

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

<b>Case No.</b>	60/2020
<b>Date of Institution</b>	31.01.2020
<b>Date of Order</b>	08.09.2020

**In the matter of:**

1. Principal Commissioner, Central Tax & Central Excise  
Hyderabad, GST Commissionerate, GST Bhavan, LB Stadium  
Road, Basheerbagh, Hyderabad-500004.
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 Inox Leisure Ltd., Hyderabad GVK One, 4<sup>th</sup> Floor, Road No.  
1, Banjara Hills, Hyderabad-500034.

**Respondent**





Quorum:-

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

Present:-

1. None for the Applicants.
2. Sh. Rohit Jain, Advocate and Sh. Adarsh Somani, Advocate for the Respondent

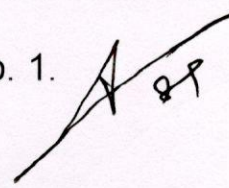
**ORDER**

1. The present Report dated 31.01.2020 has been furnished by the Applicant No. 2 i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that an application dated 22.05.2019 was filed by the Applicant No. 1 against the Respondent alleging profiteering in respect of supply of 'Services by way of admission to exhibition of cinematography films where the price of admission ticket was above one hundred rupees' despite reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. In the said application it was alleged by the Applicant No. 1 that the Respondent was selling the movie tickets of value of Rs. 250/-, Rs. 200/- and Rs. 150/- at the same prices after the reduction in the rate of GST from 28% to 18%, vide Notification



No. 27/2018- Central Tax (Rate) dated 31.12.2018 and instead had increased the base prices resulting in non passing on of the benefit of rate reduction to his customers. Copy of the APAF-1 Form, letter dated 22.02.2019 and 22.03.2019 of the Respondent addressed to the Pr. Chief Controller of Accounts, CBIC, New Delhi had also been enclosed by the Applicant No. 1 with his complaint.

2. The DGAP has stated in his Report that the Standing Committee on Anti-profiteering has examined the above application and on being prima facie satisfied, had referred it to the DGAP to conduct a detailed investigation. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 05.08.2019, a notice under Rule 129 (3) of the above Rules was issued by the DGAP on 14.08.2019 calling upon the Respondent to respond as to whether he admitted that he had not passed on the benefit of reduction in GST rate w.e.f. 01.01.2019 to his recipients by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice as well as to furnish all documents in support of his reply. The Respondent was also allowed to inspect the non-confidential evidence/information which formed the basis of the said notice, during the period from 21.08.2019 to 23.08.2019, which was availed of by the Respondent on 26.08.2019. Further, vide e-mail dated 06.01.2020, the Applicant No. 1 was also afforded an opportunity to inspect the non-confidential documents furnished by the Respondent on 14.01.2020 or 15.01.2020 which was not availed of by the Applicant No. 1.



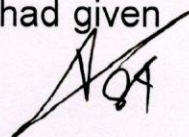


3. The DGAP has also reported that the period covered by the current investigation was from 01.01.2019 to 31.07.2019 and that the statutory time limit to complete the current investigation was on or before 04.02.2020 in terms of Rule 129 (6) of the CGST Rules, 2017.
4. The DGAP in his report has stated that in response to the notice dated 14.08.2019, the Respondent submitted his replies vide e-mails/letters dated 26.08.2019, 12.09.2019, 18.09.2019, 30.09.2019, 04.11.2019 and 22.01.2020 and inter-alia stated that:-

(a) The local enactments were regulating the rates/ticket prices that could be charged to the patrons in the units located in State of Telangana and hence, he had no say in the prices that could be charged. Therefore, vide letter dated 29.12.2018 (even prior to change in rate of tax w.e.f. 01.01.2019), he had made representation before the Licensing Authority, Commissioner of Police, Hyderabad and had requested guidance in respect of the change in prices.

(b) After the reduction in the rate of tax w.e.f. 01.01.2019, he had also made representations before the Principal Secretary (Home), Government of Telangana. Representations were also made by the Multiplex Association of India (MAI) which were followed by multiple meetings between the MAI and the local state authorities.

(c) Despite follow ups no further instructions were received and thus as a responsible corporate citizen he *suo moto* had given





effect of the reduced GST rate on his ticket prices w.e.f. 07.01.2019 and voluntarily deposited an amount of Rs. 4,20,936/- against the profiteered amount of Rs. 4,20,731/- along with the interest of Rs. 10,065/- in the Consumer Welfare Funds (CWFs).

