



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Case No. : 04/2024
Date of Institution : 10.12.2019
Date of Order : 24.06.2024

In the matter of:

1. Principal Commissioner, Medchal Commissionerate, 11-4-649/B, Lakdi ka Pool, Hyderabad.
2. Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Asian GPR Multiplex, 126, Nizampet X Road, Kukatpally, Hyderabad-500072.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Sh. Anil Agrawal, Member
3. Ms. Sweta Kakkad, Member
4. Sh. Deepak Anurag, Member

Present:-

1. None for the Applicant No. 1.
2. Sh. Sanjay Kumar Chattar, Assistant Commissioner and Sh. Awanindra Kumar, Inspector for the DGAP.
3. Sh. Vaibhav Gaggar, Advocate. Sh. Swapnil Srivastava, Advocate, Sh. Vidur Mohan, Advocate and Sh. Somdev Tiwari, Advocate for the Respondent.

ORDER

1. The present Report dated 10.12.2019 has been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case and findings of investigation conducted by the DGAP are as under:-

- a. A reference has been received from the Standing Committee on Anti-profiteering on 02.07.2019, to conduct a detailed investigation in respect of an application dated 29.03.2019, filed by the Applicant No. 1 under Rule 128 of the Central Goods and Services Tax Rules, 2017, alleging profiteering by the Respondent with respect to supply of "Services by way of admission to exhibition of cinematography films" by not passing on the benefit of reduction in the GST rate on the aforesaid movie admission tickets, from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018-Central tax (Rate) dated 31.12.2018 and instead, increased the base price to maintain the same cum-tax selling price as detailed in Table-'A' below:-

Table-A

Sr.No.	Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019				
		Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Commensurate Base Price (in Rs.)	Amount which was to be Charged (in Rs.)
A	B	C	D	E=[C/128%]	F	G	H	I	J=(I*118%)
1	Premium Seats	175	28	136.72	175	18	148.31	136.72	161.32
2	Regular Seats	150	28	117.19	150	18	127.12	117.19	138.28

- b. The Applicant No. 1 had enclosed copies of tickets pre & post 01.01.2019, copy of letter dated 27.03.2019 of the Respondent confirming non-reduction of the prices of tickets along with his application in Anti-Profiteering Application Form ('APAF-1 form').
- c. The above application was examined by the Standing Committee on Anti-profiteering and was forwarded to the DGAP to conduct a detailed investigation in the matter. Accordingly, the DGAP decided

to initiate an investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax had been passed on by the Respondent to the recipients in respect of supply of "Services by way of admission to exhibition of cinematography films" supplied by the Respondent.

- d. The DGAP issued a Notice on 08.07.2019 under Rule 129 of the CGST Rules, 2017 to the Respondent calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in rate of tax had not been passed on to the recipients by way of 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 furnish all supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information during 17.07.2019 to 19.07.2019, which were furnished by the Applicant No. 1. The Respondent did not avail the same opportunity.

Vide e-mail dated 01.11.2019, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply during 06.11.2019 to 08.11.2019, which were furnished by the Respondent. However, the Applicant No. 1 did not avail of the opportunity.

- e. The period covered by the current investigation was from 01.01.2019 to 30.06.2019.
- f. The main issues to be looked into were whether the rate of GST on the "Services by way of admission to exhibition of cinematography films where price of admission ticket was above one hundred rupees" was reduced from 28% to 18% w.e.f. 01.01.2019 and "Services by way of admission exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" was reduced from 18% to 12% w.e.f. 01.01.2019, if so, whether the benefit of such reduction in the rate of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.
- g. The Applicant No. 1 vide its application had annexed copy of admission ticket where the price was Rs. 175/- including taxes. The

Respondent had also informed vide letter dated 27.08.2019 that he had only two rate of admission tickets i.e. Rs. 150/- (Regular seats) and 175/- (Premium Seats) only. Hence, the investigation was limited to reduction in rate of GST from 28% to 18% only.

