	Others including Cesses (Specify)			
D.5*	Total Tax per unit [Total of D.4a to D.4e]			₹
D.6*	Post-GST reduction in amount of Tax per unit (D.3 - D.5)			₹
D.7	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. 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	Post-GST per unit price/value to be reduced by [D.9+D.10]			₹
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	
General Instruction			
1		Fill up the application form legibly in BLOCK LETTERS 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	Contact details of Central 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: Contact details of State Screening Committee on Anti-profiteering are available at URL: goo.gl/eYJXnK		
A	General information about the Applicant		
A.1*	Name	Enter name as recorded on proof of identity submitted with this application form.	
A.2*	Code of Applicant	01 Interested party ⁺	
		02 Commissioner	
		03 Any other person	
		⁺ 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:	
		Code	Proof of Identity
		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	General information about the Supplier who has not passed on the benefit		
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)	
C	Particulars of Goods/Services		
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"> a. Central Excise duty b. Duties of Excise (Medicinal and Toilet Preparations) c. Additional Duties of Excise (Goods of Special Importance) d. Additional Duties of Excise (Textiles and Textile Products) e. Additional Duties of Customs (commonly known as CVD) f. Special Additional Duty of Customs (SAD) g. Service Tax h. Central Surcharges and Cesses so far as they relate to supply of goods and services i. State VAT j. Central Sales Tax k. Luxury Tax l. Entry Tax (all forms) m. Entertainment and Amusement Tax (except when levied by the local bodies) n. Taxes on advertisements o. Purchase Tax p. Taxes on lotteries, betting and gambling q. State Surcharges and Cesses so far as they relate to supply of goods and services. <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.

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER
THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 95/2020
Date of Institution 31.01.2020
Date of Order 11.12.2020

In the matter of:

1. Shri I.P Saji, Shop No. 8, Happy Home Apt. No. 1, Shanti Park, Mira Road (E), Thane – 401107.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Inox Leisure Pvt. Ltd., 5th Floor, Viraj Towers, Next to Andheri Flyover, Western Expressway Highway, Andheri (East), Mumbai – 400093.

Respondent

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member



1. None for Applicant No 1.
2. None for Applicant No 2.
3. None for the Respondent.

ORDER

1. The present Report dated 31.01.2020 has been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation conducted under Rule 129 of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profiteering from Applicant No. 1, alleging profiteering in respect of the supply of restaurant service despite a reduction in the rate of GST from 18% to 5% w.e.f. 15.11.2017. Vide his Application, the above Applicant had alleged that the Respondent had increased the base prices of his items and did not pass on the benefit of reduction in the GST rate from 18% to 5% w.e.f. 15.11.2017, vide Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017 by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
2. The DGAP has reported that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 02.05.2019, a Notice under Rule 129 of the Rules was issued by the DGAP on 13.05.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in GST rate w.e.f. 15.11.2017 had not been passed on to his recipients by way of a commensurate reduction in prices and if

so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply. Further, the Respondent was afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said Notice, during the period 21.05.2019 to 23.05.2019. The Authorized Representative of the Respondent availed of the said opportunity on 22.05.2019.

3. The DGAP had further reported that the period covered in the current investigation was from 15.11.2017 to 30.04.2019 and the time limit to complete the investigation was extended up to 01.02.2020 by the National Anti-profiteering Authority, in terms of Rule 129(6).
4. The DGAP had further reported that in response to his Notice dated 13.05.2019 and subsequent letters and summons the Respondent submitted his responses before the DGAP vide his e-mails/letters dated 22.05.2019, 03.06.2019, 12.06.2019, 18.06.2019, 09.07.2019, 22.07.2019, 14.08.2019, 26.08.2019, 29.08.2019, 03.09.2019, 23.09.2019, 30.09.2019 and 13.01.2020. Vide his various replies, the Respondent made the following contentions before the DGAP:-
 - a. That he was engaged in the business of Film exhibition service (box office collection), Food and Beverage and advertisement services, etc. Further, it was submitted that the present inquiry was concerning

the supply of food and beverages by him wherein the price was dependent upon and/or significant changes based on the following parameters:

- Food and beverage prices depending on the types of film
- Date and time of the supply
- Other miscellaneous factors such as the location of the property, movie screening language (original or dubbed), etc.

b. That in the business of entertainment and leisure, the marginal utility changed every minute/hour/day depending upon the offering, and hence, there was no consistency in scenarios & considerations for pricing, therefore, any comparison was not just unwarranted but impossible. In other words, each film or each show was different from the other and hence, was not comparable for pricing considerations. Given this, every supply was unique and no comparison could be made for prices charged pre-post certain event (including tax events such as increase or reduction in the rate of tax or ITC allowance or disallowance. Also, given the above, the supply of food and beverage by the multiplexes could not be compared to the supply of food and beverages by the restaurants, where the supply of food and beverages was based on printed rate or menu card, which was fixed for medium to long duration. In the case of multiplexes, the prices were dynamic and were revised frequently depending upon

all the parameters stated above. Thus, any inquiry or investigation either needed to be dropped or could be undertaken only after taking into account all the aforementioned business nuances and uniqueness.

- c. That he was providing the supply price data which highlighted that depending upon food/ beverage items, in question, and keeping in view the factors above, the prices might be dynamic on the same date (for different properties) or for the same property (on different dates). It signified that differentiation in the prices of tickets according to the film, the day and the time of the show as also the location of the property was completely business-driven. Thus in his case, no two supplies were comparable and prices were extremely dynamic and could go up and down depending upon the parameters stated above and any price change, therefore, could not be related to any profiteering by him.
- d. That the meaning/definition of the term 'profiteering' was given in various scholarly references and that even in terms of Section 171 of the CGST Act, his case didn't fit the criteria of a case of profiteering.
- e. That before 15 Nov 2017, the supply of food and beverage by him was liable to GST rate of 18% with full ITC allowance, whereas w.e.f. 15 Nov 2017, his supply of food and beverages had become liable to

GST at 5% without ITC, which had a far-reaching impact on his business and profitability on account of the reduction in tax on outward supplies; and the increase in the cost of his direct and indirect procurements due to loss of ITC; that the actual loss of ITC had been reflected in the GST returns filed by him for periods covering 15 November 2017 onwards and the summary of the same, which duly reconciled with his GST returns, has been given in the table- 'A' below: -

Table-'A'

Period	Food and Beverage Taxable Turnover (i.e. net of taxes)	ITC Denied (in Full) and Reversal on Common ITC pool
15-Nov-17 to 31-Mar-18	31.80 Crores	4.87 crores

- f. That it could be seen from the above Table that he had incurred a loss of 17% (approx.) but he had kept the ultimate prices to customers unchanged on the eve of change in GST rate and onwards. This enabled passing of the benefit of the reduced rate of tax and only partially compensated his losses by increasing the base prices, affected due to cum tax prices remaining unchanged. This showed that he was in full compliance with Section 171 of the CGST Act and no allegation of profiteering could be made against him.
- g. That the subject complaint was lodged against his multiplex located in Dahlias, Mumbai, and that the

complainant had based his application on a comparison of two invoices close to the date of the change in law detailed above and had contended that the prices remained unchanged despite the reduction in the tax rate; that subsequently, GST authorities requisitioned data from him on profitability in the food segment; that the profitability in his business segment had witnessed a sharp decline on a relative basis and therefore, the allegation of profiteering was untenable.

- h. That the Screening Committee and Standing Committee had only highlighted the increase in the base prices of food and beverages as the basis of profiteering by him.
- i. That the locus-standi of the entire matter was that he had not reduced the prices despite the reduction in the GST rate applicable to his supplies of food and beverages which was a disorderly comparison without any merit; that the data tabulated in the Tables 'B' & 'C' below clarified that there was no profiteering whatsoever:-



Table-'B'

(Amounts in Rs.)

Item	Before/ After Rate Change	Date	Total Amount Charged to Customer	Applicable GST Rate	Base Price (excl taxes)
Tea Georgia	Before	11-Nov-17	90.00	18%	76.27
	After	18-Nov-17	90.00	5%	85.71
Popcorn	Before	11-Nov-17	260.00	18%	220.34
	After	18-Nov-17	260.00	5%	247.62

Loss Incurred by the Respondent**Table-'C'**

(Amounts in Rs.)

Particulars	Tea Georgia	Popcorn
Base Price Before the change in GST rates (A)	76.27	220.34
Loss of ITC	17.21%	17.21%
Loss of ITC (Amount) (B)	13.13	37.92
Prices should have been revised to (C = A+B)	89.40	258.26
GST 5% on above (D = 5% of C)	4.47	12.91
The price that should have been charged to the Customer (E = C+D)	93.87	271.17
Actual Price Charged (F)	90.00	260.00
Excess Benefit Passed on the to Customer (E-F)	3.87	11.17

- j. That as illustrated above, no incremental profit was made by him, and that the ITC loss parallel to the rate change event – had actually resulted in overall losses to him since he had passed on the benefit to the customers; that that fact that he was making losses was overlooked by the Screening and Standing Committee, thus, the very basis of reference for detailed investigation to the DGAP was flawed.
- k. that due to the very nature of the business of entertainment he kept evolving his offerings to patrons by opening new units/ properties or by revamping/ resizing the existing units/ properties as also by adding/ deleting premium elements and offering new food and beverages, as per market requirements and

his business strategy.

l. that the comparison of financial/sales data to examine profiteering, if any, should be limited to a reasonable/ limited/ defined length of time; that the data request from the DGAP spanned over 18 months and aimed at comparing price data of all the months commencing from November 2017 to April 2019 with October/ November 2017 as the base; that in his business, which followed a dynamic pricing approach, the prices were not even comparable daily.

m. that the investigation has grossly overlooked the intent of anti-profiteering provisions and the following comments of Chairman of this Authority seem to have escaped consideration in as much as the period to which the investigation was being extended:

*"Chairman, National Anti-Profiteering Authority, assured companies that the Authority was **not a price regulator** and neither does it have legislative intent. He was addressing an interactive session with industry organized by the Confederation of Indian Industry (CII) at Mumbai today.*

*The Chairman mentioned that authorities were **sensitive to natural business outcomes** and appreciate that **several factors contribute to pricing decisions such as supply and demand, supplier's cost and taxes, etc.** Hence, it was not justified to lay down uniform parameters across sectors."*



- i. that it was evident from the above submission that the anti-profiteering provisions were not to be implemented in a manner that disregarded business outcomes and their impact on prices and the said provisions neither aimed at regulating the prices nor discouraged increase in prices; that this essence of law must duly be given effect right from the stage of commencement of investigation and that the subjectivity around business outcomes must be factored before attempting to compare any random data points over a period as long as 18 months.

5. The DGAP had also reported that vide the aforementioned e-mails/letters, the Respondent had also submitted the following documents/information:

- (a) Copies of GSTR-1 returns for the period July 2017 to April 2019.
- (b) Copies of GSTR-3B returns for the period July 2017 to April 2019.
- (c) Copies of sample sale invoices along with sample SKU's at different properties.
- (d) Copy of the price fluctuation data for different properties.
- (e) Monthly Summary of Multiplex wise item-wise sales register for the period July 2017 to April 2019 for all the states.
- (f) Actual ITC loss sheet and excess loss incurred due to benefit passed on.

- (g) Input Tax Credit register for July 2017 to November 2017.
 - (h) Copy of Sample invoices of ITC availed during November 2017.
 - (i) Copy of Balance Sheets for the FY 2016-17 & 2017-18.
 - (j) Copy of Maharashtra GST Registration.
 - (k) Reconciliation of F&B sales and Non-F&B sales with GST Returns.
 - (l) Details of ITC Reversed on Stock of 14 November 2017 in proportion to expected use in F&B business.
6. The DGAP has further reported that the Respondent has also submitted that he was a listed company and his business data constitutes price sensitive information in terms of the listing agreement, accordingly, any public access or reporting should be prohibited; that the data dealt with his margin and profitability scenario, therefore, was also of direct interest to competitors and its publication could hurt his commercial interests and interests of the shareholders/public at large in as much any misuse by the competition (intended or inadvertent) would lead to erosion of shareholders' wealth; that thus **all the details/documents/ data submitted by him may be treated as confidential** in terms of Rule 130 of the CGST Rules 2017;
7. The DGAP has also reported that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the restaurant service from 18% to 5% w.e.f.


15.11.2017 with the condition that the ITC on the goods and services used in supplying the service was not taken, vide Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017.

8. The DGAP has further submitted that the legal position on Section 171 of CGST Act, 2017 was unambiguous and could be summed up as follows:

(a) A supplier of goods or services must pass on the benefit of ITC or reduction in the rate of tax to the recipients by commensurate reduction in prices.

(b) The law did not offer a supplier of goods and services and flexibility to *suo moto* decide on any other modality to pass on the benefit of ITC or reduction in the rate of tax to the recipients.

Thus, while an increase in the cost of inputs and input services was a factor for the determination of prices, this factor was independent of the output GST rate. Hence, It could not be argued that elements of cost, unrelated to GST, had been affected by the change in the output GST rates. Therefore, in terms of Section 171 of the CGST Act, 2017, the claim made by the Respondent of an increase in the cost of inputs and input services was not considered by the DGAP.

9. The DGAP had further reported that the Respondent's contention of diminishing marginal position (month on )

month) as per financial information pertaining to the pre and post tax rate reduction periods could not be considered; that the contention of the Respondent that anti-profiteering provisions attempted to regulate the prices and disregarded business outcomes and their its impact / question the base prices as Section 171 of the Act did not mandate control over the prices of the goods or services as it was to be determined by the supplier and that Section 171 only mandates that any reduction in the rate of the tax or the benefit of ITC which accrues to a supplier must be passed on to the consumers as these were concessions given by the Government and the suppliers were not entitled to appropriate them; that any such benefits must go to the consumers and in case the consumers were not identifiable the amount so collected by the suppliers was required to be deposited in the Consumer Welfare Fund; that he had not examined the cost component included in the base prices but had only factored the denial of ITC to the pre rate reduction base price since Anti-profiteering provisions attempted neither to regulate the prices nor to disregard any business outcomes.

10. It was also stated by the DGAP that the concern over the long period of investigation was frivolous since the period of Investigation has not been prescribed either in the CGST Act, 2017 or in the corresponding Rules/Notifications; that he had received the reference from the Standing Committee

on Anti-profiteering recommending a detailed investigation into the instant matter on 02.05.2019; hence the period from 15.11.2017 up to the latest month of receipt of reference was taken up for investigation, i.e. from 15.11.2017 to 30.04.2019; that the said fact has been conveyed to the Respondent.

11. The DGAP also stated that the contention of the Respondent that no methodology & procedure had been prescribed for such an investigation was found incorrect as the power to determine Methodology & Procedure as per Rule 126 of the Rules, had been conferred on this Authority by the Union of India, in the exercise of its powers given under Section 164 of the CGST Act, 2017, on the recommendations of the GST Council which was a Constitutional body created under the 101st Amendment of the Constitution; that the Authority, in the exercise of the power delegated to it under the above Rule, had notified the Methodology and Procedure, vide Notification dated 28.03.2018 which was available on its website. The DGAP has also stated that the Methodology and Procedure to be adopted for the determination of profiteering might vary from case to case, depending on the facts and circumstances of the case as well as the nature of goods or services supplied and hence no fixed methodology could be prescribed to determine the extent of profiteering in all cases; moreover that this Authority could only determine the Methodology and could not prescribe it as per the above Rule.

12. Further, the DGAP dismissed as incorrect, the contention of the Respondent that the references from the State Screening Committee and the Standing Committee were flawed since, in terms of Rule 128 of the Rules, the State Screening Committees and the Standing Committee had to examine the accuracy and adequacy of the evidence provided in the application and on being satisfied that there was *prima-facie* evidence to show that the supplier had not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, they had to refer the matter to DGAP for detailed investigation.
13. The DGAP has further reported that the Application was received in his office on 02.05.2019 from the Standing Committee along with the minutes of its meeting with its recommendation that the Application had been forwarded to the DGAP for carrying out the investigation and that the said action was totally in consonance with the contents of Rule 129 of the CGST Rules, 2017.
14. The DGAP has also reported that Respondent's contention that no adequate opportunity of representation was given by the State Screening Committee was not found tenable as Rule 133(2) of the CGST Rules, 2017 only bestows the power of granting any interested party the opportunity of being heard only to this Authority and that there was no such power available with the State Screening Committee of

Standing Committee; that Rule 133 (2) reads as follows- *"An opportunity on hearing shall be granted to the interested parties by the Authority where any request was received in writing from such interested parties"*.

15. The DGAP has also reported that the Respondent's submissions related to his having opened new units/ properties or supplied new food items and beverages, etc. have been duly considered in the investigation and the profiteering has been computed only for those goods and services which were being supplied in the pre-tax rate reduction period, i.e. during the period 01.07.2017 to 14.11.2017.
16. The DGAP has also reported that the Respondent has argued that he had incurred ITC loss of 17% (approx.) and by keeping the final prices charged from customers unchanged on the eve of the reduction in the GST rate and later, he had passed on the benefit of the reduced rate of tax; that he had computed the ITC as a percentage of the total taxable turnover of the Respondent for the period July 2017 to October 2017.
17. The DGAP has reported that the Respondent had contended that he had different base prices in respect of his supplies depending on factors such as Category of Movies (Blockbuster, Popular or Regular), Movie Type (3D & Non-3D), Date and time of supply (Weekdays, Weekends or holidays), target customer, competition and locality of the


property. In this context, the DGAP has reported that this issue had been adequately addressed while computing the quantum of profiteering since the profiteering had been arrived at by comparing property-wise (property in operation in both, pre-tax rate reduction period, (i.e. as of 14.11.2017) and the post 14.11.2017 period and by comparing the item-wise average selling prices for the items sold during the period 01.11.2017 to 14.11.2017 (or the latest month in which an item was sold, if the said item had not been at all sold between 01.11.2017 and 14.11.2017), with the prices of the said items in the post 15.11.2017 period; that the computation accounted for the different base prices as given in the sales data furnished by the Respondent.

18. On the contention of the Respondent that the prices for the supply of food and beverages by his multiplexes were dynamic and differential and could not be compared to the supply of food and beverages by restaurants where the prices printed on the menu card remained unchanged for long periods, the DGAP has reported that the said issue has been duly factored while determining the quantum of profiteering. In this context, the DGAP has reported that the details of the outward taxable supplies of 1650 items from the Respondent's 133 Multiplexes spread over 18 states were considered for the computation which was based on a comparison of the average selling prices for the items sold during the period 01.11.2017 to 14.11.2017 (or the latest month in the period ~~July-October 2017~~ ^{11.11.17} if the item had not been sold during

01.11.2017 to 14.11.2017) with the actual item-wise prices post 15.11.2017.

19. The DGAP has reported that during the investigation it was noticed that the lower GST rate of 5% had been charged on the increased base prices of the items in the post-tax rate reduction period after 15.11.2017, which established that the tax amount was computed @ 18% before 15.11.2017 and @ 5% w.e.f. 15.11.2017. The charging of the lower tax on a higher (enhanced) base price had resulted in the customers having to pay more than the commensurate price. Thus, while the Respondent's contention during the investigation that the tax amount was computed @18% before 15.11.2017 and at a reduced rate of 5% w.e.f. 15.11.2017 was correct, this in no way established that the commensurate benefit of the reduction in the GST rate had been passed on by him to his customers. On the contrary, the fact was that the customers should have paid a lower final price after the GST rate was reduced to 5% but the final item-wise prices remained unchanged for the customers and hence it was clear that the benefit was not passed on to them by the Respondent. DGAP has added that thus the only point for determination was whether the increase in the item-wise base prices was solely on account of denial of the ITC.
20. The DGAP has further reported that the assessment of the impact of denial of the ITC required the determination of ITC in respect of "restaurant service" as a percentage of the taxable

turnover from the outward supply of "products" during the pre-GST rate reduction period. To illustrate, if the ITC in respect of restaurant service was 10% of the taxable turnover of the Respondent till 14.11.2017 (which became unavailable w.e.f. 15.11.2017) and the increase in the pre-GST rate reduction base price w.e.f. 15.11.2017, was up to 10%, one could conclude that there was no profiteering. However, if the increase in the pre-GST rate reduction base price w.e.f. 15.11.2017, was by 14%, the extent of profiteering would be $14\% - 10\% = 4\%$ of the turnover. Therefore, this exercise to work out the ITC in respect of restaurant service as a percentage of the taxable turnover from products during the pre-GST rate reduction period was carried out by taking into consideration the period from 01.07.2017 to 31.10.2017 (and not up to 14.11.2017). This had been done by the DGAP for the following reasons:

- (a) That the Respondent was required to reverse an amount of Rs.1,35,90,052/- on the closing stock of inputs and capital goods as of 14.11.2017. However, the correctness and completeness of the computation could not be ascertained and therefore it could not be relied upon for the investigation.
- (b) That the invoice-wise outward taxable turnover in November 2017 was not furnished by the Respondent which was required for the computation of the taxable turnover for the period 01.11.2017 to 

14.11.2017.

(c) That it was noticed that ITC had been availed by the Respondent in the period from 01.11.2017 to 14.11.2017 based on invoices issued later on in the month of November 2017 (after 15.11.2017) which could not be allowed since no ITC was permissible on or after 15.11.2017. Further, for the month of November, ITC was permissible to the Respondent only for invoices issued up to 14.11.2017 but he had availed ITC on input services that covered the whole month of November 2017. Hence the month of November 2017 was excluded from the computation

21. That while determining the ITC as a percentage of the total taxable turnover of the Respondent, the ITC for the period July 2017 to October 2017, as furnished in the GSTR-3B, has been adjusted by excluding the amount of ITC availed in respect of supplies of other/ non-restaurant services. Further, ITC availed on common inputs, input services and capital goods has been taken proportionately, based on the proportion of Respondent's turnover from restaurant service to his total turnover. While determining the net taxable turnover of the Respondent during the period July 2017 to October 2017, the total taxable turnover (only restaurant service) as per SKU wise sales summary duly reconciled with GSTR-1 returns for the period July 2017 to October 2017 had been taken into consideration by the DGAP. Finally, the ratio

of ITC to the net taxable turnover had been taken for determining the impact of denial of ITC for the period from July 2017 to October 2017. On this basis, the finding was that ITC amounting to Rs.8,92,55,966/- was available to the Respondent during the period July 2017 to October 2017 which was approximately 9.70% of the net taxable turnover of restaurant service (Rs. 92,01,72,389/-) supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the said ITC was not available to the Respondent. A summary of the computation of the ratio of ITC to the taxable turnover of the Respondent done by the DGAP is given in Table-'D' below:

Table-'D' (Amount in Rs.)

