BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	15/2020
Date of Institution	13.09.2019
Date of Order	12.03.2020

In the matter of:

1. Shri Himanshu Sharma, 794, Vaishali Colony, Swarg Asharam Road, Hapur, Uttar Pradesh-245101.
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 NY Cinemas LLP, Opp. Private Bus Stand, Govind Nagar, Hapur, Uttar Pradesh-245101.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. Arjun Bhandari, CFO and Sh. Dhaval Talati, Chartered Accountant, Authorised Representative for the Respondent.

ORDER

1. The present Report dated 12.09.2019 has been furnished by the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application in which it was alleged that the Respondent had not passed on the benefit of reduction in the GST rates on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was 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 prices, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and instead, had increased the base prices to maintain the same cum-tax selling prices of the admission tickets. Along with the application, the Applicant No. 1 had submitted copies of invoices with 28% and 18% GST charged, his own

working of GST computation and GSTIN details of the Respondent.

2. The above Applicant had also submitted the following documents along with his application:-

(a) APAF Form

(b) Driving Licence

(c) Copy of invoice wherein 28% GST had been charged

(d) Copy of invoice wherein 18% GST had been charged

(e) Detailed Working of GST collected and paid

(f) GSTN details of NY Cinemas

3. The DGAP has stated in his Report dated 12.09.2019 that the Standing Committee on Anti-profiteering had examined the above application in its meeting held on 11.03.2019, the minutes of which were received by the DGAP on 27.03.2019, whereby it was decided to refer the matter to the DGAP for initiating investigation and collect evidence necessary to determine whether the benefit of reduction in the rates of GST on supply of "Services by way of admission to exhibition of cinematograph films" had been passed on by the Respondent to the recipients or not.

4. The DGAP has also stated that a Notice under Rule 129 (3) of the above Rules was issued by him, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in the GST rates w.e.f. 01.01.2019 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. The Respondent was afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the above Notice, during the period from 16.04.2019 to 18.04.2019. However, the Respondent did not avail of the opportunity. The period covered by the current investigation is from 01.01.2019 to 31.03.2019.

5. The DGAP has further stated that as the Applicant No. 1 had made a complaint which was specific to the Theatre/Screen being operated by the Respondent in the District of Hapur in the State of Uttar Pradesh, Notice for Initiation of investigation was issued for the same only. The Respondent had also provided the detailed outwards supplies and pricing data for the theatre in Hapur only. Hence, the scope of this investigation was limited to the Theatre located in Hapur.

6. The time limit to complete the investigation was extended upto 26.09.2019 by this Authority in terms of Rule 129 (6) of the above Rules, vide order dated 19.06.2019.

7. The Respondent has submitted his replies to the notice, vide e-mails/letters dated 06.05.2019, 17.05.2019, 21.05.2019,

20.05.2019, 23.05.2019, 28.08.2019, and 30.08.2019. The submissions of the Respondent are summed up as follows:-

a. That the Respondent was engaged in the business of running a chain of multiplexes in India and currently had screens operational in Kotkapura of Punjab State, Greater Noida, Hapur, Ghazipur, Raebareli, Pilkhua and Kanpur Districts of Uttar Pradesh and Surendra Nagar and Bhuj Districts of Gujarat.

b. That the Respondent had legitimately reduced the rates of tax for movie tickets but was not able to incorporate changes in the tax rates for the movie tickets of value more than Rs. 100/- from 28% to 18% and for movie tickets of value less than or upto Rs. 100 from 18% to 12% for the initial period of 2 days i.e. 01.01.2019 to 02.01.2019.

c. That the excess tax collected for the period from 01.01.2019 and 02.01.2019 for the cinema located in Hapur amounted to Rs. 3,309/- and a summary of the price list along with tax collected and paid by the Respondent pre and post 01.01.2019 was submitted by him.

d. That the Respondent had not breached the provisions of Section 171 of CGST Act, 2017 citing the following reasons:-

i. That the benefit was passed on to the consumers only in the cases where reduction in the rates of tax had not reduced the cum-tax prices of the admission tickets.

ii. That the base prices of the admission tickets had remained unchanged for the period from 01.01.2019 to 02.01.2019.

iii. That the rates of tax had also remained unchanged for the period from 01.01.2019 and 02.01.2019.

e. That the Notice was received only for the cinema located in District of Hapur, however, the amount of excess tax collected for the whole state of Uttar Pradesh including district of Hapur was Rs. 18,116/- which had been voluntarily paid.

f. That it was not a case of profiteering, rather it was a case of excess tax collected which had been voluntarily paid by him.

8. Vide his aforesaid e-mails/letters, the Respondent had also submitted the following documents/information:-

a. Copies of GSTR-1 Returns for the period from December, 2018 to March, 2019.

b. Copies of GSTR-3B Returns for the period from December, 2018 to March, 2019.

c. Copies of sample invoices pre and post 01.01.2019.

d. A brief summary of total revenue from all the screens located in the state of Uttar Pradesh and its reconciliation with the GSTR-1 Returns for the month of January, 2019.

e. A summary of the price list along with taxes collected and paid by the Respondent for the month of January, 2019 in the state of Uttar Pradesh.

f. Monthly Summary of tickets for the period from December, 2018 to March, 2019.