- h. From the Table-'A' above, it was apparent that the Respondent had increased the base price of admission ticket i.e. 'Premium Seats' from Rs. 136.72 to 148.31 and Rs. 117.19 to 127.12 for 'Regular seats'. Therefore, in terms of Section 171 of the CGST Act, 2017, benefit of GST rate reduction from 28% to 18% in respect of "Services by way of admission to exhibition of cinematography films", was not passed on to the recipients.
- i. On the basis of aforesaid pre/ post reduction in GST rates and the details of outward supplies for the period 01.12.2018 to 30.06.2019 submitted by the Respondent, it was observed that profiteering during the period from January, 2019 to June, 2019 from the sale of tickets in two categories mentioned in table 'A' above amounts to Rs. 3,63,299/- for 'Premium Seats' and Rs. 44,62,671/- for 'Regular seats'. The total amount of net higher sale realization due to increase in the base price of the movie ticket, despite the reduction in GST rate from 28% to 18% or in other words, the profiteered amount comes to Rs. **48,25,970/-**. The details of the computation are given in the Table 'B' below:-

Table-'B'

Sr No	Admission ticket	01.01.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18%	Profiteering per unit (Rs.)	Qty. Sold	Total Profiteering (including tax @18%) (in Rs.)
A	B	C	D	E= (C-D)	F= (E*18%)	G= (E+F)	H	I= (H*G)
1	Premium Seats	148.31	136.72	11.59	2.09	13.68	26557	363299
2	Regular Seats	127.12	117.19	9.93	1.79	11.72	380774	4462671
Grand Total								48,25,970/-

2. The DGAP has concluded that the allegation of profiteering by way of increasing the base prices of the tickets (Services) and by way of not reducing the selling prices of the tickets (Services) commensurately, despite the rate reduction in GST rate on "Services by way of admission

to exhibition of cinematography films where price of admission ticket was above one hundred rupees" was reduced from 28% to 18% w.e.f. 01.01.2019, was not passed on to the recipients appeared to be correct. The DGAP has stated that the total amount of profiteering covering the period from 01.01.2019 to 30.06.2019, was **Rs. 48,25,970/-**. The recipients of the services were not identifiable as no such details of the consumers have been provided. On the basis of the details of outward supplies of the product submitted by the Respondent, the DGAP has noticed that the Respondent has sold admission ticket in the State of Telangana only.

3. The above Report of the DGAP dated 10.12.2019 was considered by the erstwhile NAA and it was decided to allow the Respondent and the Applicant No. 1 to file their consolidated written submissions in respect of the above Report of the DGAP. Notice dated 16.12.2019 was also issued to the Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the Act should not be fixed. Meanwhile, the Respondent had filed Writ Petition (Civil) No. 2588/2020 before the Hon'ble High Court of Telangana challenging the notice dated 16.12.2019. The proceedings were stayed for four weeks by the Hon'ble Court in the present case, vide order dated 11.02.2020. The Hon'ble Court vide order dated 03.06.2021 disposed of the aforesaid Writ Petition directing the Respondent to submit his explanation in response to the erstwhile Authority's notice dated 16.12.2019. Accordingly, the Respondent vide his letter dated 23.01.2020 has filed his written submissions on the DGAP's Report dated 10.12.2019 and stated:-

- a. That Rule 128 provides that the Standing Committee had to take a decision within a period of 2 months from the date of written application. In the instant case, the written application was made on 29.03.2019 and the Standing Committee referred the case to DGAP on 02.07.2019, almost 3 months after the date of Application by the Applicant No. 1 and therefore the entire proceeding are not maintainable in terms of Rule 128 of the CGST Rules, 2017 and the investigation was time barred.