(d) He had three properties in the state of Telangana namely Hyderabad GSM Mall (having 8 Screens), Hyderabad GVK One (having 6 Screens) and Hyderabad MP (having 5 Screens). Further, Hyderabad GSM Mall theatre had started functioning in the month of June, 2019 and the first movie was exhibited on 29.06.2019 and the prices of tickets in Hyderabad GSM Mall theatre were fixed in terms of the order dated 14.06.2019 passed by Hon'ble High Court of Telangana in WP No. 11805 of 2019.

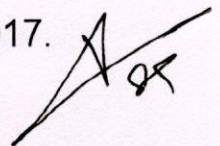
5. The Respondent, vide the afore-mentioned e-mails/letters has also furnished the following documents/information before the DGAP:-

- 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. Sample copies of tickets pre and post 01/01/2019.
- d. Government Order No. 43 dated 15.10.2009 & G. O. No. 169 dated 09.10.2012 approving the ticket prices.





- e. Copies of representations made before the Principal Secretary (Home), Government of Telangana & Licensing Authority, Commissioner of Police, Hyderabad.
  - f. Copies of Cheque & Bank Statement for deposition of differential amount of Rs. 4,20,731/- along with interest of Rs. 10,065/- to PAO (HQ), CBIC in the Consumer Welfare Fund.
  - g. Copy of order dated 14.06.2019 passed by Hon'ble High Court of Telangana in WP No. 11805 of 2019 along with copy of Writ petition.
6. The DGAP vide notice dated 14.08.2019 had also intimated the Respondent to provide a non-confidential summary of the information/documents furnished by him in terms of Rule 130 of the CGST Rules, 2017. However, the Respondent had not classified any of his information/documents as confidential in terms of Rule 130 of the Rules.
7. The DGAP has also reported that he has examined the reference from the Standing Committee on Anti-profiteering, the various replies of the Respondent and the documents/evidence on record. The main issues to be examined in the present matter were whether the GST rate on "Services by way of admission to the exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" was reduced from 28% to 18% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.





8. On the above issues, the DGAP has further reported that the Central Government, on the recommendation of the GST Council, had indeed reduced the GST rate on "Services by way of admission to an exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019 vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018.
9. The DGAP has also stated that as per the provisions of Section 171 of the CGST Act, 2017 the legal requirement was very clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in prices of the goods or services. Such reduction could obviously be only such that the final price payable by a consumer got reduced commensurate with the reduction in the tax rate. This was the legally prescribed mechanism for passing on the benefit of ITC or reduction in rate of tax to the recipients under the GST regime and there was no other method available to pass on such benefits. From 01.01.2019, the Respondent, in terms of Section 171 of the CGST Act, 2017, was bound to maintain the base prices of the tickets across all classes of seats/slots and GST should have been charged on the pre rate reduction base prices.
10. The DGAP has further stated that the Respondent was dealing in two classes of admission/movie tickets i.e. 'Executive' and 'Royal'. For the purpose of determination of profiteering, the class wise number of tickets sold during the period from 01.12.2018 to



31.12.2018 (pre-GST rate reduction) were taken and an average base price (after discount) was obtained by dividing the total taxable value by total number of tickets sold during this period. The average base prices of the ticket were compared with the actual selling price of the tickets sold during post-GST rate reduction i.e. on or after 01.01.2019. The DGAP has furnished the illustration of the methodology adopted while computing profiteering, in the Table-'A' below:-

**Table-'A'**

**(Amount in Rupees)**

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	Hyderabad MP		Hyderabad GVK One	
2.	Ticket Category	B	Executive (2D)		Royal (3D)	
3.	Ticket MRP	C	150/-	150/-	280/-	280/-
4.	Total No. of tickets sold	D	56,230		2,771	
5.	Total taxable value (after Discount, if any)	E	65,89,031/-		6,06,129/-	
6.	Average base price (without GST)	$F=(E/D)$	117.18/-		218.74/-	
7.	GST Rate	G	28%	18%	28%	18%
8.	Actual Selling price (post rate reduction) (including GST)	$H=128\%$ of F	150/-		280/-	
9.	Commensurate Selling price (post Rate reduction) (including GST)	$I=118\%$ of F		138.27/-		258.12/-
10.	Post Reduction Movie Name & date	J		Salt Bridge dated 05.01.2019		Aquaman (3D English) dated 02.01.2019
11.	Actual Selling price (post rate reduction) (including GST)	K		150		280
12.	Excess amount charged of Profiteering	L		11.73		21.88/-



