BEFORE THE COMPETITION COMMISSION OF INDIA

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

Case No.	:	05/2024
Date of Institution	:	28.09.2020
Date of Order	:	26.06.2024

In the matter of:

1. Sh. Hrushikesh, 1-4-21413P106, AMP 107P, Pradhamapuri Colony, Near Netaji Nagar, ECIL, Hyderabad-500062.
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.

Applicants

Versus

M/s Asian Radhika Multiplex, Anupuram Colony, Dr. AS Rao Nagar, Secunderabad-500062.

Respondent

Coram: -

1. Ravneet Kaur, Chairperson
2. Anil Agrawal, Member
3. Sweta Kakkad, Member
4. 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, Respondent on behalf of the Respondent.

ORDER

1. The Present Report dated 25.09.2020 has been received by the erstwhile Authority from the Applicant No. 2, i.e., the Director General of Anti-Profiteering (**hereinafter referred to as "the DGAP"**) on 28.09.2020 after a detailed investigation under Rule 129(6) of the CGST Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profiteering on 06.05.2020 to conduct a detailed investigation in respect of an application dated 22.05.2019 filed by Applicant No. 1, under Rule 128 of the CGST Rules, 2017 (**hereinafter referred to as "the Rules"**). The Applicant No. 1 had alleged that the Respondent did not pass on the benefit of reduction in the GST rate on the movie admission tickets from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018-C.T. (Rate) dated 31.12.2018 and instead, increased the base price to maintain the same cum-tax selling price, alleging profiteering by the Respondent with regard to supply of *'Services by way of admission to exhibition of cinematography films'*.

2. Vide the above-mentioned Report, the DGAP inter-alia stated that: -

   i. On receipt of the reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 of the Rules was issued by him on

02.06.2020, calling upon the Respondent to reply as to whether he admits that the benefit of ITC had not been passed on to the Applicant No. 1 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 supporting documents. Vide the said notice; the Respondent was also given an opportunity to inspect the non-confidential evidences/information during the period 23.06.2020 to 24.06.2020, which were furnished by the Applicant No. 1. The Respondent did not avail the same opportunity.

ii. Vide e-mail dated 31.08.2020, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply during 07.09.2020 to 08.09.2020, which were furnished by the Respondent. However, the Applicant No. 1 did not avail the same opportunity.

iii. The period covered by the current investigation was from 01.01.2019 to 30.04.2020.

iv. In response to the Notice dated 02.06.2020, the Respondent submitted his reply vide letters and e-mails dated 14.07.2020, 17.08.2020, and 26.08.2020.

v. Vide the aforementioned letters/emails; the Respondent submitted the following documents/information:

   a. Invoice-wise details of all outward taxable supplies of the movie admission tickets impacted by GST rate reduction w.e.f. 01.01.2019, during the period 01.11.2018 to 30.04.2020.

b. Price List of the aforesaid movie admission tickets, pre and post 01.01.2019.

c. GSTR-1 and GSTR-3B Returns for the period November, 2018 to April, 2020.

vi. The reference received from the Standing Committee on Anti-profiteering, the various replies of the Respondent and the documents/evidence on record had been examined in detail. 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*" were 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.

vii. On examination of the details of sales data, complaint of the Applicant No. 1 and various replies submitted by the Respondent, it was observed that basically there was only one category of ticket i.e., Rs. 130 sold by the Respondent during the pre as well as post rate reduction period effective from 01.01.2019 and the cum-tax price of this category of ticket remained same after the rate reduction. Hence, the investigation was limited to reduction in rate of GST from 28% to 18% only for one category of ticket.

viii. From the sales data made available, it appeared that the Respondent increased the base price of the admission ticket when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019 in the manner illustrated in Table-A below.

Table-A

Sr. No.	01.12.2018 to 31.12.2018			01.01.2019 to 30.04.2020				
	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=(B/128%)	E	F	G	H	I=(H*118%)
1	130	28	101.56	130	18%	110.17	101.56	119.84

ix. From the above Table- "A", it was apparent that the Respondent had increased the base price of admission ticket i.e., from Rs. 101.56 to 110.17. Thus, it was noted that the actual cum-tax price of the ticket was not reduced to Rs.119.84 as was required after the GST rate reduction. The Respondent continued to charge the pre rate reduction prices and maintained the actual cum-tax price by increasing the base price of the tickets. Therefore, in terms of Section 171 of the CGST Act, 2017, commensurate 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 recipient is.

x. Having established the fact of profiteering, the next step was to quantify the same. On the basis of aforesaid pre/ post reduction in GST rates

and the details of outward supplies for the period 01.11.2018 to 30.04.2020 submitted by the Respondent, it was observed that profiteering during the period from January, 2019 to April, 2020 from the sale of ticket in the category mentioned in Table-B amounts to Rs. 88,67,790/-. 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 came to Rs. 88,67,790/-. The details of the computation are given in the Table-B below.

Table-B

Sr. No.	Admission ticket	01.01.2019 to 30.04.2020						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18%	Profiteering per unit (Rs.) (cum-tax)	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	110.17	**101.56**	8.61	1.55	10.16	872814	**88,67,790/-**

xi. On the basis of the details submitted by the Respondent, it was observed that the Respondent had sold admission ticket in the State of Telangana only.

3. Therefore, the DGAP has concluded that: -

i. From the above discussions, it was quite clear that the base price of the admission ticket was indeed increased from Rs. 101.56/- to Rs. 110.17/- , as a result of which the benefit of reduction in GST rate from 28% to 18% (w.e.f. 01.01.2019), was not passed on to the recipients by way of

commensurate reduction in price charged (including lower GST @ 18%) which remained unchanged at Rs.130/-. The total amount of profiteering covering the period from 01.01.2019 to 30.04.2020, was Rs.88, 67,790/- (Rupees Eighty Eight Lakh Sixty Seven Thousand Seven Hundred and Ninety only). The recipients of the services were not identifiable as no such details of the consumers had been provided.

ii. In view of the aforementioned findings, it appeared that Section 171(1) of the CGST Act, 2017, requiring that "*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*", had been contravened by the Respondent in the present case.

