

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

Case No. 53/2020
Date of Institution 31.01.2020
Date of Order 24.08.2020

In the matter of:

1. Shri M. Srinivas, Principal Commissioner, Hyderabad Commissionerate, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad- 500004.
2. Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s PVR Ltd., PVR Hyderabad, 5th Floor, Hyderabad Central, Punjagutta Cross Road, Hyderabad-500073.

Respondent.

Quorum:-

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

Present:-

1. None for the Applicant No. 1.
2. None for the DGAP, the Applicant No. 2.
3. Sh. Nitin Sood, Chief Financial Officer, Sh. Brijesh Arora, Vice-President (Accounts), Sh. Pratik Jain and Sh. Rajeev Dewan, Chartered Accountants for the Respondent.


ORDER

1. The present Report dated 31.01.2020 has been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received by the DGAP from the Standing Committee on Anti-Profiteering on 05.08.2019 to conduct a detailed investigation in respect of an application filed by the Applicant No. 1, under Rule 128 (1) of the CGST Rules, 2017, alleging profiteering by the Respondent in respect of supply of "Services by



way of admission to exhibition of cinematograph films” despite reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. The Applicant No. 1 had alleged that the Respondent had sold tickets of value of Rs. 250/-, Rs. 200/-, Rs. 150/- at the same prices prior to and after the GST rate reduction vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of reduction in the GST rate from 28% to 18% w.e.f. 01.01.2019 announced vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 and instead, had increased the base prices. The above Applicant had also enclosed the following supporting documents along with his application:-

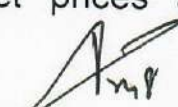
- a. Copy of the APAF-I.
 - b. Sample tickets dated 31.12.2018 (Pre-rate reduction) and 06.01.2019 & 07.01.2019 (Post-rate reduction).
 - c. Letter dated 25.02.2019 of the Respondent addressed to Pr. Chief Controller of Accounts, CBIC, New Delhi along with copy of cheque No. 349950 dated 22.02.2019 for payment of Rs. 13,72,181/- into the Consumer Welfare Fund (CWF).
2. The DGAP has reported that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 (3) of the above Rules was issued to the Respondent on 22.08.2019, calling upon him to reply as to whether he admitted that the benefit of



reduction in the GST rate w.e.f. 01.01.2019 had not been passed on by him to his recipients by way of commensurate reduction in prices of the tickets and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply. The Respondent was afforded opportunity to inspect the non-confidential evidence/ information which formed the basis of the above Notice, during the period from 26.08.2019 to 28.08.2019. However, he failed to avail the same. The Applicant No. 1 vide e-mail dated 20.01.2020 was also allowed to inspect the non-confidential documents/reply furnished by the Respondent on 27.01.2020 or 28.01.2020 which the above Applicant did not avail of. The DGAP has informed that the period covered by the current investigation was from 01.01.2019 to 31.07.2019 and the statutory time limit to complete the current investigation was on or before 04.02.2020, in terms of Rule 129 (6) of the Rules.

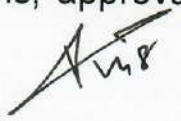
3. The DGAP has also reported that the Respondent in response to the Notice dated 22.08.2019 and subsequent reminders has submitted his replies vide letters and e-mails dated 02.09.2019, 06.09.2019, 11.12.2019, 26.12.2019, 09.01.2020, 13.01.2020 and 23.01.2020 whereby he has submitted:-

- a) That he was operating in a regulated market and thus he was required to abide by the fixed admission ticket prices as



endorsed by the Licensing Authority. Any deviation therefrom in the admission ticket prices required previous sanction of the concerned Authority.

- b) That on reduction in rate of tax w.e.f. 01.01.2019, representations were made to the Principal Secretary (Home), Government of Telangana. A representations was also made on 04.01.2019 by the Multiplex Association of India (MAI) which was followed by multiple meetings between the MAI and the Industry representatives with the concerned local State authorities.
- c) That despite follow ups no clarity was received to deal with the impact of the GST rate changes on ticket prices in a regulated market of Telangana. Despite the above, the Respondent had suo moto given effect to the reduced GST rates on his ticket prices w.e.f. 07.01.2019 and the differential amount of Rs. 13,72,181/- was voluntarily deposited in the CWF. Therefore, the Respondent had exercised all due diligence, within his control, to ensure that the GST rate reduction benefit was appropriately passed on to his customers.
- d) That he has 8 cinema properties [having total 49 No. of screens viz. 30 (2D), 18 (3D) & 1 (4DX)] in the State of Telangana out of which PVR Erramanzil, Hyderabad had started its operation from 30.11.2019 and the 4DX screen was in operation from 11.02.2019. In terms of Telangana State Regulations, approval



from the Licensing Authority was generally given for an introductory ticket of Rs. 75/-. After a month of operations, permission was granted to increase the ticket prices. Further, the prices applicable in this property were fixed in terms of the order dated 02.01.2019 passed by the Hon'ble High Court of Telangana in WP No. 48127 of 2018 filed on 31.12.2018.

e) That the PVR Musarambagh, Hyderabad (having 6 screens) has started its operation from 22.03.2019 and pricing in this property was fixed in terms of the order dated 01.04.2019 passed by the Hon'ble High Court of Telangana in WP No. 6811 of 2019.