11. The DGAP has claimed that from the above Table it was evident 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 profiteered an amount of Rs.11.73/- per ticket in the Executive (2D) category and Rs. 21.88/- per ticket in the Royal (3D) category. Therefore, the benefit of reduction in GST rate 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 above calculation as has been illustrated in Table 'A', profiteering in case of all the tickets of the Respondent (Except Hyderabad GSM Mall, as the property came into existence only in June 2019 and price was fixed for the first time as per Telangana High Court Order dated 14.06.2019) had also been arrived at in similar way for all the Multiplexes. The details of the same has been furnished by the DGAP vide Table-'B', 'C' & 'D' as has been mentioned below:-

### Hyderabad MP

### (Table-'B')

### (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction 01.12.2018 to 31.12.2018	Post Rate Reduction 01.01.2019 to 06.01.2019	Post Rate Reduction 07.01.2019 to 31.07.2019	Pre Rate Reduction 01.12.2018 To 31.12.2018	Post Rate Reduction 01.01.2019 to 06.01.2019	Post Rate Reduction 07.01.2019 to 31.07.2019
1.	Class of Ticket	A	Executive (2D)			Executive (3D)		
2.	Ticket MRP	B	150/-	150/-	138/-	200/-	200/-	184/-
3.	Total No. of tickets sold	C	56,230	12,785	4,59,297	33,272	1,167	71,218
4.	Total taxable value (after Discount, if any)	D	65,89,031	16,25,229	5,37,10,191	51,98,417	1,97,783	1,11,05,324



5.	Average base price (without GST)	E=D/C	117.18/-	127.12/-	116.94/-	156.24/-	169.48/-	155.93/-
6.	GST Rate	F	28%	18%	18%	28%	18%	18%
7.	Actual Selling price (post rate reduction) (including GST)	$G=E \times (1+F)$	150/-	150/-	138/-	200/-	200/-	184/-
8.	Commensurate Selling price (post Rate reduction) (including GST)	H=118 % of E		138.27/-	138.27/-		184.36/-	184.36/-
9.	Excess amount charged or Profiteering per Ticket	I=G-H		11.73/-	-		15.64/-	-
10.	Total Profiteering	J=C*I		1,49,968	-		18,252	-
11.	Total Profiteering (Hyderabad MP)(K)		Rs. 1,68,220/-					

**Hyderabad GVK One (Table-'C') (Amount in Rupees)**

Sl. No.	Description	Factors	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (01.01.2019 to 06.01.2019)	Post Rate Reduction (07.01.2019 to 31.07.2019)	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (01.01.2019 to 06.01.2019)	Post Rate Reduction (07.01.2019 to 31.07.2019)
1.	Class of Ticket	A	Executive (2D)			Executive (3D)		
2.	Ticket MRP	B	150/-	150/-	138/-	180/-	180/-	166/-
3.	Total No. of tickets sold	C	66,791	14,923	5,21,204	38,747	3,024	1,06,558
4.	Total taxable value (after Discount, if any)	D	78,26,569	18,97,012	6,09,49,596	54,48,603	4,61,281	1,49,90,579
5.	Average base price (without GST)	E=D/C	117.18/-	127.12/-	116.94/-	140.63/-	152.54/-	140.68/-
6.	GST Rate	F	28%	18%	18%	28%	18%	18%
7.	Actual Selling price (post rate reduction) (including GST)	$G=E \times (1+F)$	150/-	150/-	138/-	180/-	180/-	166/-
8.	Commensurate Selling price (post Rate reduction) (including GST)	H=118 % of E		138.27/-	138.27/-		165.94/-	165.94/-

*NQP*



9.	Excess amount charged or Profiteering per Ticket	I=G-H	11.73/-	-	14.06/-	-
10.	Total Profiteering	J=C*I	1,75,047	-	42,517	-
11.	Total Profiteering (Hyderabad GVK One Executive) (K)	Rs. 2,17,564/-				