Particulars	July-2017	Aug.-2017	Sept.-2017	October-2017	Total
ITC Availed as per GSTR-3B (A)	5,10,45,836	8,64,73,023	12,02,04,147	12,48,44,525	38,25,67,531
ITC availed Exclusively on Non Restaurant Services (B)	32,21,451	1,12,90,601	3,40,34,664	4,17,10,519	9,02,57,234
ITC availed Exclusively on Restaurant Services (C)	40,14,836	76,62,990	1,02,80,402	94,28,274	3,13,86,503
ITC availed on Common inputs, input services and capital goods (D)	4,38,09,549	6,75,19,432	7,58,89,081	7,37,05,732	26,09,23,794
Total Outward Taxable Turnover as per GSTR-1 (E)	93,73,86,472	1,08,47,21,802	1,01,26,41,557	1,09,61,74,705	4,13,09,24,536
Total Restaurant Taxable Turnover as per SKU Wise Sale Register (F)	21,65,99,800	24,03,35,295	21,27,81,452	25,04,55,842	92,01,72,389
Total Turnover other than restaurant service (G)=(E) - (F)	72,07,86,672	84,43,86,507	79,98,60,105	84,57,18,863	3,21,07,52,147
Proportionate ITC availed towards restaurant Service (H)=(D*(F/E))	1,01,22,975	1,49,59,875	1,59,46,204	168,40,410	5,78,69,463
Total ITC availed towards Restaurant Service (I) = (C+H)	1,41,37,811	2,26,22,865	2,62,26,606	262,68,634	8,92,55,966
Net Outward Taxable Turnover for the period July, 2017 to October, 2017 (J) = (F)	21,65,99,800	24,03,35,295	21,27,81,452	25,04,55,842	92,01,72,389
The ratio of ITC to Net Outward Taxable Turnover (K)= (I/J)					9.70%

22. It was further reported by the DGAP that the analysis of the details of item-wise outward taxable supplies during the period of 15.11.2017 to 30.04.2019 revealed that the Respondent had increased the base prices of different items supplied by him as a part of restaurant service to make up for

the denial of ITC post GST rate reduction. The pre and post GST rate reduction prices of the items sold as a part of restaurant service during the period 15.11.2017 to 31.03.2019 were compared and it was established that the Respondent increased the base prices by more than 9.70% i.e., by more than what was required to offset the impact of denial of ITC in respect of 1434 items (out of a total of 1650 items) sold during the same period. Thus, the conclusion was that in respect of these items, the commensurate benefit of reduction in the rate of tax from 18% to 5% had not been passed on. It was also claimed by the DGAP that there was no profiteering in regard to the remaining items on which there was either no increase in the base prices or the increase in base prices was less or equal to the denial of the input tax credit, or these were new products launched in many states or sold in new Multiplexes which started operation post 15.11.2017.

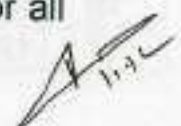
23. The DGAP has also reported that having established the fact of profiteering, the next step for him, was to quantify the same. In this regard, the methodology adopted could be explained by illustrating the calculation in respect of a specific item i.e., SAMOSA (2PCS.) sold in a particular multiplex i.e. MUMBAI METRO CINEMA, during the period 01.11.2017 to 14.11.2017 (pre-GST rate reduction) was taken by the DGAP and an average base price (after discount) was worked out by dividing the total taxable value by the total quantity of the said item sold by the Respondent during the above period. The average base price of this item was compared with the actual

selling price of this item sold in the same Multiplex during the post-GST rate reduction period i.e. on or after 15.11.2017 as is illustrated in the Table-'E' below:

Table-'E' (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.11.2017 to 14.11.2017)	Post Rate Reduction (From 15.11.2017)
1.	Item Description	A	SAMOSA (2PCS.)	
2.	Multiplex Name	B	MUMBAI METRO CINEMA	
3.	The total quantity of the item sold	C	347	
4.	Total taxable value (after Discount)	D	41,170/-	
5.	Average base price (without GST)	$E=(D/C)$	118.65/-	
6.	GST Rate	F	18%	5%
7.	Denial of ITC of 9.70% as per table- 'D' above	$G=E*9.70\%$		11.51/-
8.	Commensurate Base price (post Rate reduction) (Excluding GST)	$H=E+G$		130.16/-
9.	Commensurate Selling price (post Rate reduction) (including GST)	$I=105\%$ of H		136.87/-
10.	Post reduction illustrative month	J		Jan-2018
11.	Total quantity Sold	K		1,788
12.	Total Invoice Value (including GST)	L		2,50,320/-
13.	Actual Selling price (post rate reduction) (including GST)	$M=L/K$		140/-
14.	The excess amount charged or Profiteering per unit	$N=M-I$		3.33/-
15.	Total Profiteering	$O= K*N$		5,954/-

24. It was further reported by the DGAP that the Respondent did not reduce the selling price commensurately in respect of the item/ product 'SAMOSA (2PCS.)', despite the GST rate reduction from 18% to 5% w.e.f. 15.11.2017, vide Notification No.41/2017 Central Tax (Rate) dated 14.11.2017, and thus he had profiteered by an amount of Rs. 5,954/- on the said item sold in a particular multiplex in a particular period since he had not passed on the benefit of reduction in GST rate to his recipients/ customers by way of a commensurate reduction in the price as mandated by the provisions of Section 171 of the CGST Act, 2017. On the basis of the above calculation as illustrated in Table-'E', profiteering was worked out for all the items supplied by the Respondent in the two periods.



25. The DGAP has also stated that for computing the total profiteering, only those items were considered where the increase in base prices was more than what was required to offset the impact of denial of the input tax credit. The DGAP has further reported that based on the aforesaid pre and post-reduction in GST rates, the impact of denial of ITC and the details of item-wise outward supplies for the period 15.11.2017 to 30.04.2019, the amount of net higher sale realization on account of the increase in the base prices of the items supplied by the Respondent, despite the reduction in GST rate from 18% to 5% (with denial of ITC). or in other words, the profiteered amount works out to Rs. 3,85,30,314/- (including GST on the base profiteered amount).

26. The DGAP has also reported the details of the place-wise break up (State or Union Territory) of the total profiteered amount of Rs. 3,85,30,314/- vide Table- 'F' below:-

Table- 'F'

S.No.	Name of State	State Code	Total Profiteering (Rs.)
1	Andhra Pradesh	37	21,91,020
2	Chhattisgarh	22	2,52,833
3	Delhi	7	16,46,621
4	Goa	30	19,13,126
5	Gujarat	24	21,72,745
6	Haryana	6	11,93,313
7	Jharkhand	20	4,96,181
8	Karnataka	29	31,02,637
9	Kerala	32	2,61,609
10	Madhya Pradesh	23	7,16,906
11	Maharashtra	27	99,20,757
12	Orissa	21	9,82,190
13	Punjab	3	6,16,561
14	Rajasthan	8	23,84,474
15	Tamil Nadu	33	20,72,177
16	Telangana	36	11,26,811
17	Uttar Pradesh	9	13,88,348

18	West Bengal	19	60,92,005
Grand Total			3,85,30,314

27. The DGAP has further reported that thus the allegation of profiteering made by Applicant No. 1 stood confirmed against the Respondent and that the quantum of profiteering, inclusive of GST, worked out to **Rs. 3,85,30,314/- in terms of Section 171(1) of the CGST Act, 2017** which reads as follows-
"any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices".
28. The above Report of the DGAP dated 31.01.2020 was considered by this Authority and it was decided to hear the parties on 27.02.2019. A Notice dated 04.02.2020 was issued to the Respondent asking him to explain why the Report dated 31.01.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the CGST Act, 2017 should not be fixed. Sh. Rohit Jain and Sh. Adarsh Somani, Authorized Representatives, represented the Respondent while none appeared on behalf of Applicant No. 1 and 2.
29. The Respondent vide his written submissions dated 27.02.2020 has made the following averments:-
- a) That the allegations made in the Impugned Report were baseless and untenable on merits; that he had not contravened the provisions of Section 171 of the CGST Act and the Rules made thereunder and has duly discharged all its obligations; that each of his

submissions below may be treated as mutually exclusive and without prejudice to each other.

- b) That the Impugned Report of DGAP has travelled far beyond the complaint filed before the Screening Committee and was liable to be rejected on this ground alone; that the complaint was lodged only in respect of Tea Georgia & Popcorn (i.e. Subject Goods) and in terms of Rule 129 of the CGST Rules, the Screening Committee forwarded the case to the Standing Committee, which referred the matter to the DGAP for further investigation limited to the Subject Goods only qua the state of Maharashtra; that however, the DGAP has expanded the scope of his investigation to cover all the items sold without the approval of the Standing Committee, a pre-requisite under Rule 129(1) of the CGST Rules that reads as follows:-*"Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering or a detailed investigation."*
- c) that in terms of sub-rule (3) of Rule 129 of the Rules, *ibid*, the notice to be issued by the DGAP before the start of the investigation should inter-alia mention "the description of the goods or services in respect of which

the proceedings have been initiated"; that it was a specific requirement under the above Rule to mention, in the notice, the description of the goods or services which is a clear indication that proceedings could be initiated only in respect of those goods which were described in the Notice; that, however, in the present proceedings, the Notice issued nowhere mentioned that an investigation was being initiated for all the items; that this indicated that while the scope of the proceedings was dictated or restricted by clear reference to the description of the subject products in the Notice itself, DGAP has suo-moto expanded the scope improperly.

30. That he wished to rely on the following orders passed by the Authority wherein the investigation has been restricted only to the products against which the complaint was filed:

- ▶ **Sh. Rishi Gupta v. M/s Flipkart Internet Pvt. Ltd.**
- ▶ **Sh. Ankur Jain v. M/s Kunj Lub Marketing Pvt. Ltd.**
- ▶ **Sh. Sandeep Puri v. M/s Glenmark Pharmaceutical Ltd.**

31. The Respondent has further submitted that if the manner of doing a particular act was prescribed under any statute, the act must be done unambiguously in the manner prescribed or should not be done at all. Assumption/ presumption about the scope of the investigation could not be left to the mercy of interpretation, where the rules warrant that the scope was defined. Strong reliance in this regard was placed by the Respondent on the decision in the case

of State of Uttar Pradesh v. Singhara Singh wherein it was held that:

"8. The rule adopted in Taylor v. Taylor [(1875) 1 Ch D 426, 431] is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. A Magistrate, therefore, cannot in the course of investigation record a confession except in the manner laid down in Section 164. The power to record the confession had been given so that the confession might be proved by the record of it made in the manner laid down. If proof of the confession by other means was permissible, the whole provision of Section 164 including the safeguards contained in it for the protection of accused persons would be rendered nugatory."

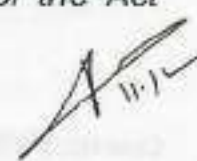
Citing the above case law, the Respondent also submitted that the aforesaid principle was first laid down in the case of Taylor v. Taylor and thereafter was followed by Lord Roche in the case of Nazir Ahmad v. King Emperor who pronounced as under:

"where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all."

32. The Respondent has further submitted that the DGAP in the given scenario was mandated by GST law to follow a pattern of action while carrying out the investigation. In light thereof,

without any specific complaint, any evidence, or any description whatsoever in the Notice, the DGAP could not have *suo-moto* broadened the scope of the investigation to products other than those which had been referred to it either by the Standing Committee or this Authority. It was for this reason that Rule 133 of the CGST Rules had been amended prospectively by insertion of sub-rule (5) vide Notification No. 31/2019 – Central Tax dated 28.06.2019 granting powers to this Authority (and not to the DGAP) which could expand the scope of an investigation. Even in that scenario, this Authority had to give reasons to believe that there was a contravention of the provisions of Section 171 of the CGST Act 2017. The said amendment, which, was prospectively applicable, has been extracted herein below:

"(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules."



33. The Respondent reiterated that, had the DGAP been given the powers to expand the scope of the investigation as it deemed fit, there would have been no need to insert sub-rule 5 of Rule 133 granting powers (only) to this to expand the scope of investigations. Hence, even after the amendment, it was only this Authority that has been given the power to expand the scope of investigation; however, before the Authority did so, it was incumbent upon it to record the reasons for the same. However, in the present facts, the DGAP, without the authority of law, had already commenced its inquiry in respect of all the items without any instructions whatsoever from this Authority, which was a substantive omission of duty, which went to the very root of the investigation conducted by DGAP which has without the authority of law and hence the entire investigation was void ab-initio. The Respondent also submitted that the Amendment effected vide Notification No. 31/2019 – Central Tax dated 28.06.2019 also could be applied to the present proceedings because as far as the question of jurisdiction was concerned, it was a substantive law in nature and substantive law could not be retrospectively amended. In this regard, the Respondent has placed strong reliance on Continental Commercial Corporation v. ITO, wherein the Hon'ble Madras High Court while dealing with an amendment that expanded the jurisdiction of the Income Tax Officer, held that such an amendment must be prospective and could have a retrospective effect. The relevant extract of Para 6 of the judgment is quoted below:

"Even so, the learned counsel for the revenue contended that section 274(2) and the amendment made by Act 42 of 1970 are procedural in nature and, therefore, the amendment would apply to all cases of infringements whether committed before or after the amendment. In other words, the amendment was retrospective and would apply to even a case where the return was filed before the amendment. The learned counsel, in this connection, also relied on the marginal note saying "procedure". We are unable to agree with this contention of the learned counsel. The provision relates to the jurisdiction of the Income-tax Officer to deal with penalty proceedings. Before the amendment, the Income-tax Officer could deal with cases falling under section 271(1) (c) only if the minimum penalty imposable did not exceed a sum of Rs. 1,000. Under section 271(1) (c) (iii) the minimum penalty imposable is a sum equal to the amount of income in respect of which the particulars have been concealed or inaccurate particulars have been furnished. In cases where the minimum penalty imposable exceeds the sum of Rs. 1,000, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner. Under the amended provision, the Income-tax Officer is enabled to deal with cases in which the amount of income concealed did not exceed the sum of Rs. 25,000. In other cases, it is the Inspecting Assistant Commissioner who would have jurisdiction to deal with penalty proceedings. Thus, those cases in which the income concealed was in excess of Rs. 1,000 but below Rs. 25,000 which were originally within the jurisdiction of the Inspecting Assistant Commissioner are now to be dealt with by the Income-tax Officer. The amendment had thus

enlarged the jurisdiction of the Income-tax Officer. Being a question dealing with the jurisdiction of an officer to deal with a case we are unable to agree with the learned counsel that the amendment was retrospective in effect in the sense that it would apply even to a case where the offence or infringement was committed prior to the amendment."

34. Further, the Respondent has submitted that in the case of *Purbanchal Cables and Conductors Pvt. Ltd. v. Assam State Electricity Board*, the Hon'ble Supreme Court declared that any substantive law shall operate prospectively unless the retrospective operation was clearly made out in the language of the statute. The Respondent had also claimed that in the present proceedings even an endeavor by the NAA/DGAP to expand the scope should be construed as ultra vires and bad in law.
35. The Respondent also contended that the issue of *suo-moto* assuming jurisdictional powers by DGAP assumed far greater significance because the anti-profiteering provisions purport to have stigmatic and penal consequences. The same was also highlighted by the Hon'ble Bombay High Court in the recent case of *Hardcastle Restaurants Pvt. Ltd. v. UOI* wherein while guiding this Authority on the importance of fair-decision making, the Hon'ble Court stated that the term profiteering was used under the CGST Act and CGST Rules in a pejorative sense with penal consequences that even extended to cancellation of registration. Hence, he has claimed that the authorities (DGAP, this Authority) ought to be circumspect while exercising their powers while undertaking investigation and issuing rulings.

36. Further, the Respondent has submitted that it was also settled rule of law when a statute was penal in character, it must be strictly followed. In the case of State of Jharkhand v. Ambay Cements, the Hon'ble Supreme Court has held as under:

"It is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of obtaining prior permission is mandatory, therefore, non-compliance with the same must result in cancelling the concession made in favour of the grantee, the respondent herein."

The Respondent had also placed strong reliance on the recent decision of the Hon'ble Delhi Court in the case of Reckitt Benckiser India Pvt. Ltd. v. UOI wherein the Court directed that no information was required to be submitted to DGAP other than the information pertaining to the goods mentioned in the Application. The relevant extract of the ruling in Reckitt Benckiser (supra) was re-iterated herein below:

"The Court is of the view that the Petitioner has made out a prima facie case for grant of limited interim relief. It is directed that, till the next date, it will not be required to furnish information to the DGAP pursuant to the impugned notice other than information pertaining to the Subject Goods. It is, however, clarified that the NAPA's inquiry as far as the Subject Goods is concerned will proceed in accordance with law."

37. The Respondent has further submitted that the DGAP's jurisdiction

was circumscribed by the specific powers granted under the aforementioned provisions. Therefore, the authorities could not confer on themselves additional jurisdiction vested other than as provided under the law. In this regard, reference was made to the case of Northern Plastics Limited v. Hindustan Photo Films Mfg. Co. Ltd. wherein the Hon'ble Supreme Court inter-alia held that the Tribunal being a creature of the statute and deriving its jurisdiction and powers from the statute could not venture into an exercise beyond the mandate of the statute. The Respondent also submitted that it has provided the complete information/ details as sought by the DGAP as a responsible corporate assessee and in good order to facilitate the investigation all along. The Respondent further submitted that this act should, by no stretch of the imagination, be considered as the acquiescence of the fact that the DGAP has jurisdictional powers to investigate in respect of all products.

38. The Respondent has further contended that in any event, in so far as the issue of jurisdiction was concerned, the provisions had to be strictly construed and no authority could confer to itself a jurisdiction wider than that vests in it. It was well settled that where there was an absence of jurisdiction, even by consent of parties, the jurisdiction could not be expanded. Reliance in this regard was placed on the case of CIT v. Dalipur Construction Pvt. Ltd. Decided by the Hon'ble Allahabad High Court wherein the department inter-alia argued that once objection regarding jurisdiction is not taken before the assessing officer, the order could not be challenged. However, the Hon'ble Court rejecting the argument of the Department inter-alia observed that lack of jurisdiction was not a

mere irregularity but nullity in the eyes of law and if an authority has no jurisdiction, the same could not be conferred even by the consent of parties.

39. The Hon'ble High Court in the case of Dalipur Construction (supra) inter-alia has relied on the following decisions to enunciate that jurisdiction could not be conferred by consent or acquiescence:

Judgements	Relevant Text
United Commercial Bank Limited v. Their Workmen ¹	"No acquiescence or consent can give a jurisdiction to a court of limited jurisdiction which it does not possess."
Kiran Singh v. Chaman Paswan ²	"A defect of jurisdiction ... strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties."
Benarsi Silk Palace v. CIT ³	"Jurisdiction could be conferred only by statute and not by consent and acquiescence. Since jurisdiction is conferred upon Income Tax Officer to proceed under Section 34 (1) only if he issues a notice an assessee cannot confer jurisdiction upon him by waiving the requirement of notice

¹ AIR 1951 SC 230

² AIR 1954 SC 340

³ [1964] 52 ITR 220 (All)

Judgements	Relevant Text
	because jurisdiction cannot be conferred by consent or acquiescence"

40. The Respondent also submitted that the DGAP had exceeded its jurisdiction and has thus travelled far beyond its power by investigating all products which neither formed a part of the complaint examined by the Standing Committee nor was it mentioned in the Notice issued by the DGAP. The investigation conducted by DGAP was therefore in gross violation of the mandate in terms of Rule 129 of the CGST Rules and went to the very root of the investigation. The Respondent further submitted that the entire investigation and the proceedings were, therefore, liable to be quashed on this ground alone.

41. The Respondent also stated that the initiation of the proceedings was flawed and time-barred. The Screening Committee had not adhered to the time limit prescribed under Rule 128 of the CGST Rules. The Screening Committee was legally bound to examine a complaint strictly within a period of two months from the date of receipt of such complaint.

42. The Respondent had also submitted that the FAQs released by this Authority on its website against Question No. 3, mentioned the fact that the Screening Committee was mandatorily required to complete its investigation within a period of two months.

"The Committees shall complete the investigation within a period of

two months from the date of the receipt of a written application or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority."

43. It was further claimed by the Respondent that Additional Commissioner of State Tax (Member of Screening Committee) vide his letter dated 17.01.2019 intimated the Commissioner (Member of Screening Committee) stating that the complaint received on 21.11.2017 against the Respondent was a fit application to be forwarded to the Standing Committee and requested him to forward the complaint to the Standing Committee for further action. The Screening Committee took nearly 14 months (from November' 17 to Jan'19), instead of the prescribed time limit of 2/3 months to examine the complaint. Further, the Screening Committee vide letter issued in February 2019 forwarded the complaint to the Standing Committee. Both the letters were attached as Annexures. Thereafter, the Standing Committee after review of the matter referred the same to the DGAP on 02.05.2019 for further investigation. The delay by the Screening Committee had a serious impact on the period of investigation adopted by the DGAP. He has argued that if the Screening Committee had not taken 14 long months to examine the complaint, the period of investigation would have been much shorter. He has also claimed that this has also been admitted by the DGAP in the Impugned Report (para 17, Page No 16), which is extracted below:

..... *"This office has received the reference from the*

Standing Committee on Anti-profiteering on 02.05.2019 to investigate the matter, hence the period from 15.11.2017 up to the latest month of receipt of reference was taken up for investigation i.e. from 15.11.2017 to 30.04.2019 which has already been conveyed in para-5 above."

44. The Respondent has further submitted that the forwarding of complaint from the Screening Committee was even beyond the extended period of one month that could have been allowed by this Authority. Further, the use of negative words "not exceeding a further period of one month" under Rule 128 has an inbuilt element of a "mandatory" prescription. It meant that the legislature intended this Authority to condone the delay of only one month and any further condonation would render the phrase "not exceeding a further period of one month" wholly otiose.
45. It has been further argued by the Respondent that where a limitation period was prescribed and the condonation of delay period was also prescribed in law, it was not permissible to further extend or condone the delay. When an extension period was prescribed in law, the delay (beyond the extension) could not be condoned even by the Courts. In the case of Singh Enterprises v. CCE, the issue raised before the Hon'ble Supreme Court was whether the High Court has the power to condone the delay after the lapse of the prescribed extension of 30 days. The Hon'ble Supreme Court at Para 8 inter-alia observed as under:
- "8. The Commissioner of Central Excise (Appeals) as also the Tribunal being creatures of statute are not vested with jurisdiction to*

condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act") can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

46. The Respondent has also relied upon the following decisions to submit that period of limitation and the condonation period when

statutorily prescribed has to be strictly adhered to and could not be relaxed:

- ▶ *CCE v. Hongo India (P) Limited and Another*
- ▶ *Amchong Tea Estate v. UOI4*
- ▶ *Simplex Infrastructure Limited v. UOI5*

47. The Respondent has averred that the forwarding of application by the Screening Committee was even beyond the extended period of one month that could be allowed only by this Authority. Further, it was apparent that the Screening Committee had exceeded the statutory period of two months (to conclude investigation) by seven times. It was argued by the Respondent that the delay was deliberate because, on account of this unlawful delay, the DGAP was allowed an unfettered free play to expand the period of investigation till April 2019 and arrive at a stratospheric alleged profiteering amount of Rs. 3.85 crores (approx.) A period of limitation prescribed by a Rule could not be diluted, more so when the delay has such grave financial implications & hardships caused to the taxpayer.

