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

Order No.	:	25/2020
Date of Institution	:	26.09.2019
Date of Order	:	11.05.2020

In the matter of:

1. Sh. Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
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

1. M/s J. K. Helene Curtis Ltd. C/o Raymond Consumer Care Ltd., 9th & 10th Floor, ATL Corporate Park, Saki Vihar Road, Chandivali, Povai, Mumbai Mumbai-400072.
2. M/s Shree Sai Kripa Marketing, B-141, Shakurpur, Samarat Cinema Road, Delhi-110034.

Respondents

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. Alpesh Dalal Director (Finance), Sh. Nirav Parekh (Employee), Sh. V. Lakshmikumaran, Sh. K. Srikanth, Sh. Gokul Kishore and Sh. Darshan Machchhar, Advocates for the Respondent No. 1.
3. Sh. Tushar Mittal Consultant, Sh. Vineet Bhathi Advocate and Smt. Shradha Agarwal CA for the Respondent No. 2.

ORDER

1. This Report dated 24.09.2019 has been received from the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Standing Committee on Anti-profiteering vide its communication dated 11.03.2019 had requested the DGAP to conduct a detailed investigation as per Rule 129 (1) of the above Rules on the allegation that M/s Raymond Ltd. had not passed on the benefit of tax reduction from 28% to 18% w.e.f. 15.11.2017 on "After-Shave Lotion Park Avenue Good Morning 50 ml" which was supplied to M/s Big Bazaar, Inderlok run by M/s Future Retail Ltd., on 08.11.2017 under Purchase Order (PO) No. 8114997697 with MRP of Rs. 115/- per unit, on 19.12.2017 under PO No. 8115407972 with the same MRP of Rs. 115/- per unit and on 12.06.2018 vide PO No. 4518098598 again with the same MRP of Rs. 115/- per unit.

2. The DGAP had issued Notice under Rule 129 (3) of the CGST Rules, 2017 on 09.04.2019 to M/s Raymond Ltd., to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 15.11.2017, had not been passed on by him to his 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 the documents in support of his reply. He was also afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said Notice, during the period from 15.04.2019 to 17.04.2019 which M/s Raymond Ltd. had availed.

3. The DGAP has mentioned the time period of the present investigation w.e.f. 15.11.2017 to 31.03.2019. He had also sought extension of the time limit to complete the investigation from this Authority under Rule 126 (6), which was granted to him.

4. The DGAP has stated in his above Report that M/s Raymond Ltd. had replied to the above Notice vide his letters dated 26.04.2019, 03.05.2019, 15.05.2019 and 17.05.2019 and submitted that the impugned goods were manufactured by the Respondent No. 1, an associate Company of M/s Raymond Ltd., which was also supplying them to the other marketing companies which further supplied them to the distributors. The distributors were supplying the above goods to retailers/mega stores such as M/s Big Bazaar, Inderlok which in turn were supplying these goods to the ultimate consumers and in the instant case as well, M/s Big Bazaar being a mega store, ought to have received the goods from a distributor. He had also submitted that he was not distributor of the above goods and that he had not supplied the

same to M/s Big Bazaar or any other retailer/mega store. Thus, he had claimed that the allegation that the complained goods were supplied by him to M/s Big Bazaar, Inderlok was not correct. M/s Raymond Ltd. had further submitted that the impugned Notice referred to three POs bearing Nos. 8114997697, 8115407972 and 4518098598 which were issued by M/s Big Bazaar, Inderlok, New Delhi, a division of M/s Future Retail Ltd., to one of his distributors i.e. the Respondent No. 2 herein. In light of the above, the transactions referred by the Applicant No. 1 had taken place between the Respondent No. 2 and M/s Big Bazaar and he (M/s Raymond Ltd.) was not a party to the said transactions. It was also submitted by M/s Raymond Ltd. that on 15.11.2017, Respondent No. 1 herein had issued letters to all his distributors intimating that there was reduction in the rate of GST on the impugned goods and they should pass on the commensurate benefit by giving an additional primary discount of 7.81% on the invoices.

5. After considering the above submissions of M/s Raymond Ltd., the Notice dated 09.04.2019 issued to him was withdrawn by the DGAP and Notices for initiation of investigation under rule 129 (3) of the CGST Rules, 2017 were issued on 04.06.2019 to the Respondent No. 1 and 2 seeking their replies as to whether they admitted that the benefit of GST rate reduction had not been passed on by them to the recipients by way of commensurate reduction in the prices of the goods supplied by them and if so, to suo moto determine and indicate the same in their replies to the Notices. They were also given an opportunity to inspect the non-confidential evidence/ information furnished by the Applicant No. 1 on 10.06.2019 or 12.06.2019 and the same was not availed by both the Respondents. In response to the above Notice and subsequent

reminders/summons, the Respondent No. 1 had submitted his replies in a piecemeal manner vide his e-mails/letters dated 18.06.2019, 24.06.2019, 05.07.2019, 05.08.2019, 16.08.2019, 24.08.2019, 28.08.2019, 05.09.2019, 09.09.2019, 10.09.2019, 11.09.2019 and 16.09.2019 which have been summed up by the DGAP as follows:-

(a) That the aforesaid three POs were issued by M/s Big Bazaar to the Respondent No. 2 and the said transactions referred by the Applicant No. 1 were between the Respondent No. 2 and M/s Big Bazaar and he was not a party to the said transactions. Thus, the proceedings initiated against him were non-est and were liable to be dropped.

(b) That he had issued letter dated 15.11.2017 to his distributors, including the Respondent No. 2, apprising them of the reduction in the rate of applicable GST on the subject goods with effect from 15.11.2017. Vide the said letter he had advised them to pass on the excess input tax credit benefit to the consumers via MRP reduction as per the directive of the GST Council and also vide another letter dated 15.11.2017, he had informed them that as far as the subject goods lying in the stock as on 15.11.2017 were concerned i.e. the inventory in respect of which he was unable to modify the MRPs affixed on such goods, the reduction in the total MRPs/ selling prices would be passed on by giving an additional primary discount of 7.81% on the face of the invoices.

(c) That the Hon'ble High Court of Delhi in the case of M/s Reckitt Benckiser India (P) Ltd. v. Union of India in WP(C) 7743/2019, vide its order had directed that the inquiry as far as the complained

product was concerned would continue till the final disposal of the petition and no inquiry would be held in respect of the other products being sold by the petitioner. Thus, he requested to conduct detailed investigation only in respect of the complained product i.e. "Park Avenue Good Morning 50 ml" After Shave Lotion.

(d) That the impugned goods were being supplied by him to various distributors or retailers for further sale to the end consumers. The selling price at which the goods were being sold to the distributors varied from case to case and depended upon various factors including the regional demand and the supply factors, market outreach of the distributor, yearly volume of sales, the length of relationship and market aging etc. Thus, for the purpose of determination of profiteering, a proper mechanism suitable to the facts in hand was required and simple comparison of the price charged to one distributor with the price charged to another distributor would not be appropriate.

(e) That the following transactions should be kept outside the investigation:-

i. Transactions in respect of which discount of 7.81% had been given. Even though there was increase in the gross sale price, the benefit of rate change from 28% to 18 % had been passed on by giving additional discount of 7.81% on the sale prices on the face of the invoices itself and the same was also evident from the fact that the rate of discount under Column No. 26 of the sales sheet was named as "discount on account of GST rate change."

ii. His Company Sale Price (CSP) per unit post 15.11.2017 was either less than or equal to the sale price per unit pre 15.11.2017.

While arriving at these sale prices per unit, he had not considered seasonal discounts because they were temporary in nature and depended on a particular season or peculiar market requirements. The seasonal discounts were given only in respect of the period during which they were effective and for the remaining period, the base prices were charged without any seasonal discount. This seasonal discount was not available to the customers as a matter of right and entirely depended on the marketing campaign run by him during a particular season. The seasonal discount being exceptional in nature need not be adjusted in his sale price in both the periods mentioned above.

iii. In the absence of sales in the period prior to 15.11.2017 for a given customer for a given product, there could not arise any situation of profiteering in those cases.

iv. In respect of certain goods which were exempt from Excise Duty and VAT alone was leviable on them in the pre-GST regime, the aggregate tax incidence included in the MRP was less than 18% of the base price. However, after introduction of GST, these products attracted GST at the rate of 28% but he had not increased the MRPs as the goods were already manufactured and the MRPs were already affixed on the packages/containers. He had no option but to bear the temporary additional loss in case of such products. Before he could affect increase in the MRPs on these products, the applicable GST rate was reduced to 18% w.e.f. 15.11.2017. In view of the new GST rate of 18% which was slightly higher than the tax incidence taken in to account at the time of determination of the MRPs, he had not changed the MRPs and in

such cases, evidently, he had to bear the additional loss even when the GST rate was 18%. Thus, in these cases, there could not be any question of profiteering.

v. At the time of launching of his products, he had offered an extra 25% net weight in content as free so as to attract more customers. The said initial offer was later withdrawn. Post withdrawal of such offer, the net weight of the product was increased and his sale price per unit of weight of the product was reduced. Thus even in these cases there was no profiteering.

vi. Some of the supplies made within a period of one month from the date of change in the rate of GST w.e.f. 15.11.2017, were covered by the POs received prior to 15.11.2017. Thus, the CSP (inclusive of tax) in respect of such supplies had remained equal to his sale prices fixed prior to 15.11.2017. Even if there would have been increase in the GST rate, he would have adopted the same methodology. In respect of the POs issued post 15.11.2017, the inclusive prices of the products were suitably changed. In view of this, he had passed on the benefit arising out of reduction in the GST rate.

vii. Given the rising competition in the Fast Moving Consumer Goods (FMCG) sector, he had to time and again revisit the discounts offered and various seasonal discounts such as festival discounts, Independence Day discounts and introductory/new product launch offers etc. were also given by him on periodical basis. Given the diverse product profile and continuous changes in the market

place, he was unable to determine the reasons for the difference between the net CSP adopted pre and post 15.11.2017.

viii. Comparison over a period of 21 months from 01.07.2017 to 31.03.2019 without any adjustment of inflation and other factors that might govern a price increase would be unreasonable and hence such comparison must be restricted to shorter period of three months. Whenever the revenue authorities sought to compare the prices of identical products, regard must be had to the various factors including quantity, time gap, additional costs on logistics, market factors and transactional peculiarities etc.

6. The DGAP has also stated that the Respondent No. 1 has also submitted the following documents/information requesting not to disclose them to any other party:-

a. List of all GSTINs.

b. Copies of GSTR-1 & GSTR-3B Returns for the period from July, 2017 to March, 2019 for all the registrations held all over India.

c. Invoice-wise and Stock Keeping Unit (SKU) wise details of the outward taxable supplies (other than zero rated, nil rated and exempted) for the period from July 2017 to March 2019 for all the GST registrations.

d. Price Lists (pre and post 15th November, 2017) for all the products.

e. List containing customer codes and names of the customers of Canteen Stores Department (CSD), Central Police Canteens

(CPC) / BSF and Indian Naval Canteen Service (INCS), Mumbai.

f. Sample copies of invoices issued to the dealers, pre and post 15.11.2017.

7. The DGAP has further mentioned that the Respondent No. 2 has submitted the following documents:-

a. Copies of GSTR-1 & GSTR-3B Returns for the period from October, 2017 to March, 2019.

b. Details of invoice wise impacted outward taxable supplies during the period from July, 2017 to March, 2019.

c. Sample copies of invoices issued to his customers, pre and post 15.11.2017.

8. The DGAP has also intimated that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the goods supplied by the Respondents from 28% to 18% w.e.f. 15.11.2017, vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017.

9. The DGAP has also stated that M/s Raymond Ltd. had submitted that the impugned goods were manufactured and supplied by the Respondent No. 1 and thus, participation of Respondent No. 1 in the said transactions was undeniable. The Respondent No. 1's claim that he had asked his distributors to pass on the benefit of rate reduction vide letter dated 15.11.2017, by giving an additional primary discount of

7.81% on the face of the invoices could be taken as admission of his role in fixation of the prices of the goods. The DGAP has further stated that the Respondent No. 1 had not taken effective step to reduce the MRP of Rs. 115/- per unit until November, 2018 on the complained product. With regard to the Respondent No. 1's reliance on the order of the Hon'ble High Court of Delhi in the case of M/s Reckitt Benckiser India (P) Ltd. v. Union of India in WP (C) 7743/2019, the DGAP has claimed that the relief was granted only as far as the complained product was concerned till the final disposal of the petition and there was no stay/directions in respect of the present proceedings, which had also been communicated to the Respondent No. 1 vide his office letter dated 08.08.2019.

10. The DGAP has also mentioned that the Respondent No. 1 had claimed that he was supplying his products to the various distributors or retailers for further sale to the end consumers at the prices which varied from case to case and depended upon various factors including the regional demand and supply factors, market outreach of the distributor, yearly volume of sales, the length of relationship and market aging etc. The Respondent No. 1 has further mentioned that the goods were sold or distributed through channels of General Trade, Modern Trade, Institutional buyers, E-commerce platforms and CSD etc. Each channel had different pricing pattern and margins. He has also contended that the DGAP has wrongly determined profiteering by comparing the customer type or channel wise average of the base prices of the impugned products sold during the period from 01.11.2017 to 14.11.2017 or the latest month, wherever goods were not sold during the period from 01.11.2017 to 14.11.2017, with the actual invoice-wise

base prices of such products sold during the period from 15.11.2017 to 31.03.2019.

11. The DGAP has also submitted that in regard to the Respondent No. 1's contention of giving discount of 7.81% on account of GST rate change and for not considering the discount based on the season or on the peculiar market requirements for the purpose of comparison, the copies of the sample invoices submitted by the Respondent No. 1 showed that there was no mention of the nature of the discount given on the Invoices i.e. whether it was on account of GST rate change or due to other reasons. It was just an inference that if discount was 7.81% or more then 7.81% represented discount on account of GST rate change and the excess towards other factors. The DGAP has also quoted Section 15 (1) of the Central Goods and Services Tax Act, 2017 which reads as under:-

"The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."

He has also claimed that Section 15 (3) (a) of the above Act provided that the value of the supply shall not include any discount which was given before or at the time of the supply if such discount had been duly recorded in the invoice issued in respect of such supply and thus, the DGAP has stated that the GST was chargeable on the actual transaction value after excluding any discount (conditional as well as unconditional)

and therefore, actual transaction value had been considered for computation of profiteering. He has further claimed that the reason cited by the Respondent No. 1 that there was no increase in the MRPs at the time of implementation of GST as the goods were already manufactured and the MRPs were already affixed and he had borne the temporary additional loss in case of such products, was also not consistent with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 read with Chapter XV of the Rules framed under it.

12. The DGAP has also argued that the Respondent No. 1's decision not to increase the MRPs when the tax rate had increased at the time of implementation of the GST w.e.f. 01.07.2017, was his voluntary and conscious business decision which could not form the basis for not passing on the benefit of subsequent GST rate reduction w.e.f. 15.11.2017. He has further argued that the provisions contained in Section 171 of the Central Goods and Services Tax Act, 2017 did not provide for any other means of passing on the benefit of reduction in the rate of tax or benefit of input tax credit other than by way of commensurate reduction in prices and hence the claim of the Respondent No. 1 that he had passed on the benefit of GST rate reduction on certain newly launched products by removing the introductory offer of 25% extra content and by increasing the quantity or grammage of the products, while maintaining the earlier pre-rate reduction MRPs of such products, was also not acceptable.

13. The DGAP has also mentioned that the Respondent No. 1 has also sought to exclude the outward sale of the following goods from the scope of the present investigation:-

(a) New Stock Keeping Units (SKUs) introduced after 14.11.2017.

(b) Life Style Stores (LFS) channel introduced in July 2018 i.e. post 15.11.2017, where pre-rate change comparison of prices was not available.

(c) Sales made through the CSD/CPC/BSF and INCS.

(d) No sales made from July 2017 to 14.11.2017 so no comparison was available.

14. On examination of the nature of the above sales and the copies of the Circulars issued by the CSD, CPC and INCS to the Respondent No. 1, the DGAP has observed that the reduction in the rate of GST w.e.f. 15.11.2017 did not have any impact on the sales mentioned at points No. (a) to (c) above. However, for the items sold during 15.11.2017 to 31.03.2019 but not sold during the period from July 2017 to 14.11.2017, base prices of corresponding items were provided by the Respondent No. 1 which were used for determination of profiteering, if any. He has further observed that Section 171 of the Central Goods and Services Tax Act, 2017 did not provide any scope for adjustment of increase in the cost against the benefit of reduced tax rate. The DGAP has also added that the increase in the cost of inputs/input services might be a factor for determination of prices but this factor was independent of the output GST rate. It could not be argued that elements of cost were affected by the downward revision of the output GST rate. Therefore, the contention of the Respondent No. 1 that the various factors including quantity, time gap, additional cost such as on

logistics, market factors and transactional peculiarities etc. should also be considered in the increase of base prices could not be accepted. The DGAP has also averred that a particular item i.e. "PA Asl Good Morning Splash 50 ml, MRP 115/- per unit" After Shave Lotion having item code "NPAASG050008", sold through a particular channel i.e. the General Trade (GT), during the period from 01.11.2017 to 14.11.2017 (pre-GST rate reduction) was taken and an average base price (after discount) was obtained after dividing the total taxable value by the total quantity of this item sold during the period. The average base price of this item was compared with the actual selling price of this item sold through same channel during the post-GST rate reduction period i.e. on or after 15.11.2017 as has been illustrated in the Table below:-

Table 1

(Amount in Rs.)