### Hyderabad GVK One

### (Table-'D')

### (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (01.01.2019 to 06.01.2019)	Post Rate Reduction (07.01.2019 to 31.07.2019)	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (01.01.2019 to 06.01.2019)	Post Rate Reduction (07.01.2019 to 31.07.2019)
1.	Class of Ticket	A	Royal (2D)			Royal (3D)		
2.	Ticket MRP	B	250/-	250/-	230/-	280/-	280/-	258/-
3.	Total No. of tickets sold	C	6,493	1,510	53,082	2,771	248	8,677
4.	Total taxable value (after Discount, if any)	D	12,68,083	3,19,909	1,03,46,743	6,06,129	58,845	18,97,139
5.	Average base price (without GST)	E=D/C	195.30/-	211.86/-	194.92/-	218.74/-	237.28/-	218.64/-
6.	GST Rate	F	28%	18%	18%	28%	18%	18%
7.	Actual Selling price (post rate reduction) (including GST)	G=E* (1+ F)	250/-	250/-	230/-	280/-	280/-	258/-
8.	Commensurate Selling price (post Rate reduction) (including GST)	H=118 % of E		230.45/-	230.45/-		258.12/-	258.12/-
9.	Excess amount charged or Profiteering per Ticket	I=G-H		19.55/-	-		21.88/-	-
10.	Total Profiteering	J=C*I		29,521	-		5,426	-
11.	Total Profiteering (Hyderabad GVK One Royal) (K)	Rs. 34,947/-						



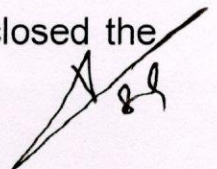
12. The DGAP has further claimed that as per the Table 'B', 'C' & 'D', it was clear that the Respondent had increased the base prices during the period from 01.01.2019 to 06.01.2019 to maintain the same selling prices (or MRPs), resulting in extra charging from the customers for the tickets, which they were paying prior to reduction in the rate of tax from 28% to 18% w.e.f. 01.01.2019 and hence he has denied the benefit of reduction in the rate of tax to his recipients. However, w.e.f. 07.01.2019, the selling prices had been revised commensurately to pass on the benefit of reduction in the rate of tax from 28% to 18% by the Respondent.
13. The DGAP has also contended that the allegation of profiteering by way of increasing the base prices of the tickets (Services) by way of not reducing the selling prices of the tickets (Services) commensurately, despite the reduction in GST rate on "*Services by way of admission to exhibition of cinematography films where price of admission ticket is above one hundred*" from 28% to 18% w.e.f. 01.01.2019, appeared to be correct. From the Table- B, C & D above, it was quite clear that the base prices of the admission tickets had been indeed increased, as a result of which the benefit of reduction in GST rate from 28% to 18% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged. The Respondent had collected excess amount of Rs. 4,20,731/- [Rs. 1,68,220/- (Table-'B') + Rs. 2,17,564/- (Table-'C') + Rs. 34,947/- (Table-'D')] from his customers. However, an amount of Rs. 4,20,936/- against the profiteered amount of Rs. 4,20,731/- along with



interest of Rs. 10,065/- had also been voluntarily deposited in the Consumer Welfare Funds by the Respondent. Therefore, it could be concluded that though there was contravention of the provisions of Section 171 of the CGST Act, 2017 but the Respondent had *suo moto* rectified his mistake and paid the entire amount due in the Consumer Welfare Funds, prior to initiation of present proceeding. Therefore, the profiteered amount might not be ordered to be paid again and the profiteered amount already paid might be confirmed and regularized.

14. The DGAP has also intimated that as per the details of outward supplied submitted by the Respondent, it was observed that the Respondent had been supplying services in the State of Telangana.
15. The investigation Report submitted by the DGAP was received by this Authority on 31.01.2020 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 27.02.2020. Notice dated 05.02.2020 was also issued to the Respondent directing him to explain why the Report dated 31.01.2020 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. Sh. Rohit Jain and Sh. Adarsh Somani, Advocates represented the Respondent. Vide his submissions dated 27.02.2020 the Respondent has submitted:-

- a. That pursuant to the change in the GST rate, he had reduced the prices by giving effect to the lower rate of GST in all the states, where the prices were not regulated. He had also enclosed the

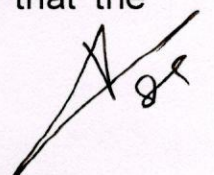




sample tickets (pre and post rate change) showing the reduced prices which was also acknowledged by the DGAP.

- b. That in terms of Section 171 of the CGST Act, 2017, he had reduced his ticket prices from effective date of the Notification to give effect to the legal provisions as might be applicable and the said reduction in the prices was also carried as a news item by several constituents of the print media.
- c. That in the State of Telengana, the ticket prices that could be charged from the patrons were regulated by the local enactments and hence, he had no say in the prices that could be charged.
- d. That to address/clarify on the issue of profiteering, he had made a representation before the Principal Secretary (Home), Govt. of Telengana and enclosed a copy of the same.
- e. That on reduction of the rate of tax, he had reduced the ticket prices suo moto and had voluntarily deposited the profiteered amount of Rs. 4,20,731/- along with interest of Rs. 10,065/- for the period from 01.01.2019 to 08.01.2019 in the Consumer Welfare Funds (CWFs).
- f. That in view of above, he should not be held in contravention of the provisions of Section 171 of the CGST Act, 2017.