4. Vide the aforementioned letters; the Respondent has also submitted the following documents/information:-

- a. Copies of GSTR-1 & 3B Returns for the period from December, 2018 to July, 2019.
- b. Movie wise & ticket wise data for the period from December, 2018 to July, 2019.
- c. Reconciliation of outward taxable supplies with GSTR-1 & GSTR-3B Returns.
- d. Sample copies of tickets pre and post 01.01.2019.
- e. Government Order No. 60 dated 11.03.2010 approving the ticket prices.



- f. Copies of representations made to the Principal Secretary (Home), Government of Telangana.
 - g. Copy of Cheque & Bank Statement for deposition of the differential amount of Rs. 13,72,181/- along with interest of Rs. 35,865/- in the CWF.
 - h. Copies of orders dated 02.01.2019 & 01.04.2019 passed by the Hon'ble High Court of Telangana in WP No. 48127 of 2018 & 6811 of 2019 respectively.
5. The DGAP has also stated that on a careful examination of the case record, including the reference received from the Standing Committee on Anti-Profiteering, various replies of the Respondent and the documents/evidence placed on record, it emerged that the main issues to be examined were whether the GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" was reduced from 28% to 18% and whether the rate of GST on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" was reduced from 18% to 12% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rates of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.



6. The DGAP has further stated that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018. Since it was a case of reduction in the rates of tax, it was important to examine the provisions of Section 171 (1) of the CGST Act, 2017, to ascertain whether the present case was a case of profiteering or not. Section 171 (1) reads as "*Any reduction in rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the recipient by way of commensurate reduction in prices.*" Thus, the legal requirement was abundantly clear that in the event of a benefit of Input Tax Credit (ITC) or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction should obviously be in monetary terms only so that the final price payable by a consumer got reduced which was the legally prescribed mechanism for passing on the benefit of ITC or reduction in rate of tax to the customers under the GST regime. Moreover, it was also clear that the said Section 171 simply did not provide a



supplier of goods or services any other means of passing on the benefit of ITC or reduction in the rate of tax to the buyers.

7. The DGAP has also noted that there were basically two classes of tickets in the Respondent's Multiplexes, namely, 'Classic' and 'Recline'. For the purpose of determination of profiteering, the class wise no. of tickets sold during the period from 01.12.2018 to 31.12.2018 (pre-GST rate reduction) was taken and an average base price (after discount) was obtained by dividing the total taxable value by total no. of tickets sold during this period. The average base prices of the ticket were compared with the actual selling prices of the tickets sold during the post-GST rate reduction i.e. on or after 01.01.2019 as has been illustrated in the Table-'A' below:-

Table-'A'

(Amount in Rs.)

| Sl. No. | Description | Factors | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (From 01.01.2019) | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (From 01.01.2019) |
|---------|--|-----------|---|---------------------------------------|---|---------------------------------------|
| 1. | Multiplex Name | A | PVR Panjagutta Hyderabad | | PVR KUKKATPALLY | |
| 2. | Ticket Category | B | Classic | | Royal (3D) | |
| 3. | Ticket MRP | C | 150/- | 150/- | 250/- | 250/- |
| 4. | Total No. of tickets sold | D | 91,415 | | 9,936 | |
| 5. | Total taxable value (after Discount, if any) | E | 1,07,12,009/- | | 19,40,700/- | |
| 6. | Average base price (without GST) | $F=(E/D)$ | 117.18/- | | 195.32/- | |
| 7. | GST Rate | G | 28% | 18% | 28% | 18% |

| | | | | | | |
|-----|--|--------------------|-------|---|-------|---|
| 8. | Actual Selling price (post rate reduction) (including GST) | H=12 8% of F | 150/- | | 250/- | |
| 9. | Commensurate Selling price (post Rate reduction) (including GST) | I=118 % of F | | 138.28/- | | 230.47/- |
| 10. | Post Reduction Movie Name & date | J | | PRETHAM 2 dated 05.01.201 9 | | (3D) AQUAMAN (English) dated 04.01.2019 |
| 11. | Actual Selling price (post rate reduction) (including GST) | K | | 150 | | 250 |
| 12. | Excess amount charged or Profiteering | L | | 11.72 | | 19.53/- |

8. The DGAP has claimed from Table-'A' that the Respondent had not reduced the selling prices commensurately of the "Movie Tickets", when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 and hence, the Respondent has profiteered an amount of Rs. 11.72/- on Classic and Rs. 19.53/- on Recline classes per ticket and thus the benefit of reduction in GST rates was not passed on to the recipients by way of commensurate reduction in the prices, in terms of Section 171 of the CGST Act, 2017. On the basis of the calculation as illustrated in Table-'A' above, profiteering in case of all the tickets sold



by the Respondent (Except PVR Musarambagh, Hyderabad, as the property came into existence only in March 2019 and price was fixed for the first time as per the Hon'ble Telangana High Court Order dated 01.04.2019) has also been arrived at in a similar way for all the Multiplexes which has been furnished in Table-'B' below:-

Table-'B'

(Amount in Rs.)

