

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

Case No.	77/2020
Date of Institution	23.12.2019
Date of Order	26.11.2020

In the matter of:

1. Shri M. Srinivas, Principal Commissioner of Central Tax, Central Excise & Service Tax, Medchal GST Commissionerate, 11-4-649/B, Lakdi Ka Pool, Hyderabad-500004.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Electronics Mart India Ltd., Survey No. 43, Near Suchitra Circle,
Kompally, Hyderabad-500004.

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. Manoj Mishra and Ms. Gayatri R., Authorised Representatives for the Respondent.

ORDER

1. The present Report dated 23.12.2019 has been furnished by the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that an application dated 29.03.2019 was filed by the Applicant No. 1, under Rule 128 (1) of the CGST Rules, 2017 before the Standing Committee on Anti-Profiteering alleging profiteering by the Respondent in respect of supply of "Monitors and TVs of screen size up to 32 inches" despite reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. The Applicant No. 1 had also alleged that the product "LG LED TV" having value of Rs. 12,600/- was sold at a lower price after the reduction in the GST rate from 28% to 18% w.e.f. 01.01.2019 levied vide Notification No.

24/2018-Central Tax (Rate) dated 31.12.2018 but without commensurate reduction in the price. The Applicant No. 1 had further alleged that the Respondent had not passed on the benefit of reduction in the rate of tax in respect of the impugned product to the extent of 10% (28%-18%) by commensurate reduction in price as has been furnished in Table- 'A' given below:-

Table -'A' (Amount in Rs.)

Product Description	LG LED TV	
Before 01.01.2019	Base Price	9843.75
	Tax Rate	28%
	Tax Amount	2756.52
	Total	12,600
On or after 01.01.2019	Base Price	10169.49
	Tax Rate	18%
	Tax Amount	1803.51
	Total	12,000
Price Without Profiteering ought to be	Base Price	9843.75
	Tax Rate	18%
	Tax Amount	1771.88
	Total	11614.74
Alleged Profiteering	Profiteered Amount per unit	385.26

The Above Applicant had also submitted the following supporting documents along with his application:-

- a) APAF-1 Form.
- b) Sample copy of the pre and post rate reduction invoices.
- c) Report of Jurisdictional Assistant Commissioner dated 06.03.2019.
- d) Signed worksheet of the Respondent confirming the fact of non-reduction of the prices - with specific details.



2. The DGAP has reported that the aforesaid application was examined by the Standing Committee on Anti-profiteering in its meeting held on 15.05.2019 and it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. The DGAP, on receipt of the above reference, had issued Notice of investigation to the Respondent on 09.07.2019 under Rule 129 (3) of the above Rules, calling upon him to reply as to whether he admitted that the benefit of GST rate reduction in prices had not been passed on to the recipients by way of commensurate reduction in prices and if so, to suo moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. The Respondent was also afforded opportunity to inspect the non-confidential evidence/information furnished by the above Applicant during the period from 17.07.2019 to 19.07.2019. Accordingly, the Respondent had visited DGAP's office on 18.07.2019 and inspected the same. The DGAP had also given an opportunity to the Applicant No. 1 to inspect the non-confidential documents/reply furnished by the Respondent on 28.11.2019 or 29.11.2019, which the above Applicant did not avail of. The DGAP has intimated that the period covered by current investigation was from 01.01.2019 to 30.06.2019.
3. The DGAP has also reported that the Respondent in response to the Notice of Initiation of investigation and subsequent reminders dated 22.07.2019, 08.08.2019, 10.10.2019, 21.11.2019, 28.11.2019, 02.12.2019, 06.12.2019, 17.12.2019 and summons dated 23.10.2019, 31.10.2019, has submitted his replies vide e-mails/letters

dated 22.07.2019, 25.07.2019, 06.08.2019, 19.08.2019, 22.08.2019, 22.10.2019, 29.10.2019, 13.11.2019, 15.11.2019, 19.11.2019, 27.11.2019, 03.12.2019, 09.12.2019, 12.12.2019 whereby he has submitted that:-

- a) The investigation had been initiated only for TVs upto 32 inches. Further, in terms of recent amendment to the CGST Rules, 2017 vide Notification No. 31/2019-Central Tax (Rate) dated 28.06.2019 it had been clearly stated that any action seeking to expand the scope of investigation had to follow the procedure prescribed under Rule 133 (5) and should be treated as a new investigation or enquiry following the procedure prescribed under the CGST Act and the Rules. Such investigation could be initiated only based on the written findings of this Authority on the submissions of the DGAP. The DGAP could not suo moto expand the scope of investigation without following the procedure laid down in the CGST Rules, 2017.
- b) The orders of the Hon'ble High Court of Delhi in the case of ***M/s Reckitt Benckiser India (P) Ltd. v. Union of India & others*** in WP(C) 7743/2019 dated 19.07.2019 and 22.08.2019 could be relied on wherein the Hon'ble High Court has granted an absolute stay on the proceedings initiated by the DGAP in as much as the DGAP had suo moto sought details of products not under investigation without following the procedure prescribed under Rule 133 (5)(a) of the CGST Rules, 2017.
- c) There had been sale of two type of Power Banks falling under

HSN 8507 – Lithium Ion and Lithium Polymer. The Notification No. 24/2018 dated 31.12. 2018 had reduced the rate of tax on Lithium Ion Power Banks from 28% to 18% w.e.f. January, 2019. On pointing out by the DGAP, the Respondent was perusing the details of all the invoices to understand whether any lower rate of tax had been inadvertently applied and would voluntarily remit the amount wherever applicable under Section 73 (5) of the CGST Act, 2017.

d) On Sample copies of invoices asked by the DGAP, the Respondent has informed that these invoices were pertaining to the first week of January, 2019 when there was a lag in the system which could also be corroborated by the fact that the Respondent had correctly remitted tax @ 18% for all the months since January, 2019 except for the identified invoices. The tax on these invoices had been remitted to the Government. The Respondent had identified the customers and would be issuing suitable credit notes for the differential amount of Rs. 4000/- to his customers.

4. The Respondent has also submitted the followings documents/information vide the aforementioned letters/emails:-

a) Copies of GST Registration.

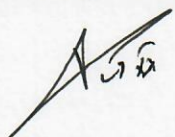
b) Copies of GSTR-1 & GSTR-3B Returns for the period from December, 2018 to June, 2019.



- c) Invoice-wise details of the outward taxable supplies (other than Zero rated, nil rated and exempted) for the period from December, 2018 to June, 2019 for impacted HSNs.
- d) Price List (pre and post 01st January, 2019 for impacted products.
- e) Sample copies of invoices issued to his dealers, pre and post 01.01.2019.
- f) HSN Summary Sheet of taxable supplies and screenshots of HSN wise summary as filed by the Respondent in the GSTR-1 Returns.
- g) Reconciliation of sales as per Sales Register with GSTR-1 Returns.

5. The DGAP has also stated that the Respondent had submitted the documents in a piecemeal manner and had not co-operated during the course of investigation and had also not submitted the pre-rate reduction base prices in respect of specific products and clarifications for claiming Power Banks and Play Stations as non-impacted products. The DGAP has also informed that the Respondent had not classified his information/documents as confidential in terms of Rule 130 of the above Rules.

6. The DGAP has further stated that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the goods supplied by the Respondent from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018-Central Tax (Rate) dated



31.12.2018.

7. The DGAP has also claimed that the Respondent has relied on the orders of the Hon'ble High Court of Delhi passed in the case of ***M/s Reckitt Benckiser India (P) Ltd. v. Union of India & others*** in WP(C) 7743/2019, wherein the Hon'ble High Court has granted relief that only the enquiry as far as the complained product was concerned would continue till final disposal of the petition. The DGAP has intimated that there was no stay/directions issued on the present proceedings. The DGAP has further clarified that it was an interim relief only and not final judgement, so its ratio was not applicable in this case.
8. The DGAP has further informed that since it was a case of reduction in the rate 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 input tax credit shall 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 benefit of input tax credit (ITC) or reduction in rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could obviously be in monetary terms only so that the final price payable by a consumer got reduced commensurately with the reduction in the tax rate or benefit of ITC, which was the legally prescribed mechanism to pass 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.