4. The above Report dated 25.09.2020 was carefully considered by the erstwhile Authority **(hereinafter referred to as "the NAA")** and it was decided to allow the Respondent and the Applicant to file their consolidated written submissions by 15.10.2020. Accordingly, a notice dated 01.10.2020 was issued to the Respondent to explain why the Report dated 25.09.2020 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 and to file his reply.

5. The Respondent filed his written submissions on 20.10.2020 vide which he has inter-alia stated that: -

i. The DGAP should have computed the profiteering, if any, only in case of the movies which were going on during the GST rate change period. Prices of tickets for every movie was being decided afresh at the time of release. Therefore, the prices of tickets for the movies which were

released after 01.01.2019 were decided after due consideration of all the above factors along with the GST rate reduction from 28% to 18%. Further, the DGAP had been computing the profiteering amount separately for each and every project in construction sector on the basis of launching dates, separate ITC and turnover etc. Reliance might be placed on the cases *Macrotech Developers v. DGAP*, *Heeranandani v. DGAP*, *Vatika Group v. DGAP*, *Gaursons Realtech v. DGAP*. In all the above case, the DGAP had considered every project separately for the computation of profiteering and the NAA had also shown agreement with the DGAP. Therefore, in view of the above, it was submitted that in the instant case, every movie should be treated separately and profiteered amount, if any, should be computed only in respect of the movies which were going on during the GST rate reduction period.

ii. When the GST was introduced i.e.,01.07.2017, overall tax on the movie tickets was increased from 15% (Approx.) to 28%, i.e.,tax portion on the movie tickets was increased by considerable amount of 13%. Further, the State Government's GO (Government Order) directed the Respondent to sell tickets at allowed prices, inclusive of taxes. Therefore, he had continued to sell the tickets at Rs. 130/- even after increase in the tax portion. Without considering the impact of tax rate change at the time of introduction of GST, computation of profiteering would lead to grave injustice to the Respondent. Therefore, the NAA was requested to look into the matter as a whole starting from the introduction of the GST i.e., 01.07.2017. Since, the Respondent did not have the liberty to make any change in the prices, the Respondent prays

that such prohibition imposed on him should also be given due cognizance while deciding on the question of any profiteering offence done by him.

iii. The DGAP's Report had gone beyond the application submitted by the Applicant and was liable to be rejected on this ground alone. On perusal of the Rule 128 of the Rules, it could be concluded that an anti-profiteering investigation could be initiated only on receipt of written application from interested party, commissioner or any other person. In the instant case, the proceedings were started with the application received from the Applicant No. 1. The said application was by one Applicant, namely Sh. Hrushikesh. Hence, the investigation cannot go beyond the application and cover other customers also who had not questioned the benefit passed on to them. In this regard, reliance was placed on the following orders of the NAA, wherein investigation, report and final order of the NAA all were only on the product for which complaint was filed in the respective cases:

a. *M/s U. P. Sales & Services vs. M/s Vrandavaneshwree Automotive Private Limited reported at 2018-VIL-01-NAA*: In this case, the applicant filed an application alleging that the supplier did not pass on the benefit of reduced rate of tax on Honda Car having Model No. WR-V 1.2 VX MT (i-VTEC) and purchased by the applicant. The NAA in this case while holding that the supplier had not contravened the provisions of Section 171 of the CGST Act, 2017 limited his enquiry and order, only to the particular model of car.

b. *Shri Rishi Gupta vs. M/s Flipkart Internet Put Ltd. reported at 2018 VIL-04-NAA:* In this case, the applicant filed an application stating that he paid extra amount for GodrejInterio Slimline Metal Almirah to the supplier and by not refunding the same, the supplier was resorting to profiteering in contravention to Section 171. The NAA while holding that the supplier had not contravened the provisions of Section 171 limited its order only to the particular model of almirah.

Reliance was also placed on the decision of -

a. *Kerala State Screening Committee on Anti-Profiteering, DGAP v. M/s Pulimoottill Silks reported at2019 (2) TMI 296 –NAA.*

b. *Kerala State Screening Committee on Anti-Profiteering, DGAP, Central Board of Indirect Taxes & Customs v. M/s Velbon Vitrified Tiles Pvt. Ltd. reported at2019 (3) TMI 370 –NAA*

It was further submitted that the DGAP had incorrectly considered and equated one ticket of a movie with a ticket of other movie. The correct comparison would be between the tickets of same movie for pre-GST rate reduction and post-GST rate reduction. Thus, by virtue of application of the case laws cited above, it was submitted that the investigation had incorrectly gone beyond the applicant. Thus, in the light of the aforementioned discussion, the Report should be restricted to the Applicant who had filed the application to concerned committee. Accordingly, the investigation in respect of customers other than mentioned in the application deserves to be rejected.