9. The DGAP has also submitted that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of

admission ticket was 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. He has further submitted that the legal requirement of Section 171 of the CGST Act, 2017 was abundantly clear that in the event of benefit of input tax credit or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could obviously be in money terms only, so that the final price payable by a consumer got reduced. He has also contended that this was the legally prescribed mechanism for passing on the benefit of input tax credit or reduction in the rate of tax to the recipients under the GST regime. He has further contended that Section 171 simply did not provide a supplier of goods or services any other means of passing on the benefit of input tax credit or reduction in the rate of tax to the consumers.

10. The DGAP has also intimated that the Respondent in respect of a few category of seats had continued to charge the erstwhile higher rates of GST which was a case of wrong charging of the rates of GST and was not under the purview of this investigation. The DGAP has further intimated that the Respondent's claim that he had not breached the provisions of Section 171 of the Act was not maintainable due to the following reasons:-

a. The reduction in the prices of the tickets should have been commensurate with the reduction in the rates of tax. Mere reduction in the cum tax prices of admission tickets could not be treated as compliance of the provisions of Section 171 of the Act, if the reduction was not commensurate with the reduction in the rates of Tax.

b. To comply with the provisions of Section 171 of the Act, the Respondent had to maintain the base prices of the tickets across all classes of seats, across all time slots during the period post 01.01.2019, as they were earlier, and the applicable reduced rates of GST should have been charged on such base prices w.e.f. 01.01.2019.

11. The DGAP has further intimated that from the analysis of the details of outward supplies of admission tickets submitted by the Respondent for the month of December, 2018 i.e. prior to the rate reduction, it was observed that there were basically three classes of tickets in the theatre, namely, Gold, Platinum and Premium. He has also stated that the pricing of tickets for a movie varied within each category depending on the timing of the show as well as part of the week during which the movie was being screened i.e. weekdays or weekends. He has further stated that analysis of the cum-tax prices in each category for the period from 01.12.2018 to 31.12.2018 showed

that the pricing pattern of the movie tickets during the period of pre-rate reduction was as follows:-

Table A

(Price in ₹)

Time-period	Class		
	Gold	Platinum	Premium
Morning show on all days	100	118	200
Weekdays- other than morning show	118	150	250
Weekends- other than morning show	118	180	300

12. The DGAP has also submitted that from the Table A, it was evident that the Respondent was involved in providing services in two categories for the purpose of taxation i.e. "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" where GST rate was reduced from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" where GST rate was reduced from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018. Prior to 01.01.2019, as per Notification No. 11/2017- Central Tax (Rate) dated 27.06.2017, "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" attracted GST rate of 28% (entry 34 (iii) of the Table), and "Services by way of admission to

exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" attracted GST rate of 18% (entry 34 (ii) of the Table). Thus, it was clear that as alleged in the complaint, the services provided by the Respondent were impacted by the rate reductions vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018.

13. He has further submitted that the cum-tax price of the admission tickets across all categories and days, as made available by the Respondent for the month of December, 2018 was inclusive of applicable GST. During the period before reduction of GST rate, in "Gold" Class, across all days and time-slots, and in the "Platinum" Class for the morning shows, the cum-tax price included 18% GST as the base price was upto ₹ 100/- only. In all other Class and time-slots, 28% GST was applicable. By reverse calculation, the base prices across all class and time-slots were arrived at by the DGAP as under:-

Table B

Time-period	Class (Price in Rs.)		
	Gold	Platinum	Premium
Morning show on all days	84.74	100	156.25
Weekdays- other than morning show	100	117.18	195.31
Weekends- other than morning show	100	140.63	234.37

14. He has also averred that the analysis of the details during the period from 01.01.2019 to 31.03.2019 revealed that the

Respondent had increased the base prices of the tickets across some categories so that the actual cum-tax prices of admission tickets had not been reduced commensurately for the period from 01.01.2019 onwards. A comparison of the commensurate prices post rate reduction w.e.f. 01.01.2019 and the actual selling prices has been given in Table C by the DGAP as under:-

	Commensurate Price post 01.01.2019			Actual Price post 01.01.2019		
Time-period	Class			Class		
	Gold	Platinum	Premium	Gold	Platinum	Premium
Morning show on all days	94.9	112	184.3	100	110*	200
Weekdays- other than morning show	112	138.27	230.4	110*	150	250
Weekends- other than morning show	112	165.9	276.5	110*	180	300

*No-profiteering for these classes of tickets as the actual price post 01.01.2019 was less than the commensurate price.

15. He has further claimed that having established the fact of profiteering to the extent aforementioned, the next step was to quantify the same. For this purpose, only those classes and show timings where the decrease in actual prices post rate reductions was less than what was required to offset the impact of decrease in the rates of tax, have been considered. From the

details of outward supplies submitted by the Respondent, the movies such as "Uri:The Surgical Strike" which was exempted from State GST by the UP Government and the prices of which across all classes of seats and timings were uniform at ₹ 70/- only, "Kesari" which was screened across all classes but except for the morning shows in Platinum class, it was priced at ₹ 200/- , and in the Premium class it was priced at ₹ 350/-, 3D movie "Captain Marvel", had been exempted from calculation of profiteered amount as no pre-rate reduction reference prices for such screenings in the immediate previous period could be found. On the basis of the aforesaid pre and post reduction in GST rates, the details of outward supplies (other than exempted supplies) during the period from 01.01.2019 to 31.03.2019, as per the sales data, the amount of net higher realization due to increase in the base prices of the service, despite the reduction in GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" from 28% to 18% and on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" from 18% to 12%, or in other words, the profiteered amount came to ₹4,01,520/- (including GST on the base profiteered amount). This amount was inclusive of ₹ 14/- (including GST) which was the profiteered amount in respect of the Applicant No. 1 for the ticket dated 16.02.2019, 12:30 PM, of Platinum Class sold to

him. The details of computation of the profiteered amount have been given by the DGAP in **Annexure-11** of his above Report.