- b. There was reduction in the profits due to introduction of GST. The Respondent stated that the State Government had been regulating the ticket prices through Government Orders. The last GO Ms.100 dated 26.04.2013 was challenged before the Hon'ble High Court of Andhra Pradesh in the case of *Ramakrishna Gliterrati vs. State of Telangana* being Writ Petition (civil) No. 19.46/2014 vide order dated 31.10.2016, quashed the GO Ms.100 dated 26.04.2013 and also allowed theatre owners to charge a higher price on cinema tickets after informing the concerned authorities about the hiked prices. Pursuant to the said Order of the Hon'ble High Court, the Respondent increased the prices of tickets from Rs.125 to Rs.150 for 'Regular Seats' and from Rs.150 to Rs.175 for 'Premium Seats' after informing the same to the Commissioner of Police who was the licensing authority. Thereafter, the Government of Telangana issued a GO Ms.75 dated 23.06.2017 wherein the maximum rates for movie tickets was fixed at Rs.200 for Regular seats and Rs.300 for Premium seats inclusive of all taxes. The prices determined by the Government of Telangana included an Entertainment Tax of 15% for Telugu films and 18% for non-Telugu films.
- c. That the DGAP while arriving at the profiteered amount had compared the base prices of the tickets with the point of reference being the date from which the GST Rate was reduced from 28% to 18%. However, it was pertinent to also take into consideration the lack of change in base price from the period when GST was introduced.
- d. That the DGAP had arrived at the profiteered amount of Rs. 48,25,970/- by basing the calculation on Rs.117.19 as the commensurate base price for Regular Seats and Rs.136.72 as the commensurate base price for Premium Seats which was the same base price that was charged when the rate of tax was 28%. However, the calculation should have been based on the base price of Rs.130.43 for Regular Seats and Rs.152.17 for Premium Seats. A table has been provided by the Respondent below:

Ticket Category	Entertainment Tax		GST @ 28%		GST @ 18%		Loss suffered (A)-(C)
	Base Price	Tax Element (A)	Base Price	Tax Element (B)	Base Price	Tax Element (C)	
Regular seats (Rs. 150)	130.43	19.56	117.18	32.81	127.11	22.88	Rs.3.32
Premium Seats (Rs. 175)	152.17	22.82	136.71	38.28	148.3	26.69	Rs 3.87

- e. That when the base prices of Rs.130.43 for Regular Seats and Rs.152.17 for Premium Seats was taken into consideration for calculating the amount profiteered, if any, it would be evident that there was no violation of Section 171. In fact, the tax element that was borne by the Respondent had increased from Rs. 19.56 to Rs.22.88 per unit in case of 'Regular Seats' and from Rs. 22.82 to 26.69 per unit in case of 'Premium Seats'. In essence, the Respondent had suffered losses to the extent of Rs.3.32 per unit in case of Regular Seats and Rs.1.87 per unit in case of 'Premium Seats'.
- f. That the DGAP failed to appreciate that in the case of *Kerala Screening Committee on Anti Profiteering Vs. Ms. Saint Gobain India Pvt. Ltd.* (Case No.32/2019), it was held that Section 171 of CGST Act, 2017 would not apply where GST applicable was higher than the tax in Pre GST regime.
- g. That the DGAP failed to appreciate that in the case of *ABV & Co. vs. Professional Couriers (2019)* (NAA), it was observed that there was no reduction in the rate of tax on supply of 'Courier Service' after the implementation of GST, instead there was increase in the rate of tax from 15% in pre-GST regime to 18% in post-GST regime. NAA went onto hold that *"the fact that the Respondent had increased his base price for providing courier service had no relevance in view of the fact that there has been no reduction in the rate of tax nor increased benefit on account of Input Tax Credit was available and hence the provisions of Section 171 of CGST Act, 2017 cannot be invoked in this case"*.
- h. The DGAP failed to appreciate that in the case of *State Level Screening Committee on Anti-Profiteering, Kerala vs. Ramraj*

Handlooms (2019) (NAA), it was held that "there was no reduction in the rate of tax on the product with effect from 01.07.2017 and that the rate of tax in the post-GST era has also been increased from CST at the rate of 2 per cent to IGST at the rate of 5 per cent, therefore, the allegation of profiteering is not sustainable in terms of section 171 as there has been no reduction in the rate of tax".

