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

Case No.	79/2020
Date of Institution	13.07.2020
Date of Order	09.12.2020

In the matter of:

1. Shri Ravi Charaya, ravi@xofootwear.com
2. Shri Chandranath Sarkar, sarkarcs10@gmail.com
3. Shri Shreepad Shende, sgshende@gmail.com
4. Shri Jayasankar Venkatramani, jay.jayashankar.v@gmail.com
5. 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 Hardcastle Restaurants Pvt. Ltd., 1001/1002, Tower 3, 10th Floor, Indiabulls Finance Centre, Senapati Bapat Marg, Elphinstone Road, Mumbai-400013.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants No. 1, 2, 3 and 4.
2. Smt. Gayatri, Deputy Commissioner for the Applicant No. 5.
3. Sh. Pankaj Roongta, Sh. Shatadru Sengupta, Sh. Chintan Bhatia, Company Representatives, Sh. Dinesh Agarwal, CA and Sh. Mayank Jain, Advocate for the Respondent.

ORDER

1. A Report dated 15.06.2018 was received from the Applicant No. 5 i.e. the Director General of Safeguards (DGSG), now re-designated as Director General of Anti-Profiteering (hereinafter referred to as the DGAP) under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case were that the Applicants No. 1 & 2 through their e-mails both dated 23.11.2017 and Applicants No. 3 & 4 vide their e-mails dated 15.11.2017 and 17.11.2017 respectively had filed complaints alleging that though the rate of Goods and Services Tax (GST) on Restaurant Services had been reduced from 18% to 5% w.e.f. 15.11.2017, the Respondent had increased the prices of the products which were being sold by

him and had maintained the same prices which he was charging before the above reduction. They had also claimed that the Respondent had indulged in profiteering in contravention of the provisions of Section 171 of the CGST Act, 2017 and hence appropriate action should be taken against him.

2. The above applications were examined by the Standing Committee on Anti-Profiteering and were referred to the DGAP vide the minutes of its meetings dated 29.11.2017 and 20.12.2017 for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.

3. The DGAP had called upon the Respondent vide notice dated 29.12.2017 to submit reply on the allegations levelled by the Applicants No. 1 to 4 and also to suo moto determine the quantum of benefit which he had not passed on to the consumers during the period between 15.11.2017 to 31.01.2018. The above Applicants were given an opportunity to inspect the non-confidential evidence/replies furnished by the Respondent between 24.05.2018 to 25.05.2018. However, the Applicants did not avail of this opportunity.

4. The respondent had submitted his reply on 05.01.2018 vide Annexure-11 and denied the allegations levelled against him and claimed that the benefit of reduction in the rate of tax had been neutralised due to withdrawal of Input Tax Credit (ITC) to him. The Respondent had furnished the required information/documents to the DGAP vide his letters dated 12.01.2018, 17.01.2018, 22.01.2018, 24.01.2018, 29.01.2018, 07.02.2018, 09.02.2018, 16.02.2018, 22.02.2018, 23.02.2018, 05.03.2018, 09.03.2018, 19.03.2018, 26.03.2018, 06.04.2018, 31.05.2018 and 01.06.2018.

5. The DGAP vide his above Report had informed that the Respondent had made the following contentions before him-:

a. That he was operating quick service restaurants under the brand name "McDonald's" in the Western and Southern regions of India and was registered as a supplier under the GST in 10 States. He had also stated that he was running three tiers of restaurants depending upon the locality, the targeted customers, local competition etc. and was selling the same items at different prices based on the tier of the restaurant.

b. That the rate of GST on the Restaurant Services was reduced to 5% w.e.f. 15.11.2017 with the condition that the ITC on the goods or services used in supplying the restaurant services would not be available. He had further stated that as per Section 33 of the CGST Act, 2017 the amount of tax formed part of the price. He had also claimed that the price lists of the food and the beverages published by him for each tier of restaurants clearly showed that prior to 15.11.2017, the GST was being charged @ 18% and w.e.f. 15.11.2017 it had been levied @ 5% on the taxable value and thus, the commensurate benefit arising out of the reduction in the rate of tax had been passed on to the customers.

c. That the price revision made by him w.e.f. 15.11.2017 did not fall within the purview of Section 171 of the above Act as this provision applied in only those cases where the contract of supply/sale had been entered in to prior to the change in the rate of tax or ITC. He had also claimed that any such change did not amount to automatic change in the price unless it was agreed to by both the parties as per Section 64 A of the Sale of Goods Act, 1930. He had further claimed that any attempt to regulate the sale prices of the products being sold by him would violate his right to carry on trade as per

Article 19 (1) (g) of the Constitution and the provisions of Section 171 were not similar to the laws framed for controlling prices as per List III of Schedule VII of the Constitution.

d. That the cost of food and beverages had gone up due to the abrupt denial of ITC which had constrained him to increase the base prices to negate this impact and such increase was also not commensurate with the increase in the costs. He had also contended that the cost of the restaurant services had gone up by at least 15%. He had further contended that he could not avail ITC worth Rs. 8.70 Crore for the months of July to October, 2017 and could avail it only after 15.11.2017. He had also submitted that the quantum of ITC not shown in the GSTR-3B Returns would increase from Rs. 8.70 Crore to Rs. 9.33 Crore and would further increase by Rs. 50 Lakh after all the inward supplies were accounted for which would prove that he had not profiteered. He had further contended that prices of some premium products had been reduced from 11% to 22%.

e. That the rent for the restaurants in the shopping malls was charged on fixed or variable or semi-variable basis which was approximately 3.5% of the incremental turnover and was payable at the end of the year and since the bills for the same would be raised only at the year-end, he would not be eligible to claim ITC on such variable rent and he would suffer an estimated loss of Rs. 22.78 Lakh.

f. That for the computation of availability of ITC, additional ITC for the period from July, 2017 to 14.11.2017 should be a minimum of Rs. 10 Crore. The Respondent had also claimed that the transitional credit mentioned in TRAN-1 statement filed by him was not the correct indicator of the tax incurred as (i) credit of CENVAT was not available on the Central Excise

Duty, (ii) his restaurants were operating under the Composition Scheme under which ITC on VAT was not allowed (iii) expenses on Petroleum were outside the GST and (iv) most of the inputs were taxable at higher rates. He had further claimed that he had reversed the ITC on the closing stock as on 14.11.2017 amounting to Rs. 4.18 Crore and hence he should be given deemed credit for the opening stock as on 01.07.2017 of Rs. 4.52 Crore.

6. The DGAP had stated in his report that the contention of the Respondent that provisions of Section 171 were not applicable in his case was not correct as they would be attracted as soon as there was reduction in the rate of tax or the benefit of ITC was available and they would not be dependent on whether the contract for supply was entered in to before such reduction or availability of ITC had come in to force and hence provisions of Section 64 A of the Sale of Goods Act, 1930 were not applicable. He had also stated that the argument of the Respondent that the provisions of Section 171 amounted to controlling the prices and thus infringed his right to trade under Article 19 (1) (g) of the Constitution was also not correct as this Section nowhere provided for control on the prices and its operation was limited to the extent of ensuring that the benefits of tax reduction and ITC were passed on to the consumers by way of commensurate reduction in the prices. The DGAP had further stated that the Central Govt. on the recommendation of the GST Council vide its Notification No. 26/2017-Central Tax (Rate) dated 14.11.2017 had reduced the rate of tax on restaurant services from 18% to 5% w.e.f. 15.11.2017 with the condition that the benefit of ITC would not be available on this service.

7. The DGAP had also submitted that the Respondent was selling 1,844 products and after comparing the price lists published before and after 15.11.2017 when the rate of tax was reduced, which was indicated in Annexure-32, the Respondent had increased the base prices in respect of 1,774 (96.20%) products. He had further submitted that although the Respondent had charged GST @ 5% on and after 15.11.2017 but due to increase in the base price the customers were forced to pay the same price which was being charged from them before 15.11.2017 whereas they should have been charged the lower price after commensurate reduction due to reduction in the rate of tax and hence they were denied the benefit which had become due to them.

8. The DGAP had made detailed calculation of profiteering vide Annexure-37 of his report. He had also compared the ITC which was available to the Respondent till 31.10.2017 with the outward taxable supplies made till the above date. He had calculated the ITC from the period from 01.07.2017 to 31.10.2017 as the details of closing stock and ITC on such stock were not available in the GSTR-3B Return of November, 2017 filed by the Respondent. The DGAP had also intimated that date wise outward taxable turnover was also not supplied by the Respondent up to 14.11.2017. The DGAP while determining the ITC as a ratio of the total taxable turnover of the Respondent had taken into account the ITC for the period from July, 2017 to October, 2017, as was shown in the GSTR-3B Returns, which had been adjusted by adding the amount of ITC which was availed in the month of November, 2017 as per GSTR-3B Return and by excluding the

amount of tax which was paid on inter unit branch transfers as per Sale Registers and the input tax credit pertaining to the period before July 2017 which was availed during the period between July, 2017 to October, 2017 as per the GSTR-3B Returns.

9. The DGAP had also mentioned that the Respondent had claimed that the ITC of Rs. 9.33 Crore approx. availed in November, 2017 and subsequently was on account of the invoices issued during the period of July, 2017 to October, 2017 and for ITC of Rs. 0.72 Crore, the invoices were not in his possession. The DGAP had intimated that out of the above claim, ITC of Rs. 8.51 Crore pertaining to the invoices issued from July, 2017 to October, 2017 which was availed during November, 2017, had been duly considered on the basis of the details submitted by the Respondent. He had further intimated that the ITC amounting to Rs. 1.54 Crore, which had not been considered while calculating the ITC, was available to the Respondent till 31.10.2017, comprised of: (i) ITC of Rs. 0.82 Crore availed in December, 2017 and subsequently, (ii) estimated credit of Rs. 0.50 Crore, invoices of which were not received by the Respondent and ITC was not availed in November, 2017 as per GSTR-3B Return and (iii) Rs. 0.22 Crore on account of rent for which bills were to be raised in March, 2018.

10. The DGAP had also informed that on the scrutiny of the GSTR-1 and GSTR-3B Returns and the ITC registers produced by the Respondent it was found that the ITC amounting to Rs. 33.96 Crore was available to the Respondent during the period between July, 2017 to October, 2017 which was approximately 9.11% of the taxable value of service of Rs. 372.62 Crore supplied by the Respondent during the same period.

excluding the inter-unit branch transfers. The rate of tax on the restaurant services was reduced from 18% to 5% w.e.f. 15.11.2017 and the benefit of ITC was not available to the Respondent w.e.f. the above date. The DGAP had calculated the ratio of denial of ITC as under:-

(Amount in Rs.)