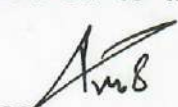
| Sl. No. | Description | Factor | Pre Rate Reduction (01.12.18 to 31.12.18) | Post Rate Reduction (01.01.19 to 06.01.19) | Post Rate Reduction (07.01.19 to 31.07.19) | Pre Rate Reduction (01.12.18 to 31.12.18) | Post Rate Reduction (01.01.19 to 06.01.19) | Post Rate Reduction (07.01.19 to 31.07.19) | Pre Rate Reduction (01.12.18 to 31.12.18) | Post Rate Reduction (01.01.19 to 31.07.19) |
|---------|--|--------------|---|--|--|---|--|--|---|--|
| 1. | Class of Ticket | A | Classic | | | Recline | | | Classic | |
| 2. | Ticket MRP | B | 150/- | 150/- | 138/- | 250/- | 250/- | 230/- | 75/- | 75/- |
| 3. | Total No. of tickets sold | C | 5,54,001 | 1,02,323 | 40,03,644 | 25,218 | 5,277 | 2,25,410 | 77,806 | 12,922* |
| 4. | Total taxable value (after Discount, if any) | D | 6,49,21,992 | 1,30,07,300 | 46,81,86,132 | 49,25,391 | 11,17,985 | 4,39,36,683 | 49,45,297 | 8,65,257 |
| 5. | Average base price (without GST) | E=D/C | 117.19/- | 127.12/- | 116.94/- | 195.31/- | 211.86/- | 194.92/- | 63.56/- | 66.96/- |
| 6. | GST Rate | F | 28% | 18% | 18% | 28% | 18% | 18% | 18% | 12% |
| 7. | Actual Selling price (post rate reduction) (including GST) | G=E*(1+F) | 150/- | 150/- | 138/- | 250/- | 250/- | 230/- | 75/- | 75/- |
| 8. | Commensurate Selling price (post Rate reduction) (including GST) | H=118 % of E | | 138.28/- | 138.27/- | | 230.47/- | 230.45/- | | 71.19/- |
| 9. | Excess amount charged or Profiteering per Ticket | I=G-H | | 11.72/- | - | | 19.53/- | - | | 3.81/- |
| 10. | Total Profiteering | J=C*I | | 11,99,226 | - | | 1,03,060 | - | | 49,233 |
| 11. | Grand Total (K) | | Rs. 13,51,519/- | | | | | | | |

*Note: Introductory ticket of Rs. 75/- sold in PVR Erramanzil Hyderabad upto 05.01.2020.

9. The DGAP has claimed from the above Table that the Respondent had increased the base prices during the period from 01.01.2019 to 06.01.2019 to maintain the same selling prices (or MRPs) resulting in extra charging from the customers for the tickets which they were paying prior to reduction in rate of tax from 28% to 18% and from 18% to 12% w.e.f. 01.01.2019 and hence, he has denied the benefit of reduction in the rates of tax to his recipients. However, w.e.f. 07.01.2019, the Respondent had revised his selling prices commensurately to pass on the benefit of reduction in the rates of tax from 28% to 18% and 18% to 12%.
10. The DGAP has also claimed from the above Table that the Respondent had collected excess amount of Rs. 13,51,519/-. However, the Respondent had voluntarily deposited Rs. 13,72,181/- along with interest of Rs. 35,865/- in the CWF. Therefore, it appeared that though there was contravention of the provisions of Section 171 of the CGST Act, 2017, the Respondent has suo moto rectified his mistake and paid the entire amount due in the CWF, prior to initiation of present proceedings. Therefore, he might not be ordered to pay this amount again. The DGAP has also stated that the said service has been supplied by the Respondent in the State of Telangana on the basis of the details of outward supplies of the

services by way of admission to exhibition of cinematograph films, submitted by him.

11. Consequently, the DGAP has submitted that the allegation of profiteering by way of either increasing the base prices of the services while maintaining the same selling prices or by way of not reducing the selling prices commensurately on the "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" when the GST rate was reduced from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" when the rate of GST was reduced from 18% to 12% w.e.f. 01.01.2019 stood confirmed against the Respondent. On this account, the Respondent had realized an additional amount to the tune of Rs. 13,51,519/- from the recipients which included both the profiteered amount and the GST on the said profiteered amount. However, as mentioned in para supra, the Respondent had voluntarily deposited Rs. 13,72,181/- along with interest of Rs. 35,865/- in the CWF which was in accordance with the provisions of Section 171 of the CGST Act, 2017 read with Rule 133 of the CGST Rules, 2017.
12. The DGAP has also stated that Section 171 (1) of the CGST Act, 2017 requiring that "any reduction in rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the



recipient by way of commensurate reduction in prices”, might not be invoked against the Respondent in the present case and the profiteering amount already paid might be confirmed and regularized.