Sl. No.	Description	Factors	Pre rate reduction (01.11.2017 to 14.11.2017)	Post rate reduction (from 15.11.2017)
1	Product Description (Item Code)	A	PA Asl Good Morning Splash 50 ml (MRP 115/- (NPAASG050008)	
2	Channel	B	General Trade (GT)	
3	Total quantity of item sold	C	2,220	
4	Total taxable value (after Discount)	D	1,58,322/-	
5	Average base price (without GST)	E=(D/C)	71.32/-	
6	GST Rate	F	28%	18%
7	Commensurate Selling Price (post rate reduction)(including GST)	G=118% of E		84.15/-
8	Invoice No.	H		GWTSSI180566
9	Invoice Date	I		21.11.2017
10	Total quantity (as per invoice indicated in H)	J		12
11	Total Invoice Value (including GST)	K		1,082/-
12	Actual Selling price (post rate	L=K/J		90.19/-

	reduction)(including GST)			
13	Excess amount charged or Profiteering	M=L-G	6.04/-	
14	**Total Profiteering**	**N=J*M**	**72.48/-**	

15. From the above Table, the DGAP has concluded that it was clear that the Respondent No. 1 did not reduce the selling price commensurately of the "PA Asl Good Morning Splash 50ml (MRP 115/-) (NPAASG050008)" product, when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 and hence he had profiteered an amount of Rs. 72.48/- on a particular invoice and thus the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017. On the basis of above calculation as illustrated in the Table given above, profiteering in case of all the impacted goods of the Respondent No. 1 has been computed by the DGAP in the similar manner. However, he has claimed that the average base prices for other channels would be different from the channel which has been shown in Table above and accordingly, profiteering has been calculated channel-wise.

16. The DGAP has also stated that from the invoices made available by the Respondent No. 1, it appeared that he had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017 so that the commensurate benefit of GST rate reduction was not passed on to the recipients. The DGAP has

also contended that on the basis of the aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products supplied during the period from 15.11.2017 to 31.12.2018, as furnished by the Respondent No. 1, the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 18,48,34,084/- and the said profiteered amount has been arrived at by comparing the customer type or channel-wise average of the base prices of the goods sold during the period from 01.11.2017 to 14.11.2017 (or the latest month i.e. October, 2017 and so on, in case those goods were not sold during 01.11.2017 to 14.11.2017), with the actual invoice-wise base prices of such goods sold during the period from 15.11.2017 to 31.03.2019. The excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess prices collected from the recipients also included the GST charged on the increased base prices.

17. The DGAP has further contended that the perusal of the outward sales data made available by the Respondent No. 1 indicated that he had profiteered an amount of Rs. 8,97,253/- from the Respondent No. 2 during the period from 15.11.2017 to 31.03.2019. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 18,48,34,084/- has been furnished by the DGAP in the Table given below:-

Table

Profiteering (Rs.)					
S. No.	Name of State	State Code	General Trade	Other than General Trade	Total Profiteering (Rs.)
1	Andaman & Nicobar Islands	35	2,89,408	-	2,89,408
2	Andhra Pradesh (New)	37	28,81,350	22,75,744	51,57,094
3	Arunachal Pradesh	12	34,078	-	34,078
4	Assam	18	24,31,584	5,41,810	29,73,394
5	Bihar	10	30,19,659	6,47,652	36,67,311
6	Chandigarh	4	3,05,386	19,166	3,24,552
7	Chattisgarh	22	19,11,865	3,50,075	22,61,939
8	Dadra and Nagar Haveli	26	11,657	-	11,657
9	Daman and Diu	25	-	38,376	38,376
10	Delhi	7	68,66,663	43,21,976	1,11,88,639
11	Goa	30	2,85,628	52,144	3,37,772
12	Gujarat	24	26,96,883	41,05,036	68,01,918
13	Haryana	6	14,01,212	50,76,462	64,77,674
14	Himachal Pradesh	2	2,52,766	24,617	2,77,384
15	Jammu and Kashmir	1	2,19,967	65,582	2,85,549
16	Jharkhand	20	13,68,148	4,66,696	18,34,843
17	Karnataka	29	56,54,964	94,82,431	1,51,37,395
18	Kerala	32	57,65,995	9,28,745	66,94,740
19	Madhya Pradesh	23	24,39,065	40,82,573	65,21,637
20	Maharashtra	27	1,59,36,419	2,91,66,764	4,51,03,183
21	Manipur	14	1,27,663	-	1,27,663
22	Meghlaya	17	2,16,513	-	2,16,513
23	Mizoram	15	5,059	-	5,059

24	Nagaland	13	57,540	-	57,540
25	Odisha	21	30,59,079	8,01,378	38,60,457
26	Puducherry	34	2,89,577	4,49,656	7,39,233
27	Punjab	3	13,83,199	10,95,085	24,78,285
28	Rajasthan	8	33,14,776	16,04,101	49,18,877
29	Sikkim	11	17,711	-	17,711
30	Tamil Nadu	33	98,42,417	78,17,703	1,76,60,119
31	Telangana	36	34,05,733	68,94,992	1,03,00,726
32	Tripura	16	2,73,629	43,366	3,16,996
33	Uttar Pradesh	9	68,97,864	27,29,642	96,27,505
34	Uttarakhand	5	7,64,572	1,19,806	8,84,378
35	West Bengal	19	1,09,99,476	72,05,003	1,82,04,479
	Grand Total		**9,44,27,505**	**9,04,06,580**	**18,48,34,084**

18. The DGAP has also stated that perusal of the outward sales data made available by the Respondent No. 2 indicated that the Respondent No. 2 had increased the base prices of the products when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017. On the basis of aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) for all the products impacted by reduction in the rate of GST from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, during the period from 15.11.2017 to 31.03.2019, as furnished by the Respondent No. 2, the amount of net higher sales realization due to increase in the base prices of the products or in other words, the profiteered amount came to Rs. 38,64,891/-, and the said profiteered amount had been arrived at by comparing the average of the base prices (after discount) of the goods sold during the period from 01.11.2017 to 14.11.2017 (or the latest month i.e. October, 2017 and so on, in case these goods were not sold during 01.11.2017 to 14.11.2017),

with the actual invoice-wise base prices of such goods sold during the period from 15.11.2017 to 31.03.2019. The excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess prices collected from the recipients also included the GST charged on the increased base prices. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 38,64,891/- has been furnished by the DGAP in the Table given below:-

Table

S.No.	Name of State	State Code	Profiteering (Rs.)
1	Haryana	06	52,916
2	Delhi	07	38,04,137
3	Uttar Pradesh	09	7,838
	Grand Total		38,64,891

19. After perusal of the DGAP's Report, this Authority in its meeting held on 01.10.2019 had decided to hear the Applicants and the Respondents on 24.10.2019 and accordingly notices were issued to all the interested parties. Notices were also issued to the Respondents on 03.10.2019 asking them to reply why the Report dated 24.09.2019 furnished by the DGAP should not be accepted and their liability for profiteering under Section 171 of the CGST Act, 2017 should not be fixed. On behalf of the Applicants none appeared whereas the Respondent No. 1 was represented by Sh. Alpesh Dalal, Director (Finance), Sh. Nirav Parek (Employee), Sh. V. Lakshmikumaran, Sh. K. Srikanth, Sh. Gokul Kishore and Sh. Darshan Machchhar Advocates and the Respondent No. 2 was represented by Sh. Tushar Mittal, Consultant, Sh. Vineet Bhathi, Advocate and Smt. Shradha Agarwal, CA.

20. The Respondent No. 1 through his written submissions dated 10.01.2020 has stated that he was a company incorporated in 1964 and was a part of Raymond Group, dealing in personal grooming and toiletries such as deodorants, shampoos, fragrant soaps, shaving creams, perfumes and room fresheners etc. and was engaged, *inter alia*, in the manufacture and sale of various products which were broadly grouped under the product categories of After Shave Lotion, Body Deo, Deodorant Women, Dye Stick, Eau-De-Cologne, Eau-De-Perfume, Perfume, Perfumed Deodorant, Shampoo, Styling Gel, Grooming Kit, Soap and Talc etc. He has also stated that he was selling his products through the channels of (i) Direct Retailers (ii) E-Commerce Platforms and (iii) Distributors who were further selling them to the retailers.

21. The Respondent No. 1 has also stated that the application dated 30.07.2018 filed by the Applicant No. 1 was not examined by the Standing Committee on Anti-Profiteering within a period of 2 months as was prescribed under Rule 128 (1) of the CGST Rules, 2017 and therefore, the present proceedings were not maintainable. He has also argued that the above limitation of 2 months could not be condoned. He has further stated that as per Rule 129 (1), a reference to the DGAP for conducting detailed investigation could be made by the Standing Committee on Anti-Profiteering only when it was satisfied that there was prima facie accurate and adequate evidence available before it. However, no such evidence was available and hence, the recommendation for conducting investigation against him was ultra vires of the above Rule. In this regard, the Respondent No. 1 has placed reliance on the judgments of the Hon'ble Supreme Court passed in the cases of ***Oil and Natural Gas Corporation Limited* v. *Gujarat Energy***

***Transmission Corporation Limited and Others* (2017) 5 SCC 42**, ***Singh Enterprises* v. *CCE Jamshedpur* 2008 (221) ELT 163 (SC)**, ***Commissioner of Customs & Central Excise* v. *Hongo India (P) Ltd*. 2009 (236) ELT 417 (SC), taxmann.com 108 (Madras)**, ***Krishna Kumar Saraf* v. *Commissioner of Income Tax* [2017] 83 taxmann.com 331 (Delhi - Trib.)** and ***Gujarat Paraffins Pvt. Ltd.* v. *Union of India* 2012 (282) ELT 33).** On the insistence of the Respondent No. 1 the above objections have been considered by this Authority and vide its Interim Order No. 10/2020 dated 17.02.2020 they have been found to be not tenable. Hence, the above contentions of the Respondent are not being mentioned in the present order.

22. The Respondent No. 1 has filed further written submissions on 02.03.2020 and has also given Power Point Presentation.

23. The Respondent No. 1 has submitted that the procedure followed by the DGAP during the investigation was not in accordance with Rule 128 and Rule 129 of the CGST Rules, 2017. He has also submitted that the complaint had been filed by the Applicant No. 1 by stating that M/s Raymond Ltd. had supplied 'Park Avenue After Shave Lotion Good Morning 50 ml', the price/value per unit pre and post GST rate reduction of which was INR 115/-. Accordingly, M/s Raymond Ltd. had filed his reply *inter alia* stating that the said product was not supplied him but was sold by his associate company viz. the Respondent No. 1. M/s Raymond Ltd. had also mentioned the various steps which had been taken by the Respondent No. 1 to pass on the benefit of reduction in the rate of tax from 28% to 18%. However, instead of closing the investigation at that stage, the DGAP had suo moto issued an addendum to the notice withdrawing the notice issued to M/s Raymond Ltd. and making the

Respondent No. 1 an interested party. The Respondent No. 1 has claimed that the entire procedure right from the examination of the complaint till carrying out the investigation and passing of the order determining the amount profiteered was enshrined in Chapter XV of the CGST Rules which did not grant powers to the DGAP to suo moto make Respondent No. 1 a party as the investigation was required to be limited to the reference made by the Standing Committee. In the instant case, the reference was made in respect of M/s Raymond Ltd. and upon satisfaction that the goods under question were not supplied by him, the DGAP should have closed the investigation at that stage itself. By impleading the Respondent No. 1 as an interested party, the DGAP has assumed jurisdiction which was not prescribed under the rules. Accordingly, the DGAP's assumption of jurisdiction while issuing notice for initiation of investigation to the Respondent No. 1 was in violation of Rule 129 of the CGST Rules and hence was liable to be set aside.

24. The Respondent No. 1 has also submitted that the complaint had been filed in respect of the sale of goods bearing description 'Park Avenue After Shave Lotion Good Morning 50 ml', the price/value per unit pre and post GST rate reduction of which was INR 115/- with specific reference to PO Nos. 8114997697 dated 08.11.2017, 8115407972 dated 19.12.2017 and 4518098598 dated 12.06.2018. The aforementioned POs had been issued by M/s Big Bazaar in the name of the Respondent No. 2. The Respondent No. 1 has further submitted that had the Standing Committee examined the sample invoices issued by him to the Respondent No. 2 in respect of the product code NPAASG050008 having description PA Asl Good Morning Splash 50ml (MRP 115/-), it would have found that the Respondent No. 1 had kept the base price

same prior to and after the reduction in the rate of tax by offering discount of 7.81% on account of reduction in the rate of GST. On the basis of the invoices, the Respondent No. 1 has submitted the following details of the base prices:-

Pre-rate reduction				Post-rate reduction			
Date	**Base price**	**Discount**	**Net base price**	**Date**	**Base price**	**Discount (@ 7.81% of base price)**	**Net base price**
10.08.17 21.08.17	64.90 64.90	-	64.90 64.90	24.01.18	70.40	5.50	64.90
24.10.17	64.90	-	64.90	30.01.18	70.40	5.50	64.90
30.11.17	64.90	-	64.90	13.03.18	70.40	5.50	64.90
14.11.17	64.90	-	64.90	15.03.18	70.40	5.50	64.90

25. The Respondent No. 1 has also stated that he had kept the same base price by offering additional discount of 7.81% on the invoices on account of reduction in the rate of tax. However, the Standing Committee, on the basis of the above POs to which the Respondent No. 1 was not a party, had referred the matter for detailed investigation. It has been further submitted that there should have been some material to prima facie establish the allegation of profiteering before a reference was made by the Standing Committee. Thus, both the reference made by the Standing Committee and the consequent investigation by the DGAP were bad in law and liable to be set aside for want of prima facie evidence and also for being in violation of the process laid down in Rules 128 and 129. In this regard, reliance was placed on the judgements passed in the cases of ***Ved***

Prakash Prabhudayal Agarwal v. ITO* (1982) 135 ITR 756 (Bom.)** and ***ITO v. Lakhmani Mewal Das* (1976) 103 ITR 437 (SC)**. The Respondent No. 1 has further referred to the Order dated 29.10.2018 passed by this Authority in the matter of ***M/s Amway India Enterprises Private Limited (Case No. 12/2018), wherein, in the absence of description of products, name of the supplier and any specific evidence of profiteering by the Respondent it was held that the DGAP could not conduct investigation and this Authority had dismissed the complaint alleging violation of Section 171 as non-maintainable.

26. The Respondent No. 1 has also contended that the period adopted for investigation, from 15.11.2017 to 31.03.2019, was arbitrary. He has further contended that the period covered the business operations of the Respondent No. 1 for sixteen months and sixteen days. While the GST rate was reduced from 15.11.2017, there was no reason adduced by the DGAP as how the date of 31.03.2019 was reckoned for conducting the investigation and the period covered under investigation did not have any statutory basis. He has also added that in the absence of any specified time period, increase in the price, if any, undertaken by the Respondent No. 1 would be considered as profiteering till the time Respondent No. 1 was in business. He has further added that after the GST rate reduction from 28% to 18% for most of the products, he had undertaken a massive exercise to determine the prices to be charged in light of the revised rate of tax and reflected the same on the packages by way of reduced MRPs. Further, in respect of the SKUs where it was feasible to increase the grammage instead of reducing the MRPs, the said exercise was

carried out. This exercise was carried out in the months of November and December 2017 and the new MRPs / grammage and the prices were given effect from January 2018 onwards. It was also submitted that once the MRPs / grammage was revised/increased by the Respondent No. 1, considering the above factors and also taking into consideration the various other commercial factors affecting the pricing and MRPs of the products, it should be considered as a conscious effort on the part of Respondent No. 1 to pave the way for new prices to be charged for the products sold by the Respondent No. 1. Accordingly, it has been submitted by the Respondent No. 1 that the period of investigation should be restricted to a period up to January 2018 as by this time the effect of new prices / grammage had already come into picture. The Respondent No. 1 has cited the following cases decided by this Authority in which the period of investigation was restricted from 2 to 5 months:-

a. **Sharma Trading Company (3 Months)**
b. **Hardcastle Restaurants (3 Months)**
c. **Unicharm India Pvt. Ltd. (3 Months)**
d. **Excel Rasayan Pvt. Ltd. (3 Months)**
e. **Harish Bakers & Confectionaries (3 Months)**

The Respondent has further placed reliance on the judgements of the Hon'ble Supreme Court passed in the cases of ***S. G. Jaisinghani v. Union of India & Ors. (1967) 2 SCR 703*** and **Maneka Gandhi v. Union of India 1978 AIR 597** in his support.

27. The Respondent No. 1 has also claimed that the formula used by the DGAP for computation of profiteering was incorrect as the DGAP in

para 31 of his Report had stated that the profiteered amount had been arrived at by comparing the customer type or channel-wise average of the base prices of the goods sold during the period from 01.11.2017 to 14.11.2017 (or the latest month i.e. October 2017 and so on, in case these goods were not sold during the period from 01.11.2017 to 14.11.2017) with the actual invoice-wise base prices of such goods sold during the period from 15.11.2017 to 31.03.2019. In this regard, it was submitted that the method of adoption of average base prices pre-rate reduction at customer type/channel level and comparing them with the actual invoice-wise base prices was incorrect and not applicable in the facts of the present case. The Respondent No. 1 has further claimed that his prices to various customers even within the same channel varied from time to time. It was further submitted that even without any reduction in the rate of GST, the DGAP's methodology of adopting average base prices pre-rate reduction and comparing them with the actual base prices post rate reduction would have resulted in profiteering. Accordingly, it has been submitted that if the DGAP wanted to take pre-rate reduction weighted average prices as comparable prices to compute profiteering, he should have also adopted post rate reduction weighted average prices as comparable and not considered the actual transaction wise prices. In support of the above submissions, the Respondent has cited the order of the Hon'ble High Court of Delhi passed in W. P. (C) 1780/2020 in the case of ***M/s Johnson & Johnson Pvt. Ltd. v. Union of India & Ors.*** wherein the order passed by this Authority was challenged.

