

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

I.O. No. 20/2020  
Date of Institution 10.10.2019  
Date of Order 26.06.2020

**In the matter of:**

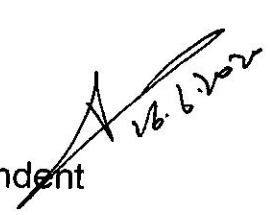
1. Sh. Rahul Sharma on behalf of M/s Local Circles India Pvt. Ltd.,  
4<sup>th</sup> Floor, Express Trade Tower-2, Sector-132, Noida-201301.
2. Director-General of Anti-Profiteering, Central Board of Indirect  
Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan,  
Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s. Mataji Paints and Hardware, 36/6 Papu Cottage, S.  
Kariappa Road, Near Yediur Lake, Bengaluru, Karnataka.

Respondent

 16.6.2020

Quorum:-

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

Present:-

1. None for Applicant No. 1.
2. Sh. Bhupender Goyal, Assistant Director (Cost) and Sh. Sachin, Superintendent for Applicant No. 2.
3. Sh. P. K. Bansal, Advocate, and Sh. Tarun Sharma, Chartered Accountant for the Respondent.

**ORDER**

1. The initial investigation Report dated 29.03.2019 was received from the Applicant No. 2 i.e. the Director-General of Anti-Profitteering (DGAP) on 02.04.2019. The brief facts of the case are that an undated application was filed before the Standing Committee on Anti-profitteering, under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017 by the Applicant No. 1 alleging profiteering by the Respondent. The Applicant alleged that the Respondent had not passed on the benefit of reduction in the rate of GST on Paints, from 28% to 18% w.e.f. 27.07.2018 and instead had increased the base prices of the paints sold by him thus denying the benefit of commensurate reduction in the cum-tax price (inclusive of 18% GST)

to the recipients. In support of his allegation, the Applicant No. 1 submitted copies of two sale invoices of "AB6 APEX 20 LTR" Paint, one dated 23.07.2018 and the other dated 27.07.2018, issued by the Respondent, which revealed that the Respondent had increased the per-unit base price from Rs. 4,062.73/- to Rs. 4,322.25/- when the rate of GST was reduced from 28% to 18% w.e.f. 27.07.2018. The Standing Committee, upon prima facie satisfying itself, that the allegation of profiteering needed to be investigated, forwarded the same to the DGAP for detailed investigation vide its minutes dated 06.09.2018.

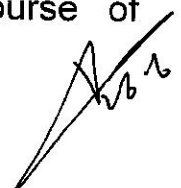
2. The DGAP, on receipt of the above minutes, issued a notice dated 15.10.2018 to the Respondent seeking his reply as to whether the benefit of reduction in the rate of tax was not passed on to the recipient. The notice also sought to suo-moto determine the quantum of benefit to be passed on if the Respondent had failed to pass on the same. The Respondent was also allowed to inspect the non-confidential documents provided by Applicant No. 1 which was not availed by him.
3. The DGAP's Report covered the period from 27.07.2018 to 30.09.2018. This Authority on the request of the DGAP vide its order dated 02.01.2019 had extended the time limit to 03.04.2019 for completing the investigation in terms of Rule 129 (6) of the CGST Rules, 2017.
4. The DGAP's Report submitted that the Respondent had failed to file any written submissions inspite of repeated requests but later on filed various documents such as invoices, GSTR returns, sample sale

invoices, and All India price list, etc. Based on the above documents the DGAP found that though there was a reduction in the rate of tax from 28% to 18% w.e.f. 27.07.2018 on the products the Respondent had increased his base prices w.e.f. 27.07.2018. The Report further stated that 331 products that were supplied by the Respondent were impacted by GST rate reduction. Out of these 331 products, 181 products were sold before 27.07.2018, and out of these 181 products only in the case of 151 products the base prices were increased from 27.07.2018 (post GST rate reduction) as compared to the period 01.06.2018 to 26.07.2018 (pre rate reduction). From the outward taxable supplies and the prices of the products provided by the Respondent, the DGAP had found that the profiteered amount was Rs. 3,76,360/- and that all these products were supplied only in the state of Karnataka.