9. The DGAP has further reported that profiteering in the case of a particular product i.e. "LG LED 32LJ573D TV, sold during the period from 01.12.2018 to 31.12.2018 (pre-GST rate reduction) was examined and an average base price (after discount) was obtained on dividing the total taxable value by total quantity of the above product sold during the above period. The average pre rate reduction base price of the above product was compared with the actual selling price of the product sold during the post-GST rate reduction period i.e. on or after 01.01.2019, as has been illustrated in the Table-'B' given below:-

Table-'B'

(Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.12.2018 to 31.12.2018)	Post Rate Reduction (From 01.01.2019)
1.	Product Description (Item Code)	A	LG LED 32LJ573D TV (HSN CODE 8528 7220)	
2.	MRP	B	30,990	
3.	Total quantity of item sold	C	333	
4.	Total taxable value (after Discount)	D	61,65,920/-	
5.	Average base price (without GST)	E=(D/C)	18,516/-	
6.	GST Rate	F	28%	18%
7.	Commensurate Selling price (post Rate reduction) (including GST)	G=118% of E		21,849/-
8.	Invoice No.	H		1238/18E/S-6490
7.	Invoice Date	I		20.01.2019
8.	Total quantity (as per invoice indicated in H)	J		1
9.	Total Invoice Value (including GST)	K		22,400/-
10.	Actual Selling price (post rate reduction) (including GST)	L=K/J		22,400/-

11.	Excess amount charged or Profiteering	M=L-G	551/-
12.	Total Profiteering	N= J*M	551/-

10. The DGAP has also claimed from the Table above that the Respondent had not reduced the selling price commensurately of the "LG LED 32LJ573D TV", (HSN Code 8528 7220), when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018 and hence, the Respondent has profited an amount of Rs. 551/- on a particular invoice and thus the benefit of reduction in GST rate was not passed on to the recipient by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. On the basis of the calculation as illustrated in Table-'B' above, profiteering in case of all the impacted goods of the Respondent has also been arrived at in the similar way.

11. The DGAP has further claimed from the HSN Code wise summary data that the Respondent was dealing in total 150 HSN Codes, out of which 8 HSN Codes were impacted by GST rate reduction Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. The DGAP has also noticed from the invoices made available that the Respondent had sold 170 products falling in these 8 HSN Codes which were impacted, out of which 69 products (constituting 20% of total sales of impacted products during 01.01.2019 to 30.06.2019) were not sold in the pre-reduction period (i.e. 01.10.2018 to 31.12.2018) and the Respondent had not provided pre-rate reduction base prices for these products claiming them to be sold first time in post rate reduction

period. In respect of remaining 101 products, the Respondent had increased the base prices in the case of 69 products when the rate of GST was reduced from 28% to 18% w.e.f. 01.01.2019, so that the commensurate benefit of GST rate reduction was not passed on to the recipients. On the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products during the period from 01.01.2019 to 30.06.2019 (excluding sales returned and inter unit branch transfers), as furnished by the Respondent, the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 37,89,550/-. The details of the computation have been given in Annexure-20 of the DGAP's Report. The above profiteered amount has been arrived at by comparing the average of the base prices of the goods sold during the period from 01.12.2018 to 31.12.2018 (or the latest month i.e. November, 2018 and so on, in case those goods were not sold during 01.12.2018 to 31.12.2018) with the actual invoice-wise base prices of such goods sold during the period from 01.01.2019 to 30.06.2019. The excess GST so collected from the recipients, has also been included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased base prices.

12. The DGAP has also mentioned that the Respondent has claimed some products falling under HSN codes 85076000 and 95049090 as non-

impacted by the GST rate reduction Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. However, the DGAP has stated that the above products were duly impacted by the aforesaid Notification and accordingly profiteering has been computed on these items which was included in the profiteered amount of Rs. 37,89,550/-. Details of the above items along with profiteered amount have been furnished in Table- 'C' given below:-

Table- 'C'

(Amount in Rs.)

S.No.	Product Description	HSN/SAC	Telangana		Andhra Pradesh		Total	
			Quantity (In No.)	Profiteering (In Rs.)	Quantity (In No.)	Profiteering (In Rs.)	Total Quantity (In No.)	Total Profiteering (In Rs.)
1	MI 10000mAH POWER BANK 2i BLACK	85076000	1,031	113,735	61	5,818	1,092	119,553
2	MI 10000mAH POWER BANK 2i RED	85076000	38	2,830	1	112	39	2,942
3	MI 20000mAH POWER BANK 2i WHITE	85076000	220	29,299	12	803	232	30,102
4	SONY ACCESSORIES PS4 DUAL SHOCK BL	95049090	8	7,056	-	-	8	7,056
5	SONY POWERBANK 10000mah CP-V10B/BC	85076000	4	680	-	-	4	680
6	SONY POWERBANK 20000MAH CP-V20A/BC	85076000	1	1,975	-	-	1	1,975
7	SONY POWERBANK 5000mah CP-E5VPX/WC	85076000	3	390	1	100	4	490
8	SONY POWERBANK 8700mah BLK CP-V9/B	85076000	1	450	-	-	1	450
9	SONY POWERBANK 8700mah WHT CP-V9/W	85076000	1	100	-	-	1	100
10	STUFFCOOL POWERBANK 10000mAH GREY	85076000	2	499	-	-	2	499
Grand Total			1,309	157,015	75	6,832	1,384	163,847

The DGAP has also intimated that he had requested the Respondent to provide the reasons for classification of the above products in non-impacted category vide email dated 17.12.2019, however, the Respondent had not responded.

13. The DGAP has further furnished the place (State) of supply-wise break-up of the total profiteered amount of Rs. 37,89,550/- (including Rs. 1,63,847/-) in the Table-'D' given below:-

Table- 'D'

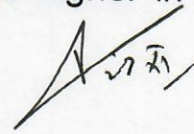
(Amount in Rs.)

S. No.	Name of State	State Code	Profiteering (Rs.)
1	Telangana	36	34,00,106
2	Andhra Pradesh	37	3,89,444
	Grand Total		37,89,550

14. Consequently, the DGAP has submitted that the allegation of profiteering that the base prices of the goods were increased when there was a reduction in the GST rate from 28% to 18% w.e.f. 01.01.2019, so that the benefit of such reduction in GST rate was not passed on to the recipients by way of commensurate reduction in prices has been found to be correct. The DGAP has further established from the details furnished in Annexure-20 of the Report that the base prices of the goods under investigation were indeed increased post GST rate reduction w.e.f. 01.01.2019. Thus, by increasing 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%, has not been passed on to the recipients. Accordingly, the DGAP has worked out the total amount of profiteering as Rs. 37,89,550/- covering the period from 01.01.2019 to 30.06.2019.
15. The above Report was considered by this Authority in its meeting held on 24.12.2019 and it was decided that the Applicants and the Respondent be asked to appear before this Authority on 14.01.2020. A Notice dated 26.12.2019 was also issued to the Respondent asking him to explain why the Report dated 23.12.2019 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.

Manoj Mishra and Ms. Gayathri R., Authorised Representatives represented the Respondent while none appeared on behalf of the Applicants. Further, the Respondent has filed written submissions dated 18.02.2020 in which he has submitted that :-

- I. The DGAP in his Report has failed to consider the unique pricing nature of the retail industry and the allegations of profiteering were baseless:- The Respondent has stated that the DGAP has considered the sale of the product LG LED TV before and after 01.01.2019 for the purpose of investigation and while computing the "Prices without Profiteering ought to be" the base price prevailing before 01.01.2019 was taken into consideration. In this regard, the Respondent has also stated that the base price varied from transaction to transaction as the final sale price completely depended on the customer's bargaining power i.e. the price at which the customer was willing to purchase the product. The Respondent has further stated that the DGAP has been comparing two base prices that would not be same at any given point of time. He has illustrated that the DGAP has considered the base price of LG LED TV as Rs. 9,843.75/-, which was sold before 01.01.2019 and Rs. 10,169.49/- for the TV which was sold on or after 01.01.2019.
- II. Multiple prices for a product in a given period:- The Respondent has also submitted in respect of the impugned invoices for the month of May, 2018 and January, 2019, which were submitted by the Applicant No. 1 that the base price of the TV was higher in



May, 2018 than the one considered for the month of January, 2019. The Respondent has also submitted the Sale Register of the aforementioned product (Annexure-1) for the months of May, 2018 and January, 2019 and claimed that there was a range of prices at which a single product could be sold in a particular period. The Respondent has also elaborated the details of the pricing methodology and submitted that in the given scenario where it was clearly established that there could be more than one price for a product in a particular period, singularly picking on an invoice of May, 2018 and comparing the same with an invoice issued during the month of January, 2019 was arbitrary and without any legal or factual basis. The Respondent has used the basis of computing profiteering in Table-'A' of the DGAP's Report and computed the alleged profiteering for the same product using the sample data picked up from the Sales Register for 'LG LED TV' to substantiate his claim which has been given below:-

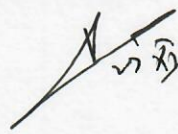
Sample invoice wise for LG LED TV

Product Description	LG LED TV	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Before 01.01.2019	Base Price	9,531	9,766	9,844	9,922	10,000
	Tax Rate	28%	28%	28%	28%	28%
	Tax Amount	2,669	2,734	2,756	2,778	2,800
	Total	12,200	12,500	12,600	12,700	12,800
On or after 01.01.2019	Base Price	9,152	9,322	9,407	9,492	9,576
	Tax Rate	18%	18%	18%	18%	18%
	Tax Amount	1,647	1,678	1,693	1,708	1,724
	Total	10,799	11,000	11,100	11,200	11,300
Prices Without Profiteering ought to be (as per the Report)	Base Price	9,531	9,766	9,844	9,922	10,000
	Tax Rate	18%	18%	18%	18%	18%
	Tax Amount	1,716	1,758	1,772	1,786	1,800
	Total	11,247	11,523	11,616	11,708	11,800
Alleged Profiteering	Profiteered Amount per unit	(447)	(523)	(516)	(508)	(500)

On the basis of the above Table, the Respondent has stated that there was no unfair profit. He has also claimed that the above Table was prepared on the sample basis and there were many sale transactions in addition to the above, of the same product where the profiteering was either zero or negative.