13. The above Report of the DGAP was considered by this Authority and it was decided to hear the parties on 02.03.2020. A Notice dated 05.02.2020 was also issued to the Respondent asking him to explain why the Report dated 31.01.2020 furnished by the DGAP should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed. Sh. Nitin Sood, Chief Financial Officer, Sh. Brijesh Arora, Vice-President (Accounts), Sh. Pratik Jain and Sh. Rajeev Dewan, Chartered Accountants represented the Respondent while none appeared on behalf of the Applicants.
14. The Respondent has filed submissions dated 02.03.2020 wherein he has stated that the GST Authorities from Hyderabad Commissionerate had visited one of the Multiplexes of the Respondent situated in Hyderabad for verification of the rate reductions on sale of tickets effective from 01.01.2019. Subsequently, the Respondent was issued notice by the Hyderabad Commissionerate vide Notice HQAE/V/149/2018-HYD GST(AE) dated 01.02.2019, requesting submission of summary report of all the movie ticket sales for the theatres in Telangana State. During the course of the above investigation, he had submitted his reply highlighting that there was no clarity on account of reduction of prices since he operated under the



regulated market. The Respondent had also submitted that the ticket prices were however, suo moto reduced by him effective from 07.01.2019.

15. The Respondent has also stated that the Hyderabad Commissionerate has alleged that the Respondent had not passed on the benefit of rate reductions on the sale of movie tickets for the period from 01.01.2019 to 06.01.2019. In this regard, the above Commissionerate had issued a payment notice vide Dy. No. 03/2019 dated 20.02.2019 to him alleging that there was delayed reduction in the ticket prices during the period w.e.f. 01.01.2019 to 06.01.2019 and had requested to deposit the profiteered amount. Consequently, the Respondent had voluntarily deposited Rs. 13,72,181/- along with interest of Rs. 35,865/- under protest.
16. The Respondent has further stated that he was issued a notice by the DGAP bearing F. No. 22011/API/125/2019 dated 22.08.2019 and notice No. 22011/API/125/2019/3021 dated 04.12.2019 seeking information/documents relating to the contravention of the provisions of Section 171 of the CGST Act, 2017. The Respondent has submitted that he had filed his replies with the DGAP dated 06.09.2019 and 26.12.2019 explaining the facts of the case along with his submission that he has suo moto passed on the benefit on account of rate reductions even though there was no clarity on this issue in the regulated market.



17. The Respondent has also submitted that he was registered in the State of Telangana under GSTIN 36AAACP4526DIZR and was majorly engaged in the following business segments: -
- a. Sale of Tickets
 - b. Sale of Food & Beverages
 - c. Sale of Advertisement space
18. The Respondent has also submitted that effective from 01.01.2019 the Government vide Notification No. 27/2018 - Central Tax (Rate) dated 31.12.2018 had reduced GST rates as under:-
- a. For ticket prices above Rs. 100/- - GST rate was reduced to 18% from existing rate of 28%
 - b. For ticket prices up to Rs. 100/- - GST rate was reduced to 12% from existing rate of 18%
19. The Respondent has argued that while there were no specific guidelines or methodology prescribed under the CGST Act, 2017 for passing on benefit of tax reductions, he had suo moto computed the benefit and passed on the same by way of reduction in prices.
20. The Respondent has also argued that one of his sites in the State of Telangana located at Erramanzil, Hyderabad had started its operation from 30.11.2019. At the time of GST rate reductions effective from 01.01.2019, the above site had completed 1 month only. In terms of Telangana State Regulations, approval from the Licensing Authority was generally given for an introductory ticket price of Rs. 75/-. After a

month of operations, permission was granted to increase the ticket prices. The pricing for the above property was fixed in terms of order dated 02.01.2019 passed by the Hon'ble High Court of Telangana in WP No. 48127 of 2018 filed on 31.12.2018. Thus, the price being fixed post rate reductions, the rate reduction notification was not effective on the above property. However, the Respondent had suo moto passed on the benefit of rate reductions to his customers and also deposited the benefit for the period from 01.01.2019 to 06.01.2019. He has further stated that PVR Musarambagh, Hyderabad was operational from 22.03.2019, hence, rate reduction notification was not effective on the same.

