



BEFORE THE COMPETITION COMMISSION OF INDIA

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

Case No. : 10/2024
Date of Institution : 27.12.2019
Date of Order : 27.09.2024

In the matter of:

1. Principal Commissioner, Hyderabad Commissionerate, GST Bhawan, LB Stadium Road, Basheerbagh, Hyderabad – 500004.
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 Ranga 70 MM, Sy. No. 311/1, Shapur Nagar, IDA Jeedimetla, Hyderabad - 500055.

Respondent

Quorum:-

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

ORDER

1. The present Report dated 27.12.2019 had been received from the Director General of Anti-Profiteering (hereinafter referred to as the "DGAP") on 27.12.2019 by the erstwhile National Anti-Profiteering

Authority (hereinafter referred to as the “**NAA**”) after a detailed investigation under Rule 133(4) of the Central Goods & Service Tax (CGST) Rules, 2017 (hereinafter referred to as the “**Rules**”).

2. Vide the above mentioned Report, the DGAP had stated:-

- a) That the applicant had alleged that the Respondent did not pass on the benefit of reduction in the GST rate on “*Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less*” from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “**Act**”) and instead, increased the base price to maintain the same tax-cum selling price of the admission tickets. Accordingly, it was decided to initiate an investigation and collect evidence necessary to determine whether the benefit of GST rate reduction from 18% to 12% w.e.f. 01.01.2019, had been passed on by the Respondent to the recipients by way of commensurate reduction in price, in terms of Section 171 of the Act.
- b) That the aforesaid application was examined by the Standing Committee on Anti-profiteering, in its meeting held on 15.05.2019, the minutes of which were received in the DGAP on 28.06.2019, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, it was 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.
- c) That the Standing Committee forwarded the following submission/documents of the Applicant.
 - (i) Anti-profiteering Application form (APAF-1).

- (ii) Annexure to APAF-1 confirming the fact of increasing in the base prices of tickets.
 - (iii) Letter dated 29.03.2019 of the Respondent to the State Screening Committee on Anti-profiteering.
- d) That on receipt of the reference from the Standing Committee on Anti-profiteering, a Notice of Investigation (NOI) dated 09.07.2019 under Rule 129 of the Rules was issued by the DGAP calling upon the Respondent to reply as to whether he admitted if 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.
- e) That vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant during 17.07.2019 to 19.07.2019, which the Respondent did not avail.
- f) That the period covered by the current investigation was from 01.01.2019 to 30.06.2019.
- g) That 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 issue to be looked into was whether the rate of GST on the "*Services by way of admission to exhibition of cinematography films where price of admission ticket is 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 is one hundred rupees or less*" was reduced from 18% to 12% w.e.f. 01.01.2019 and 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 Act.

- h) That at the outset, it was observed that the Applicant had given the illustration with respect to reduction in rate of admission tickets where the price of admission was upto ₹100/- (One Hundred Rupees) only. Also, the Respondent in his submissions itself admitted that he had not increased the base price of the ticket of ₹100/-. However, he had increased the prices of the other tickets.
- i) That on examination of the details of sales data, letter of the Applicant and replies submitted by the Respondent it was observed that basically there were three categories of tickets Balcony ₹90/-, First Class ₹50/- and Second Class ₹30/- sold by the Respondent during the pre-rate reduction period effective from 01.12.2018 to 31.12.2018 and the changed prices of these three categories of tickets were Balcony ₹125/-, 110/-, 90/- First Class ₹50/-, 70/- and Second Class ₹40/-, 30/- post rate reduction w.e.f 01.01.2019.
- j) That from the sales data made available, it appeared that the Respondent increased the base price of the admission tickets when the GST rate was reduced from 18% to 12% and 28% to 18% w.e.f. 01.01.2019 in the manner illustrated in table-'A' below. From the table-'A', it was observed that the prices of three categories of tickets were changed on different dates randomly.

Table-A								
S. No.	Category	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019			
		Price of Ticket inclusive of tax	GST Rate (%)	Base Price	Price of Ticket inclusive of tax	GST Rate (%)	Commensurate Price	Profiteering per ticket (in ₹)
A	B	C	D	$E=[C/118\%]$	F	G	$H=E*112\%$	$I=F-H$
1	Balcony	90	18%	76.27	90	12%	85.42	4.58
					110	12%	85.42	24.58
					125	18%	90.00	35.00
2	1st class	50	18%	42.37	50	12%	47.46	2.54
					70		47.46	22.54
3	2nd class	30	18%	25.42	30	12%	28.47	1.53
					40		28.47	11.53

Therefore, in terms of Section 171 of the Act, benefit of GST rate reduction from 28% to 18% and from 18% to 12% in respect of "Services by way of admission to exhibition of cinematography films", was not passed on to the recipients.