- i. The DGAP failed to appreciate that your goodselves in the case of *State Level Screening Committee on Anti-Profitteering Kerala vs. Panasonic India Pvt. Ltd. (2019) 20 GSTL 375* have held that when the rate of tax in the post-GST era has been increased from 26.79% to 28%, the allegation of profiteering would not be sustainable in terms of Section 171 of the CGST Act, 2017.
 - j. The DGAP failed to appreciate that in the following orders, NAA had held a similar view that Section 171 could not be said to be attracted when the pre-GST rate of tax was lesser than the GST rate:
 - i. *Kerala State Screening Committee on Anti-Profitteering vs. Sudarsans (2019) 103 taxmann.com 68 (NAA)*
 - ii. *Kerala State Screening Committee on Anti-Profileering vs. Emke Silks & Garments (P.) Ltd. (2019) 103 taxmann.com 28 (NAA)*
 - iii. *Kerala State Screening Committee on Anti-Profitteering vs. Pulimootill Silks(2019) 102 taxmann.com 84 (NAA)*
 - k. That the DGAP Report should not be accepted as the amounts of profiteering arrived at, are incorrect. There had been no undue profits made by the Respondent as a result of the rate reduction from 28% to 18% w.e.f. from 01.01.2019. The price had been maintained at the same rates only with the intention of not shifting the burden of increased tax rates onto the ultimate customer.
4. A supplementary Report was sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the Rules. The DGAP filed his clarifications raised by the Respondent vide letter dated 19.02.2020, wherein, it was stated that:-

- a. For the contention made by the Respondent that the investigation was time barred, the DGAP clarified that the complaint dated 29.03.2019 against the Respondent was sent by Principal Commissioner, Medchal and was received in DGAP on 18.04.2019 and then forwarded to the Standing Committee. The Standing Committee in its meeting held on 15.05.2019 forwarded the minutes of the meeting dated 15.05.2019 which were received in DGAP on 02.07.2019. It would be seen that the period between 18.04.2019 and 15.05.2019 was less than two months and thus within time limit.
- b. For the averment made by the Respondent that there was reduction in his profits due to introduction of GST, the DGAP has clarified that this issue had been discussed in para 17 of DGAP's Report in which it was shown that the Respondent had a base price (exclusive of taxes) of Rs. 136.72/- and Rs. 117.19/- for the Premium and Regular class tickets respectively before the GST rate reduction on 01.01.2019 which was raised to Rs. 148.31/- and Rs. 127.12/- respectively.
- c. For the contention raised by the Respondent that the DGAP has not considered the lack of change in base price from when GST was introduced, the DGAP stated that it does not interfere in the commercial decision of a Respondent, the DGAP's investigation starts only when Section 171 of CGST Act, 2017 was attracted i.e. when the Government issued notification leading to "any reduction in rate of tax on supply of goods and service or the benefit of input tax credit" was issued. In the instant case Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 was effective from 1.01.2019 and therefore was applicable w.e.f. 01.01.2019 only. Hence, this contention of the Respondent did not hold any merit.
- d. That the case pertains to the reduction of rate in GST regime. Thus there was no comparison of Pre and Post GST tax rate and hence not applicable in the instant case. Therefore, the case law of Kerala Screening Committee on anti-profiteering v. M/s Saint

Gobain India Pvt. Ltd. case no. 32/2019 referred by the Respondent is of no help to the Respondent.