16. The DGAP has also submitted that it appeared that the allegation of profiteering by way of either increasing the base prices of the services or by way of not reducing the selling prices of the services commensurately, despite a reduction in the GST rates on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" from 28% to 18% and on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" from 18% to 12%, w.e.f. 01.01.2019 stood established against the Respondent. On this account, the Respondent has realized an excess amount to the tune of ₹ 14/- from the Applicant No. 1 which included both the profiteered amount and the GST on the profiteered amount. The DGAP has also claimed that the investigation has revealed that the Respondent has realized an excess amount of ₹ 4,01,506/- from the other recipients and the Applicant No. 1 which included both the profiteered amount and the GST on the profiteered amount. These other recipients except Applicant No. 1 were not identifiable as no details of these customers could be ascertained; therefore this Authority may consider ordering deposit of the balance amount of Rs. 4,01,506/- in the respective Consumer Welfare Funds (CWF). He has also intimated that the Respondent has supplied the above service in the States of Panjab, Uttar Pradesh and

Gujarat, however, the ambit of this investigation was limited to the theatre situated in the District of Hapur only.

17. The Respondent was issued show cause notice dated 19.09.2019 to explain why the Report dated 12.09.2019 submitted by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. During the course of the proceedings the Applicant No. 1 and the Applicant No. 2 (DGAP) did not appear. Sh. Arjun Bhandari, CFO and Sh. Dhaval Talati, CA Authorised Representative of the Respondent attended the proceedings. The first hearing was fixed on 03.10.2019 however, the Respondent had sought adjournment and the next hearing was scheduled on 22.10.2019 which was attended by the Respondent. Further hearings were fixed on 14.11.2019, 10.12.2019 and 07.02.2020.

18. The Respondent has filed written submissions on 18.10.2019, 11.11.2019, 11.12.2019 and 11.02.2020 which may be summed up as follows:-

I. Section 171 & the Rules 122 to 137 framed under the said Section did not provide any mechanism or guidelines for the purpose of determination of the profiteering amount. He has also relied upon the judgement passed in the case of **K. Damodarasamy Naidu & Bros. v. State of Tamil Nadu and another (2000) 117 STC 1 (SC)** to claim that as per the law

settled in the above case, rules were required to be framed for computation of the profiteered amount.

II. Rule 126 did empower this Authority to determine the Methodology and Procedure for determination of the 'profiteered amount'. But nothing had been notified till date in the public domain in this respect. No Notification or circular was issued mentioning the approach to be adopted by the taxpayer or this Authority in the matter. In the circumstances, the approach of this Authority was subjective and arbitrary in nature.

III. In the case of **Abbott Healthcare Private Limited & Anr. v. Union of India & Ors.**, the petitioners have questioned the constitutional validity of Section 171 of the CGST Act and Chapter 15 of the CGST Rules and in particular Rule 126, 127 and 133. it was directed by the Hon'ble High Court of Delhi that there shall be stay on further proceedings against the petitioners pursuant to the impugned order of this Authority, hence the present proceedings were not maintainable.

IV. In the case of **Kiran Chimirala v. M/s Jubilant Food Works Limited 2019-VIL 183-DEL** the Hon'ble High Court of Delhi had stayed the operation of the order passed by this Authority on the ground that no methodology had been prescribed for determining profiteering.

V. The supply of services by admission to exhibition of cinematograph films for the movies exhibited **after the rate**

change did not have a price valuation in the past which could be compared for the purpose of profiteering and hence no profiteering could be alleged.

VI. For the purpose of profiteering there must be a comparison of the **same supply of goods/services** before and after the reduction in the rate of tax. Thus, the entire exercise of computation of profiteering was incorrect and deserved to be not accepted.

VII. It was for the Respondent to decide to change the prices upwards or downwards of the movies according to the demand of a movie.

VIII. The price to be charged to a customer was solely based on the demand and supply [market forces] and on the management's decision in respect of the pricing of the tickets. **Differential prices were being charged for different movies on the basis of the demand and thus they could not fall under the ambit of anti-profiteering measures.**

IX. There was no methodology prescribed in the GST Act and the rules made thereunder to ***determine the time period*** during which the provisions of anti-profiteering would apply in the present case. At the most, in case the same movies had been screened pre and post rate reductions and the benefit of the rate reductions had not been passed to the consumers the scope of profiteering could have been examined.

X. The DGAP has analysed the data and categorized the pricing of the different shows in **9 categories** on the basis of which

he has determined the profiteered amount. However, the pricing of the different shows fell in **12 categories.**

XI. Mondays and Thursdays have been considered as weekdays whereas Fridays and Sundays have been considered as weekends for the purpose of pricing of tickets for different movies. However, if the movie was released on a Thursday, the weekend should be considered from Thursday onwards. There were two movies which were released on a Thursday in the period between Jan-March 2019. They were as follows:-

1. Gully Boy – Thursday, 14th February, 2019
2. Kesari – Thursday, 21st March, 2019.

XII. The DGAP has wrongly computed an amount of Rs. 8612/- on the above two movies.

XIII. The DGAP has also wrongly calculated the profiteering amounting of Rs. 11,248/- for some of the shows of the 3D movie 'Captain Marvel' despite providing exception on account of extra charges on the 3D glasses.