- k) That 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 three categories mentioned in table 'B' below amounts to ₹10,00,482/- for Balcony, ₹12,73,180/- for First Class and ₹1,51,967/- for Second Class. The total amount of net higher sales realization due to increase in the base prices of the movie tickets, despite the reduction in GST rate from 18% to 12% or in other words, the profiteered amount comes to **₹24,25,630/-** (Rupees Twenty Four Lakhs, Twenty Five Thousand, Six Hundred and Thirty only). The details of the computation are given in the table "B" below:-

Table-B							
S No	Category	01.01.2019 to 30.06.2019					
		Actual Selling Price	Commensurate Price	Excess amount charged per ticket	Qty. Sold	Total Profiteering (including tax @12% or 18%)	Category wise profiteering (in ₹)
A	B	C	D	E= (C-D)	F	G= (F*E)	H
1	Balcony	90	85.42	4.58	35192	161179.36	1000482.08
		110	85.42	24.58	18934	465397.72	
		125	90	35	10683	373905.00	
2	1st class	50.00	47.46	2.54	93988	238729.52	1273180.28
		70.00	47.46	22.54	45894	1034450.76	
3	2nd class	30.00	28.47	1.53	42248	64639.44	151967.66
		40.00	28.47	11.53	7574	87328.22	
Total (in ₹)						2425630.02	

- l) That in view of the aforementioned findings, it appeared that Section 171(1) of the Act has been contravened by the Respondent.

3. The above report of the DGAP dated 14.02.2020 was considered by

the erstwhile NAA and it was decided to allow the Respondent and the Applicant to file their consolidated written submissions in respect of the above Report of the DGAP. Notice dated 01.01.2020 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.

4. The Respondent vide letter dated 04.02.2020 has made his written submissions on the DGAP's report dated 27.12.2019. The same has been summarised as below:-
 - i. The rate of admission of tickets of a cinema theatre in the State of Telangana will be fixed by the Licencing Authority and the theatre owner has no independent right to reduce or increase the rates without permission. The Respondent has also submitted that he had obtained permission for enhancement of rates and screening of films in the second week of January 2019. The Respondent submitted that no benefit had accrued to the theatre by virtue of change of percentage of tax and that the government was getting the revenue directly from the theatre and that he had not collected tax separately from the audience.
 - ii. When GST was introduced or the tax on GST was reduced, the officers concerned in the State of Telangana had not intimated the Respondent by issuing any notice except the notice received from the DGAP.
 - iii. There was no stocking of goods at an older tax rate and therefore the possibility of not passing on the benefit of Input Tax Credit as claimed in the DGAP's report did not arise.
 - iv. The Respondent was not supposed to increase prices during any tax rate in the transitory period; it was only logical/viable for a small period of time. It may be seen that between 09.01.2019 to January third week the Respondent got his rate of ticket prices allowed by the Hon'ble High Court of Telangana.

- v. Ticket prices are controlled by the film owners i.e. producers/distributors.
5. 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 on each issue raised by the Respondent vide letter dated 20.02.2020, wherein, it was stated that:-
- i. Vide Notification No. 27/2018-Central Tax (rate) dated 31.12.2018, the Central Government on recommendation of GST Council reduced the GST rate on "*Services by way of admission to exhibition of cinematography films where price of admission ticket is one hundred rupees or above*" from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission to exhibition of cinematography films where price of admission ticket is one hundred rupees or less*" from 18% to 12% w.e.f. 01.01.2019. During investigation, it was observed that the base prices of admission tickets were increased by the Respondent shortly when the GST rate was reduced from 18% to 12% w.e.f. from 01.01.2019.

As per Section 171(1) of CGST Act, 2017 the legal requirement was that in the event of a reduction in rate of tax, there must be a commensurate reduction in prices of goods or service, such reduction could obviously be only in terms of money, such that the final price payable by a consumer get reduced commensurately.