iv. The CGST Act read with the CGST Rules did not provide the procedure and mechanism of determination and calculation of profiteering. In absence of the same, the calculation and methodology used in the report was arbitrary and was in violation of principles of natural justice. As per Rule 126, the NAA had the power to determine the methodology and procedure for determination as to whether the reduction in rate of tax on the supply of goods or services or the benefit of ITC had been passed on by the registered person to the recipient by way of commensurate reduction in prices. It was pertinent to note that as on date, CGST Rules have not prescribed any procedure methodology/ formula/ modalities for determining/ calculating 'profiteering'. The Methodology and Procedures, 2018 issued on 19.07.2018 by NAA only provides the procedure pertaining to investigation and hearing. However, no method/formula had been notified/prescribed pertaining to calculation of profiteering amount. Absence of the same violates the principle of natural justice and thus, the investigation was liable to be set aside. In this regard, reliance was placed on the cases of *Eternit Everest Ltd. vs. UOI, reported at 1997 (89) E.L.T. 28 (Mad.), Commissioner of Income Tax, Bangalore vs. B.C. Srinivasa Shetty, reported at (1981) 2 SCC 460, Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes U.P. Lucknow, reported at2018[11] G.S.T.L. 367 and Union of India vs. Suresh Kumar Bansal reported at 2017 (4) G.S.T.L. J128 (S.C.).*

v. The lack of a judicial member in the Constitution of the NAA exercising the judicial/quasi-judicial functions was against the basic structure of

Constitution of India and it takes away the independence of judiciary and was therefore, against the rule of law. It was submitted that the proceedings being violative of principles of natural justice was liable to be dropped in entirety. Reliance was also placed on following cases:

a. *Madras Bar Association vs. Union of India, 2014 (308) ELT 209 (SC)*
b. *Union of India v. R. Gandhi, President Madras Bar Association, (2010) 11 SCC 1*
c. *Rojer Mathew vs. South Indian Bank Limited and Ors.*, 2018 (13) GSTL 129 (SC)
d. *Gujarat Urja Vikas Nigam Limited v. Essar Power Limited*, (2016) 9 SCC 103
e. *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261
f. *R.K. Jain v. Union of India*, (1993) 4 SCC 119

vi. The Respondent submitted that the word "commensurate reduction" in the Section 171 denotes reduction in price after taking into account all factors which impact pricing of goods. Had the legislative intention been otherwise, instead of the word 'commensurate', the word 'equal' or 'equivalent' would have been used in this Section. 'Commensurate' connotes proportionality and adequacy. The law did not prescribe as to how to determine whether a particular amount was commensurate as the legislature was conscious of the fact that pricing of goods was a complex exercise involving numerous factors. Price was based on contract and terms as agreed between the seller and buyer. Commensurate reduction was not restricted to passing of benefit of tax rate reduction in monetary terms which was normally the price. Section

171 does not use the words 'pass on the benefit by reduction in price'. The effect of commensurate reduction in price was increased benefit to the recipient due to tax rate reduction. It should be seen whether the objective of Section 171 was being achieved or not. If the recipient got the benefit in monetary or non-monetary form proportionate to tax rate reduction, Section 171 was complied with. The Respondent further submitted that he had not undertaken any activity which tantamount to 'profiteering'. The interpretation given to Section 171 and rules made thereunder, by the DGAP without considering the 'marginal notes' to Section 171 and heading of chapter XV of CGST Rules, was untenable and not correct. In this regard, reliance was placed on the cases of *Indian Aluminium Company v. Kerala State Electricity Board, reported at (1975) 2 SCC 414, UOI v. Harbhajan Singh Dhillon reported at (1971) 2 SCC 779 and SP Gupta v. UOI reported at AIR 1982 SC 149.*

The Respondent submitted that the term 'profiteering' was not defined in the CGST Act or rules made there under. Therefore, reference to common parlance meaning of the term 'profiteering' must be made. For the Definition of the term "Profiteer/Profiteering", reliance is placed on the dictionaries: The Chambers Dictionary, Allied Chambers (India) Ltd., New Delhi, The Collins Cobuild English Dictionary for Advanced Learners -Harper Collins Publication and Oxford English Reference Dictionary – Oxford University Press.

vii. The period covered under the investigation was from 01.01.2019 to 30.04.2020. This covered the business operations of the Respondent for 14 months. While the GST rate was reduced from 01.01.2019, there was

no reason adduced by the DGAP as to the date of 30.04.2020 being reckoned for conducting the investigation. The Report was silent on the grounds or reasons based on which such period was selected by the DGAP for investigation. The period covered under investigation does not have any statutory basis. The Respondent had requested the DGAP to confine the period of investigation to a maximum of three months as during such period the cost of doing business would have changed and Respondent would have revised the price based on such cost. It was pertinent to mention that a supplier considers various factors like direct and indirect costs, demand & supply, customer perception, competition, product positioning, legal compliances, profit, etc., while determining the price of his goods. It was submitted that Respondent had not been able to pass on the increased cost to the recipients by way of increase in prices due to adoption of longer period of investigation. It was submitted that if the period of investigation was beyond 3 months, the effect of increased costs should be taken into account while calculating the alleged profiteering.

viii. The Respondent submitted that while arriving at the total alleged profiteering amount, the DGAP had incorrectly added 18% to the alleged profiteered amount without adducing grounds as to why this amount had been added. This amount came to the tune of Rs. 13,52,861/- which had already been duly deposited with the GST authorities and was currently residing with the State exchequer. In this regard, reliance was placed on the case of *R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited reported at(1977) 4 SCC 98.*

ix. The present proceedings had been issued in violation of principles of natural justice as show because notice had not been issued to the Respondent proposing the action to be taken by the NAA. Moreover, the investigation was initiated basis the reference of the Standing Committee who, unilaterally, decided to forward the application filed by the Applicant No. 1 to the DGAP for investigation without giving any chance to Respondent to clarify or explain his side. The Rule 133 did not provide for issuance of a show cause notice to the person alleged as having contravened Section 171 before passing an order under Rule 133. Therefore, it was submitted that Rule 133 of the CGST Rules, to this extent was violative of principles of natural justice. Reliance is placed on the judgments of Hon'ble Supreme Court in the cases of *Canara Bank and Others v. Debasis Das and Others reported at (2003) 4 SCC 557, Uma Nath Pandey and Others v. State of UP reported at (2009) 12 SCC 40, Collector of Central Excise v. ITC Ltd. reported at 1994 (71) ELT 324 (SC), Vasta Bio-Tech Pvt. Ltd v. Assistant Commr. reported at 2018 (360) ELT 234, Dharampal Satyapal Ltd. v. Dy. Commissioner of C.Ex reported at 2015 (320) ELT 3 (SC) and Union of India v. Hanil Era Textiles Ltd., reported at 2017 (349) ELT 384 (SC).*

In view of the above, it was submitted that even if the CGST Act and the CGST Rules do not provide for issuance of a show cause notice before initiating proceedings under Section 171, NAA should have issued a show cause notice to the Respondent in terms of principles of natural justice as held by courts in the decisions/judgments referred supra.