III. Factors that have affected the unique pricing of the Industry:-

- a. The Respondent has also argued that considering the reduction in the prices of the products, there were many factors which affected the final sale prices of the products sold by the Respondent viz.: -
- b. The MRPs are fixed by the manufacturer:- The Respondent has also added that he has purchased the products from the vendors like Samsung and Sony etc. The base price of the purchased product and its Maximum Retail Price (MRP) at which the product could be sold was fixed by the manufacturer. The Respondent has no control on the fixing of the base price as well as the MRPs. However, the Respondent could sell at any price below MRP but not more than the MRP. It was quite evident from his submissions that no product was sold by him beyond the MRP.
- c. Final sale price depends on Customer's bargaining power :-
The Respondent has also stated that the manufacturer fixed the MRP of the product, however, the final price at which the product was sold completely depended on customer's bargaining power. The Respondent has further stated that at



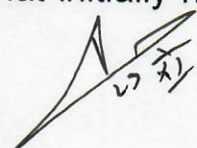
any given point of time, any product of same brand and same model could be sold at two different prices to two different customers at the same location depending on their respective bargaining power i.e. the price at which the customer was willing to purchase the product.

- d. Discounts offered by E-commerce and impact on Electronic Retail Industry:- The Respondent has also submitted that in the electronic retail industry, owing to the presence of online marketplaces offering attractive discounts, the retailers were sometimes forced to pay heed to the customer's negotiations who cited the prices prevalent on these online stores. In many instances, due to these factors, prices of certain products were dropped to offer the consumers the best available prices in the market. Given the above circumstances, it would be difficult to conclude that an average price was the correct representative of the price of a product and to extrapolate the price of a month was not acceptable as the pricing fluctuated for any given product at any given time for the aforesaid reasons.

- IV. The Respondent has also averred that apart from the unique pricing methodology, the DGAP had also failed to consider the fact that he had sold over 2000 different products and with the rate reduction, there had also been a reduced ITC on the purchase front and the Respondent had strived to sell the goods at only discounted rates and below MRPs. The study conducted

by the DGAP was therefore one sided and ought to be set aside for lack of legal and factual basis.

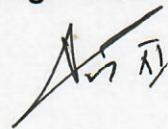
- V. The Respondent has also furnished Sale Register of HSN Codes impacted by the GST rate Notification No. 24/2018 dated 31.12.2018. However, the Sales Register submitted by him involved both the products which were impacted and non-impacted by the notification falling under these HSN Codes. Considering the same, the Respondent has provided a column for detailed classification of products into Impacted and non-impacted products. He has also submitted reconciliation of the amount of sales reflected in the books of account and the amount of sales reported in the HSN Code summary of GSTR-1 Returns filed during the above period. The Respondent has also submitted that as per the FAQ issued by the Telangana GST Authorities on Anti-Profiteering in Answer to Q1., the term Profiteering has been elaborated to mean - *"to make or seek to make an excessive or unfair profit, especially illegally"*.
- VI. The Respondent has also referred to Section 171 of CGST Act/SGST Act, 2017 and argued that he had neither the intention to make or seek to make an excessive or unfair profit, especially illegally nor made any unfair profit and he had passed on the benefit of commensurate reduction in price of the product to the end customer.
- VII. Applicability of Rule 133 (5) and M/s Reckitt Benckiser India (P) Ltd. v. UOI:- The Respondent has also contended that initially he



had received notice for submission of details of sale of Televisions up to 32 inches, the TVs which were impacted by the GST rate reduction Notification No. 24/2018 dated 31.12.2018. The scope of investigation at the later point of time was expanded by the DGAP without any prior intimation and he was directed to submit the details of all the products impacted by the aforesaid notification. In this regard, the Respondent has stated that as per Rule 133 (5) of the CGST Rules, 2017 it was provided that if upon the receipt of the Report of the DGAP, this Authority had identified any profiteering component or believed that there was profiteering involved in respect of goods or services or both other than those which were already covered in the investigation Report then for reasons to be recorded in writing it could direct the DGAP to cause investigation or inquiry. He has also extracted Rule 133 (5) as under:-

*“Chapter XV - Anti-Profiteering
Rule 133. Order of the Authority.
Sub rule (5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.”*

- VIII. The Respondent has also placed reliance on the case of **M/s Reckitt Benckiser India (P) Ltd. v. Union of India W. P. No. 7743/2019** in which the Hon'ble High Court of Delhi vide its Order dated 22.08.2019 has granted relief by observing that the enquiry would be conducted in respect of the complained product only. The Respondent has also averred that the DGAP in his Report had concluded that it was an interim relief only in the above case and not a final judgement, so its ratio was not applicable in this case. In this regard, the Respondent has submitted that the expansion of the investigation to include products other than the product under investigation was prima facie without any legal basis and has been done without following the prescribed procedure under Rule 133 of the CGST Rules, 2017 and the proceedings were required to be set aside in respect of the products not covered under the notice for investigation.
- IX. The Respondent has also submitted that the statutory provisions of anti-profiteering had also been challenged for constitutional validity in many cases pending final orders and in the recent interim order of the Hon'ble Delhi High Court in the case of **M/s Jubilant Food works Ltd. and Anr. v Union of India, W.P. (C) 2347/2019**, the Hon'ble High Court has stayed this Authority's orders for inter-alia examining the constitutional validity of the anti-profiteering provisions, vide order dated 13.03.2019.
- X. The Respondent has further submitted that given the fact that the provisions were still under review by the jurisdictional High Court,



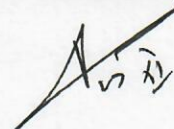
the proceedings against him should be kept in abeyance till such time the Hon'ble High Court has passed final order.

- XI. The Respondent has also argued that the interim orders of the Hon'ble High Court on constitutional validity of an Act were deemed to be binding in the case of jurisdiction. He has also drawn attention to the judgment of the Hon'ble Apex Court passed in the case ***M/s Kusum Ingots & Alloys Ltd. v. Union of India (2004) 6 SCC 254*** wherein it was held that "...An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act".
- XII. Computing profiteering using the Average Sale Price method wherein the average price was not representative of the correct price of the product was arbitrary and unfair:- The Respondent has also stated that the methodology adopted by the DGAP to calculate the average base price was not statistically accurate. The DGAP has computed profiteering by deducting the commensurate sale price from the actual price at which the product was sold. Commensurate sale price has been computed by calculating the average sale price of the product for the sales made during the period of December 2018.
- XIII. The Respondent has further stated that October to December was the season wherein the Respondent has offered discounts

on a large scale on selling prices due to which the final prices at which the products were sold would be comparatively lower. Considering the same, using average sale price of December month was completely unfair as there was high chance that the product was sold at a price higher than the price prevailing in December. He has also attached copies of newspaper clippings evidencing the discounts offered by him during the above period vide Annexure-2. The Respondent has also provided an illustration as per the Table given below using the Sale Register details of December, 2018: -

Impacted Product	DGAP Average base price	Sales prices in December				
SAMSUNG LED 32M5570	22,957	25,000	26,406	24,219	25,781	25,703
SONY LED 32W622F	23,366	25,000	23,984	23,828	23,906	24,141
SAMSUNG LED 32N4300	19,638	20,703	20,312	20,547	20,469	20,281
PANASONIC LED 32FS600D	17,861	17,961	17,969	18,750	18,125	19,531

XIV. The Respondent has also contended that there were several prices which were above the average sale price computed for the month of December, 2018 and the use of such an inaccurate price by the DGAP has resulted in the unjustified allegations of profiteering, when the fact of the matter has always been that the Respondent has not done any willful act to increase the base prices or indulge in profiteering after the rate reduction. Therefore,



if comparison needed to be made then only the maximum price at which the product was sold needed to be considered for every product for a given period. Such criteria needed to be considered to check profiteering by analyzing whether the product sold after 01.01.2019 fell in between those minimum and maximum limits. The electronic retail industry has always sold the products below the MRPs and only the maximum price for a product (the least discounted from the MRP) ought to be used as the correct representative price and not the average sale price. In this regard, for the purpose of computation of minimum and maximum limits, he has picked top 15 products as sample from Annexure-20 which have contributed to the highest profiteering component. Further, for the products identified, he has considered sales net of sale returns including erroneous sales or where the customers had returned the products during the period from October, 2019 to December, 2019 and has identified the minimum and maximum sale prices prevailing during the aforementioned period. He has also verified whether the sale prices prevailing during the above period were falling in between the limits so identified. The Respondent has further stated that the prices at which the



products were sold at any point of time during the period from January, 2019 to June, 2019 were falling in between the minimum and maximum limits as per Annexure-3. He has also submitted that he had also plotted the base prices computed by the DGAP using Annexure-20 in respect of the identified products and it was observed that the average base prices computed by the DGAP were also falling in between the limits identified by the Respondent. He has tabulated the same below for reference:-