Particulars	Jul., 2017	Aug., 2017	Sept., 2017	Oct., 2017	Total
ITC Availed as per GSTR-3B (A)	5,40,24,699	8,00,76,997	9,10,56,885	11,08,97,125	33,60,55,706
Add: ITC of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B **(Anex-34)** (B)	68,74,072	1,36,41,705	2,01,97,587	4,43,97,474	8,51,10,837
Less: Tax on Inter unit branch transfer as per Sales register (C)	1,59,87,269	2,12,74,094	1,77,50,160	1,80,18,920	7,30,30,443
Less: Input Tax Credit pertaining to prior July, 2017 but availed in July, 2017 to October, 2017 GSTR-3B (Annex-35) (D)	62,71,753	4,55,180	4,51,567	13,49,417	85,27,917
Net Input Tax Credit available for the period July, 2017 to October, 2017 (E)= (A+B-C-D)	**3,86,39,749**	**7,19,89,428**	**9,30,52,745**	**13,59,26,262**	**33,96,08,183**
Total Outward Taxable Turnover as per GSTR-1 (F)	1,03,58,60,891	1,07,44,33,448	99,87,33,437	1,10,98,64,117	4,21,88,91,893
Less: Inter unit branch transfer included in B2BV sale as per Sale Register (G)	11,85,53,210	12,96,09,631	11,85,07,995	12,60,15,548	49,26,86,384
Net Outward Taxable Turnover for the period July, 2017 to October, 2017 (H)= (F-G)	**91,73,07,681**	**94,48,23,817**	**80,02,25,442**	**98,38,48,569**	**3,72,62,05,509**
Ratio of Denial of Input Tax Credit to Net Outward Taxable Turnover (I)= (E/H)	4.21%	7.62%	10.57%	13.82%	**9.11%**

11. On the basis of the analysis of the details of the item-wise outward taxable supplies during the period between 15.11.2017 to 31.01.2018, the DGAP had found that the Respondent had increased the base prices of the various items supplied by him to neutralise the effect of denial of ITC after the rate reduction. The DGAP had compared the pre and post GST rate reduction prices of the items sold during the period between 15.11.2017 to 31.01.2018 and after taking into account the entire quantity of the products sold during the above period, had found that the Respondent had increased the average output taxable value i.e. the base prices by 10.45% to offset the denial of input tax credit of 9.11% as was evident from Annexure-36 of the Report. Therefore, the

DGAP had concluded that the Respondent had not passed on the benefit of reduction in the rate of tax from 18% to 5% as he had increased the base prices by more than 9.11% to 10.45% i.e. more than the denial of ITC in respect of 1,730 items out of total 1,844 items i.e. 93.82% of the total items supplied by him before and after 15.11.2017.

12. The DGAP had also stated that on the basis of the pre and post reduction in GST rates, the impact of the denial of ITC and the details of the outward supplies made during the period between 15.11.2017 to 31.01.2018, as per the GSTR-1 or GSTR-3B Returns of the Respondent, the amount of net higher sale realization due to increase in the base prices of the service, despite the reduction in the GST rate from 18% to 5%, with denial of ITC, the profiteered amount came to Rs. 7.49 Crore as per the following Table and therefore, the Respondent had contravened the provisions of Section 171 of the above Act:-

S. No.	State (Place of Supply)	Profiteering (In Rs.)
1	Andhra Pradesh	8,36,602
2	Chhattisgarh	3,99,904
3	Goa	8,29,314
4	Gujarat	88,48,919
5	Karnataka	1,18,30,563
6	Kerala	13,34,341
7	Madhya Pradesh	9,68,540
8	Maharashtra	3,96,68,520
9	Tamilnadu	43,19,803
10	Telangana	58,91,280
Total:		**7,49,27,786**

13. The above Report was considered by this Authority in its sitting held on 05.07.2018 and it was decided to hear the interested parties by

granting hearing on 24.07.2018 during which the Applicants No. 1 to 4 did not appear. The DGAP was represented by Sh. Akshat Aggarwal, Assistant Commissioner and Sh. Bhupinder Goyal Assistant Director (Costs). Sh. Suresh Lakshminarayan, Chief Finance Officer, Sh. Dinesh Agarwal, CA and Sh. Mayank Jain, Advocate appeared for the Respondent.

14. The Respondent had filed detailed written submissions on 24.07.2018, 09.08.2018, 16.08.2018 and 22.08.2018 and stated that the DGAP had grossly erred in applying the provisions of Section 171 of the CGST Act, 2017 which stated as under:-

> **"Anti-Profiteering Measure**
>
> 171. (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."

He had also claimed that the DGAP had conceded in his Report that the Respondent had charged GST @ 5% to his customers and therefore, commensurate benefit had been passed on to them. It had also been claimed by the Respondent that the DGAP had admitted that there was no incremental ITC available and therefore no benefit was to be passed on by the Respondent. He had further claimed that despite admission that Section 171 nowhere aimed at price regulation and its purpose was only to ensure that benefit of reduction in the rate of tax or ITC was passed on to the recipients by way of commensurate

reduction in the prices, the DGAP had gone in to the computation of base price by invoking the marginal note, i.e. "Anti-Profiteering Measure" which was illegal. He had further claimed that as per the settled law pronounced on the interpretation of the statutes, marginal notes were considered as internal aid to construction and while construing such provisions, the first and the foremost rule was of literal construction and in case the provision was unambiguous and the legislative intent was clear, the other rules of construction were not be called into aid since they were to be called for aid only when the legislative intention was not clear. The Respondent had also cited the law settled in the cases of ***Commissioner of income Tax v. Calcutta Knitwears (2014) 6 SCC 444, Union of India v. National Federation of the Blind (2013) 10 SCC 772, Commissioner of Income-Tax v. Ahmedbhai Umarbhai & Co. 1950 AIR 134, N. C. Dhoundial v. Union of India AIR 2004 SC 1272, Sarabjit Rick Singh v. Union of India 2008 (2) SCC 417*** and ***R. Krishnaiah v. State of Andhra Pradesh AIR 2005 AP 10*** and argued that in view of the judgements passed in the above cases, it was clear that the marginal note could be used in the interpretation of statue only if literal construction of the statue was ambiguous or absurd and since the provisions of Section 171 were unambiguous and explicit hence the marginal note was irrelevant and therefore, any attempt to examine and assess the base price was beyond the scope of Section 171.

15. The Respondent had also claimed that the word "profit" in common parlance was understood as under:-

MEANING	SOURCE
Advantage or gain in money or in money's worth	Prem & Saharay's Judicial Dictionary of Words and Phrases
The excess of revenues over expenditures in a business transaction	Black's Law Dictionary
The word profit connotes the idea of pecuniary gain	Ravanna Subanna vs G.S. Kaggeerappa (AIR 1954 SC 653)
The financial gain in a transaction or enterprise; the excess of returns over outlay	Shorter Oxford English Dictionary

The Respondent had also contended that the DGAP had only considered the impact of ITC denial and had failed to consider other factors such as increase in the electricity bills, fuel costs, variable rent, royalty and commissions etc. He had further contended that as per WPI, prices of food articles had risen by 6.32% and that of fuel & power by 4.69% during the same period, however, the impact of ITC was considered. The Respondent had also claimed that the increased input prices were considered as a mitigating factor in the order dated 04.05. 2018 passed by this Authority in the case of ***Kumar Gandharv & others v. KRBL Limited***, but in spite of furnishing evidence no other factor was taken in to consideration. He had further claimed that while determining cost of a product, tax was just one component and the other factors had been ignored and therefore, the entire exercise undertaken by the DGAP needed to be dismissed as the DGAP had lost sight of the true meaning of the word "profit".

16. The Respondent had also pleaded that the DGAP had concluded that the turnover had increased by ₹ 24,81,33,857/- solely due to the

increase in the base prices by 10.45%, which could not be taken as profit accruing to the Respondent as there was increase in the (a) Royalty, as the Respondent was paying royalty to M/s McDonald's India Pvt. Ltd. which was 3.99% of the restaurant turnover and amounted to incremental royalty of ₹ 99,00,540/- on the incremental turnover attributed solely to the price increase during the year 2017-18 (b) Variable rent, which was 3.29% of the restaurant turnover, whereby he had paid an incremental rent of ₹ 81,63,604/- on the incremental turnover attributed solely to price increase during the above year and (c) Other variable expenses like payments made to various service providers and during the year 2017-18, such expenses were 0.96% of the restaurant turnover and he had paid incremental expenses of ₹ 23,82,085/- on the incremental turnover attributable solely to the price increase. He had further pleaded that on the incremental revenue of ₹ 24,81,33,857/-, he had incurred incremental cost of ₹ 2,21,33,540/-, hence the profit worked out to be 9.43% as against 10.45% computed by the DGAP as per the following Table:-

	DESCRIPTION	%	AMOUNT IN ₹	AMOUNT IN ₹
A	Revenue for 15 November to 31 January 2018 on price before revision		237,46,84,157	
B	Revenue for 15 November to 31 January 2018 after price revision		262,28,18,014	
C	Incremental revenue due to price revision[i] [B – A]			24,81,33,857
D	incremental royalty due to price revision [3.99% x C]	3.99%[ii]	99,00,541	
E	Incremental rent due to price revision [3.29% x C]	3.29%[iii]	81,63,604	
F	Other expenses due to price revision [0.96% x C]	0.96%[iv]	23,82,085	
G	Incremental tax cost [(D+E+F) x 18%]		36,80,321	
H	Total incremental cost due to price revision [D+E+F+G]	9.72%		204,46,230

I	Net Incremental revenue due to price revision [C-H]			22,40,07,306
	EFFECTIVE MARGIN [I] / [A]			9.43%

17. The Respondent had also pleaded that the word "profiteering" had been defined as under:-

1.	Profiteering	Any conduct or practice involving the acquisition of excessive profits	Mount vs Welsh[v]
		To seek or obtain excessive profits, one who is given to making excessive profits	Law Lexicon
		The taking advantage of unusual or exceptional circumstances to make excessive profits	Black's Law Dictionary
		Make or seek to make an excessive profit	Shorter Oxford English Dictionary
		Profiteering would mean taking advantage of unusual or exceptional circumstances to make excessive profits.	Islamic Academy of Education vs State of Karnataka[vi]

The Respondent had further pleaded that he had not made excessive and/ or unreasonable profit as he was hardly making profit, as the tax incremental cost computed by the DGAP was 9.11% as against the incremental price margin of 9.43% and hence he had benefited only by 0.32%. He had also averred that the increased tax cost warranted revision in the prices to offset the tax cost and in case he increased the prices by ₹100, he would only get ₹ 90.28 after paying out royalty, variable rent and the outside services and therefore, the prices must be at least increased by 10.09% [9.11*100/0.902] and not by 9.11% as had been calculated by the DGAP to recover the tax cost. He had further averred that the profiteering had to be due to excessive profit which was not the case in the present proceedings as the increased realisation was extremely minuscule, and therefore, the inevitable conclusion was that he had passed on the commensurate benefits and

he had not violated the provisions of Section 171 of the CGST Act, 2017.

18. The Respondent had also stated that the DGAP had found that the net increase in the cost due to denial of ITC was 9.11%, which was arrived at on the basis of the ITC availed during the months of July 2017 to October 2017. He had further stated that the quantum of ITC during the months of July and August was very low as compared to the ITC in the months of September and October due to the reason that he was carrying inventory upwards of Rs. 25 Crore on which no ITC had been claimed under the GST and since this inventory was procured under the VAT regime no credit was availed of/carried forward as he was availing the Composition Scheme, therefore, as all future procurements would suffer GST, for calculating the impact of the denial of GST, the months of July and August should not be considered. He had also submitted that the ITC availed of in the month of October 2017 was 13.82% and the ITC for the months of September and October 2017 was 12.28% and therefore the ITC for the month of October 2017 only, or, the average of September 2017 to October 2017 being 12.28% should be considered for evaluating impact on cost due to denial of ITC. The Respondent further submitted that he had provided complete details of the ITC which he had availed in the months of December 2017 till March 2018 for the supplies received during the period between July - October 2017 which worked out to be ₹ 1,15,88,010/- which had been disallowed by the DGAP causing huge disadvantage to him. He had also claimed that the DGAP had disallowed ITC of ₹ 85,27,917/- pertaining to period prior to July 2017 but availed of during the period between July-October 2017 as the

invoices were issued by the supplier late which must be given to him. He had further claimed that the GST liability on variable rent would be accounted for either on a monthly or yearly basis, although it was accruing daily which constituted 3.29% of the restaurant turnover which the Respondent would be denied.