6. Copy of the above submissions filed by the Respondent was forwarded to the DGAP for clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP submitted his clarifications on 16.11.2020 vide which he has clarified that: -

i. The DGAP had computed profiteering with respect to movies which were shown in his multiplex after the GST Rate reduction, as mandated by the provisions of Anti-profiteering. Section 171 of CGST Act, 2017did not restrict or debar passing on the benefit of GST rate reduction in case films which were running at the time of rate reduction or after the rate reduction. Moreover, the contention of the Respondent was not acceptable because it was observed that prior to rate reduction and after the rate reduction, there was only one category of tickets priced as Rs 130/- for all the different types of films shown in his theatre. Therefore, the Respondent ought to have given the benefit of rate reduction by reducing the base price commensurate to the benefit of rate reduction extended by the Government. The Respondent failed to do so in case of all subsequent films and hence the profiteering could not be restricted to only 3 films as submitted by him. Further, the Respondent had compared the *"Service by way of admission to exhibition of Cinematography film"* with Real Estate Sector. The Respondent had cited the example of several judgments of real estate to substantiate his claim that since computation of profiteering had been limited to the project by the NAA the same should be applied in case of Cinema. In this context, it was clarified that in the real estate, the main issue

pertained to passing on the benefit of ITC, whereas in case of cinema, the issue pertained to reduction in rate of tax. Further, in the real estate the complaint was made against one or two flats but all the flats of the said project were considered for computation of profiteering. Also, the time was not limited to the point when the complaint was lodged but the period of completion of project was taken for computation of profiteering. No fixed/ uniform mathematical methodology could be determined for all the cases of profiteering, as the facts and circumstances of each case, as well as the nature of goods or services supplied in each case, differ.

ii. The State Government/ Police Commissioner only fixed the maximum rate of movie ticket. The cinema management was free to sell the tickets at the lower price e.g., in the event of reduction of taxes. The State Government/ Police Commissioner came into picture only when the cinema management wanted to increase the price of tickets beyond the maximum rate already fixed. There was no conflict with the State Government directives but it seeks to extend the benefit given to the public in case of reduction of tax rate. Thus, in the event of a reduction in rate of tax, there must be a commensurate reduction in prices of Goods & Services.

The Respondent had stated that when GST was introduced from 01.07.2017, there was increase in tax but he did not increase the prices of ticket. In this regard, it was stated that it was his commercial decision and the increase in the tax rate on 01.07.2017 could not be adjusted with decrease in tax rate post 01.01.2019. It was noteworthy that Section 171 came into effect only when there was a reduction in rate of taxes.

The Respondent had also stated that there was increase of cost of inputs. However, this increase of cost could not happen overnight on the date of notification of rate reduction.

iii. The rate of tax on the impugned services was reduced w.e.f. 01.01.2019 and therefore, it was statutory obligation on the Respondent to pass on the benefit of tax reduction from the above date as per the provisions of Section 171(1) of the CGST Act. During the course of investigation, it had been found that the Respondent instead of reducing his prices commensurately had in fact increased the base price from the above date. Therefore, as per provisions of Section 171 of the CGST Act, 2017, Respondent was liable to be investigated till the time he has not passed on the benefit of tax reduction, as he could not misappropriate the above benefit. The Respondent had failed to produce any evidence which could show that he had passed on the above benefit to all the recipient of service other than the Applicant and hence he had been rightly investigated as he had failed to fulfil the statutory requirement. Section 171 of the Act nowhere mentions or restricts that the benefit of rate reduction should be limited to the Applicant only.

Further, the Respondent had cited several case laws of NAA and observation of Screening Committee of Kerala to substantiate his claim that investigation could not go beyond the application to cover other customers. In this context, it was clarified that comparison of the cases cited and the case of Respondent was entirely different and could not be compared. In the cases cited by the Respondent, further investigation was not conducted as it was found that the allegation for contravention

of Section 171 was incorrect. Whereas in the present case, the allegation for contravention of Section 171 had been found to be correct, and therefore further investigation on the basis of documents submitted by the Respondent was carried out. The Respondent had also tried to equate the Anti-profiteering Application Form (APAF) as a show-cause notice which was incorrect. A Show-Cause Notice (SCN) could be issued under some provision of the Law or statute. The Respondent had not given any evidence to substantiate that a SCN was issued to him. All the applications of Anti-profiteering were examined by the Standing Committee/ Screening Committee and were rejected or accepted on the basis of evidence submitted by the interested Party. No SCN was issued at this stage. During the investigation carried out by the DGAP, an Investigation Report was prepared and submitted to the NAA, and here also, no SCN was issued to the Respondent. The power to issue SCN was vested with NAA only.

iv. The GST Council, constituted under Article 279A of the Indian Constitution as a federal, constitutional body, comprising all the Finance Ministers of all the States and UTs and the Union Finance Minister, in his due wisdom had rightly not prescribed any specific guidelines/mechanism/methodology to determine profiteering in Section 171 of the Act and the Rules made thereunder as the facts of each case was different for different sectors as well as in same sector also. Hence, no fixed mechanism could have been provided for in the Act or Rules. However, it was submitted that the Methodology and Procedure had been notified by the NAA vide his Notification dated 28.03.2018 under