5. On the perusal of the DGAP's Report, the Authority in its sitting held on 03.04.2019 decided to hear the interested parties, and accordingly, hearings were held on 29.04.19 & 20.05.2019. During the hearings, none was appeared for the Applicant No. 1, Sh. Bhupender Goyal, Assistant Director (Cost) and Sh. Sachin, Superintendent represented Applicant No. 2 and the Respondent was represented by Sh. P. K. Bansal, Advocate, and Sh. Tarun Sharma, Chartered Accountant.
6. The Respondent in his written submissions dated 29.04.2019 submitted that the DGAP had erred in calculating the profiteered amount based on average value per unit. It was the case of the Respondent that he was a dealer in paints and when they were sold in various colours it included the cost of the base paint plus the colour.

He has submitted that the DGAP has taken the value per unit based on the average value of the month whereas in this case in all the invoices there was some component of coloring, cost of which was added over and above the base value of the Paints which led to change in the taxable value of every invoice. Therefore, the Respondent claimed that the prices of the items vary on account of the different colours used for the same basic product. Further, the Respondent submitted copies of invoices to show that the prices had not increased on or after 27.07.2018 (in the post-reduction period) for the same items containing the same colours.

7. The Respondent also submitted that the process of identifying those bills which had the same colour combination for those items which were taken by the DGAP in the Report was a timeconsuming process due to which the Respondent was able to produce only sample copies of the invoices. He also stated that the average value method followed by the DGAP was not appropriate in this case as the prices containing the same base paints varied due to the effect of the cost of the colour therein. The Respondent also pleaded that either the profiteered amount should be calculated based on the base price of the items for which the calculation sheet has already been submitted or based on the comparison of the actual invoices of the pre-reduction and the post-reduction period.
8. These submissions of the Respondent were forwarded to the DGAP and the DGAP vide his Report dated 31.05.2019 submitted that the information submitted by the Respondent during the course of



hearings had not been submitted to the DGAP at the time of the investigation.

9. This Authority examined the DGAP's Report and various submissions filed by the Respondent and the documents placed on record. The record revealed that the Government had reduced the GST rate from 28% to 18% w.e.f. 27.07.2018 vide its Notification No. 18/2018-Central Tax dated 26.07.2018 on "Paints, Varnishes and Putty". The DGAP's Report stated that the Respondent who supplied the above products was impacted with the above Notification in the case of 331 products. The Report further stated that out of these 331 only in the case of 151 products the base prices were increased denying the benefit of reduction of the rate of tax to the recipients. The Report in Para 7 mentioned that no written submissions were filed by the Respondent though he had indeed submitted the following documents:-

1. Invoice-wise details for outward taxable supplies during the period from June 2018 to September 2018.
2. Copies of GSTR-1 returns from June 2018 to September 2018.
3. Copies of GSTR-3B returns from June 2018 to September 2018.
4. Copies of sample sale invoices.  
and
5. All-India Dealer Price List.

10. The DGAP in his Report had not expressly mentioned as to how it had been concluded that the base prices had been increased by the Respondent. However, based on the outward supplies register as

given in his Annexures 12 and 13, it appeared that the DGAP had arrived at the profiteered amount by comparing the average prices of the various products taking into account the prices of the products before rate reduction (01.07.2018 to 26.07.2018) with the actual selling prices of the products after rate reduction (27.07.2018 to 30.09.2018). The Annexure 15 of the DGAP Report showed that the commensurate price had been worked out based on the per-unit base price for the supplies made from 01.07.2018 to 26.07.2018. However, the report did not elaborate on how the per-unit base prices for the two periods were arrived at (as shown in column No. K of Annexure 15 of the DGAP Report). This calculation made by the DGAP required further clarification.