XIV. In order to recoup the costs of the fixed overheads as compared to the falling demand of the movies, the Respondent had decided not to reduce the cum-selling prices of the movie tickets post rate change. (Electricity consumption vis-à-vis Demand of the movies dropping after the 2nd week of their release).

XV. The supply of service of admission to exhibition of cinematograph films could not be compared to the Fast Moving Consumer Goods (FMCG) which were subject to MRP and hence no profiteering could be computed on them.

XVI. This Authority could not expand the scope of investigation except in the case of the complained multiplex located at Hapur and hence the details of other multiplexes could not be asked from the Respondent.

19. The above submission of the Respondent were sent to the DGAP for filing clarifications who vide his Report dated 22.02.2020 has submitted that the Respondent has cited the case of **K. Damodarasamy Naidu & Bros. v. State of Tamil Nadu and another (2000) 117 STC 1(SC)**, wherein the Hon'ble Supreme Court had observed that in the absence of the rules made by the State Governments to ascertain the amount relating to the supply of goods and Services out of the composite charges collected, it was impossible in practical terms, for the sales tax authorities to make assessments on the basis of the facts relevant to each individual customer in each individual hotel and hence, the State had to promulgate rules to indicate how to treat the composite charges for lodging and boarding so as to eliminate substantial difference in approach of the sale tax officers and resultant arbitrariness. In the present case, Section 171 and the Rules framed under the said section did not provide for any mechanism or any guidelines for the

purpose of determination of the profiteering amount, hence the allegation of arbitrary and subjective method adopted in the proceedings to work out and/or to compute the profiteering amount by the DGAP was devoid of merits. The DGAP has also submitted that in terms of Rule 126 of the Rules, this Authority has been empowered to determine methodology for determination of profiteering. He has also claimed that his methodology to compute the profiteered amount has been consistent throughout in all his reports involving allegation of profiteering in similar cases and has been approved by this Authority. Further, the procedure and methodology for determination of profiteering was being determined by this Authority on case to case basis by adopting the most appropriate and accurate method based on facts and circumstance of each case as well as the nature of the goods and services supplied. There could not be a fixed mathematical formulation/methodology for determination of quantum of benefit to be passed on which can cover different sectors of the economy and each case was to be decided based on its specific facts. He has further claimed that subjective method was adopted according to the facts and nature of the goods or services being supplied by a supplier on a case to case basis. He has also stated on the submission of the Respondent that the pricing of the different shows should be divided in to 12 categories, by claiming that the pricing of shows in general for the Mornings Shows on all days has remained same, be it

weekdays or weekends hence the same has been classified into one category for ease of calculation. Details of analysis done and reasoning behind show categorization used in his report dated 12.09.2019 had been mentioned in detail in Table A of the Report. The pricing pattern of the shows for the period immediately prior to the rate reductions has been taken into account for the calculation of profiteering. He has further claimed that the Respondent was trying to claim that for the service supplied by the Respondent viz. "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" where Rate of GST was reduced from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" where Rate of GST was reduced from 18% to 12% could be compared only for the films that were being screened at the time of rate reductions and subsequently for other films there shall be no impact of rate reductions. However, this logic was against the spirit of law, as the nature of services supplied had remained the same and the impact of rate reductions would be applicable on the services being supplied irrespective of the film being screened.

20. The DGAP has also argued that the Respondent has claimed that the rates of admission charged on the films screened post rate reduction on 18.01.2019 could not be compared with the rates of admission charged for the film shown on 28.12.2018

during the pre rate reduction period on the ground that no price valuation for comparison was available and it was the prerogative of the Respondent to increase prices as per his discretion and to recover the recurring costs. On the above claims the DGAP has stated that the price pattern has remained the same during the pre and the post reduction period. The changes made in the prices were on account of rate reductions as was evident from the pricing of tickets for the Platinum Class morning shows on all days, Gold Class other than morning shows on weekends and on weekdays where the cum-tax prices were reduced from erstwhile Rs. 118/- to Rs. 110/- which were lower than the commensurate prices for the said categories. He has further stated that the contention of the Respondent that he could increase the prices on his discretion or for recovering costs was not borne from the data supplied by him.

21. He has also stated that as a practice, his reports on profiteering in GST rate reduction cases covered the period from the date of effect of change in the GST rate to the last day of the month preceding to the month in which the reference was received by him for initiation of investigation from the Standing Committee or this Authority. Further, reasoning and rationale for comparison of prices of shows of all the movies screened upto March, 31st 2019 has been provided above, and Respondent's contention that "at most, in case the same movie have been screened pre and post rate reduction" should be compared in

not maintainable. Further, the procedure and methodology for determination of profiteering and intent thereof were determined by this Authority on case to case basis by adopting the most appropriate and accurate method based on facts and circumstance of each case as well as the nature of the goods and services supplied. There could not be any fixed mathematical formulations/methodology for determination of quantum of benefit to be passed on which would cover different sectors of the economy and each case was to be decided based on its specific facts. Subjective method was adopted according to the facts and the nature of the goods or services being supplied by the Respondent, on a case to case basis.