Rule 126 of the CGST Rules, 2017. As the facts of each case was different for different sectors as well as in same sectors, hence no fixed mechanism could had been provided in the Act or Rules. The facts for the cases related to FMCG, restaurants, construction and cinema sectors were completely different and at times mutually exclusive to each other. Applying the same mathematical methodology of FMCG sector to a supplier of a cinema sector would in fact lead to erosion of justice in the name of uniformity. The case laws cited by the Respondent were not applicable to the present case in view of above explanation.

v. The Commission had been constituted under Section 171 (2) of the CGST Act, 2017 read with Rule 122 of the CGST Rules, 2017. The said Act or the Rules, nowhere mention requirement of a judicial member in the Authority. The Parliament, the State legislatures, the Central and State Government as well as the GST Council in his wisdom, had not found it expedient to constitute the NAA by providing a judicial member in the NAA. Such a Member had also not been provided in the other such Authorities like the TRAI or the Authorities on Advance Rulings on the Income Tax, Authorities on Advance Rulings on the Central Excise and the Goods and Services Tax. Moreover, the Orders passed by the NAA was in full consonance of the 'Principles of Natural Justice' and was subject to judicial review and hence, no prejudice had been caused to the Respondent because of absence of a Judicial Member in the NAA. The case laws cited by the Respondent were not relevant to the present case.

vi. The word "commensurate" mentioned in the Section 171(1) gives the extent of benefit to be passed on by way of reduction in the prices which had to be computed in respect of each product based on the tax reduction as well as the existing base price (price without GST) of the product. The word 'commensurate' had been adequately defined in Section 171 (1) of the above Act as well as in Rule 127 and 133 of the CGST Rules and hence there was no ambiguity in his intent and the same could not be construed to be factors which impact pricing of goods.

Submission regarding interpretation of word profiteering: -In this context it was submitted that an explanation added to the provision of the Act was clarificatory in nature and had retrospective effect unless it overrides the basic provision of the Act. The Petitioner had also submitted that the interpretation of Section 171 had been done without considering the marginal notes. In this connection it was submitted that if the explanation defining the word profiteering was not considered then the purpose of the statute would be rendered ineffective or purposeless. While construing a provision, full effect had to be given to the language used therein giving reference to the context and other provisions of the statute. If the construction given by the Petitioner was accepted then the provision of Section 171 would be reduced to a "dead letter" or "useless lumber".

vii. As per provisions of Section 171 of the CGST Act, 2017, the Respondent was liable to be investigated till the time he has not passed on the benefit of tax reduction, as he could not misappropriate the above

benefit. The Respondent had failed to produce any evidence which could show that he had passed on the above benefit till 30.04.2020 and hence he had been rightly investigated till the above date. Had he produced evidence to the effect that he had passed on the benefit before the above date the DGAP would not have investigated him beyond that date. Since, DGAP had received the reference from the Standing Committee on Anti-profiteering on 06.05.2020 and issued Notice of Investigation on 02.06.2020, the period till 30.04.2020 was correctly covered as no evidence was available that the Respondent had passed on the benefit of tax reduction and a date was required to be fixed for conducting investigation. The Respondent was labouring under the wrong impression that the Anti-profiteering provisions were transitionary, which was not the case, as provisions of Section 171 was permanent and enforceable perpetually till it was repealed by the Parliament and all the State Legislatures.

viii. The Respondent had not only collected excess base prices from his customers which they were not required to pay due to the reduction in the rate of tax but the Respondent had also compelled customers to pay additional GST on these excess base price which he should not have paid. By doing so the Respondent had defeated the very objective of both the Central and the State Governments, which aimed to provide the benefit of rate reduction to general public. The Respondent was legally not required to collect the excess GST and therefore, he had not only violated the provisions of the CGST Act, 2017 but had also acted in contravention of the provisions of Section 171 (1) of the Act supra, as he

had 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 price while purchasing goods from the Respondent and hence, above amount had rightly been included in the profiteering amount. The Profiteering amount could also not be paid from the GST deposited in the account of the Central and state Governments by the Respondent as the amount was required to be deposited in the Consumer Welfare Funds (CWFs) as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017.

ix. The para wise comments/clarifications were being furnished in response to the show cause notice issued by the NAA.

7. Copy of the above DGAP's clarifications was supplied to the Respondent to file his rejoinder. The Respondent has submitted his rejoinder on 28.12.2020 wherein he has reiterated his earlier submissions along with the following additional grounds: -

i. The DGAP should have computed the profiteering, if any, by considering the fact that the Rent of the premises of Cinema Hall had been increased by Rs. 68 Lakhs during the notice period. The premises owner had revised the Rent from Rs. 44,65,500/- in 30.11.2015 per month to Rs. 49,18,240/- per month in 01.01.2019 which clearly indicated that there was a huge increase in the Rent of the premises by the owner. Further, this additional cost had to be borne by the Respondent.

ii. Telangana Government had issued a Government Order dated 20-03-2018 restricting the multiplex owners from collecting the parking fee. In view of the above directions, the Respondent had been restricted from

collecting the parking fee from the customers. This cancellation of parking fee collection had become new additional cost to the Respondent. The DGAP had not considered this fact of increase in the cost of the Respondent due to restriction on collection of parking fee in his investigation report.

iii. Profit had been shared between the distributor and multiplex owner in the ratio of 53.5:46.5 therefore, the profiteered amount, if any, should have been proportioned, accordingly.