48. The Respondent has also submitted that the use of the word "shall" in Rule 128 was indicative of the seriousness which the Screening Committee ought to have attached to the prescribed timeline. The use of the word "shall" in a statute denoted mandatory prescription. The strict requirement of two months was specified to ensure that the taxpayers should not be asked to produce documents and face

⁴ 2010 (257) E.L.T. 3 (S.C.)

⁵ (2019) 2 SCC 455

inquiry after a prolonged delay, as it would irreversibly affect their defence. Further, vide an amendment dated 28.06.2019, the said period of two months could be extended only for a month by this Authority with reasons to be recorded in writing. Understandably, the purpose of giving reasons in writing was to ensure that the power to extend the period of limitation was exercised for valid reasons based on material considerations and that the power was not abused by irrelevant considerations or extraneous purposes.

49. The Respondent submitted that after the lapse of the period of two months, the Screening Committee was not vested with the right to examine the matter any longer. He further claimed that no reasons for the expansion of this period were ever recorded and none were supplied to the Respondent or formed part of the record. Even otherwise, as stated earlier, the extended period had also lapsed, and the Screening Committee had lost its jurisdiction to proceed any further in the matter. On the expiry of the limitation period, the right of the Screening Committee to examine the matter was extinguished, and a very valuable right has come to vest in the Respondent that the investigation could not proceed any further. In this regard, reference was made by the Respondent to the judgment of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, wherein the Hon'ble Supreme Court considered the respective rights of the parties upon expiry of the limitation period as under:

"26. The law of limitation is a substantive law and has definite

consequences on the right and obligation of a party to arise. These principles should be adhered to and applied appropriately depending on the facts and circumstances of a given case. Once a valuable right has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right on the mere asking of the applicant, particularly when the delay is directly a result of negligence, default or inaction of that party. Justice must be done to both parties equally. Then alone the ends of justice can be achieved. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right that has accrued to it in law as a result of his acting vigilantly."

50. The Respondent has also submitted that the Hon'ble Supreme Court, in the case of State of Punjab v. Shreyans Industries Ltd., has held that once the period of limitation expired, the immunity to being subject to assessment sets in and the right of the tax officer to make assessment got extinguished. It was further stated in the case of Shreyans Industries (supra) that once an assessment has already become time-barred, a valuable right accrues in favour of the assessee. The relevant extract from Para 23 of the judgment is quoted below:

"If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment

not be strictly adhered to. On the question that the first respondent is duty bound to initiate proceedings within 90 days from the date of receipt of offence report, there are no two opinions, at least before me. Therefore, the decision of the Division Bench of the Delhi High Court is of no assistance to the respondents. Hence the first contention is to be upheld."

53. The Respondent has submitted that once the initiation of investigation proceedings was bad in law since the Screening Committee had gone beyond the permissible time limit (including the extended period), the entire proceedings would be rendered void ab initio and without the authority of law. The proper initiation of investigation proceedings was a pre-requisite for conferring the jurisdiction especially given that there were no power to this Authority to suo-moto expand the time limit for initiation of the subject investigation. Given the above, the Respondent submitted that the continuance of the proceedings was contrary to the mandate of Rule 128 of the CGST Rules and was in clear violation of the rule of law and that of limitation. He submitted that this violation of a mandatory provision by the Screening Committee rendered the entire proceeding in the present case as unsustainable and liable to be summarily set aside.

54. The Respondent has also submitted that the DGAP had failed to submit the Impugned Report within the time limit as prescribed under the statute. In terms of sub-rule (6) of Rule 129, as it stood on the date of initiation of proceedings by DGAP, required that the

Impugned Report, so finished, was thus null & void and must be adjudged as bad in law.

56. Further, it was submitted by the Respondent that the initial 3 month's time limit was enhanced to 6 months vide Notification No. 31/2019 – Central Tax dated 28.06.2019. However, it was a common principle of law that any amendment to the fiscal statutes had to be applied prospectively unless the amended provisions expressly provide for retroactive application. Moreover, in the instant case, since the amendment had an impact imposing an additional burden or adversity on the taxpayers concerned, there was no case of its retroactive application. The Respondent, in this regard, has placed reliance on the case of Continental Commercial Corporation (supra) and also on the following rulings:

- ▶ *Govinddas v. Income Tax Officer 10 and CIT Bombay v. Scindia Steam Navigation Company Limited*. In either case, the Court had remarked that one of the established rules of interpretation was that unless explicitly stated, a piece of legislation was presumed not to be intended to have a retrospective operation.

- ▶ *In CIT v. Vatika Township Private Limited*⁶, the Court upheld the principle of "lex prospicit non-respicit", which means that 'the Law looks forward and not backward'. Accordingly, the Court was pleased to order that no amendment will have retrospective effect unless expressly indicated along with the amendment itself.

57. The Respondent has submitted that in the instant case there was

⁶ TS 573 SC 2014

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no context, neither in the amended Rule and not even through any Revenue Circular or Clarification or any white paper/ object memorandum, etc. (by whatever name called), laying out the object of the said amendment, which was suggestive of its retrospective application. He further claimed that the enhanced time limit of 6 months could not be made applicable to investigations pending as on the date of such amendment, since the proceedings were initiated under the law before the amendment and hence, would be subjected to conditions/ limitations as existed on that relevant date.

58. The Respondent has contended that notwithstanding the above, and assuming for the mere sake of argument that the 6 months period was available to DGAP in the instant proceedings, it remained a glaring fact that the investigation was completed beyond the stipulated 6 months period too. Hence, the additional period also could not rescue the void character of proceedings as explained above.

59. The Respondent has also submitted that in the given scenario, the only way the Impugned Report would stand the test of law would be when the below conditions were cumulatively satisfied:

- a. *The amended 6 months period was available to the proceedings;*
- and*
- b. *The said period was further lawfully extended by another 3 months.*



60. It was further submitted by the Respondent that assuming for the mere sake of argument and without admitting that the condition (a) above was satisfied and hence, the essence would be a lawful grant of extension; that it was his understanding of the common legal procedures that wherein a statute contained the power to grant of such extensions, no such extension which would prejudice and adversely impact the interest of the parties could be approved unilaterally without according an opportunity of representation to the party so adversely impacted; that in the instant case, the extension was sought and approved between DGAP and this Authority without his knowledge and without according him an opportunity to represent his case and averments; that he was deprived of an opportunity to present his case against the grant of such extension; that he wished to rely on the ruling of Hon'ble Madras High Court in Gaunir Impex Private Limited v. Commissioner of Customs (Imports), Tuticorin, wherein the Hon'ble High Court had an occasion to examine whether in a scenario where the statute allowed time bound issuance of show cause notice (concerning seized goods), could the said period be extended without following the principles of natural justice. Following were the remarks of the Hon'ble High Court made on the said subject matter:

The answer to this question is against the department. Section 110(2) of the Act gives six months time to take action against the defaulter in accordance with law. Furthermore, sufficient cause is required to be shown for extension of time. The reading of proviso

to Section 110(2) shows that it is only as sufficient cause being shown that the period can be extended by six months. The burden is on the department to show cause as to why the necessary formalities could not be completed in six months as provided. The show cause notice to party therefore is not a mere formality, but a statutory right to oppose the decision for extension of time.

The Respondent has cited the above decision and submitted that for extension of time-limits an opportunity of representation was required since the issue in the instant case was on a similar footing.

61. The Respondent has also submitted that since no such opportunity of representation was granted to the Respondent, the extension so granted by this Authority to the DGAP was invalid and not tenable under the prescribed code. The decision to allow the extension, in the present case, was clearly devoid of legal merits and failed on the principles of natural justice as well and was, therefore, illegal.

62. The Respondent has further contended that the CGST Act and the CGST Rules did not prescribe any procedure or mechanism for calculation of profiteering due to which the DGAP arbitrarily adopted a methodology that best suited its motive. Given the absence of knowledge of the basis on which the DGAP had to act, the Respondent was compelled to accept any procedure adopted by DGAP and the opportunity of full defence to the Respondent was also curtailed. This violated the principles of natural justice.

63. The Respondent has also submitted that as per Rule 126 of the CGST Rules, it was this Authority that could determine the

methodology and the procedure. However, in the present proceedings, the DGAP has used its own methodology and procedure to determine the alleged profiteering amount. This violates the mandate given under Rule 126 since the DGAP did not have the statutory power to determine the methodology and procedure that had to be considered while computing the profiteering amount.

64. Further, the Respondent has contended that till 27.02.2020 this Authority had failed to determine any methodology and procedure in respect of the calculation of the profiteering amount. The 'Procedure and Methodology issued on 19.07.2018 by this Authority only provided the procedure pertaining to investigation and hearing but prescribes no method pertaining to the calculation of the profited amount and there had been no indication on how to conclude that there was profiteering due to change in the rate of tax and whether such computation had to be done invoice-wise, product-wise, business vertical-wise or state-wise, etc. The statutory provisions, the CGST Rules, and even the methodology prescribed were completely silent on the computation provision according to which it could be concluded that a supplier has indulged in profiteering. The Respondent was left to the subjective discretion of the DGAP without any guiding factors/ instructions or safeguards. In absence of any guidelines in the CGST Act or the CGST Rules, the power given to this Authority to determine methodology to a case of "excessive delegation" of powers.

65. The Respondent has also averred that it was not only his case that

a basic need of having a mechanism to compute 'profiteering' with proper checks and balances was being raised. The same was also raised by the Advisor to the Chief Minister, Punjab as well as the Chief Economic Advisor in the 17th GST Council Meeting held on 18.06.2017. The Respondent has also submitted that despite all the concerns raised by several authorities and interested parties, the issue remained unattended, resulting in grave injustice to the Respondent. A relevant extract from the minutes of the 17th GST Council Meeting is quoted below:-

"The Adviser to the Chief Minister, Punjab stated that profit should be carefully defined as to whether it referred to profit at the product and service level, vertical level, or entity level. He added that it was necessary to see how credit was being allocated to each product and thereafter determine the profitability for each product. The Chief Economic Adviser stated that the anti-profiteering clause was a mistake and the discretion it provided might lead to its abuse and cause harassment. Therefore, it was necessary to circumscribe it. He added that it would be difficult to implement it because of the difficulty in determining what profit was, what profiteering was, etc."

66. Further, the Respondent has contended that this Authority, in the case of Jubilant Foodworks Ltd., has itself admitted in Para 47 that no methodology for calculation of profiteered amount could be fixed as parameters required to be taken into account would vary from industry to industry. The stance of this Authority that no methodology/ guidelines could be prescribed for computing the

profiteering amount was untenable and highlighted the lacunae of methodology, which was required to be devised under the law. In this regard, the Respondent has submitted that in the case of anti-dumping levies under the Customs Tariff Act, 1975, there were broad guidelines based on which the extent of dumping and anti-dumping duty was quantified. Even under anti-dumping investigations, the products under consideration were from completely different industries, still, the general principles for the determination of injury and dumping margin were well enshrined under the law and the Rules made thereunder. In this regard, the principles for the determination of injury, evidence of dumping, and calculation of non-injurious price have been provided in a detailed manner under the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

67. The Respondent has also submitted that similar anti-profiteering provisions existed in Australia and the Australian Competition and Consumer Commission entrusted with overseeing the price responses pursuant to the implementation of GST, laid down guidelines to provide greater certainty for determination/quantification of profiteering. This included the net dollar margin method and the price margin method which were the fundamental principles for the determination of price variances and changes. Similarly, under the erstwhile Malaysian GST law, a proper mechanism, with formulae, was provided under the Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High

Profits) Regulations 2018. Any profit charged over and above the determined 'Net Profit Margin' during a given time frame was considered as 'unreasonably high profit' and was liable for penal action under the law.

68. For his next contention, the Respondent has placed reliance on (a) the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise and Customs Kerala v. Larsen and Toubro Limited wherein it was held that in the absence of machinery provisions for computation of taxable value, the levy of tax would become non-existent and (b) the decision of the Hon'ble Supreme court in Commissioner of Income Tax, Bangalore v. B. C. Srinivasa Shetty, wherein the Apex Court, while considering Section 45 of the Income Tax Act, held that in the absence of a methodology of computation, the charging section would fail the test of scrutiny. Citing the above decisions, the Respondent has averred that anti-profiteering provisions were a part of a taxing statute and the same principles, as enunciated in the judgments quoted above, would apply to them and that it was well settled in taxation laws that the absence of the method of computation of quantum of demand payable would result in the demand itself being declared as invalid.

69. The Respondent has also contended that during the course of the prolonged investigation or even thereafter, he was never been put to notice or offered any hearing to understand how the DGAP was computing the profiteering; that the said denial of hearing by the

DGAP was in gross violation of the principles of natural justice; that he places his reliance on the decision of the Hon'ble Supreme Court in the case of Automotive Tyre Manufacturers Association v. Designated Authority, wherein the Directorate General of Anti-dumping and Allied Duties (DGAD) had passed an order without granting personal hearing to the parties and the said order was quashed by the Apex Court on the ground that it was a violation of the principles of natural justice. The relevant extract from the judgment was quoted herein below:

"83. The procedure prescribed in the 1995 Rules imposes a duty on the DA to afford to all the parties, who have filed objections and adduced evidence, a personal hearing before taking a final decision in the matter. Even written arguments are no substitute for an oral hearing. A personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc. and also clear up his doubts during the course of the arguments. Moreover, it was also observed in Gullapalli [AIR 1959 SC 308], if one person hears and other decides, then personal hearing becomes an empty formality"

70. The Respondent has further argued that the DGAP could not be given a free pass to compute profiteering randomly without paying any heed to commercial/ business realities or mathematical principles; that there was a complete lack of transparency and an obvious disconnect in the approach followed by the DGAP which varies from case to case; for instance, in the present case, the DGAP had considered an exceedingly long period of investigation of nearly 1.5 years from 15.11.2017 to 30.04.2019 and the only

reason provided in the impugned Report was that it was according to the date on which reference was received from Standing Committee recommending investigation by the DGAP.

71. The Respondent has further averred that the DGAP, being a specialist in carrying out anti-profiteering investigations, cannot be believed to be oblivious of the fact that the forwarding of the complaint along with the recommendation from the Screening Committee to the Standing Committee, was itself time-barred. It appeared to the Respondent that the DGAP had willfully chosen to ignore the contravention of Rule 128 of the CGST Rules by the Standing Committee.

72. The Respondent has also cited the following cases as examples and contended that the DGAP has been considering different periods of investigation in different cases investigated by him:-

Sr. No	Case No	Investigation Period	Total Period
1.	20/2018	From 15.11.2017 to 28.02.2018	3.5 months
2.	02/2019	From 15.11.2017 to 31.03.2018	4.5 months
3.	59/2019	From 27.07.2018 to 30.09.2018	2 months
4.	46/2019	From 01.01.2019 to 31.03.2019	3 months
5.	14/2018	From 15.11.2017 to 31.01.2018	2.5 months

Sr. No	Case No	Investigation Period	Total Period
6.	08/2018	From 15.11.2017 to 31.01.2018	2.5 months
7.	Current Investigation	From 15.11.2017 to 30.04.2019	~18 months

73. Based on the above, the Respondent has alleged that the DGAP has investigated his case in a manner that evidenced arbitrariness and inequality; that the DGAP has adopted that period of investigation/ method of computation which was the best suited for it to reach its preconceived objective; that such an approach of the DGAP was a violation of Article 14 of the Constitution of India and the concept of equality before the law; that reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in the case of *Ajay Hasia and Ors. V. Khalid Mujib Sehravardi and Ors* wherein it was inter-alia observed that wherever there was arbitrariness in the State action, whether it was of the legislature or the executive, Article 14 immediately springed into action and struck down such action. The concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and was a golden thread that ran through the whole of the fabric of the Constitution. The Respondent has relied upon the following decisions to submit that the taxing statutes must conform to Article 14 of the Constitution of India:



- ▶ *The State of A.P. and another v. Nalla Raja Reddy and others*⁷
- ▶ *Kunnathat Thathunni Moopil Nair etc. v. the State of Kerala and another*⁸

74. Based on the above submissions, the Respondent has contended that the absence of any prescribed mechanism to compute "profiteering" coupled with inexplicable prolonged investigation of ~18 months when many other investigations were between 2 to 4.5 months clearly manifested arbitrariness and was violative of Article 14 of the Constitution of India; that this was a sufficient ground to strike down the Impugned Report. It has also been argued by the Respondent that the provisions of Section 171(1) could be made applicable to only such contracts that transitioned an event of downward revision of GST rates.

75. It has been further argued by the Respondent that the anti-profiteering provisions were introduced to contain the profiteering impact of any favourable change in the rate of tax or allowance of input tax credits i.e. by pushing businesses to pass on the benefit accrued. Given this, it would merit perceiving the impact of these provisions only on such commercial contracts (for buying and selling of goods/ services), which existed and were not completely serviced at the time of change in the rate of tax and/ or ITC allowance. All subsequent supplies/ sale contracts under such existing contracts would warrant compliance with the anti-profiteering provisions.

⁷ AIR 1967 SC 1458

⁸ AIR 1961 SC 552

76. The Respondent has further submitted that in those contracts which were negotiated/ executed after the new tax rate regime came into effect, the prices were agreed to in the post-tax-rate reduction period as per Section 64A of the Sale of Goods Act, 1930, and these agreed prices could not be further examined for profiteering as for such new contracts in which the conditions of Section 171(1) of the CGST Act were not triggered and that since the provisions of Section 171 of the Act, *ibid*, did not envisage fixing of prices, the instant proceedings violated the provisions of Article 19(1) (g) of the Constitution of India. Further, confirmation of profiteering for a long period of 18 months adopted for the investigation implied that prices should not have been increased/ revised for such a long period, which made it plausible to argue that DGAP was abusing its powers to indirectly contain/ limit prices, for which it was not constitutionally and statutorily empowered. The Respondent has also stated that the above argument rested on the backdrop of this Authority's own comments, which were published vide its press release on 04.10.2018, which are as under:

".....National Anti-Profitteering Authority, assured companies that the National Anti-Profitteering Authority is not a price regulator and neither does it have legislative intent....."

The Respondent has added that given the above the impugned Report of the DGAP merited to be quashed by this Authority.

77. The Respondent has also submitted that Section 171(1) of the CGST Act, which laid down the framework for anti-profiteering

in the context of GST laws, reads as follows- " 171. (1) 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." which implied that no profiteering should be done in the name of GST in an event of (a) reduction in tax rate or (b) benefit of enhanced ITC and that the benefit of the same should be passed on to the recipient of supply by way of commensurate reduction in prices.

78. The Respondent has also submitted that the key aspect to be analyzed was what factual scenario would constitute 'profiteering' and has relied on the FAQs published on the CBIC website on the subject matter, which provides as under:

"Q1 What is profiteering?"

Ans. In terms of Section 171 of the CGST Act, 2017, the suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices. The willful action of not passing on the above benefits to the recipients in the manner prescribed is known as 'profiteering'."

79. Citing the above the Respondent has contended that the key aspects that emerge about profiteering were - (a) there must accrue a benefit from the specified event, and (b) The benefit was 'willfully' not passed on to the recipient by a commensurate reduction in prices (i.e. the prescribed action in Section 171(1) of the CGST Act); that profiteering could be confirmed only if the benefit has not been passed on to the

recipients willfully by the supplier, implying thereby that a mala-fide intent on part of the supplier must be proved.

80. The Respondent has further submitted that earning profits through lawful means was not a sin; that the provisions of Section 171 of the CGST Act could be triggered only in a case where a registered person made exorbitant profits through unlawful means; that the term 'profiteering' was not defined anywhere under the GST law or the Rules made thereunder; that only a marginal note to Section 171 mentioned the term "Anti Profiteering measure"; that it was a settled law that marginal notes could be referred to for understanding the intention of the legislature, as decided in the case of Commissioner of Income Tax, Gujarat v. Vadilal Lallubhai, wherein the Hon'ble Court has held that a marginal note indicated as to what exactly was the mischief that was intended to be remedied; that he also relied on the decision in the case of Indian Aluminium Company v. Kerala State Electricity Board, wherein the Hon'ble Supreme Court has held that marginal notes could be relied upon to show what the section was dealing with; that the term "Profiteering" has been defined as under:

Sr. No	Particulars	Reference
1	Taking advantage of unusual or exceptional circumstances to make excessive profits	Black's Law Dictionary

Sr. No	Particulars	Reference
2	Make or seek to make an excessive profit	Shorter Oxford English Dictionary
3	To seek or obtain excessive profits, one who is given to making excessive profits	Law Lexicon
4	As nouns, the difference between profit and profiteering is that profit is total income or cash flow minus expenditures the money or other benefit a business receives in exchange for products and services sold at an advertised price while profiteering is the act of making an unreasonable profit not justified by the corresponding assumption of risk, or by doing so unethically	Wiki Diff online
5	Any conduct or practice involving the acquisition of excessive profits	Mount vs. Welsh

81. The Respondent has further argued that the above meanings/ definitions/ connotations, read together with the FAQ (supra), suggest that profiteering could be said to have been done only if there has been a willful lack of fairness, i.e. either when any incremental margins or profits were made in comparison to the base scenario with similar facts and circumstances or when such incremental profits were not derivatives of action that conformed to

the established business practices and/ or pricing trends; that a bare reading of the aforementioned definitions suggested that profiteering could be alleged only when a person made excessive, unreasonable, or exorbitant profits and that the mere act of earning profits has not profiteering; that his case was not one where any exorbitant or unreasonable profits were made unlawfully and hence it could be said that he had profited.

82. The Respondent also reiterated his submissions made before the DGAP that the prices of food and beverages were dynamic and dependent on several market-driven factors; that the item-wise prices were incumbent on multiple factors that kept changing rapidly (a fact that was well evidenced by the historical data of operations), such as:-

- ▶ *Depending on the types of film*
 - *Blockbuster film*
 - *Popular film*
 - *Regular film or others*

- ▶ *Date and timing of supply*
 - *The First 1-3 days from film release were generally more rewarding*
 - *Few days after word of mouth spreads about the film, the revenues started picking up*
 - *Later days were generally less occupied and less rewarding*
 - *Weekends were more rewarding than weekdays*

- *Holidays (including the festival period) were more rewarding than regular days*

▶ *Other miscellaneous factors*

- *Location of the property (or target customers)*
- *Movie screening language (original or dubbed)*
- *Target Customer & Competition etc.*

83. The Respondent has also reiterated his submission made before the DGAP that in the business of entertainment and leisure, the marginal utility changed every minute/ hour/ day depending upon the offering, and hence, there was no consistency in scenarios & considerations for pricing, therefore, any comparison was not just unwarranted but impossible. In other words, the demand/ supply scenario changed with each film or each show, which was different from the other and hence, not comparable for pricing considerations. Given this, every supply was unique and no comparison could be made of prices charged pre & post certain events (including tax events such as increase or reduction in the rate of tax or ITC allowance or disallowance).