22. The DGAP has also submitted that the pattern of pricing of tickets has remained the same irrespective of the fact which movie was being screened. A few exceptions had already been given from the computation of the profiteered amount in his Report dated 12.09.2019. He has further submitted that the contention of the Respondent to consider Monday-Thursday as weekdays and Friday-Sunday as weekends had been considered by him and it had no impact on the profiteered amount when the data for the pre and post rate reduction periods was compared by him. Moreover, it was an exception which could not be considered as a common trend and specific instances had been treated individually by him.

23. The DGAP has further submitted that due to some error in calculation, few shows of 3D movie were included in the amount

of profiteering totalling up to ₹ 11,248/- which may be reduced from the total amount of profiteering. He has also submitted that in the case of M/s Jubilant Food Works Ltd., further proceeding were stayed by the Hon'ble High Court of Delhi subject to the petitioner depositing an amount of Rs. 20 Crore in the Consumer Welfare Fund and no prima facie grounds were mentioned by the Hon'ble Court. The impugned case has not yet been decided and there was no stay on the legality of the Anti-profiteering provisions. In the case of M/s Abbott Healthcare Pvt. Ltd., the Hon'ble High Court of Delhi in para 7 of its Order dated 24.04.2019, has referred to one of the grounds of relief raised by the petitioner and has not given any direction with regard to admissibility and merits of the ground. The same could not be applied in the case of the Respondent. Further, the impugned case was still not decided and there was only interim stay on further proceedings. He has also submitted that although the Respondent has cited the Order passed in the case of M/s Abbott Healthcare Pvt. Ltd. and other cases and claimed that there was no legal obligation on him to submit the data regarding the other cinema halls, the Respondent had himself submitted data for all the cinemas located all over India.

24. The Respondent has also filed re-joinder to the Report dated 22.02.2020 filed by the DGAP and raised the same objections which he had raised during his preliminary submissions. However, he has added that the investigation period could not

have been extended to the month of March, 2019 when the complaint was received in the month of February, 2019.

25. The Respondent has also cited the judgements passed in the cases of **Commissioner Central Excise & Customs Kerala v. Larsen & Toubro Ltd. (2016) 2 SCC 170** and **Tata Sky Limited v. State of Madhya Pradesh & others (2013) 4 SCC 656** in his support stating that the charging section was required to be provided in the CGST Act for computation of profiteering.

26. We have carefully heard both the parties and have also gone through the record of the case placed before us and it has been revealed 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 was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was 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, the benefit of which was required to be passed on to the recipients as per the provisions of Section 171 of the above Act.

27. Perusal of the Report dated 12.09.2019 filed by the Respondent shows that the Respondent is providing "Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees" in respect of which the GST rate was reduced from 28% to 18% and "Services by way of admission to exhibition of cinematograph

films where price of admission ticket is one hundred rupees or less" on which the GST rate was reduced from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018. Prior to 01.01.2019, as per Notification No. 11/2017- Central Tax (Rate) dated 27.06.2017, "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" had GST rate of 28%, and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" were having GST rate of 18%. Therefore, it is evident that the services provided by the Respondent were impacted by the rate reductions allowed vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 and hence the Respondent was liable to pass on the benefit of both the above tax reductions.

28. It is also revealed from Table A of the Report that the Respondent was having three Classes for the exhibition of movies viz. Gold, Platinum and Premium and was charging different prices for admission in respect of each class for morning shows and shows on the weekdays and the weekends, which have been mentioned in the above Table. It is further revealed from the Report that the cum-tax price of the admission tickets across all categories and days, for the month of December, 2018 was inclusive of applicable GST. During the period before reduction in GST rates, in Gold Class, across all days and time-slots, and in the Platinum Class for the morning

shows, the cum-tax price included 18% GST as the base price was upto ₹ 100/- only. In all other Classes and time-slots, 28% GST was applicable. The DGAP has computed the base prices across all the Classes and time-slots as per Table B which were being charged by the Respondent before the rate reductions. Based upon these base prices the DGAP has calculated the commensurate cum-tax prices vide Table C which shows that during the period from 01.01.2019 to 31.03.2019, the Respondent had increased the base prices of the tickets across all the categories except three so that the actual cum-tax prices of the admission tickets had not been reduced commensurately during the above period. The DGAP has accordingly, computed the excess realisation made or the profiteered amount due to not passing on the benefit of tax reductions by the Respondent vide Annexure-11 of his Report amounting to Rs. 4,01,520/-. The methodology adopted by the DGAP while making the above computations of the profiteered amount by the Respondent is appropriate, correct, reasonable and in consonance with the provisions of Section 171 as well as the methodology approved by this Authority in the cases decided by it and hence the same can be relied upon. Accordingly, it is held that the Respondent has violated the provisions of Section 171 of the above Act as he has not passed on the benefit of both the above tax reductions by commensurate reduction in the prices of the admission tickets.