- e. That the instant case pertains to the reduction of rate of tax from 28% to 18% in the GST regime. Whereas in the case cited above there was no reduction of rate of tax w.e.f. 01.07.2017 and therefore there was no question of passing on the benefit of reduction of tax rate on supply of goods or services. Hence, the case laws of *ANV & Co. V. Professional Couriers*, *State Level Screening Committee on Anti-Profiteering V. Ram Raj Handlooms* referred by the Respondent are of no help to him.
 - f. For the averment made by the Respondent that the price at which the ticket had been sold has been maintained constant throughout the pre-GST and post-GST era, the DGAP submitted that the Respondent ought to have reduced the price when there was a rate reduction in GST era effective from 01.01.2019 in terms of Section 171 of CGST Act, 2017.
5. Hearing in the matter was held by the Commission on 09.05.2024. It was attended by Sh. Vaibhav Gaggar, Advocate, Sh. Swapnil Srivastava, Advocate, Sh. Vidur Mohan, Advocate and Sh. Somdev Tiwari, Advocate for the Respondent and Sh. Sanjay Kumar Chattar, Assistant Commissioner and Sh. Awanindra Kumar, Inspector were present on the behalf of DGAP. None appeared on behalf of the Applicant No. 1. The Respondent was heard and during the course of the hearing, the Counsel advanced their arguments before the Commission. The Counsel also requested one weeks' time to submit written submissions along with relevant documents. The Commission considered the request of the Respondent and decided to grant one weeks' time to submit written submissions along with relevant documents.
6. The Respondent vide his letter dated 16.05.2024 filed his additional written submissions and stated:-
- a. That the DGAP failed to take into consideration that the prices being charged by the Respondent is within the maximum permissible limit set by the Regulating Authority i.e., the licensing authority which is a specialized body. The Respondent relied

upon Hon'ble Supreme Court of India's judgment dated 05.12.2018 in *Competition Commission of India v. Bharti Airtel Ltd. & Ors.*

- b. That the DGAP has misconstrued the scope and ambit of Section 171 of the CGST Act, 2017. The Respondent relied upon the decision of the Hon'ble High Court of Delhi in the case of *Reckitt Benckiser India Private Limited & Ors. v. Union of India & Ors.*
 - c. That the DGAP has gone beyond the purview of the Complaint made by the Applicant.
 - d. That the Standing Committee considered the DGAP's Report beyond the mandatory statutory period.
 - e. Rule 133(3) mentions a 'recipient' to whom the benefit was not passed and not 'recipients'. Section 2(93) of the CGST Act defines a 'recipient'. Hence, the profiteered amount has to be determined in relation to a 'recipient' only.
7. This Commission has carefully perused all the submissions and the documents placed on record, and the arguments advanced by the Respondent. The Commission needs to determine as to whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.

Section 171 of the CGST Act provides as under:-

"(1). 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."

(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such

powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the Order by the Authority.

Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."

8. This Commission further finds that the Central and the State Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.
9. The Commission finds that, one of the contentions of the Respondent was that that the entire proceeding are not maintainable in terms of Rule 128 of the CGST Rules, 2017 as the investigation was time barred. In this regard, it is to mention that the complaint dated 29.03.2019 sent by Principal Commissioner, Medchal was received in DGAP on 18.04.2019 and then forwarded to the Standing Committee. The Standing Committee in its meeting held on 15.05.2019 forwarded the minutes of the meeting dated 15.05.2019 which were received in DGAP on 02.07.2019. It would be seen that the period between 18.04.2019 and 15.05.2019 was less than two months and thus within time limit and therefore, the above contention of the Respondent is not tenable.

10. The Respondent further contended that there was reduction in his profits due to introduction of GST. In this regard, the Commission finds that upon perusal of table 'A' above it is evident that the Respondent had a base price (exclusive of taxes) of Rs. 136.72/- and Rs. 117.19/- for the Premium and Regular class tickets respectively before the GST rate reduction on 01.01.2019 which was raised to Rs. 148.31/- and Rs. 127.12/- respectively.
11. The Respondent further contended that the licensing authority under the Telangana Cinema (Regulation) Act, 1955 had been regulating the ticket prices through Government Orders. The last GO Ms.100 dated 26.04.2013 was challenged before the Hon'ble High Court of Andhra Pradesh in in the case of *Ramakrishna Giltterati vs. State of Telangana*, wherein the Hon'ble Court vide order dated 31.10.2016 allowed theatre owners to charge a higher price on cinema tickets after informing the concerned authorities about the hiked prices. The Respondent has also contended that the DGAP failed to take into consideration that the prices being charged by the Respondent is within the maximum permissible limit set by the Regulating Authority.