84. It was also submitted by the Respondent that given the above, the supply of food and beverages by the multiplexes could not be compared to the supply of food and beverages by the restaurants, where the supply of food and beverage was based on printed rate or menu card, which were fixed for medium to long duration. In the case of multiplexes, the prices were dynamic and revised frequently

depending upon all parameters stated above. Therefore, the computation of profiteering should be undertaken only given the business nuances and uniqueness of his case.

85. The Respondent has also reiterated his submissions made before the DGAP that the supply price data depending upon food/ beverage items, in question, and keeping in view the factors above; the prices could be dynamic on the same date (for different properties) or for the same property (on different dates). It signified differentiation by the film, the day and time of the show, the location of the property etc.

86. The Respondent has also reiterated his submission made before the DGAP that in the present case, no two supplies were comparable and prices were extremely dynamic and could go up and down depending upon the parameters stated above and any price change, therefore, could not lead to any profiteering by the Respondent.

87. Further, the Respondent has reiterated his submission made before the DGAP that it was proven beyond doubt that the dynamic pricing (and frequent price changes) was a natural business outcome of the industry in which the Respondent operated, implying that prices of any given two or more instances were rendered incomparable to the said fact itself.

88. The Respondent has also reiterated his other submissions that the



DGAP had chosen to ignore key business aspects/ natural business outcomes even though this Authority, in its press release dated 04.10.2018, had indicated that the authorities needed to be sensitive to natural business outcomes; that the DGAP had incorrectly considered an inordinately long period of investigation from 15.11.2017 to 30.04.2019, which implied that the DGAP was trying to regulate the prices, which was beyond the intent of the law; that prices have to change on account of the impact of costs and as a response to the pricing strategy of the competitors; that the DGAP had failed to consider factors, such as the increase in the input costs, electricity consumed, fuel, rent, etc. on account of general inflation, but has only considered the impact of denial of ITC; that unless all the costs were considered, the finding of the DGAP was not tenable; that his business data (culled from his audited financial statements) clearly demonstrated that over time his margins have shrunk as detailed in the Chart below:-

CHART

(Amounts in INR Crores)

Particulars	FY 2017-18	FY 2018-19
F&B Revenue	306	436
F&B Cost	74	112
Total Cost (in proportion of revenues)	24.18%	25.69%

Note: Financial facts & figures taken from published and audited financial statements.

That the data in the above Chart showed that his costs had been increasing in the post-tax rate reduction period due to denial of ITC and his margins were shrinking; that this aspect ought to have been considered in alleging/ determining the amount of profiteering.

89. The Respondent has further submitted that he placed reliance on the decision of this Authority in the case of Kumar Gandharv v. KRBL Ltd. wherein this Authority had accepted the argument that the price of Basmati rice was increased on account of various market factors including the increase in the purchase price of paddy and thus, there was no element of profiteering; that in the above-cited case, the MRP of the product was increased from Rs. 540 to Rs. 585, which constituted an increase of 8.33%, keeping in view, the increase in the purchase price; the increase in the cost has been accepted by this Authority itself as a reason for the price increase; that the entire exercise undertaken by the DGAP should be set aside since the amount of profiteering has been computed arbitrarily.
90. The Respondent has reiterated that the provisions of Section 171 of the CGST Act could restrict the right of the Respondent to increase prices in the normal course of business for such a prolonged period and that the DGAP has assumed that the powers under Chapter XV of the CGST Rules were akin to price control mechanism and has sought to impinge on his fundamental right to decide the selling price of his items/ goods.



91. The Respondent has also reiterated his submission that there were no guidelines regarding the period for which further prices could or could not be revised, but the DGAP has stretched the investigation to nearly 1.5 years after the reduction of tax rate w.e.f. 15.11.2017, which was inexplicable; that the Impugned Report was silent about till when the increase in prices undertaken by the Respondent would be considered as profiteering. In the absence of any period of limitation, it would imply that any increase in prices by Respondent would be considered as profiteering till the time he is in business. It meant that the Respondent was bound by the Authorities in taking commercial decisions qua the pricing of the product even if it had valid reasons to do so, which was a violation of Article 19(1) (g) of the Constitution of India.

92. The Respondent has also reiterated his submission that anti-profiteering provisions, as well as the constitution of the DGAP, were part of a taxing statute and not of a price regulation statute; that without any explicit authority of law, the DGAP could not force a blanket mandate to keep the prices in check as the same was violative of the freedom of trade and commerce; that he placed reliance on the case of Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited & Ors., wherein it was held that in the absence of any statutory power to fix tariffs, a delegated authority could not regulate the tariffs and any such action was ultra vires of the Constitutional provisions; that in his case, the price revisions, if any, had happened only in the ordinary course of business and the same should not be seen as a contravention of Section 171 of the CGST Act; that his case was triggered by the

amendment of two GST aspects that directly impacted his business and his margins and these aspects were GST rate reduction and his ineligibility to avail ITC qua the food & beverage business with effect from 15.11.2017; that the cumulative impact of the two aspects was the key to the determination of profiteering, if any, as explained in the illustration below:

Particulars	Up to 14.11.2017	15.11.2017 onwards
Gross Price of supplies	100	100
Tax included in price above at 18% & 5% respectively	15.25	4.76
Base price realized by the Respondent	84.75	95.24
(%) Increase in prices $[(95.24 - 84.75) / 95.24]$		11.01%

93. Citing the above illustration, the Respondent has submitted that if the ITC loss was more than or equivalent to 11.01%, there was no profiteering since the increased prices were sufficient to offset the ITC losses; that, however, the illustrative factual position in his case was given in the Chart below:

CHART
Summary of ITC

Particulars	Amount (INR)
ITC loss booked between 15.11.2017 – 31.03.2018	129,737,879
ITC loss booked on transition inventory (i.e. closing stock as of 14.11.2019)	13,590,052

Total ITC loss (as per GSTR 3B)	A	143,327,931
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% loss on base price pre-rate change

Particulars		Amount (INR)
Taxable turnover (Revised Prices)	B	1,160,087,992
Taxes - 5%	C	58,004,400
Total (a)	D = B + C	1,218,092,392
Erstwhile tax rate	E	18%
Re-computed base price	F = D/(1+E)	1,032,281,688
ITC loss as % of pre-rate change prices	A / F	13.88%

94. Referring to the above Chart, the Respondent has contended that the increase in the base prices of the items supplied by him was not enough to offset the loss of ITC, since the loss of ITC was 12.35% whereas the base prices had increased by 11.01% and hence his case was not a case of profiteering.

95. It was also submitted by the Respondent that the actual proportion of ITC to total turnover in his case was significantly different from that adopted by the DGAP; that in Para 27 of his Report, the DGAP has applied an arbitrary amount of ITC in the computation; that he wished to make the following contentions to dispute the DGAP's computation:-

a. Adoption of a period of 4 months from July to October 2017 to compute the average base prices in the pre-tax-rate reduction period - The adoption of the said period was arbitrary and without

any logic. The impugned Report did not provide any rationale for such an approach.

b. Non-consideration of credits, pertaining to the period from July to October 2017 that were availed in later periods, which was allowed under the GST law. It was a business fact that invoices were accounted for belatedly for various reasons beyond Respondent's control and a provision for the same existed under the GST law. Hence such ITC, that correlated to the period July to October 2017 ought to be considered while computing the quantum of profiteering.

c. Arbitrary vivisection of the ITC pool into F & B and Non-F & B businesses - During the relevant period i.e. July-October 2017, F & B was a fully taxable activity and enjoyed no restriction to corresponding ITC allowance. Given this, the law had no prescription on how to segregate the ITC attributable or co-relatable only to the F & B business. In the absence of such a prescription, the DGAP has erred in arbitrarily vivisectioning the ITC pool for F & B business, which was not tenable under the law.

96. The Respondent has further contended that if the above contentions had been considered in the computation, the percentage of ITC to Turnover would stand modified as under:-



Particulars	Data as per	ITC	Total
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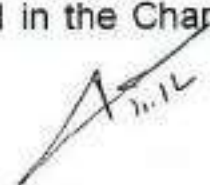
	Impugned Report (refer Para 27)	corresponding to Invoices Dated Between July- October 2017 availed in later months	
Total ITC Availed as per GSTR-3B	38,25,67,531	8,19,83,201	46,45,50,732
Total Outward Taxable Turnover as per GSTR-1 (as duly reconciled at Annexure 22 of the Impugned Report)	4,13,09,24,536		4,13,09,24,536
	ITC %		11.25%

97. It was submitted by the Respondent that the impact of ITC @11.25% ought to have been considered by DGAP while computing the amount of profiteering but the DGAP has erred in the computation and as such the computation needed to be revisited.

98. The Respondent has also contended that he has not violated the provisions of Section 171; and that even if it was assumed for the mere sake of argument that he had profiteered, the profiteering

ought to have been computed based on the correct impact of his ITC loss.

99. It has been argued by the Respondent that the DGAP had computed the net increase in cost due to denial of ITC to be 9.70% of the turnover of sales. The said percentage has been computed based on the ITC availed by the Respondent from July 2017 to October 2017. This was conceptually illogical and biased action of the DGAP to merely give effect to its motive to determine as high profiteering as may be possible notwithstanding the merits of its approach. The Respondent has submitted that if the DGAP wished to persist with the ITC loss % computed for the July-October 2017 period, it would be relevant to ensure that data so adopted/ considered was free from any sampling errors. The Respondent has also averred that the key aspect in the present case was that there could be a timing difference in the booking of expenses and hence, an automatic timing difference in availing the corresponding ITC too. In Respondent's case, ITC on several invoices pertaining to the months of July-October 2017 was availed in subsequent periods. To make the ITC loss computation comprehensive and free of any sampling errors, it would be prudent to consider the ITC qua actual purchases in a given period irrespective of the month/ period of its availment. The Respondent has submitted the computation of ITC loss thus, updated as is detailed in the Chart below:-



Amounts (INR)

Particulars	Key	ITC corresponding to Invoices Dated Between July-October 2017		Total (Representing the True & Fair position)
		Availed in Return for July-October 2017 period (as considered by DGAP)	Availed in Later Months	
ITC Availed as per GSTR-3B	A	38,25,67,531	8,19,83,201	46,45,50,732
ITC availed Exclusively on Non-Restaurant Services	B	9,02,57,234	4,94,85,043	13,97,42,277
ITC availed Exclusively on Restaurant Services	C	3,13,86,503	37,09,230	3,50,95,733
ITC availed on Common inputs, input services and capital Goods	D	26,09,23,794	2,87,88,928	28,97,12,722
Total Outward Taxable Turnover as per GSTR-1	E		4,13,09,24,536	4,13,09,24,536
Total Restaurant Taxable Turnover as per SKU Wise Sale Register	F		92,01,72,389	92,01,72,389
Total Turnover other than	G = E-F		3,21,07,52,147	3,21,07,52,147

Particulars	Key	ITC corresponding to Invoices Dated Between July-October 2017		Total (Representing the True & Fair position)
		Availed in Return for July-October 2017 period (as considered by DGAP)	Availed in Later Months	
restaurant service				
Proportionate ITC availed towards restaurant Service	H = D*F/E	5,78,69,463 (refer Page 22 of Impugned Report)	64,12,796	6,42,82,259
Total ITC availed towards Restaurant Service	I = C + H	8,92,55,966	1,01,22,026	9,93,77,992
Net Outward Taxable Turnover for the period July-October 2017	J = F	92,01,72,389		92,01,72,389
The ratio of Input Tax Credit to Net Outward Taxable Turnover K= I/J		9.70%		10.80%

100. The Respondent submitted that the aforesaid details were duly furnished before the DGAP vide his letter dated 30.09.2019 and subsequently a sample invoice verification was also done by DGAP; that ITC for July-October 2017 invoices, which was availed belatedly in later periods, ought to have been considered by the DGAP to arrive at the correct position, on the same lines as decided by this Authority in its Order No. 14/2018 dated 16.11.2018 (more

specifically Para 9 and Para 30 of the Order).

101. The Respondent has also reiterated that the DGAP had not reasoned its approach to adopt 4 months ITC for profiteering computation. However, while evaluating base prices, the DGAP had only adopted the data from the most recent tax period immediately preceding the rate change event. It was further submitted by the Respondent that such an inconsistent approach in data adoption was neither warranted nor tenable. Accordingly, the DGAP should have considered ITC only of October 2017 (i.e. the month immediately preceding the rate change event). From data quoted within the impugned Report itself, it followed that ITC – Turnover percentage for October 2017 was pegged at 10.49%, which should have been considered for the computation since such an approach would not just present consistency in action but would also be a good measure to leave aside the data that has the potential of abnormality.
102. It was also submitted by the Respondent that since the investigation was being done post-facto rather than on a live basis, one should actually look at actual ITC loss suffered by the Respondent, the data of which was available on record & summary has been presented below. The ITC loss percentage based upon actual data post the rate change event could alone be the most authentic basis for the present computation of alleged profiteering since it neither averaged/ nor projected/ nor has any inbuilt assumptions. It represented actual financial loss incurred by the Respondent, which ought to be netted off/ adjusted in the determination of alleged profiteering

amount, as detailed in the Table:-

TABLE

Amounts (INR)

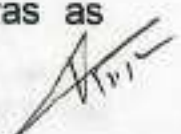
Particulars	Key	15.11.2017 to 31.03.2019
ITC Loss as shown in GSTR 3B Return for the period 14.11.2017 to 31.03.2019	A	56,68,27,492
Total Restaurant Taxable Turnover as per GSTR 1 Return per SKU Wise Sale Register for 15.11.2017 to 31.03.2019	B	5,54,03,41,745
ITC Loss %	C = A/B	10.23%

103. Citing the above Table, it was reiterated by the Respondent that since the actual loss data was available, any alleged profiteering should be determined on considering the same and not otherwise. The Respondent has submitted that from the above Table, it could be observed that various approaches (with respective merits) invariably showed that his ITC as a percentage of turnover was in a narrow range, with the median being close to 10.8%.

104. Reiterating his contentions, the Respondent requested this Authority to order the DGAP to re-visit the computation vis-à-vis the ITC loss considered. He also added that the highlighting of the computational anomalies should in no way be construed to its admission of profiteering, in any manner whatsoever.

105. The Respondent also submitted that while arriving at the total alleged profiteering amount, a notional 5% amount had been incorrectly included in the profited amount by the DGAP on the ground that it represented the excess GST collected by him, based on the increased base prices, from his recipients. The Respondent has submitted that the amount already paid to the Government in terms of Section 76(1) of the CGST Act 2017 and hence it could not be held that he has profited from such amount since he had not retained the same; He has added that he placed reliance on the decision of the Hon'ble Apex Court in the case of R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited, wherein the Hon'ble Supreme Court has analyzed the term "collected" meant in the context of the Sales Tax legislation of Gujarat as follows:- *"Section 37(1) uses the expressions, in relation to forfeiture, "any sum collected by the person ... shall be forfeited". What does "collected" mean here? Words cannot be construed effectively without reference to their context. The setting colours the sense of the word. The spirit of the provision lends force to the construction that "collected" means "collected and kept as his" by the trader."*

106. Citing the above decision, the Respondent has stated that the amount of GST collected from the customers was a liability of tax (reflected under the head of 'Liabilities' in the Balance Sheet) which was subsequently deposited with the Government. The accounting treatment accorded to account for the applicable GST was as depicted below:



Transaction	Journal Entry	Amount (Rs.)	Amount (Rs.)
Outward Sales - Creation of GST Liability	Customer A/c..... Dr.	105	
	To Sales Outward.....Cr.		100
	To IGST Payable.....Cr.		5
Payment of GST Liability to Government	IGST Tax PayableDr.	5	
	To Bank.....Cr.		5

107. The Respondent has also submitted that if the above relief was upheld, the computation would also be in line with the proposition advocated by this Authority in the following case as well as the commentary in its press release.

Extract of the Order dated 16.11.2018 in case no. 14/2018 (Hardcastle Restaurants):

"34. It is clear from the definition of 'profit' given by the Respondent in his submissions that it is the advantage or gain derived in a legal business transaction but the same cannot be considered profit if it is illegally derived by appropriating the benefits which were granted by the Government from the public funds to customers."

Extract of the press release dated 04.10.2018

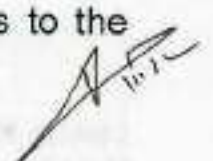
"...it is simple to decide the profiteering by comparing the corresponding invoices of pre-revised rates to post revision which is an accounting procedure and no legality is required. By reduction of rates, the Government sacrifices revenue but commensurate reduction should be passed on to the end consumers."

108. Citing the above, the Respondent has submitted that the addition of 5% GST to the average base prices should be excluded from the calculations and that consequentially, the alleged profiteering amount would reduce by Rs. 18,34,777/- ($3,85,30,314 \times 5/105$).

109. The Respondent, whilst reiterating all his submissions and averments, requested this Authority to set aside the Report of the DGAP dated 31.01.2020.

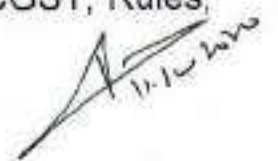
110. The submissions filed by the Respondent were forwarded to the DGAP for filing his clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP has filed his point-wise clarifications dated 23.03.2020 and the same are re-iterated as under:

- a) **Para- 'A'**: DGAP has exceeded its power by investigating products beyond contours of the complaint which goes to the very root of its jurisdiction.



Clarification by DGAP: The submission of the Respondent in this regard was refuted by highlighting the contents of Rule 129(1) of the CGST Rules, 2017 in which it was clearly stated that the Standing Committee on being satisfied that the supplier had not passed on the benefit of tax reduction on the goods and services or the benefit of Input Tax Credit to the recipients commensurately, would refer the matter to the DGAP for a detailed investigation. Thus, on the receipt of the reference from the Standing Committee, NOI was issued on 13.05.2019 asking the Respondent to furnish the details of all supplies made by it in respect of restaurant service (SAC: 9963) and not limited to a particular item provided by it. Thus the DGAP had not exceeded its jurisdiction by investigating whether the benefit of ITC had been passed on all the supplies made by the Respondent. Further, with regard to Respondent's reference of the judgment of the Hon'ble High Court of Delhi in the case of M/s Reckitt Benckiser India (P) Ltd. vs. UOI in WP (C) 7743/2019, wherein the Hon'ble High Court of Delhi granted relief that only the inquiry as far as the concerned product would continue till final disposal of the petition, it was noted that there is no such stay/directions issued in the present proceedings. Further, it was an interim relief only and no final judgment has been passed and hence its ratio was not applicable in this case.

- b) **Para- 'B':** Examination of over 14 months by the Screening Committee is in clear violation of Rule 128 of the CGST, Rules, 2017.

A handwritten signature in black ink, followed by the date '11.12.2020' written in a similar style.

Clarification by DGAP: He had received the reference from the Standing Committee on Anti-profiteering on 02.05.2019 with a remark that the complaint had been forwarded to the DGAP for carrying out the investigation. The said action aligned with the contents of Rule 129 of the Central Goods and Services Tax Rules, 2017.

- c) **Para- 'C':** The DGAP failed to complete the investigation proceedings & issue the report within the prescribed period thus rendering the impugned report null and void.

Clarification by DGAP: - In this case, a reference was received from the Standing Committee on 02.05.2019 to investigate the subject matter and NOI was issued on 13.05.2019. Thus the Statutory timeline to complete the investigation was on 01.08.2019 (three months) without extension in terms of Rule 129(6) of the Central Goods and Services Tax Rules, 2017. In the meantime, vide Notification No. 31/2019- Central Tax dated 28.06.2019, the period to investigate the case was replaced with "**Six months**" in place of "**three months**" earlier which could be extended by a further period of three months (total nine months) by this Authority. Accordingly, after the expiry of six months, a necessary extension of three months was duly granted by the National Anti-profiteering Authority which was clearly mentioned in para-6 of its report dated 31.01.2020 and reproduced as follows: -*"6. The time limit to complete the investigation was extended up to 01.02.2020 by the National Anti-profiteering Authority, in terms of Rule 129(6) of the Rules,*

vide letter F.No. 22011/NAA/19/2018/6019 dated 31.10.2019”.

Thus, the submission of the Respondent that the report of the DGAP was time-barred was bereft of facts.

- d) **Para-'D':** No Methodology prescribed to derive profiteering; thus, leading to an arbitrary exercise of powers by DGAP.

Clarification by DGAP: The contention of the Respondent of not prescribing the Methodology & Procedure for investigation is incorrect. In this regard, it was submitted that the power to determine Methodology & Procedure as per Rule 126 of the Central Goods and Services Tax Rules, 2017 has been conferred on this Authority by Central Government in the exercise of its powers given under section 164 of Central Goods and Services Tax Act, 2017, on the recommendations of the GST Council which was a Constitutional body created under the 101st Amendment of the Constitution. This Authority, in the exercise of the power delegated to it under the above Rule, had notified the Methodology and Procedure, vide Notification dated 28.03.2018 which is available on its website. It was further submitted that the Methodology and Procedure to be adopted for the determination of profiteering might vary from case to case, depending on the facts and circumstances of the case as well as the nature of goods or services supplied. No fixed Methodology could be prescribed to determine profiteering in all cases. Moreover, the Authority could only determine the Methodology and not prescribe it as per the above Rule. Further, regarding the contention of the Respondent that

different period of investigation was taken up in different cases the reason has already been explained that since the report was received from Standing Committee in May 2019, the review was done until April 2019. The same has also been mentioned in para-17 of this office report dated 31.01.2020 which is reproduced below:

"17. It is also noted that the Respondent raised concern over period of investigation. In this regard, it is submitted that the period of Investigation has been prescribed neither in the Central Goods and Services Tax Act, 2017 nor in the corresponding Rules/Notifications. This office has received the reference from the Standing Committee on Anti-profiteering on 02.05.2019 to investigate the matter, hence the period from 15.11.2017 up to the latest month of receipt of reference was taken up for investigation, i.e. from 15.11.2017 to 30.04.2019 which has already been conveyed in para-5 above."

- e) **Para- 'E':** Provision of Section 171 (1) cannot be applied to the present case in absence of any transitional supply contract.