Product Name	Avg. Base price	Pre-GST Minimum base price (after discount)	Pre-GST Maximum base price (after discount)
SAMSUNG LED 32M5570	22,957	21,094	30,078
SONY LED 32W622F	23,366	17,969	25,781
SAMSUNG LED 32N4300	19,638	14,980	21,094
PANASONIC LED 32FS600D	17,861	15,625	21,874
LG LED 32LJ573D	18,516	15,313	21,641
PANASONIC LED 32FS490	15,249	13,281	17,969
PANASONIC LED 32F201DX	12,940	11,796	16,797
SAMSUNG LED 32N4000	14,107	10,937	16,406
AKAI LED AKLT32-DNI32SV	11,263	10,539	14,063
SONY LED 32R202F	16,406	14,609	17,961
SONY LED 32W672F	26,182	22,656	28,898
AKAI LED AKLT32-80DF1M	9,079	8,828	11,719
SONY LED 32R302F	18,453	15,859	19,531
LG LED 32LK616	21,645	18,273	23,438

XV. On the basis of the above analysis, the Respondent has submitted a computation based on the maximum limits of the sale prices of all the products using October to December sale ledgers which he had submitted to the DGAP and has also computed profiteering by identifying whether the sale prices were falling in between the minimum and maximum limits. He has attached the detailed computation as reference.

XVI. The Respondent has also added that a sale transaction dated 30.06.2019 was erroneously posted in the books of account with higher sale value. He had identified and highlighted the same in his submissions made before the DGAP on 11.12.2019. He had also provided the reason why such higher value was mentioned against such sale transaction and he had also passed a sale reversal entry for the same on the succeeding day i.e. on 01.07.2019 which he has furnished as under:-

Date	Invoice No	Customer	Product Name	Taxable Value	CGST	SGST	Bill Amount	Noticee's Comments	Total Profiteering
30/06/2019	1210/19E/S-8562	P ANJIAIAH	LG LED 32LU573D	186,949	16,825	16,825	220,600	The invoice is erroneously raised with amount Rs.2,20,600/- where in the error was identified immediately and reversal entry's been passed for the same on 01 July 2019.	198,751

In this regard, the Respondent has submitted a copy of entry passed in the books of account and credit note issued as evidence and requested that the transaction has been erroneously included in the computations and the same should be removed from the calculations for profiteering.

XVII. Products falling under HSN 8507 6000 and HSN 9504 9090 were classified as not impacted:- The Respondent has also claimed that the following products listed in Table-C of the Report were not impacted by the rate reduction:-



- MI Power Banks;
- Sony Power Banks;
- Stuffcool Power Banks; and
- Sony Play station accessories.

MI, Sony and Stuffcool Power Banks:- The Respondent has further claimed that there have been sales of two types of Power Banks falling under HSN Code 85076000 – Lithium Ion and Lithium Polymer. The GST rate Notification No. 24/2018 dated 31.12.2018 had reduced the rate on Lithium Ion Power Banks from 28% to 18% with effect from 01.01.2019. All MI, Sony and Stuffcool Power Banks were Lithium Polymer Power Banks which did not form part of GST rate reduction Notification No. 24/2018 dated 31.12.2018 due to which the Respondent had classified the same under the non impacted products and continued to charge same GST rate as earlier. The Respondent had submitted the same explanation before the DGAP vide e-mail dated 27.11.2019 and has furnished a copy of the e-mail as evidence as is given below:-

Query

Please clarify on what basis you have charged 18% on Power Banks (HSN: 8507) in the month of Dec.-18

Response

The Respondent submits that there has been sale of two types of power banks falling under HSN 8507 – lithium ion

and lithium polymer. The rate Notification No. 24/2018 dated 31 December 2018 has reduced the rate of power banks of Lithium ion from 28% to 18% w.e.f. January 2019. The Respondent was perusing the details of all invoices to understand where any lower rate of tax has been inadvertently applied and will remit the amount where applicable voluntarily under Section 73(5) of the CGST Act, 2017.

Sony Play Station accessories: - The Respondent has also contended that he had inadvertently mapped the accessories of Play Stations as non-impacted in his submissions made before the DGAP. However, the Respondent has charged GST @18% from 01.01.2019 giving effect to the GST rate Notification No. 24/2018 dated 31.12.2018. The Respondent has admitted that he has adhered to the GST rate notification regardless of the inadvertent classification made in his submissions made before the DGAP.

16. Clarifications on the Respondent's above submissions were sought from the DGAP. In response, the DGAP vide his Report dated 01.06.2020 has submitted that:-

a. The DGAP in his Report has not considered the unique nature of the retail industry and the allegations of profiteering were baseless:- The allegation made by the Respondent of comparing May, 2018 invoice with that of January, 2019 was incorrect. As mentioned in Para-18 of the DGAP's Report dated 23.12.2019, the

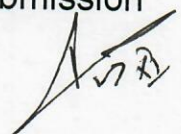
DGAP has compared average base prices (after discount) during the period from 01.12.2018 to 31.12.2018 (pre-GST rate reduction) with the actual selling prices of the items sold during the post-GST rate reduction period i.e. on or after 01.01.2019. The DGAP has further contended that the invoices referred to in Table-'A' of Respondent's submissions dated 19.02.2020 did not form part of computation of base prices prevailing in pre-GST period given in Annexure-20 of the DGAP's Report dated 23.12.2019.

- b. The DGAP has also claimed that although the Respondent has no direct influence over revision of MRPs of external brands, he was still in a position to revise his retail selling prices as he had taken input tax credit on the purchase of such products. Therefore, he should not sell the products at the MRPs and instead, reduce the retail selling prices to pass on the benefit of reduction in GST rate from 28% to 18% w.e.f. 01.01.2019 to the customers as the retail selling prices of the products were decided by the Respondent within the MRPs printed on the products. The DGAP has further claimed that the Respondent was a separate GSTN holder as an independent entity and therefore, he was duty bound to comply with all the provisions including provisions of Section 171 of the above Act and the rules made there under.
- c. The DGAP has also clarified that the discount offered by the Respondent has been duly considered and profiteering has been arrived at by comparing the average base prices (after discount) during the period from 01.12.2018 to 31.12.2018 (pre-GST rate

reduction) with the actual selling price of the same items sold during the post-GST rate reduction period i.e. on or after 01.01.2019 which was mentioned in Para-18 of the DGAP's Report dated 23.12.2019.

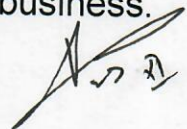
- d. The DGAP has also stated that the Respondent's submission that he had suffered loss in the accrual of ITC due to the reduction in the rate of GST was not correct. In this regard, the DGAP has submitted that under the GST, the credit of tax paid on all products (inputs) was available, accordingly, the GST component on the procurements did not form part of the cost of purchase of the products. As a result, any change in the rate of tax on purchase of products did not have any impact on cost. Therefore, there was no ITC loss on account of reduction in rate of tax from 28% to 18% as it did not change cost for the Respondent.
- e. The DGAP has further stated that the tax amount was computed at the reduced rate of 18% w.e.f. 15.11.2017 was correct. However, this in no way established that the commensurate benefit of the reduction in the GST rate was passed on by the Respondent to the customers. On the contrary, the fact was that the customers should have paid a lower final price after the GST rate was reduced to 18% but they did not get this benefit. On this account, the Respondent was found to have profiteered by an amount of Rs. 37,89,550/- as mentioned in Para-20 of the DGAP's Report dated 23.12.2019.
- f. Applicability of Rule 133 (5) and M/s Reckitt Benckiser India (P) Ltd.

v. UOI :- The DGAP has clarified that the Respondent's submission



that Rule 133 (5) had been forced upon him by expanding the investigation to all the products instead of the complained product at a later stage was bereft of facts as in the Notice of Initiation of Investigation dated 09.07.2019 (Annexure-2 to the DGAP's Report dated 23.12.2019), it has been clearly stated that details of all the products impacted by the reduction in the GST rate w.e.f. 01.01.2019 and whether the benefit had been passed on the said products to the customers or not had to be provided to the DGAP. Further, the non-applicability of the order passed in the case of **M/s Reckitt Benckiser** supra has been explained in Para-16 of the DGAP's Report dated 23.12.2019.

g. Computing profiteering using the Average Sale Price method wherein the average price was not a representative of the correct price of the product as arbitrary and unfair:- The DGAP has also claimed that justification for the average base price pre-rate reduction comparison with the actual invoice wise price post-rate reduction method adopted by the DGAP has been explained in Para-18 and 20 of his Report dated 23.12.2019. Further, in many such cases where the pre-rate reduction price was not available from the Sale Register, the Respondent was asked to submit the pre-rate reduction base price charged prior to 31.12.2018. The base price so submitted by him was taken for the computation of profiteering by the DGAP. Further, the DGAP has considered average base price (after discount) during the period from 01.12.2018 to 31.12.2018 which was a normal period of business.



