

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

Case No.	06/2022
Date of Institution	29.10.2020
Date of Order	10.05.2022

In the matter of:

1. Sh. Vikas Goyal, House No. 682, Sector-8, Chandigarh-160018.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Piccadilly Square Movie Complex, Sub.City Center, Sector-34, Chandigarh- 160022.

Respondent

Quorum:-

1. Sh. Amand Shah, Chairman & Technical Member
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah Technical Member

Present:-

1. None for the Applicants.
2. None for the Respondent.

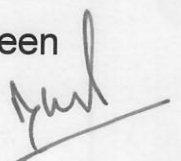
ORDER

1. This Report dated 28.10.2020 has been received on 29.10.2020 from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 had filed an application alleging that the Respondent has profited with respect to supply of "Services by way of admission to exhibition of cinematography films".
2. The Applicant No. 1 had alleged that the Respondent did not pass on the benefit of reduction in the GST rate on the aforesaid movie admission tickets, from 28% to 18% w.e.f. 01.01.2019, granted vide Notification No. 27/2018-Central tax (Rate) dated 31.12.2018 and instead, increased the base price to maintain the same cum-tax selling price.
3. The DGAP in its report dated 28.10.2020 has stated that
 - i. The aforesaid Application was examined by the Standing Committee on Anti-profiteering, in his meeting held on 10.01.2020 whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, a Notice under Rule 129 of the Rules was issued by the DGAP on 29.01.2020, calling upon the Respondent to reply as to whether he admit that the benefit of GST rate reduction had not been passed on to the Applicant No. 1 by way of commensurate reduction in price and if so, to suomoto



determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. The Respondent and the Applicant No. 1 were also given opportunity to inspect the non-confidential evidences/information. While the Applicant did not avail of the opportunity, the Respondent availed the said opportunity.

- ii. The period covered by the current investigation was from 01.01.2019 to 31.01.2020. The time limit to complete the investigation was 24.07.2020. However, vide Notification No. 55/2020-Central Tax dated 27.06.2020, the time limit was extended upto the 31.08.2020 and then by Notification No. 65/2020- Central Tax dated 01.09.2020, the time limit for compliance was extended up to 30.11.2020. The National Anti-Profitteering Authority, vide it's Order dated 26.08.2020 in terms of Rule 129(6) of the Rules allowed further extension of three months.
- iii. Central Government, on the recommendation of the GST Council, reduced the GST rate on the product "Services by way of admission to exhibition of cinematography films where price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. This was a matter of fact which has not been contested by the Respondent.



iv. The Respondent submitted his replies vide letters and e-mails dated 12.02.2019, 28.02.2019, 01.06.2020, 08.10.2020 and 20.10.2020. The replies of the Respondent are summed up as follows:-

- a) That he had sold movie tickets in three categories: - Silver, Gold and Business Class, where the Respondent has changed prices of some tickets from the date of change in effective rate of tax i.e. 01.01.2019, whereas he changed price of other slabs from 19.07.2019 onwards.
- b) That the Anti-profiteering Authority was constituted to check profiteering due to the advent of GST only and not for the subsequent rate reduction under GST. That the Authority was constituted for monitoring any profiteering by taxpayers and not as a price controlling authority.
- c) The entire profiteering from increased base selling price w.e.f 01.01.2019 was not the share of Respondent and had been distributed among others.

v. The Respondent submitted the following documents/information:

- a) Category-wise details of price of the tickets along with the number of tickets sold in each category during the period under consideration i.e. prior to change in effective rate of tax (December, 2018) and after the change in effective rate of tax (January, 2019 to 18th July, 2019) and (19th July, 2019 to January, 2020).
- b) Price List of the aforesaid movie admission tickets, pre and post 01.01.2019.

c) Sample copies of the invoice/tickets, pre and post 01.01.2019.

d) GSTR-1 and GSTR-3B returns for the period December, 2018 to January, 2020.

- vi. On examination of the details of sales data, complaint of the Applicant No. 1 and various replies submitted by the Respondent, it was observed that five categories of tickets (Rs. 100/-, Rs. 125/-, Rs. 150/-, Rs 250/- and Rs. 500/-) were sold by the Respondent during the pre and post rate reduction period effective from 01.01.2019. Hence, the investigation was limited to reduction in rate of GST from 28% to 18% and from 18% to 12% for all categories of admission tickets sold by the Respondent.
- vii. In terms of Section 171(1) of Central Goods and Services Tax Act, 2017, the legal requirement was that in the event of benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of the goods or services.
- viii. From the sales data made available by the Respondent, it was observed that although the price of Silver category ticket (Rs. 100/-) and price of Gold category tickets were reduced by the Respondent from 01.01.2019 and price of all other categories were reduced from 19.07.2020 but the Respondent did not reduce the price commensurately and increased the base prices of the admission ticket when the GST rate was reduced from 28% to 18% and 18% to 12% w.e.f. 01.01.2019 in the manner illustrated in Table-'A' below.