Clarification by DGAP: - The contention of the Respondent that the provisions of Section 171 of the CGST, Act, 2017 did not apply to its case was not tenable as it was found to increase the priced of several items by more than ITC loss suffered by it. The same has been explained in Paras 27 & 28 of this office report dated 31.01.2020. The relevant extract is reproduced below:



" 27.....the ratio of input tax credit to the net taxable turnover has been taken for determining the impact of denial of input tax credit for the period from July, 2017 to October, 2017 On this basis the findings are that input tax credit amounting to Rs. 8,92,55,966/- was available to the Respondent during the period July, 2017 to October, 2017 which is approximately 9.70% of the net taxable turnover of restaurant service (Rs. 92,01,72,389/-) supplied during the same period... "

"..... Further, the analysis of the details of item-wise outward taxable supplies during the period of 15.11.2017 to 30.04.2019, reveals that the Respondent had increased the base prices of different items supplied as a part of restaurant service to make up for the denial of input tax credit post-GST rate reduction. The pre and post GST rate reduction prices of the items sold as a part of restaurant service during the period 15.11.2017 to 31.03.2019 were compared and it is established that the Respondent increased the base prices by more than 9.70% i.e., by more than what is required to offset the impact of denial of input tax credit in respect of 1434 items (out of a total of 1650 items) sold during the same period. Thus, the conclusion is that in respect of these items, the commensurate benefit of reduction in rate of tax from 18% to 5% had not been passed on. It is also clear that there was no profiteering in regard to the remaining items on which there was either no increase in base price or the increase in base price is less or equal to the denial of input tax



credit, or these were new products launched in many states or sold in new Multiplex started operation post 15.11.2017."

- f) **Para- 'F'**: Anti-profiteering provision, if at all, can be triggered only in instances where an unlawful manner of business is established.

Clarification by DGAP: - DGAP in its report dated 31.01.2020 has nowhere questioned lawful profits made by the Respondent. Only those transactions have been taken up where the prices post rate cut have been increased more than the impact of ITC loss suffered by it. Further, an explanation has already been given in the reply supra.

- g) **Para- 'G'**: Adopting 18 months as the period of investigation to determine alleged profiteering acts as a price control mechanism and is clearly violative of the Right to trade.

Clarification by DGAP: - The objection raised by the Respondent has been duly redressed in para-16 of this office report dated 31.01.2020 which is reproduced below:

"16. Further, the contention of the Respondent that anti-profiteering provisions attempt to regulate the prices and disregard business outcomes & their impact on prices is not correct. Directorate General of Anti-profiteering has not attempted to examine or question the base price as Section 171 does not mandate control over the prices of the goods or services as they are to be determined by the supplier. Section 171 only mandates that any reduction in the rate of the tax or

the benefit of ITC which accrues to a supplier must be passed on to the consumers as both are the concessions given by the Government and the suppliers are not entitled to appropriate them. Such benefits must go to the consumers and in case they are not identifiable, the amount so collected by the suppliers is required to be deposited in the Consumer Welfare Fund. This investigation has not examined the cost component included in the base price. It has only added the denial of ITC to the pre rate reduction base price. Therefore, neither Anti-profiteering attempted to neither regulate the prices nor disregard any business outcomes."

- h) **Para- 'H':-** The loss on account of ITC disallowance is higher than the revision in prices:-

Clarification by DGAP: - Already replied supra in reply to point E. Further queries raised by the Respondent in this para have already been addressed in para-26 of DGAP report dated 31.01.2020 which is reproduced as under: -

"26. The assessment of the impact of denial of the input tax credit, which is an uncontested fact, requires the determination of the input tax credit in respect of "restaurant service" as a percentage of the taxable turnover from the outward supply of "products" during the pre-GST rate reduction period. To illustrate, if the input tax credit in respect of restaurant service was 10% of the taxable turnover of the Respondent till 14.11.2017 (which became unavailable w.e.f. 15.11.2017) and the increase in the pre-GST rate reduction base price w.e.f.

15.11.2017, is up to 10%, one can conclude that there is no profiteering. However, if the increase in the pre-GST rate reduction base price w.e.f. 15.11.2017, is by 14%, the extent of profiteering would be $14\% - 10\% = 4\%$ of the turnover. Therefore, this exercise to work out the input tax credit in respect of restaurant service as a percentage of the taxable turnover from products during the pre-GST rate reduction period has to be carried out, though by taking into consideration the period from 01.07.2017 to 31.10.2017 and not up to 14.11.2017. This has been done for the following reasons:

- 1) The Respondent submitted that he was required to reverse an amount of Rs. 1,35,90,052/- on the closing stock of input and capital goods as on 14.11.2017. However, the correctness and completeness of the computation cannot be ascertained and therefore it cannot be relied upon.
- 2) The invoice-wise outward taxable turnover in November 2017 was not provided by the Respondent to compute taxable turnover for the period 01.11.2017 to 14.11.2017.
- 3) On several invoices, the credit was taken between 01.11.2017 to 14.11.2017 but they pertained to services availed during the whole month of November 2017. The details of sample invoices and observations are mentioned in **Annex-20**."



- i) **Para- 'I'**: The computation of alleged profiteering hastily overlooks the correct ITC loss & includes other arbitrary additions.

Clarification by DGAP:- With regard to Respondent's submission that ITC against invoices of July to October, 2017 period, which were booked in later periods also be taken into consideration, it was submitted that Section 16(2) the Central Goods and Services Tax Act, 2017 prescribes certain conditions for entitlement of ITC which are as follows:-

- i. Respondent is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;
- ii. Respondent has received the goods or services or both.
- iii. subject to the provisions of section 41, the tax charged in respect of such supply has been paid to the Government, either in cash or through the utilization of input tax credit admissible in respect of the said supply; and
- iv. Respondent has furnished the return under section 39:

The DGAP has clarified that with effect from 15.11.2017, the Respondent was not allowed to avail ITC in terms of Notification no.46/2017- Central Tax (Rates) dated 14.11.2017, Therefore, the Respondent was not eligible to take ITC w.e.f. 15.11.2017 on the strength of invoices received post 15.11.2017 when the aforesaid notification debarred the Respondent from availing ITC took effect. As the Respondent has received the taxable invoices post 15.11.2017 when he was not eligible to avail ITC in terms of Notification no. 46/2017 Central Tax (Rate) dated 14.11.2017, therefore the same could not be considered for computation of

denial of Input Tax Credit to net turnover ratio. The DGAP has further clarified that he had already explained the reason for considering the invoices for the July to October 2017 period for computation of input tax credit as a percentage of the total taxable turnover in Para-26 of his Report dated 31.01.2020.

- j) Regarding the request of the Respondent for considering the actual ITC loss data for the period 15.11.2017 to 31.03.2019, the DGAP has stated that the same was not tenable as the same could only be computed after the end of the period i.e. on or after April 2019 which could not be factored in on the eve of GST rate reduction i.e. on 15.11.2017. DGAP has clarified that he has computed the input tax credit as a percentage of the total taxable turnover of the Respondent for the period July 2017 to October 2017 for reasons cited in Paras 26 & 27 of his Report dated 31.01.2020.
- k) Regarding the contention of the Respondent that 5% GST has been incorrectly added to the profiteering amount, the DGAP has clarified that Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, required the supplier of goods or services to pass on the benefit of the tax rate reduction to the recipients by way of commensurate reduction in price. Price includes both, the base price and the tax paid on it. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such amount be refunded to the eligible recipients or deposited in the Consumer Welfare Fund, regardless of whether such extra tax collected from the recipient

has been deposited in the Government account or not. Besides, any extra tax returned to the recipients by the supplier by issuing credit notes could be declared in the return filed by such supplier, and his tax liability would stand adjusted to that extent in terms of Section 34 of the CGST Act, 2017. Therefore, the option was always open to the Respondent to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

111. The DGAP's clarifications dated 23.03.2020 were supplied to the Respondent vide this Authority's Order dated 01.06.2020. In response, the Respondent vide his letter dated 21.07.2020 requested time to file his rejoinder against the clarifications dated 23.03.2020 filed by the DGAP. The above request was allowed by this Authority and the Respondent was granted further opportunity to file his rejoinder latest by 28.08.2020. In response thereto, the Respondent has filed his below-detailed written submissions dated 27.08.2020, in which has averred as follows:-

112. That the DGAP was not the competent authority to increase the scope of the investigation in any profiteering complaint beyond the items that have been complained against and thus DGAP had not just exceeded jurisdiction but also conveniently disregarded the established legal & judicial position on the subject matter.

112.1 That in response to his detailed submissions, DGAP's Supplementary response merely provided an ineffectual explanation; that while upholding the validity of its action, the

DGAP has failed to adduce any legal averments in rebuttal of the contentions made by him and lack the necessary explanation.

112.2 That the DGAP has clarified that unlike the case of **Reckitt Benckiser India Private Limited v. UOI** the Delhi High Court has specifically stayed investigations for an item outside the limits of the complaint, no such direction has been issued by any competent court in his (Respondent's) case, ignoring the fact that the directions of the Delhi High Court' contained in its Order dated 22.08.2019 were absolute and constituted a valid precedent for any/ all other matters too since the relevant portion of the Order reads as follows:- "*1. The interim order dated 19th July 2019 is made absolute during the pendency of the writ petition. The application is disposed of.*"; that the DGAP has not interpreted the Order of the Hon'ble Delhi High Court correctly.

112.3 That the insertion of sub-rule (5) under Rule 133 of the CGST Rules 2017, effected vide Notification No. 31/2019 – Central Tax dated 28.06.2019, expressly granted powers only to this Authority (and not to the DGAP) as this Authority could expand the scope of the investigation; that the DGAP has been silent on this issue.

112.4 That the DGAP appeared to be taking the shelter of Rule 129(1) of the CGST Rules 2017 to decide the scope of its investigation; that the said Rule did not provide any validity to the action of the DGAP; that on the contrary, with the insertion of sub-rule (5) under Rule 133, the intent of the law became much clearer as no other Rule of the Rules *ibid*, had such an expansion of the scope of profiteering investigation or else the said Rule would not have been required.

112.5 That the legal position as demonstrated by him in relevant context

had been duly buttressed and strengthened by the available jurisprudence none of which has been disproved by the DGAP. It was a settled position of law, that case laws quoted by the taxpayer if not properly distinguished then, such action amount to tacit acceptance of the taxpayer's connected arguments. In the present case, the judicial precedents submitted by him had been completely overlooked despite being placed on record, leave alone distinguishing the same. This Authority may, accordingly, consider these legal aspects before passing any final order in the present matter to avoid any futile and long-lasting litigation; that the DGAP had itself submitted that further comments could be sought from the Screening Committee on the matter. This statement itself attested DGAP's acceptance of futile delay in procedure undertaken by the Screening Committee. Given that the statutory prescription had been breached in the said case, the reference by the Standing Committee itself was illegal, and hence, the proceedings ought to be quashed on that basis alone; that the statutory limitation period for completion of investigation and issuance of the corresponding report was not adhered to by DGAP. Contextually, the amendment made in the CGST Rules timelines was only prospective and not available in the present case, which was initiated and was in progress before the relevant amendment; and that the extended period as utilized by DGAP was allowed to it without following principles of natural justice and hence, jeopardizing his interest.

112.6 That the DGAP's Supplementary Report, in Part C, failed to rebut his (Respondent's) contentions in word and spirit.; that DGAP's response seemed to be based upon conjecture that the Amendment to Sub- Rule (6) of Rule 129 by Notification No. 31/2019 – Central Tax dated 28.06.2019 would be operative for

ongoing investigation as well.

- 112.7 That vide the amendment to said Sub-Rule, the normal period allowed for completion of the investigation was extended from 3 months to 6 months though without an express stipulation of whether the amendment would apply prospectively or to ongoing cases as well. Given the said position, he submitted that in the absence of an express stipulation, the amended timelines could not be applied retrospectively, or to any ongoing proceedings initiated before the said amendment. The Respondent reiterated that he relied upon settled jurisprudence in this regard.
- 112.8 that the DGAP himself acknowledges that the time limit allowed for completion of an investigation, without extension, was 3 months only; that the relevant Rule was amended to provide six months without establishing the legal basis of its claim. The Authority might, therefore, note that the DGAP has failed to explain the legitimacy of its position.
- 112.9 that the DGAP has altered its position as per his own convenience between different investigation matters and various aspects of the investigation. At this juncture, it wished to refer to the case of **S. Ganapathy vs. Mahindra Lifestyle Developers Limited**⁹, wherein the DGAP opined that one of the many amendments brought by Notification No. 31/2019 – Central Tax dated 28.06.2019, should apply prospectively and would not have any bearing on ongoing investigations. The relevant text from the said judgment is extracted below:

"Though there was a time frame for investigation and submission of

Report in case of a reference received from the Standing Committee (which was duly adhere to in the initial investigation), there was no such timeline for the examination of the claims as per the directions of this Authority and for the first time, vide Rule 133 (5) of the CGST Rules, 2017, introduced w.e.f. 28.06.2019 it has been stated that "any investigation or enquiry carried out on the direction of the NAA shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry".

He submitted that since Rule 133 (5) of the Central Goods & Services Tax Rules, 2017 was introduced with prospective effect from 28.06.2019 it had no bearing on the ongoing investigation.

112.10 Further, it was submitted by the Respondent that the approach of the DGAP was a grave miscarriage of justice since it has applied different yardsticks and calculations in different cases as per his convenience. This Authority must take due cognizance of the inconsistencies in DGAP's conduct across different matters that the impugned Report breached the law of limitation and was, therefore, null & void. He also submitted that no opportunity of hearing was granted to him while allowing the DGAP extended period to complete investigation, hence, the matter had traversed natural justice and jeopardized his interest. In such a case, the Impugned Report could not be held legitimate since it rightfully ought to be barred by limitation.

113 The Respondent has also argued that the DGAP's approach of measuring each business with the same yardstick was against the principle advocated by this Authority itself in multiple cases. The peculiar

facets of the Respondents business, where the price of the same products varied from location to location and for the same location for different show days, show timings, films, etc; must be given due importance while computing the profiteering, which had not been done by the DGAP.

113 The Respondent contended that the profiteering provisions could not be applied to supplies other than transitional cases, which were either live or under process when the relevant change in law took place. Adding to its averments, the Respondent submitted that where the provisions of profiteering were applied to supplies covered otherwise than by transitional contract, the same would tantamount to regulating prices, which was not the mandate of Section 171 of the CGST Act.

114 The Respondent has also submitted the following averments:

a. The proportion of ITC loss to the turnover for the period 15.11.2017 to 31.03.2018, suffered by the Respondent was 12.35%; whereas the actual increase in the base selling price was only 11.01%. Leave alone profiteering, the Respondent could not even fully recoup the actual loss suffered by it.

b. An uneven approach had been adopted by the DGAP for computing the percentage of ITC availed and the average selling price before the tax rate reduction. While the sales of one item has been considered for 4 months (July 2017 to October 2017), in the case of another item the computation is based on the sales data for October 2017. Due to this inconsistent approach, the DGAP has incorrectly arrived at the eligible ITC percentage of 9.70%, whereas it should be 10.49%.

- c. The DGAP has failed to consider the eligible ITC for the period 01.07.2017 to 14.11.2017, which was availed on or after 15.11.2017, in the computation of the ratio of ITC to turnover. Due to this flaw, a lower eligible ITC percentage of 9.70% was determined instead of 10.80%.
- d. The Respondent has further submitted that the computation of ITC loss percentage should be based on actual numbers as reported by the Respondent in the periodic GST returns including reversal of ITC on closing stock of goods as of 14.11.2017; rather than on any hypothetical basis, as done by the DGAP.
- e. It was further submitted by the Respondent that the bifurcation of ITC availed during July 2017 to October 2017 between Food & Beverages and other businesses, had been done on frivolous basis rather than considering the actual data. Due to this error, the eligible ITC percentage was determined to be lower than the authentic figure of 11.25%.

115 Further, the Respondent has submitted that the ITC reversed on closing stock of goods as of 14.11.2017 was reported in the GSTR-3B return filed for the month of May 2019. The Respondent had enclosed a certificate issued by an independent Chartered Accountant certifying the amount of ITC reversed on closing stock of goods as of 14.11.2017 and disclosure thereof in the GST returns. The Respondent had also submitted that the provisions related to payment of GST on the supply of services were governed by Section 13 i.e. time of supply of services. It provided that, if the invoice was issued within the prescribed time, the time of supply was earlier than the date of invoice or date of payment. The time of

supply in the present case, in terms of Section 13 was determined based on the date of the invoice. Further, the Respondent has also stated that the term 'time of supply' has not been defined under the CGST Act. Reference in this regard has been invited to the Point of Taxation Rules, 2011 ("POT Rules"), which were analogous to the time of supply provisions under the CGST Act. He has also claimed that Rule 2(e) of POT Rules defined the term 'point of tax' (comparable to 'time of supply'), as the point in time when a service would be deemed to have been provided. Conversely put, the actual performance of service, might not be relevant for determining the point of tax.

116 It was also submitted by the Respondent that the time of supply in the present case arose on the date of issuance of invoice. The eligibility to avail ITC was dependent on the date of receipt of service i.e. when the service was deemed to be provided and not the underlying period covered by such invoice. The services were received during the period when the Respondent was eligible to avail ITC. Hence, the ITC has been rightly availed.

117 The Respondent has further submitted that there was no such restriction prescribed under Section 16(2) to disallow ITC in the present case. As provided above, the eligibility to avail ITC must be determined based on the date of receipt of underlying supply and not concerning any other date such as the date of availing ITC in the books of account. Additionally, Section 16(4) empowered the taxpayer to avail ITC in respect of a financial year by earlier of (a) September of the following year or (b) filing of Annual return. The Respondent had appropriately availed ITC within the given

limitation period.

118. Given the above, the Respondent has contended that it would be judicious to consider the ITC on invoices dated 01.07.2017 to 14.11.2017, which was availed in later periods to arrive at the correct position. Such an approach was merited by past action of DGAP, which had been approved by this Authority in the case of **Hardcastle Restaurants Pvt. Ltd.**, as stated in para 9 and para 30 of the order. The approach was meritorious since it ensured that there was no selective bias, sampling errors and hence, the results so obtained were just & reasonable.

119. Further, the Respondent has placed reliance on the decision of Hon'ble Chennai Tribunal in the case of **Same Duetz-Fahr India Pvt. Ltd.**, wherein it was upheld that the eligibility to avail ITC was with reference to the date of receipt of inputs in the factory and subsequent exemption granted to the final product shall not impair such right. The Tribunal further said that the denial of ITC on inputs reaching the factory after the prescribed date was possible, however, eligibility to avail ITC on inputs received before the exemption was not hampered and that such credit could be availed at a later date too. The relevant part is extracted as under:

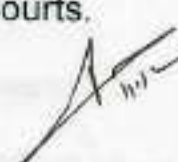
Therefore, the right vested on the appellant to get credit on the input came into its factory before 9-7-2004 remain unimpaired. Deniability of Cenvat credit on inputs reaching the factory after 9-7-2004 may be possible. Law is also well settled in Dai Ichi Karkaria Ltd., that there is no provision in the

rule to recover Cenvat credit in the event the goods manufactured prior to a cutoff date are cleared at a subsequent date. The Cenvat credit earned being permitted to be used with indefeasible right that cannot be denied in absence of any express provision of law in that behalf.

120. The Respondent has also submitted that it would be preposterous to compute the ITC loss based on extrapolation of proportionate data rather than simply relying upon the actual data reported by the Respondent. The DGAP has provided a flimsy argument that since the actual data was not available on the date of the rate change, hypothetical data should be considered.

121. It was further submitted that various petitions were pending in the High Courts in which the petitioners have raised important issues regarding the constitutional validity of the anti-profiteering provisions along with computation method/ procedures adopted by this Authority for calculating profiteering amount. It was further submitted that the Hon'ble High Court of Delhi in the case of **Nani Resorts and Floriculture Private Limited vs UOI¹⁰**, had ordered that all the 33 identified matters be listed for hearing on 24.08.2020. These *inter alia* includes **Hindustan Unilever Limited v UOI¹¹**, **Jubilant Food works Limited v UOI¹²**, and **Abbott Healthcare v UOI¹³**.

The Respondent has requested that based on the above the proceeding should be stayed till the time the issue of constitutional validity and computation methodology is settled by the Courts.



122. The Respondent has also submitted that the impugned Report sweepingly ignored the business peculiarities. Basis the same, in the first place no amount of profiteering could be determined given the incomparability of any two supplies by the Respondent. The supplies, it may be noted, were rendered incomparable owing to the sheer nature of business and varying utility of each supply (as perceived by the customer since it was in the business of entertainment). The business of entertainment, was never static, and hence, that alone is the primary defense for non-maintainability of comparisons and the inapplicability of profiteering provisions on the same. The decision of the Authority, accordingly, would be of huge relevance and the Respondent craves for justice with full faith in this Authority. The relevance of a fair decision, in favour of the Respondent appreciating the business peculiarities and legal averments submitted, was further advanced given the impact of pandemic and consequent lockdowns on its business. The Cinema exhibition sector too had borne the brunt of the pandemic. While the sector was among the first businesses to get impacted due to a country-wide lockdown, it was amply clear now that it would be among the last ones to be allowed to reopen for operations. The Respondent has been already under lockdown for the last 5 months now, and despite unlock 3 already announced, he was still shut with no clarity on the resumption of operations. If that was not enough, the apprehensions in the minds of consumers, which started impacting our revenues weeks before the lockdown, would remain prevalent for a longer time, even after he reopened. The list of

challenges did not end here. Producers of those movies which would supposedly have helped him garner huge Box Office revenues had started opting for direct release on digital platforms. This trend was potentially causing grave damage to the cinematic value chain and his potential revenue prospects. The Respondent had further contended that the kind of headwinds, which its premier venture, INOX Leisure Ltd. was facing, coupled with a ZERO revenue stretch of more than 160 days now, has already challenged his strong business foundation and shaken up his financial stability. The Respondent was finding it difficult to discharge even the salaries to his employees and other routine expenditures in absence of any revenue now. He was fighting for survival hence; any liability imposed for the said profiteering would lead to the closure of the business. Given the ground realities, the case needed to be seen sympathetically as well. The Respondent has further added that the Respondent's representation in the present proceedings was further severely obstructed by the fact that since mid-March '20, several of his employees had tested positive for Covid-19. This has led to a complete shutdown of even back-office operations for a significant period; thus, impacting ability to either submit responses or appear before this Authority. The Respondent would like to report the severity of the issues, sadly though, given the demise of some of the said employees, an irrecoverable loss of the Respondent. The Respondent has stated that without prejudices, at least the deserving claim for input credit should be allowed so that it could attempt to close the liability if any.