8. Hearing in the matter was held by the Commission on 09.05.2024. The same was attended by Sh. Vaibhav Gaggar, Advocate, Sh. Swapnil Srivastava, Advocate, Sh. Vidur Mohan, Advocate and Sh. Somdev Tiwari, Advocate on behalf of the Respondent and Sh. Sanjay Kumar Chattar, Assistant Commissioner and Sh. Awanindra Kumar, Inspector on the behalf of the DGAP. None appeared on behalf of the Applicant No. 1. During the course of the hearing, the Counsel advanced his 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. Accordingly, the Respondent has filed his submissions on16.05.2024. Vide its submissions dated 16.05.2024, the Respondent has submitted a short synopsis on arguments in addition to the previous written submissions which are as follows: -

i. The DGAP failed to take into consideration that the prices being charged by the Respondent were within the maximum permissible limit set by the

Regulating Authority i.e., the State Government.

ii. The DGAP has misconstrued the scope and ambit of Section 171 of the CGST Act.

iii. The DGAP has gone beyond the purview of the complaint made by the Applicant No. 1.

iv. 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.

9. The Commission has carefully examined the DGAP's Reports, the written submissions and the documents placed on record, and the arguments advanced by the Respondent. The Commission needs to determine 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.

10. 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 ITCs 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."

11. The Commission 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.

12. The Respondent has contended that Profiteering, if any, should have been computed only in respect of the movies which are going on during the GST rate reduction period. It is submitted that in the instant case, every movie should be treated separately. Further, the DGAP has been computing the profiteering amount separately for each and every project in construction sector on the basis

of launching dates, separate ITC and turnover etc.

In this regard, the Commission observes that the Respondent has only category of tickets i.e., Premium Category having price of Rs. 130/- for all the different types of films shown in his theatre. Further, Section 171 of CGST Act, 2017 does not restrict or debar passing on the benefit of GST rate reduction in cases, where films were running at the time of rate reduction or after the rate reduction. Further, the Respondent has compared the *"Service by way of admission to exhibition of Cinematography film"* with Real Estate Sector. In this regard, the Commission finds that in the real estate sector, the complaint is made against one or two flats but all the flats of the said project are considered for the computation of profiteering. Also, the time is not limited to the point when the complaint was lodged but the period of completion of project is taken for computation of profiteering. Therefore, the contention of the Respondent is not acceptable.

13. The Respondent has contended that when the GST was introduced i.e., 01.07.2017, overall tax on the movie tickets was increased from 15% (Approx.) to 28%, i.e., tax portion on the movie tickets was increased by considerable amount of 13%. Further, the State Government's GO (Government Order) directed the Respondent to sell tickets at allowed prices, inclusive of taxes. Without considering the impact of tax rate change at the time of introduction of GST, computation of profiteering would lead to grave injustice to the Respondent.

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 Gliferrati 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.

In this regard, it is to mention that the DGAP starts investigating only when Section 171 of CGST Act, 2017 is attracted i.e., when the Government issued notification leading to *"any reduction in rate of tax on supply of goods and services or the benefit of input tax credit"*. In the instant case, Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 is effective form 01.01.2019 and therefore is applicable w.e.f. 01.01.2019 only. The increase in the tax rate on 01.07.2017 cannot be adjusted with decrease in tax rate on 01.01. 2019.Further, the benefit of tax reductions has to be passed on by the Respondent as it has been given to him from the public exchequer. It also has no connection with the fixing of the ticket prices by the State authorities or an increase in the ticket prices. Moreover, the State authorities always fix the upper price limits of the cinema tickets by taking into consideration the various factors including cost, in the interest of cinema goers and the Respondent is always at liberty to reduce his prices in accordance with the provisions of Section 171 of the CGST Act, 2017 at the time of rate reductions. Therefore, the above contention of the

Respondent is not tenable.

14. The Respondent has contended that the investigation cannot go beyond the application submitted by the Applicant No. 1 and cover other customers also who have not questioned the benefit passed on to them. In this regard, reliance is placed on the cases of *M/s U.P. Sales & Services vs. M/s Vrandavaneshwree Automotive Pvt. Ltd. [2018-VIL-01-NAA]* and *Sh. Rishi Gupta vs. M/s Flipkart Internet Pvt. Ltd. [2018 VIL-04-NAA]*, wherein investigation, report and final order of the NAA, all were made, only on the product for which complaint was filed in the respective cases.

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 the Commission to expand the scope of the investigation to all the supplies made by a registered person. This Section empowers the Commission to examine whether the benefit of the input tax credits and reduced tax rates have been passed 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 his recipients need to be examined from the perspective of passing on the benefit to each recipient. Further, the Respondent has cited several case laws of NAA to substantiate his claim that investigation could not

go beyond the application to cover other customers. In this context, it is clarified that comparison of the cases cited and the case of Respondent is entirely different and cannot be compared. In the cases cited by the Respondent, further investigation was not conducted, as it was found that the allegation for contravention of Section 171 was incorrect; whereas in the present case the allegation for contravention of Section 171 has been found to be correct and therefore further investigation on the basis of documents submitted by the Respondent is carried out. Therefore, in view of the above, the contention raised by the Respondent is not tenable and denied.

15. The Respondent has contended that in absence of the prescribed method of calculation of profiteering in the Act or the Rules or the procedure, the calculation and methodology used in the report is arbitrary and is in violation of principles of natural justice.

In this connection, the Commission holds that 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 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, 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. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from Stock Keeping Unit (SKU) to Stock Keeping Unit 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 which 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 Commission has been authorized to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 19.6.2023 under Rule 126 of the CGST Rules, 2017. 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. Therefore, no guidelines or methodology or clarifications were required to be issued for passing on the benefit of tax reductions. The Respondent was only required to reduce selling prices of the tickets, by taking into account the reductions in the tax rates w.e.f. 01.01.2019 which he has failed to do till 30.04.2020. Therefore, the above contention of the Respondent is frivolous and hence it cannot be accepted.

16. The Respondent has contended that the present proceeding initiated by the Authority is not sustainable and are liable to be dropped as there is no judicial member present in the composition/constitution of the Authority.