Table-A

Sr. No.	Admission ticket	Pre Rate Reduction			Post rate Reduction w.e.f 01.01.2019			
		Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e. Base Price (in Rs.)	Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e. Base Price (in Rs.)	Commensurate Base Price(in Rs.)
A	B	C	D	E=[C/118 % or 128%]	F	G	H	I
1	Silver	100	18	84.75	95	12%	84.82	84.75
2	Silver	125	28	97.65	125	18%	105.93	97.65
3	Gold	150	28	117.18	140	18%	118.64	117.18
4	Business	250	28	195.31	250	18%	211.86	195.31
5	Business	500	28	390.63	500	18%	423.73	390.63

ix. As shown in the table above, the Respondent had increased the base price of admission ticket i.e. Silver seat from Rs. 84.75/- to 84.82/-, Silver Seat Rs 97.65/- to 105.93/-, Gold seat Rs.117.18/- to 118.64/-, Business seat Rs.195.31/- to 211.86/- and Business seat Rs. 390.63/- to 423.73/-. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, benefit of GST rate reduction from 28% to 18% and 18% to 12% in respect of "Services by way of admission to exhibition of cinematography films, was not passed on to the recipients.

x. On the basis of aforesaid pre/ post reduction in GST rates and the details of outward supplies for the period 01.12.2018 to 18.07.2019 submitted by the Respondent, it was observed that the Respondent profited during the period from 01.01.2019 to 18.07.2019 from the sale of tickets in five categories amounting to Rs. 10,109/- for Silver, Rs. 2,46,907/- for Silver, Rs. 4,46,840/- for Gold, Rs.1,50,790/- for Business and Rs. 1,19,992/ for Business. The total amount of net higher sale realization due to increase in the base price of the movie

tickets, despite the reduction in GST rate from 28% to 18% & 18% to 12% or in other words, the profiteered amount comes to Rs. 9,74,638/-. The details of the computation are given in the Table "B" below.

Table-B

Sr No	Admission ticket	01.01.2019 to 18.07.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18%	Profiteering per unit (Rs.)	Qty. Sold	Total Profiteering (including tax @18%) (inRs.)
A	B	C	D	E= (C-D)	F= (E*12% or 18%)	G= (E+F)	H	I= (H*G)
1	Silver	84.82	84.75	0.07	0.01	0.08	126358	10,109
2	Silver	105.93	97.65	8.28	1.49	9.77	25272	2,46,907
3	Gold	118.64	117.18	1.46	0.27	1.73	258289	4,46,840
4	Business	211.86	195.31	16.55	2.99	19.54	7717	1,50,790
5	Business	423.73	390.63	33.10	5.96	39.06	3072	1,19,992
Grand Total								9,74,638/-

xi. The above said profiteering is for the period 01.01.2019 to 18.07.2019, as it was claimed by the Respondent that he had reduced the price of admission ticket for the four slabs i.e. Rs 125/-, Rs 150/-, Rs 250/- and Rs.500/-. This contention was found correct and it was observed that the Respondent had reduced the cum-tax selling price of admission ticket in respect of four slabs from 19.07.2019 onwards at Rs 120/-, Rs 135/-, Rs 240/-, and Rs 480/- respectively. However, the said reduction was not commensurate to rate reduction but the Respondent has increased the base prices of the admission tickets while the GST rate was reduced from 28% to 18% and 18% to 12% after 19.07.2019 in the manner illustrated in the table 'C':-

Handwritten signature

Table-C

Sr. No.	Admission ticket	Pre Rate Reduction			Post rate Reduction w.e.f 19.07.2019			
		Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e. Base Price (in Rs.)	Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e. Base Price (in Rs.)	Commensurate Base Price(in Rs.)
A	B	C	D	E=[C/118 % or 128%]	F	G	H	I
1	Silver	100	18	84.75	95	12%	84.82	84.75
2	Silver	125	28	97.65	120	18%	101.69	97.65
3	Gold	150	28	117.18	135	18%	114.41	117.18
4	Business	250	28	195.31	240	18%	203.39	195.31
5	Business	500	28	390.63	480	18%	406.78	390.63

- xii. On the basis of aforesaid pre/ post reduction in GST rates and the details of outward supplies, it was observed that profiteering during the period from 19.07.2019 to 31.01.2020 from the sale of tickets in four categories amounts to Rs. 9,195/- for Silver, Rs. 1,09,653/- for Silver, Rs. 64,718/- for Business and Rs. 48,546/- for Business. The total amount of net higher sale realization due to increase in the base price of the movie ticket, despite the reduction in GST rate from 28% to 18% & 18% to 12% or in other words, the profiteered amount comes to Rs. 2,32,112/-. The details of the computation were given in the Table "D" below:-