29. The Respondent vide his written submissions has contended that Section 171 of the CGST Act, 2017 and the Rules 122 to 137 of the CGST Rules, 2017 did not provide mechanism or guidelines for the purpose of determination of the profiteering amount. In this context it would be relevant to mention that the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC has been clearly and unambiguously 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 evident from the above provision that any "reduction in the rate of tax or benefit of ITC" has to be passed on by a supplier to his recipients since such reduction has been given by sacrificing the tax revenue by the Central and the State Governments. It also means that the above benefits have to be passed on each Stock Keeping Unit (SKU) or unit of construction or service to each buyer and in case they are not passed on, the profiteered amount has to be calculated. These benefits also have to be passed on to each recipient at each SKU/unit/service level. Further, the above Section mentions "any supply" which means that the above benefits have to be passed on each taxable supply made to each buyer and a registered person cannot pass more benefit to one customer at the cost of another customer. Each buyer is entitled to receive the benefit of tax reduction or ITC on each SKU or

unit or service purchased by him. The word "commensurate" denotes the extent of benefit to be passed on by way of reduction in the price on each SKU or unit or service based on the tax reduction or the benefit of additional ITC. The computation of commensurate reduction in prices is purely a mathematical computation which is dependent upon the various factors and hence it would vary from SKU to SKU or unit to unit or service to service and therefore, no fixed methodology can be prescribed to determine the amount of benefit. However, to give further clarifications behind the law, this Authority has been granted power to determine the 'Procedure and Methodology' which has been done by this Authority vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed formula can be set while determining such a "Methodology and Procedure" as the facts of each case are different. In one real estate project, date of start and completion of the project, price of the house/commercial unit, mode of payment of price, stage of completion of the project, rates of taxes, amount of ITC availed, total saleable area, area sold and the taxable turnover realised before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to another project. Moreover this Authority under Rule 126 has power to 'determine' Methodology & Procedure and not to 'prescribe' it. Fixation of commensurate price is purely a mathematical

exercise which can be easily done by a registered person by taking in to account the reduction in the rate of tax or the availability of additional ITC. Further, the facts of the cases relating to the Fast Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses are completely different and therefore, the mathematical methodology adopted in the case of one sector cannot be applied in the other sector. Moreover, both the above benefits are the concessions which have been granted by the Central as well as the State Governments from the public exchequer by sacrificing their tax revenue in the public interest and the suppliers are not required to pay even a single penny from their own account and hence they are required to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous and mandatory. Therefore, the above contention of the Respondent is not correct and hence the same cannot be accepted.

30. He has also quoted the case of **K. Damodarasamy Naidu & Bros v. State of Tamil Nadu and another (2000) 117 STC 1 (SC)** in his support in which the Hon'ble Supreme Court had ruled that the State Government was required to frame rules to determine how the sales and services were to be assessed. In this connection it would be appropriate to mention that no tax has been levied under Section 171 of the above Act and hence the above Section cannot be termed as the charging section for levy of tax and its assessment. This Section only provides for

passing on the benefit of tax reduction or ITC by commensurate reduction in prices. As has been explained in para supra the methodology to compute the profiteered amount has been mentioned in the above Section itself and hence, there is no requirement of framing separate rules for determining how the benefits are to be passed and hence, the law settled in the above case cannot be relied upon.

31. The Respondent has also cited the case of **M/s Abbott Healthcare Private Limited & Anr v. Union of India & Ors.** pending in the Hon'ble High Court of Delhi in which constitutional validity of Section 171 and Chapter 15 of the CGST Rules, 2017 has been challenged. Since, the Hon'ble High Court has not pronounced its judgement on the above issues the Respondent cannot take advantage of the above case.

32. The Respondent has also relied upon the case of **Kiran Chimirala v. M/s Jubilant Food Works Limited 2019-VIL 183-DEL** and claimed that the Hon'ble High Court of Delhi has stayed the operation of the order passed by this Authority on the ground that no methodology has been prescribed for determining profiteering. However, the above contention of the Respondent is not correct as the Hon'ble Court has not passed any order on the methodology applied in the above case and hence, the above case does not help the Respondent.

33. The Respondent has also contended that the supply of services by admission to the exhibition of the cinematograph films for the movies exhibited after the rate change did not have a price valuation in the pre rate reduction period which could be compared for the purpose of profiteering. This contention of the Respondent is not maintainable as the nature of services supplied by the Respondent has remained the same during the pre and the post rate reduction periods. The impact of the rate reductions would also be applicable on the services being supplied by the Respondent irrespective of the film being screened. Moreover, the details of the prices which the Respondent was charging during the pre rate reduction period were available for comparison with the prices which he was charging after the rate reductions. The Respondent had continued to charge the same base prices which he was charging before the rate reductions and hence, he had not passed on the benefit of tax reductions by commensurately reducing them.

34. The Respondent has further contended that the price to be charged to a customer was solely based on the demand and supply [market forces] and decision of the management in respect of the pricing of the tickets was final. Differential prices were being charged for different movies on the basis of the demand and thus they could not fall under the ambit of anti-profiteering. In this connection it would be pertinent to mention that the Respondent is free to fix his rates of admission and no

restriction can be placed on him while doing so. However, perusal of the supplementary Report dated 22.01.2020 filed by the DGAP shows that the claim of the Respondent that he was charging different prices keeping in view the demand and supply was not correct as the pricing pattern adopted by the Respondent was similar in respect of all the films and he had not charged different prices for admission for different movies keeping in view their demand. Perusal of the above Report also shows that the Respondent while fixing his prices had not used his discretion. It was also not established from the data supplied by him to the DGAP that he had taken in to account the fixed costs or the reduced demand of a movie after second week while fixing his prices. The DGAP has already taken in to account those movies where there was tax exemption or extra charges were levied on 3D movies, while computing the profiteered amount. Therefore, the above contentions of the Respondent are frivolous and hence, they cannot be accepted.