Section 171 of the Act does not interfere with the right to trade as Section 171 of the CGST Act, 2017 nowhere seeks to fix the prices at which the goods and services ought to have been supplied. Section 171 only requires the supplier to pass on the benefit of reduction in rate of tax or the benefit of Input Tax Credit to the recipients by reducing the price commensurately and does not require him to seek any approval to conduct trade or fix the prices of the products supplied by him.

- ii. GST applicable on the products or service supplied was self-assessed by the supplier based on the relevant Notifications/Circulars of the GST Act and the Notifications were uploaded on the website of CBIC.
 - iii. There was no question of stocking of goods as the investigation carried out by the DGAP pertained to the services offered by the Respondent.
 - iv. The Respondent in his submissions agreed that prices could not be increased in the transitory period of GST rate reduction. However, the Respondent also stated in the same submission that he had increased the prices in the second week of January, 2019 i.e. merely a week after reduction of rate of tax.
 - v. The Respondent's submissions appeared to be very vague about who actually determine the prices, whether it was the Licensing Authority or the film owners/producers/ distributors.
6. The Respondent filed Writ Petition No. 1167/2020 (on 19.01.2020) before Hon'ble Telangana High Court seeking stay on proceedings pursuant to NAA's Notice dated 01.01.2020. The Hon'ble Court granted interim stay of 'four weeks' vide order dated 04.02.2020. Further, Hon'ble Court vide its common order dated 12.12.2023 vacated the stay and disposed of the Writ Petition No. 1167/2020 and held that *"the authorities concerned thereafter in turn is expected to proceed further in accordance with law after due consideration of the contents of the reply and documents which the Petitioner shall be furnishing by way of their response."*
7. The Respondent vide his letter dated 06.06.2024 filed his additional written submissions. The same has been summarised as below:-
 - i. For two movies namely "F2" and "Maharshi" the Respondent had taken permission to increase the ticket prices from the Licensing Authority during the period 10.01.2019 to 24.01.2019 and again for the period 09.05.2019 to 22.05.2019 respectively and

collected the enhanced ticket price and paid applicable GST accordingly (18% if ticket price is > 100). Details of the same are given in table 'C' below:-

Table 'C'

SI No	Movie	Period	Category	Enhanced Ticket price	No. of tickets sold	Profiteering per ticket as per DGAP report	Amount (in ₹)
1	F2	10.01.2019 to 24.01.2019	Balcony	110	18934	24.58	4,65,398
2	Maharshi	09.05.2019 to 22.05.2019	Balcony	125	10683	35	3,73,905
3	F2	10.01.2019 to 24.01.2019	1st class	70	24,660	22.54	5,55,836
4	Maharshi	09.05.2019 to 22.05.2019	1st class	70	21,234	22.54	4,78,614
5	F2	10.01.2019 to 24.01.2019	2nd class	40	7,574	11.53	87,328
6	Maharshi	09.05.2019 to 22.05.2019	2nd class	30	5,826	1.53	8,914
Total (in ₹)							19,69,995

ii. In the absence of the prescribed method of calculation of profiteering in the Act or the Rules or the procedure, the proceedings are arbitrary and liable to be set aside.

iii. The profiteering amount has been incorrectly inflated in the report of the DGAP by adding GST and the same is not sustainable. The Respondent also stated that addition of 18% would have been correct if the case of DGAP was that the amount has been collected and retained by the Respondent and not deposited with the Government.

8. The Commission granted opportunities of hearing to the Respondent on 28.03.2024, 02.05.2024, 06.06.2024 and 08.08.2024. Hearing in the matter was held on 08.08.2024. Sh. Sanjay Kumar Chatter, Assistant Commissioner and Sh. Diwakar Sharma, Inspector appeared on behalf of the DGAP. Sh. Venkata Prashad P., Advocate appeared on behalf of the Respondent to advance arguments. The Respondent re-iterated his submissions dated 06.06.2024.