21. The Respondent has also mentioned that the cinema business in the State of Telangana was regulated and thus, the prices of the tickets were required to remain the same until expressively approved by the relevant Authority. He has further mentioned that the cinema exhibition business in the State of Telangana was regulated by the Andhra Pradesh Cinemas (Regulation) Act, 1955 and was governed by the guidelines issued by the appropriate Licensing Authority. Therefore, the multiplexes were bound to obey the obligations arising out of the Cinematograph Act as well as the guidelines imposed upon him by the Licensing Authority. He has also mentioned that the Theatres and the Cinemas were categorised as Entry 33 in the State List of Seventh Schedule of the Constitution of India. Therefore, the business of



multiplexes was a State Subject. The Constitution 101st Amendment Act, 2016 by way of which the GST has been implemented, has not changed the status of Entry 33 thereof. Accordingly, the multiplexes in the State of Telangana have continued to be governed by the special statute enacted by a particular State. In the present case the Andhra Pradesh Cinemas (Regulation) Act, 1955 and the Rules made thereunder were regulating the regime of static/standardization of admission ticket prices. The concerned Licensing Authorities in the State of Telangana were fixing the admission ticket prices and endorsing the same on the license itself. Any deviation thereto in the admission ticket prices required the previous sanction of the concerned Licensing Authority.

22. The Respondent has also claimed that in the present case, the Respondent was also granted license by the Licensing Authority whereupon the admission ticket prices were fixed. A copy of the license/permission granted to the PVR Panjagutta by the Licensing Authority was enclosed as evidence wherein the admission ticket price was endorsed as Rs. 150/-.
23. The Respondent has further claimed that as and when the taxes were raised before implementation of the GST, the ticket prices had remained same and there were no changes made in them under the provisions of the Cinematograph Act and the Rules made thereunder resulting in net business losses. He has also submitted that the GST



rate applicable on the ticket prices in multiplexes was brought down from 28% to 18% w.e.f. 01.01.2019 and still the ticket prices were not changed by the Licensing Authority. The Respondent has further submitted that on increase in the procurement prices, he was not allowed to increase his prices. Accordingly, on decrease in the GST rates, the benefit should also not be asked to be passed on by him.

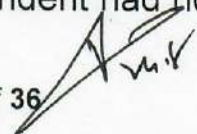
24. The Respondent has also placed reliance on the order of this Authority passed in the case of ***Kumar Gandharv v. KRBL Ltd. 67 GST 574 (NAA)*** wherein it has been held that any increase in the MRP on account of increase in the purchase price did not constitute violation of the provisions of Section 171. The relevant extract of the same has been provided hereunder:-

"It was also revealed from the perusal of the tax invoices submitted by the Respondent that there was an increase in the purchase price of paddy in the year 2017 as compared to his price during the year 2016 which constitutes major part of the cost of the above product. It was further revealed from the record that the Respondent had increased the MRP of his product from Rs. 540/- to Rs. 585/- which constituted increase of 8.33% keeping in view the increase in the purchase price. Therefore, due to the imposition of the GST on the above product as well as the increase in the purchase price of the paddy there does not appear to be denial of benefit of ITC as has



been alleged by the Applicant as there has been no net benefit of ITC available to the Respondent which could be passed on to the consumers. Accordingly, there was no substance in the application filed by the above Applicant as there was no violation of the provisions of Section 177 of the CGST Act 2017 and hence the same was dismissed."

25. The Respondent has also contended that no guidelines/instructions were provided by the Licensing Authority on applicability of the change in the GST rates under the regulated market. He has further contended that an order was passed by the Hon'ble High Court of Telangana in WP No. 18779 of 2019 dated 31.10.2016, wherein, the Hon'ble High Court had allowed the cinema theatres to run as per the rates informed to the Licensing Authorities and collect the prices deemed appropriate by the theatre owners post informing the Licensing Authorities. Accordingly, the MAI had submitted a representation to the Principal Secretary (Home) dated 04.01.2019 for seeking clarification on changing the ticket prices on account of increase in the cost but no response was received from the office of the Principal Secretary.
26. The Respondent has also averred that the cinema theatres were not allowed to change ticket prices even on account of increase in the cost without permission of the concerned authorities. In the present case, even when the cost had increased in the past, the Respondent had not



approached the Licensing Authority for revising the ticket prices. The Respondent has also argued that he had infact passed on the benefit of GST rate reductions to his customers and therefore, there was no need for further reduction of ticket prices. He has also stated that even though there was no requirement to pass on the GST benefit, he had suo-moto computed the benefit and passed on the same by way of reduction in the prices of tickets in the State of Telangana.