19. The Respondent had also pleaded that during the period between July-October 2017, he had made inter-unit branch transfers of ₹ 49,26,86,384/- on which GST of ₹ 7,30,30,443/- was paid which had been wrongly excluded while computing the ratio of ITC denial to taxable turnover, being mere book entries, as he had suffered incremental cost on the mark up price. He had further pleaded that he had availed of ITC of ₹ 6,46,90,974/- on the inward supplies of ₹ 47,15,04,275/- which were used to make outward inter-unit branch transfers valued at ₹ 50,90,43,209/- on which GST of ₹ 7,03,22,927/- was paid and thus, he had paid additional GST of ₹ 56,31,954/- on inward supplies which had been denied to him by the DGAP. He had also alleged that the period of investigation had been arbitrarily taken from 1 July 2017 to 31 October 2017 on the ground that the break-up of the closing stock of inputs and the ITC on the closing stock as on 14 November 2017 was not available in the GSTR-3B Return of November 2017 and the date wise outward taxable turnover for the month of November 2017 was not provided by the Respondent to compute the taxable turnover for the period between 1 November 2017 – 14 November 2017. The Respondent had claimed that he had supplied the ITC Register w.e.f. 01.07.2017 to 30.11.2017 on 19.01.2018 and 22.03.2018, the Stock Statement as on 30.06.2017 and 14.11.2017 on 09.03.2018 and the details of the SKU wise sales,

w.e.f. 01.11.2017 to 14.11.2017 and 15.11.2017 to 30.11.2017 on 10.04.2018 and hence the allegation of not providing these details was incorrect. He had further claimed that perusal of Annexure-36 (Columns G & H, and J & K) and Annexure-37 (Columns I & J, and L & M) of the Report framed by the DGAP provided SKU wise turnover in terms of units and prices for the period between 01-14 November and for the period of 15-30 November 2017 and hence the above allegation was wrong. He had also asserted that if the period of investigation was considered as 01 July 2017 to 14 November 2017, the tax cost resulting from denial of ITC would jump to 10.29% or in the bare minimum to 10.06% which can prove that he had not profiteered.

20. The Respondent had also submitted that in determining the price the historical data as was available at the time of decision making was used to estimate the likely cost of sales. He had further submitted that there was an abrupt change in the tax regime on 14 November 2017 whereby the Government had denied the benefit of ITC to the restaurant services which had resulted in significant increase in the cost which needed immediate price revision. He had also stressed that the methodology adopted by the DGAP had left significant amount of tax unaccounted for therefore the correct tax cost analysis due to ITC denial could be made only on the basis of the audited financials which had been taken in to account by the Respondent for the year 2016-17 to forecast incremental tax cost as per the following Table:-

Particulars	As per Financial Statements	As per submissions
Increase in price post 14-Nov-17 as per DGA	10.45%	10.45%
Increase in recovered price due to increase in sales prices	9.43%	9.43%
Impact due to denial of ITC	12.24%	10.1%~10.3
Net marginal Gain/(Loss)	(2.81%)	(0.67~0.87%)

21. He had also argued that the calculation of the profiteered amount of Rs. 7.49 Crore was not correct as the DGAP had ignored the reduction in the prices made by him which had led to reduction in the profiteered amount and also due to the reason that the DGAP had calculated the profiteered amount @ 105%, i.e. base price + 5% GST when the 5% GST had already been deposited in the Government account and not retained by him and hence, no profiteering could be alleged on it. He had also admitted that on the basis the above submissions, the amount of alleged profiteering stood reduced to Rs. 3,17,03,988/-.

22. The Respondent had also contended that the relevant provisions of the CGST Act, 2017 or the CGST Rules, 2017 did not prescribe the methodology to be followed by the registered suppliers in order to comply with the anti-profiteering requirements. He had further contended that Rule 126 of the above Rules authorised this Authority to determine the Methodology and Procedure to decide whether the reduction in the rate of tax or the benefit of input tax credit had been passed on by the registered person to the recipients by way of commensurate reduction in prices, however, no such methodology had been notified by it till date. He had also pleaded that Section 171 and Rule 122-137 being part of a taxing statute,

could not be enforced in the absence of machinery provisions for computation of the profiteered amount as per the law settled in the cases of ***CIT v. B. C. Srinivasa Shetty (1981) 2 SCC 460*** and ***Commissioner of Central Excise v. Larsen & Toubro Ltd. (2016) 1 SCC 170***. He had further pleaded that the above Act did not provide for a mechanism of computation or any guidelines and had left framing of methodology and computation to this Authority which was illegal as it was settled that legislature could not delegate it's authority under a statute without appropriate guidelines as per the law pronounced in the case of ***Indian Aluminium Co. Ltd. and Anr. v. The State of Bihar and Ors. 1994 (1) PLJR*** as the anti-profiteering provisions placed an unbridled discretion in the hands of this Authority and hence the present proceedings were not maintainable.

23. The Respondent had also stated that it was not clear whether the price alteration was required to be done at the entity level, State level, locational level, product level, category level or SKU level, each of which would bring about a different result in the pricing. There was also no indication whether a "commensurate" change in pricing would be assessed as a trend or in percentage terms. He had further stated that there was no recognition of various non-GST factors like market conditions, demand and supply, rising/ falling input costs, each of which might independently warrant a reduction or increase in prices and how in respect of common goods or services which would be procured and used across the business e.g. fuel, security and audit services, would be apportioned to the various segments of the business.

24. The Respondent had also submitted that this Authority must provide appropriate machinery for recovery of the amount of ITC of ₹ 22 Lakh pertaining to the period between 1 July 2017-14 November 2017 which could not be availed due to change in the tax regime. He had further submitted that Section 16 of the CGST Act provided for availment of the ITC up to a period of one year and hence he was entitled to claim the above ITC. He had also stated that the receipt of the goods and services had to be determined under the provisions of Section 12 and 13 of the CGST Act, 2017 as per which earlier of the date of issue of the invoice or the date of the receipt of payment was to be considered as time of supply and since the Respondent had claimed credit of ITC in respect of all such invoices which were dated on or before 14 November 2017 but accounted in the books of account on or after 14 November 2017, he should be allowed to avail the same. He had further stated that he was barred from taking benefit of ITC on inward supplies received after 14 November 2017 as per Section 12 and 13 of the CGST Act, 2017 which could not be construed as curtailing his vested right of availing the ITC for the inward supplies received on or before 14 November 2017. He had also cited the cases of ***Eicher Motors Ltd. v. Union of India 1999 (1) SCR 295, Samtel India Ltd. v. Commissioner of Central Excise (2003) 11 SCC 324*** and ***Binani Cement Ltd v. Commissioner of Central Excise 2002 (143) ELT 577 (Tri. - Del.)*** in his support.

25. The Respondent had also alleged that the DGAP had claimed that the gross price had remained identical for the period up to 14 November 2017 and w.e.f. 15 November 2018 he had resorted to

profiteering, however, it was an undisputed fact that the Respondent had revised his base prices both upward as well downward due to denial of ITC therefore, the gross prices charged had remained same. He had also claimed that in the tax law it was settled that a literal meaning was to be adopted as opposed to any other construction thereof as had been held in the cases of ***Commissioner of Income Tax v. Vadilal Vallubhai (1972) 86 ITR 2 (SC)*** and ***State of Punjab v. Gurdial Singh AIR 1980 SC 319***. The Respondent had also alleged that the *dictum* to increase the base prices only by 9.11% was nothing but a direct restriction on the prices of the services offered by the Respondent.

26. The Respondent had also claimed that prior to 15 November 2017, the input tax paid on inward supplies other than those listed under Section 17 (5) of the CGST Act, 2017 was not cost and therefore, it was not factored in the price however, after 15 November 2017, the input tax paid had become a cost which needed to be factored in the price. He had further claimed that the transitional credit of Rs. 5,18,17,311/- was also required to be included in the month of July 2017 as per the comments dated 09 August 2018 of the DGAP for working out the ratio of ITC versus the taxable turnover which would have been 10.50% and hence he cannot be held to have profiteered.

27. The Respondent had also submitted that the DGAP had claimed that as per Section 171 determination of profiteering was required to be done in absolute terms, then the entire investigation was vitiated as it had been done on aggregate or consolidated data and the DGAP should have determined each and every factor against each and

every product for determining profiteering. The respondent had also calculated the ratio of denial of ITC as under:-

Particulars	Jul-17	Aug-2017	Sept-2017	Oct-17	1-14 Nov-17	Total
ITC availed as per GSTR-3B (A)	5,40,24,699	8,00,76,997	9,17,54,635	11,08,97,125	5,77,33,663	39,44,87,119
Add: ITC of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B (Annex-34) (B)	68,74,072	1,36,41,705	2,01,97,587	4,43,97,474		8,51,10,838
Add: ITC of July 2017 to 14 November 2017 availed in the month of December 2017	2,37,237	7,08,187	9,47,249	22,49,103	1,14,39,498	1,55,81,273
Add: ITC of July 2017 to 14 November 2017 availed in the month of January 2018	4,55,861	5,73,870	10,57,272	19,62,917	35,77,711	76,27,630
Add: ITC of July 2017 to 14 November 2017 availed in the month of February 2018	1,95,426	1,43,501	2,72,150	3,50,443	6,91,633	16,53,153
Add: ITC of July 2017 to 14 November 2017 availed in the month of March 2018	6,73,269	4,75,593	8,51,747	4,34,186	5,87,834	30,22,630
Less: Tax on inter unit branch transfers as per Sales register (C)	1,59,87,269	2,12,74,094	1,77,50,160	1,80,18,920	1,33,68,224	8,63,98,667
Add: Incremental tax cost on inter-unit branch transfers	9,22,289	7,45,701	9,05,270	25,73,392	4,85,302	56,31,954
Net input tax credit available for the period July, 2017 to October, 2017 (E)= (A+B-C-D)	4,73,95,583	7,50,91,460	9,82,35,750	14,48,45,720	6,11,47,417	42,67,15,930
Total outward Turnover as per GSTR-1 (F)	1,03,58,60,891	1,07,44,33,448	99,87,33,437	1,10,98,64,117	50,77,76,041	4,72,66,67,934
Less: Inter unit branch transfer included in B2B Sale as per Sale register (G)	11,85,53,210	12,96,09,631	11,85,07,995	12,60,15,548	7,75,04,820	57,01,91,204
Net outward Taxable Turnover for the period July,2017 to October, 2017 (H) = (F-G)	91,73,07,681	94,48,23,817	88,02,25,442	98,38,48,569	43,02,71,220	4,15,64,76,729
Ratio of Denial (in % terms) of Input tax credit to Net Outward Taxable Turnover (I) = (E/H)	5.17	7.95	11.16	14.72	14.21	10.27

He had also claimed that the net effect of the denial of ITC was 10.27% to 12.24% whereas the net incremental revenue was only 9.43% and hence there was no profiteering.

28. The DGAP in his replies dated 08.08.2018 and 20.08.2018 filed in response to the submissions made by the Respondent had stated that Section 171 required passing on of the benefit of reduction in the rate of GST by way of a commensurate reduction in the prices and in this case the prices were not reduced. He had also stated that he had not examined the cost component included in the base price and hence there was no interference with the right of the Respondent to fix prices of his products and freely carry on his trade. He had further stated that he had only added the quantum of denial of ITC to the pre rate reduction price. He had also submitted that the Respondent had carried forward Transitional Credit of Rs. 5.18 Crore on 1st July, 2017 for the stock held on 30.06.2017 and also ITC of Rs. 4.61 Crore availed in the months of September and October 2017 pertained to the period prior to the month in which the credit was availed. He had also calculated ratio of denial of input tax credit to the net outward taxable turnover which came to 9.11% considering only the months of July-October, 2017. The DGAP has further submitted that in case the ITC in respect of the inter-unit branch transfers was not considered the outward taxable turnover had also not been considered from the period from July-October, 2017. He had also claimed that the Respondent had submitted SKU wise summary of supplies and not B2C invoices for outward taxable supplies and random check of the invoices revealed that in some cases, ITC was availed by him without being in possession of the invoices on the date of availing of ITC which was in contravention of the provisions of Section 16 (2) (a) of the CGST Act, 2017 and thus it was not allowed. The DGAP had also claimed that he was justified in applying the anti-profiteering provisions at the product/SKU level, in the absence of

invoice-wise outward taxable supplies data as the Respondent had failed to provide the same.