9. The Commission vide its O.Ms dated 09.08.2024 and 28.08.2024 directed the DGAP to re-calculate the profiteering amount as per the submissions of the Respondent dated 06.06.2024 and submit its report under Rule 133(2A) of the CGST Rules, 2017.
10. The DGAP vide letters dated 21.08.2024 and 05.09.2024 has filed his supplementary reports under Rule 133(2A) of the Rules on the submissions of the Respondent dated 06.06.2024, wherein it is stated that:-
- i. The DGAP on directions of the Commission considered the submissions of the Respondent given in column 1 to 5 of the table-'C'. Whereas, the contention of the Respondent at column 6 for "Maharshi" movie had not been taken for consideration as movie ticket price of Maharshi for 2nd class was fixed at Rs. 30/- during the period of 01.01.2019 to 30.06.2019. The calculation is given in the table 'D' below:-

Table 'D'

SI No	Movie	Period	Category	Enhanced Ticket price	No. of tickets sold	Profiteering per ticket as per DGAP report	Amount
1	F2	10.01.2019 to 24.01.2019	Balcony	110	18934	24.58	4,65,398
2	Maharshi	09.05.2019 to 22.05.2019	Balcony	125	10683	35	3,73,905
3	F2	10.01.2019 to 24.01.2019	1st class	70	24,660	22.54	5,55,836
4	Maharshi	09.05.2019 to 22.05.2019	1st class	70	21,234	22.54	4,78,614
5	F2	10.01.2019 to 24.01.2019	2nd class	40	7,574	11.53	87,328
Total							19,61,081

Therefore, the profiteering amount worked out to be (2425630-1961081) = Rs. 4,65,549/-.

- ii. The provisions of Section 171 of the CGST Act, 2017 on Anti-profiteering has been passed by the Parliament. Section 171(1) of the Act, envisages that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by

way of commensurate reduction in price. In other words, every recipient of goods or services has to get the benefit from the supplier and hence, this benefit has to be calculated for each and every product supplied. The investigation by DGAP is conducted under the provisions of Section 171 of the Act read with Rule 129 of the CGST Rules, 2017 on the recommendation of the Standing Committee on Anti- profiteering and the Investigation Report is submitted to the Commission under Rule 129(6) of the Rules. The main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017.

However, one formula which fits all cannot be set while determining such a "Methodology and Procedure" as the facts of each case are different. In cinema sector different parameters are fixed, such as, rates of tickets for some special movies, weekends, weekdays, timing of the show, classes in the hall etc. before and after the GST rate revision would always be different than the other cinema hall and hence the amount of benefit of rate revision to be passed on in respect of one cinema hall would not be similar to another cinema hall. Therefore, no set parameters can be fixed for determining methodology to compute the benefit of rate revision which would be required to be passed on to the buyers. The CGST Rules have provided an elaborate mechanism for determination of the benefits and hence there is sufficient machinery to implement the anti-profiteering provisions.

- iii. The contention of the Respondent that alleged profiteering amount has been incorrectly inflated by adding GST is frivolous and not acceptable. Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, require the supplier of goods or services to pass on the benefit of the tax rate reduction to the recipients by way of commensurate reduction in price.

Price includes both, the base price and the tax paid on it. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such amount be refunded to the eligible recipients or alternatively deposited in the Consumer Welfare Fund, regardless of whether such extra tax collected from the recipient has been deposited in the Government account or not. Besides, any extra tax returned to the recipients by the supplier by issuing credit note can be declared in return filed by such supplier and his tax liability shall stand adjusted to that extent in terms of Section 34 of the CGST Act, 2017. Therefore, the option was always open to the Respondent to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

11. This Commission has carefully gone through the the Report dated 27.12.2019 furnished by the DGAP as well as all the other material placed on record and 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 price of admission ticket is above one hundred rupees*" from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission to exhibition of cinematograph films where price of admission ticket is less than one hundred rupees*" from 18% to 12% 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 Commission finds that, as per the details and calculations in tables 'A' & 'B' above, the Respondent has been profiteering by way of increasing the base prices of the tickets (Services) by not reducing the selling price of the tickets (Services) commensurately, despite the reduction in GST rate as per Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018. From the table 'B' above, it is evident that the base prices of the admission tickets was indeed increased, as a result

of which the benefit of reduction in GST rate from 28% to 18% and 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged. The total amount of profiteering covering the period from 01.01.2019 to 30.06.2019, calculated by the DGAP vide its report dated 27.12.2019 amounted to Rs. 24,25,630/-.