27. The Respondent has also pleaded that he had sought clarity from the relevant Licensing Authority through MAI to deal with the impact of GST rate changes on the ticket prices in a regulated market of Telangana but no clarity was provided by the concerned Licensing Authority. Despite that, the Respondent had suo-moto reduced the ticket prices without even waiting for written permission in this regard from the concerned Licensing Authority, in order to pass on the benefit to his customers. The Respondent had waited for a week for response from the Licensing Authority but no response had been received pursuant to which he had suo moto reduced the prices of the tickets and passed on the benefit to his customers. The Respondent had revised the ticket prices giving effect to the reductions in the GST rates w.e.f. 07.01.2019, as has been mentioned below:-



| Particulars | December 2018 | | 7 January onwards | |
|--------------------|---------------|-----------------|-------------------|-----------------|
| | % | Amount (in Rs.) | % | Amount (in Rs.) |
| Gross Ticket Price | | 150 | | 138 |
| Less: GST | 28% | 33 | 18% | 21 |
| Net Ticket price | | 117 | | 117 |

28. The Respondent has further pleaded that he had exercised all due diligence, within his control, to ensure that the GST benefits were appropriately passed on to his customers. The Respondent has also submitted that Telangana being an exception State where the prices were regulated by the State authorities he was not able to reduce the prices in initial 6 days due to no clarity and regulated factors and thus, the Respondent had deposited the profiteering amount suo moto on the basis of differential amount even when he should not be required to reduce the ticket prices.

29. Supplementary Report was sought from the DGAP on the above submissions of the Respondent. In response, the DGAP vide his Report dated 18.03.2020 has submitted that the above submissions had been suitably dealt in para 8 (c), 8 (d), 8 (e), 14 and 16 of his Report dated 31.01.2020. The DGAP has also stated that the Telangana State Regulations were independent of the CGST Act and the Rules made thereunder which have prescribed the anti-profiteering measures and there were no anti-profiteering provisions in the

Telangana State Regulations. The Licensing Authority might have provided an introductory ticket price of Rs. 75/- but this did not absolve the Respondent from Section 171 of the CGST Act, 2017.

30. The DGAP has further submitted that the case of ***Kumar Gandharv v. KRBL Ltd.*** supra cited by the Respondent was different from the instant case as in the above case the pre-GST rate was nil and for the first time a tax rate of 5% was imposed on the impugned product, therefore the same was not applicable in the present circumstances.
31. The DGAP has also claimed that the Respondent has submitted that there were no guidelines/instructions provided by the Licensing Authority on applicability of the change in the rates of GST in the regulated market. In this regard, the DGAP has stated that the rates prescribed by the State Government were maximum rates and the Respondent was free to charge any rate upto maximum rates allowed by the Government. Further the Respondent being registered under CGST Act, 2017 has to comply with the provisions of Section 171 of the CGST Act, 2017 and pass on the benefit of reductions in the rates of tax commensurately to his recipients
32. We have carefully considered all the Reports furnished by the DGAP, the submissions made by the Respondent and the other material placed on record. On examining the various submissions we find that the following issues need to be addressed:-



- a. Whether the Respondent has passed on the commensurate benefit of reduction in the rates of tax to his customers?
- b. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 committed by the Respondent?
33. It is observed from the record that the Respondent is registered in the State of Telangana under GSTIN 36AAACP4526DIZR and is mainly engaged in the business of sale of cinema tickets, food and beverages and advertisement space. It is also revealed from the plain reading of Section 171 (1) of the CGST Act, 2017 that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second about the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the record that there has been a reduction in the rate of tax from 28% to 18% on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees" and from 18% to 12% on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018. Therefore, the Respondent is liable to pass on the benefit of both the tax reductions to his customers in terms of Section 171 (1) of the above Act. It is also apparent that the DGAP



has carried out the present investigation w.e.f. 01.01.2019 to 31.07.2019.

34. It is also evident that the Respondent was selling two classes of tickets in his Multiplexes, namely, 'Classic' and 'Recline'. For computing the profiteered amount the DGAP has taken the class wise number of tickets which the Respondent has sold w.e.f. 01.12.2019 to 31.12.2019 during the pre rate reduction period and calculated the average base price of each class of tickets by dividing the total taxable value with the total number of tickets sold during the above period. He has compared the average pre rate reduction base prices of the tickets with the actual selling prices of the tickets sold during the post reduction period i.e. after 01.01.2019 and assessed the profiteered amount on each class of ticket as is evident from the perusal of Table-'A' supra where profiteering of Rs. 11.72 and Rs. 19.53 respectively has been computed on the 'Classic' and 'Recline' classes of tickets. The mathematical methodology employed by the DGAP to compute the profiteered amount is correct, appropriate, reasonable and in consonance with the provisions of Section 171 (1) as the Respondent was selling tickets at various prices to his customers due to which the actual transaction value was required to be taken in to account to calculate the profiteered amount. The average base price computed by the DGAP was required to be compared with the actual base price of the ticket to ascertain whether the Respondent has passed on the benefit to each of his buyer

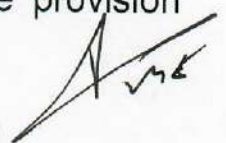


or not. Therefore, it would not have been correct to compare the average base prices pre and post rate reductions. Hence, the mathematical methodology applied by the DGAP to compute the profiteered amount is justified and can be relied upon.