11. Moreover, during the hearings, the Respondent had produced a list of items with the sale prices before 27.07.2018 and after 27.07.2018 where the pre GST rate reduction prices were higher than the post GST rate reduction prices for the period August 2018 to September 2018. The facts and figures submitted by the Respondent before the Authority during the course of the hearings appeared to be at variance with the facts and figures taken by the DGAP for its calculations. Besides, it was noted that the Respondent had claimed that the pre-rate reduction and post-rate reduction sale prices of similar coloured paints needed to be compared to arrive at the correct figure of profiteering. The Respondent had also submitted that even though the price of basic white colour paint remained constant, the prices of the end products varied on account of the differences in prices associated with different colours. The DGAP in his Report dated 31.05.2019 had

clearly stated that none of the documents filed by the Respondent before the Authority, had been submitted before him at the time of the investigation. Therefore in the interest of justice and to determine the profiteered amount based on complete submissions made by the Respondent, this Authority had directed the DGAP to verify the claim of the Respondent and to re-calculate the net profiteered amount that was available with the Respondent on account of reduction in the rate of tax. Given the above facts the Authority under Rule 133 (4) of the CGST Rules, 2017 directed the DGAP to reinvestigate the following issues:-

- i) To re-examine the pre rate reduction per unit price for the period before 27.07.2018 and specifically state the calculation as to how it has been arrived at?
- ii) To examine whether the claim of the Respondent that there are variations in the prices on account of the addition of colour to his products is correct or not?
- iii) To re-examine whether the per-unit price before 27.07.2018 is a discounted price and if so whether the comparable price is also a discounted price?
- iv) To categorically explain as to how the per-unit price has been arrived at and provide a calculation sheet if necessary.
- v) To state that the additional amount of benefit derived by the Respondent is due to the reduction in the tax rate.





13. Subsequently, the DGAP submitted a comprehensive Report on 10.10.2019, after re-investigation, wherein DGAP has stated that the Respondent had taken GST registration in the month of May 2018 and perusal of the relevant records indicated that there was no sale in the month of May 2018. Therefore, the DGAP had taken average basic price (after discount) covering the period 01.06.2018 to 26.07.2018 (Pre-rate reduction period) to compare with the discounted monthly average of the supply made during the period 27.07.2018 to 30.09.2019 (Post-rate reduction period under investigation). The DGAP has also submitted that the details of pre-rate reduction basic price, commensurate selling price, actual selling price, and the amount of profiteering were provided in Annexure-15 to the DGAP's Report dated 29.03.2019 which was furnished to this Authority under Rule 129(6) of the above Rules. However, an extract of the two products has been furnished in Table-'A' below:

Table- A						
S.No.	Particulars	Month	Period	Factor	HQ2 Ultima 20 Ltr.	Birla Wall Care Putty 40 Kg.
1	Quantity	Jun-18	Pre-Rate Reduction	A	512	25
2	Discounted Taxable Amount	Jun-18	Pre-Rate Reduction	B	4,12,519	1,32,883
3	Base Price per Unit	Jun-18	Pre-Rate Reduction	C=B/A	806	5,315
4	Quantity	01.07.2018 to 26.07.2018	Pre-Rate Reduction	D	301	15
5	Discounted Taxable Amount	01.07.2018 to 26.07.2018	Pre-Rate Reduction	E	2,44,470	85,506
6	Base Price per Unit	01.07.2018 to 26.07.2018	Pre-Rate Reduction	F=D/E	812	5,700
7	Quantity	01.07.2018 to 26.07.2018	Pre-Rate Reduction	G=A+D	813	40
8	Discounted Taxable Amount	01.07.2018 to 26.07.2018	Pre-Rate Reduction	H=B+E	6,56,988	2,18,389
9	Base Price per Unit	01.07.2018 to 26.07.2018	Pre-Rate Reduction	I=H/G	808	5,460