28. The Respondent No. 1 has also argued that the line items in respect of which 7.81% discount had been offered by him should be removed

from the profiteering analysis. He has further argued that this was the first time ever when such a large scale reduction in tax had taken place and there was no precedent in terms of compliance of the Anti-Profiteering provisions and hence, there was complete lack of clarity as to how this reduction was to be passed on. The benefit of reduction in the rate of tax had to be passed on in respect of the goods which were held in stock by the Respondent No. 1 on 14.11.2017 as well as the goods which were to be manufactured by him on or after 15.11.2017. The Respondent No. 1 has also contended that he wanted to ensure that such reduction should also be reflected by way of reduced MRPs on the packages or through increased grammage. However, implementation of reduced MRPs on the packages / increase in the grammage was a time-consuming process as these changes could have only been implemented over a period of next 1-3 months. Till then, he was determined to pass on the benefit to his customers. Accordingly, he had decided to immediately pass on the benefit through additional primary discount of 7.81% in the cum-tax price (equivalent to the reduction in the rate of GST from 28% to 18%) on all the SKUs held in stock as on 14.11.2017 (excluding SKUs which were manufactured in excise-free units in the pre-GST regime). This additional primary discount was given on the invoices right from 15.11.2017. It was further contended that the benefit passed on by way of additional primary discount on the invoices should be reduced from the total profiteered amount. The Respondent has also placed reliance on the case of ***M/s Lipton India Ltd. v. State of Tamilnadu 1973 (32) STC 194 (Mad.)*** in his support.

29. The Respondent No. 1 has also averred that the profiteering should not be computed in respect of the line items in respect of which credit notes were issued. He has further averred that during the normal course of business he was issuing credit notes on account of return of goods from his recipients or on account of incorrect invoicing. In respect of supplies made after 14.11.2017, there have been cases of credit notes being issued by him. The Respondent No. 1 has also stated that while the DGAP had computed profiteering in respect of line items, corresponding negative effect was not given when credit notes were issued for return of goods/incorrect invoicing. It was further stated that once the goods were returned / incorrect invoicing was rectified, the original invoice value receivable from the customers got reduced to the extent to which the credit notes had been issued. Accordingly, no profiteering should have been computed in respect of the invoices where credit notes had been issued.

30. The Respondent No. 1 has also pleaded that there were instances where the DGAP had computed profiteering on a SKU in excess of the reduction in the GST rate. He has further pleaded that Section 171 (1) of the CGST Act mandated that any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit had to be passed on to the recipients by way of commensurate reduction in prices and according to the provisions of Section 171 (2) of the CGST Act, this Authority was mandated to investigate through DGAP and determine the quantum of commensurate benefit arising out of reduction in the tax rate which had not been passed on by a supplier. Therefore, allegation of profiteering (if any) could only be to the extent of reduction in the GST rate. In the instant case, there had been a

reduction in tax rates by 10% (From 28% to 18% w.e.f. 15.11.2017) which as per the DGAP's computation methodology could be given effect by keeping the pre tax price (base price) constant, which had resulted in a reduction of 7.81% in the cum tax price charged to the customers, therefore, the allegation of profiteering could only be to the extent of 7.81%, which reflected the reduction in the tax rate. Based on the methodology adopted by the DGAP, the Respondent No. 1 was required to maintain the same base prices which were prevalent during the pre rate reduction period and if the business profit was also treated as the profiteered amount, the same might amount to 'price control' which was neither intended nor mandated by Section 171 of the CGST Act. The Respondent No. 1 has referred to the order passed in the case of ***Lifestyle Retail Pvt. Ltd.- Case No. 8/2018 dated 25.09.2018*** wherein this Authority has observed that it was not functioning as a 'price regulator'. The Respondent No. 1 has computed an amount of Rs. 5.47 Crore (Annexure-15) on this ground and argued that it should be excluded from the profited amount .

31. The Respondent No. 1 has also submitted that there was no effective reduction in the rate of tax on the SKUs which were manufactured in the excise free units including those situated in Baddi, Himachal Pradesh. The SKUs which were produced by the contract manufacturers in these locations were exempt from the Excise Duty in the pre-GST regime (area based exemption) and were chargeable only to Value Added Tax (VAT) / Central Sales Tax (CST) in the range of 14% - 15% all over India. Since no Excise Duty was payable, the effective rate of tax embedded in the sale prices of these goods was only VAT / CST @ 14% - 15%. Accordingly, the effective rate of tax

was much lower than 18%. The Respondent No. 1 has further submitted that he had identified the SKUs which were manufactured in these area based exempt locations and floated a proposal internally to revise the prices of these SKUs. While the said internal proposal was under consideration, several representations were made before the GST Council by the various associations for reduction in the rate of tax as 28% GST was considered very high as compared to the pre GST effective rate of tax. He has also claimed that reduction in the rate of tax from 28% to 18% had merely restored the rate of tax back to 18% from the pre-GST effective rate of less than 18%, in respect of the SKUs which were manufactured in the area based exempt units. There was no effective reduction in the rate of tax as the rate of tax pre-GST was lower as compared to the rate of tax of 18% post 15.11.2017. Accordingly, there was no effective reduction in the rate of tax and the provisions of Section 171 of the CGST Act were not applicable in respect of these SKUs. The Respondent No. 1 has further claimed that an amount of Rs. 2.36 Crore (Annexure-19) computed as profiteering in respect of these SKUs should be reduced from the total alleged profiteering.

32. The Respondent No. 1 has also contended that he had launched certain products with 50% free quantity as an introductory offer in July 2017. It was planned to stop these promotional offers once the products achieved a certain market penetration. In the meanwhile, the GST rate reduction had taken place which was effective from 15.11.2017 from 28% to 18%. Accordingly, it was decided that he would discontinue with this introductory offer and accordingly, changes were made by removal of the words 'introductory offer' which were

earlier printed on the product bottle itself. Since the product code was not changed, he had decided to continue giving discount @ 7.81% until April 2018, by which time the old stock had exhausted and he had started selling the new stock without introductory offer. He has further submitted that once sale of the products had commenced without introductory offer, the prices of the products charged during the pre-rate reduction period no longer remained as comparable prices as the pre-rate reduction prices were highly discounted. Hence, no profiteering should be computed on these products where introductory offers were withdrawn. The product codes for these products were NPAPDA150001, NPAPDE150001 and NPAPDM150001 in respect of which the profiteering computed by DGAP was Rs. 1.33 Crore (Annexure-20) which should be excluded from the total alleged profiteering.

33. The Respondent No. 1 has also submitted that he had made sales to a class of customers known as Institutional Customers. They were either direct corporate customers or distributors through which sales were made only to the corporate customers. Bulk orders were placed by the corporate customers generally for corporate gifts, where the quantity and prices were negotiated on each and every order. The prices were highly discounted as compared to the supplies made by the Respondent No. 1 to the normal trade partners. These prices were inclusive of transport charges and other costs like customization of the packages depending on the requirement of the corporate customer. In the case of sales through the distributors, the quantity and prices were negotiated with the corporate customers by these distributors and sale prices of Respondent No. 1 were determined after deducting

distributor's margins from the negotiated prices. Although the prices were negotiated at the time of placing of the purchase orders, the applicable rate of GST as on the date of supply was charged. He has further submitted that the prices were negotiated for each and every transaction and the rate of GST applicable on the date of supply was charged. Accordingly, there was no comparable price available for any transaction as each and every transaction was different and independent. Therefore, the supplies made under the customer type "Institutional" should be excluded for the purpose of profiteering analysis. The Respondent No. 1 has claimed that the DGAP had computed profiteering of an amount of Rs. 2.64 Crore against the sales made to the institutional Customers, which must be excluded from the total alleged profiteering.

34. The Respondent No. 1 has also pleaded that the rate of GST on certain products supplied by him was reduced from 28% to 18% w.e.f. 15.11.2017. Accordingly, he had reduced the rate of GST from 28% to 18% in the invoices issued by him to his customers. He has further pleaded that he was fully aware of his obligation of passing on the benefit of reduction in the GST rate to the recipients under Section 171 of the CGST Act. He has also contended that the provisions of Section 171 of the CGST Act and the rules made thereunder were clear that such benefit was to be passed on at an entity level and not at the SKU level. While the Report of the DGAP had alleged profiteering at the SKU level, he had ensured passing of benefit using various means, which were submitted before the DGAP and also explained during the present proceedings.

35. The Respondent No. 1 has also alleged that the DGAP had selectively applied the anti-profiteering provisions in the present case as where he had passed on benefit to the customer in excess of the required amount, the DGAP had ignored such amount. On the other hand, the DGAP had insisted that where the benefit to the customers was less than what was required to be passed on, regardless of other measures, the differential amount was being sought to be alleged as the profiteered amount. The Respondent No. 1 has also argued that similar methodology of 'Zeroing' was used by the Anti-dumping Authorities in the European Union (EU). According to the said methodology, while calculating the dumping margins only those SKUs were considered which were being dumped and those SKUs which were not being dumped were not considered. The Government of India had disputed this practice and had taken stand against such methodology before the WTO and argued that while determining the dumping margins, all SKUs should be considered rather than only those which showed positive dumping. In this regard, the Respondent No. 1 has referred to the ***Report No. WT/DSI41/AB/R dated 01.03.2001*** of the Appellate Body of the WTO regarding Anti-Dumping Duties on imports of Cotton-Type Bed Linen from India vide which it was held that the methodology of 'Zeroing' could not be applied and both the negative and positive margins were to be considered while applying the anti-dumping provisions. The Respondent No. 1 has therefore, contended that the net profiteering should be computed after taking in to account the positive and negative benefits passed on at the entity level and accordingly, the amount of excess benefit passed on by this measure at the entity level aggregating to Rs. 18.60 Crore

which was even higher than the profiteered amount should be excluded from the computation.

36. The Respondent No. 1 has also cited the recent order dated 18.02.2020 of the Hon'ble High Court of Delhi passed in W. P. (C) 1780/2020 in the case of ***M/s Johnson & Johnson Pvt. Ltd. v. Union of India & Ors.,*** wherein the order passed by this Authority was challenged and has contended that the Hon'ble High Court had observed that the Petitioner had been able to make out a strong case for grant of interim relief and one of the points considered by the Hon'ble High Court was that cases where the prices actually fell after reduction in the rate of tax were excluded from consideration by the this Authority in its impugned order. He has further contended that a transaction must be viewed from the perspective of a man of commerce and as long as the benefit was passed on to the same customer by the Respondent No. 1 and was also received by the customer, the same should have been adjusted from total profiteering. In this regard reliance was also placed on the judgement of the Hon'ble Supreme Court passed in the case of ***Dai Ichi Karkaria Ltd. 1999 (112) ELT 0353 SC***, wherein the Hon'ble Supreme Court had observed as under:-

"24. We think it is appropriate that the cost of the excisable product for the purposes of assessment of excise duty under Section 4(1)(b) of the Act read with Rule 6 of the Valuation Rules should be reckoned as it would be reckoned by a man of commerce. We think that such realism must inform the meaning that the Courts give to words of a commercial nature, like cost, which are not defined in the statutes

which use them. A man of commerce would, in our view, look at the matter thus: "I paid Rs. 100/- to the seller of the raw material as the price thereof. The seller of the raw material had paid Rs. 10/- as the excise duty thereon. Consequent upon purchasing the raw material and by virtue of the Modvat scheme, I have become entitled to the credit of Rs. 10/- with the excise authorities and can utilise this credit when I pay excise duty on my finished product. The real cost of the raw material (exclusive of freight, insurance and the like) to me is, therefore, Rs. 90/-. In reckoning the cost of the final product I would include Rs. 90/- on this account." This, in real terms, is the cost of the raw material (exclusive of freight, insurance and the like) and it is this, in our view, which should properly be included in computing the cost of the excisable product." (emphasis supplied)

37. The Respondent has also submitted that the alleged profiteered amount has been incorrectly inflated in the Report by adding GST which was not sustainable. He has further added that the DGAP vide para 31 of his Report has observed that the profiteered amount of Rs. 18,48,34,084/- has been arrived at by comparing the customer type or channel-wise average of the base prices of the goods sold during the period from 01.11.2017 to 14.11.2017 with the actual invoice-wise base prices of such goods sold during the period from 15.11.2017 to 31.03.2019. The excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base prices. The Respondent No. 1 has also stated that while arriving at the total alleged profiteered amount, the DGAP had

incorrectly inflated the pre-rate reduction prices by adding 18% GST to them and comparing them with the actual sale prices including 18% GST, without adducing grounds as to why this amount had been added. In this regard, the above Respondent has referred to the case of ***R. S. Joshi Sales Tax Officer Gujarat v. Ajit Mills Limited*** **(1977) 4 SCC 98** and the case of ***Dai Ichi Karkaria*** supra. Accordingly, the Respondent has submitted that an amount of Rs. 2.82 Crores (Rs. 18.48 Crores * 18/118) representing the GST collected should be reduced from the alleged profiteered amount.

38. The Respondent No. 1 has also argued that the interpretation of Section 171 of CGST Act made by the DGAP was not correct as in the absence of any guidelines having been issued by this Authority, the Respondent No. 1 understood that passing of the benefit of GST rate reduction through discounts etc. was in full compliance with the provisions of Section 171 of CGST Act. The Respondent No. 1 has further argued that the word "commensurate reduction" in the Section denoted reduction in the price after taking into account all the factors which impacted pricing of goods. Had the legislative intention been otherwise, instead of the word 'commensurate', the word 'equal' or 'equivalent' would have been used in this Section. 'Commensurate' connoted proportionality and adequacy. The law did not prescribe as to how to determine whether a particular amount was commensurate as the legislature was conscious of the fact that pricing of goods was a complex exercise involving numerous factors. There might be multiple prices for the same supply at different points of time viz. one before the supply and one after the supply when the price was finalized based on the terms of sale like discounts or price reductions based on schemes

and turnover etc. To cover such situations, the word 'prices' was used in Section 171. The law also used the word 'any' before supply of goods and the same had been used to denote singular as against the plural for price. Therefore, for the same supply, existence of tentative and final prices had been recognized and consequently, all post-supply price reductions passed on should be factored in while examining whether commensurate reduction in prices had taken place or not. He has also submitted that commensurate reduction was not restricted to passing of the benefit of tax rate reduction in monetary terms which was normally the price. Section 171 did not use the words 'pass on the benefit by reduction in price'. It should be seen whether the objective of Section 171 was being achieved or not. If the recipient got the benefit in monetary or non-monetary form proportionate to tax rate reduction, Section 171 was complied with. Price in this regard was the consideration paid or payable for the supply. The Respondent No. 1 has further submitted that the term 'profiteering' was not defined in the CGST Act or the rules made thereunder. He has also referred to the following dictionaries for explaining the meaning of the word 'profiteering':-

a. **The Chambers Dictionary, Allied Chambers (India) Ltd., New Delhi.**
b. **The Collins Cobuild English Dictionary for Advanced Learners - Harper Collins Publication.**
c. **Oxford English Reference Dictionary - Oxford University Press.**

39. The Respondent No. 1 has also submitted that the amount, if any, held as profiteered, should be refunded to the recipients and should not be deposited in the Consumer Welfare Funds (CWFs). The Respondent has further added that if this Authority was to hold that some amount has been profiteered by the Respondent No. 1, then the same would be refunded by the Respondent No. 1 to his recipients. Rule 133 of the CGST Rules provided that where this Authority determined that a registered person has not passed on the benefit of the reduction in the rate of tax, this Authority could, inter alia, order return to the recipient an amount equivalent to the amount not passed on. It further provides for deposit of such amount in the CWF constituted under Section 57 of CGST Act where the eligible person did not claim return of the amount or where such person was not identifiable. The Respondent No. 1 has further submitted that recipients of the Respondent No. 1 were identifiable as they were his distributors, modern retail customers and e-commerce customers etc. and therefore appropriate orders should be passed to enable the Respondent No. 1 to return such amount to his recipients, and not the CWFs. He has also argued that according to the Hon'ble Supreme Court, it was the cardinal rule of interpretation that where a statute provided that a particular thing should be done, it should be done in the manner prescribed and not in any other way. He has quoted the cases of ***State of Jharkhand v. Ambay Cements 2004 (178) E.L.T. 55 (S.)*** and ***Tata Chemicals Ltd. v. Commissioner of Customs 2015 (320) E.L.T. 45 (SC)*** in his support.

40. The Respondent No. 1 has also stated that as a manufacturer he was not under legal obligation to affix stickers notifying change in the MRPs on the goods lying in the distribution chain. He has further stated that

at the time of import or manufacture, the importer or manufacturer was under obligation to comply with the various laws. He has also admitted that under the Legal Metrology Act, 2009, there was obligation on him which placed ban that the MRPs could not be altered. While revision of MRPs by affixing stickers was restricted in case of increase in such MRPs, in the case of reduction in MRPs, the law provided a window. The CGST Act and the Rules made thereunder did not deal with affixation of MRPs. Affixation of stickers with revised MRPs and allied compliances were provided under the Legal Metrology Act, 2009 and Legal Metrology (Packaged Commodities) Rules 2011. As per the provisions of the above Act, in respect of reduction in the MRPs, it was permissible to affix stickers with revised lower MRPs and ensure that the revised MRPs did not cover the MRPs declared earlier. The said rule provided discretion to the supplier regarding affixation of stickers as the words used were 'may be affixed'. Therefore, in case of reduction in the MRPs, there was no compulsion to affix stickers with revised MRPs. The Respondent No. 1 has also submitted that Rule 6 (3) of the above Rules dealt with the affixation of stickers with the revised lower MRPs without reference to the person who was empowered in this regard. The only condition was that such stickers should not cover the MRPs already declared by the manufacturer or the packer on his products. Therefore, it could be said that such stickers could be affixed also by the distributors, dealers or the retailers. It was further submitted that a commensurate reduction in the price on supply of goods was the only mandate under section 171 of the CGST Act and affixing of stickers with reduced MRPs was not a

mandatory provision but a discretion provided in the Legal Metrology Act and the Rules framed thereunder.

41. The Respondent No. 1 has also averred that in the absence of any prescribed methodology and procedure for calculation of profiteering in the CGST Act and the CGST Rules or the procedure prescribed by this Authority under Rule 126, the present proceedings were arbitrary and liable to be dropped as they were violative of the principles of natural justice. It was further averred that the 'Procedure and Methodology' issued on 19.7.2018 by this Authority only provided the procedure pertaining to the investigation and hearing. He has also maintained that in the absence of any framework or guidelines laid down under Section 171 or the Rules made thereunder, different approaches could be followed by this Authority and the DGAP. Such unfettered discretion would lead to uncertainty, arbitrariness and whimsical approach on case to case basis.