- h. The DGAP has also stated that he has excluded all the transactions for which credit notes were issued for sale returns by mapping the credit notes with original sale invoices. However, for a specific transaction highlighted by the Respondent, the DGAP had inadvertently computed profiteering amounting to Rs. 1,98,751/-, for which credit note was issued later on. On perusal of credit note No. 1210/19E/SR-164 dated 01.07.2019 submitted by the Respondent, the DGAP had found that invoice No. 1210/19E/S-8562 dated 30.06.2019 (Telangana State) was cancelled and therefore, he has recommended that profiteering amounting to Rs. 1,98,751/- should be reduced from the total profiteered amount of Rs. 37,89,550/-.
- i. The DGAP had failed to consider the detailed submissions made by the Respondent from time to time:- The DGAP has refuted the claim of the Respondent that he had submitted any documents/information dated 17.12.2019 to him. The various submissions made by the Respondent were listed in Para-10 of the DGAP's Report dated 23.12.2019. The DGAP has alleged that the Respondent did not co-operate during the course of investigation and had not submitted the pre-rate reduction base prices of specific products and clarifications for claiming Power Banks and Play Stations as non-impacted products, which had also found mention in Para-12 of the DGAP's Report dated 23.12.2019.
- j. The DGAP has also contested the claim of the Respondent that Power Banks and Play Stations were non-impacted products.

Reference in this connection was made to Para-21 of the DGAP's

Report dated 23.12.2019. The DGAP has also added that with regard to Sony Accessories PS4 Dual Shock BL (S. No. 4), the Respondent has accepted inadvertent mapping of the product as non-impacted. However, with regard to Power Banks (MI, Sony and Stuffcool), the Respondent has submitted screenshots of Power Bank description as battery type "Lithium Polymer" which were not impacted by the GST rate reduction Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 w.e.f. 01.01.2019. The DGAP has stated that this Authority may consider the same and profiteering amounting to Rs. 1,56,791/- may be reduced from the total profiteering amount of Rs. 37,89,550/-.

k. On the basis of above clarifications, the DGAP has revised the profiteering reported in the DGAP's Report dated 23.12.2019 to Rs. 34,34,008/- and the place (State) of supply-wise break-up has been furnished below:-

S.No.	Name of State	State Code	Profiteering (Rs.)
1	Telangana	36	30,51,396
2	Andhra Pradesh	37	3,82,612
Grand Total			34,34,008

17. The Respondent has further filed submissions dated 11.06.2020 in response to the DGAP's Supplementary Report dated 01.06.2020 wherein he has reiterated his earlier contentions and additionally submitted that: -



- I. The DGAP has accepted comparing of the random invoices issued in May, 2018 and January, 2019 for the sale of product LG LED TV before and after 01.01.2019 for the purpose of initiation of profiteering investigation. The LG LED TV brand and model in the impugned invoice pertained to less than 24 inches model which was not impacted by the rate change Notification dated 31.12.2018 and therefore, the basis of initiating the proceedings for profiteering against the Respondent on the basis of the above invoices was without any legal or factual basis.
- II. The Respondent has also submitted the newspaper cuttings through which the discount schemes during the FY 2017-18, FY 2018-19 and FY 2019-20 were launched to establish the business model followed by him and to support the fact that the schemes, discounts and offers were prevailing every year during the period from October to December.
- III. The Respondent has further submitted that he had launched various discount schemes during the various parts of the year for various festivals and many other events. However, quantum of discounts offered by him was huge during the said period depending on the requirement of the business, stock clearance, festivals and product promotions. He has also depicted the price trend of top three products in respect of which profiteering was identified in the Report during the FY 2018-19.



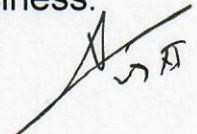
18. Supplementary Report was sought from the DGAP on the above submissions of the Respondent. In response, the DGAP vide his Report dated 08.07.2020 has submitted that:-

- a. The Respondent's contention that the LG LED TV brand and model in the impugned invoices pertained to less than 24 inches model which was not impacted by the rate change Notification dated 31.12.2018 was absolutely incorrect. In this regard, the DGAP has contended from the website of the Respondent that the model No. LG LED 24LJ470 was a 24 inches model (Annexure-1) which was impacted by the GST rate reduction w.e.f. 01.01.2019, vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. The Respondent had himself submitted to the Principal Commissioner of Central Tax, Medchal Commissionerate, the price trend of the LG LED TV (HSN:8528 7218) in which aforesaid model fell, which clearly showed reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019 (Annexure-2). Hence, the DGAP has stated that he has rightly initiated the investigation as mandated by Rule 129 of the CGST Rules, 2017.
- b. The DGAP has also contended that in 99.52% transactions, the average base price (after discount) during the period from 01.12.2018 to 31.12.2018 was considered resulting in profiteering of Rs. 34,04,616/- (99.14% of total profiteering of Rs. 34,34,008). The DGAP has further stated that the festival of Diwali was celebrated on 27.10.2019 which did not fall in the

month of December, 2019. Further, the Respondent has attached paper cutting of advertisements published on 23.12.2017 which were one year older than the date of reduction in the rate of tax w.e.f. 01.01.2019 and therefore the same were not relevant. The DGAP has also observed that similar campaign was in force during the period from January, 2019 to June, 2019. The details of the campaign have been furnished by the DGAP in the Table given below along with sample copies of advertisements published in various newspapers:-

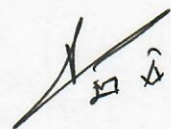
S.No.	Date	Newspaper	Scheme Name	Annexure
1	05.01.2019 12.01.2019	Deccan Chronicle	Happy New Year	Annex-3
2	26.01.2019	Deccan Chronicle	Biggest Republic Day Offer	Annex-4
3	02.02.2019 09.02.2019 16.02.2019 02.03.2019	Deccan Chronicle	Off Season Prices	Annex-5
4	09.03.2019 10.03.2019	Deccan Chronicle	37 th Anniversary	Annex-6
5	05.04.2019 06.04.2019	Deccan Chronicle	Ugadi Offers	Annex-7
6	05.05.2019	Deccan Chronicle	Akshaya Tritiya Offers	Annex-8
7	08.06.2019	Deccan Chronicle	World Cup Fever	Annex-9

The DGAP has also claimed from the above Table that these were regular business promotions which were run on regular basis. The DGAP has also claimed that as has already been clarified by his letter dated 01.06.2020, the period considered by the him for average base prices (after discount) i.e. from 01.12.2018 to 31.12.2018, was a normal period of business.



19. The Respondent has further filed submissions dated 07.08.2020 in response to the DGAP's Supplementary Report dated 08.07.2020 wherein he has reiterated his earlier pleadings and additionally submitted that LG LED TV 24LJ470 brand was not impacted by the GST rate reduction w.e.f. 01.01.2019 vide Notification No. 24/2018 Central Tax rate dated 31.12.2018. In this regard, the Respondent has submitted that the model LG LED TV 24LJ470 was 24 inches (60.96 cms.) television which was subject to GST at the rate of 28% till 27.07.2018 which was reduced to 18% vide Para C (xii) of Notification No. 18/2018 CT (Rate) dated 26.07.2018. The Respondent has also contended that the LG LED TV 24LJ470 was within 68 cms. and the same was evidenced from the model specifications on vendor's website. The Respondent has further submitted that the comparison of sample invoices issued in May, 2018 and January, 2019 pertaining to the above model has formed the basis of the complaint and initiation of anti-profiteering investigation by the DGAP for the products covered under rate change Notification No. 24/2018-Central Tax rate dated 31.12.2018.

20. We have carefully considered the Reports of the DGAP, the submissions made by the Respondent and the material placed on record. On examining the various submissions we find that the following issues need to be addressed in the present case:-



- a. Whether the Respondent was required to pass on and has passed on the commensurate benefit of reduction in the rate of tax to his customers?
- b. Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?

21. In this connection perusal of Section 171 of the CGST Act shows that it provides as under:-

“(1). 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.

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

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

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under



sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

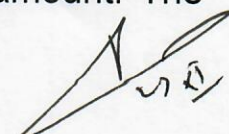
PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

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

22. It is also observed from the record that the Respondent is engaged in retail trading of electronic goods from his stores under the brand name 'Electronic Mart' having GSTIN 36AAFCE1683D1ZT. The Respondent has wide presence in the States of Andhra Pradesh and Telangana and operates from around 36 retail stores across these States. It is also revealed from the plain reading of Section 171 (1) supra 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% w.e.f. 31.12.2018, on the Monitors and TV's of screen size up to 32 inches, Digital Cameras, Play Stations and Power Banks etc. being supplied by the Respondent,

vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018. Therefore, the Respondent is liable to pass on the benefit of 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 30.06.2019.