In this regard, the Commission finds that as stated in Section 171(2) of the CGST Act, 2017, the role of the Commission is *"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."* The duties of the Commission have been further elaborated upon in Rule 127 of the Central Goods and Services Tax Rules, 2017 which reads as follows:

> *"127. Duties of the Authority. - It shall be the duty of the Authority, -*
>
> *(i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;*
>
> *(ii) to identify the registered person who has not passed on the benefit of reduction in the 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;*
>
> *(iii) to order,*
>
> *(a) reduction in prices;*
>
> *(b) 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 the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

(iv) to furnish a performance report to the Council by the tenth day of the close of each quarter."

Therefore, the sequitur of the discussion above is that (a) the Commission did not replace or substitute any function which Courts were exercising hitherto; (b) it performs quasi-judicial functions but cannot be equated with a judicial tribunal; (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d) absence of a judicial member does not render the constitution of the Commission unconstitutional or legally invalid.

Further, in the case of ***Namit Sharma vs. Union of India, (2013) 1 SCC 745,*** the Hon'ble Supreme Court considered the question of the requirement of a judicial member for performing the functions and exercising the powers of the Chief Information Commissioner. The Hon'ble Supreme Court initially held that the Information Commissions and the Central Information Commissioners perform judicial functions possessing the essential attributes and trappings of a Court and hence, it must have judicial members. However, while deciding the

review petition filed by the Union of India, the Hon'ble Supreme Court in its judgment (***Union of India vs. Namit Sharma, (2013) 10 SCC 359)*** has held that

> *"the powers exercised by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the legislature need not provide for appointment of judicial members in the Information Commissions."*

Further, there are several statutory bodies like TRAI, Medical Council of India, Institute of Chartered Accountant of India etc. that perform quasi-judicial functions but do not have judicial members. Furthermore, Assessing Officers, CIT (Appeals) and the Dispute Resolution Panel under the Income Tax Act, 1961, all perform quasi-judicial functions, but there is no requirement that such members must possess either a law degree or have judicial experience. Therefore, the above contention of the Respondent is untenable and hence it cannot be accepted.

17. The Respondent has further contended that the interpretation given to Section 171 and rules made thereunder, by the DGAP without considering the 'marginal notes' to Section 171 and heading of chapter XV of CGST Rules, is untenable and not correct. The Respondent further submitted that the term 'profiteering' is not defined in the CGST Act or Rules made there under.

In this connection, it would be pertinent to mention that 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 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 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, which states as under: -

"Explanation: For the purposes 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 ITC to the recipient by way of commensurate reduction in the price of the goods or services or both.

The expression '*profiteered*' has been defined in the Explanation to Section 171 of the Act, 2017 to 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 or both.*' According to Collins English Dictionary Complete and Unabridged, 12th Edition 2014, the word 'commensurate' means "1. *having the same extent or duration; 2. Corresponding*

in degree, amount, or size; proportionate; 3. able to be measured by a common standard; commensurable." The word '*commensurate*' has been used in several judgments of the Supreme Court for laying down yardsticks in different contexts, from determining the rightfulness of the posting of a public servant, to assessing the correctness of criminal sentencing and calculating maintenance amounts indicating that the Courts too have a clear and definite understanding of this word.

The obligation of effecting/making a "*commensurate*" reduction in prices, as mentioned hereinabove, is relevant to the underlying objective of the Goods and Services Tax regime which is to ensure that suppliers pass on the benefits of reduction in the rate of tax and Input Tax Credit to the consumers, especially since the Goods and Services Tax is a consumption-based tax (as adopted in India) and the recipient (consumer) practically pays the taxes which are included in the final price. Section 171 of the Act, 2017, therefore, is not to be looked at as a price control measure but is to be seen to be directly connected with the objectives of the GST regime. Consequently, the word *'commensurate'* in Section 171 of the Act, 2017 means that whatever actual saving arises due to the reduction in rates of tax or the benefit of the Input Tax Credit, in rupee and paisa terms, must be reflected as equal or near about equal reduction in price. In other words, tax foregone by the authorities has to be passed on to the consumer as commensurate reduction in price.

18. The Respondent has further contended that the period covered under the investigation is from 01.01.2019 to 30.04.2020.The Report is silent on the grounds or reasons based on which such period is selected by the DGAP for

investigation. The period covered under investigation does not have any statutory basis. Further, it is submitted that if the period of investigation is beyond 3 months, the effect of increased costs should be taken into account while calculating the alleged profiteering.

In this connection, it would be pertinent to mention that the DGAP has received the reference from the Standing Committee on Anti-profiteering on 06.05.2020 and issued Notice of Investigation on 02.06.2020, the period till 30.04.2020 was correctly covered as the Respondent has not produced any evidence to pass on the benefit of tax reduction to the recipients/customers. The Respondent is liable to be investigated till the time he has not passed on the benefit of tax reduction. Therefore, the above contention of the Respondent is untenable and hence it cannot be accepted.

19. The Respondent has further contended that alleged profiteering amount has been incorrectly inflated in the Report by adding GST and the same is not sustainable.

In this connection, the Commission holds that the Respondent has not only collected excess base prices from his customers which they were not required to pay due to the reduction in rate of tax but the Respondent has also compelled his customers to pay additional GST on the excess base price which they should not have paid. By doing so, the Respondent has defeated the very objective of both the Central and the State Governments 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 Act supra, as he has denied the benefit of rate reduction to his customers by charging excess GST. Had he not charged the excess GST, the customers would have paid less price while purchasing tickets from the Respondent. Hence, the GST has rightly been included in the profiteering amount as it denotes the amount of benefit denied by the Respondent. Therefore, the Commission finds that the above contention of the Petitioner is untenable and hence it cannot be accepted.