42. The Respondent No. 1 has also submitted that the present proceedings have been initiated in violation of the principles of natural justice as Show Cause Notice has not been issued to the Respondent No. 1 proposing the action to be taken by this Authority. Moreover, the investigation was initiated on the basis of the reference made by the Secretary of this Authority made to the Standing Committee on Anti-Profiteering which unilaterally misinterpreted the submissions made by the Respondent No. 1 in his communications and erroneously concluded admission of profiteering by the Respondent No. 1. The Respondent No. 1 has further submitted that the order required to be passed by this Authority under Section 171 read with Rule 133 would determine rights and liabilities of the registered persons with civil and/

penal consequences and therefore, the first principle of natural justice viz. *audi alteram partem* required that the person concerned should be heard. One of the essential elements of hearing was communication of the grounds based on which action was proposed to be taken and a Show Cause Notice served such essential purpose so that opportunity to preliminarily rebut the allegations was provided. He has further submitted that the Report consequent to the investigation conducted by DGAP was neither a Show Cause Notice nor could it be treated as substitute to a Show Cause Notice. However, from the notice received by the Respondent No. 1, it appeared that this Authority has considered the Report of the DGAP as a Show Cause Notice, which was not correct. He has also submitted that in the present case except for providing a copy of the Report of the DGAP, as on date the Respondent No. 1 was not served any notice/communication regarding the issues to be examined and action proposed to be taken against him. The Respondent No. 1 has also claimed that he could not presume the Report of the DGAP to be a Show Cause Notice and defend himself. He has further claimed that even if the CGST Act and the CGST Rules did not provide for issuance of a Show Cause Notice before initiating proceedings under Section 171, this Authority should have issued a Show Cause Notice to the Respondent No. 1 in terms of principles of natural justice as was held by various courts in their decisions/judgments referred below:-

a. ***Canara Bank and Others v. Debasis Das and Others* 2003 4 SCC 557.**

b. ***Uma Nath Pandey and Others v. State of UP*** **(2009) 12 SCC 40.**

c. ***Collector of Central Excise v. ITC Ltd.*** **1994 (71) ELT 324 (SC).**

d. ***Vasta Bio-Tech Pvt. Ltd. v. Assistant Commr.*** **2018 (360) ELT 234.**

e. ***Dharampal Satyapal Ltd. v. Dy. Commissioner of C. Ex*** **2015 (320) ELT 3 (SC).**

f. ***Union of India v. Hanil Era Textiles Ltd.*** **2017 (349) ELT 384 (SC).**

43. The Respondent No. 1 has also submitted that in absence of a judicial member, the constitution of NAA was improper as the Technical Members appointed in this Authority lacked judicial experience which was necessary for deciding the legal issues involved in the anti-profiteering proceedings.

44. The Respondent No. 1 has further submitted that Section 171 of the CGST Act and the Rules made thereunder pertaining to Anti-Profiteering were unconstitutional being violative of Article 14 and Article 19 (1) (g) of Constitution of India as the above provisions amounted to exercising restrictions on his fundamental right to conduct trade, fix his prices and profit margins.

45. The Respondent No. 1 further submitted that Rules 126, 127 and 133 of the CGST Rules suffer from the vice of excessive delegation as the above Rules conferred unfettered powers on this Authority which were not provided in the CGST Act, 2017.

46. The Respondent No. 1 vide his written submissions dated 02.03.2020 has also submitted that the Interim Order No. 10/2020 dated 17.02.2020 passed by this Authority, rejecting his submissions on the issues relating to the reference from the Standing Committee on Anti-Profiteering, required modification. He has referred to para 54 and 55 of the above order and argued that the reminder dated 22.02.2019 issued by the Applicant No. 1 through his e-mail to the Standing Committee on Anti-Profiteering could not be treated as a fresh complaint by the above Committee and hence it had no right to re-look or re-examine the complaint made by the above Applicant. The Respondent has also relied on the judgement passed in the case of ***Aluminium Cables & Conductors (U. P.) Pvt. Ltd. v. Collector of Central Excise 1993 (65) ELT 261 (Tribunal)*** to support his above claim. He has further argued that even if the reminder was assumed to be the removal of the defect it dated back to the original complaint and hence the fresh examination of the same was barred by limitation. He has also cited the following cases in his support:-

(i) ***Roshan Lal Gupta & Sons Pvt. Ltd. v. Union of India 2016 (331) ELT 239 (Guj.).***

(ii) ***Vidyawati Gupta & others v. Bhakti Hari Nayak & others (2006) 2 SCC 777.***

(iii) ***All India Reporter Ltd. v. Ramchandra Dhondo Data AIR 1961 Bom 292.***

47. The Respondent No. 1 has also contended that this Authority had ample powers to modify its Interim Order dated 17.02.2020 as per the law settled in the following cases:-

(a) Union of India v. Auto & General Engg. Co. 1995 (80) ELT 246 (Del.).

(b) Baron International Ltd. v. Union of India 2004 (163) ELT 150 (Bom).

(c) Garg Ispat Udyog Ltd. v. Commissioner of Central Excise Jaipur 2013 (288) ELT 392 (Tri.-Del.)

48. The Respondent No. 1 has also claimed that the POs mentioned in the complaint pertained to the Respondent No. 2 and had the invoices issued by him to the Respondent No. 2 in respect of the complained product had been examined by the Standing Committee on Anti-Profiteering it would have realized that he had passed on the benefit of tax reduction by giving discount of 7.81% and had maintained the pre rate reduction base price. He has also enclosed copies of invoices as Annexure-9 with Volume 3 of his written submissions dated 02.03.2020.

49. The Respondent No. 2 vide his submissions dated 08.01.2020 has stated that the constitution of the Standing Committee as well as of the Screening Committees on Anti-Profiteering as per Rule 123 of the CGST Rules, 2017 was illegal and without the authority of law as the CGST Act, 2017 nowhere envisaged constitution of these Committees. He has also stated that the constitution of the office of DGAP (earlier Director General of Safeguards) was purportedly done under Rule 129

of the CGST Rules, 2017, however, the said Rule was ultra vires of the CGST Act, 2017 as it nowhere envisaged constitution of any such body and therefore, the investigation carried out by the DGAP was illegal. The Respondent no. 2 has also cited the law settled in the cases of **Addl. District Magistrate (Rev.) Delhi Admin. v. Siri Ram (2000) 5 SCC 451** and **State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) SCC 517** in his support. On the insistence of the Respondent No. 2 both the above contentions have been carefully considered and found to be untenable by this Authority vide its Interim Order No. 10/2020 dated 17.02.2020 and hence, they are not being discussed in the present order.

50. The Respondent No. 2 has also mentioned that he was one of the distributors of the Respondent No. 1, for supply of goods to the Modern Trade category i.e. the mega stores such as M/s Big Bazar and M/s Godfrey Phillips India Ltd. etc. and all the supplies made by him were negotiated and finalized between the manufacturer i.e. the Respondent No. 1 and the Modern Trade Stores such as M/s Big Bazar and he merely acted on the directions of the Respondent No. 1 and had no role to play in the fixation of the prices relating to the supplies of goods to his customers.

51. He has also stated that it was apparent from the impugned Report of the DGAP dated 24.09.2019 that the present complaint was never looked in to by the Delhi State Screening Committee on Anti-Profiteering, as mandated under rule 128 (2) of the CGST Rules, 2017. He has further stated that even examination of the application by the Standing Committee on Anti-Profiteering was not in accordance with Rule 128 (1) of the CGST Rules, 2017 which required it to dispose of the same within

a period of 2 months. He has also contended that in the present case the application/ complaint was made on 30.07.2018 and it was examined by the Standing Committee on Anti-Profiteering in its meeting held on 11.03.2019 i.e. after 7 months of the receipt of the application and hence the recommendation made by the above Committee for conducting investigation against him was illegal and was barred by limitation. The Respondent No. 2 has also submitted that that as per rule 128 (1) of the CGST Rules, to determine whether there was prima-facie evidence to support the claim of the applicant, the Standing Committee on Anti-Profiteering was required to examine the accuracy and adequacy of the evidence provided in the application. However, in the present case no evidence was provided by the Applicant No. 1 in support of his application. In this connection it would be revenant to mention that all the above objections have been elaborately dealt by this Authority in its Interim Order No. 10/2020 dated 17.02.2020 and found to be untenable and hence, no findings are being recorded on them in this order.

52. The Respondent No. 2 has also pleaded that the calculations of profiteering made by the DGAP were erroneous and faulty and the profiteered amount worked out by the DGAP was excessive and illegal. He has further pleaded that the objective of this Authority was to ensure that any reduction in the rate of tax was passed on to the recipients by way of reduction in prices which meant that the supplies should not result in illegal profiteering, by the suppliers. He has also claimed that in this regard the Government of India in its flyer had stated as follows:-

"This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering.

National Anti-Profiteering Authority is a mechanism devised to ensure that prices remain under check and to ensure that businesses do not pocket all the gains from GST because profit is fine, but undue profiteering at the expense of the common man is not."

53. He has further claimed that in the present case the DGAP had simply calculated base sale prices on the basis of supplies made during the period from October, 2017 to 14 November, 2017. The DGAP has calculated the alleged profiteered amount by comparing the aforesaid base prices with the actual sale prices of the supplies made during the period from 15th November, 2017 to 31st March, 2019. He has also contended that the DGAP has erred in facts and in law in adopting this methodology of calculating the profiteered amount in as much as the said methodology had not actually resulted in calculating the excess profits made by a supplier, especially in the context of Respondent No. 2.

54. The Respondent No. 2 has also argued that in the present case, the DGAP had not looked into the following:-

- Additional taxes collected and deposited with the Government which had been included in the alleged profiteered amount.
- Increase in the purchase prices post 15th November, 2017.

- Post sale discounts offered by the Respondent No. 2 after affecting sales (impact of Debit / Credit Notes).

55. He has further argued that the DGAP had included the additional tax collected in the profiteered amount which had been duly deposited with the Government and such additional tax deposited by the Respondent No. 2 could not be attributed as the profiteered amount. The calculation of the amount collected as tax and deposited by the Respondent No. 2 with the Government is reproduced hereunder:-

S.No.	Particulars	Details (Rs.)	Amount (Rs.)
1	**Value as per company**		
(a)	- Taxable amount	4,42,97,386	
(b)	- Tax amount	79,73,530	
	Total		5,22,70,916
2	**Price as per DGAP**		
(a)	- Taxable amount	4,10,22,055	
(b)	- Tax amount	73,83,970	
	Total		4,84,06,024
3	**Profiteering amount**		**38,64,891**
4	Less: exclusion of GST component	**1b- 2b**	5,89,560
5	**Non-GST amount**		**32,75,332**

56. The Respondent No. 2 has also stated that even otherwise the DGAP has taken too long a period for computing the profiteered amount and has calculated the same from 15th November 2017 to 31st March, 2019. During such a long period the benefit of cost inflation index, increase in the labour cost and the delivery cost etc. had not been accounted for and out of the total alleged profiteered amount the major

portion pertained to the F. Y. 2018-19. Month wise details of the alleged profiteered amount computed by the Respondent No. 2 are given hereunder:-

Row Labels	Sum of diff in totals inclusive of GST	% age of total amount	Sum of diff in totals exclusive of GST	% age of total amount
Nov-2017	74,297.76	1.92	62,964.21	1.92
Dec-2017	1,69,488.72	4.39	1,43,634.51	4.39
Jan-2018	2,99,706.40	7.75	2,53,988.48	7.75
Feb-2018	2,41,015.06	6.24	2,04,250.05	6.24
Mar-2018	3,14,725.03	8.14	2,66,716.13	8.14
For 17-18	**10,99,232.99**	**28.44**	**9,31,553.38**	**28.44**
Apr-2018	2,01,580.40	5.22	1,70,830.85	5.22
May-2018	2,74,551.45	7.10	2,32,670.72	7.10
Jun-2018	2,76,109.35	7.14	2,33,990.97	7.14
Jul-2018	2,57,106.32	6.65	2,17,886.71	6.65
Aug-2018	2,24,863.35	5.82	1,90,562.16	5.82
Sep-2018	2,75,316.69	7.12	2,33,319.23	7.12
Oct-2018	3,34,369.46	8.65	2,83,363.95	8.65
Nov-2018	2,05,413.74	5.31	1,74,079.44	5.31
Dec-2018	1,72,287.62	4.46	1,46,006.46	4.46
Jan-2019	1,51,357.84	3.92	1,28,269.35	3.92
Feb-2019	1,85,386.30	4.80	1,57,107.03	4.80
Mar-2019	2,07,315.72	5.36	1,75,691.29	5.36
For 18-19	**27,65,658.24**	**71.56**	**23,43,778.17**	**71.56**
Gross Total	**38,64,891.23**	**100.00**	**32,75,331.55**	**100.00**

57. The respondent No. 2 has further stated that the alleged profiteered amount calculated for the F. Y. 2018-19 was absolutely incorrect as the purchase prices of the Respondent No. 2 had increased from April, 2018 onwards and the said purchase prices were even higher than the base sale prices adopted for computation of profiteering as on 14th Nov. 2017 and the Respondent No. 2 could not be expected to sell his products at the prices which were below the purchase prices or at lesser profit margins. He has also claimed that the profiteered amount calculated by the DGAP was erroneous and incorrect in as much as the same has not taken into account the debit notes raised by the buyers, which had resulted in reduction in the sale prices of the Respondent No. 1. After the sales had taken place the buyers had

issued debit notes in respect of tax difference but the same have not been considered by DGAP at all. He has further claimed that the debit notes on account of discount of 7.81% as had been claimed by the Respondent No. 1 (although disallowed by the DGAP in his Report), were issued to him only till March 31, 2018. Post that, the Respondent No. 2 had not received any discount and was naturally required to sell his products at higher base prices to offset the increase in the purchase prices and consequently, out of the total alleged profiteered amount of Rs. 38,64,891, the alleged profiteering of Rs. 27,65,658 which related to the F. Y. 2018-19 could not be held to be undue profiteering.

58. The Respondent No. 2 has also mentioned that the present Report was bad in law on account of mis-joinder and non-joinder of parties vis-à-vis him in as much as he was a middle man in the supply chain and had no control over the price fixation vis-à-vis the Modern Trade. The prices in case of Modern Trade were negotiated exclusively by the Respondent No. 1 and the Mega Store buyers. He had no role to play in the price fixation and had to follow the dictates of the Respondent No. 1 as he was duty bound to comply with the prices mentioned in the POs issued by the buyers and had no discretion / power to alter or even reduce the prices as were mentioned in the POs. He has further added that his profit margin was almost static and there was no extra profit earned by him on account of reduction in the rate of tax.

59. The Respondent No. 2 has also stated that even otherwise no profiteering could be attributed to him, since it has been alleged in the notice itself that the Respondent No. 1 had committed profiteering by selling the products at a higher price, hence further selling of the said

products at a higher price could not be recomputed in the hands of the Respondent No. 2. This would result in double computing of the profiteered amount. He has further stated that if the Respondent No. 1 was alleged to have profiteered, then his selling price to him would be Rs. 108.4 per unit in respect of the complained product. Thus, to avoid profiteering (as alleged by the DGAP) his base selling price should have been retained at Rs. 105 per unit. Thus, far from profiteering, this would in fact result in the Respondent No. 2 incurring a loss of Rs. 3.47 i.e. Rs. 108.47 – Rs. 105.00 per unit and hence, profiteering could not have been alleged to have been indulged in both by the Respondent No. 1 as well as the Respondent No. 2, since it would lead to the absurd conclusion of the Respondent No. 2 having to sell at a loss. He has also added that basic premise of profiteering calculation was that the same product should have been sold to the same customer without any increase in the price following a reduction in the GST rate. However, there were at least three customers to whom no supplies were made prior to November 15, 2017 rendering the alleged profiteering premise inapplicable. However, the profiteering calculation sheet included the sales made to these three parties as under:-

Name	Sale Value (Rs.)
Airplaza Retail Holdings Pvt. Ltd.	14,81,372
GPA Retail Pvt. Ltd.	3,20,694
Max Hyper Markets India Pvt. Ltd.	4,86,577

60. The DGAP vide his Report dated 23.01.2020 has replied to the Respondent No. 1's submissions dated 10.01.2020 and stated that the

Respondent No. 1 had raised objection on the time limit which barred reference from the Standing Committee on Anti-profiteering to the DGAP, however, his office had received the same on 27.03.2019 and his action was in consonance with the contents of the Rule 129 of the CGST Rules, 2017.

61. The DGAP vide his Report dated 23.01.2020 has also replied to the submissions of the Respondent No. 2 dated 08.01.2020 and stated the following:-

(a) That he had received the complaint on 27.03.2019 from the Standing Committee along with its minutes of meeting dated 11.03.2019 with a remark that the complaint was being forwarded to the DGAP for investigation. So, his action was totally in consonance with the contents of Rule 128 (1) of the CGST Rules, 2017.

(b) That Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, required the supplier of goods and services to pass on the benefit of tax rate reduction to the recipients by way of commensurate reduction in price and price included 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 CWF, regardless of the fact whether such extra tax collected from the recipients has been deposited in the Government account or not. Any extra tax returned to the recipients by the supplier by issuing credit notes could be declared in the return filed by such supplier and his tax liability would stand

adjusted to that extent in terms of section 34 of the CGST Act, 2017. The option was always open to the Respondent No. 2 to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

(c) That the period of investigation has neither been prescribed in the CGST Act, 2017 nor in the corresponding Rules/Notifications. The period from 15.11.2017 upto the last month of receipt of reference i.e. 27.03.2019 was taken for investigation from 15.11.2017 to 31.03.2019.

(d) That the calculation of profiteered amount has nothing to do with the costing of the product and it was independent of the costing of the product.

(e) That even if the Respondent No. 2 had no control on the prices at which sales were to be made to his recipients and he was duty bound to comply with the prices mentioned in the POs issued by the recipients, the Respondent No. 2 had directly collected the amount of Rs. 38,64,891/- and retained the same which he was legally bound to pass on to his recipients but he had chosen to increase the base prices.