23. It is also evident that the Respondent has been selling different variants of the Monitors, TVs, Digital Cameras, Play Stations and Power Banks etc. during the period from 01.01.2019 to 30.06.2019 to his customers. Upon comparing the average base prices as per the details of sale transactions submitted by the Respondent for the pre rate reduction period from 01.12.2018 to 31.12.2018 and the actual base prices post rate reduction w.e.f. 01.01.2019 to 30.06.2017 it has been found that the GST rate of 18% has been charged by the Respondent w.e.f. 01.01.2019 however the base prices of the products have been increased more than their pre rate reduction base prices, w.e.f. 01.01.2019 which shows that because of the increase in the base prices the cum-tax prices paid by the consumers were not reduced commensurately, inspite of the reduction in the GST rate. On the basis of the aforesaid pre and post reduction GST rates and the details of the outward supplies (other than zero rated, nil rated and exempted supplies) made during the period from 01.01.2019 to 30.06.2019, the amount of net higher sale realization due to increase in the base prices of the products, despite the reduction in the GST rate from 28% to 18% or the profiteered amount has come to Rs. 37,89,550/- including the GST on the base profiteered amount. The



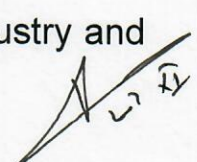
details of the computation have been given by the DGAP in Annexure-20 of his Report dated 23.12.2019.

24. The DGAP for computation of the profiteered amount has compared the average base prices of 101 products which were being supplied by the Respondent during the pre rate reduction period w.e.f. 01.12.2018 to 31.12.2018 with the actual post rate reduction base prices of these products which were sold by the Respondent w.e.f. 01.01.2019 to 30.06.2019. In respect of the products which were not sold during the period w.e.f. 01.12.2018 to 31.12.2018, the Respondent was asked to furnish the average base prices and the prices so given by him were compared with the actual post rate reduction base prices. It was not possible to compare the actual base prices prevalent during the pre and the post GST rate reduction periods due to the reasons that the Respondent was (i) selling his products at different prices to different customers based on the various factors such as the MRPs of the products were fixed by the manufacturers, the prices were dependent on the bargaining power of the customers, he was offering large discounts during festival seasons and the prices were dependent on the discounts offered by the E-Commerce Companies etc. and (ii) a customer may have purchased a particular product during the post rate reduction period which he may not have purchased in the pre rate reduction period. The Respondent has himself admitted in his submissions dated 18.02.2020 that the prices charged by him differed on account of the above factors and there could be two different prices for the same

product at the same time in respect of the same product for the two different customers at the same location. The average base prices so computed by the DGAP are based on the sales and the quantity sold by the Respondent over a period of one month i.e. from 01.12.2018 to 31.12.2018 and hence they practically give accurate, dependable and reasonable measure of the actual base prices charged during the above period. Therefore, the average pre rate reduction base prices of 101 products were computed by the DGAP, which were being sold by the Respondent during the period between 01.12.2018 to 31.12.2018, as is evident from the Annexure-20 attached with his Report, on the basis of which commensurate base prices post rate reduction were calculated in respect of the same products and compared with the invoice wise post rate reduction actual prices of these products, as per the computation illustrated in Table-B supra. The average pre rate reduction base price of each product was required to be compared with the actual post rate reduction base price of the same product as the benefit was required to be passed on each product to each customer and also to those customers who had not purchased the product during the pre rate reduction period. In case average to average base price is compared for both the periods, the customers who have purchased a particular product on the base price which is more than the commensurate base price, would not get the benefit of tax reduction. Similarly a person who has not purchased a particular product in the pre rate reduction period would also not get the benefit of tax reduction. Such a comparison would also be against

the provisions of Section 171 as well as Article 14 of the Constitution which require that each customer has to be passed on the benefit of tax reduction on each purchase made by him. On the basis of the aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the above products sold during the period from 01.01.2019 to 30.06.2019, as have been supplied by the Respondent himself, the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% or the profiteered amount has been calculated as Rs. 37,89,550/- as per Annexure-20 of the investigation Report. The excess GST charged from the recipients has also been included in the profiteered amount. The place of supply-wise break-up of the total profiteered amount of Rs. 37,89,550/- has been furnished vide Table-D supra in respect of 2 States. The above profiteered amount has been reduced to Rs. 34,34,008/- vide subsequent Report dated 01.06.2020 of the DGAP. The above methodology employed by the DGAP for computing the profiteered amount appears to be correct, reasonable, justifiable and in consonance with the provisions of Section 171 of the CGST Act, 2017. The above mathematical methodology has also been approved by this Authority in respect of all such cases of reduction in the rate of tax. Therefore, the above mathematical methodology can be safely relied upon.

25. The Respondent has claimed that the DGAP in his Report has failed to consider the unique pricing nature of the electronic retail industry and



the allegation of profiteering was baseless as various factors had affected the final sale prices of the products sold by him like the MRPs were fixed by the manufacturers. However, the above contention of the Respondent is not correct as every supplier is bound to pass on the benefit of rate reduction to his customers in terms of Section 171(1) of the CGST Act, 2017. The MRP is the maximum retail price fixed by the manufacturer which could be charged by the Respondent but it is not the price which is required to be compulsorily charged by the Respondent. It is apparent from the invoices furnished by the Respondent himself which are attached as Annexure-1 at page 24-28 of his submissions dated 18.02.2020, in respect of the LG LED 24LJ470 TV, that he has charged different prices to different customers during the post rate reduction period which proves that the Respondent was not bound to charge the MRP. Further, the Respondent was legally bound to pass on the benefit of rate reduction from 28% to 18% which he has denied by increasing the base prices which he was charging before the rate reduction and he has charged the same base prices or more which he was charging before the rate reduction. As per the provisions of the above Section, the Respondent was legally bound to reduce his cum-tax prices commensurately by charging GST @18% w.e.f. 01.01.2019 instead of 28%, rather than increase them in the post rate reduction period hence the above contention of the Respondent is not tenable.

26. The Respondent has further claimed that the final sale prices were dependent on the bargaining power of the customers. In this

connection it would be pertinent to mention that the Respondent could charge different prices to different customers but he could not increase the base prices which he was charging before the rate reduction so that the cum-tax price of a product would remain the same which was being charged by him before the rate reduction. He was bound to reduce it commensurately as per the provisions of Section 171(1) as there was reduction of 10% in the rate of tax however, it is apparent from the perusal of Annexure-20 attached with the Report dated 23.12.2019 that the Respondent had not reduced his prices commensurately and has continued to charge the same prices which he was charging before the rate reduction by increasing the pre rate reduction prices. The bargaining power of the customers is not unlimited as the Respondent has to sell his products on profit and hence, he cannot sell them as per the wishes of his customers. Accordingly, the price charged from different customer may vary but it cannot be below the price paid by him to the manufacturer plus his profit margin. Since, the Respondent has himself admitted that he was charging different prices from his customers there was no other alternative available to the DGAP except to compute the average base prices of the products being sold by him in the pre rate reduction period and then to compare them with the actual base prices so as to assess whether the Respondent has passed on the benefit of tax reduction or not. Therefore, the above claim of the Respondent is incorrect.

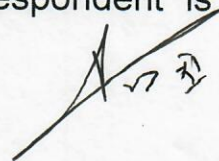


27. The Respondent has also contended that discounts offered by the E-Commerce Companies were also affecting his prices as he was required to give matching discounts. In this regard it would be relevant to mention that the E-Commerce Companies were mere intermediaries and they were not suppliers of the products as they were only providing platform to the sellers to offer their products online and were entitled to collect commission. They were offering discounts on behalf of the wholesalers who were also bound by the provisions of Section 171(1) to pass on the benefit of tax reductions. The dealers who were selling their products on the E-Commerce platforms could not have offered more discounts as compared to the Respondent as they were also required to sell minimum at the price paid by them to the manufacturers along with their profit margin. Hence, the above contention of the Respondent is not maintainable.

28. The Respondent has further contended that the DGAP has not considered the fact that he was selling over 2000 different products and with the rate reduction, there had also been a reduction in the ITC on the purchases due to which the Respondent was striving hard to sell his goods at only the discounted rates and below the MRPs. The above claim of the Respondent is wrong as reduction in the tax rate in no way affects the prices of the Respondent as he is eligible to claim full ITC on the tax whether it is 28% or 18%. The Respondent is getting full ITC on the GST paid by him on his purchases which does not add any cost to him. Therefore, he cannot deny the benefit of tax reduction to his customers on the above ground.