29. The DGAP had also contended that Para-13 on page 6 of his Report explained the rationale for rejecting the Respondent's contention that mere charging of the reduced GST rate of 5% demonstrated the absence of profiteering, as Section 171 required the passing on the benefit of reduction in the GST rate by way of a commensurate reduction in prices and in this case the prices were not so reduced which amounted to profiteering. He had further contended that Section 171 required that any reduction in the rete of the tax or the benefit of ITC which had accrued to a supplier must be passed on to the customers as both were the concessions given by the Government and the suppliers were not entitled to appropriate them and in case the customers were not identifiable, the amount so collected by the suppliers was required to be deposited in the Consumer Welfare Fund (CWF). He had also argued that commensurate reduction could obviously only be in absolute terms, so that the final price payable by a consumer got reduced. He had further argued that Section 171 did not provide a supplier any other means of passing on the benefit of ITC or reduction in the rate of tax to his consumers. He had also pleaded that increase in the cost of inputs including royalty, variable rent and other expenses was a factor in the determination of the price but it was independent of the output GST rate and hence it could not be claimed that the elements of cost unrelated to GST where affected by the change in the output GST rate and therefore, the increase in the cost of inputs claimed by the Respondent had not been considered.

30. The DGAP had also submitted that full benefit of ITC was allowed after implementation of the GST w.e.f. 01.07.2017 on the purchase of Inputs, Input Services and Capital Goods which the Respondent had availed. He had further submitted that the Respondent had informed that he carried the same level of inventory on 30th June 2017 and 31st October 2017 and therefore, for computing the ratio of denial of ITC to the taxable turnover, the ITC for the period from July, 2017 to October, 2017, as furnished by him in the GSTR-3B Returns had been considered by adding the amount of ITC pertaining to the period from July, 2017 to October, 2017 but availed in the month of November, 2017 as per the GSTR-3B Return and excluding the amount of tax paid on inter-unit branch transfers as per Sales Register and the ITC pertaining to the period before July, 2017 which was availed during the period of July, 2017 to October, 2017 as per GSTR-3B Returns. He had also stated that Section 16 (2) the CGST Act, 2017 prescribed certain conditions for availing ITC and w.e.f. 15.11.2017, the Respondent was not allowed to avail ITC in terms of Notification No. 46/2017- Central Tax (Rates) dated 14.11.2017, therefore, he was not eligible to take benefit of ITC w.e.f. 15.11.2017 on the strength of invoices received after 15.11.2017. The DGAP had also claimed that the ITC of Rs. 85,27,917/- was not disallowed but was not considered while computing the ratio of denial of ITC to net turnover as this credit pertained to the period prior to implementation of GST which had no bearing on the supplies made during the period from July, 2017 to October, 2017. He had further stated that as the Respondent had received the tax invoices after 15.11.2017 hence he was not eligible to avail the ITC in terms of the Notification dated 14.11.2017, therefore the same could not be

considered for computation of denial of input tax credit to the net turnover ratio. The DGAP had also maintained that as the Respondent had already availed ITC on the original purchase of inputs, the same had been considered in the computation of denial of ITC to net turnover. He had further maintained that the output tax liability on the inter-unit branch transfer turnover had been excluded from the ITC on the one hand and the inter-unit branch transfer turnover had been excluded from the outward taxable turnover on the other hand which neutralised the impact of branch transfer transactions on the computation. He had also informed that there was reversal of ITC on the closing stock of inputs and capital goods as on 14.11.2017 made by the Respondent which was not available in the GST-3B Return of November, 2017. The DGAP had also alleged that the Respondent had submitted details of SKU wise summary sales for the period between 1-14 November, 2017 but had not submitted invoice wise B2C outward taxable supplies pertaining to this period, therefore, net taxable turnover could not be computed on the basis of summary sales. The DGAP had also alleged that during random check of the invoices on which ITC was availed in November, 2017 the credit was taken by the Respondent without being in possession of these invoices on the date of availing ITC, in contravention of the provisions of Section 16 (2) (a) of the CGST Act, 2017 and therefore, the ITC pertaining to the invoices issued on or after 1st November 2017 and availed during 1-14 November 2017 had been left out. He had also intimated that the net turnover for the above period had also been left out and therefore, this had no bearing on computation of denial of ITC ratio to the turnover during the period from 1st July 2017 to 31st October 2017. The DGAP had also claimed that the law did not

provide a supplier any flexibility to suo moto decide on any other modality to pass on the benefit of ITC or reduction in the rate of tax to the recipients except by commensurate reduction in the price and hence computation of the marginal gain/loss as per the financial statements could not be considered in view of the statutory provisions. He had further claimed that a supplier did not have discretion to pass on the benefit of input tax credit or reduction in the rate of tax on one product, by reducing the price of another product. He had also contended that price included both basic price and also the tax charged on it and therefore, any excess amount collected from the recipients amounted to profiteering which must be returned to the recipients or deposited in the CWF.

31. We had carefully considered the material placed on record and had also heard both the parties and it was revealed that the Central Govt. vide it's Notification No. 26/2017-Central Tax (Rate) dated 14.11.2017 had reduced the rate of GST being charged on the Restaurant Services from 18% to 5% w.e.f. 15.11.2017 with the stipulation that the suppliers of these services would not be able to obtain benefit of ITC from the above date.

32. It was also revealed from the perusal of Section 171 quoted above that (i) any reduction in the rate of tax on any supply of goods or services or (ii) the benefit of ITC shall be passed on to the recipient by way of (iii) commensurate reduction in prices. Since there had been reduction in the rate of tax in respect of the above services as per the above Notification the benefit of reduction was required to be passed on to the consumers. Similarly the benefit of ITC availed by the supplier was also to be passed on to the recipients. Mere charging of GST @ 5% w.e.f.

15.11.2017 did not amount to passing on the benefit of the above reduction as had been claimed by the Respondent. The Respondent had also claimed benefit of ITC as per TRAN-1 Statement as well as per his GSTR-3B Returns for the period between 01.07.2017 to 14.11.2017 which was also required to be passed on to the consumers. Perusal of the Report filed by the DGAP nowhere showed that he had gone in to the cost component of the base price fixed by the Respondent as he had neither sought details of the cost of the inputs used by the Respondent nor of his profit margins and therefore, the allegation of computation of base price by the DGAP made by the Respondent was completely wrong. The DGAP had only tried to investigate whether the benefits of reduction in the rate of tax and the ITC had been passed on to the customers by the Respondent or not as per the provisions of Section 171. It was absolutely clear even from a cursory perusal of the provisions of Section 171 that they were completely unambiguous and clear and hence there was hardly any scope for misinterpretation of the marginal note mentioned as 'Anti-Profiteering Measures' and there was no justification in construing the same in the manner which had been suggested by the Respondent. Therefore, it was respectfully submitted that the law settled in the cases of ***Commissioner of income Tax v. Calcutta Knitwears, Union of India v. National Federation of the Blind, Commissioner of Income-Tax v. Ahmedbhai Umarbhai & Co., N. C. Dhoundial v. Union of India, Sarabjit Rick Singh v. Union of India*** and ***R. Krishnaiah v. State of Andhra Pradesh supra*** was not applicable in the facts of the present case as no strict interpretation of the provisions of Section 171 was required as they were simple and clear, their meaning and message was absolutely unambiguous and

hence no weightage was required to be given to the marginal note. The intent of legislature showed that it proposed to hold the suppliers accountable for passing on both the above benefits as both of them have been given out of the public exchequer and any breach of the same will fall foul of the above Section.

33. The Respondent had also claimed that the provisions of Section 171 were applicable only in the case of the contracts of sale which had been entered in to prior to the change in the rate of tax and both the parties had agreed to such change as per the provisions of Section 64 A of the Sale of Goods Act, 1930. Perusal of the above Section showed that its provisions were not applicable in view of the specific provisions of Section 171 which stipulated that both the benefits had to be passed on as and when they were given to the customers by the Government out of its own revenue which had nothing to do with the contract between the two parties. Therefore, the contention of the Respondent made in this regard was frivolous. It was also clear from the provisions of Section 171 that it had given mandate only to ensure that the benefits of rate reduction and ITC were passed on to the consumers and it had no provisions for interference in the process of price fixing as had been alleged by the Respondent and hence there was no question of violation of the right of the Respondent granted under Article 19 (1) (g) nor of the laws framed for regulation of prices as per List III of Schedule VII of the Constitution. Both the claims made by the Respondent in this regard were farfetched and untenable in view of the specific provisions of Section 171.

34. It was also clear from the definition of 'profit' given by the Respondent in his submissions that it was the advantage or gain derived in a legal

business transaction but the same could not be considered as profit if it was illegally derived by appropriating the benefits which were granted by the Government from the public funds to the consumers. The contention of the Respondent that the increase in the prices of food articles, electricity, fuel, variable rent, royalty and commissions etc. was not considered by the DGAP while calculating the profiteered amount was untenable because the DGAP had mandate to only examine whether the benefit of tax reduction or ITC had been passed on or not. He could not go into the factors which were taken in to account by the Respondent while he fixed his prices. The order passed in the Case of ***Kumar Gandharv v. KRBL Ltd.*** on 04.05.2018 by this Authority pertained to Basmati Rice in the case of which the GST was increased from 0% to 5% and hence there had been no reduction in the rate of tax and hence the provisions of Section 171 were not attracted, which was not the case in respect of the Respondent as the rate of tax had been reduced.

35. The Respondent had wrongly claimed that the DGAP had assessed that the Respondent had made a profit of Rs. 24,81,33,857/- due to the average increase in the base prices by 10.45%. The claim made by the Respondent was incorrect as the DGAP had taken the above amount as additional sale realisation made by the Respondent on account of the increase in the prices and not the profiteered amount as this amount had been assessed to be Rs. 7,49,27,786/- only as per Annexure-37 of the Report submitted by the DGAP. Since the above amount of Rs. 24,81,33,857/- had not been taken as profiteering by the DGAP there was hardly any question of considering the costs incurred by the Respondent on royalty, variable rent or other variable expenses nor the

DGAP could consider them. The Respondent was trying to confuse the issue by comparing the incremental revenue earned by him with the amount of profiteering. Since he had earned incremental revenue he should also have made arrangements for meeting the above expenses from the revenue earned by him.

36. The Respondent had also tried to define 'profiteering' as a conduct or practice for making excessive profits. The present conduct of the Respondent squarely fell in the definitions mentioned by the Respondent as he had not only realised his usual margin of profit which he was charging but he had also pocketed the amount which he was bound to pass on to his customers due to reduction in the rate of tax and benefit of ITC. The Respondent should have remembered that the benefit of reduction in the rate of tax as well as the benefit of ITC had been given by the Central as well as the State Governments by sacrificing their own revenue in favour of the general public and the Respondent had no right to appropriate it. The Respondent had himself admitted that the DGAP had calculated the ratio of denial of ITC to total taxable turnover as 9.11% whereas it was 9.43% as per his own assessment and hence he had profiteered by 0.32% which demolished his entire defence of having not profiteered. The amount of profiteering assessed by the DGAP could not be described as miniscule as it had been earned by fleecing millions of customers.