35. It is also revealed from the perusal of Table-'B' supra that after comparing the average selling prices pre rate reductions for the period from 01.12.2018 to 31.12.2018 and the actual selling prices post rate reduction w.e.f. 01.01.2019 to 31.07.2019, as per the details submitted by the Respondent, it has been found that the Respondent has profiteered an amount of Rs. 13,51,519/- w.e.f. 01.01.2019 to 06.01.2019, thus the benefit of reduction in the GST rates was not passed on to the recipients by way of commensurate reduction in the prices by the Respondent, in terms of Section 171 (1) of the CGST Act, 2017 during the above period. However, it has been confirmed by the DGAP that the Respondent has reduced his prices commensurately w.e.f. 07.01.2019 and has also deposited an amount of Rs. 13,72,181/- as profiteered amount alongwith interest of Rs. 35,865/- in the CWFs.
36. The Respondent has also contended that there were no specific guidelines or methodology prescribed under the CGST Act for passing on the rate reduction benefit nor any clarifications were given by the concerned State authorities however, he has suo moto computed the benefit and passed on the same by way of reduction in prices. The above contention of the Respondent is frivolous as the 'Procedure and



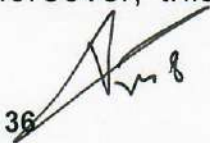
Methodology' for passing on the benefits of reduction in the rate of tax and ITC or computation of the profiteered amount has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides that "Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices." It is 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 if any reduction in the rate of tax is ordered by the Central or the State Governments or a registered supplier avails benefit of additional ITC the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their tax revenue. It also provides that the above benefits are to be passed on any supply i.e. on each Stock Keeping Unit (SKU) of each product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefits 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 defined in the explanation attached to Section 171. These benefits can also not be passed on at the entity/organisation/branch/invoice/product/ business vertical 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 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 SKU or unit or service based on the price and the rate of tax reduction or the additional ITC which has become available to a registered person. The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. 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 price of the SKU or service and 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



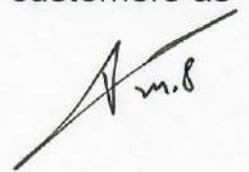
service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of the profiteered amount is also a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics. 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. However, no fixed mathematical 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 or mathematical methodology 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 Fast Moving Consumer Goods (FMCG), 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 to the other sector. Moreover, both the above benefits are being 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 provisions, 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. Therefore, no guidelines or methodology or clarifications were required to be issued for passing on the benefit of tax reductions. The Respondent was only required to reduce selling prices of the tickets by taking in to account the reductions in the tax rates w.e.f. 01.01.2019 which he has failed to do till 06.01.2019. Therefore, the above contention of the Respondent is frivolous and hence it cannot be accepted.



37. The Respondent has also claimed that one of his sites in the State of Telangana located at Erramanzil, Hyderabad has started its operation from 30.11.2019 and in terms of Telangana State Regulations, the prices of tickets were to be fixed after completion of one month. He has further claimed that the prices of the tickets were fixed in terms of the order dated 02.01.2019 passed by Hon'ble High Court of Telangana in WP No. 48127 of 2018 filed on 31.12.2018. Thus, the rate reduction notification was not applicable on the above cinema hall. In this connection it would be relevant to mention that the Telangana State Regulations cannot supersede the provisions of the CGST/Telangana SGST Act, 2017 which govern the fixation of GST rates as well as the anti-profiteering measures. Since, the Central Government and the Government of Telangana have given the benefit of tax reductions out of their precious tax revenue to benefit the common cinema goers the Respondent cannot deny the same since it is not to be paid by him from his own pocket. The Respondent cannot illegally enrich himself at the expense of the general public which is vulnerable, unorganised and voiceless and misappropriate the above benefit. It is also revealed from the perusal of the order dated 02.01.2019 passed by the Hon'ble High Court of Telangana that the Hon'ble Court has not exempted the Respondent from passing on the benefit of tax reductions. Therefore, he has to pass on the rate reduction benefit to the eligible customers as

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per the provisions of Section 171. Hence, his above contentions cannot be accepted.

38. The Respondent has also averred that he was not allowed to change ticket prices even on account of increase in his cost without permission of the concerned Licensing Authorities as per the provisions of the Andhra Pradesh Cinemas (Regulation) Act, 1955. It would be pertinent to mention here that passing on of the benefit of tax reductions has no connection with the costs of the Respondent as the CGST/SGST Act, 2017 only require passing on the benefit of tax reductions which does not fall under the provisions of Andhra Pradesh Cinemas (Regulation) Act, 1955. Moreover, the State authorities always fix the upper price limits of the cinema tickets by taking into consideration the various factors including cost in the interest of cinema goers and the Respondent is always at liberty to reduce his prices in accordance with the provisions of Section 171 of the CGST Act, 2017 at the time of rate reductions. Therefore, the above claim of the Respondent is not tenable.