16. We have carefully considered the Report 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 rate 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?
17. It is observed from the record that the Respondent is engaged in the business of running of cinema screens and sale of cinema tickets in the State of Telengana. 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" 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 the above tax reduction 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.
18. It is also evident that the Respondent was selling two class of tickets in his Multiplexes, namely, 'Executive' and 'Royal'. 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. 11.73 and Rs. 21.88 respectively has been computed on the 'Executive' and 'Royal' 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 buyers 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, reasonable, appropriate and in consonance with the provisions of Section 171 which can be relied upon.

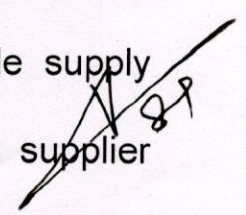




19. It is also revealed from the perusal of Table-'B' to 'D' supra that after comparing the average selling prices pre rate reduction for the period from 01.12.2018 to 31.12.2018 and the actual selling prices post rate reduction w.e.f. 01.01.2019 to 31.07.2019, as per the details submitted by the Respondent, it has been found that the Respondent has profiteered an amount of Rs. 4,20,731/- w.e.f. 01.01.2019 to 06.01.2019, thus the benefit of reduction in the GST rate has not been 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. 4,20,731/- as profiteered amount alongwith interest of Rs. 10,065/- in the CWFs of the Central and the State Government.
20. The Respondent has also contended that no clarifications were given by the concerned State authorities to reduce the rates of tickets due to the tax reduction inspite of representation made to the Principal Secretary (Home) to the Govt. of Telengana vide Annexure-4 of his submissions dated 27.02.2020, by the MAI and the local Licensing Authority vide Annexure-5, however, he has suo moto computed the benefit and passed on the same by way of reduction in prices as was evident from Annexure-2. The above contention of the Respondent is incorrect 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 the quantum of reduction in the rate of tax from the date of its notification. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from SKU to SKU or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of

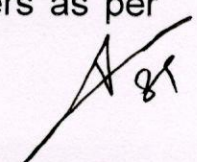


the profiteered amount is also a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics. However, to further explain the legislative intent behind the above provision, this Authority has been authorised to determine the 'Procedure and Methodology' 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. 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 clarifications were required to be issued to the Respondent for passing on the benefit of tax reduction. The Respondent was only required to reduce selling prices of the tickets by taking in to account the reduction in the tax rate 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.

21. The Respondent has also claimed that the prices of the tickets were fixed in terms of the orders attached as Annexure-3, by the State Government and hence he could have reduced them. In this connection it would be relevant to mention that the Telengana State Regulations or any order issued by the State Government in the Home Department cannot supersede the provisions of the CGST/Telengana 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 Telengana have given the benefit of tax reduction 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. Therefore, the Respondent has to pass on the rate reduction benefit to the eligible customers as per





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

22. Based on the above facts the profiteered amount is determined as Rs. 4,20,731/- for the period from 01.01.2019 to 06.01.2019 as mentioned in Tables-B to D 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 the profiteered amount of Rs. 4,20,731/- along with interest of Rs. 10,065/- in the CWFs of the Central and the State Government in accordance with the provisions of Rule 133 (3) (c) of the CGST Rules, 2017.
23. It is clear from the above 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.
24. 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. 65/2020-Central Tax dated 01.09.2020 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.

25. 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.

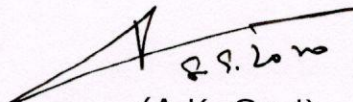
Sd/-  
(J.C. Chauhan)  
Member(Technical)



Sd/-  
(B. N. Sharma)  
Chairman

Sd/-  
(Amand Shah)  
Member (Technical)

Certified Copy

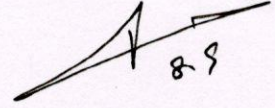
  
(A.K. Goel)  
Secretary, NAA

File No. 22011/ NAA/134/Inox/2020 / 5006-09 Dated: 08.09.2020  
Copy To:-

1. M/s Inox Leisure Ltd., Hyderabad GVL One, 4<sup>th</sup> Floor, Road No. 1, Banjara Hills, Hyderabad-500034.
2. 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.



3. Pr. Commissioner, Central Tax & Central Excise, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad-500004.
4. Guard File.

A handwritten signature in black ink, consisting of a stylized 'A' followed by the initials '89'.