37. It was also apparent from the record that the DGAP had calculated the ratio of ITC to the total taxable turnover pertaining to the period between July, 2017 to October, 2017 as 9.11% on the basis of the GSTR-3B Returns filed by the Respondent. However, the Respondent had claimed that the above ratio should have been calculated on the basis

of the ITC availed by him either in the month of October, 2017 or during the months of September and October, 2017 as the ratio would be 13.82% or 12.82% respectively which would show that he had not profiteered. The Respondent had not given any reason to explain why the above months should be picked up selectively. The only reason for the above contention appeared to be that the Respondent wanted to hide the fact that he had increased his prices more than the denial of benefit of ITC. The Respondent could not claim ITC after the Notification was issued on 14.11.2017 for the supplies made during the months of July to October, 2017 during the months of December 2017 to March 2018 and hence the DGAP had rightly denied him the benefit of ITC of Rs. 1,15,88,010/-. He had further rightly denied him the benefit of ITC of Rs. 85,27,917/- as the tax invoices in respect of the supplies made during the period of July to October, 2017 were received by the Respondent late. The Respondent must have been prudent enough to make necessary provisions for payment of rent to avoid loss of ITC which he had failed to do.

38. It was also revealed from the Report of the DGAP that the output tax liability on inter-unit branch transfer turnover had been excluded from the ITC on the one hand and the inter-unit branch transfer turnover had been excluded from the outward taxable turnover on the other hand which had neutralised the impact of branch transfer transactions on the computation of ratio of ITC to total taxable turnover and hence amounts of Rs. 49,26,86,384/- and Rs. 47,15,04,275/- had rightly not been included in the calculations. Perusal of Annexure-36 and 37 attached with the Report showed that they had been framed by taking in to account the information pertaining to the period between 01.11.2017 to

30.11.2017 and hence the contention of the Respondent that all the information required by the DGAP had been supplied was correct although this information was not mentioned in the GSTR-3B Return by him. Since the calculation of profiteering had been made after duly considering the above period there was no ground to claim that the ratio of denial of ITC would jump to 10.29% or 10.06%.

39. The Respondent had also claimed that due to sudden denial of the ITC the prices were required to be revised as there was significant change in the costs, which could only be done on the basis of the audited financial statements. This contention was absolutely wrong as the Respondent had overnight increased the prices w.e.f. 15.11.2017 from the day from which the rate of tax was reduced. Further, the increase was exactly equal to the amount by which the tax had been reduced and the same MRP which was being charged on 14.11.2017 was also charged on 15.11.2017. Perusal of the tax invoice dated 07.11.2017 enclosed with the complaint showed that the Respondent had charged Rs. 120.34/- as base price for one unit of Regular Mccafe Latte and Rs. 21.66/- as 18% CGST+SCST and thus an amount of Rs. 142/- was charged for the above item. Vide invoice dated 15.11.2017 the base price was increased by Rs. 14.90/- to Rs. 135.24/- and Rs. 6.76/- were charged as CGST+SGST @ 5% and the above product was supplied at the same MRP of Rs. 142/-. Therefore, it was clear that the base price was increased by 12.38% which was more than the ratio of denial of ITC of 9.11%. The Respondent had not only compelled his customers to pay extra base price of Rs. 3.94, he had also forced them to pay extra GST of Rs. 0.20/- and thus the benefit of Rs. 4.14 had been denied to the customers. Had the Respondent not increased the price of the

above product the same would have been supplied at the price of Rs. 137.86 only. Perusal of Annexure-32 further proved that the Respondent had arbitrarily increased his prices without taking in to account the audited financial statements and they were increased solely with the malafide intention of appropriating the benefit which was to be passed on to the general public. The Respondent had himself admitted that he had made net marginal gain of 2.81% and the total profiteering was to the tune of Rs. 3,17,03,988/-. After this admission the Respondent could hardly claim that the price increase was based on the audited statements.

40. The Respondent had also claimed that no methodology had been prescribed under the CGST Act or the Rules which could be followed by the suppliers in order to comply with the anti-profiteering measures and this Authority had also not notified such methodology under Rule 126 of the CGST Rules, 2017. In this connection it would be pertinent to mention that this Authority in exercise of the powers conferred on it under Rule 126 of the above Rules had already promulgated the "Methodology and Procedure" vide it's Notification dated 28.03.2017 which had been prominently displayed on its website. It was regrettable that the Respondent was raising this issue without consulting the website. The Respondent had also claimed that the provisions of Section 171 and Rules 122-137 could not be enforced in the absence of machinery provisions which also proved that the Respondent had not read the above provisions carefully. As discussed above the provisions of Section 171 and the above Rules were very clear and unambiguous under which a comprehensive machinery comprising of the State specific Screening Committees, Standing Committee, Directorate

General of Anti-Profiteering and Commissioners of Central GST and State Tax had been constituted/established under the above Rules to take cognizance of the complaints made on profiteering, their investigation and for enforcement of the orders passed by this Authority. The law settled in the cases of ***CIT v. B. C. Srinivasa Shetty*** and ***Commissioner of Central Excise v. Larsen & Toubro Ltd. supra*** was not applicable as specific and adequate anti-profiteering machinery had been provided under the above Act and the Rules to enforce the above provisions. The averment of the Respondent regarding excessive delegation to this Authority for framing methodology was also not tenable as the delegation had been done in exercise of the powers conferred under Section 164 of the Act on the recommendation of the GST Council which was a body established under the Constitution. It would also be pertinent to mention that the judgement passed in the case of ***Indian Aluminium Co. Ltd. and Anr. v. The State of Bihar and Ors.*** **supra** was not applicable as the delegation had been made in accordance with the provisions of the CGST Act, 2017. It would also be appropriate to mention here that the computation of the profiteered amount under Section 171 had to be done on the basis of the facts of each case and hence no general methodology and procedure could be prescribed for the same. The basic aim was to ensure that both the benefits of reduction in the rate of tax and ITC were passed on to the consumers by commensurate reduction in the prices. During the hearing the Respondent was repeatedly asked to put forth his own methodology and procedure in case he was not satisfied with the course of action adopted by the DGAP while assessing his liability for profiteering but the

Respondent had failed to do so and therefore, all the objections raised by him in this behalf were frivolous and could not be accepted.

41. The Respondent had also pleaded that he was not aware at what level the price was to be reduced. In this connection the provisions of Section 171 were very clear which stated that both the benefits had to be given in the case of every supply. Therefore, the benefit was required to be passed on at the SKU level of each product as the recipient would be different in each supply of the product. Every consumer was entitled to receive the above benefits and no one could be denied these benefits on the ground that they should be passed on at the entity level, State level or locational level or the product level. The Respondent had no discretion to deny these benefits on any ground or to grant them on the basis of his own convenience. There was also no problem in settling the issue of commensurate reduction in the price which could be calculated after taking in to account the reduction in the rate of tax or grant of benefit of ITC both of which could be easily determined in the absolute figures and hence there should be no problem in reducing the prices commensurately, therefore, there was no question of its assessment as a trend or in percentage terms. The provisions of Section 171 were only concerned about passing on the above two benefits and have no connection with the fixing of the price of the product and hence the issues of market conditions, demand and supply, and rising/falling input costs were not required to be taken in to account while determining the amount of profiteering. The Respondent could not raise these issues by arbitrarily raising his prices on the intervening night of 14/15th November, 2017 on the eve of the reduction in the rate of tax. He could

have very well raised his prices on the basis of the above factors anytime between 01.04.2017 to 14.11.2017 which he had not done.

42. The Respondent had also suggested that this Authority should provide for appropriate machinery for recovery of ITC of Rs. 22 Lakh which he could not avail. In this connection it was made clear that this Authority was not the appropriate forum before which such issue can be raised. The Respondent could always approach the competent forum to redress his grievance of denial of ITC as per the provisions of Section 12, 13 and 16 of the above Act. He might also cite the judgements rendered in the cases of ***Eicher Motors Ltd. v. Union of India, Samtel India Ltd. v. Commissioner of Central Excise*** and ***Binani Cement Ltd v. Commissioner of Central Excise supra*** before such forum.

43. After the perusal of Annexure-32, it was established beyond any doubt that the Respondent had increased the base prices on the intervening night of 14/15th November, 2017 by an average of 10.45% in respect of 1,730 products out of the 1,844 products which came to about 93.82% which clearly showed that he had deliberately in conscious disregard of the provisions of Section 171 of the above Act had resorted to profiteering as he had no ground whatsoever to increase his prices on the eve of tax reduction. The cases of ***Commissioner of Income Tax v. Vadilal Vallubhai*** and ***State of Punjab v. Gurdial Singh*** were of no help to him as the same were not relevant in the facts of the present case. The allegation of the Respondent that he had been directed to increase his prices by 9.11% only amounted to restriction on his right to fix the prices was misplaced as no such direction had been passed by the DGAP as the Respondent had himself revised the prices and while doing so he had deliberately pocketed the benefit which he was

required to pass on to his customers, in additions to his regular margins, which being in contravention of the provisions of Section 171 of the above Act was liable to the consequences prescribed under Rule 133 of the above Rules.

44. The Respondent had also claimed that after 15.11.2017 the input tax paid by him had become a cost which needed to be factored in the price. This contention of the Respondent was frivolous as it appeared that he had no details of the input tax available to him on 15.11.2017 when he had increased the prices more than the denial of benefit of ITC. The Respondent had been duly given the benefit of transitional credit and therefore, he should not have any grievance on this account.

45. The claim of the Respondent that the calculation of profiteering had been done on aggregate or consolidated data and not on the absolute terms was wrong as such calculation had been done through a very comprehensive exercise carried out by the DGAP as had been shown in Annexures-32 to 37, the veracity of which could not be challenged. The amount of profiteering had been meticulously assessed on each and every product by the DGAP and therefore, the same could be fully relied upon. The calculation of ratio of denial of ITC had been worked out as 10.27% by the Respondent in the Table submitted by him, however, the same could not be accepted as it included the ITC to which the Respondent was not entitled and also the inter unit branch transfers which had not been taken in to account by the DGAP.

46. In view of the above discussion the quantum of profiteering illegally obtained by the Respondent was determined by this Authority vide its order dated 16.11.2018 as Rs. 7,49,27,786/- as per the details mentioned supra as per the provisions of Rule 133 (1) of the CGST

Rules, 2017 as the Respondent had failed to pass on the benefit of tax reduction to his customers. Accordingly, the Respondent was directed to reduce his prices by way of commensurate reduction keeping in view the reduced rate of tax and the denial of benefit of ITC as per Rule 133 (3) (a). Since the complainants were not identifiable the Respondent was further directed to deposit the above amount as per the provisions of Rule 133 (3) (c) in the ratio of 50:50 in the Central and the State CWFs of all the 10 States mentioned above, along with the interest @ 18% till the same was deposited within a period of 3 months. The concerned Central and State GST Commissioners were also directed to ensure that the amount due was got deposited from the Respondent along with interest and in case the same was not deposited necessary steps would be taken by them to get it recovered from the Respondent as per the provisions of the CGST/SCST Acts under the supervision of the DGAP. They were further directed to submit report in compliance of the order within a period of 4 months.

47. As per the above narration of the facts it was clear that the Respondent had resorted to profiteering by charging more price than he could have charged by issuing wrong tax invoices. He had further acted in conscious disregard of the obligation which was cast upon him by the law, by issuing incorrect invoices in which the base price was deliberately enhanced exactly equal to the amount of reduced tax or more and thus he had denied the benefit of reduction in the rate of tax granted vide Notification dated 14.11.2017 to his customers. Accordingly he had committed an offence under Section 122 (1) (i) of the CGST Act, 2017 of the above Act. Therefore, a show cause notice was ordered to be issued to the Respondent to explain why the penalty

under the provisions of the above Section should not be imposed on him.