13. The Respondent vide his submissions dated 06.06.2024 has contended that rate of admission of tickets of a cinema theatre in the State of Telangana is fixed by the Licencing Authority and the theatre owner has no independent right to reduce or increase the rates without permission. The Respondent also submitted that he had obtained permission for enhancement of rates and screening of films in the second week of January 2019. In this regard, the Commission finds that the Respondent sought specific permission from Licensing Authority to increase the ticket price for the period 10.01.2019 to 24.01.2019 and again for the period 09.05.2019 to 22.05.2019 and collected the enhanced ticket price and paid applicable GST accordingly. In this regard, it is to mention that the contention of the Respondent at column 6 for "Maharshi" movie had not been taken into consideration as movie ticket price of Maharshi for 2nd class was fixed at Rs. 30/- during the period from 01.01.2019 to 30.06.2019.

However, on the basis of the submissions of the Respondent made in column 1 to 5 of the above table-'C', the Profiteering amount has been re-calculated from Rs. 24,25,630/- to Rs. 4,65,549/- by the DGAP and the same is upheld by this Commission.

14. The Respondent in his submission also averred that when GST was introduced or the GST rate was reduced, the officers concerned in the State of Telangana have not intimated by issuing any notice except the notice received from the DGAP. In this regard, the Commission finds that the relevant Notifications/Circulars of the GST Act are uploaded on the website of CBIC in public domain whenever the tax rates are changed by the Central Government on recommendation of the GST Council. Therefore, the above contention of the Respondent is not

tenable.

15. The Respondent vide his submissions also contented that there was no stocking of goods at an older tax rate and therefore possibility of not passing on the benefit of ITC did not arise. In this regard, the Commission finds that the services offered by the Respondent are “*by way of admission to exhibition of cinematography films*” and therefore the question of stocking of goods does not arise. As per Section 171 benefit of reduction of GST rate is required to be passed on to the ticket buyers which was not passed on during the period 01.01.2019 to 30.06.2019. Therefore, above contention of the Respondent is not tenable and hence rejected.

16. The Respondent vide his submissions also averred that in the absence of the prescribed method of calculation of profiteering in the Act or the Rules or the procedure, the proceedings are arbitrary and liable to be set aside. The Respondent also relied upon the judgement of the case of Eternit Everest Ltd. Vs. UOI, reported at 1997(89) E.L.T. 28 (Mad.).

In this regard, the Commission finds that the methodology and procedure was notified by this Authority vide its Notification dated 19.06.2023 under Rule 126 of the CGST Rules, 2017 which is also available on its website. The ‘Procedure and Methodology’ for passing on the benefit of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which states 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*”. Further, it is to mention that the facts of the case relied upon by the Respondent are different from the present case, therefore reliance of the Respondent upon the said judgment is of no help to him.

17. The Respondent also contented that the word “commensurate reduction” in Section 171 of the Act denotes reduction in price after taking into account all factors which impact pricing of goods and that the law does not prescribe whether a particular amount is

commensurate as the legislature is conscious of the fact that pricing of goods is a complex exercise involving numerous factors. The Respondent stated that the law uses the word 'any' before supply of goods and the same has been used to denote singular as against the plural for price.

In this regard, the Commission finds that the word "commensurate" mentioned in Section 171 of the Act gives the extent of benefit to be passed on by way of reduction in the prices which has to be computed in respect of each product based on the tax reduction or availability of additional ITC as well as the existing base price (price without GST) of the product. The computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product 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 recipient or the profiteered amount.

Further, Section 171 of the Act mentions "any supply" i.e. each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. Each customer is entitled to receive the benefit of tax reduction on each product purchased by him.

18. The Respondent also averred that the term 'profiteering' is not defined in the CGST Act or rules made thereunder. In this regard, the Commission finds that 'Profiteering' has been defined in the CGST Act as an Explanation to Section 171 which was inserted in the Statute vide Section 112 of the Finance Act, 2019 (No. 2) which came into force w.e.f. 01.01.2020. Further, the Respondent has cited the definitions of 'Profiteering' from the 'Chambers Dictionary', 'Collins Cobuild English Dictionary' and 'Oxford English Reference Dictionary' in his support. However, it would be worthwhile to mention here that Section 171 of the CGST Act is very much clear, according to which the benefit commensurate to the amount of reduction in rate of tax or benefit of ITC has to be passed on to the recipients by way of reduction

in prices. The insertion of definition of the term "profiteered" in Section 171 of the CGST Act, 2017 vide the Finance (No. 2) Act, 2019 was only clarificatory in nature.

19. The Respondent also contended that the profiteering amount has been incorrectly inflated in the report of the DGAP by adding GST and the same is not sustainable. The Respondent also stated that addition of 18% would have been correct if the case of DGAP was that the amount has been collected and retained by the Respondent and not deposited with the Government.