Table-D

Sr No	Admission ticket	19.07.2019 to 31.01.2020						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	Excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 18%	Profiteering per unit (Rs.)	Qty. Sold	Total Profiteering (including tax @18%) (inRs.)
A	B	C	D	E= (C-D)	F= (E*12% or 18%)	G= (E+F)	H	I= (H*G)
1	Silver	84.82	84.75	0.07	0.01	0.08	114938	9,195
2	Silver	101.69	97.65	4.04	0.73	4.77	22988	1,09,653
3	Gold	114.41	117.18	-2.77	-0.50	-3.27	229343	0
4	Business	203.39	195.31	8.08	1.45	9.53	6791	64,718
5	Business	406.78	390.63	16.15	2.91	19.06	2547	48,546
Grand Total								2,32,112/-

4. The DGAP concluded that from the Tables above, it was clear that the base price of the admission tickets were increased, as a result of which the benefit of reduction in GST rate from 28% to 18% & 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged (including GST @ 12% & 18%). For the period from 01.01.2019 to 18.07.2019, the Respondent did not reduce the base price of five categories of tickets in commensurate manner resorting to profiteering amounting to Rs. 9,74,638/- and for the period from 19.07.2019 to 31.01.2020, the Respondent did not reduce the base prices of four categories of tickets in commensurate manner resorting to profiteering amounting to Rs. 2,32,112/- and hence the total amount of profiteering covering the period of 01.01.2019 to 31.01.2020, was Rs. 12,06,750/- .

sub

5. After perusal of the DGAP's Report, this Authority in its sitting held on 02.11.2020 decided to hear the Applicants and the Respondent on 19.11.2020 and accordingly Notice dated 5.11.2020 was issued to them. It is observed that the Respondent and Applicant No. 1 have been given 05 (Five) opportunities of hearing/filing written submissions on 19.11.2020, 07.12.2020, 21.12.2020, 15.01.2021, 01.02.2021.

6. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and

accordingly personal hearing was scheduled for the Respondent as well as Applicants on 30.03.2022 vide order dated 24.02.2022. However, Respondent vide letter dated 10.03.2022 has informed that they have already made submissions earlier and do not want to make further submissions and also do not want personal hearing. The Applicant No. 1 was again given opportunity to make his submissions vide order dated 04.04.2022. However, he did not make any submissions. After all the opportunities the Applicant No. 1 did not make any submissions while the Respondent made his submissions vide letter dated 24.11.2020, 06.01.2021, 20.01.2021 and 10.03.2022 which are, inter-alia, summed up as follows:-

- a) He does not accept the findings of the DGAP made vide his Report dated 28 October 2020. However, he has agreed to deposit the alleged profiteered amount to avoid litigation and to buy peace of mind.
- b) He is engaged in the business of exhibition of cinematography films in cinema halls which are currently non-operational due to the current COVID-19 pandemic outbreak. He is facing financial crunch and requested for payment of tax and other amount in instalments in terms of section 80 of CGST Act, 2017.
- c) He submitted that the Anti-profiteering Authority was constituted to check profiteering due to the advent of GST only and not for the subsequent rate reduction under GST. That the Authority was constituted for monitoring any profiteering by taxpayers and not as a price controlling authority.

Handwritten signature

d) The entire profiteering from increased base selling price w.e.f 01.01.2019 was not his share and had been distributed among others.

e) Since he has agreed to make the payment of alleged profited amount, he did not want to exercise his option of personal hearing in the matter.

f) He may be allowed to make the payment of alleged profited amount in number of monthly instalments, as may be considered necessary, without imposition of interest in this regard. He also quoted the case of Samsung India Electronics (P.) Ltd. v. Union of India and Gaurav Sharma Food Industries Vs Union of India & Ors in this regard.

Mishra

7. This Authority has carefully considered the Report furnished by the DGAP and the submissions made by the Respondent and the record of the case. The Central Government, on the recommendation of the GST Council, had reduced the GST rate on the "Services by way of admission to exhibition of cinematograph films" from 28% to 18% for ticket priced above Rs. 100 and from 18% to 12% w.e.f. 01.01.2019 for tickets priced below Rs. 100, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. The DGAP after detailed investigation in his Report dated 28.10.2020 concluded that the base prices of the admission tickets were increased, as a result of which the benefit of reduction in GST rate from 28% to 18% & 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged (including GST @ 12% & 18%). The total amount of

profiteering due to increase in the base prices of the impacted services, despite the reduction in the GST rate from 28% to 18% or from 18% to 12% was calculated as **Rs. 12,06,750/-**. The said profiteering amount has been arrived at by the DGAP by comparing the pre rate reduction selling price of the ticket with the selling price of the tickets sold during the post-GST rate reduction period i.e. on or after 01.01.2019. The excess GST so collected from the recipients has also been included by the DGAP in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base prices.