20. The Respondent has contended that the present proceedings had been issued in violation of principles of natural justice as show because notice has not been issued to the Respondent proposing the action to be taken by the NAA. Moreover, the investigation is initiated basis the reference of the Standing Committee who, unilaterally, decided to forward the application filed by the Applicant No. 1 to the DGAP for investigation without giving any chance to Respondent to clarify or explain his side.

In this regard, The Commission finds that on perusal of Rule 129(6) of the CGST Rules, 2017, it is clear that the DGAP shall complete the investigation within the prescribed time limit and upon completion of the investigation, furnish a report of its findings along with the relevant records to the Commission. In the present case, the DGAP after detailed investigation has submitted his Report dated 25.09.2020. On receipt of the above Report of the DGAP, the NAA has carefully considered the allegations made against the Respondent and issued show cause notice dated 01.10.2020 to him vide which he was directed to explain why the Report of the DGAP should not be accepted and his liability for profiteering should not be determined under Section 171 of the Act, 2017. The

Report of the DGAP is also supplied to the Respondent along with all the annexures. The Respondent is also given opportunity to file his written submissions against the allegations levelled by the DGAP in his Report vide the above show because notice dated 01.10.2020. 'The description of the goods and services' and 'the grounds/reasons on the basis of which profiteering has been alleged' have also been mentioned in the Report of the DGAP and the same has been supplied to the Respondent. Hence, there is no need to issue separate show cause notice to the Respondent on the above grounds. The Respondent has been supplied all the material/documents which have been relied upon by the DGAP while framing the Report and hence the Respondent has no ground to allege violation of principles of natural justice. Hence, the contention of the Respondent is devoid of merit and cannot be accepted.

21. The Respondent has contended that the DGAP had not considered the fact of increase in the cost of the Respondent due to restriction on collection of parking fee and increase in rent in his investigation report.

In this regard, it may be mentioned that the main factor under consideration for determining the profiteered amount are base prices of tickets. 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 ITC to the recipients by way of commensurate reduction in prices. The wilful action of not passing on the above benefits to the recipients in the manner prescribed amounts to profiteering and the Respondent had indulged in profiteering by increasing the base prices of the tickets with intent of not passing on the benefit of reduction in the rate of tax to the recipients. The Respondent does not have the liberty to increase the base prices and maintain the same selling price when

there was reduction in the rate of tax. In such a case, the Respondent was obliged to reduce the base prices commensurate with reduction in tax rate so that the due benefit of recipients was passed on to them in terms of Section 171 of the CGST Act, 2017.

22. 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 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 Gliterrati 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 are 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 on 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 Respondent has erroneously relied upon the Interim Orders of Hon'ble High Court of Telangana dated 22.08.2019 and 22.10.2019 in W.P.(C) 18232/2019 and W.P.(C) 23025/2019 respectively. In this regard, the Commission notes that the Hon'ble High Court directed the parties that the petitioners should pay the taxes proportionate to the proposed ticket rates.

Further, 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.

23. 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 concessions are 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 benefits 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 recipients after factoring the benefit of ITC or reduction in rate of tax, is to be determined by the DGAP in the course of such calculations 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.

24. 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.

25. 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) and 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 were 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 30.04.2020, was Rs. 88,67,790/-.

26. Based on the facts discussed above, it has been established that the Respondent has profiteered by way of increasing the base prices of movie tickets by maintaining the same selling prices of the movie admission tickets despite the reduction in GST rate *"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. It is also clear to us that the Respondent has not passed on the benefit of rate reduction for the period from 01.01.2019 to 30.04.2020 amounting to Rs. 88,67,790/- (inclusive of GST) to his customers/recipients. Thus, the profiteering is determined as Rs. 88,67,790/-as per the provisions of Section 171 read with Rule 133 (1) of the CGST Rules 2017 and accordingly the Respondent is directed to commensurately reduce the prices of movie tickets in line with the provisions of Section 171(1) read with Rule 133 (3) (a) of the CGST Rules, 2017.

27. Further, since the customers/ recipients, in this case, are not identifiable, we direct the Respondent to deposit the profiteered amount of Rs. 88,67,790/-along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited, in two equal parts, in the Central Consumer Welfare Fund and the Telangana State Consumer Welfare Fund as per provisions of Section 171(1) read with Rule 133 (3) (c) of the CGST Rules, 2017. The above amount shall be deposited by the

Respondent within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the Commissioner CGST/SGST as per the provisions of the relevant GST Act, 2017.

28. It is also evident from the above narration of facts that the Respondent has denied the benefit of rate reduction from 28% to 18% w.e.f. 01.01.2019 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. That Section 171 (3A) of the CGST Act, 2017 has been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. As the period of investigation was 01.01.2019 to 30.04.2020, therefore, he is liable for imposition of penalty under the provisions of the above Section for the amount profiteered from 01.01.2020 onwards. Accordingly, notice be issued to him to explain why penalty should not be imposed on him.

29. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is deposited in the respective CWFs. A report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this Order.

30. A copy of this Order be supplied, free of cost, to the Applicants, the Respondent and the concerned jurisdictional Commissioners CGST/SGST for necessary action. File 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/204/Asian Radhika/2020/556-61 Date:- 27.06.2024

Copy to:-

1. M/s Asian Radhika Multiplex, Anupuram Colony, Dr. AS Rao Nagar, Secunderabad-500062.
2. Sh. Hrushikesh, 1-4-21413P106, AMP 107P, Pradhamapuri Colony, Near Netaji Nagar, ECIL, Hyderabad-500062.
3. 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.
4. The Chief Commissioner of Central Goods & Service Tax, Hyderabad Zone GST Bhavan, I.B. Stadium Road, Basheer Bagh, Hyderabad, Telangana-500004.
5. The Commissioner of Commercial Taxes Department, C.T Complex, Nampally, Hyderabad, Telangana-500001.
6. Guard File.