(f) That the computation of gross profit ratio or gain/loss as per the financial statements could not be considered in the light of section 171 of the CGST Act, 2017.

62. We have carefully perused the complaint filed by the Applicant No. 1, Reports filed by the DGAP, the written and oral submissions made by both the Respondents and all the other material placed on record and it is revealed that the Respondent No. 1 is a part of the Raymond Group and is dealing in the personal grooming and toiletries such as

deodorants, shampoos, fragrant soaps, shaving creams, perfumes and room fresheners etc. and is engaged in the manufacture and sale of a number of products which are broadly grouped under the product categories of After Shave Lotion, Body Deodorant, Deodorant Women, Dye Stick, Eau-De-Cologne, Eau-De-Perfume, Perfume, Perfumed Deodorant, Shampoo, Styling Gel, Grooming Kit, Soap and Talc etc. It is also revealed that he is marketing his products through the channels of (i) General Trade (ii) Modern Trade (iii) Institutional Partners (iv) E-Commerce Platforms (v) CSD and (v) Distributors. General consumers are buying the above products through all the above channels. The Respondent No. 2 has admitted that he is a distributor of the Respondent No. 1 and is selling the above products. The Respondent No. 1 has also accepted that the Respondent No. 2 was his distributor. It is further revealed that the both the Respondents are registered under the CGST and the SGST Acts, 2017 respectively.

63. It is also clear from the record that the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 on the products which were being supplied by the Respondents, the benefit of which was required to be passed on by them to their customers as per the provisions of Section 171 of the GST laws applicable to them.

64. It is also apparent from the record that an application dated 30.07.2018 was filed before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, 2017, by the Applicant No. 1 alleging profiteering by M/s Raymond Ltd. in respect of the supply of "After shave Lotion Park Avenue Good Morning 50

ml" to M/s Big Bazar, Inder Lok. The Applicant No. 1 had alleged that M/s Raymond Ltd. had not reduced the selling price of the above product when the GST rate was reduced from 28 % to 18% w.e.f. 15.11.2017 and had kept the MRP of the above product unchanged at Rs. 115/- per piece and thus, the benefit of reduction in the GST rate was not passed on to the recipients by way of commensurate reduction in the price. The Standing Committee on Anti-profiteering had examined the above application in its meeting held on 11.03.2019 and referred the same to the DGAP for detailed investigation in terms of Rule 129 (1) of the above Rules. During the course of the investigation carried out by the DGAP it was revealed that the above product was supplied by the Respondent No. 2 after he had purchased it from the Respondent No. 1. Hence, both the above Respondents were issued notices under Rule 129 (3) of the above Rules and investigation was conducted against them for not passing on the benefit of tax reduction.

65. It is further apparent from the record that the Respondent No. 1 has admitted that his products were being sold through various channels mentioned supra and the pricing pattern for each channel and each customer was different as it was based on the demand and supply, market outreach of the distributor, yearly volume of sales, length of relationship and market aging etc. It is also clear from the Report dated 24.09.2019 that the Respondent No. 1 has provided the details of the channel wise outward taxable supplies of the products being supplied by him during the period from 15.11.2017 to 31.03.2019 and the DGAP has computed the profiteered amount by comparing the average base price of a product at which it was being supplied by

the Respondent No. 1 during the pre-GST rate reduction period with the actual base price of the same product at which it was sold during the post-GST rate reduction period. The DGAP has illustrated the computation of the profiteered amount vide Table-A of his Report dated 24.09.2019, in respect of "PA Asl Good Morning Splash 50 ml (MRP 115/- (NPAASG050008)" After Shave Lotion product sold through the General Trade Channel. He has calculated the average base price of the above product after discount by dividing the total taxable value by the total quantity of this item sold during the period from 01.11.2017 to 14.11.2017. The average base price so calculated of this product was compared with its actual selling base price during the post-GST rate reduction period at which it was supplied on or after 15.11.2017, through the above channel and accordingly, the DGAP has reported that the Respondent No. 1 has profiteered an amount of Rs. 6.04 on the above item. On the basis of above methodology profiteering in respect of all the impacted goods of both the above Respondents for the period from 15.11.2017 to 31.03.2019 has been calculated in the similar way for each channel of sale or the customer separately by the DGAP. The methodology adopted by the DGAP for computation of profiteered amount by comparing the average base prices of the products in respect of which the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017, with the actual post rate reduction base prices of these products appears to be correct, reasonable, justifiable and in consonance with the provisions of Section 171 of the CGST Act, 2017 as it was not possible to compare the actual base prices prevalent during the pre and the post GST period due to the reasons

that the Respondents No. 1 was (i) selling his products at different rates to different customers in the same channel based on the various factors such as demand and supply, market outreach of the distributor, yearly volume of sales, length of relationship and market aging etc. (ii) the same customer may not have purchased the same product during the pre and the post rate reduction periods and (iii) a customer may have purchased a particular product during the pre rate reduction period and may not have purchased it in the post rate reduction period or vice versa and (iv) the average base prices computed for a period of 14 days w.e.f. 01.11.2017 to 14.11.2017 or for the month of October 2017 provide highly representative and justifiable comparable average base prices. However, the average pre rate reduction base prices were required to be compared with the actual post rate reduction base prices as the benefit is required to be passed on each SKU to each customer. In case average to average base prices are compared for both the periods, the customers who have purchased a particular product on the base price which is less than the average base price but which is more than the commensurate base price, would not get the benefit of tax reduction. Such a comparison would be against the provisions of Section 171 as well as Article 14 of the Constitution which require that each customer has to be passed on the benefit of tax reduction on each purchase made by him. From the invoices and the details of the outward supplies made available by the Respondent No. 1 it has been found that the above Respondent has increased the base prices of his products when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017, therefore, the commensurate benefit of

GST rate reduction was not passed on to the recipients. Similarly, the Respondent No. 2 has also been found to have not passed on the benefit of tax reduction to his customers during the period w.e.f. 15.11.2017 to 31.03.2019. There was no reason for the Respondents to increase their base prices exactly equal to the rate of tax reduction w.e.f. 15.11.2017. Such a coincidence is incomprehensible, strange and unheard off which shows that the Respondents have deliberately tried to pocket the benefit of tax reduction to enrich themselves at the expense of the vulnerable customers. Accordingly, on the basis of the pre and post reduction GST rates and the details of the outward taxable supplies of the impacted products made during the period from 15.11.2017 to 31.03.2019 the profiteered amount in respect of the Respondent No. 1 has been rightly computed as **Rs. 18,48,43,084/-** channel/customer wise, including the GST, the details which have been mentioned in **Annexure-32** of the Report dated 24.09.2019 submitted by the DGAP. The above amount also includes an amount of **Rs. 8,97,253/-** including the GST which the Respondent No. 1 has profiteered from the Respondent No. 2, as has been detailed in **Annexure-33.** The State wise profiteered amount has been mentioned in **Table-B** of the Report. The profiteered amount has been calculated as **Rs. 38,64,891/-** including the GST in respect of the Respondent No. 2, the State wise break up of which has been given in **Table-C** of the Report dated 24.09.2019, furnished by the DGAP.

66. The Respondent No. 1 has stated in his submissions that the procedure followed by the DGAP during the investigation was not in accordance with Rule 128 and 129 of the CGST Rules, 2017 as the

complaint had been filed against M/s Raymond Ltd. and hence, the DGAP had no jurisdiction to expand the investigation and carry out the same against him. In this regard it would be appropriate to refer to the provisions of Section 171 (1) and (2) of the CGST Act, 2017 which provide as under:-

"(1). *Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*

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

67. It is apparent from the perusal of Sub-Section 171 (1) that both the benefits of tax reduction and ITC are required to be passed on by the suppliers to the customers by commensurate reduction in the prices as they have been granted from the public exchequer to benefit the consumers. Sub-Section 171 (2) provides that the Central Government may on the recommendations of the GST Council constitute an Authority to **examine** whether the input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the prices of the

goods or services or both supplied by him. Therefore, this Authority has mandate to examine all such cases in which the above benefits are required to be passed on either suo moto or to get them investigated through the DGAP and its power to do so is not restricted to only those cases or products in respect of which complaint has been made. It is also apparent from the provisions of Rule 129 (1) that the DGAP shall investigate and collect necessary evidence in all such cases in which the rate of tax has been reduced or the benefit of ITC has been granted which is required to be passed on to the buyers and submit his Report to this Authority under Rule 129 (6). Therefore, the DGAP is bound to investigate all such cases in respect of which the above benefits are required to be passed on and furnish his Report accordingly to this Authority once violation of the provisions of Section 171 comes to his notice during the course of the investigation.

68. It would also be pertinent to mention here that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

a) Conduct of investigation to collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, in

terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

b) Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee and the State level Screening Committees."

69. Therefore, it is also apparent from the above OM that the DGAP is responsible for investigating and collecting evidence necessary to determine whether both the above benefits have been passed on. No restrictions have been imposed either under the CGST Act, 2017 or Rule 129 of the CGST Rules, 2017, which stipulate that the DGAP shall investigate only those products or services in respect of which complaints have been received and he would not launch investigation in the cases in which violation of provisions of Section 171 (1) has been made if such infringement comes to his notice during the course of the investigation. Since, the DGAP is the investigating arm of this Authority any Report furnished by him to this Authority has to mention all the cases of denial of the above benefits once they have come to his notice keeping in view that this Authority has mandate to examine all such cases, determine the amount of benefit and provide relief to the affected consumers as per the provisions of Section 171 (2) and Rule 133 of the above Rules. The DGAP is legally required to investigate and bring before this Authority all those registered persons who have failed to pass on both the above benefits not withstanding whether any allegation has been received against them or not once he has become aware of such violation. It is further borne out from the record that M/s Raymond Ltd. had himself vide his letters dated

26.04.2019, 03.05.2019, 15.05.2019 and 17.05.2019 (Annexures-4 to 7 of the Report) informed the DGAP that the above product was manufactured by the Respondent No. 1 and was supplied by the Respondent No. 2 to M/s Big Bazar, therefore, it was incumbent upon the DGAP to investigate both the above Respondents in terms of Section 171 and Rule 129. During the course of the investigation the DGAP had further found that the Respondents had not passed on the benefit of tax reduction in respect of other products also which were being supplied by them inspite of tax reduction and therefore, he was legally bound to investigate and bring this infringement of Section 171 to the notice of this Authority. The Respondents cannot be allowed to deny benefit of tax reduction to their customers on the ground of jurisdiction and misappropriate the amount of benefit of tax reduction which they are not required to pay from their own pockets. Accordingly, the investigation conducted by the DGAP against the Respondent No. 1 is in consonance with the provisions of Section 171 and the Rules framed under Chapter XV of the CGST Rules, 2017 and hence, the above claim of the Respondent is not correct and it cannot be accepted.

70. The Respondent No. 1 has further stated that had the Standing Committee on Anti-Profiteering examined the sample invoices issued by him to the Respondent No. 2 in respect of the product code NPAASG050008 having description "PA Asl Good Morning Splash 50ml (MRP 115/-) After shave Lotion", it would have found that he had kept the base price same prior to and after the reduction in the rate of tax by offering discount of 7.81% on account of reduction in the rate of

GST. On the basis of the invoices, the Respondent No. 1 has submitted the following information:-

Pre-rate reduction				Post-rate reduction			
Date	**Base price**	**Discount**	**Net base price**	**Date**	**Base price**	**Discount (@ 7.81% of base price)**	**Net base price**
10.08.17	64.90	-	64.90	24.01.18	70.40	5.50	64.90
21.08.17	64.90		64.90				
24.10.17	64.90	-	64.90	30.01.18	70.40	5.50	64.90
30.11.17	64.90	-	64.90	13.03.18	70.40	5.50	64.90
14.11.17	64.90	-	64.90	15.03.18	70.40	5.50	64.90

71. Perusal of the above Table shows that the Respondent No. 1 was charging Rs. 83.07 (64.90+28% GST) on the above product before the tax reduction and after the rate reduction he should have charged Rs. 76.58 (64.90+18% GST) and hence, the price was required to be commensurately reduced by Rs. 6.49 @10% equal to the tax reduction. However, the Respondent has claimed to have passed on benefit of Rs. 5.50 @7.81% only as discount which is less by Rs. 0.99 and 2.19% than the commensurate reduction in the price. Moreover, the Respondent No. 1 has not produced any evidence to show that he has given the above discount on account of passing on the benefit of tax reduction. It is further clear from the above Table that the Respondent has himself admitted that he had increased the base price from Rs. 64.90 to Rs. 70.40 whereas he could not have increased it as he was required to maintain the pre rate reduction base price. Therefore, the Respondent has not kept the pre and post rate reduction base prices same and has

thus profiteered to the extent of Rs. 6.49 per unit of the above product and has denied the benefit of tax reduction and therefore, the above contention of the Respondent is not correct.

72. The Respondent No. 1 has also submitted that there should have been some material to prima facie establish the allegation of profiteering before a reference was made by the Standing Committee to the DGAP. This Authority has already given its findings on this issue in its Interim Order dated 17.02.2020 and hence, the same is not being discussed in this order. In this regard, reliance has been placed by the above Respondent on the judgements/order passed in the cases of ***Ved Prakash Prabhudayal Agarwal v. ITO*** **(1982) 135 ITR 756 (Bom.),** ***ITO v. Lakhmani Mewal Das*** **(1976) 103 ITR 437 (SC)** and ***M/s Amway India Enterprises Private Limited*** (Case No. 12/2018). However, since there was prima facie accurate and adequate evidence available before the Standing Committee on Anti-Profiteering in terms of Rule 128 (1), as has been held vide Interim Order dated 17.02.2020, the above cases are not being followed.

73. The Respondent No. 1 has also contended that the period of 16 months and 16 days adopted by the DGAP for investigation, from 15.11.2017 to 31.03.2019, was arbitrary. In this regard it would be relevant to mention that the rate of tax on the products being supplied by the above Respondent was reduced w.e.f. 15.11.2017 and therefore, he was legally required to pass on the benefit of tax reduction from the above date as per the provisions of Section 171 (1) of the above Act. During the course of the investigation it has been found that the Respondent No. 1 instead of reducing his prices commensurately had infact increased them from the above date. Therefore, as per the provisions of Section 171 (1) he is

liable to be investigated till the time he passes on the benefit of tax reduction as he cannot misappropriate the above benefit. The Respondent No. 1 has failed to produce any evidence which could show that he has passed on the above benefit till 31.03.2019 and hence he has been rightly investigated till the above date. Had he produced evidence to the effect that he has passed on the benefit before the above date the DGAP would not have investigated him beyond that date. Since, the DGAP had received the complaint against the above Respondent from the Standing Committee on 27.03.2019 he has correctly investigated him till 31.03.2019 as there was no evidence till that date that the Respondent No. 1 has passed on the benefit of tax reduction and a date was required to be fixed for conducting investigation. It would be further relevant to mention here that keeping in view that a registered person may not reduce the prices commensurately at any time this Authority has been given power under Rule 133 (3) (a) of the above Rules to direct such a registered person to reduce his prices.

74. He has further contended that after the GST rate reduction he had undertaken a massive exercise to determine the revised prices and reflected the same on the packages. However, the Respondent has not produced even a single invoice or sticker or label of the product in respect of which he had reduced the price. On the contrary there is ample evidence that he had infact increased the prices w.e.f. 15.11.2017 of all the impacted products and hence the above claim of the Respondent is incorrect.

75. The Respondent No. 1 has also claimed that where ever it was feasible to increase the grammage instead of reducing the MRPs he had

increased the same from January, 2018. However, the above Respondent has:-

- Not supplied the names of the products in respect of which the benefit of tax reduction was passed on by him by way of increase in the quantity of the products.
- What were the pre rate reduction prices of these products.
- What was the quantity of each product during the pre rate reduction period.
- What was the quantity in respect of each product which was commensurately required to be increased.
- What was the quantity of such products during the post rate reduction period.
- Copies of the production logs showing the date and quantity of increase.
- Copies of the pre rate reduction and post rate reduction labels of the products showing increase in the quantity.
- Copies of invoices showing the pre and post rate reduction prices of all such products.
- Copies of the advertisements or other means used to inform the consumers that the benefit of tax reduction was being passed by increase in the quantity.
- Evidence showing that the excess price charged from the customers w.e.f. 15.11.2017 till the date of increase in the quantity or the profiteered amount was deposited in the CWFs.

Therefore, it is evident that the above claim of the Respondent is without any basis and the hence, the same cannot be relied upon.

76. The Respondent has further claimed that in the cases of **M/s Sharma Trading Company, M/s Hardcastle Restaurants, M/s Unicharm India Pvt. Ltd., M/s Excel Rasayan Pvt. Ltd.** and **M/s Harish Bakers & Confectionaries** the period of investigation was restricted to 3 months by the DGAP which should also have been done in his case. In this respect it would be pertinent to note that the complaints in the above cases were received immediately after the reduction in the rate of tax was announced, therefore, the period of investigation was restricted to 3 months and the above parties were ordered to reduce their prices from the date of passing of the orders. However, there is no restriction on launching fresh investigation against them in case they have not passed on the benefit of tax reduction subsequent to passing of the orders against them. Since, the orders were passed against them after elapse of a certain period of time the DGAP was also directed to investigate them further from the above period in case they continued to remain wilful defaulters. Therefore, the above cases do not support the claim made by the above Respondent. He has also vehemently claimed that no period of investigation has been fixed in the Act or the Rules and if his claim is assumed to be correct then the Respondent No. 1 can also not contend that the period of investigation should be restricted to 3 months. Therefore, the above claim of the Respondent is not tenable. The Respondent has also placed reliance on the judgement of the Hon'ble Supreme Court passed in the cases of ***S. G. Jaisinghani v. Union of India & Ors. (1967) 2 SCR 703*** which pertains to the

seniority of the Income Tax Officers and **Maneka Gandhi v. Union of India 1978 AIR 597** which was concerned with confiscation of her passport, in his support. However, the same are not being followed as the facts of the present case are entirely different from the facts of both the above cases as the Respondent No. 1 cannot claim violation of his fundamental rights on the ground that he would not pass on the benefit of tax reduction beyond a period of 3 months, which has been fixed by him illegally, arbitrarily and as per his own whims.