8. Under the provisions of the CGST Act and the Rules, this Authority has been constituted to determine the amount of benefits to be passed on to the customers/ consumers/recipients of Goods or Services in the event of reduction of tax rate or benefit of Input Tax Credit. The Authority doesn't control or monitor the prices or profitability and the mandate of the Authority starts only in the event of tax reduction or passing of the ITC benefits. In the case in hand, the Authority is to examine whether the Respondent was required to pass on and has passed on the commensurate benefit of reduction in the rate of tax to his customers under the provisions of the section 171 of the CGST Act, 2017.

9. The Authority find from the documents submitted along with the Report that the Respondent did not commensurately reduce the price of the tickets despite reduction in the GST rate from 28% to 18% and from 18% to 12% respectively. The Respondent vide his

various submissions has also not opposed the said fact of not reducing the prices in commensurate manner after reduction of tax rate and profiteering calculation and has agreed to deposit the profiteered amount, though he has raised certain objections. In view of the facts mentioned in the DGAP Report, the Authority find that the Respondent has contravened provisions of section 171 of the CGST Act, 2017 and the Authority agrees with the profiteering amount calculated by the DGAP.

10. The Respondent has also requested that the payment of alleged profiteering may be allowed in monthly instalments, without imposition of interest in this regard. He has also quoted the case of Samsung India Electronics (P.) Ltd. v. Union of India and Gaurav Sharma Food Industries Vs Union of India &Ors. The above quoted orders are interim orders and are yet to attain finality and are pending before the court of law. Further, the facts of present case are different from the above-referred case and hence they are not applicable. There are no specific provisions in the CGST Act or rules, which provide for payment of determined profiteered amount in instalments.

11. In view of the above facts, it is evident that the Respondent did not reduce the base prices of five categories of tickets in commensurate manner for the period from 01.01.2019 to 18.07.2019 and four categories for the period from 19.07.2019 to 31.01.2020 and has contravened the provisions of section 171 of the CGST Act. This Authority determines the profiteered amount as Rs. 9,74,638/- and Rs. 2,32,112/- for the period 01.01.2019 to 18.07.2019 and

19.07.2019 to 31.01.2020 respectively. Therefore, the total amount of profiteering covering the period of 01.01.2019 to 31.01.2020 is determined as **Rs.12,06,750/-** (9,74,638 + 2,32,112).

12. The Authority determines the total amount of profiteering as Rs. 12,06,750/- as per the provisions of Rule 133 (1) of the above Rules as has been computed vide above Table- B and Table- D. Accordingly, the Respondent is directed to reduce his prices commensurately in terms of Rule 133 (3) (a) of the above Rules. The Respondent is also directed to deposit an amount of **Rs. 12,06,750/-** in the Consumer Welfare Fund of the Central and the State Government in the ratio of 50:50, as per the provisions of Rule 133 (3) (c) of the above Rules along with 18% interest payable from the dates from which the above amount was realised by the Respondent from his recipients till the date of its deposit. The above amount shall be deposited within a period of 3 months from the date of passing of this Order failing which it shall be recovered by the concerned Commissioners CGST/SGST.

13. It is also evident that as the Respondent has committed an offence for violation of the provisions of Section 171 (1) during the period from 01.01.2019 to 31.01.2020 therefore, he is apparently liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. These provisions came into effect from 01.01.2020 i.e penalty equivalent to ten per cent. of the profiteered amount will be imposed upon him for the amount collected after 01.01.2020. However, 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.

14. This Authority as per Rule 136 of the CGST Rules 2017 directs the concerned Commissioners of CGST/SGST to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondents as ordered by this Authority is deposited in the CWFs of the Central and the concerned State/UT Governments as per the details given above. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners CGST/SGST within a period of 4 months from the date of receipt of this order through the DGAP.

15. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for further proceedings vide Order dated 24.02.2022. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (c) No. 3/2020, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the Limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

16. A copy of this order be sent to the Applicant, the Respondent and the Commissioners CGST/SGST of the concerned State/Union Territory free of cost for necessary action. File of the case be consigned after completion.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member




Certified Copy

(Dinesh Meena)
NAA, Secretary

F. No. 22011/NAA/217/Piccadily/2020
Copy To:-

Date: 10.05.2022

1. M/s Piccadily Square, Sub. City Center, Sector-34, Chandigarh-160022.
2. Sh. Vikas Goyal, House No. 682, Sector-8, Chandigarh-160018.
3. Pr. Chief Commissioner, CGST, Chandigarh, 4th Floor, Central Revenue Building, Plot No. 19, Sector-17 C, Chandigarh,- 160017.
4. Commissioner, Excise and Taxation Department, Additional Town Hall Building, Sector-17, Chandigarh - 160017.
5. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
6. Guard File.