10	Commensurate Selling Price	01.07.2018 to 26.07.2018	Pre-Rate Reduction	$J=I*118\%$	954	6,442
11	Quantity	27.07.2018 to 31.07.2018	Post-Rate Reduction	K	100	-
12	Discounted Taxable Amount	27.07.2018 to 31.07.2018	Post-Rate Reduction	L	81,651	-
13	Base Price per Unit	27.07.2018 to 31.07.2018	Post-Rate Reduction	$M=L/K$	816.51	-
14	Actual Selling Price	27.07.2018 to 31.07.2018	Post-Rate Reduction	$N=M*118\%$	963	-
15	Quantity	Aug-18	Post-Rate Reduction	O	510	93
16	Discounted Taxable Amount	Aug-18	Post-Rate Reduction	P	4,36,963	5,49,670
17	Base Price per Unit	Aug-18	Post-Rate Reduction	$Q=P/O$	859.79	5,910.43
18	Actual Selling Price	Aug-18	Post-Rate Reduction	$R=Q*118\%$	1,011	6,974
19	Quantity	Sep-18	Post-Rate Reduction	S	717	73
20	Discounted Taxable Amount	Sep-18	Post-Rate Reduction	T	6,18,946	4,22,691
21	Base Price per Unit	Sep-18	Post-Rate Reduction	$U=T/S$	863.24	5,790.28
22	Actual Selling Price	Sep-18	Post-Rate Reduction	$V=U*118\%$	1,019	6,833
23	Profiteering	27.07.2018 to 31.07.2018	Post-Rate Reduction	$W=[(N-J)*K]$	991	-
24	Profiteering	Aug-18	Post-Rate Reduction	$X=[(R-J)*O]$	29,299	49,460
25	Profiteering	Sep-18	Post-Rate Reduction	$Y=[(V-J)*S]$	46,652	28,474
26	<b>Total Profiteering</b>	<b>27.07.2018</b>	<b>Post-Rate Reduction</b>	<b><math>Z=W+X+Y</math></b>	<b>76,943</b>	<b>77,934</b>

14. The DGAP has further reported that he has considered the discounted price i.e. the transaction value per unit during the period 01.06.2018 to 26.07.2018 (Pre-rate reduction period) as well as during the period 27.07.2018 to 30.09.2018 (Post-rate reduction period). The allegation, in this case, was that the base prices of the products were increased when there was a reduction in the GST rate from 28% to 18% w.e.f. 27.07.2018, so that the benefit of the reduction in the tax rate was not passed on to the recipients by way of commensurate reduction in prices. The DGAP has thus found that the Respondent had increased the base prices of the goods consequent to the reduction in GST rate, the commensurate benefit of reduction in GST rate from 28% to 18%.

was not passed on by the Respondent to the recipients which have been furnished as the details in Annexure-15 to the DGAP's Report dated 29.03.2019. The total amount of profiteering covering the period 27.07.2018 to 30.09.2018 has been worked out as Rs. 3,76,360/-.

15. The DGAP has further stated that the submission made by the Respondent regarding variations in the prices on account of the addition of colour to his products could not be substantiated as it was nowhere available in the details of outward taxable supplies of the Respondent. The DGAP has finally observed from Annexure-15 to the DGAP's Report dated 29.03.2019 that the Respondent has profiteered to the tune of Rs. 83,732 - on the supply of Wall Putty (HSN 3214) and Rs. 34,936/- on the supply of "Primer", which has not involved any coloring cost.
16. The above Reports were considered by this Authority in its meeting held on 11.10.2019 and accordingly the Applicants and the Respondent No. 1 were asked to appear before the Authority on 09.11.2019 for hearing. Five hearing opportunities were accorded to the interested parties on 05.11.2019, 20.11.2019, 02.12.2019, 16.12.2019 & 27.12.2019 wherein none appeared for the Respondent, Applicant No. 1 and the DGAP.
17. We have carefully considered the DGAP's Reports and the documents placed on record. It is revealed that the Respondent is a dealer engaged in the purchase and sale of paint products. On examining the various submissions, we need to find whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipient as provided under Section 171 of

the CGST Act, 2017. The record reveals that the Government had reduced the GST rate from 28% to 18% w.e.f. 27.07.2018 vide its Notification No. 18/2018-Central Tax dated 26.07.2018 on "Paints, Varnishes and Putty". This fact has also not been contested by the Respondent. Therefore, there is no dispute that the Respondent is liable to pass on the benefit of tax reductions w.e.f. 27.07.2018. It is further observed that the Respondent who supplied the above products was impacted with the above Notification in the case of 331 products. Out of these 331 products, base prices only in the case of 151 products were increased from 27.07.2018 (post GST rate reduction). Therefore, the Respondent is required to pass on an amount of Rs. 3,76,360/- in respect of these 151 products.