29. The Respondent has also averred that he had initially received notice for submission of details of sale of Televisions up to 32 inches which was impacted by GST rate Notification No. 24/2018 dated 31.12.2018. However, the scope of investigation was expanded by the DGAP at a later point of time without any prior intimation and he was directed to submit the details of all the products impacted by the aforesaid Notification. However, the above claim of the Respondent is not supported by the contents of the Notice for Initiation of Investigation dated 09.07.2019 issued by the DGAP under Rule 129(3) to the Respondent (Noticee) which vide Para-3 clearly stated that "The Noticee are hereby directed to furnish their reply to this Notice on or before 22.07.2019, stating whether they admit that the benefit of reduction in the GST rate from 28% to 18% w.e.f. 01.01.2019, has not been passed on to their recipients by way of commensurate reduction in the prices of the goods impacted by such GST rate reduction w.e.f. 01.01.2019. The Noticee may also suo moto determine the quantum of benefit not passed on, if any and indicate the same in their reply to this Notice." Vide Para 4 of the above Notice the DGAP had also directed the Respondent to furnish details of GSTR-1 & 3B Returns and invoice wise details of the taxable supplies of all the goods impacted by the rate reduction w.e.f. December, 2018 to June, 2019. Therefore, it is quite apparent that the Respondent was duly informed that he would be investigated for all the products on which the rate of tax has been reduced and accordingly he was directed to supply the above information. Hence, the above claim of the Respondent is



incorrect as the Respondent had prior notice for investigation of all the impacted products.

30. The Respondent has further averred that he could not have been investigated in respect of the other products except the product in respect of which the complaint was made unless this Authority had passed an order as per Rule 133 (5) of the CGST Rules, 2017. In this connection it would be relevant to refer to Section 171 (1) and (2) of the CGST Act, 2017 which state as under:-

- “(1) 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.
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.”

31. It is clear from the perusal of the above Sub-Sections that the benefit of tax reduction or ITC is to be passed on by each registered person by commensurate reduction in prices on each supply to every recipient and this Authority is empowered to examine whether these benefits have been passed on or not. To assist this Authority an investigating agency designated as the DGAP has been created under Rule 129 of the CGST Rules, 2017 to conduct detailed

investigation and submit Report to this Authority under Rule 129 (6) to determine whether the above benefits have been passed on or not in terms of Section 171 (1) and Rule 133 (1) of the above Rules. Under Rule 129 (2) the DGAP has mandate to conduct investigation and collect necessary evidence to determine whether these benefits have been passed on. Further, the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

- a) Conduct of investigation to collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.
- b) Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee and the State level Screening Committees.”

32. Therefore, it is clear from the above provisions that the office of the DGAP has been charged with the responsibility of conducting detailed investigation to collect evidence necessary to determine whether both the above benefits have been passed on or not in terms of the provisions of Section 171 of the CGST Act, 2017 and Rule 129. The

above Rule has been framed by the Central Government under Section 164 of the CGST Act, 2017 read with Section 171(3) which has approval of the Parliament and all the State Legislatures and of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and the express approval of the Central Government and the State Governments. There is no provision in the above Act or the Rules which provides that the investigation shall be limited to the products against which complaint has been received. On the contrary every product on which the rate of tax has been reduced is required to be investigated by the DGAP and report submitted to this Authority to determine whether the above benefits have been passed on as per the provisions of Section 171(1) of the above Act. Rule 133 (5) is a mere clarification of the provisions of Section 171(2) and hence, the DGAP has rightly conducted investigation on all the products in respect of which the rate of tax was reduced with prior notice to the Respondent and hence, no order was required to be passed under Rule 133 (5) by this Authority. The Respondent cannot get away by appropriating the benefit which he is legally bound to pass, on the ground that no complaint has been made in respect of the other products, as the benefit is not to be paid by him out of his own pocket, since it has been granted from the public exchequer to benefit the common customers. Therefore, the above claim of the Respondent is not correct and hence the same cannot be accepted.

33.The Respondent has also placed reliance on the Order dated

22.08.2019 passed by the Hon'ble High Court of Delhi in the case of ***M/s Reckitt Benckiser India (P) Ltd. v. Union of India & others*** in W. P. No. 7743/2019 vide which the Hon'ble Court had restrained the DGAP to conduct investigation in respect of the other products of the Respondent except the complained product. The Respondent has also claimed that based on the above order no investigation could have been done in his case also. The above stand of the Respondent is not tenable as in the above case the Hon'ble High Court has granted only interim relief till the next date and has not passed the final judgement. Moreover, there is no such order in respect of the Respondent. The DGAP has already conducted investigation in respect of the goods being supplied by the Respondent and it has been established that the Respondent has resorted to profiteering and has denied the benefit of tax reduction to his buyers and hence he cannot misappropriate the profited amount under the above excuse.

34. The Respondent has also quoted the case of ***M/s Jubilant Food Works Ltd. v. Union of India & others*** supra pending in the Hon'ble High Court of Delhi in which the constitutional validity of Section 171 has been challenged and has claimed that the present proceedings should be kept in abeyance till the above Writ petition was not decided. It would be relevant to note in this regard that no final judgement has been passed by the Hon'ble High Court till date and hence the present proceedings cannot be kept in abeyance.

35. The Respondent has also cited the judgement passed by the Hon'ble

Supreme Court in the case of *M/s Kusum Imgots & Alloys Ltd. v. Union of India supra* and contended that the interim orders passed by the Hon'ble High Court of Delhi were required to be implemented. In the above case the issue involved was whether the jurisdiction of the Hon'ble High Court was limited to the State of Delhi or was extendable to the entire Union and hence the law settled in the above case is not being followed.

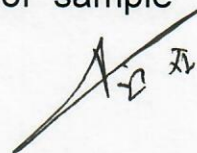
36. The Respondent has also contended that during the month of December, the sale prices of the products were generally lowest as December was a festive season month. The DGAP has considered the average sale prices of the products during the month of December, 2018 for comparison with the actual sale prices during the period from 01.01.2019 to 30.06.2019 which has resulted in excess profit which has been wrongly considered as profiteering. In this context, it would be pertinent to mention that one or the other festive season or festival is always going on in the country throughout the year and the month of December has no specific relevance in this regard. Therefore, it cannot be claimed that in this month the selling prices are the lowest. The Respondent has not produced any evidence to show that his prices in the previous month of November, 2018 were more than the prices which he has charged in the month of December, 2018. The advertisements attached as Annexure-2 by the Respondent with his submissions pertain to 23.12.2017 and hence they carry no weight in support of the contentions of the Respondent that his prices were lowest in December, 2018. Moreover, such advertising campaigns are

being launched by the Respondent in the ordinary course of his business which do not form the basis of the prices charged by him as is evident from Annexure-3 to 7 attached by the DGAP with his clarifications dated 08.07.2020. It is also established from the perusal of Table-A supra and Annexure-20 of the Report that the Respondent had immediately increased his prices from the intervening night of 31.12.2018/01.01.2019 from which the rate reduction had taken effect. Further the rates were generally increased by the same amount by which the rate of tax was reduced. Therefore, there is no doubt that the selling prices charged by the Respondent during the month of December, 2018 were not the lowest and hence they have been rightly taken in to account while calculating the pre rate reduction average base prices as well as the profiteered amount and hence the above claim of the Respondent is not tenable.

37. The Respondent has also pleaded that for comparison of the prices of the products the maximum price charged should be considered. In this regard it would be pertinent to mention that in case the maximum price is considered, the Respondent would be able to deny the benefit of tax reduction on every product. The Respondent has not explained that if the maximum price was considered how he would pass on the benefit of tax reduction. The Respondent has also submitted a Table in which the average prices computed by the DGAP for the pre rate reduction period have been compared with the pre GST minimum and maximum prices after discount and it has been claimed that the prices charged by him during the period from January, 2019 to June, 2019

fell within the above minimum and maximum prices. The Respondent has failed to explain how the minimum and maximum prices prevailing in the pre GST period before 01.07.2017 can be compared with the average prices obtained on the basis of the sales made during the month of December, 2018, after a lapse of a period of 17 months. Accordingly, the comparison made by the Respondent is wrong, illogical arbitrary and unreliable. Hence, the computations made by the Respondent vide Annexure-3 also cannot be relied upon as there would be no profiteering in case the average base prices computed for the month of December, 2018 are compared with the minimum and maximum prices prevailing during the same month. It is also on record that the Respondent has not reduced his prices after the rate reduction has come in to force. Therefore, the above plea of the Respondent is not convincing.

38. The Respondent has further pleaded that the DGAP has wrongly claimed that the LG LED TV 24LJ470 was impacted by the GST rate reduction w.e.f. 01.01.2019 vide Notification No. 24/2018 Central Tax (Rate) dated 31.12.2018. In this regard, the Respondent has submitted that the above model was 24 inches (60.96 cm) television which was subject to GST @28% till 27.07.2018 and thereafter it was reduced to 18% vide Para C (xii) of Notification No. 18/2018 Central Tax (Rate) dated 26.07.2018. The Respondent has also contended that the LG LED TV 24LJ470 was within 68 cm. and the same was evidenced from the model specifications on the vendor's website. The Respondent has further submitted that the comparison of sample

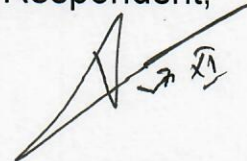


invoices issued in May, 2018 and January, 2019 pertaining to the above model has wrongly been formed as the basis for anti-profiteering investigation by the DGAP. In this regard, perusal of Annexure-1 attached by the DGAP with his clarifications dated 08.07.2020, which is screen shot of the website of the Respondent, shows that the LG LED 24LJ470 TV was a 24 inches model which was impacted by the GST rate reduction w.e.f. 01.01.2019. The Respondent vide Annexure-2 attached by the DGAP has himself furnished the price trend of the LG LED TV (HSN:8528 7218) to the Principal Commissioner of Central Tax, Medchal Commissionerate, in which the aforesaid model has been shown to have been impacted by the reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. Therefore, the above claim of the Respondent is untenable as the Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 had reduced the rate of tax from 28% to 18% in respect of the "Monitors and TVs of up to screen size of 32 inches". The product was mentioned in the complaint was TV of screen size of 24 inches which also comes under the same category. Therefore, it is established that the rate of tax during the month of May, 2018 was 28% on the above model which was reduced to 18% w.e.f. 01.01.2019 and hence, the complaint of not passing on the benefit of tax reduction made by the Applicant No. 1 is correct. However, the Respondent had not reduced the price of the complained product commensurately w.e.f. 01.01.2019. Therefore, the above claim of the Respondent cannot be accepted.