The Commission finds that the licensing authority only fixes the maximum price at which a movie ticket can be sold. Levy of GST is fixed by the GST Council which is a Constitutional body and all the State Governments are part of the GST Council. Section 171 of the CGST Act, 2017 and Rules made thereunder is limited to the extent of passing of benefit of rate reduction which the Respondent has to comply with. The fixing of the prices by the State Government or the licencing authority does not grant a waiver from applicability of the GST Act.

The reliance on the judgement of *Competition Commission of India v. Bharti Airtel Ltd. & Ors.* by the Respondent is completely misplaced as the facts and circumstances of the said case are different and distinct from facts of the case at hand. In the said judgement the Hon'ble Supreme Court has acknowledged the exclusive jurisdiction of the Competition Commission of India arising under the Competition Act, 2002. Further, arguendo, even if it is assumed that the said judgement is applicable to the present case, there are no jurisdictional facts which

need to be ascertained from the Licensing Authority.

The Respondent should have kept his base prices same to transfer the benefit of rate reduction to the consumers. Instead, he increased the base prices of tickets thereby wrongly appropriating the benefit of rate reduction. Therefore, the above contention of the Respondent cannot be accepted.

12. The Commission further finds that the Respondent also contended that the DGAP has not considered the lack of change in base price from the period when GST was introduced. The Respondent also contended that the DGAP should have considered the base price of tickets which was applicable before introduction of GST i.e. Rs. 130.43 for regular tickets and Rs. 152.17 for premium tickets.

In this regard, it is to mention that the DGAP starts investigating only when Section 171 of CGST Act, 2017 was attracted i.e. when the Government issued notification leading to "any reduction in rate of tax on supply of goods and service or the benefit of input tax credit". In the instant case Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 was effective from 01.01.2019 and therefore was applicable w.e.f. 01.01.2019 only. Therefore the above contention of the Respondent is not tenable and hence denied.

13. The Commission further finds that the Respondent in his submission also referred to various case laws of NAA namely *Kerala Screening Committee on Anti Profiteering Vs. Ms. Saint Gobain India Pvt. Ltd. (2019)*, *ABV & Co. vs. Professional Couriers (2019)*, *State Level Screening Committee on Anti-Profiteering, Kerala vs. Ramraj Handlooms (2019)*. In this regard it is to mention that the present case pertains to reduction of rate of tax from 28% to 18% in GST regime, however, in the case laws referred above, there was no reduction of rate of tax w.e.f. 01.07.2017 and therefore there was no question of passing on the benefit of reduction of tax rate on supply of goods or services. Thus, the above case laws cited by the Respondent are not relevant. Reduction of tax and increase in tax are not the same and each has its own legal implications and consequences under the law and hence, cannot be compared.

14. The Respondent has also averred that the DGAP has misconstrued the scope and ambit of Section 171 of the CGST Act, 2017. In this regard, the Commission finds that Section 171 of the CGST Act, 2017 mandates that any benefit of reduction in the rate of tax or the benefit of ITC which accrues to a supplier must be passed on to the recipients of supply, as both are concessions given by the Government and the suppliers are not entitled to appropriate such benefits by increasing their profit margin at the cost of the consumers. Such benefit must go to the consumers. The DGAP has to adopt a mathematical methodology to arrive at the amount profiteered. An amount which ought to have been charged by the supplier from the recipient after factoring the benefit of ITC or reduction in rate of tax, is to be determined by the DGAP in the course of such calculation of profiteered amount. Therefore, in view of the above, the DGAP has not misconstrued the ambit of Section 171 of the CGST Act, 2017.

For the above contention the Respondent relied upon the decision of the Hon'ble High Court of Delhi in the case of *Reckitt Benckiser India Private Limited & Ors. v. Union of India & Ors.* However, the Respondent has failed to bring on record any factor necessitating the setting off of price reductions. Therefore, the case law sought to be relied upon is of no help to the Respondent.

15. The Commission finds that the Respondent also contended that DGAP has gone beyond the purview of the Complaint made by the Applicant No. 1. In this regard it is to mention that Section 171 (2) of the CGST Act, 2017 states that *"the Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him"*. Therefore, the above Section has already given powers to this Commission to expand the scope of the investigation to all the supplies made by a registered person. This Section empowers this Commission to examine if the benefit of input tax credit and reduced tax rates have been passed on by him or not.