123. The DGAP submitted his supplementary Report dated 08.10.2020 vide which he has submitted parawise clarification on the Respondent's submission dated 21.08.2020 which are as under: -

- (I) He submitted that the submission of the Respondent that the report of the DGAP is based on the hypothetical data and not on actual data is bereft of facts. The ratio of input tax credit to the net taxable turnover has been computed on the basis of actual data submitted by the Respondent. He also reiterated that the Respondent's contention of considering actual ITC loss data for the period 15.11.2017 to 31.03.2018 is not tenable as the same can only be computed only after the end of period i.e. on or after April, 2018 which cannot be factored in on the eve of GST rate reduction i.e. on 15.11.2017. The DGAP has computed the input tax credit as a percentage of the total taxable turnover for the period July, 2017 to October, 2017.
- (II) With regard to the Respondent submission that ITC against invoices of July to Oct., 2017 period, which are booked in later periods also be taken into consideration, he submitted that Section 16(2) the Central Goods and Services Tax Act, 2017 prescribes certain conditions for entitlement of ITC which are:
 - a. Respondent is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - b. Respondent has received the goods or services or both.



- c. subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and
- d. Respondent has furnished the return under section 39:

Further, with effect from 15.11.2017, Respondent was not allowed to avail ITC in terms of Notification no.46/2017- Central Tax (Rates) dated 14.11.2017, Therefore, in terms of provisions of Section 16(2)(a) Respondent was not eligible to take ITC w.e.f. 15.11.2017 on the strength of invoices received post 15.11.2017 when the aforesaid notification debarred the Respondent from ITC availment. As Respondent has received the taxable invoices post 15.11.2017 when he was ineligible to avail ITC in terms of Notification no. 46/2017 Central Tax (Rate) dated 14.11.2017, therefore the same cannot be considered for computation of denial of Input Tax Credit to net turnover ratio.

However, the DGAP has inadvertently not considered the ITC availed during the period 01-14 Nov. 2017 pertaining to the invoices issued from July 2017 to Oct., 2017. Therefore, he has re-computed the ratio of Input Tax Credit to Net Outward Taxable Turnover after adding the amount of ITC pertaining to the invoices issued from July 2017 to Oct., 2017 but availed during 01-14 Nov., 2017 and also excluding the amount of ITC pertaining to the period before July, 2017 which was availed during the period July, 2017 to Oct., 2017 as per GSTR-3B returns. Accordingly, the ratio of Input Tax Credit to Net Outward Taxable Turnover is determined as 10.22% as per table below:



Table-'D (revised)'

Particulars	July-2017	Aug.-2017	Sept.-2017	Oct.-2017	Total
ITC Availed as per GSTR-3B (A)	5,10,45,836	8,64,73,023	12,02,04,147	12,46,44,625	38,25,67,531
ITC availed Exclusively on Non Restaurant Services (B)	32,21,451	1,12,90,601	3,40,34,664	4,17,10,519	9,02,57,234
ITC availed Exclusively on Restaurant Services (C)	40,14,838	78,62,990	1,02,80,402	94,26,274	3,13,86,503
Add: ITC Exclusively on Restaurant Services of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B (Annex-23) (D)	33,227	64,258	1,50,217	22,04,815	24,52,517
ITC availed on Common inputs, input services and capital goods (E)	4,38,09,549	6,75,19,432	7,58,89,081	7,37,05,732	26,09,23,794
Add: Common ITC of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B (Annex-23) (F)	32,405	6,37,689	24,84,290	71,79,538	1,03,33,922
Less: Common Input Tax Credit pertaining to prior July, 2017 but availed in July, 2017 to October, 2017 GSTR-3B (Annex-24) (G)	(6,72,096)	(1,87,777)	(29,481)	-	(8,89,334)
Net ITC availed on Common inputs, input services and capital goods (H)=(E+F-G)	4,31,69,658	6,79,69,344	7,83,43,910	8,08,85,270	27,03,68,382
Total Outward Taxable Turnover as per GSTR-1 (I)	93,73,86,472	1,08,47,21,802	1,01,26,41,557	1,09,61,74,705	4,13,09,24,536
Total Restaurant Taxable Turnover as per SKU Wise Sale Register (J)	21,65,99,800	24,03,35,295	21,27,81,452	25,04,55,842	92,01,72,389
Total Turnover other than restaurant service (K)=(I) - (J)	72,07,86,672	84,43,86,507	79,98,60,105	84,57,18,863	3,21,07,52,147
Proportionate ITC availed towards restaurant Service (L)=(H*J/I)					6,02,25,143
Total ITC availed towards Restaurant Service (M) = (C+D+L)					9,40,64,163
Net Outward Taxable Turnover for the period July, 2017 to October, 2017 (N) = (J)					92,01,72,389
Ratio of Input Tax Credit to Net Outward Taxable Turnover (O)=(M/N)					10.22%

(III) Further with regards to the total profiteering, only those items where the increase in base price is more than what is required to offset the impact of denial of input tax credit, have been considered. On the basis of the pre and post reduction in GST rates, the impact of denial of input tax credit and the details of outward supplies (other than zero rated, nil rated and exempted supplies) during the period 15.11.2017 to 30.04.2019, as per the item wise sales registers, the amount of net higher sale realization due to increase in the base price of the service, despite the reduction in GST rate from 18% to 5% (with denial of input tax credit) or in other words, the revised profiteered amount comes to **Rs. 3,10,56,939/- (including GST on the base profiteered amount)**. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 3,10,56,939/- is furnished in table- 'F (revised)' below:

(IV)

Table- 'F (revised)'

S.No.	Name of State	State Code	Total Profiteering (Rs.)
1	Andhra Pradesh	37	17,66,048
2	Chhattisgarh	22	2,03,793
3	Delhi	7	13,27,241
4	Goa	30	15,42,054
5	Gujarat	24	17,51,318
6	Haryana	6	9,61,857
7	Jharkhand	20	3,99,941
8	Karnataka	29	25,00,847
9	Kerala	32	2,10,867
10	Madhya Pradesh	23	5,77,855
11	Maharashtra	27	79,96,518
12	Orissa	21	7,91,684
13	Punjab	3	4,96,972
14	Rajasthan	8	19,21,980
15	Tamil Nadu	33	16,70,255
16	Telangana	36	9,08,253
17	Uttar Pradesh	9	11,19,063
18	West Bengal	19	49,10,394
Grand Total			3,10,56,939

124. The Respondent vide his additional submissions dated 19.10.2020 on the supplementary Report of the DGAP dated 08.10.2020 he submitted that the profiteering provisions being applicable to only transitional contracts the DGAP's office has stated sweeping commented that the profiteering is found in later contracts also and hence, provision of Section 171 extended to such later period. The DGAP has failed to explain its position that why a contract of sale that is proposed/ executed/ serviced (all events) post the change in rate of tax should even concern Section 171 in first place (the computational aspects should be delved into only if provisions are applicable at an in-principle level). It is submitted that the prices of supplies would but naturally change over a period of time including in our case where the prices have been revised (including downwards) purely out of commercial considerations. As per

DGAP's view once the rate of tax has been lowered, any subsequent price increase (for indefinite period) would fall within purview of profiteering provisions. He requested the Authority take cognizance of his other legal submissions regarding scope of the investigation; the investigation being time barred; Lacunae in procedures and arbitrary methodology of computation of profiteering amounts; etc

The Respondent further submitted that regarding ITC allowance the DGAP has partially acceded to his submissions/ argument on the manner of computation of ITC loss %. However the DGAP again failed to be set out a legal basis for his new approach. The DGAP has once again erred in its approach by only partially accepting Respondent's claim regarding ITC loss (%). Such approach, of rejecting the balance claim, is devoid of legal merits and ought to be set aside. He also reiterated his earlier submissions regarding ITC loss (%) which are as follow:-

- a. ITC eligibility on procurement is determined qua the outward supplies for which such procurements has been used.
Procurements vide July to October 2017 invoices were used for outward supplies in the same period and not thereafter
- b. The right to avail ITC arises on the date of receipt of supplies. The limitation period for actual availment (once the right is established) is a statutory prescription.
- c. For July to October 2017 invoices, the right to avail ITC thereupon arose in the same period
- d. The period of limitation for actual availment is expressly provided at Section 16 of the CGST Act – for FY 2017-18 invoices – the same is allowed up to March 2019

- e. The GST rate change event of 15 November 2017, providing a bar on ITC availment was prospective. Hence, procurement prior to that date continue to be eligible for ITC availment even after the change in law.
- f. Only such procurements, that bear nexus to outward supplies made after that date (i.e. on or after 15 November 2017), are barred for ITC availment. and other eligible ITC could be availed even after the relevant GST rate change event.

He also submitted that these submissions are without prejudice to his earlier submissions that the ITC loss % should be calculated on basis of data on actual loss during the period post change in rate of tax.

125. A copy of the objections dated 29.10.2020 filed by the Respondent was supplied to the DGAP for filing further clarifications under Rule 133(2A) of the CGST Rules, 2017 to which the DGAP has filed clarifications dated 09.11.2020, wherein he has reiterated his earlier submissions of the supplementary Report dated 08.10.2020.

126. The DGAP's Supplementary Report dated 09.11.2020 was supplied to the Respondent vide Order dated 11.11.2020 to file his consolidated and concise submissions by 18.11.2020. The Respondent has filed his consolidated submissions dated 18.11.2020, wherein he has stated that:

S. No.	Particulars of Averment/Ground
1	DGAP has exceeded its power by investigating products beyond

	contours or the complaint which goes to the very root of its jurisdiction.
2	Examination over 14 months by the screening committee is in clear violation of Rule 128 of the CGST Rules.
3	The DGAP failed to complete the investigation proceedings & issue the Report thereof within the prescribed time thus rendering the impugned report Null & Void.
4	No methodology was prescribed to derive profiteering, thus, leading to an arbitrary exercise of powers by DGAP.
5	Provision of Section 171(1) cannot be applied to the present case in absence of any transitional supply contract.
6	Anti-profiteering provision, if at all, can be triggered only in instances where an unlawful manner of business is established.
7	Adopting 18 months as the period of investigation to determine alleged profiteering acts as a price control mechanism and is clearly violative of the right to trade.
8	The loss on account of its disallowance is higher than the revision in prices.
9	Incorrect addition of 5% GST to the alleged profiteering amount.
10	Proceedings/Notice to be kept in abeyance pending finality of various petitions.

127. We have carefully considered all the Reports furnished by the DGAP, the submissions made by the Respondent, and the other material placed on record. On examining the various submissions we find that the following issues need to be addressed:-

(a) Whether the Respondent has passed on the commensurate benefit of reduction in the rate of tax to his customers?

(b) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 committed by the Respondent?

128. It is revealed from the record that the Respondent has been operating a total of 133 multiplexes in 18 states and dealing with 1650 items while supplying restaurant services after 15.11.2017. It is also revealed from the plain reading of Section 171 (1) of the CGST Act, 2017 that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second about the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the case record that there has been a reduction in the rate of tax from 18% to 5% w.e.f. 15.11.2017, on the restaurant service being supplied by the Respondent, vide Notification No. 46/2017-Central Tax (Rate) dated 14.11.2017 without the benefit of ITC. Therefore, the Respondent is liable to pass on the benefit of tax reduction to his customers in terms of Section 171 (1) of the above Act. It is also apparent that the present investigation has been carried out w.e.f. 15.11.2017 to 30.04.2019.

129. It is also evident that the Respondent has been dealing with a total of 1650 items during the period from 15.11.2017 to 30.06.2019. Upon comparing the average selling prices as per the details submitted by the Respondent for the period from 01.08.2017 to 14.11.2017 and the actual selling prices post rate reduction w.e.f. 15.11.2017 to 30.06.2017 the DGAP has reported that the GST

rate of 5% has been charged w.e.f. 15.11.2017, however, the base prices of 1434 products have been increased more than their commensurate prices w.e.f. 15.11.2017 which established that because of the increase in the base prices the cum-tax prices paid by the consumers were not reduced commensurately, inspite of the reduction in the GST rate.

130. While comparing the average pre rate reduction base prices with the post rate reduction actual base prices the DGAP has duly taken in to account the impact of denial of ITC in respect of the "restaurant service" being supplied by the Respondent as a percentage of the taxable turnover from the outward supply of the products made during the pre-GST rate reduction period by taking into consideration the period from 01.07.2017 to 31.10.2017 and not up to 14.11.2017. This has been done because:

- (a) The Respondent was required to reverse an amount of Rs. 1,35,90,052/- on the closing stock of inputs and capital goods as on 14.11.2017. However, the correctness and completeness of the computation could not be ascertained and therefore it could not be relied upon.
- (b) The invoice-wise outward taxable turnover in November 2017 was not provided by the Respondent to compute taxable turnover for the period 01.11.2017 to 14.11.2017.
- (c) On several invoices, the credit was taken between 01.11.2017 to 14.11.2017 but it pertained to services availed during the whole month of November 2017.

Accordingly, the ratio of ITC to the net taxable turnover has been computed for determining the impact of denial of ITC, by taking in

to consideration the ITC and the turnover which was available/obtained by the Respondent till 31.10.2017. As per the case record, ITC amounting to ₹ 8,92,55,966/- was available to the Respondent during the period from July 2017 to October 2017 which was approximately 9.70% of the net taxable turnover of the restaurant service amounting to ₹92,01,72,389/- supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the said ITC was not available to the Respondent.

131. It is further revealed from the analysis of the details of item-wise outward taxable supplies made during the period from 15.11.2017 to 31.03.2018 that the Respondent had increased the base prices of the items supplied as a part of restaurant service to make up for the denial of ITC post GST rate reduction. The pre and post GST rate reduction prices of the items sold during the period from 01.08.2017 to 14.11.2017 (Pre-GST rate reduction) and 15.11.2017 to 31.03.2019 (Post-GST rate reduction) have been compared and it has been found that the Respondent has increased the base prices by more than what was required to offset the impact of denial of ITC in respect of 1434 items (out of a total of 1650 items) sold during the above period. Thus, it is apparent that the Respondent has resorted to profiteering as the commensurate benefit of reduction in the rate of tax from 18% to 5% has not been passed on by him. However, there was no profiteering in respect of the remaining items on which there was either no increase in the base prices or the increase in base prices was less or equal to the denial

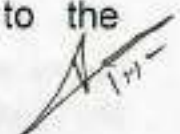
of ITC or these were new products launched post-GST rate reduction.

132. Based on the aforesaid pre and post-reduction GST rates, the impact of denial of ITC and the details of outward supplies (other than zero-rated, nil rated, and exempted supplies) during the period from 15.11.2017 to 30.04.2019, the amount of net higher sale realization due to increase in the base prices of the products, despite the reduction in the GST rate from 18% to 5% with denial of ITC or the profiteered amount has come to ₹3,85,30,314/- including the GST on the base profiteered amount. The details of the computation have been given by the DGAP in Annexure-22 of his Report. However, the DGAP vide his Supplementary Report dated 08.10.2020 has partially accepted the objection of the Respondent regarding under-reporting of the eligible ITC allowance. The DGAP has submitted that the ratio of input tax credit to the net taxable turnover has been computed on the basis of actual data submitted by the Respondent himself before him and it was reiterated by him that the Respondent's contention of considering actual ITC loss data for the period 15.11.2017 to 31.03.2018 was not tenable as the same could only be computed after the end of the period i.e. on or after April 2018 which could not be factored in on the eve of GST rate reduction i.e. on 15.11.2017. The DGAP has computed the input tax credit as a percentage of the total taxable turnover of the Respondent for the period July 2017 to October 2017 for the reasons cited in paras 26 & 27 of the DGAP report dated 31.01.2020.



133. The Respondent has submitted the DGAP has wrongly calculated the loss of ITC and failed to consider ITC loss booked between 15.11.2017 to 31.03.2018 and accordingly calculated the loss of ITC as 9.70% which should have been 13.88%. Further the DGAP vide its supplementary Report dated 08.10.2020 has submitted that he had inadvertently not considered the ITC availed during the period 01-14 Nov 2017, pertaining to invoices issued from July 2017 to Oct 2017 and hence accepted the revised ITC loss as 10.22% instead of 9.70%. Further the Respondent's contention of considering actual ITC loss data for the period 15.11.2017 to 31.03.2018 was not tenable as the same could only be computed after the end of period i.e. on or after April, 2018 which could not be factored in on the eve of GST rate reduction i.e. on 15.11.2017. The DGAP has computed the input tax credit as a percentage of the total taxable turnover for the period July, 2017 to October, 2017. Further we agree with the DGAP that ITC against invoices of July to Oct., 2017 period, which were booked in later periods could not be considered as Section 16 (2) the Central Goods and Services Tax Act, 2017 prescribed certain conditions for entitlement of ITC which are:

- (a) Respondent is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed.
- (b) Respondent has received the goods or services or both.
- (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the



Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) Respondent has furnished the return under section 39:

Further, with effect from 15.11.2017, Respondent was not allowed to avail ITC in terms of Notification No. 46/2017- Central Tax (Rates) dated 14.11.2017, Therefore, in terms of provisions of Section 16 (2) (a) Respondent was not eligible to take ITC w.e.f. 15.11.2017 on the strength of invoices received post 15.11.2017 when the aforesaid notification debarred the Respondent from ITC availment. As Respondent has received the taxable invoices post 15.11.2017 when he was ineligible to avail ITC in terms of Notification no. 46/2017 Central Tax (Rate) dated 14.11.2017, therefore the same cannot be considered for computation of denial of Input Tax Credit to net turnover ratio. He has also relied upon **the Hon'ble Chennai Tribunal in the case of Same Duetz-Fahr India Pvt. Ltd.** Wherein it was upheld that the eligibility to avail ITC is with reference to the date of receipt of inputs in the factory and subsequent exemption granted to the final product shall not impair such right. The Tribunal further said that the denial of ITC on inputs reaching the factory after the prescribed date is possible, however, eligibility to avail ITC on inputs received before the exemption is not hampered and that such credit could be availed at a later date too however, the present case is different from the above quoted case and the denial of ITC arose out of the Notification no. 46/2017 Central Tax (Rate) dated 14.11.2017 which was not the scenario in the above quoted case.



However, the DGAP has admitted that he has inadvertently not considered the ITC availed during the period 01-14 November 2017 pertaining to the invoices issued from July 2017 to October 2017. Therefore, the DGAP has re-computed the ratio of Input Tax Credit to Net Outward Taxable Turnover after adding the amount of ITC pertaining to the invoices issued from July 2017 to October 2017 but availed during 01-14 November 2017 and also excluding the amount of ITC pertaining to the period before July 2017 which was availed during the period from July 2017 to October 2017 as per GSTR-3B returns. Accordingly, the ratio of Input Tax Credit to Net Outward Taxable Turnover was determined as 10.22% as per Table- 'D (revised)' as is given below:

Table-'D (Revised)'

Particulars	July-2017	August-2017	September-2017	October-2017	Total
ITC Availed as per GSTR-3B (A)	5,10,45,836	8,64,73,023	12,02,04,147	12,48,44,525	38,25,67,531
ITC availed Exclusively on Non Restaurant Services (B)	32,21,451	1,12,90,601	3,40,34,664	4,17,10,519	9,02,57,234
ITC availed Exclusively on Restaurant Services (C)	40,14,836	76,62,990	1,02,80,402	94,28,274	3,13,86,503
Add: ITC Exclusively on Restaurant Services of July, 2017 to October, 2017	33,227	64,258	1,50,217	22,04,815	24,52,517

availed in the month of November, 2017 GSTR-3B (Annex-23) (D)					
ITC availed on Common inputs, input services and capital goods (E)	4,38,09,549	6,75,19,432	7,58,89,081	7,37,05,732	26,09,23,794
Add: Common ITC of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B (Annex-23) (F)	32,405	6,37,689	24,84,290	71,79,638	1,03,33,922
Less: Common Input Tax Credit pertaining to prior July, 2017 but availed in July, 2017 to October, 2017 GSTR-3B (Annex-24) (G)	(6,72,096)	(1,87,777)	(29,461)	-	(8,89,334)
Net ITC availed on Common inputs, input services and capital goods (H)=(E+F-G)	4,31,69,858	6,79,69,344	7,83,43,910	8,08,85,270	27,03,68,382
Total Outward Taxable Turnover as per GSTR-1 (I)	93,73,86,472	1,08,47,21,802	1,01,26,41,557	1,09,61,74,705	4,13,09,24,536
Total Restaurant Taxable Turnover as per SKU Wise Sale Register (J)	21,65,99,800	24,03,35,295	21,27,81,452	25,04,55,842	92,01,72,389

Total Turnover other than restaurant service (K) = (I) - (J)	72,07,86,67 2	84,43,86,507	79,98,60,105	84,57,18,863	3,21,07,52,1 47
Proportionate ITC availed towards restaurant Service (L) = (H*J/I)					6,02,25,143
Total ITC availed towards Restaurant Service (M) = (C+D+L)					9,40,64,163
Net Outward Taxable Turnover for the period July, 2017 to October, 2017 (N) = (J)					92,01,72,389
The ratio of Input Tax Credit to Net Outward Taxable Turnover (O) = (M/N)					10.22%

134. As regards the total profiteering, the DGAP has submitted that only those items where the increase in base price was more than what was required to offset the impact of denial of the input tax credit, have been considered. Based on the pre and post-tax reduction GST rates, the impact of denial of input tax credit and the details of outward supplies (other than zero-rated, nil rated, and exempted supplies) during the period 15.11.2017 to 30.04.2019, as per the item-wise sales registers, the amount of net higher sale realization due to increase in the base price of the service, despite the reduction in GST rate from 18% to 5% (with denial of ITC) or in other words, the revised profiteered amount comes to **Rs. 3,10,56,939/- (including GST on the base profiteered amount)**. The details of the computation are given in **Annexure-25 (Confidential)** of the DGAP Report.

The place (State or Union Territory) of the supply-wise break-up of the total profiteered amount of Rs. 3,10,56,939/- is furnished in Table- 'F (revised)' below:

Table- 'F (Revised)'

S.No.	Name of State	State Code	Total Profiteering (Rs.)
1	Andhra Pradesh	37	17,66,048
2	Chhattisgarh	22	2,03,793

3	Delhi	7	13,27,241
4	Goa	30	15,42,054
5	Gujarat	24	17,51,318
6	Haryana	6	9,61,857
7	Jharkhand	20	3,99,941
8	Karnataka	29	25,00,847
9	Kerala	32	2,10,867
10	Madhya Pradesh	23	5,77,855
11	Maharashtra	27	79,96,518
12	Orissa	21	7,91,684
13	Punjab	3	4,96,972
14	Rajasthan	8	19,21,980
15	Tamil Nadu	33	16,70,255
16	Telangana	36	9,08,253
17	Uttar Pradesh	9	11,19,063
18	West Bengal	19	49,10,394
Grand Total			3,10,56,939

135. The Respondent has also argued that the DGAP has exceeded its power by investigating products beyond contours of the complaint which goes to the very root of his jurisdiction. He also quoted certain cases such as **Northern Plastics Limited v. Hindustan Photo Films Mfg. Co. Ltd.** and **CIT v. Dalipur Construction Pvt. Ltd. Supra.** However, these cases are of no use to him as it is observed that the DGAP has been mandated under Rule 129 of the CGST Rules, 2017 to conduct a detailed investigation and submit his Report to this Authority under Rule 129 (6) to determine whether the above benefits have been

passed or not in terms of Section 171 (1) and Rule 133 (1) of the above Rules. Under Rule 129 (2) of the said Rules, only the DGAP has the mandate to conduct an investigation and collect the necessary evidence to determine whether these benefits have been passed on. Further, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

- a) Conduct of investigation to collect the evidence necessary to determine whether the benefit of reduction in the 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, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.
- b) Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee, and the State level Screening Committees."