48. The Respondent had filed Writ Petition No. 3492/2018 before the Hon'ble High Court of Bombay against the order dated 16.11.2018, passed by this Authority in the present proceedings, which vide its Judgement dated 01.10.2019 had remanded the case back to this Authority and directed the Respondent to appear before this Authority on 25.11.2019. However, the Respondent immediately thereafter had filed another Writ Petition No. 3536/2019 before the Hon'ble High Court of Bombay challenging the vires of Rule 126 of the CGST Rules, 2017 in which the Hon'ble High Court vide its order dated 18.12.2019 had directed that "if the Petitioner makes a request for an adjournment, the Respondents-Authority will grant a suitable date in the pending proceedings beyond the next date." Vide its order dated 30.01.2020 this Authority was again directed by the Hon'ble High Court to adjourn the proceedings beyond the next date. This Authority had filed Transfer Applications No. 290-292/2020 before the Hon'ble Supreme Court for transfer of the above Writ Petition to the Hon'ble High Court of Delhi as a number of similar Writ Petitions were pending before it. The Hon'ble Supreme Court had transferred the above Writ Petition to the Hon'ble High Court of Delhi vide its order dated 19.02.2020 which was listed as Writ Petition (C) No. 3909/2020 before the Hon'ble High Court of Delhi. The above Writ Petition was listed before the Hon'ble High Court on 06.07.2020 when it was withdrawn by the Petitioner with the liberty to raise all issues before this Authority. Therefore, no effective hearings could take place from 25.11.2019 to 13.07.2020, when regular proceedings were started in the present case.

49. During the present proceedings the Respondent has filed written submissions dated 23.10.2019, 13.11.2019 and 25.11.2019 which have been consolidated by him vide his written submissions dated 04.12.2019 which are enumerated as under:-

I. That the order dated 16.11.2018 passed by this Authority was assailed by him before the Hon'ble High Court of Bombay, which vide its Judgement dated 01.10.2019 has remanded the matter back to this Authority.

II. That he has filed submissions on 23.10.2019 and 13.11.2019 and he proposed to specifically refer to (i) paras 8 and 9 which go to the very root of the scope and coverage of the proceedings (ii) paras 10 and 11 which raise the issue of an absence of a prescribed methodology and (iii) para 12 where a series of issues were raised for clarification which directly impacted his ability to effectively lead his defence in the matter. He urged that this Authority to respond to these critical issues to enable him to suitably form his defence and to meet the requirement of what the Hon'ble Bombay High Court referred to as the "importance of a fair decision-making process".

III. That in the present proceedings, it was clear that this Authority was deciding a *case* between the Respondent and S/Sh. Ravi Charaya, Chandranath Sarkar, Shreepad Shende, Jayasankar Venkatramani and the DGAP. Further, this Authority was also vested with penalty powers as also civil death by de-registration. Thus, this Authority was a Tribunal as per the judgments viz. ***Jaswant Sugar Mills Ltd. v. Lakshmichand & Ors. AIR 1963 SC 677, Kihoto Hollohan v. Zachillhu and Ors. AIR 1993 SC 412, Associated Cement Companies Ltd. v. P.N. Sharma &***

Ors. AIR 1965 SC 1595 and ***Columbia Sportswear Company v. Director of Income Tax, Bangalore (2012) 11 SCC 224.***

IV. That although Section 171 of the CGST Act provided for the creation of this Authority, its constitution was prescribed under Rule 122 of the CGST Rules. This Authority comprised of the Chairman and Technical Members but there was no Judicial Member. The constitution of this Authority was having all trappings of a Tribunal which was vitiated as per the judgments passed in the cases of ***L. Chandra Kumar v. Union of India 1997 (92) ELT 318 (SC), Union of India v. R. Gandhi 2010 (261) ELT 3 (SC), Madras Bar Association v. Union of India 2014 (308) ELT 209 (SC), S. P. Sampath Kumar & Ors. v. Union of India 1987 (27) ELT 1 (SC), S. Manoharan v. The Deputy Registrar and Ors. 2015-2-LW-343*** and ***the Order dated 20.09. 2019 passed by the Hon'ble High Court of Madras in W. P. 21147/2018.***

V. That this Authority was competent to examine vires of the subsidiary legislations as has been held in Paragraph 91 in the case pf ***L. Chandra Kumar*** *supra*. Consequently, as the constitution of this Authority was prescribed under Rule 122 of the CGST Rules, it was competent to examine vires thereof and therefore, the same should be examined by this Authority and held to be illegal in light of the above decisions.

VI. That comparison of this Authority with other authorities was devoid of merits and was entirely immaterial to the question of composition of the this Authority and hence, any examination should be done in the light of the settled judicial precedents referred above.

VII. That the last date of passing of the order in the present case was on or before 17.09.2018 as the order was required to be passed within a period of three (3) months from the date of receipt of the Report from

the DGAP i.e. 18.06. 2018. The proceedings have therefore abated and could not be revived under these remand proceedings.

VIII. That the Hon'ble High Court of Bombay has observed that the term profiteering has been used in a pejorative sense and such a finding could severely dent the business reputation. In effect, the order of the Hon'ble High Court was that the business reputation should not be dented merely on the basis of assumptions and presumptions but must be based on credible, cogent evidence as also legal tenets, both substantive and procedural. It was trite that any order passed in perfunctory manner would naturally and severely dent business reputation and therefore, this Authority must exercise due restraint and follow legal principles to the fullest. In this regard, the Respondent has claimed that the order dated 16.11.2018 was passed in a cursory manner as was evident from Para 35 of the order which stated as under:-

"the respondent has wrongly claimed that the DGAP had assessed that the respondent had made a profit of ₹ 24,81,33,857 due to the average increase in the base price by 10.45%. The claim made by the Respondent is incorrect as the DGAP has taken the above amount as additional sales realisation made by the Respondent on account of the increase in the prices and not the profiteered amount as this amount has been assessed to be ₹ 7,49,27,786 only as per Annexure-37 of the report submitted by the DGAP." However, vide Para 16 of the same order. this Authority has recorded that "*the respondent has also pleaded that the DGAP has concluded that the turnover has increased by ₹*

24,81,33,857 solely due to the increase in the base price by 10.45%."
There was apparent contradiction in Para 35 and Para 16.

IX. That in Para 36 of the above order, this Authority has observed that "*the Respondent has himself admitted that the DGPA has calculated the ratio of denial of ITC to total taxable turnover as 9.11% whereas it was 9.43% as per his own assessment and hence he has profiteered by 0.32% which demolishes his entire defence of having not profiteered*". Attention of this Authority was invited to the Table at Para 16, wherein the figure 9.43% was taken from the Table. The Respondent had submitted that his effective margin was 9.43% after considering his incremental revenue and incremental cost. If the ITC loss computed by the DGAP @ 9.11% was taken as sacrosanct, then the gain would be meagre 0.32%. However, this ITC loss @ 9.11% computed by the DGAP was disputed in Para 27 where the Respondent has claimed historical ITC loss @10.27%. Attention of this Authority was also invited to the Table at Para 20 of the order where the Respondent has projected net loss in the range of 0.67% to 2.81% of the turnover. Thus, observation of this Authority at Para 36 was factually wrong.

X. That in Para 37 of the order dated 16.11.2018, this Authority has observed that *"It is also apparent from the record that the DGAP has calculated the ratio of ITC to the total taxable turnover pertaining to the period between July 2017 to October 2017 as 9.11% on the basis of GSTR-3B returns filed by the Respondent. However, he has claimed that the above ratio should have been calculated on the basis on ITC availed by him either in the month of October 2017 or during the month of September and October which would be 13.82% or 12.82% respectively which would show that he has not profiteered. Respondent*

has not given any reason to explain why the above months should be picked up selectively. The only reason for the above contention appears to be that the Respondent wants to hide the fact that he has increased his prices more than the denial of benefit of ITC." However, vide Para 18 it has been recorded that *"the Respondent has also stated that DGAP has found the net increase in the cost due to denial of ITC was 9.11% which was arrived at on the basis of ITC availed during the month of July 2017 to October 2017. He had further stated that the quantum of ITC during the months of July and August were very low as compared to ITC in the month of September-October due to the reason that he was carrying inventory of upward of Rs. 25 crores on which no ITC has been claimed under GST and since this inventory was procured under the VAT regime no credit was availed or carried forward as he was availing the composition therefore as all future procurement would suffer GST for calculating the impact denial of GST the month of July-August should not be considered."* It is a matter of record that the Respondent has provided reasons to explain as to why ITC for the months of September 2017 and October 2017 should be taken as the basis of computation. However, this Authority did not consider the same.

XI. That in Para 39 of the above order, this Authority has observed that *"the Respondent has himself admitted that he had made marginal gain of 2.81% and the total profiteering was to the tune of ₹ 3,17,03,988. After this admission, the Respondent can hardly claim that the price increase was based on the audited statements."* In this regard attention was invited to the Table at Para 20 wherein the Respondent had computed Net Marginal Gain/(Loss). The figure 2.81% was in brackets which

meant loss. Clearly this Authority has misread the Net Marginal Loss as Net Marginal Gain.

XII. That in Para 40 of the above order, this Authority has wrongly observed that the Respondent has failed to provide his methodology which has been duly recorded at Para 16, 20 and 27 of the above order.

XIII. That this Authority was required to determine the *'methodology'* and *'procedure'* for determination of the commensurate effect on the prices due to reduction in the tax rate or increase in the benefit of input tax credits availed by the Respondent. Methodology referred to the objective criteria and standards which would be applied to the case. In an order dated 09.09.2019 passed by the Hon'ble High Court of Bombay in ***Vanashakti Public Trust v. State of Maharashtra (W. P. No. 118/2015)***, the Hon'ble High Court has held that objective criteria proposed to be adopted has to be made known to the parties. The Hon'ble Court has further observed that unless the process by which a decision was proposed to be taken was made known, the person whose views were solicited would be clueless.

XIV. That this Authority has notified procedure, but the Respondent was unaware about framing of methodology which might have been prescribed or determined. He has not been provided any computation methodology till date. He has merely furnished the information sought by the DGAP from time to time without knowing as to how the information was being used, interpreted and applied.

XV. That the actual loss of the ITC and actual incremental revenue due to increase in the price rise for the month of December 2017 and January 2018 was being submitted for consideration of this Authority. Actual loss

of the ITC has been computed as under from the GSTR-2A Returns uploaded by the Respondent:-

MONTH	ITC DETAILS			ADD: ITC reflecting in subsequent months	NET ITC (₹) (*after reduction on account of credit notes*)
	CGST (₹)	SGST (₹)	IGST (₹)		
Dec – 2017	3,26,84,893	3,26,84,895	4,60,06,884	1,78,649	11,14,23,937
Jan – 2018	2,62,67,453	2,62,67,453	3,62,25,821	58,97,046	9,43,04,550
TOTAL	5,89,52,347	5,89,52,348	8,22,32,705	60,75,695	20,57,28,488

XVI. That to arrive at the incremental revenue, the Respondent has computed incremental revenue from Annexure-37 of the DGAP's Report and incremental variable expenses as per the Table mentioned in Para 16 of the order dated 16.11.2018 which are submitted as follows:

MONTH	**TURNOVER OF RESTAURANT SUPPLIES AS PER ANNEXURE – 37 OF DGAP REPORT**	**ADJUSTED TURNOVER OF RESTAURANT SUPPLIES**	**ADDITIONAL SALES REALSATION ON ACCOUNT OF PRICE INCREASE**	**ADDITIONAL VARIABLE EXPENSES ON ACCOUNT OF PRICE INCREASE @ 9.72%**	**NET INCREMENTAL REVENUE**
	(A)	(B)	(C) = (A) – (B)	(D) = 9.72% X (C)	(E) = (C) – (D)
Dec – 2017	112,25,97,710	101,95,94,798	10,30,01,912	1,00,11,786	9,29,90,126
Jan – 2018	101,58,30,793	92,29,61,528	9,28,69,265	90,26,893	8,38,42,372
Total	213,84,28,503	194,25,56,326	19,58,72,177	1,90,38,776	17,68,33,401

XVII. That the net result was as follows:-

MONTH	NET INCREMENTAL REVENUE	TOTAL ITC LOSS	PROFITEERED AMOUNT
Dec – 2017	9,29,90,126	11,14,23,937	(1,84,33,811)
Jan – 2018	8,38,42,372	9,43,04,550	(1,04,62,178)
Total	**17,68,32,498**	**20,57,28,488**	**(2,88,95,990)**

XVIII. That the net incremental revenue due to price change was lower than the loss of ITC during the month of December 2017 and January 2018. The revised prices have fallen short of the loss of ITC and thereby, he has incurred a loss of ₹ 2,88,95,990/-. This clearly proved beyond doubt that the Respondent has not profiteered and the conclusions drawn by the DGAP were imaginary based on extrapolation and trend which deserved to be rejected by this Authority.