Since, the Section doesn't mention about any particular recipient it implies that all the supplies made by a registered person to all recipients need to be examined from the perspective of passing on the benefit to each recipient. Therefore, in view of the above, the contention raised by the Respondent is not tenable and denied. Further, tax policies are made keeping in view the larger interest of the society and nation and any violation of the same entails potential to larger harm. Individual applicant may be a trigger for investigation and once the proceedings are initiated, it is bound to consider all the taxes which have not been paid or misappropriated at the cost of society.

16. The argument advanced by the Respondent that Rule 133(3) mentions a 'recipient' and not 'recipients' is baseless as the same is contrary to Section 13(2) of General Clauses Act, 1897 which states words in singular shall include the plural.
17. The Commission finds that, as per the details and calculations in Tables 'A' & 'B' above, the Respondent had been profiteering by way of increasing the base prices of the tickets (Services) and by not reducing the selling price of the tickets (Services) commensurately, despite reduction in GST rate on "*Services by way of admission to exhibition of cinematograph films*" where price of ticket was one hundred rupees or above, from 28% to 18% w.e.f. 01.01.2019. From the Table 'B' above, it was evident that the base prices of the admission tickets was indeed increased, as a result of which the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in prices charged. The total amount of profiteering covering the period of 01.01.2019 to 30.06.2019 is Rs. 48,25,970/-.
18. This Commission, based on the facts discussed above, finds that the Respondent had resorted to profiteering by way of either increasing the base price of the service while maintaining the same selling price or by way of not reducing the selling price of the service commensurately, despite a reduction in GST rate, on "*Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees*" from 28% to 18% w.e.f. 01.01.2019 upto 30.06.2019. On this account, the Respondent profiteered to the tune of

Rs. 48,25,970/- (including GST) from the recipients. Thus the profiteered amount was determined as Rs. 48,25,970/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. Further, as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, the Respondent is directed to reduce the prices of his tickets, keeping in view the reduction in the rate of tax so that the benefit would be passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of **Rs. 48,25,970/-** along with the interest, which is to be calculated @ 18% from the date, when the above amount was collected by him, from the recipients, till the above amount is deposited. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering in two equal parts, of Rs. 24,12,985/- in the Central Consumer Welfare Fund and Rs. 24,12,985/- in the Telangana State Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with interest @18%. The above amount shall be deposited within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the jurisdictional Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

19. It is also evident from the above narration of facts that the Respondent has denied benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. However, perusal of the provisions of Section 171 (3A), under which liability for penalty arises 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 01.07.2017 to 30.06.2019 when the Respondent had committed the above violation. Hence, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively for the said period.

20. Further, the Commission, as per Rule 136 of the CGST Rules 2017, directs the jurisdictional Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent is deposited in the

respective CWFs as ordered by this Commission. A Report in compliance of this Order shall be submitted to this Commission by the DGAP within a period of 4 months from the date of receipt of this Order.

21. A copy of this order be supplied to all the interested parties free of cost and file of the case be consigned after completion.

S/d
(Deepak Anurag)
Member

S/d
(Sweta Kakkad)
Member

S/d
(Anil Agrawal)
Member

S/d
(Ravneet Kaur)
Chairperson

Certified copy

(Secretary, CCI)

File No. 22011/NAA/108/Asian/2019/540-45
Copy To:-


Date: 24.06.2024

1. M/s Asian GPR Multiplex, 126, Nizampet X Road, Kukatpally, Hyderabad - 500072.
2. Principal Commissioner, Medchal CGST Commissionerate, 11-4-649/B, Lakdi Ka Pool, Hyderabad.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. The Chief Commissioner of Central Goods & Service Tax, Hyderabad Zone GST Bhavan, I.B.Stadium Road, Basheer Bagh, Hyderabad, Telangana-500 004.
5. The Commissioner of Commercial Taxes Department, C.T Complex, Nampally, Hyderabad, Telangana-500 001.
6. Guard File.