18. It is also evident from the record that the Applicant No. 1 had filed an application under Rule 128 (1) of the CGST Rules, 2017 before the Standing Committee on Anti-profiteering alleging that the Respondent had not passed on the benefit of reductions in the GST rates to his customers but had instead increased the base prices of his products by keeping the Maximum Retail Prices (MRPs) unchanged. The above Applicant had also submitted invoices showing both the pre and post GST rate reduction prices claiming that the Respondent had not reduced the MRPs.
19. The above application was scrutinised by the Standing Committee on Anti-profiteering in its meeting held on 06.09.2018 and it was resolved to refer the application to the DGAP for detailed investigation under Rule 129 (1) of the above Rules.



20. The DGAP after issuing notice to the Respondent has carried out detailed investigation in the allegations made against the Respondent and furnished his Report on 29.03.2019 under Rule 129 (6) of the above Rules. The DGAP had stated in his Report that perusal of the Price Lists effective as on 26.07.2018 and 27.07.2018 as well as the details of the outward sales data submitted by the Respondent showed that the base prices of the products under investigation were not maintained by the Respondent after the GST rates were reduced but instead, they were increased. Thus, there has been no reduction in the prices commensurate with the reduction in the GST rates as was required under Section 171 (1) of the Act. The DGAP has further stated that although the Respondent has claimed to have reduced his base prices w.e.f. 27.07.2018, the revised base prices were more than the pre-rate reduction base prices, therefore, while there was a reduction in the cum-tax prices, it was not commensurate with the reduction in the tax rates. The DGAP has claimed that the benefit of reduction in the GST rates w.e.f. 27.07.2018 should have resulted in commensurate reduction in the cum-tax prices but the Respondent did not reduce the prices of impacted goods commensurately. He has also contended that the provisions of Section 171 of the CGST Act, 2017 have been infringed by the Respondent as he has not passed on the benefit of tax reductions.
21. The DGAP has also quantified the amount of benefit which the Respondent has denied to his customers or the profiteered amount on the basis of the pre and post-reduction GST rates and the details of the outward supplies (other than zero rated, nil rated and exempted

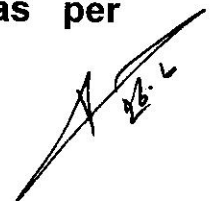
supplies) for the period from 01.07.2018 to 30.09.2018 furnished by the Respondent vide Annexures 15 of the Report. Perusal of **Annexure-15** prepared by the DGAP shows that it mentions the material code, description of the material (product), HSN Code, pre rate reduction average base price, the post rate reduction monthly average base price, total quantity sold w.e.f. 01.07.2018 to 30.09.2018, total amount during 01.07.2018 to 30.09.2018, post rate reduction average basic price, post rate reduction average selling price, commensurate price, profiteering per unit and total profiteering of 151 products which were impacted by the rate reductions from w.e.f. 27.07.2018. **Annexure-7, 12 & 13** mention the name of the customer (dealer), GSTN, invoice No., invoice date, place of supply (name of the State), material No., material description, HSN Code, MRP, invoice quantity, Rate per unit, taxable value, discount, taxable value, rate of GST, amount of GST and the invoice amount of all the supplies made by the Respondent from 01.07.2018 to 30.09.2018.

22. Accordingly, the DGAP has computed amount of net higher sales realization or the profited amount due to increase in base prices of 151 products consequent upon the reduction in the GST rates from 28% to 18% as **Rs. 3,76,360/-**.