39. The Respondent has also contended that the cinemas and theatres have been mentioned against Entry 33 of the State List of Seventh Schedule of the Constitution of India and therefore, the business of multiplexes was a State subject which has not been affected by the 101st Amendment of the Constitution Act, 2016 by way of which the GST has been implemented and hence prior approval for fixing the

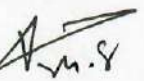
prices of the tickets was required under the Andhra Pradesh Cinemas (Regulation) Act, 1955. In this regard it would be relevant to mention that passing on of the benefit of GST is regulated under the CGST/SGST Act, 2017 and not under the 1955 Act and hence, no prior approval of the State Government under this Act is required to pass on the benefit of tax reductions as the rates of tax are not fixed under it. Therefore, the above argument of the Respondent is far-fetched which cannot be accepted.

40. The Respondent has further contended that as and when the taxes were raised before implementation of the GST, the ticket prices had remained the same resulting in net business losses to him. He has also submitted that when the GST rates were brought down from 28% to 18% or 12% w.e.f. 01.01.2019 still the ticket prices were not changed by the Licensing Authority. He has further submitted that on increase in the procurement prices also he was not allowed to increase his prices and therefore, on reductions of the GST rates, the benefit should also not be asked to be passed on by him. As has been discussed in para supra the benefit of tax reductions has to be passed on by the Respondent as it has been given to him from the public exchequer. It also has no connection with the fixing of the ticket prices by the State authorities or on increase in the procurement prices. Therefore, the above contentions of the Respondent are not tenable.

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41. The Respondent has also argued that he has passed on the benefit of GST rate reductions to his customers and therefore, there was no need for further reduction of ticket prices. He has also stated that even though there was no requirement to pass on the GST benefit, the Respondent has suo-moto computed the benefit and passed on the same by way of reduction in the prices. In this context it would be pertinent to mention that the Respondent is legally bound to pass on the benefit of tax reductions to his customers as per the provisions of Section 171 and hence, he cannot refuse to pass it on. There is also no evidence on record which can prove that he had already passed on the benefit of tax reductions and hence he was not required to reduce his prices further. It is also apparent from the record that the Respondent has not reduced his prices suo moto as the same was done by him due to the intervention of the Central GST Anti-Evasion Authorities. Therefore, the above claim of the Respondent cannot be accepted.
42. The Respondent has also cited the case of ***Kumar Gandharv v. KRBL Ltd.*** supra in his defence, however, the facts of the above cited case are different from the facts of the present case as in the above case the pre-GST rate was nil and for the first time tax @ 5% was imposed on the impugned product. Hence, the provisions of Section 171 (1) were not attracted in the above case as the rate of tax had been increased whereas the same are duly applicable as the rates of tax have been reduced in the present case.

43. Based on the above facts the profiteered amount is determined as Rs. 13,51,519/- for the period from 01.01.2019 to 06.01.2019 as mentioned in Table-B of the DGAP's Report dated 31.01.2020 as per the provisions of Section 171 (1) read with Rule 133 (1) of the CGST Rules, 2017. The Respondent has reduced his prices commensurately w.e.f. 07.01.2019 in terms of Rule 133 (3) (a) of the above Rules therefore, no further direction is required to be passed on this account. Further, since the recipients of the benefit, as determined above are not identifiable, the Respondent has voluntarily deposited an amount of Rs. 13,72,181/- along with interest of Rs. 35,865/- in the CWFs in accordance with the provisions of Rule 133 (3) (c) of the CGST Rules, 2017.
44. Based on the above facts it is clear that the Respondent has contravened the provisions of Section 171 (1) of the CGST Act, 2017. However, since, the penalty prescribed under Section 171 (3A) of the CGST Act, 2017 for violation of the above provisions has come in to force w.e.f. 01.01.2020 and the infringement pertains to the period from 01.01.2019 to 06.01.2019 and the Respondent has also deposited the profiteered amount alongwith the interest therefore, no penalty is proposed to be imposed on the Respondent.
45. 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 31.01.2019 the order was to be passed on or before 30.07.2020. However, due to 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. 55/2020-Central Tax dated 27.06.2020 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.

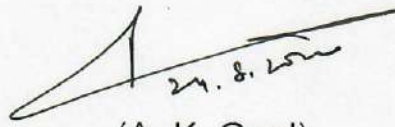
46. A copy each of this order be supplied to the Applicants, the Respondent, and the concerned Commissioner CGST/SGST Telangana for necessary action. File be consigned after completion.

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

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy



(A. K. Goel)
Secretary, NAA



F. No. 22011/NAA/130/PVR/2020 | 4224-4228

Date: 24.08.2020

Copy To:-

1. M/s. PVR Ltd., PVR Hyderabad, 5th Floor, Hyderabad Central Punjagutta Cross Road, Hyderabad, Telangana-500073.
2. Principal Commissioner, Hyderabad Commissionerate, GST Bhawan, L B Stadium, Basheerbagh, Hyderabad-500004.
3. Commissioner, SGST, C.T Complex, Nampally, Hyderabad-500 001
cst@tgct.gov.in.
4. Directorate General of Anti-Profiteering, CBIC.
5. NAA website/Guard File.

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A. K. GOEL
SECRETARY, NAA