39. The Respondent has also pleaded that the DGAP has compared the invoice price of May, 2018 with that of January, 2019 to compute the profiteered amount. The above plea of the Respondent is wrong as the DGAP has computed the average base prices of the products sold by the Respondent in the month of December, 2018 and compared them with the actual base prices which were charged by the Respondent during the period of January, 2019 to June, 2019 to compute the profiteered amount. The above invoice has only been relied upon to initiate the anti-profiteering proceedings against the Respondent. Hence, the above plea of the Respondent is not tenable.

40. The Respondent has also argued that a sale transaction dated 30.06.2019 amounting to Rs. 2,20,600/- was erroneously posted in the books of account which was reversed on the succeeding day i.e. on 01.07.2019. In this regard, the Respondent has submitted a copy of entry posted in the books of account and credit note issued to reverse it as evidence vide Annexure-4 and requested that the transaction has been erroneously included in the computations and the same be deducted from the profiteered amount. The DGAP in his Supplementary Report dated 01.06.2020 has also verified that he has excluded all the transactions for which credit notes were issued for sales returned by mapping the credit notes with the original sale invoices. However, in respect of the above transaction he has inadvertently computed profiteering amounting to Rs. 1,98,751/- for which credit note was issued later on. On perusal of credit note No. 1210/19E/SR-164 dated 01.07.2019 submitted by the Respondent,



the DGAP has observed that invoice No. 1210/19E/S-8562 dated 30.06.2019 (Telangana State) was cancelled and therefore, profiteering amounting to Rs. 1,98,751/- should be reduced from the total profiteered amount of Rs. 37,89,550/-. Accordingly, the above claim of the Respondent is accepted as the DGAP has inadvertently computed profiteering amounting to Rs. 1,98,751/- on a transaction for which credit note was issued later on and accordingly, an amount of Rs. 37,89,550/- is directed to be reduced from the profiteered amount.

41. The Respondent has also stated that he had inadvertently mapped the Sony Play Station accessories as non-impacted in the submissions made before the DGAP. However, he had charged GST @18% from 01.01.2019 giving effect to the GST rate reduction Notification No. 24/2018 dated 31.12.2018. However, the DGAP has claimed that with regard to the Sony Accessories PS4 Dual Shock BL, the Respondent has accepted inadvertent mapping of the product as non-impacted and profiteering of Rs. 7056/- has been computed on the same as per Annexure-20 as well as Table-C of the Report dated 23.12.2019. Hence, the above claim of the Respondent is untenable.

42. The Respondent has also argued that the products falling under HSN Code 85076000 viz. MI Power Banks; Sony Power Banks and Stuffcool Power Banks were classified as impacted vide Table-C of the DGAP's Report dated 23.12.2019. However, the Respondent has claimed that there had been sale of two type of Power Banks falling under HSN Code 85076000 – Lithium Ion and Lithium Polymer. The GST rate Notification No. 24/2018 dated 31.12.2018 had reduced the

rate of Power Banks of Lithium Ion from 28% to 18% with effect from 01.01.2019. All MI, Sony and Stuffcool Power Banks were Lithium Polymer Power Banks which did not form part of the GST rate reduction Notification No. 24/2018 dated 31.12.2018 which was the reason that the Respondent had classified the same under non impacted products and continued to charge the same GST rate as was prevalent earlier. The DGAP has stated in his clarifications dated 01.06.2020 that with regard to the Powers Banks (MI, Sony and Stuffcool), the Respondent has submitted screenshots of Power Bank description as battery type "Lithium Polymer" which was not impacted by the GST rate reduction Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 w.e.f. 01.01.2019. The DGAP has also stated that this Authority may consider the same and profiteering amounting to Rs. 1,56,791/- may be reduced from the total profiteered amount of Rs. 37,89,550/- on the above Power Banks. On perusal of the record, we observe that after coming into force of Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 there had been no impact on the tax rate leviable on the above Power Banks having HSN Code 85076000, which were being supplied by the Respondent with the "Lithium Polymer" batteries. Hence, we agree with the DGAP's observation and allow reduction of profiteered amount by Rs. 1,56,791/- in respect of the above Power Banks from the total profiteering amount of Rs. 37,89,550/-.

43. On the basis of above clarifications, the profiteered amount reported in the Report dated 23.12.2019 is revised to Rs. 34,34,008/-, the

place (State) of supply-wise break-up of which has been furnished below:-

S.No.	Name of State	State Code	Profiteering (Rs.)
1	Telangana	36	30,51,396
2	Andhra Pradesh	37	3,82,612
Grand Total			34,34,008

44. Given our above findings the profited amount is determined as Rs. 34,34,008/-, details of the computation of which are given in Annexure-20 of the DGAP's Report dated 23.12.2019 and the clarification Report of the DGAP dated 01.06.2020, in terms of Section 171 (1) read with Rule 133 (1). Accordingly, the Respondent is directed to reduce his prices commensurately, as indicated in the above mentioned Annexure, in terms of Rule 133 (3) (a) of the above Rules. The Respondent is also directed to deposit an amount of Rs. 34,34,008/- in two equal parts each in the Central Consumer Welfare Fund and the Consumer Welfare Funds (CWFs) of the States mentioned supra as per the provisions of Rule 133 (3) (c) of the above Rules, since the recipients are not identifiable. The above amounts shall be deposited along with 18% interest payable from the dates from which the above amount was realized by the Respondent from his recipients till the date of deposit in the Consumer Welfare Funds. The above amount of Rs. 34,34,008/-, along with applicable interest thereon, shall be deposited within a period of 3 months from the date of passing of this order failing which it shall be recovered by the concerned

CGST/SGST Commissioners as per the provisions of the CGST/SGST Acts.

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

46. It is also evident from the above narration of the facts that the Respondent has denied benefit of rate reduction to the buyers of his products in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus resorted to profiteering. Hence, he has committed an offence for violation of the provisions of Section 171 (1) during the period from 01.01.2019 to 30.06.2019 and therefore, he is apparently liable for imposition of penalty under the provisions of Section 171 (3A) of the above Act. However, perusal of the provisions of Section 171 (3A) under which penalty has been prescribed for the above violation shows that it has been inserted in the CGST Act, 2017 w.e.f. 01.01.2020 vide Section 112 of the Finance Act, 2019 and it was not in operation during the period from

01.01.2019 to 30.06.2019 when the Respondent had committed the above violation and hence, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, notice for imposition of penalty is not required to be issued to the Respondent.

47. 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 23.12.2019 the order was to be passed on or before 22.06.2020. 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 Central Goods & Services Tax Act, 2017.


48. A copy of this order be sent to the Applicants, the Respondent and the Commissioners CGST/SGST of the concerned States/UTs free

of cost for necessary action. File of the case be consigned after completion.



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

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

Certified Copy

A.K. Goel
(Secretary, NAA)

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/115/electronics mart/2019/6205-11 Date: 26.11.2020
Copy to:- 27

1. M/s Electronics Mart India Ltd, D. No. 04-009/NR, (Old No. 3-24), Survey No. 43, Near Suchitra Circle, Kompally, Hyderabad-500004.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh SahityaSadan, Bhai ViR Singh Marg, New Delhi-110001.
3. Sh. M. Srinivas, Principal Commissioner of Central Tax, Central Excise & Service Tax, Medchal GST Commissionerate, 11-4-649/B, Lakdi ka Pool, Hyderabad-500004.
4. The Commissioner, SGST, Telangana, C.T Complex, Nampally, Hyderabad-500 001 (cst@tgct.gov.in).
5. The Commissioner, SGST, D. No. 5-59, R. K. Spring Valley Apartments, Bandar Road, Eedupugallu Village, Kankipadu Mandal, Vijayawada, Krishna District, Andhra Pradesh-521144.
6. The Chief Commissioner, CGST, Visakhapatnam Zone, GST Bhavan, Port Area, Visakhapatnam – 530035.
7. Guard File/NAA website.



A. K. GOEL
SECRETARY, NAA