77. The Respondent No. 1 has also claimed that the method of adoption of average base prices pre-rate reduction at customer type/channel level and comparing them with the actual invoice-wise base prices post rate reduction was incorrect. It would be appropriate to mention here that the Respondent No. 1 has himself claimed in his submissions that he was selling his products at different rates to different customers in the same channel/customer type based on the various factors such as demand and supply, market outreach of the distributor, yearly volume of sales, length of relationship and market aging etc., therefore, it is apparent that he was charging different prices on account of dozens of variables from different customers. Therefore, it is impossible to take in to account the actual base prices for comparison and hence, the only alternative available is to compute the average base prices which has been done in the present case after considering a very short period of 14 days. It would also be pertinent to mention that as per the provisions of Section 171 (1) each customer is entitled to receive the benefit of tax reduction on each purchase and hence the amount of benefit has to be accordingly computed. In case the comparison is made after calculation of the average base price after the rate

reduction, the benefit of tax reduction would not be passed on to those customers who have purchased a particular product below the average base price but above the commensurate base price. Therefore, comparison of average base prices pre and post rate reduction would be hit by the provisions of Section 171 as well as Article 14 of the Constitution and therefore, the above claim of the Respondent is unacceptable. The Respondent has also cited the order of the Hon'ble High Court of Delhi passed in W. P. (C) 1780/2020 in the case of ***M/s Johnson & Johnson Pvt. Ltd. v. Union of India & Ors.*** and claimed that the order passed by this Authority in the above case had been stayed on the ground that the methodology applied to compute the profiteered amount was not correct. In this regard it is submitted that the above case is pending before the Hon'ble Court and no final judgement has been passed and hence, the above case is not being followed.

78. The Respondent No. 1 has also argued that the line items in respect of which 7.81% discount had been passed on by him should be removed from the profiteering analysis. In this connection it would be relevant to point out that as per the provisions of Section 171 (1) "*Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*" Therefore, there is no provision of passing on the benefit of tax reduction by way of offering discounts and it should be invariably passed on by commensurate reduction in the prices only. As has been discussed above the Respondent was required to pass on benefit of 10% rate reduction whereas he has passed on benefit of 7.81% only and thus he has not passed on the full benefit of tax reduction. This

benefit was to be calculated on each product and hence it would be different for different products based on their prices whereas the Respondent has passed benefit at the uniform rate, which is wrong and illegal. The Respondent has not produced any evidence to establish how he had arrived at the 7.81% discount. It is also evident from the perusal of the tax invoice dated 17.02.2018 attached by him at page 40 with Volume One of his submissions dated 02.03.2020 that an amount of Rs. 7,140.60 has been shown as discount. However, there is no mention of the % of the discount and that this discount has been given on account of benefit of tax reduction. Perusal of tax invoice dated 14.02.2018 (page 45 of Volume One) shows that discount of 7.81% has been given on 4 different products however, there is no mention that this discount has been given due to tax reduction. Perusal of page 94 of Volume One shows that the prices have been reduced by 6.62% instead of 10%. It is also clear from perusal of para 25 of the Report dated 24.09.2019 furnished by the DGAP that the discount of 7.81% offered by the Respondent did not satisfy the conditions imposed vide Section 15 (3) of the CGST Act, 2017 as it did not form part of the taxable supply. Therefore, the products on which the above discount has been illegally and arbitrarily given by the Respondent cannot be excluded from computation of the profiteered amount. The Respondent has also placed reliance on the case of ***M/s Lipton India Ltd. v. State of Tamilnadu 1973 (32) STC 194 (Mad.)*** in his support, however, the same is not relevant in the facts of the present case.

79. The Respondent No. 1 has also averred that the profiteering should not be computed in respect of the line items in respect of which credit

notes were issued by him. However, the Respondent has not supplied details of the credit notes which he has claimed to have issued due to return of the goods supplied by him or due to corrections made in the invoices. Hence, the above contention of the Respondent cannot be admitted.

80. The Respondent No. 1 has also pleaded that in the instant case there had been a reduction in the tax rate by 10% which as per the DGAP's methodology could be given effect by keeping the pre tax base price constant, which has resulted in a reduction of 7.81% in the cum tax price charged to the customers, therefore, the allegation of profiteering could only be to the extent of 7.81% and the business profits could not be added in it. The above argument of the Respondent is completely flawed as the Respondent has not passed on the benefit of 10% rate reduction commensurately as has been illustrated by computing the profiteered amount in respect of the product "PA Asl Good Morning Splash 50ml After Shave Lotion" above as he has not maintained the pre rate reduction base price of the above product but has increased it w.e.f. 15.11.2017. Moreover, although the reduction in the price of the product was required to be made to the extent of 10% whereas it was claimed to have been made up to the extent of 7.81% only which was 2.19% less than the legally required reduction. The Respondent has also claimed to have made similar reduction of 7.81% on rest of the products in respect of which the selling price was to be reduced therefore, it is clear that in respect of these products the prices have not been reduced to the extent of 10%. Therefore, the claim of the Respondent that the profiteering could only be to the extent of 7.81% is completely wrong as the above percentage is unreasonable,

arbitrary and ultravires of the provisions of Section 171 (1) and hence the same is not tenable. The Respondent No. 1 has also computed an amount of Rs. 5.47 Crore on this ground and argued that it should be excluded from the profiteered amount. However, as has been discussed above the claim made by the Respondent on this ground is not correct and hence the above amount cannot be reduced from the profiteered amount.

81. The Respondent No. 1 has also submitted that there was no effective reduction in the rate of tax on the SKUs which were produced in the excise free units as only the VAT and CST in the range of 14% - 15% were applicable on them during the pre GST period whereas after coming in to force of the GST the rate of tax was increased to 28% which was further reduced to 18% w.e.f. 15.11.2017 and hence no benefit was required to be passed on as the above rate of tax was almost equal to the pre GST rate of tax. In this connection it would be appropriate to note that the rate of tax was 28% w.e.f. 01.07.2017 on the products which were being manufactured by the above Respondent in the Excise Duty free areas which was reduced to 18% w.e.f. 15.11.2017 and hence, there was reduction of 10% in the rate of tax benefit of which was required to be passed on by the Respondent. Therefore, the above plea of the Respondent is not maintainable. Accordingly, an amount of Rs. 2.36 Crore computed as profiteering in respect of the SKUs manufactured in the above areas cannot be reduced from the profiteering.

82. The Respondent No. 1 has also contended that he had launched certain products with 50% free quantity as an introductory offer in July 2017 which was withdrawn w.e.f. 15.11.2017. However, he had

decided to continue giving discount @ 7.81% until April 2018, by which time the old stock had exhausted and he had started selling the new stock without introductory offer. He has also contended that once sale of the products had commenced without introductory offer, the prices of the products charged during the pre-rate reduction period no longer remained as comparable prices as the pre-rate reduction prices were highly discounted. Hence, no profiteering should be computed on these products where introductory offers were withdrawn. In this regard it would be relevant to state that the Respondent had only withdrawn the additional quantity of the products which was offered by him during the introductory offer but had not reduced their prices which had been increased by him w.e.f. 15.11.2017 and hence, comparable pre rate reduction prices were available for computation of the profiteered amount. Hence, the above contention of the Respondent is not tenable and accordingly, an amount of Rs. 1.33 Crore which has been claimed to have been wrongly computed by the DGAP cannot be excluded from the profiteered amount.

83. The Respondent No. 1 has also submitted that he had made sales to a class of customers known as 'Institutional Customers' on highly discounted prices and there were no comparable prices in respect of these customers and hence profiteering could not be alleged. However, perusal of the Report dated 24.09.2019 furnished by the DGAP shows that the Respondent No. 1 has himself supplied the details of the prices of the products supplied to the Institutional Customers during the pre and the post rate reduction periods and hence, comparable prices were available to the DGAP for computation of the profiteered amount. Accordingly, the above claim of the

Respondent in not correct and hence, profiteered amount of Rs. 2.64 Crore computed against the sales made to the institutional Customers, cannot be excluded from the profiteering.

84. The Respondent No. 1 has also pleaded that the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017 and accordingly, he had reduced the rate of GST from 28% to 18% in the invoices issued by him to his customers and hence, he had passed on the benefit of tax reduction. The above plea of the Respondent is wrong and misleading as mere charging of GST @ 18% after the tax reduction does not amount to passing on the benefit of tax reduction in view of the fact that the Respondent had increased the base prices of his products w.e.f. 15.11.2017 and then charged GST @ 18% on them whereas he was legally bound not to increase them. The Respondent had continued to charge the same cum tax prices which he was charging before the tax reduction and hence, he has not passed on the benefit of tax reduction. Therefore, the above plea of the Respondent is hollow and hence, it cannot be accepted.

85. The Respondent No. 1 has also alleged that the DGAP had used methodology of 'Zeroing' which was used by the Anti-dumping Authorities in the European Union (EU) to compute profiteering which was incorrect. In this regard, the Respondent No. 1 has referred to the ***Report No. WT/DSI41/AB/R dated 01.03.2001*** of the Appellate Body of the WTO regarding Anti-Dumping Duties on imports of Cotton-Type Bed Linen from India vide which it was held that the methodology of 'Zeroing' could not be applied and both the negative and positive margins were to be considered while applying the anti-dumping provisions. The above contention of the Respondent is not correct as

no 'netting off' can be applied in the cases of profiteering as the benefit has to be passed on to each customer which has to be computed on each SKU. Netting off implies that the amount of benefit not passed on certain SKUs will be subtracted from the amount of benefit passed on other SKUs and the resultant amount shall be determined as the profiteered amount. If this methodology is applied the Respondent would be entitled to subtract the amount of benefit which he has not passed on one product from the amount of benefit which he has claimed to have passed on the other product, which will result in complete denial of benefit to the customer who has purchased a particular project on which no benefit or less benefit has been passed on. Hence, the methodology of 'netting off' cannot be applied in the case of FMCGs and the methodology of 'Zeroing' has to be applied as the customers have to be considered as individual beneficiaries and they cannot be netted off against each other. This Authority has also clarified in its various orders that the benefit cannot be computed at the product, service or the entity level as the benefit has to be passed on each SKU and service as per the provisions of Section 171 (1). Hence, the above contention of the Respondent is not correct as the Respondent cannot insist of not applying the above methodology of 'Zeroing' as it would amount to violation of the provisions of Section 171 of the above Act as well as Article 14 of the Constitution. Therefore, an amount of Rs. 18.60 Crore cannot be excluded from the profiteered amount on the above ground.

86. The Respondent No. 1 has also cited the order dated 18.02.2020 of the Hon'ble High Court of Delhi passed in W. P. (C) 1780/2020 in the case of ***M/s Johnson & Johnson Pvt. Ltd. v. Union of India & Ors.,***

wherein the order passed by this Authority was challenged and has contended that the Hon'ble High Court had observed that the Petitioner had been able to make out a strong case for grant of interim relief and one of the points considered by the Hon'ble High Court was that cases where the prices actually fell after reduction in the rate of tax were excluded from consideration by the this Authority in its impugned order. In this connection it would be appropriate to mention that the above case is still pending before the Hon'ble Court and therefore, no final judgement has been passed in the above case. The above Respondent has also placed reliance on the judgement of the Hon'ble Supreme Court passed in the case of ***Dai Ichi Karkaria Ltd. 1999 (112) ELT 0353 SC*** to support his claim. In this regard it would be pertinent to mention that no man of commerce is entitled to deny the benefit of tax reduction to one customer on the ground that he has passed his share of the benefit to another customer. Hence, the above case does not assist the cause of the Respondent.

87. The Respondent has also submitted that the alleged profiteered amount has been incorrectly inflated in the Report by adding GST which was not sustainable. In this connection it would be appropriate to mention that the Respondent has not only collected excess base prices from his customers which they were not required to pay due to the reduction in the rate of tax but he has also compelled them to pay additional GST on these excess base prices which they should not have paid. The Respondent has thus defeated the objective of both the Central and the State Governments to provide the benefit of rate reduction to the ordinary customers by sacrificing their tax revenue. The Respondent was legally not required to collect the excess GST

and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of tax reduction to the ordinary buyers by charging excess GST. Had he not charged the excess GST the customers would have paid less price while purchasing goods from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the above Respondent. It would also be appropriate to state here that price includes GST also. The profiteered amount can also not be paid from the GST deposited in the account of the Central and the State Governments by the Respondent as the above amount is required to be deposited in the CWFs as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017 along with the interest. Therefore, the above contention of the Respondent is untenable and hence it cannot be accepted. Accordingly, an amount of Rs. 2.82 Crore representing the GST cannot be reduced from the profiteered amount. The above Respondent has also referred to the cases of ***R. S. Joshi Sales Tax Officer Gujarat v. Ajit Mills Limited*** **(1977) 4 SCC 98** and ***Dai Ichi Karkaria*** supra in his support, however, in view of the fact that the GST collected by the above Respondent amounts to denial of benefit of tax reduction to the customers both the above cases cannot be relied upon.

88. The Respondent No. 1 has also argued that the interpretation of Section 171 of CGST Act done by the DGAP was not correct as passing of the benefit of GST rate reduction through discounts etc. was in full compliance with the provisions of Section 171 of CGST Act. However, it is clear from plain reading of the provisions of Section 171

(1) that the benefit of tax reduction can be passed only by commensurate reduction in the price and not be any other means including the discounts. Moreover, the discount of 7.81% claimed to have been passed on account of tax reduction has been arbitrarily and wrongly computed by the Respondent and was also not commensurate with tax reduction of 10%. Not even a single tax invoice produced by the Respondent shows that the above discount was given on account of tax reduction. Moreover, the discounts so offered by the Respondent do not satisfy the conditions imposed under Section 15 (3) of the CGST Act, 2017 quoted supra. The strategy adopted by the Respondent to first increase the base prices from 15.11.2017 and then offer discount shows that he had no bonafide intention of passing on the benefit of tax reduction. Hence, the above claim of the Respondent is not tenable.

89. The Respondent No. 1 has further argued that the word "commensurate reduction" in Section 171 (1) denoted reduction in the price after taking into account all the factors which impacted pricing of goods. In this connection it would be relevant to mention that had the Respondent not increased his base prices w.e.f. 15.11.2017 and applied 18% GST post rate reduction it would have automatically resulted in commensurate reduction in the prices. No elaborate and complex exercise was involved in doing so as the Respondent is trying to make out. The intent of the above Section is to pass on the benefit of tax reduction which has no connection with fixing of the prices of the products as both are independent of each other. One product may have different prices at different levels but it cannot have different prices at the same level. However, the benefit of tax reduction has to

be passed on at every level so that it ultimately reaches the ordinary customer. Since, the benefit of tax reduction has not been passed on by the above Respondent there is no question of its being passed down the supply chain. As already discussed above the benefit has to be passed on by way of reduction in prices and hence, it cannot be passed in any other manner as per the convenience of the Respondent. Therefore, all the above claims of the Respondent cannot be accepted.

90. The Respondent No. 1 has further submitted that the term 'profiteering' was not defined in the CGST Act or the rules made thereunder. He has also cited the definition of the term 'profiteering' as per the various dictionaries and contended that 'profiteering' referred to the excessive, exorbitant and unjustifiable profits arising due to supply of essential goods. However, the above contention of the Respondent is wrong as what would constitute the 'profiteered' amount has been elaborately defined in Section 171 of the CGST Act, 2017 itself as under:-

"(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices."

(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether Input Tax Credits availed by any registered person or the reduction in the tax rate have actually

resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

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

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

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

(Emphasis supplied)

91. Therefore, it is evident from the above Section and the Explanation attached to it that profiteering pertains to the amount of benefit which has been denied to the recipients by a registered person by not reducing the prices of his products commensurately on which the rate

of tax has been reduced. Hence, the definitions quoted by the Respondent from various dictionaries are not applicable. Similarly, his contention that the above term refers to excessive, exorbitant and unjustifiable profits arising due to supply of essential goods is also not correct.

92. The Respondent No. 1 has also submitted that the amount held as profiteered, should be refunded to his recipients (distributors) and should not be deposited in the CWFs as they were identifiable. In this connection it would be appropriate to refer to the intention of passing on the benefit of tax reduction. It has been explained several times by the Hon'ble Union Finance Minister as well as the GST Council which is a constitutional body constituted under 101st Amendment of the Constitution and has the Finance and Taxation Ministers of all the States as its members that the benefits of tax reduction and ITC should be passed on to the general consumers/buyers who bear the burden of tax and who are unorganized, voiceless and vulnerable liable to be exploited and denied the benefit by the big suppliers and manufacturers. The intention of reduction in the rate of tax is not to enrich the distributors/suppliers/retailers/big stores at the expense of the ordinary customers by passing on the benefit of tax reduction from the public exchequer. Therefore, the benefit is required to be passed on to the general recipients and hence, the profiteered amount has to be passed on to each of such customers on their each purchase and if they are not identifiable the same has to be deposited in the CWFs as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017. Accordingly, the Respondent cannot pass on the benefit of tax reduction to his recipients/distributors and fatten their profits as there is

sufficient evidence on record that the above benefit has not been passed on to the ordinary customers by the above Respondent as he had increased his prices immediately w.e.f. 15.11.2017, the date from which the rate of tax was reduced. Therefore, the above contention of the Respondent is not maintainable. He has also argued that as per the law settled in the cases of ***State of Jharkhand v. Ambay Cements 2004 (178) E.L.T. 55 (SC)*** and ***Tata Chemicals Ltd. v. Commissioner of Customs 2015 (320) E.L.T. 45 (SC)*** any act prescribed to be performed in a particular manner has to be done in the prescribed manner and not to be performed at all. However, the above cases are of no help to the above Respondent as the procedure for depositing the profiteered amount in the CWFs has been duly prescribed in Rule 133 which is meticulously being followed by this Authority.