XIX. That without prejudice to the above the preliminary issues raised in his submissions dated 23.10.2019 should be appropriately responded and the matter should be proceeded with only after he has been provided with the adequate response on the issues raised in the above submissions including the following:-

(i) Whether this Authority would take cognisance of unsubstantiated complaints not referred by the Standing Committee on Anti-profiteering? Out of four complainants, only one pertaining to 'McCafé Reg Latte' was referred by the Standing Committee and even that complaint was not in the prescribed format.

(ii) What was 'supply under investigation' i.e. 'McCafé Reg Latte' or 'Restaurant service'?

(iii) If the 'supply under investigation' was 'Restaurant service', would profiteering be decided for each 'food item' or 'invoice' or 'customer' or 'store' or 'state' or at 'entity' level?

(iv) What was the period of profiteering under investigation?

(v) Whether the determination of profiteering would be limited to only the store where the product complained off was sold or would be extended to all the stores of the Respondent?

(vi) Whether authority would consider the actual loss of ITC and actual incremental revenue during the period of profiteering under investigation?

(vii) Whether authority will consider the incremental cost incurred by the supplier solely attributed to price increase due to loss of ITC?

(viii) Whether authority will determine actual loss of ITC and actual incremental revenue in the absolute figures or will assess loss of ITC as a trend or in percentage term?

(ix) In case the Authority decided to assess loss of ITC on the basis of past data:-

a. Whether gain/loss of ITC would be assessed on the basis of entitlement or actual availment till the cut-off date;

b. Whether the ITC would be assessed for entire period i.e. 1 July 2017 to 14 November 2017;

c. Whether additional GST paid on branch transfers would be considered;

d. How this Authority would compensate the supplier in case actual loss of ITC was more than the assessed loss of ITC on the basis of past data?

(x) Whether principles laid down in Case No. 7/2018, 11/2018, 30/2019, 34/2019, 46/2019, and 47/2019 would be adhered to in the present proceedings?

(xi) What was the timeline by which the Respondent would have freedom to decide the price as guaranteed under Article 19 (1) (g) of the Constitution?

The Respondent also urged this Authority to provide him response to all the above issues so that he could effectively participate in the present proceedings. He also requested to cross-examine the concerned officials of the DGAP to ascertain the basis of computational methodology and legal fulfilment of Rule 126 of the CGST Rules.

50 A copy of the Respondent's submissions was supplied to the DGAP for filing clarifications under Rule 133 (2A) of the CGST Rules, 2017. Accordingly, the DGAP has filed his clarifications on 08.01.2020 wherein the DGAP has stated that the issues raised in the submissions of the Respondent have already been addressed in his original Report dated 15.06.2018 filed before this Authority.

51. Further, this Authority vide its order dated 15.06.2020 had directed the Respondent to file his consolidated submission by 25.06.2020. In response, the Respondent, vide his e-mail dated 13.07.2020 has filed his written submissions. This Authority vide its order dated 16.07.2020 had granted another opportunity of hearing to the Respondent on 04.08.2020. On the date of hearing i.e. 04.08.2020, the Respondent has made oral submissions and has filed written submissions dated 03.08.2020. Both the submissions are being mentioned below:-

a. **Section 171 of the CGST Act must be interpreted to include costs including tax/ ITC, failing which it will be a violation of Article 19(1)(g) of the Constitution of India:**

i. That the Constitution of India under Article 19 (1) (g) guaranteed fundamental right to carry business and trade to the shareholders and promoters of the Respondent. The Hon'ble Supreme Court of India has held time and again held that the word "business" occurring in Article 19 (1) (g) of the Constitution was to protect all activities done for profit and not for pleasure or charity. Reliance in this regard has been placed on the judgment of ***Sodan Singh & Ors. V. New Delhi Municipal Committee & Ors. (1989) 4 SCC 155***.

ii. That any person conducted business for realizing profit. Profit was nothing but a financial gain, being the difference between the amount earned and the amount spent in buying, operating or producing something or in simpler terms, the surplus over costs. Any law which ignored cost or failed to protect profit violated the fundamental right of the citizens enshrined under Article 19 (1) (g).

iii. That the fundamental right enshrined in Article 19 (1) (g) could be reasonably restricted in terms of the prescription provided in Article 19 (6) which *inter alia*, provided for an exception to Article 19 (1) (g) if the said restriction was reasonable in nature. However, in such cases also the Hon'ble Supreme Court has held that if the price did not secure a reasonable return on the capital employed, such a fixation was liable to be challenged as violating Article 19 (1) (g). Thus, while considering rate of tax and the amount of ITC for determination of profiteering under Section 171 of the CGST Act, direct or indirect increase in the cost of production and/or cost of supply must also be considered to protect the fundamental right to carry business. Ignoring increased cost of

production and/or cost of supply would compel the Respondent to suffer loss and thereby, infringe his fundamental right guaranteed under Article 19 (1) (g). Further, if increase in cost was not allowed, it would amount to price control, which would be unsustainable in law. Reliance in this regard has been placed on the order dated 01 June 2012 of the Hon'ble High Court of Delhi in ***Indraprastha Gas Limited v. Petroleum and Natural Gas Regulatory Board in W. P. No. 2034 of 2012***, wherein it was held as under:-

"Prices are generally governed/ regulated by market forces. Price fixation/regulation/control is essentially a clog on the freedom of trade and commerce conferred the status of a fundamental right. However, wherever the circumstances so justify, the same has been treated as a reasonable restriction. However, such restriction on fundamental right has to be by legislative mandate only."

iv. That provisions of Section 171 nowhere restrained the suppliers to revise prices coinciding with the change in rate of tax. If a supplier was free to revise prices any day before or after the date on which the rate has been changed, then he also ought to be free to revise the prices on the date of change in rate of tax to take care of the increased cost. Thus, denial of revision of price on account of increase in cost or only allowing partially for ITC loss while formulating the price under Section 171 on the date of change of rate would also amount to arbitrariness and unreasonableness, rendering all actions plainly in violation of Article 14 of the Constitution.

v. That this Authority has adopted an interpretation in various cases that only tax reduction and ITC impact were to be considered while fixing the price under Section 171. In various matters, this Authority has specifically refused to consider any increase in cost. This approach was also adopted in the order dated 16.11. 2018, which was set aside by the Hon'ble High Court of Bombay which has resulted in the present remand proceedings. As explained supra, costs other than tax were also to be accounted for, which has admittedly not been done in the present case, rendering the present matter plainly unconstitutional.

b. Constitution of this Authority under delegated legislation is bad in law:

i. That constitution of this Authority under Rule 122 of the CGST Rules suffered from the vice of excessive delegation. Section 171 (2) provided that the Central Government may, on recommendation of the GST 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 prices of the goods or services or both supplied by him. This Authority was not only vested with the power to investigate cases but also with plenary power such as imposition of penalty and cancellation of registration under Rule 127 which would deprive the suppliers from their fundamental right of carrying out business.

ii. Section 171 (2) did not lay down the power and composition of this Authority. Constitution of similarly placed Appellate Tribunal has been provided under Section 109 of the CGST Act. In this regard reference has also made to the judgment of the Hon'ble High Court of Gujarat in

the case of ***Adambhai Ranabhai v. The Regional Transport Authority (1968) 9 GLR 674*** wherein it was noted as under:-

"...The said Regional Transport Authority under Section 44(2) shall consist of a chairman who has had judicial experience and such other officials and non-officials whom the State Government may think fit to appoint, provided their number is not less than two. Thus, even though the number of persons who shall constitute such Regional Transport Authority is left to be determined by the State Government, the Legislature has provided that the nature of the experience of the chairman must be judicial experience, and that the members must be officials and nonofficial, so that such a Tribunal would have both official and nonofficial approach for their consideration, aided by such chairman who had judicial experience....It cannot, therefore, be disputed that the Regional Transport Authority under Chapter IV has to exercise both administrative and quasi-judicial functions as laid down in the various provisions of Chapter IV. The statute having provided for the necessity of permits, these provisions have an important bearing on the fundamental rights of the citizens to carry on their trade in the public transport business and these Tribunals which are constituted to exercise the important quasi-judicial functions have, therefore, their composition determined by the Legislature itself."

iii. Consequently, failure to lay down the power and composition of this Authority in the CGST Act amounted to surrender of legislative power by the legislature and was consequently ultra vires Article 14 of the

Constitution.

C. CONSTITUTION OF AUTHORITY *SANS* A JUDICIAL MEMBER IS BAD IN LAW:

i. That the anti-profiteering proceedings were initiated on the basis of a written complaint received under Rule 128 of the CGST Rules. As per Rule 133 of the CGST Rules, the complainant was given a copy of the DGAP's Report and was also provided an opportunity of hearing by this Authority. Rule 133 of the CGST Rules further provided for return of the amount to the recipient. Therefore, this Authority was discharging adjudicatory and quasi-judicial functions with grave consequences as also possibly a civil death as it decided a legal issue of profiteering under Section 171 of the Act with a scientific examination of evidence, facts and provisions of law with appropriate consequences. Seen in this context, this Authority was deciding a *case* or a dispute between two or more persons and hence, it was a Tribunal in the eyes of law. As a matter of fact, the conduct of this Authority has been to give a cause title to each matter styled as "***DGAP vs. XXX***". Hence, this Authority is nothing but a Tribunal in the eyes of law. Reliance in this regard has been placed on the case of ***Jaswant Sugar Mills Ltd. v. Lakshmichand & Ors. AIR 1963 SC 677*** and ***Columbia Sportswear Company v. Director of Income Tax Bangalore (2012) 11 SCC 22***.

ii. Being a Tribunal with the trappings of a court, this Authority should act in an impartial manner and justice should not only be dispensed but also appear to have been dispensed. Towards this effect, composition of the members in the Tribunal must be seen to be fair and impartial. Rule 122 of the CGST Rules prescribed that this Authority would consist of a Chairman equivalent in rank to the Secretary to the Government of India

and four (4) Technical Members who were Commissioners of Central/ State Tax. No Judicial Member would be present. Fair and impartial justice could be dispensed and also appear to have been dispensed only if there were Judicial Member(s) forming part of the composition of the said Tribunal and in the majority. Reliance in this regard has been placed on the cases of ***L. Chandra Kumar v. Union of India 1997 (92) ELT 318 (SC), Union of India v. R. Gandhi 2010 (261) ELT 3 (SC). Madras Bar Association v. Union of India 2014 (308) ELT 209 (SC), S. Manoharan v. The Deputy Registrar and Ors. Order dated 20 September 2019 of the Hon'ble High Court of Madras in Revenue Bar Association v. Union of India*** and ***Order dated 13.11.2019 of the Hon'ble Supreme Court in Roger Mathew v. South Indian Bank Limited.***

iii. That the line of reasoning adopted by this Authority that authorities created under the SEBI, TRAI etc. were specialized bodies and have no Judicial Members and therefore, the constitution of this Authority was correct was factually wrong, patently illegal and misconceived. Under the Securities Exchange Board of India, 1992; the final fact-finding authority was the Securities Appellate Tribunal which has a Judicial Member. Similarly, under telecom law, the final fact-finding authority was the Telecom Disputes Settlement and Appellate Tribunal which also has a Judicial Chairperson. Seen in this context, this Authority being the prosecutor, judge, jury, and also executioner against which there was no appeal mechanism should necessarily have a Judicial Member.