23. During the course of the proceedings conducted by this Authority on the basis of the Report dated 29.03.2019 furnished by the DGAP the Respondent had vehemently argued that the DGAP did not consider his submissions made before him in his Report and also argued that the procedure followed by the DGAP to compute the profiteering was not correct. Accordingly, vide its Order dated 02.07.2019 this Authority

had directed the DGAP to reinvestigate the above case under Rule 133 (4) of the CGST Rules, 2017 and to submit clear cut findings on the above issues. Accordingly, the DGAP has carried out reinvestigation and submitted his Report on 10.10.2019 which has been mentioned supra. Perusal of the Report dated 10.10.2019 shows that the DGAP has clearly illustrated by taking the example of two products namely HQ2 ULTIMA 20LTR PAINT and BIRLA WALLCARE PUTTY 40 in Table-A above that he has considered the Average selling price of every impacted product for the period 01.07.2018 to 26.07.2018 and compare it with the month-wise average selling price of the same product for the period 27.07.2018 to 30.09.2018. In this manner, the DGAP has computed the month-wise profiteering amount for every product separately as per Annexure-15 of his Report dated 29.03.2019.

24. It is further evident from the Reports dated 29.03.2019 and 10.10.2019 that the DGAP has calculated the pre tax reduction average base prices of the products which were impacted by the tax reduction w.e.f. 27.07.2018 by dividing the total taxable value of the product by the total quantity of the product sold during the period from 01.07.2018 to 26.07.2018 as mentioned in Annexure-15 attached with the Report. **The profiteered amount has been computed as Rs. 3,76,360/- in respect of the impacted products by comparing the pre-rate reduction average base prices with the post rate reduction average base prices from 27.07.2018 to 30.09.2018 as per Annexure-15 of the Report.**



25. It is clear from the above narration of the facts that the profiteered amount has been computed by comparing the **average pre rate reduction base prices** of the impacted products with the **monthly average post rate reduction base prices** in respect of both the tax reductions. The above mathematical methodology adopted by the DGAP to compute the profiteered amount is not in line with the methodology adopted by the DGAP himself in similar cases of profiteering wherein the **average pre rate reduction base prices** have been compared with the **actual post rate reduction prices** to compute the profiteered amount. Further, in case the mathematical methodology of comparing the average to average base prices employed by the DGAP is adopted it would not be possible to compute the benefit of tax reduction which is due to each customer on each supply. The profiteered amount computed by the DGAP would also not be correct. Hence, the above mathematical methodology adopted by the DGAP is not correct, logical, appropriate and in consonance with the provisions of Section 171 of the CGST Act, 2017. Therefore, the Reports dated 23.03.2019 and 10.10.2019 furnished by the DGAP cannot be accepted. Accordingly, the DGAP is directed to reinvestigate the above case under Rule 133 (4) of the CGST Rules, 2017. The DGAP is directed to compare the average pre rate reduction base prices of the products which were impacted by the tax rate reduction w.e.f. 27.07.2018 with the actual post rate reduction base prices of the impacted products.
26. The DGAP shall reinvestigate the case and submit his Report under Rule 133 (4) of the above Rules. The Respondent is directed to extend



necessary assistance to the DGAP during the course of the investigation.

27. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 10.10.2019 the order was to be passed on or before 09.04.2020. However, due to the prevalent pandemic of COVID-19 in the country, this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order 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 CGST Act, 2017.
28. A copy of this order be supplied to both the parties and file of the case be consigned after completion.

Sd/-

(Dr. B. N. Sharma)  
Chairman

Sd/-

(J. C. Chauhan)  
Member(Technical)



Certified Copy

*(Handwritten signature)*

(A. K. Goel)  
Secretary, NAA

Sd/-

(Amand Shah)  
Member(Technical)

F. No. 22011/NAA/21/Mataji/2018 / 3541 -- 3544

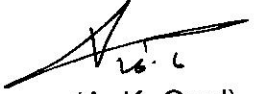
Date: 26.06.2020

Copy To:-

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

*o/c*

2. M/s. Mataji Paints and Hardware, 36/6 Papu Cottage, S. Kariappa Road, Near Yediur Lake, Bengaluru, Karnataka.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. NAA Website/Guard File.



(A. K. Goel)  
Secretary, NAA