93. The Respondent No. 1 has also stated that as a manufacturer he was not under legal obligation to fix MRPs and affix stickers notifying change in the MRPs on his products. The above contention of the Respondent No. 1 is frivolous as the Respondent being a manufacturer as per the provisions of Rule 2 (d) is legally responsible for fixing the MRPs of his products as per the provisions of Rule 2 (m) of the Legal Metrology (Packaged Commodities) Rules, 2011. However, he has not re-fixed the MRPs after the rate reduction w.e.f. 15.11.2017. He was also required to stamp or re-sticker or reprint the MRPs on all the impacted SKUs as per the letter issued by the Ministry of Consumer Affairs, Food and Public Distribution, Govt. of India, dated: 16.11.201 under Rule 6 (3) which states as under:-

"WM-10(31)/2017

Government of India

Ministry of Consumer Affairs, Food and Public Distribution

Department of Consumer Affairs

Legal Metrology Division

Krishi Bhawan, New Delhi

Dated: 16.11.2017

To,

The Controller of Legal Metrology,

All States/ UTS

Subject: Labelling of MRP of pre-packaged commodities due to reduction in GST-reg.

Reference is invited to this office letter No. WM-10(31)/2017 dated 29.9.2017 regarding declaration of MRP on unsold stock of pre-packaged commodities manufactured/packed/ Imported prior to 1st July, 2017. **Subsequent to that, Government has reduced the rates of GST on certain specified items. Consequent upon that, permission is hereby granted under sub-rule (3) of rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011, to affix an additional sticker or stamping or online printing for declaring the reduced MRP on the pre-packaged commodity. In this case**

also, the earlier Labelling/ Sticker of MRP will continue to be visible. (Emphasis supplied)

1. Further, this relaxation will also be applicable in the case of unsold stocks manufactured/packed imported after 1st July, 2017 where the MRP would reduce due to reduction in the rate of GST post 1st July, 2017.
2. This order would be applicable upto 31st December, 2017

Yours faithfully

(B. N. Dixit)

Director of Legal Metrology

Tel: 01123389489 / Fax.-011-23385322

Email: dirwm-ca@nic.in

Copy to: All Industries/ Industry Associations/ Stake Holders

However, the Respondent has not complied with the above direction and has continued to sell his impacted SKUs at the pre-reduction MRPs. The Respondent had simply transferred his legal obligation to his distributors who had no power to re-fix the MRPs and stamp/re-sticker/print them on the impacted SKUs. Since, the MRPs were not reduced and affixed on the above SKUs by the Respondent there is no likelihood of their being sold to the consumers at the commensurate reduced MRPs keeping in view the above rate

reduction. Accordingly, the Respondent has acted in contravention of the provisions of Section 171 (1) of the above Act.

94. The Respondent No. 1 has also averred that in the absence of any prescribed methodology and procedure for calculation of profiteering in the CGST Act and the CGST Rules or the procedure prescribed by this Authority under Rule 126, the present proceedings were arbitrary and liable to be dropped as they were violative of the principles of natural justice. In this regard it is mentioned that the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC has been explained in Section 171 (1) of the CGST Act, 2017 itself which provides that "*Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.*" It is clear from the plain reading of the above provision that it mentions "reduction in the rate of tax or benefit of ITC" which means that the benefit of tax reduction and ITC has to be passed on by a registered person to his recipients since both the above benefits are being given by the Central and the State Governments out of their tax revenue, which cannot be misappropriated by a registered dealer. It also mandates that the above benefits are to be passed on each SKU or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefit or the profiteered amount has to be computed for which investigation has to be conducted in respect of all such SKUs/units/services by the DGAP. What would be the 'profiteered amount' has been clearly mentioned in the Sub-Section and the explanation attached to Section 171 which have been quoted above. These benefits can also

not be passed on at the entity/organisation/branch level as they have to be passed on to each and every buyer at each SKU/unit/service level by treating them equally. The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another product. Each customer is entitled to receive the benefit of tax reduction or ITC on each SKU or unit or service purchased by him subject to his eligibility. The term "commensurate" mentioned in the above Sub-Section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each product or unit or service based on the tax reduction or the additional ITC which has become available to a registered person. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT which was available to a builder in the pre-GST period with the ITC available to him in the post GST period w.e.f. 01.07.2017. Similarly, the benefit of tax reduction would depend upon the quantum of reduction in the rate of tax from the date of its notification. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from SKU to SKU or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of the profiteered amount is also a mathematical exercise which can be

done by any person who has elementary knowledge of accounts. However, to further explain the legislative intent behind the above provision, this Authority has been authorised to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017 and not on 19.07.2018 as has been claimed by the above Respondent. However, no fixed formula, in respect of all the sectors or the SKUs or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of payment of price or instalments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT and ITC availed/available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to the other project. Therefore, no set procedure/ methodology/ guidelines/ principles can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of FMCGs, restaurant service, construction service and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied in the other sector. Moreover, both the

above benefits have been given by the Central as well as the State Governments as a special concession out of their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provision, made by the Central and the State legislatures in their respective GST Acts is to pass on the above benefits to the common buyers who bear the burden of tax. The Respondent is trying to deliberately mislead by claiming that he was required to carry out highly complex and exhaustive mathematical computations for passing on the benefit of tax reduction which he could not do in the absence of the principles, procedure and methodology framed under the above Act and the Rules. However, his claim is absolutely wrong as he was only required to maintain the same base prices of his products which he was charging before the tax reduction was notified w.e.f. 15.11.2017 and charge 18% GST instead of 28% on these base prices. Accordingly, MRPs of his impacted products were required to be the re-fixed and stickered by him as manufacturer and conveyed to his dealers. However, the Respondent had increased his base prices and continued to charge the same prices which he was charging before the tax reduction and had also not re-fixed his MRPs which he was bound to do in terms of Section 171 of the CGST Act, 2017 as well as the Legal Metrology Act, 2009. Hence, no principles, methodology and procedure or guidelines or elaborate mathematical calculations are required to be

prescribed separately for passing on the benefit of tax reduction. The Respondent cannot deny the benefit of tax reduction to his customers on the above ground as Section 171 provides clear cut methodology and procedure to compute the benefit of tax reduction. Therefore, the above plea of the Respondent is frivolous and hence the same cannot be accepted.

95. The Respondent No. 1 has also submitted that the present proceedings have been initiated in violation of the principles of natural justice as Show Cause Notice has not been issued to the Respondent No. 1 proposing the action to be taken against him by this Authority. In this regard it is mentioned that a notice dated 03.10.2018 was duly issued to the Respondent listing the allegations and the action proposed to be taken against him. A copy of the Report dated 24.09.2018 furnished by the DGAP and all the Annexures attached with the above Report which detailed the mathematical methodology employed by the DGAP to compute the profiteered amount was also supplied to the Respondent. The above notice had also clearly mentioned that it was proposed to fix liability of the Respondent under Section 171 of the above Act. He was also asked to put in appearance and file his submissions. The Respondent has addressed elaborate oral and written submissions on 10.01.2020 and 02.03.2020 and has also made Power Point presentations. He has been given sufficient opportunity to present his case and therefore, the allegations of violation of the principles of natural justice and non service of notice are frivolous and not tenable.

96. The Respondent has also claimed that a show cause notice formed the base of the principle of *audi alteram partem* as was settled in the cases of ***Canara Bank and others v. Debasis Das and Others (2003) 4 SCC 557***, ***Uma Nath Pandey and Others v. State of UP (2009) 12 SCC 40, Collector of Central Excise v. ITC Ltd. 1994 (71) ELT 324, Vasta Bio-Tech Pvt. Ltd. v. Assistant Commr. 2018 (360) ELT 234, Dharampal Satyapal Ltd. v. Dy. Commissioner of Central Excise 2015 (320) ELT 3, Anrak Aluminium Ltd. v. Commissioner*** **2017 (4) G.S.T.L. 248 and *Union of India v. Hanil Era Textiles Ltd*. 2017 (349) ELT 384 (SC)**. In this connection it is mentioned that a notice was duly served on the Respondent and he was also given full opportunity to defend himself before this Authority and hence, the above cases are not being followed.

97. The Respondent No. 1 has also submitted that in absence of a judicial member, the constitution of this Authority was illegal. In this regard it is mentioned that there is no Judicial Member in such Authorities viz. the Telecom Regulatory Authority of India (TRAI) and the Authorities on Advance Rulings on the GST or the Excise and the Service Tax. All the proceedings are conducted by this Authority by applying the principles of natural justice and all its orders are detailed, reasoned and speaking. They are also subject to judicial review and hence, absence of Judicial Member does not cause any prejudice to the above Respondent.

98. The Respondent No. 1 has further submitted that Section 171 of the CGST Act and Rules made thereunder pertaining to Anti-Profiteering were unconstitutional being violative of Article 14 and Article 19 (1) (g) of Constitution of India. In this connection it would be pertinent to

mention that Section 171 only requires the Respondent to pass on the benefit of tax reduction to the buyers and does not require him to fix his prices. The above benefit has been granted to the general public by the Central and the State Governments by sacrificing their tax revenue which the Respondent cannot be allowed to misappropriate and enrich himself at the expense of common consumers who are unorganised, voiceless and vulnerable. The Respondent is free to exercise his right to trade and fix his prices keeping in view his cost of goods, market conditions, competition and his business strategy but he cannot deny the above benefit under the pretext that it infringes his right to trade. Neither the DGAP nor this Authority has mandate to direct the Respondent to fix his prices as per their directions nor they have directed so and hence all such claims made by the Respondent are farfetched and are not tenable.

99. The Respondent No. 1 has further submitted that Rules 126, 127 and 133 of the CGST Rules suffer from the vice of excessive delegation. In this connection it would be pertinent to mention that Rule 126 empowers this Authority to frame "Methodology & Procedure" to regulate its proceedings. This power is available to all the judicial, quasi-judicial and statutory bodies e.g. the GST Tribunal has such power under Section 111 (1) of the CGST Act, 2017 and the Competition Commission has this provision under the Competition Act, 2002. Therefore, no special privilege has been conferred on this Authority. The provisions of Rule 127 outline the duties assigned to this Authority in the absence of which the objective of this Authority cannot be defined. Similarly Rule 133 prescribes the method to determine the benefit of tax reduction and ITC and the reliefs which

this Authority can grant to a recipient who has been denied these benefits. Both these Rules are similar to the Rules which govern the duties and powers of other such Authorities and hence they do not confer any special jurisdiction to this Authority. All the above Rules have been framed under Section 164 of the CGST Act, 2017 which has approval of the Parliament. They have further been notified by the Central Government on the recommendation of the GST Council which is a body established under 101st Amendment of the Constitution and has representation of all the States, Union Territories and the Central Government. Hence, the above Rules have been framed after thorough scrutiny and consultation at several levels and hence to claim that the above Rules amount to excessive delegation would be completely incorrect and untenable.

100. The Respondent No. 1 vide his written submissions dated 02.03.2020 has also submitted that the Interim Order No. 10/2020 dated 17.02.2020 passed by this Authority, rejecting his submissions on the issues relating to the reference from the Standing Committee to the DGAP for launching investigation against him under Rule 129 (1), required modification. He has referred to para 54 and 55 of the above order and argued that the reminder dated 22.02.2016 issued by the Applicant No. 1 through his e-mail to the Standing Committee on Anti-Profiteering could not be treated as a fresh complaint by the above Committee and hence it had no right to re-look or re-examine the complaint made by the above Applicant. The Respondent has relied on the judgement passed in the case of ***Aluminium Cables & Conductors (U. P.) Pvt. Ltd. v. Collector of Central Excise 1993 (65) ELT 261 (Tribunal)*** to support his above claim. He has further

argued that even if the reminder was assumed to be the removal of the defect it dated back to the original complaint and hence the fresh examination of the same was barred by limitation. He has also cited the following cases in his support:-

(i) ***Roshan Lal Gupta & Sons Pvt. Ltd. v. Union of India 2016 (331) ELT 239 (Guj.).***

(ii) ***Vidyawati Gupta & others v. Bhakti Hari Nayak & others (2006) 2 SCC 777.***

(iii) ***All India Reporter Ltd. v. Ramchandra Dhondo Data AIR 1961 Bom 292.***

The Respondent No. 1 has also contended that this Authority had ample powers to modify its Interim Order dated 17.02.2020 as per the law settled in the following cases:-

(a) ***Union of India v. Auto & General Engg. Co. 1995 (80) ELT 246 (Del.).***

(b) ***Baron International Ltd. v. Union of India 2004 (163) ELT 150 (Bom).***

(c) ***Garg Ispat Udyog Ltd. v. Commissioner of Central Excise Jaipur 2013 (288) ELT 392 (Tri.-Del.)***

In this connection it is mentioned that this Authority has no power to modify its orders which have been passed on substantive issues pertaining to the facts and the law. As per para 30 of the "Methodology & Procedure" determined by this Authority under Rule 126 of the CGST

Rules, 2017 and notified by it on 28.03.2018 only arithmetical, clerical and factual errors can be modified by it. The above Respondent has not brought any such error to the notice of this Authority in its order dated 17.02.2020 and hence, no modification is required in the above order. Therefore, the cases cited by the above Respondent in his support are not been relied upon.

101. The Respondent No. 1 has also claimed that the POs mentioned in the complaint pertained to the Respondent No. 2 and had the invoices issued by him to the Respondent No. 2 in respect of the complained product been examined by the Standing Committee on Anti-Profiteering it would have realized that he had passed on the benefit of tax reduction by giving discount of 7.81% and had maintained the pre rate reduction base prices. He has also claimed to have enclosed copies of invoices as Annexure-9 with Volume 3 of his written submissions dated 02.03.2020. Perusal of Volume 3 shows that no Annexure-9 has been attached with it. However, perusal of page 159 of the above Volume shows that the Respondent No. 1 has issued a tax invoice on 24.01.2018 in favour of the Respondent No. 2 which shows that he has supplied "PA Asl Good Morning Splash 50 ml After Shave Lotion" at the base price of Rs. 70.40 per unit whereas as per his own admission made in Table supra prepared by him, the pre rate reduction base price of the above product was Rs. 64.90 per unit, therefore, he was charging Rs. 83.07 (64.90+28% GST) on the above product before the tax reduction and after the rate reduction he was required to charge total price of Rs. 76.58 (64.90+18% GST) from the Respondent No. 2 and hence, there should have been commensurate reduction of Rs. 6.49 @ 10% equal to the tax reduction in the price. However, the Respondent has claimed to have

passed on benefit of Rs. 5.50 @ 7.81% in the above invoice as discount which is less by Rs. 0.99 and 2.19% than the commensurate reduction in the price. Moreover, the Respondent No. 1 has not produced any evidence to show that he has given the above discount on account of passing on the benefit of tax reduction and hence this arbitrary and unjustified offer of discount cannot be construed as passing on the benefit of tax reduction. The above discount is nothing but usual ploy to increase the sales which is routinely done by the Respondent in the course of his business. His strategy of firstly increasing the base prices and then to give discounts is incomprehensible and amounts to unethical and illegal business practice. Moreover, the benefit of tax reduction can be passed only through commensurate reduction in the prices as per the provisions of Section 171 (1) and it cannot be passed through arbitrary discounts. The discount offered by him also does not fulfill the conditions prescribed under Section 15 (3) of the above Act and hence, the same cannot be construed as passing on the benefit of tax reduction. The Respondent has himself admitted vide his above tax invoice that he has increased the base price of the above product from Rs. 64.90 to Rs. 70.40 whereas he could not have increased it. Therefore, the Respondent has profiteered to the extent of Rs. 6.49 per unit of the above product and he has not retained the pre rate reduction base price. Same is the position in respect of the other products supplied by him to the Respondent No. 2 through the above and the other tax invoices issued by him. It is also revealed that in respect of some of the products no discount has been shown in the tax invoices. Therefore, the above contentions of the above Respondent are not correct.

102. The Respondent No. 2 vide his submissions dated 08.01.2020 has stated that the constitution of the Standing Committee as well as of the Screening Committees on Anti-Profiteering as per Rule 123 of the CGST Rules, 2017 was illegal and without the authority of law as the CGST Act, 2017 nowhere envisaged constitution of these Committees. He has also stated that the constitution of the office of DGAP (earlier Director General of Safeguards) was purportedly done under Rule 129 of the CGST Rules, 2017, however, the said rule was ultra vires of the CGST Act, 2017 as it nowhere envisaged constitution of any such body and therefore, the investigation carried out by the DGAP was illegal. The Respondent No. 2 has also cited the law settled in the cases of **Addl. District Magistrate (Rev.) Delhi Admin. v. Siri Ram (2000) 5 SCC 451** and **State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) SCC 517** in his support. On the insistence of the Respondent No. 2 both the above contentions have been carefully considered and found to be untenable by this Authority vide its Interim Order No. 10/2020 dated 17.02.2020 and hence, they are not being discussed in the present order.

103. The Respondent No. 2 has also mentioned that he was one of the distributors of the Respondent No. 1 for supply of goods to the Modern Trade and all the supplies made by him were negotiated and finalized between the Respondent No. 1 and the Modern Traders and he had no role in the fixation of the prices relating to the supplies of goods to his customers. However, as per the provisions of Section 171 (1) being a registered person under the GST he is bound to pass on the benefit of tax reduction to his buyers irrespective of the fact whether he fixes the prices himself or not and therefore, he ought to have reduced his prices

commensurately which he had not done. Therefore, he has violated the above provisions.

104. He has also stated that it was apparent from the impugned Report of the DGAP dated 24.09.2019 that the present complaint was never looked in to by the Delhi State Screening Committee on Anti-Profiteering, as mandated under rule 128 (2) of the CGST Rules, 2017. He has further stated that even examination of the application by the Standing Committee on Anti-Profiteering was not in accordance with Rule 128 (1) of the CGST Rules, 2017 which required it to dispose of the same within a period of 2 months. He has also contended that in the present case the application/ complaint was made on 30.07.2018 and it was examined by the Standing Committee on Anti-Profiteering in its meeting held on 11.03.2019 i.e. after 7 months of the receipt of the application and hence the recommendation made by the above Committee for conducting investigation against him was illegal and was barred by limitation. The Respondent No. 2 has also submitted that that as per rule 128 (1) of the CGST Rules, to determine whether there was prima-facie evidence to support the claim of the applicant, the Standing Committee on Anti-Profiteering was required to examine the accuracy and adequacy of the evidence provided in the application. However, in the present case no evidence was provided by the Applicant No. 1 in support of his application. All the above objections have been elaborately dealt by this Authority in its Interim Order No. 10/2020 dated 17.02.2020 and hence, no findings are being recorded on them in this order.