35. The Respondent has also contended that the supply of services of admission to exhibition of cinematograph films could not be compared with the Fast Moving Consumer Goods (FMCG) which were subject to MRP and hence no profiteering could be computed on them. In this regard it would be appropriate to state that although there is no MRP on the services supplied by the Respondent however, there is base price included in his admission charges which has been fixed by him and which was required to be maintained by him after the tax reductions,

however, he had failed to do so. He had rather increased his base prices after the rate reductions and thus he has not passed on the benefit of such reductions. Hence, the above claim of the Respondent is not correct and hence it cannot be accepted.

36. The Respondent has further contended that for the purpose of profiteering there must be comparison of the same supply of goods/services before and after the reduction in the rate of tax. Perusal of the record shows that the Respondent has supplied the same "Services by way of admission to exhibition of cinematograph films" which he was supplying before the reduction in the rates of tax and hence the above contention of the Respondent is not tenable.

37. The Respondent has also argued that there was no methodology prescribed in the GST Act and the rules made there under to determine the time period during which the provisions of anti-profiteering would apply in his case. In this connection it would be appropriate to mention that provisions of Section 171 (1) require that the Respondent should pass on the benefit of tax reductions. Therefore, it is clear that he is liable for investigation till he passes on the benefit of tax reductions by commensurate reduction in the prices of the admissions tickets.

38. The Respondent has further argued that the DGAP has analysed the data and categorized the pricing of the different shows in 9 categories on the basis of which he has determined

the profiteered amount. However, the pricing of the different shows fell in 12 categories. In this context perusal of the Report of the DGAP dated 22.02.2020 shows that the pricing of shows in general for the Mornings Shows on all the days has remained same, be they on the weekdays or weekends and hence the same have been classified into one category for ease of calculation as is clear from Table A submitted by the DGAP. The DGAP has also taken in to account the pricing pattern of the shows for the period immediately prior to the rate reductions for the calculation of profiteering. Therefore, the above claim of the Respondent in not maintainable.

39. The Respondent has also pleaded that Mondays and Thursdays have been considered as weekdays whereas Fridays and Sundays have been considered as weekends for the purpose of pricing of tickets for different movies. However, if the movie was released on a Thursday, the weekend should be considered from Thursday onwards. The DGAP has examined the above contention of the Respondent and stated that it had no impact on the profiteered amount when the data for the pre and post rate reduction periods was compared by him. He has further stated that release of movies on Thursdays was an exception which could not be considered as a common trend and specific instances had been treated individually by him. The above explanation given by the DGAP is reasonable and hence the contentions of the Respondent made in this regard are not correct and hence they cannot be accepted.

40. The Respondent has also submitted that this Authority could not expand the scope of investigation and call for the details of the other multiplexes which are being operated by the Respondent and hence the details of other multiplexes could not be asked from him. In this connection it would be relevant to mention the provisions of Section 171 (2) of the CGST Act, 2017 which state as under:-

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

It is clear from the above provision that this Authority has been given power to examine whether the ITC availed by a registered person or the reduction in the rate of tax have actually resulted in commensurate reduction in prices of the goods and service. Thus, this Authority has mandate to suo moto examine whether the above benefits have been passed on or not in the pursuit of which it can call for the records for determination whether the above benefits have been passed. The above provision has been further made explicit by this Authority vide Para 9 of the 'Methodology & Procedure' notified by it on 28.03.2018 under Rule 126 of the CGST Rules, 2017 which provides as under:-

"The Authority may inquire into any alleged contravention of the provisions of Section 171 of the Central Goods & Services Tax Act, 2017 on its own motion or on receipt of information from any interested party as defined in Rule 137 (C), person, body, association or on a reference having been made to it by the Central Government or the State Government."

The Hon'ble High Court of Delhi in its order dated 10.02.2020 passed in the case of M/s Nestle India Ltd. & another v. Union of India & others in W. P. (C) No. 969/2010 has held that "We, however, make it clear that the interim order shall not come in the way of the National Anti-Profiteering Authority in cases where it has suo moto take action."

Therefore, it is abundantly clear that this Authority can suo moto summon the details of the other multiplexes from the Respondent to examine whether the Respondent has passed on the benefit of tax reductions or not and hence the above contention of the Respondent is untenable.

41. The Respondent has also cited the judgements passed in the cases of **Commissioner Central Excise & Customs Kerala v. Larsen & Toubro Ltd. (2016) 2 SCC 170** and **Tata Sky Limited v. State of Madhya Pradesh & others (2013) 4 SCC**

656 in his support stating that the charging section was required to be provided for computation of profiteering. In this connection it is respectfully submitted that no tax has been levied under the anti-profiteering measures mentioned in the CGST/SCST Acts, 2017 and hence, no charging section is required to be incorporated in them and hence, the law settled in the above cases is not being relied upon.

42. The Respondent has further contended that the DGAP has wrongly calculated profiteering amounting of Rs. 11,248/- for some of the shows of the 3D movie 'Captain Marvel' despite providing an exception on account of extra charges being levied for the 3D glasses. The DGAP vide his Supplementary Report dated 22.01.2020 has accepted this contention of the Respondent and has admitted that due to some error in calculation, few shows of the above 3D movie were included in the amount of profiteering and an amount of ₹ 11248/- was wrongly included in the profiteered amount. Accordingly, the above amount is ordered to be reduced from the profiteered amount.