In this regard, the Commission finds that Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, require the supplier of goods or services to pass on the benefit of the tax rate reduction to the recipients by way of commensurate reduction in price. Price includes both, the base price and the tax paid on it. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such amount be refunded to the eligible recipients or alternatively deposited in the Consumer Welfare Fund, regardless of whether such extra tax collected from the recipient has been deposited in the Government account or not. Besides, any extra tax returned to the recipients by the supplier by issuing credit note can be declared in return filed by such supplier and his tax liability shall stand adjusted to that extent in terms of Section 34 of the CGST Act, 2017. Therefore, the above contention of the Respondent cannot be accepted.

Further, the reliance on the judgement of *R.S. Joshi, Sales Tax Officer, Gujarat v. Ajit Mills Limited reported at (1977) 4 SCC 98* 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.

20. The Respondent also averred that Rules 126, 127 and 133 of the CGST Rules suffer from the vice of excessive delegation. In this regard, the Commission finds that the legislature had delegated the task of prescribing the powers and functions of the Authority to the Central Government as per Section 171 of CGST Act, 2017 read with

Section 2 (87) of the Act, on the recommendation of the GST Council. The Central Government, on the recommendation of the GST Council under 101th Amendment of the constitution has formulated and notified Rules 126, 127 and 133 which prescribe the functions, duties and power of the Authority. All Rules of Anti-profiteering have been framed under Section 164 of the said Act which has the sanction of the Parliament and the State Legislatures. It also shows that the delegated power to the Authority given under section 171(3) of the said Act has been duly exercised by the Central Government by formulating the Rules, on the recommendation of the GST Council. Therefore, the power to determine its own methodology under Rule 126 is just and enables the Authority to clarify and effectuate the powers given and functions to be discharged by the Authority and this enabling provision has been granted to the Authority after careful consideration at several stages and levels and therefore there is no ground for claiming that the present delegation is excessive or arbitrary.

Further, the Hon'ble High Court of Delhi vide its judgment dated 29.01.2024 has upheld the constitutional validity of Section 171 of Act, 2017 as well as Rules, 122, 124, 126, 127, 129, 133 & 134 of the Rules, 2017.

21. This Commission, based on the facts discussed above, finds that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices 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 is above one hundred rupees*" from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission to exhibition of cinematograph films where price of admission ticket is less than one hundred rupees*" from 18% to 12% w.e.f. 01.01.2019 upto 30.06.2019. On this account, the Respondent has realised an additional amount to the tune of **Rs. 4,65,549/-** from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus, the

profiteered amount is determined as **Rs. 4,65,549/-** as per the provisions of Rule 133 (1) of the CGST Rules, 2017. As per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, the Respondent is therefore directed to reduce the prices of his tickets, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of **Rs. 4,65,549/-** 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. 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. 2,32,774.5/- in the Central Consumer Welfare Fund (CCWF) and Rs. 2,32,774.5/- in the Telangana State Consumer Welfare Fund (CCWF) 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.

22. 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.
23. Further, the Commission in terms of Rule 136 of the CGST Rules, 2017 directs the jurisdictional Commissioners of CGST/SGST, Telangana to monitor compliance with this Order under the supervision

of the DGAP, by ensuring that the amount profiteered by the Respondent as ordered by this Commission is deposited in the respective Consumer Welfare Funds along with interest thereon. A report regarding compliance of this order shall be submitted to this Commission by the DGAP within a period of four months from the date of receipt of this Order.

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

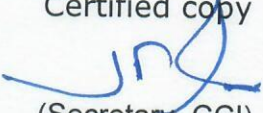
S/d
(Deepak Anurag)
Member

S/d
(Sweta Kakkad)
Member

S/d
(Anil Agrawal)
Member

S/d
(Ravneet Kaur)
Chairperson

Certified copy


(Secretary, CCI)

File No. 22011/NAA/119/Ranga/2019
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27/09/24

Date: 27.09.2024

1. M/s Ranga 70 MM, Sy. No. 311/1, Shapur Nagar, IDA Jeedimetla, Hyderabad - 500055.
2. Principal Commissioner, Hyderabad Commissionerate, GST Bhawan, LB Stadium Road, Basheerbagh, Hyderabad - 500004.
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.