105. The Respondent No. 2 has also pleaded that the DGAP had calculated the alleged profiteered amount by comparing the pre rate reduction base prices with the actual sale prices of the supplies made during the period

from 15th November, 2017 to 31st March, 2019 which was incorrect. He has further pleaded that the DGAP had not looked into the following issues:-

- Additional taxes collected and deposited with the Government which had been included in the alleged profiteered amount.
- Increase in the purchase prices post 15th November, 2017.
- Post sale discounts offered by the Respondent No. 2 after affecting sales (impact of Debit / Credit Notes).

In this connection it would be appropriate to mention that the issue of collection of GST and its deposit in the Government account has been discussed in detail above and hence, the same is not being discussed here. The Respondent No. 2 has also stated that the Respondent No.1 had increased the prices of his products w.e.f. 15.11.2017 and therefore, he was forced to increase his own prices and hence, he was not liable for profiteering. In this connection it is mentioned that the Respondent was required to maintain the pre rate reduction base prices which he had failed to do and therefore, he is also liable for profiteering as he was the registered person in terms of Section 171 (1) of the above Act charged with the responsibility of passing on the benefit of tax reduction. He has further stated that he had passed on the benefit of tax reduction by offering discounts. However, as has been discussed above the above benefit cannot be passed through arbitrary discounts as the same is required to be passed only by way of commensurate reduction in the prices. Hence, all the above contentions of the Respondent are not maintainable.

106. The Respondent No. 2 has also contended that the DGAP has taken too long a period for computing the profiteered amount from 15th November 2017 to 31st March, 2019. This issue has been discussed in detail in the para supra and hence no findings are being recorded here on this issue.

107. The Respondent No. 2 has further contended that the profiteered amount calculated for the F. Y. 2018-19 was absolutely incorrect as the purchase prices of the Respondent No. 2 had increased from April, 2018 onwards and the said purchase prices were even higher than the base sale prices adopted for computation of profiteering as on 14th Nov. 2017. As already discussed above the Respondent was required to not increase his pre rate reduction base prices as per the provisions of Section 171 (1) of the above Act and since, he had increased them he has been rightly held liable for profiteering during the F.Y. 2018-19.

108. The Respondent No. 2 has also claimed that the profiteered amount calculated by the DGAP was erroneous and incorrect in as much as the same has not taken into account the debit notes raised by the buyers. In this connection it would be pertinent to mention that the debit/credit notes issued by the Respondent No. 2 and 1 did not pertain to passing on the benefit of tax reduction and hence, they cannot be considered while computing the profiteered amount. Accordingly, out of the total profiteered amount of Rs. 38,64,891/- established against the Respondent No. 2, an amount of Rs. 27,65,658/- which related to the F. Y. 2018-19 cannot be excluded.

109. The Respondent No. 2 has also mentioned that the present Report was bad in law on account of mis-joinder of parties as he was only a middle man in the supply chain and had no control over the price

fixation. The above claim of the Respondent runs contrary to the provisions of Section 171 (1) as he is responsible for passing on the benefit of tax reduction and hence the same cannot be accepted.

110. The above Respondent has also argued that his profit margin was almost static and there was no extra profit earned by him on account of reduction in the rate of tax. However, passing on the benefit of tax reduction has no connection with the profit margin earned by the Respondent No. 2 as the same is required to be passed on due to the concession granted by the Central and the State Governments out of their own tax revenue and nothing is required to be paid out of his own account. Therefore, the above argument of the Respondent is not tenable.

111. The Respondent No. 2 has also stated that no profiteering could be attributed to him, since the Respondent No. 1 had committed profiteering by selling the products at a higher price, hence further selling of the said products at a higher price could not be recomputed in the hands of the Respondent No. 2 which would result in double computing of the profiteered amount. In this connection it would be relevant to mention that profiteering in respect of the Respondent No. 2 has been computed on the prices which he has charged to his buyers by increasing his base prices which has no connection with the prices charged by the Respondent No. 1 to his buyers. Therefore, there is no question of double computing of the profiteered amount and hence the above contention of the Respondent is not correct.

112. He has further stated that the basic premise of profiteering calculation was that the same product should have been sold to the same customer without any reduction in the price following a reduction in the

GST rate. However, there were at least three customers to whom no supplies were made prior to November 15, 2017 rendering the alleged profiteering premise inapplicable. The above plea of the Respondent is incorrect as there is no such premise as has been claimed by the above Respondent while computing the profiteered amount. The profiteered amount has to be computed when supplies have been made by increasing the base prices during the post rate reduction period in respect of all the customers on all the sold products in respect of which the rate of tax has been reduced and not the same customers on the same products. The above Respondent has also not supplied any evidence to support his claim that the profiteered amount has been computed in respect of the 3 customers to whom no supplies were made by him. Therefore, the above contentions of the Respondent cannot be accepted.

113. Based on the above facts, it is established that both the above Respondents have acted in contravention of the provisions of Section 171 of the CGST Act, 2017 and have not passed on the benefit of reduction in the rate of tax to their recipients by commensurate reduction in the prices. Accordingly, the amount of profiteering in respect of the Respondent No. 1 is determined as **Rs. 18,48,34,084/-** including the GST under the provisions of Rule 133 (1) of the CGST Rules, 2017 as per **Annexure-32** of the Report dated 24.09.2019 furnished by the DGAP. The place of supply wise break up of the profiteered amount is given as under:-

Table

Profiteering (Rs.)					
S. No.	Name of State	State Code	General Trade	Other than General Trade	Total Profiteering (Rs.)
1	Andaman & Nicobar Islands	35	2,89,408	-	2,89,408
2	Andhra Pradesh (New)	37	28,81,350	22,75,744	51,57,094
3	Arunachal Pradesh	12	34,078	-	34,078
4	Assam	18	24,31,584	5,41,810	29,73,394
5	Bihar	10	30,19,659	6,47,652	36,67,311
6	Chandigarh	4	3,05,386	19,166	3,24,552
7	Chattisgarh	22	19,11,865	3,50,075	22,61,939
8	Dadra and Nagar Haveli	26	11,657	-	11,657
9	Daman and Diu	25	-	38,376	38,376
10	Delhi	7	68,66,663	43,21,976	1,11,88,639
11	Goa	30	2,85,628	52,144	3,37,772
12	Gujarat	24	26,96,883	41,05,036	68,01,918
13	Haryana	6	14,01,212	50,76,462	64,77,674
14	Himachal Pradesh	2	2,52,766	24,617	2,77,384
15	Jammu and Kashmir	1	2,19,967	65,582	2,85,549
16	Jharkhand	20	13,68,148	4,66,696	18,34,843
17	Karnataka	29	56,54,964	94,82,431	1,51,37,395
18	Kerala	32	57,65,995	9,28,745	66,94,740
19	Madhya Pradesh	23	24,39,065	40,82,573	65,21,637
20	Maharashtra	27	1,59,36,419	2,91,66,764	4,51,03,183
21	Manipur	14	1,27,663	-	1,27,663
22	Meghlaya	17	2,16,513	-	2,16,513
23	Mizoram	15	5,059	-	5,059

24	Nagaland	13	57,540	-	57,540
25	Odisha	21	30,59,079	8,01,378	38,60,457
26	Puducherry	34	2,89,577	4,49,656	7,39,233
27	Punjab	3	13,83,199	10,95,085	24,78,285
28	Rajasthan	8	33,14,776	16,04,101	49,18,877
29	Sikkim	11	17,711	-	17,711
30	Tamil nadu	33	98,42,417	78,17,703	1,76,60,119
31	Telangana	36	34,05,733	68,94,992	1,03,00,726
32	Tripura	16	2,73,629	43,366	3,16,996
33	Uttar Pradesh	9	68,97,864	27,29,642	96,27,505
34	Uttarakhand	5	7,64,572	1,19,806	8,84,378
35	West Bengal	19	1,09,99,476	72,05,003	1,82,04,479
	Grand Total		**9,44,27,505**	**9,04,06,580**	**18,48,34,084**

114. The profiteered amount in respect of the Respondent No. 2 is determined as **Rs. 38,64,891/-** as per **Annexure-34** attached to the DGAP's Report dated 24.09.2019 in terms of Rule 133 (1) of the above Rules. The place of supply wise details are given as under:-

Table

S.No.	Name of State	State Code	Profiteering (Rs.)
1	**Haryana**	**06**	**52,916**
2	**Delhi**	**07**	**38,04,137**
3	**Uttar Pradesh**	**09**	**7,838**
	Grand Total		**38,64,891**

115. The Respondent No. 1 has also profiteered an amount of **Rs. 8,97,253/-** from the Respondent No. 2 as has been mentioned in **Annexure-33** of the Report dated 24.09.2019. Since, the above amount is required to be passed on to the ultimate buyers hence, the

same shall be deposited in the CWFs of the Central and the State Governments as per the provisions of Rule 133 (3) (C) of the CGST Rules, 2017 along with the interest and shall not be passed on to the Respondent No. 2 as he is not eligible to get the benefit of tax reduction at the expense of the common recipient.

116. Accordingly, both the Respondent are directed to reduce the prices of the impacted products as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit of tax reduction is passed on to the recipients. The Respondents are also directed to deposit the profiteered amounts mentioned above along with the interest to be calculated @ 18% from the date when the above amounts were collected by them from the recipients till the above amounts are deposited, in terms of the Rule 133 (3) (b) of the CGST Rules, 2017. Since, the recipients in this case are not identifiable, the above Respondents are directed to deposit the above amounts of profiteering along with interest in the CWFs of the Central and the concerned State Governments as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017 in the ratio of 50:50 along with interest @ 18% till the same are deposited as per the details mentioned in Annexures-32 and 34.

117. The above amounts shall further be deposited within a period of 3 months by the Respondents, from the date of receipt of this order, failing which the same shall be recovered by the concerned Commissioners of the Central and the State GST, as per the provisions of the CGST/SGST Acts, 2017 under the supervision of the DGAP and shall be deposited as has been directed vide this order. A detailed Report shall also be filed by the concerned Commissioners of

the Central and the State GST indicating the action taken by them within a period of 4 months from the date of this order.

118. It is also evident from the above narration of the facts that both the above Respondents have denied the benefit of tax reduction from 28% to 18% w.e.f. 15.11.2017 to 31.03.2019, notified vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, on the products which were being supplied by them to the consumers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and have thus resorted to profiteering. Hence, they have committed an offence under Section 171 (3A) of the Central Goods & Services Tax Act, 2017 and therefore, they are apparently liable for imposition of penalty under the provisions of the above Section. Accordingly, Show Cause Notices be issued to them directing them to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the Central Goods & Services Tax Rules, 2017 should not be imposed on them.

119. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was to be passed on or before 24.03.2020 as the investigation Report was received from the DGAP on 25.09.2019. However, due to the COVID-19 pandemic prevailing in the Country the order could not be passed on or before the above date. Hence, the same is being passed today in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs under Section 168 A of the Central Goods & Services Tax Act, 2017.

120. A copy of this order be sent to the Applicants and the Respondents free of cost. File of the case be consigned after completion.

Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-	Sd/-
(J. C. Chauhan)	(Amand Shah)
Member(Technical)	Member(Technical)

Certified Copy

11.5.2020

(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/93/JK/2019 Date: 11.05.2020

Copy To:-

1. M/s J K Helen Curtis Ltd. c/o Raymond Consumer Care Ltd., 9th & 10th Floor, ATL Corporate Park, Saki Vihar Road, Chandivali, Powai, Mumbai- 400 072.
2. M/s Shree Sai Kripa Marketing, B-141 Shakurpur, Samarat Cinema Road, Delhi- 110 034.
3. Shri Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th Express Trade Tower-2, Sector-132, Noida- 201 301.
4. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. Commissioner of commercial Taxes, office of the chief Commissioner of state Tax, eedupugallu, krishna district, Andhra Pradesh.
6. Commissioner of commercial Taxes, Department of Tax & Excise, kar bhawan, itanagar, Arunachal Pradesh - 791 111.
7. Commissioner of commercial Taxes, office of the Commissioner of Taxes, Government of Assam, kar bhawan, ganeshpuri, dispur, Guwahati - 781 006.
8. Commissioner of commercial Taxes, additional Commissioner (GST), commercial Tax Department, ground floor, vikas bhawan, baily road, Patna – 800 001
9. Commissioner of commercial Taxes, commercial Tax, SGST Department, behind raj bhawan, civil lines, Raipur - 492 001

10. Commissioner of commercial Taxes, office of Commissioner of commercial Tax, vikrikar bhavan, old high court building, panji, Goa-403 001
11. Commissioner of commercial Taxes, c-5, Rajya kar bhavan, near times of India, ashram road, Ahmedabad.
12. Commissioner of commercial Taxes, vanijya bhavan, plot no. 1-3, sector-5, panchkula. Pin - 134 151.
13. Commissioner of commercial Taxes, Excise & Taxation Commissioner, Government of Himachal Pradesh, b-30, sda complex, kasumpati, Shimla.
14. Commissioner of commercial Taxes, Excise & Taxation complex, rail head Jammu.
15. Commissioner of commercial Taxes, commercial Taxes Department, project bhawan, dhurva, Ranchi- 834 004.
16. Commissioner of commercial Taxes, vanijya therige karyalaya, 1st main road, Gandhinagar, Bangalore- 560 009
17. Commissioner of commercial Taxes, Government secretariat, Thiruvananthapuram -695001.
18. Commissioner of commercial Taxes, Moti Bangla compound, m.g. Road, Indore
19. Commissioner of commercial Taxes, GST bhavan, mazgaon, Mumbai-400 010
20. Commissioner of commercial Taxes, Department of Taxes, Old Guwahati High Court Complex, North AOC, Imphal West, Manipur - 795 001.
21. Commissioner of commercial Taxes, office of the Commissioner, GST & cx Commissionerate, morellow compound, m.g.road, shillong-793001.
22. Commissioner of Commercial Taxes, New Secretariat Complex, Aizawl, Mizoram.
23. Commissioner of commercial Taxes, Office of the Commissioner of State Taxes, Dimapur - 797 112.
24. Commissioner of commercial Taxes, office of the Commissioner of state Tax, banijyakar bhawan, old secretariat compound, cuttack - 753 001.
25. Commissioner of commercial Taxes, office of Excise and Taxation Commissioner, bhupindra road, patiala- 147 001
26. Commissioner of commercial Taxes, kar bhavan, ambedkar circle, jaipur, rajasthan - 302 005.
27. Commissioner of commercial Taxes, sitco building, block-d, above a.g. Office, gangtok, east, sikkim - 737 101.
28. Commissioner of commercial Taxes, papjm building, greams road, chennai – 600 006.
29. Commissioner of commercial Taxes, o/o the Commissioner of state Tax, ct complex, nampally station road, hyderabad - 500 001.
30. Commissioner of commercial Taxes, office of the Commissioner of Taxes & Excise, head of the Department, revisional authority, p.n. Complex, gurkhabasti, agartala - 799 006.
31. Commissioner of commercial Taxes, office of the Commissioner, commercial Tax, u.p. Commercial Tax head office vibhuti khand, gomti nagar, lucknow (u.p)
32. Commissioner of commercial Taxes, state Tax Department, head office uttarakhand, ring road, near pulia no. 6, natthanpur, dehradun.

33. Commissioner of commercial Taxes, 14, beliaghata road, kolkata - 700 015.
34. Commissioner of commercial Taxes, deptt of trade & Taxes, vyapar bhavan, ip estate, new delhi-2 pin: 110 002
35. Commissioner of commercial Taxes, first floor, 100 feet road, ellapillaichavady, pondicherry - 605 005.
36. Chief Commissioner of central Goods & Services Tax, Bhopal zone 48, administrative area, arera hills, hoshangabad road, Bhopal M.P. 462 011
37. Chief Commissioner of central Goods & service Tax c.r.building rajaswa vihar, bhubaneswar-751007
38. Chief Commissioner of central Goods & service Tax Chandigarh zone C.R. Building, plot no.19a, sector17c, chandigarh-160017
39. Chief Commissioner central Goods & service Tax , cochin zone C.R.building, i.s.press road, Ernakulum cochin682018
40. Chief Commissioner of central Goods & Services Tax Delhi zone C.R. Building, I.P. Estate, new delhi110 109
41. Chief Commissioner of central Goods & service Tax, Hyderabad zone GST bhavan, I.B.stadium road, basheer bagh, Hyderabad 500 004
42. Chief Commissioner of central Goods & Services Tax Jaipur zone, new central revenue building, statue circle, Jaipur 302 005
43. Chief Commissioner of central Goods & Services Tax, Meerut zone opp. Ccs university,mangal pandey nagar, meerut-250 004.
44. Chief Commissioner of central Goods & Services Tax, Mumbai zone GST building, 115 m.k. Road, opp. Churchagate station, mumbai-400020
45. Chief Commissioner of central Goods & Services Tax, Telangkhedi road, civil lines, Nagpur 440001
46. Chief Commissioner of central Goods & Services Tax Panchkula sco 407408, sector-8, Panchkula
47. Chief Commissioner of central Goods & Services Tax, Pune zone GST bhawan ice house, 41a, sasoon road, opp. Wadia college, pune411001
48. Chief Commissioner of central Goods & Services Tax, (Ranchi zone) 1st floor, C.R. Building, (annex) veer chand patel path Patna, 800001
49. Chief Commissioner of central Goods & Services Tax, Shillong zone north eastern, 3rtd floor, crescens building, MG Road, shillong-793 001
50. Chief Commissioner of central Goods & Services Tax, Vadodara zone 2nd floor, central Excise building, race course circle, Vadodara 390 007
51. Chief Commissioner of central Goods & Services Tax Visakhapatnam zone GST Bhavan, port area, Visakhapatnam 530 035.
52. Guard File.