Therefore, it is clear from the above provisions that the office of the DGAP has been charged with the responsibility of conducting a detailed investigation to collect the evidence necessary to determine whether both the above benefits have been passed on or not in terms of the provisions of Section 171 of the CGST Act, 2017 and the Rule 129. The above Rule has been framed by the Central Government under Section 164 of the CGST Act, 2017 read with Section 171(3)

which has the approval of the Parliament and all the State Legislatures and of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and also has the approval of the Central Government and the State Governments. There is no provision in the above Act or the Rules which provides that the investigation shall be limited to the products against which complaint has been received. On the contrary, every product on which the rate of tax has been reduced is required to be investigated by the DGAP and report submitted to this Authority to determine whether the above benefits have been passed on as per the provisions of Section 171 of the above Act. Moreover, Section 171 (2) of the above Act empowers this Authority to examine all such cases in which the benefit of tax and ITC is required to be passed on. Since the account of ITC is kept for all the products in one common ledger/Register the same cannot be apportioned product-wise hence, all the products being supplied by the Respondent are required to be investigated to determine whether the benefit of tax reduction after duly considering the denial of ITC has been passed on or not. Rule 133 (5) is a mere clarification of the provisions of Section 171 (2) and hence, the DGAP has rightly conducted his investigation covering all the products in respect of which the rate of tax was reduced, with prior notice to the Respondent and hence, no order was required to be passed under Rule 133 (5) by this Authority. The Respondent has increased his prices to deny the benefit of tax reduction in respect of all the product and not only against any particular product. The Respondent cannot get away by appropriating the benefit which he is legally bound to pass, on the ground that no complaint has been

made in respect of the other products. Moreover, the benefit is not to be paid by him out of his own pocket, since it has been granted from the public exchequer to benefit the common consumers. Therefore, the above claim of the Respondent is not correct and hence the same cannot be accepted.

136. Further, the Respondent has contended that the Screening Committee took over 14 months to examine the complaint which was in clear violation of Rule 128 of the CGST Rules, 2017. However, in the instant case a complaint was filed by the Applicant No. 1 to the State Screening Committee of Maharashtra on 21.11.2017 which was further forwarded by Screening Committee to the Standing Committee after examination in February 2017. Further, perusal of the above Rule shows that no time limit was prescribed under Rule 128 (2) for the Screening Committee to examine the complaint when it was filed and the time limit of 02 months was only inserted vide Notification No. 31/2019 Central Tax dt. 28 June 2019. Hence, no timeline has been violated by the Screening Committee in the instant case.

137. The Respondent has further argued that the DGAP has failed to complete the investigation proceedings and submit the report thereof within the prescribed time, thus, rendering the impugned report null and void. However, it is revealed that a reference was received from the Standing Committee by the DGAP on 02.05.2019 to investigate the subject matter and NOI was issued on 13.05.2019 and the statutory timeline to complete the investigation was on 01.08.2019 (three months) without extension in terms of Rule 129(6) of the Central Goods and Services Tax Rules, 2017. However, vide Notification No.

31/2019- Central Tax dated 28.06.2019 which got implemented with immediate effect on all pending proceedings, the period available to the DGAP to investigate the case was extended to 'Six months' in place of 'three months' earlier which could be extended by a further period of three months (total nine months) by this Authority. After the expiry of six months, necessary extension of three months was duly granted by this Authority which has been clearly mentioned in para-6 of the DGAP report dated 31.01.2020. Thus, the submission of the Respondent that the report of the DGAP is time-barred is bereft of facts.

138. The Respondent has further submitted that the CGST is a substantive law in nature and substantive law could not be retrospectively amended. He also placed reliance on the cases of **Purbanchal Cables and Conductors Pvt. Ltd. v. Assam State Electricity Board and Continental Commercial Corporation v. ITO Supra**. However the above mentioned cases are of no assistance to the Respondent as the Notification No. 31/2019- Central Tax dated 28.06.2019 has come into force with immediate effect for the pending proceedings and was not retrospectively implemented. The Respondent submitted that the period of limitation and the condonation period when statutorily prescribed has to be strictly adhered to and cannot be relaxed. He also placed reliance on the cases of **CCE v. Hongo India Pvt. Limited and another, Amchong Tea Estate v. UOI, Simplex Infrastructure Limited v. UOI, Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others, State of Punjab v. Shreyans Industries Ltd., Bharat Heavy Electricals**

Limited v. CCT, Thirumalai Chemicals v. UOI, A. M. Ahamed & Co. v. Commissioner of Customs (Imports), Govinddas v. Income Tax Officer and CIT Bombay v. Scindia Steam Navigation Company Limited Supra. However, the above mentioned cases are of no assistance to him as the period fixed under Rule 128, 129(6) and 133 (1) of the CGST Rules, 2017 is directory in nature and not mandatory as no consequences have been provided in case the time limit prescribed under the above Rules is not followed. This has been ruled by the Hon'ble High Court of Delhi in its Order dated 10.02.2020 passed in WP(C) 969/2020 in the case of **M/s. Nestle India Ltd. v. Union of India & Ors.** Therefore, the above argument of the Respondent is not maintainable.

139. The Respondent submitted that earning profits through lawful means was not a sin; that the provisions of Section 171 of the CGST Act could be triggered only in a case where a registered person made exorbitant profits through unlawful means. He has also placed reliance upon the various cases such as the case of **Commissioner of Income Tax, Gujarat v. Vadilal Lallubhai, Indian Aluminium Company v. Kerala State Electricity Board and Mount v. Welsh Supra.** In this regard it would be pertinent to mention that Section 171 has not been framed to ensure profit of the Respondent as the benefit has to be passed irrespective of the fact whether he is in profit or loss as he does not have to pass it from his own pocket since the same has been given to the ordinary consumer by the Central and the State Governments from their precious tax revenue by cutting down on the welfare schemes. The Respondent

cannot misappropriate it against his profit at the expense of voiceless, unorganised and vulnerable public. Section 171 also does not require consideration of cost as it requires computation of the benefit of tax reduction to be passed on by the Respondent and in case he does not pass it then the profiteered amount has to be computed. Therefore, the reliance placed by the Respondent on the above judgements is misplaced which does not help his case.

140. It was further contended by the Respondent that no methodology was prescribed to compute profiteering which has led to an arbitrary exercise of powers by the DGAP. The above contention of the Respondent is frivolous as the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC or computation of the profiteered amount has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides that "*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 is clear from the plain reading of the above provision that it mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central or the State Governments or a registered supplier avails the benefit of additional ITC the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue. It also provides that the above benefits are to be passed on any supply i.e. on each Stock Keeping Unit (SKU) of each product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefits or

the profiteered amount has to be computed for which investigation has to be conducted in respect of all such SKUs/units/services by the DGAP. What would be the 'profiteered amount' has been clearly defined in the explanation attached to Section 171 of the CGST Act. These benefits can also not be passed on at the entity/organization/ branch/ invoice/ product/ business vertical level as they have to be passed on to each buyer at each SKU/unit/service level by treating them equally. The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another product. Each customer is entitled to receive the benefit of tax reduction or ITC on each SKU or unit or service purchased by him subject to his eligibility. The term "commensurate" mentioned in the above Sub-Section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each SKU or unit or service based on the price and the rate of tax reduction or the additional ITC which has become available to a registered person. The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT which was available to a builder in the pre-GST period with the ITC available to him in the post-GST

period w.e.f. 01.07.2017. Similarly, the benefit of tax reduction would depend upon the price and quantum of reduction in the rate of tax from the date of its notification. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from SKU to SKU or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of the profiteered amount is also a mathematical exercise that can be done by any person who has elementary knowledge of accounts and mathematics. However, to further explain the legislative intent behind the above provision, this Authority has been authorized to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed mathematical formula, in respect of all the Sectors or the SKUs or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or installments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT and ITC availed/available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project

would not be similar to the other project. Therefore, no set procedure or mathematical methodology can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 of the CGST Rules has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of Fast Moving Consumer Goods (FMCG), restaurant service, construction service, and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied to the other sector. Moreover, both the above benefits are being given by the Central as well as the State Governments as a special concession out of their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts is to pass on the above benefits to the common buyers who bear the burden of tax and who are unorganized, voiceless and vulnerable. The Respondent is trying to deliberately mislead by claiming that he was required to carry out highly complex and exhaustive mathematical computations for passing on the benefit of tax reduction which he could not do in the absence of the procedure framed under the above Act. However,

no such elaborate computation was required to be carried out as the Respondent was to maintain the base price of the product which he was charging as of 14.11.2017 and then add 10.22% of the base price on account of denial of ITC and charge GST @5% w.e.f. 15.11.2017. Instead of doing that he has raised his prices by adding more than 10.22% of the base prices as is evident from the above discussion. It is clear from the above narration of facts and the law that no procedure or elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of tax reduction. The Respondent cannot deny the benefit of tax reduction to his customers on the above ground and enrich himself at the expense of his buyers as Section 171 provides a clear cut methodology and procedure to compute the benefit of tax reduction and the profiteered amount. Therefore, the above plea of the Respondent is wrong, and hence, it cannot be accepted.

141. Further The Respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise and Customs Kerala v. Larsen and Toubro Limited supra*** wherein it has been held that in the absence of machinery provisions for computation of taxable value, the levy of tax would become non-existent. Reliance was also placed on the **cases of State of Uttar Pradesh v. Singhara Singh, State of Jharkhand v. Ambay Cements, Petroleum and Natural Gas Regulatory Board v. Indraprastha Gas Limited & Ors and Commissioner of Income Tax, Bangalore v. B. C. Srinivasa Shetty supra.**

However, the above quoted cases are not being followed as the

facts of the present case are different from the above-quoted cases. The Respondent has failed to understand that Section 171 is not a charging section and anti-profiteering provisions do not levy any tax. Section 171 (1) provides for only passing on the benefit of tax reduction or additional ITC by a commensurate reduction in the price.

142. The Respondent has also argued that the provisions of Section 171 (1) cannot be applied to the present case in the absence of any transitional supply contract. The contention of the Respondent is incorrect, as they are applicable in all such cases in which the rate of tax has been reduced and are not subject to any contract entered into by the parties. Passing on of the benefit of tax reduction is a matter of public policy which cannot be superseded by any private contract whether subsisting or to be executed in future after the tax reduction.

143. The Respondent has further added that the Anti-Profiteering provisions could be triggered only in the instances where an unlawful manner of business was established. However, the DGAP in his Report dated 31.01.2020, has nowhere questioned the lawful profits made by the Respondent. Only those transactions have been taken up where the prices post rate cut have been increased more than the impact of ITC loss suffered by the Respondent and the benefit of tax reduction has been denied to the customers. Hence, the Respondent's contention is found to be incorrect.

144. The Respondent has also argued that adopting 18 months as the period of investigation to determine the alleged profiteering acts as a price control mechanism and was clearly violative of the right to trade. Therefore, keeping in mind the perishable nature of the items and various other factors the profiteered amount should be restricted up to March 2018. In this context, we observe that while the rate of GST was reduced from 18% to 5% w.e.f. 15.11.2017, the Respondent had increased the base prices of his products immediately w.e.f. 15.11.2017 and had taken no steps to pass on the resultant benefit of tax reduction by a commensurate reduction in the prices of his supplies at any point of time till 30.04.2019. In other words, the violation of the provisions of Section 171 of the CGST Act 2017 has continued unabated in this case and the offence continues to date. The Respondent has not produced any evidence to prove from which date the benefit was passed on by him. The fact that the Respondent has not complied with the provisions of Section 171 (1) of the above Act till 30.06.2019 requires that the profiteering is computed for the entire period and hence we do not see any reason to accept this contention of the Respondent. We further observe that had the Respondent passed on the benefit before 31.03.2019, he would have been investigated only till that date. The Respondent has failed to cite any ground due to which the profiteered amount should be computed till March 2018 only. Therefore, the period of investigation from 15.11.2017 to 30.04.2019 has been rightly taken by the DGAP for computation of the profiteered amount.



145. The Respondent has also argued that the right to trade was a fundamental right guaranteed under Article 19 (1) (g) of the Constitution which included the right to determine prices that could not be taken away without any explicit authority under the law. Therefore, this form of price control was a violation of Article 19 (1) (g). In this connection, it would be relevant to mention that the Respondent has full right to fix his prices under Article 19 (1) (g) of the Constitution but he has no right to appropriate the benefit of tax reduction under the garb of the above right. The DGAP has not acted in any way as a price controlling authority as it does not have the mandate to do so. Under Section 171 read with Rule 129 of the above Rules, the DGAP has only been mandated to investigate whether both the benefits of tax reduction and ITC which are the sacrifices of precious tax revenue made from the kitty of the Central and the State Governments have been passed on to the end consumers who bear the burden of the tax or not. The intent of this provision is the welfare of the consumers who are voiceless, unorganized and vulnerable. The DGAP has nowhere interfered with the pricing decisions of the Respondent and therefore, there is no violation of Article 19 (1) (g) of the Constitution.

The Respondent has also contended that the approach of the DGAP was a violation of Article 14 of the Constitution of India and the concept of equality before the law. The Respondent also relied upon the following decisions to submit that the taxing statutes must conform to Article 14 of the Constitution of India, **The State of A. P. and another v. Nalla Raja Reddy and others, Kunnath Thathunni Moopil Nair etc. v. the State of Kerala and another**

and Ajay Hasia and Ors. V. Khalid Mujib Sehravardi and Ors Supra. The above quoted cases cannot be relied upon in present case as Section 171 (1) of the CGST Act 2017 provides for only passing on the benefit of tax reduction by a commensurate reduction in the price and there is no provision of taking into account the cost of production as per the provisions of the above Section. The Respondent can only increase his prices up to denial of benefit of ITC to him and no more and an increase in the prices more than the denial of the ITC amounts to violation of the above provisions. The Respondent cannot claim violation of Article 14 on the ground that he has not been allowed to include his costs in the prices on the date of the reduction in the rate of tax as such a claim would be against the provisions of Section 171 (1) of the CGST Act. The Respondent had enough time from 01.07.2017 to 14.11.2017 to increase his prices due to an increase in his cost however, a sudden increase in his cost on 15.11.2017 is a deliberate attempt not to pass on the benefit of tax reduction and appropriate the amount of benefit. Therefore, the above contention of the Respondent is not maintainable.

146. It was further argued by the Respondent that the loss on account of ITC disallowance is higher than the revision in prices. However, the Respondent has failed to produce any evidence to prove that the price increase was not sufficient to compensate the loss of denial of ITC which has been rightly computed as 10.22%. The Respondent was to maintain the base price of the product which he was charging as on 14.11.2017 and then add the amount on account of denial of ITC and charge GST @5% w.e.f. 15.11.2017. Instead of doing that

he has raised his prices by adding more than denial of ITC as is evident from the above discussion. It is also clear from the above narration that the Respondent has increased the base prices of 1434 items more than the loss on account of ITC disallowance. Further, with effect from 15.11.2017, Respondent was not allowed to avail ITC in terms of Notification No. 46/2017- Central Tax (Rates) dated 14.11.2017, therefore, in terms of provisions of Section 16(2)(a) Respondent was not eligible to avail ITC w.e.f. 15.11.2017 on the strength of invoices received post 15.11.2017 when the aforesaid notification debarred the Respondent from ITC availment. As Respondent has received the taxable invoices post 15.11.2017 when he was ineligible to avail ITC in terms of Notification No. 46/2017 Central Tax (Rate) dated 14.11.2017, therefore the same cannot be considered for computation of denial of Input Tax Credit to net turnover ratio.

147. Further, the Respondent has contended that the incorrect addition of 5% GST to the alleged profiteering amount has been done. This contention of the Respondent is not correct because the provisions of Section 171 (1) and (2) of the CGST Act, 2017 require that the benefit of reduction in the tax rate is to be passed on to the recipients/ customers by way of commensurate reduction in price, which includes both the base price and the tax. The Respondent has not only collected excess base prices from the customers which they were not required to pay due to the reduction in the rate of tax but he has also compelled them to pay additional GST on these excess base prices which they should not have paid. By doing so, the Respondent has defeated the very objective of both the Central as

well as the State Government which aimed to provide the benefit of rate reduction to the general public. The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of tax reduction to his customers by charging excess GST. Had he not charged the excess GST the customers would have paid less prices while purchasing food items from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the Respondent. Therefore, the above amount has been correctly included in the profiteered amount by the DGAP, and therefore, the contention of the Respondent is untenable and hence it cannot be accepted.

148. The Respondent had contended that the proceedings/Notice be kept in abeyance pending finality of the various writ petitions which have been filed challenging the orders passed by this Authority. These included ***WP (C) 378 of 2019 (Hindustan Unilever Ltd. v. Union of India)***, ***WP (C) 2347 of 2019 (Jubilant Food works Ltd. v. Union of India)***, and ***WP (C) 4213/2019 (Abbott Healthcare v. Union of India)***. In this context, it would be relevant to mention that the Hon'ble High Court of Delhi has not directed this Authority to stop the proceedings in respect of the present case. Therefore, the present proceedings cannot be kept pending as they are to be completed within the prescribed period. Therefore, the above contention raised by the Respondent is not sustainable.



149. Based on the above facts the profiteered amount is determined as Rs. 3,10,56,939/- as has been revised vide the DGAP's Supplementary Report dated 08.10.2020. Accordingly, the Respondent is directed to reduce his prices commensurately in terms of Rule 133 (3) (a) of the above Rules. Further, since the recipients of the benefit, as determined above are not identifiable, the Respondent is directed to deposit an amount of Rs. 3,10,56,939/- in two equal parts of Rs. 1,55,28,470/- each in the Central Consumer Welfare Fund and the State Consumer Welfare Funds as mentioned in the Table 'F' Revised, as per the provisions of Rule 133 (3) (c) of the CGST Rules 2017, along with interest payable @ 18% to be calculated from the dates on which the above amount was realized by the Respondent from his recipients till the date of its deposit. The above amount of Rs. 3,10,56,939/- shall be deposited, as specified above, within a period of 3 months from the date of passing of this order failing which it shall be recovered by the concerned CGST/SGST Commissioner.

150. It is evident from the above narration of facts that the Respondent has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and hence he has committed an offence under section 171 (3A) of the CGST Act, 2017, and therefore, he is liable to penal action under the provisions of the above Section. However, a perusal of the provisions of Section 171 (3A) under which penalty has been prescribed for the above violation shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the

period from 15.11.2017 to 30.04.2019 when the Respondent had committed the above violation and hence, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, notice for the imposition of penalty is not required to be issued to the Respondent.

151. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST of the States given in the Table 'F' Revised supra to monitor this order under the supervision of the DGAP by ensuring that the amount profited by the Respondent as ordered by this Authority is deposited in the CWFs of the Central and the State Governments as per the details given in the above Table. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioner within a period of 4 months from the date of receipt of this order.

152. A copy each of this order be supplied to the Applicants, the Respondent, and the concerned Commissioner CGST/SGST of the States given in Table 'F' - Revised for necessary action. File be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member



Sd/-
(Amand Shah)
Technical Member

Certified Copy


(A. K. Goel)
NAA, Secretary

Copy To:-

1. M/s Inox Leisure Pvt. Ltd., 5th Floor, Viraj Towers, Next to Andheri Flyover, Western Expressway Highway, Andheri(East), Mumbai - 400093.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi.
3. Commissioner of commercial Taxes, office of the chief Commissioner of state Tax, eedupugallu, krishna district, Andhra Pradesh.
4. Commissioner of commercial Taxes, office of Commissioner of commercial Tax, vikrikar bhavan, old high court building, panji, Goa- 403 001
5. Commissioner of commercial Taxes, c-5, Rajya kar bhavan, near times of India, ashram road, Ahmedabad.
6. Commissioner of commercial Taxes, vanijya bhavan, plot no. 1-3, sector-5, panchkula. Pin - 134 151.
7. Commissioner of commercial Taxes, commercial Taxes Department, project bhawan, dhurva, Ranchi- 834 004.
8. Commissioner of commercial Taxes, vanijya therige karyalaya, 1st main road, Gandhinagar, Bangalore- 560 009
9. Commissioner of commercial Taxes, Government secretariat, Thiruvananthapuram -695001.
10. Commissioner of commercial Taxes, Moti Bangla compound, m.g. Road, Indore
11. Commissioner of commercial Taxes, GST bhavan, mazgaon, Mumbai- 400 010.
12. Commissioner of commercial Taxes, office of the Commissioner of state Tax, baniykar bhawan, old secretariat compound, cuttack - 753 001.
13. Commissioner of commercial Taxes, office of Excise and Taxation Commissioner, bhupindra road, patiala- 147 001.
14. Commissioner of commercial Taxes, kar bhavan, ambedkar circle, jaipur, rajasthan - 302 005.
15. Commissioner of commercial Taxes, papjm building, greams road, chennai - 600 006.
16. Commissioner of commercial Taxes, o/o the Commissioner of state Tax, ct complex, nampally station road, hyderabad - 500 001.
17. Commissioner of commercial Taxes, office of the Commissioner, commercial Tax, u.p. Commercial Tax head office vibhuti khand, gomti nagar, lucknow (u.p).
18. Commissioner of commercial Taxes, 14, beliaghata road, kolkata - 700 015.
19. Commissioner of commercial Taxes, deptt of trade & Taxes, vyapar bhavan, ip estate, new delhi-2 pin -110 002.
20. Chief Commissioner of central Goods & Services Tax, Bhopal zone 48, administrative area, arera hills, hoshangabad road, Bhopal M.P. 462 011.
21. Chief Commissioner of central Goods & service Tax c.r.building rajaswa vihar, bhubaneswar-751007.
22. Chief Commissioner of central Goods & service Tax Chandigarh zone C.R. Building, plot no.19a, sector17c, chandigarh-160017.