43. It is clear from the narration of the facts mentioned above that the Respondent has indulged in profiteering in violation of the provisions of Section 171 of the CGST Act, 2017 and has not passed on the benefit of reduction in the rates of tax as per the Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 in respect of the above services to his customers and

therefore, he is liable for action under Rule 133 of the CGST Rules, 2017, the relevant provisions of which state as under:-

"133. x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-x-x-x-x-x-x

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order –

(a) reduction in prices:

(b) return to the recipient, an amount equivalent to the amount not passed on by the 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 including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty percent of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty percent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) Imposition of penalty as specified under the Act; and

(e) x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-xx-x-x-x-x-x-x-x-x-x-x-x-x-

44. Accordingly, the profiteered amount is determined as ₹ **3,90,272/-** (Rs. 4,01,520- Rs. 11,248) which includes an amount of **Rs. 14/-** including the GST which the Respondent has profiteered in respect of the Applicant No.1 and ₹ **Rs. 3,90,258/-** (Rs. 3,90,272-Rs. 14**)** in respect of the other recipients which also includes the GST on the said profiteered amount, as per the provisions of Rule 133 (1) of the CGST Rules, 2017. Accordingly, the Respondent is directed to reduce the sale prices of his admission tickets immediately commensurate to the reduction in the rates of tax as were notified on 31.12.2018 and pass on the benefit of reduction in the rates of tax to his customers. The Respondent is further directed to refund an amount of Rs. 14/- to the Applicant No. 1 along with interest to be calculated @ 18% from the date when the said amount was collected by him from the above Applicant till the above amount is paid. Since, the rest of the recipients in this case are not identifiable, the Respondent is directed to deposit the balance amount of profiteering of Rs. 1,95,129/- in the Central CWF and Rs. 1,95,129/- (Total Rs. 3,90,258) in the Uttar Pradesh State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest, as all the supplies were made in the District of Hapur in the State of Uttar Pradesh. 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 concerned Commissioners CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

45. It is evident from the above that the Respondent has denied the benefit of rate reductions in the GST to his customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus profiteered as per the explanation attached to Section 171 of the above Act. Therefore, he is apparently liable for imposition of penalty under Section 171 (3A) of the CGST Act, 2017. Therefore, a Show Cause Notice be issued to him directing him to explain why the penalty prescribed under the above sub-Section should not be imposed on him.

46. Further this Authority as per Rule 136 of the CGST Rules, 2017 directs the Commissioners of CGST/SGST Uttar Pradesh to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by the Authority is passed on to the Applicant No. 1 and deposited in the State and the Central CWF. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners within a period of 4 months from the date of receipt of this order.

47. The Respondent vide his written submission dated 11.11.2019 has admitted that he was engaged in the business of running a chain of multiplexes in India and currently has screens operational in Kotkapura in Punjab, Greater Noida, Hapur, Ghazipur, Raebareli, Pilkhua and Kanpur Districts of Uttar

Pradesh and Surendra Nagar and Bhuj Districts of Gujarat. He has also submitted the details of the prices charged by him and the profiteered amount in respect of the above Screens vide Annexure-2 A of his submissions dated 11.11.2019. Since, the Respondent has himself admitted that he has profiteered in respect of the above screens there are sufficient grounds to believe that the Respondent has apparently not passed on the benefit of tax reductions in respect of above cinema halls and other such screens located all over India. Accordingly, this Authority, as per the provisions of Rule 133 (5) (a) of the CGST Rules, 2017, which are reproduced below, directs the DGAP to further investigate all the above screens and any other screens being operated by the Respondent in the Country, for violation of the provisions of Section 171 of the CGST Act, 2017 and submit his Report as per the provisions of Rule 133 (5) (b) of the CGST Rules, 2017, as the Respondent is liable to pass on the benefit of tax reductions in respect of all the screens as per the provisions of Section 171 of the above Act:-

"(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing,

within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

- *(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."*

48. A copy each of this order be supplied to the Applicants, the Respondent, and the Commissioners CGST /SGST Uttar Pradesh for necessary action. File be consigned after completion.

Sd-
(B. N. Sharma)
Chairman

Sd-
(J. C. Chauhan)
Member (Technical)

Sd-
(Amand Shah)
Member (Technical)

Certified Copy

12.3.2020

(A. K. Goel)
NAA, Secretary

F. No. 22011/NAA/76/NY/2019

Date: 12.03.2020

Copy To:-

1. M/s. NY Cinemas LLP, 406, Maurya landmark –II, new link road, oshiwara, Andheri West, Mumbai-400053
2. Shri Himanshu Sharma, 794, Vaishali Colony, Swarg Asharam Road, Hapur, Uttar Pradesh-245101.
3. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)
4. Office of the Chief Commissioner, Central Goods and Services Tax, Meerut Zone, Meerut.
   Opp. CCS University, Mangal Pandey Nagar, Meerut-250004(UP)
5. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, N.D.
6. Guard File.

12.3.2020
A. K. GOEL, IRS
Secretary
National Anti-Profiteering Authority (GST)
Department of Finance, New Delhi