23. Chief Commissioner central Goods & service Tax , cochin zone C.R.building, i.s.press road, Ernakulum cochin - 682018.
24. Chief Commissioner of central Goods & Services Tax Delhi zone C.R. Building, I.P. Estate, new delhi - 110 109.
25. Chief Commissioner of central Goods & service Tax, Hyderabad zone GST bhavan, I.B.stadium road, basheer bagh, Hyderabad -500 004.
26. Chief Commissioner of central Goods & Services Tax Jaipur zone, new central revenue building, statue circle, Jaipur -302 005.
27. Chief Commissioner of central Goods & Services Tax, Meerut zone opp. Ccs university,mangal pandey nagar, meerut-250 004.
28. Chief Commissioner of central Goods & Services Tax, Mumbai zone GST building, 115 m.k. Road, opp. Churchagate station, mumbai-400020.
29. Chief Commissioner of central Goods & Services Tax, Telangkhedi road, civil lines, Nagpur 440001.
30. Chief Commissioner of central Goods & Services Tax Panchkula, sector-8, Panchkula , sco - 407408.
31. Chief Commissioner of central Goods & Services Tax, Pune zone GST bhawan ice house, 41a, sasoon road, opp. Wadia college, pune -411001.
32. Chief Commissioner of central Goods & Services Tax, Vadodara zone 2nd floor, central Excise building, race course circle, Vadodara 390 007
33. Chief Commissioner of central Goods & Services Tax Visakhapatnam zone GST Bhavan, port area, Visakhapatnam-530 035.
34. Commissioner of commercial Taxes, cct@odishatax.gov.in.
35. Chief Commissioner of central Goods & Services Tax Bengaluru zone C.R. Building Queen's Road, Bengaluru.
36. Chief Commissioner of central Goods & Services Tax, Ahmedabad Zone, GST Bhavan, Revenue Marg, Ambawadi, Ahmedbad -380015.
37. Chief Commissioner of central Goods & Services Tax, Chennai Zone, 26/11, Mahatma Gandhi Road, Nungambakkam, Chennai - 600034.
38. Chief Commissioner of central Goods & Services Tax, Kolkata Zone, 2nd Floor, GST Bhavan, 180, Shantipally, R.B. Connector, Kolkata - 700107.
39. Chief Commissioner of central Goods & Services Tax, Lucknow Zone, 7-A, Ashok Marg, Lucknow - 226001.
40. NAA website/Guard file.



A. K. GOEL
SECRETARY, NAA

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 80/2022
Date of Institution : 31.08.2021
Date of Order : 30.09.2022

In the matter of:

1. Sh. Deepak Garg, on behalf of his mother Mrs. Chetna Garg, resident of B.B. enterprises, D-55, Sector-50, Noida.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s JKG Construction Pvt. Ltd., B-174, 1st Floor, Yojna Vihar, New Delhi-110092.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present :-

1. None for the Applicant No.1
2. None for the Respondent.

ORDER

1. The present Report dated 31.08.2021 had been received from the Applicant No. 2 i.e. the Director General of Anti-profiteering (DGAP) after a detailed investigation under Rule 129(6) of the Central Goods & Services Tax (CGST) Rules, 2017 alleging profiteering by the Respondent in respect of the purchase of shops in the Respondent's project "JKG Palm Court" by not passing on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017. The Standing

Committee forwarded the copy of the complaint of Applicant No. 1 to the DGAP for detailed investigation.

2. The DGAP vide above said Report dated 31.08.2021 has inter-alia stated that:-

- i) On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice for initiation of investigation under Rule 129 of the Rules was issued by the Director General of Anti-profiteering on 20.11.2020, calling upon the Respondent to reply as to whether he admit that the benefit of ITC had not been passed on to the recipients by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all documents in support of his reply. Further, the Respondent was afforded an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period 03.12.2020 to 04.12.2020. The authorized representative of the Respondent availed of the said opportunity on 04.12.2020.
- ii) Vide e-mail dated 17.08.2021, the Applicant was also given an opportunity during 19.08.2021 & 23.08.2021 to inspect the non-confidential documents/reply furnished by the Respondent. The Applicant availed of the said opportunity on 19.08.2021. The Applicant vide email dated 20.08.2021 submitted his observation on the documents inspected and made his submission.
- iii) The period covered by the current investigation was from 01.07.2017 to 31.10.2020.

- iv) The statutory time limit to complete the investigation was upto 14.04.2021, as per Rule 129(6) of the CGST Rules, but, due to *force majeure* caused in the light of Covid-19 pandemic, the investigation could not be completed on or before the above date. However, in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020, as amended vide Notification No. 55/2020-Central Tax dated 27.06.2020 and 91/2020-Central Tax dated 14.12.2020, issued by the Central Government, wherein the last date for submission of report had been extended upto 31.03.2021. Further, Hon'ble Supreme Court of India passed an Order dated 08.03.2021 in *Suo Moto* Writ Petition (Civil) No. 3 of 2020, wherein it was stated that "in cases where the limitation would had expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall had a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, was greater than 90 days, that longer period shall apply." The above relief had been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW (C) No. 3/2020.
- v) As complete and relevant documents were not submitted by the Respondent even after repeated requests, Summons under Section 70 of the CGST Act, 2017 read with Rule 132 of the Rules was issued on 18.05.2021 to Shri Jai Kumar Goel, Director of the

Respondent to produce the relevant documents. In response to the Summons dated 18.05.2021 and 02.08.2021. The Respondent had submitted complete information/ documents required for investigation on 17.08.2021.

- vi) In response to the Notice dated 20.11.2020 and various reminders and Summons, the Respondent replied vide letters/e mails dated 04.12.2020, 10.12.2020, 24.12.2020, 04.01.2021, 15.02.2021, 24.02.2021, 01.03.2021, 01.06.2021, 24.06.2021, 25.06.2020 and 17.08.2021.
- vii) Vide the above mentioned replies, the Respondent submitted that the Company was a real estate developer, incorporated on May, 2001 with the Registrar of Companies, NCT, New Delhi with the main object of promoting Real Estate Business through developing Residential cum commercial complexes. The Company was engaged in business of construction of Residential cum commercial properties at Greater Noida. The main project carried by the company was JKG Palm Court, which was being constructed in 02 phases.
- viii) The Respondent had claimed that he had already passed on the benefit of Rs. 1,86,112/- to the Applicant and Rs. 6,13,37,994/- to the other customers in terms of Section 171 of the CGST Act, 2017. Thus, the Respondent claimed that he had passed on total benefit of Rs. 6,15,24,106/-.
- ix) Vide the aforementioned letters/e-mails, Respondent submitted the following documents/ information:

- (a) Copies of GSTR-1 returns for the period July, 2017 to October, 2020.
- (b) Copies of GSTR-3B returns for the period July, 2017 to October, 2020.
- (c) Copies of Tran-1 return for transitional credit availed by the Noticee.
- (d) Copies of VAT & ST-3 returns for the period April, 2016 to June, 2017.
- (e) Electronic Credit Ledger for the period July, 2017 to October, 2020.
- (f) CENVAT/ITC register for the F.Ys. 2016-17 to 2020-21 (upto October, 2020).
- (g) Status of project– Architect Certificate as on 30.09.2020 for Phase 1 & 2 tower wise.
- (h) Copies of all demand letters issued and sale agreement in the name of Mrs. Chetna Garg.
- (i) Copy of temporary Occupancy Certificate dated 27.06.2019.
- (j) Details of applicable Tax rates, pre-GST and post-GST.
- (k) Details of Service Tax, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to October, 2020.
- (l) Copy of Financial Statements for FY 2016-17 to 2019-20.
- (m) Copy of project report submitted to RERA.
- (n) Copy of Agreement between land owners for the project.
- (o) List of all buyers in the project “JKG Palm Court”.

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- x) The Respondent vide email dated 10.12.2020 submitted that all his submission/documents made to department vide email dated 10.12.2020 was confidential. However, the Respondent had not given any non-confidential summary of the same. he had also not given any reason as to why summarization was not possible.
- xi) Para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration had been received after issuance of completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier". Thus, the ITC pertaining to the residential units and commercial shops which was under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remain unsold at the time of issue of the completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both was used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempted supplies under the said Acts, the amount of credit shall be

restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies”.

Section 17 (3) “The value of exempted supply under sub-section (2) shall be such as might be prescribed and shall include supplies on which the recipient was liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building”.

Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the net benefit of additional ITC available to him post-GST.

- xii) As regards the allegation of profiteering with regard to Project- JKG Palm Court, it was observed that prior to 01.07.2017, i.e., before the GST was introduced, the Respondent were eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of Central Excise duty paid on inputs was not admissible, as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, the Respondent were paying VAT under Uttar Pradesh VAT Scheme, wherein he were required to discharge his output VAT liability on deemed value addition on the purchase of the inputs. It was also evident from the submissions made by the Respondent that there was no direct correlation between the turnover for VAT as reported in his VAT returns for the period April, 2016 to June, 2017, filed by the Respondent and the actual demand raised by him from the buyers. Therefore, the ITC of VAT and the VAT turnover had not been considered for

computation of the ratio of ITC to the turnover for the pre-GST period. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and the input services. From the information submitted by the Respondent for the period April, 2016 to October, 2020, the details of the ITC availed by them, his turnover from the project "JKG Palm Court" and the ratio of ITC to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to October, 2020) periods, was furnished in table-'A' below:

Table-'A' (Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017	July, 2017 to October, 2020
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	1,06,74,368	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	1,06,74,368	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	8,76,37,853
5	Net Turnover as per Home Buyers List (E)	18,89,09,998	65,75,79,319
6	Total Saleable Area in the project (as per Home BuyersList (Sq ft) (F)	9,41,755	9,41,755
7	Area Sold relevant to turnover as per Home BuyersList (G)	1,33,241	5,49,715
8	Relevant CENVAT/Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]	15,10,227	5,11,55,388
9	Ratio of CENVAT/ ITC to Taxable Turnover [(I)=(H)/(E)]	0.80%	7.78%

xiii) From the Table- 'A' above, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during their GST period (April, 2016 to June, 2017) was 0.80% and during the post- GST period (July, 2017 to October, 2020), it was 7.78%. This clearly confirms that post-GST, the Respondent

had benefited from additional ITC to the tune of 6.98% [7.78% (-) 0.80%] of the turnover. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available in the pre-GST period (April, 2016 to June, 2017) when effective Service Tax @4.50% was payable with the post-GST period (July, 2017 to October, 2020) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017.

- xiv) On the basis of the figures contained in Table-'A' above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post- GST periods as well as the turnover, the recalibrated base price and the excess realization (profiteering) from the home buyers who booked flats during the pre-GST period, was tabulated in Table-'B' below:-

Table-'B' (Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	01.07.2017 to 31.10.2020
2	Output GST Rate (%)	B	12.00%
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	7.78%
4	Increase in ITC availed post-GST (%)	D= 7.78% less 0.80%	6.98%
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised/collected during July, 2017 to October, 2020 (Rs.)	E	65,75,79,319
9	GST @ 12% over Base Price	F=E*12%	7,89,09,518
10	Total amount collected/raised by Noticee	G= E+F	73,64,88,836
11	Recalibrated Base Price	H= (E)*(1-D) or	61,16,80,283
12	GST @ 12%	I=H*12%	7,34,01,634
13	Commensurate demand price	J=H+I	68,50,81,916
14	Excess Collection of Demand or Profiteering Amount	K=G-J	5,14,06,920

From Table-'A' and 'B' above, it might be deduced that the additional ITC of 6.98% of the turnover should had resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the respective recipients.

- xv) The Respondent had claimed that he had passed on the benefit of Rs. 6,15,24,106/- to the 386 buyers, (out of total 714 buyers) including Applicant No. 1, reflected in the buyers list. The Respondent had submitted email addresses of 324 buyers, to whom the above mentioned benefit was claimed to be passed on. The Respondent had not submitted any documentary proof to substantiate his claim. Also, the Applicant No.1 vide email dated 20.08.2021 submitted that the claim of the Respondent of passing on of benefit of Rs. 1,86,112/- was false and wrong. The Applicant No. 1 further submitted that the Respondent had raised a demand letter dated 20.12.2019 of Rs. 30,17,729/- and another demand letter dated 23.07.2020 of Rs. 33,88,124/- by adding other charges viz. interest on delayed payment, farmer compensation and delay fit out period, which were not applicable on his demand.
- xvi) Further to verify the claim of the Respondent, with respect to other buyers, the DGAP had sent emails dated 17.08.2021 to 324 buyers (whose email addresses were provided by the Respondent). In

response to these 324 emails, 23 home buyers had denied the receipt of any benefit. One buyer had accepted the receipt of ITC benefit of Rs. 3,10,935/-. However, as per Annex-17 of the Report dated 31.08.2021, it was observed that the Respondent had to pass on benefit of Rs. 2,87,179/-, thus, passed on excess credit of Rs. 23,756/- to this buyer. This credit can't be set off against the benefit which ought to have been passed on to other buyers. Thus, this excess amount was not part of benefit further to be passed on by the Respondent. The emails of home buyers was enclosed as Annex-16 of the Report dated 31.08.2021. Thus, the Respondent claim of extending the benefit to his home buyers, was not acceptable. The summary of category-wise ITC benefit that was required to be passed on and the benefit already passed on by the Respondent was furnished in Table-'C' below.

Table-'C'

(Amount in Rs.)

Sr. No.	Category of Customers	No. of Units	Saleable Area (in Sqf)	Demand Raised Post GST	Profiteering Amt. as per Annex- 17 of the Report dated 31.08.2021	Benefit claimed to be Passed on by the Respondent	Difference	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Home buyer (Residential)	1	1,185	36,73,500	2,87,179	3,10,935/-	(-) 23,756	Excess Benefit passed on
2	Other Buyers	691	9,10,755	65,39,05,819	5,11,19,741	0	5,11,19,741	Further Benefit to be passed on as per Annex-17 of Report dated 31.08.2021
	Total	692	9,11,940	65,75,79,319	5,14,06,920	3,10,935		

- xvii) From the Table 'B' and Table 'C' above, it was observed that the benefit already passed on by the Respondent was less than what he ought to have passed on by an amount of Rs. 5,11,19,741/- (including Applicant).
- xviii) Thus, on the basis of the aforesaid CENVAT/input tax credit availability pre and post-GST and the details of the amount during the period 01.07.2017 to 31.10.2020, the amount of benefit of ITC that had not been passed on by the Respondent to the recipients comes to Rs.5,11,19,741/- which included GST @12% on the base profiteered amount of Rs.4,56,42,626/-. The home buyer and unit no. wise break-up of this amount was given in Annex-17 of Report dated 31.08.2021. This amount was inclusive of profiteered amount of Rs.1,99,182/- for Applicant mentioned at serial no. 701.
- xix) The Respondent had submitted that he had total of 878 flats and 24 shops in the whole project as on 31.10.2020, out of which 676 flats and 16 shops were booked and 202 flats and 08 shops remained unsold as on 31.10.2020. Accordingly, the buyers' data provided by him was for the live customers as existing on 31.10.2020.
- xx) On the basis of above discussion, it appeared that post-GST, the benefit of additional input tax credit to the tune of 6.98% of the turnover, accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant and other recipients for the project "JKG Palm Court". The provisions of Section 171 of the CGST Act, 2017

had been contravened by the Respondent in as much as the additional benefit of ITC @6.98% of the amount collected during the period 01.07.2017 to 31.10.2020 from the buyers, had not been passed on to the 691 recipients including the Applicant. Therefore, the total additional amount of Rs.5,11,19,741/- was required to be returned to the such eligible recipients.

xxi) The Respondent had supplied construction services in the State of Uttar Pradesh.

xxii) As aforementioned, the present investigation computed the profiteering covering the period 01.07.2017 to 31.10.2020. Profiteering, if any, for the period post 31.10.2020 had not been examined as the exact quantum of ITC that would be available to the Respondent in future cannot be determined at this stage, when the Respondent was continuing to avail ITC in respect of the present project.

3. The above Report was carefully considered by the Authority and a Notice dated 04.03.2022 was issued to the Respondent to explain why the Report dated 31.08.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions. The Respondent did not file his written submissions, therefore, the Respondent was again given the opportunity of filing written submissions, if any, vide order sheet dated 29.03.2022. The Respondent requested vide letter dated 11.04.2022 for three weeks' time to file his written submissions. The request of the Respondent was allowed and was again directed to file his

written submissions vide order sheet dated 26.04.2022 and 13.07.2022 but no written submission have been filed by the Respondent.

4. The hearing in the matter was scheduled to be held on 16.08.2022 via video conferencing. No one appeared on behalf of the Respondent and the Applicant. It may be seen from the above that enough opportunities were provided to interested parties to file their submissions and personal hearing, yet, they did not participate in the proceedings. Therefore, the hearing was closed vide order dated 16.08.2022.
5. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record. It is clear from the plain reading of Section 171(1) that it deals with two situations: - one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post-GST period; hence the only issue to be examined is whether there was any net benefit of ITC with the introduction of GST. It is observed from the Report that the ITC, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 0.80%, whereas, during the GST period (July 2017 to October 2020), it was 7.78% for the project 'JKG Palm Court'. This confirms that during the GST period, the Respondent has benefited from additional ITC to the tune of 6.98% (7.78% - 0.80%) of his turnover for the project 'JKG Palm Court' and the same was required to be passed on to the customers/flat buyers/recipients. The DGAP has calculated the total profiteered amount as Rs. 5,14,06,920/- in respect of the homebuyers/shop buyers/customers/recipients of supply in the impugned Project

including the Applicant No. 1. The Respondent claim of passing on the benefit amounting to Rs. 6,15,24,106/- can not be accepted in absence of any documentary evidence or corroborative documents. This claim of Respondent also need to be rejected in view of the Applicant No. 1 submission that no benefit has been passed on to her by the Respondent.

6. The Authority finds that, neither the Applicant no.1 nor the Respondent has contested the said Report in spite of several opportunities being given to them. They, also, did not attend the personal hearing on the scheduled date. The Authority finds that, the said Report of the DGAP, as reproduced above, has calculated the profiteered amount as per the facts on record and as per the methodology adopted by it in case of other construction projects/ supply of construction services and such methodology has been approved and accepted by this Authority in those cases. The Authority finds no reason to differ from the above-detailed computation of profiteering in the DGAP's Report.
7. The Authority finds that, to verify the claims of the Respondent of having passed on the benefit of ITC to the recipients of supply, the DGAP had sent emails dated 17.08.2021 to only 324 buyers (whose email addresses were provided by the Respondent). In response to these 324 emails, 23 home buyers had denied the receipt of any benefit. Hence, this Authority finds that, such verification is not comprehensive, complete, definite or conclusive and hence cannot be accepted.
8. The Authority finds that the Respondent has profiteered by an amount of Rs. 5,14,06,920/- during the period of investigation i.e. 01.07.2017 to 31.10.2020. The Authority determines an amount of Rs. 5,14,06,920/- (including 12% GST) under section 133(1) as the amount profiteered by the Respondent from his home buyers/shop buyers/customers/recipients of

supply in the impugned Project (as per Annexure-A to this Order), including Applicant No. 1, which shall be refunded by him along with interest @18% thereon, as prescribed, from the date when the above amount was profiteered by him till the date of such payment, as per the provisions of Rule 133 (3) (b) of the GCST Rules 2017. The amount profiteered is **Rs. 1,99,182/-** in respect of Applicant No.1 .

9. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the buyers of the flats/shop buyers/customers/recipients of supply commensurate with the benefit of ITC received by him as has been detailed above.
10. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 5,14,06,920/-, for the project 'JKG Palm Court'. Hence the Respondent is directed to also pass on interest @18% to the customers/ flat buyers/ recipients of supply, on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.
11. The complete list of homebuyers/shop buyers/customers/recipients of supply is attached with this Order, with the details of the amount of benefit of ITC to be passed on along with interest @ 18%, as prescribed, in respect of the project 'JKG Palm Court' of the Respondent as in the said **Annexure-'A'**.
12. This Authority also orders that the profiteered amount of Rs. 5,14,06,920/- for the project 'JKG Palm Court' along with the interest @ 18% from the date of receiving the profiteered amount from the homebuyer/customers/recipients of supply till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of

this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

13. It has also been found that the Respondent has denied the benefit of additional ITC to his customers/buyers/recipients of supply in contravention of the provisions of Section 171(1) of the CGST Act, 2017 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. As the said provision was inserted only with effect from 1.01.2020, therefore, the Respondent is liable for the imposition of penalty for the period from 01.01.2020 onwards under the provisions of the said Section. Accordingly, a Notice be issued to the Respondent for the said purpose.
14. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each homebuyer/shop buyer/customer/recipient of supply, as per this Order along with interest @18% as prescribed. In this regard an advertisement of appropriate size to be visible to the public at large may also be published in a minimum of two local newspapers/ vernacular press in Hindi/English/local language with the details i.e., Name of the Builder (Respondent) – **M/s JKG Constructions Pvt. Ltd., B-174, 1st Floor, Yojna Vihar, New Delhi-110092, Project- “JKG Palm Court” (Greater Noida) and amount of profiteering: Rs. 5,14,06,920/-** so that the concerned home buyers/shop buyers/customers/recipients of supply can claim the benefit of ITC if not passed on. Home buyers/shop buyers/customers/recipients of supply may also be informed that the detailed NAA Order is available on Authority’s website **www.naa.gov.in** Contact details of concerned Jurisdictional CGST/SGST who are nodal officers for compliance of the NAA’s order may also be advertised through the said advertisement.

15. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this Order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.
16. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner.
17. The present investigation has been conducted up to 31.10.2020 only. However, the Respondent is liable to pass on the benefit of ITC which would become available to him till the date of issue of the Completion Certificate. Accordingly, the concerned jurisdictional Commissioner CGST/SGST is directed to ensure that the Respondent passes on the benefit of ITC to the eligible home buyers/shop buyers/customers as per the methodology approved by this Authority in the present case and submit his report to this Authority through the DGAP. The Applicants or any other interested party/person shall also be at liberty to file a complaint against the Respondent before the State Screening Committee in case the remaining benefit of ITC is not passed on to them.
18. Since the Respondent has profited in the instant project, there is every likelihood that he has profited in other projects also under the GSTIN. The Authority has reasons to believe that the Respondent may have resorted to profiteering in the other projects also and hence, it directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submit complete investigation report for all the Projects under this single GST Registration.

19. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that:-

"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."

20. A copy of this order be sent to the Applicant No. 1, the Respondent, jurisdictional Commissioners CGST/SGST Greater Noida, the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh as well as Uttar Pradesh RERA free of cost for necessary action.

Encl : **Annexure – 'A' (Pages 1 to 12)**

-Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
Secretary, NAA

File No. 22011/NAA/JKG/68/2022

Dated: 30.09.2022

Copy To:-

1. M/s JKG Constructions Pvt.Ltd., B-174,1st Floor,Yojana Vihar,
New Delhi-110092

2. Sh. Deepak Garg on behalf of his mother Mrs. Chetna Garg, resident of B.B. Enterprises, D-55, Sector-50, Noida.
3. Chief Commissioner, CGST (Lucknow zone), 7-A, Ashok Marg, Lucknow-226001.
4. Commissioner, Commercial Tax U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar Lucknow – 226010.
5. Principal Secretary, Town And Country Planning Department , Uttar Pradesh, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow 226010.
6. Uttar Pradesh Real Estate Regulatory Authority Naveen Bhavan, Rajya Niyojan Sansthan, Kala Kankar House, Old Hyderabad, Lucknow – 226007.
7. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
8. Guard File.