D. SECTION 171 OF THE CGST ACT SUFFERS FROM THE VICE OF EXCESSIVE DELEGATION:

i. That vide Section 171 (3) of the CGST Act read with Rule 126 of the CGST Rules, it was mandated that this Authority must determine a methodology whereby it could be determined whether or not there was an act of profiteering. In the formulation of such methodology, suitable guidance should statutorily have been provided to guide the exercise of powers by this Authority in the formulation of such methodology. The failure to provide such guidance amounted to "excessive delegation".

ii. That a provision which granted excessive powers to the delegate *sans* any prescriptions in the statute was unconstitutional and bad in law. Reliance has been placed in this regard on the case of ***K. T. Moopil Nair v. State of Kerala (1961) 3 SCR 77***; ***Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors. (1967) 3 SCR 557***; ***Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Anr. (1968) 3 SCR 251***; and ***K. T. Plantation Pvt. Ltd. and Anr. v. State of Karnataka (2011) 9 SCC 1***. In the present case, no guidelines for exercise of power have been laid down in the statute i.e. the CGST Act. Therefore, the delegate, i.e. this Authority has uncontrolled power which was manifestly arbitrary.

iii. That on the issue of prescribing a methodology, a useful recourse could be made to analogous anti-profiteering provisions in Malaysia and Australia, which indicated that the methodology should be statutorily prescribed. Under the methodology prescribed in Malaysia and Australia, for the determination of the price, several commercial and other economic factors were taken into account which included changes in the cost of inputs and utilities etc. There was also a requirement to

consider other commercial factors including market conditions.

iv. That under the Indian law, reference could be usefully made to anti-dumping laws under the Customs Tariff Act, 1975. Detailed guidelines to determine margin of dumping, injury margin, non-injurious price and the like have been provided in the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The methodology was prescribed in the relevant provisions and it could be adopted with required variations for each industry and in each case. This ensured that the adjudicating Authority was not in a position to adopt arbitrary approach but rather, followed a legally fair process binding all stakeholders to the matter. Similarly, detailed methodologies have been prescribed with respect to Safeguard Duty and Countervailing Duty. Therefore, in the absence of the guidelines exercise of power by this Authority was without basis.

E. COMPLAINTS OF PROFITEERING FILED BY THE ANONYMOUS PERSONS ARE NOT COGNIZABLE BY THE STANDING COMMITTEE UNDER RULE 128 AND THEREFORE UNSUSTAINABLE:

i. That in terms of Rule 128 of the CGST Rules, the Standing Committee and Screening Committees were empowered to receive written complaints in the prescribed form and examine accuracy and adequacy of the *prima facie* evidence to support the claim of the applicant on profiteering by the supplier and upon due satisfaction of the prima facie evidence of profiteering, forward the matter to the DGAP for a detailed investigation. Form APAF-1 was the prescribed format for making a complaint under Rule 128 and the complainant was also required to attach self-attested copies of all documentary evidences like proof of

identity, invoice, price list, detailed working sheet etc.

ii. That in the present case, all the complainants have submitted copies of same invoice without any self-attested document like proof of identity, invoice, price list, detailed working sheet etc. Further, the complaint merely referred to decrease in rate of tax without any refence to denial of ITC to restaurants. There was no allegation to the effect that the increase in the base price was more than the ITC loss, and hence the complaint was neither accurate not adequate.

iii. That as per the statutory scheme as set out in Rule 128 and 129 the Standing Committee must examine the "accuracy" and "adequacy" of the evidence provided in the application (*complaint*) and determine whether there was *prima facie* evidence to support the claim of the applicant (*complainant*). In the present case, it was apparent that no evidence has been provided by the complainants in their applications other than the two identical invoices. Therefore, there was no evidence in the present case which would enable the Standing Committee satisfaction of the requirement of Rule 128 and 129 and therefore entire proceedings were unsustainable in law.

F. INVESTIGATION REPORT GOES BEYOND THE REFERENCE MADE BY THE STANDING COMMITTEE AND THEREFORE UNSUSTAINABLE:

i. That in terms of Rule 129, upon receiving reference of the matter from the Standing Committee, the DGAP was empowered to conduct investigation and collect evidence. As the power to conduct investigation and collect evidence flowed from the matter referred by the Standing Committee, such investigation could not go beyond the matter referred by the Standing Committee. The description of the goods or

services in respect of which the proceedings were initiated by DGAP was therefore, restricted under the law to the matter impugned in the complaint.

ii. That the Standing Committee has received complaints from two individuals containing the identical evidence viz. two invoices detailing sale of "McCafe Reg Latte" pre and post 14 November 2017 and referred the matter to the DGAP for necessary action and therefore, the reference was restricted to the product complained of only. The CGST Rules did not provide power to either the Standing Committee or the DGAP to *suo moto* expand the scope of the investigation.

iii. That in terms of Rule 133 (5) w.e.f. 28 June 2019, where this Authority has reasons to believe that there has been contravention of the provisions of Section 171 in respect of the goods or services or both other than those covered in the DGAP Report, it might, for reasons to be recorded in writing, direct the DGAP 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. Thus, the DGAP has no power to extend the scope of investigation beyond the complaint. If it was assumed that the DGAP has power to determine the scope of investigation, it would render the provisions of Rule 133 (5) redundant and therefore, any interpretation which rendered any provision redundant or *otiose* was required to be eschewed.

iv. That power under Rule 133 (5) (a) of the CGST Rules could be exercised by this Authority only subsequent to the receipt of the Report from the DGAP under Rule 129 (6). In the present case, this Authority has not issued any direction under Rule 133 (5) (a) and therefore, DGAP has no right to expand the scope of investigation beyond

complaint i.e. supply of "McCafe Reg Latte".

v. That although the DGAP in the initiation notification dated 29 December 2017 has determined the scope of investigation as supply of "restaurant service" falling under the GST Tariff heading 996331, the investigation Report dealt with 1800 products. As per Entry 6 (b) of the Schedule II to the CGST Act, supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption) was a service and when such service was supplied by the restaurant, it was classified as "restaurant service" falling under GST Tariff heading 996331. Thus, supply of food and/or drink for human consumption was one single supply of "restaurant service". The Investigation Report dealt with 1800 products, whereas scope of investigation as per initiation notification dated 29 December 2017 was supply of "restaurant service" and therefore, even Investigation Report itself was contrary to the scope of investigation determined by the DGAP.

vi. That this Authority itself in its order dated 29 October 2018 in the Case No. 11/2018 (*Yum Restaurants India Private Limited & Ors.*) has held that in the absence of credible evidence *re* a particular product, the investigation would not be meaningful and consequently, dismissed the proceedings therein. As a corollary therefore, where the DGAP was not presented with evidence then any expansion thereto would be *ex-facie* illegal. Hence, for this reason also, the *suo moto* expansion of the investigation in the present case was illegal.

vii. Reference has also been made to the order dated 26 September 2019 passed by this Authority in Case No. 47/2019, wherein although the ITC

was consolidated for all real estate projects, the determination of profiteering was done for the project in question in which the Applicant had bought the flat. Further reference was also made to the order dated 04 July 2019 passed by this Authority in Case No. 46/2019 wherein analysis was only done *qua* the product complained and not even its variant. To similar effect were orders passed in Case No. 34/2019, Case No. 30/2019 and Case No. 7/2018.

viii. Reliance has also been placed on the ***order dated 30 June 2020 of the Hon'ble High Court of Gujarat in Sapphire Foods India Private Limited v. Union of India*** wherein by way of *ad-interim* relief, it was directed that the proceedings would only continue to the extent of the complained product. Further reliance has also been placed on the ***order dated 19 July 2019 of the Hon'ble High Court of Delhi in Reckitt Benckiser India Private Limited v. Union of India*** wherein the DGAP had sought information on 3500 products, which the Hon'ble Court restricted to only one product viz. Dettol HW Liquid Original 900 ml. In pursuance to the order dated 19 July 2019, this Authority has passed an order dated 19 March 2020 in Case No. 20/2020 restricting the findings only to the complained product. Therefore, by law as also by practice of this Authority, the investigation and findings thereof were and should be restricted to the product complained and nothing else. In not following the principles of judicial uniformity, grave injustice and manifest arbitrariness would be caused to the Respondent which was patently illegal as per the Hon'ble Supreme Court's judgement in ***Damodar J. Malpani v. Collector of Central Excise 2002 (146) ELT 483 SC***. In view of the above, in as much as goods/services involved under the present proceedings were concerned, the investigation Report of 1800

products went beyond the matter referred by the Standing Committee as well as was contrary to the initiation notification and therefore, *ex-facie* illegal and required to be quashed.

G. LACK OF METHODOLOGY, PARAMETERS AND STANDARDS ARE BAD IN LAW:

i. That Rule 126 of the CGST Rules provided that this Authority might determine a methodology and procedure for determination as to whether commensurate benefits have been passed on to the consumer. A bare perusal of this Authority's Methodology and Procedure, 2018 would show that it was purely determinative of procedural aspects such as seat of the Authority, procedure for inward receipts, service of notices etc. The substantial aspects of methodology for determining/quantifying profiteering have not been addressed in it. Failure to discharge statutory duties under Rule 126 of the CGST Rules to determine a methodology was bad in law and manifestly arbitrary. This Authority has in certain instances claimed that no methodology could be prescribed by it. The failure to formulate and communicate the method has resulted in the breach of natural justice and tainted the proceedings as lacking in fairness and transparency as has been held by the Hon'ble High Court of Bombay in the order dated 01 October 2019. *Sans* a methodology, the proceedings before this Authority have denied a full and effective opportunity to defend himself to the Respondent. Therefore, the proceedings were *ultra vires* of Articles 14, 19 (1) (g) and 265 of the Constitution.

ii. That the absence of methodology has also resulted in this Authority taking an arbitrary and contradictory stance on identical issues from matter to matter as could be evidenced from order dated 05 September

2018 (*N. P. Foods*) and order dated 31 January 2019 (*Dominos*). The arbitrary and contradictory basis adopted by this Authority was contrary to the provisions of Articles 14 and 19 (1) (g) and for this reason alone, the proceedings deserved to be quashed forthwith.

iii. Further reference has also been drawn to the ***order dated 28 January 2020 of the Hon'ble High Court of Madras in Shree Mahalaxmi Enterprises v. Union of India*** wherein it was observed as under:-

"3. The impugned order has been passed invoking the provisions of Section 171 of the Central Goods and Service Tax Act, 2017 that provides for measures to counter anti-profiteering. My attention is drawn to Rule 126 of the Central Goods and Service Tax Rules, 2017 that sets out the power to formulate the methodology and procedure for determining profiteering measures, in the following terms:

4. It is the specific case of the petitioner that the aforesaid Rule requires the Authority to standardise and lay down methodology and procedure to determine instances of profiteering. No such Rules have been formulated thus far. The determination of the Authority thus varies from case to case with relevant factors not being taken into account to effectively and scientifically determine profiteering or otherwise. Additionally in W. P. No. 1745 of 2020, the private complaint, on the basis of which, the proceedings for profiteering were triggered, has been withdrawn, despite which this Authority proceeds to hear the matter anyway.

Interim stay."

iv. That it was a statutory duty cast upon this Authority to determine a methodology. Not providing a methodology would consequently, therefore, leave the assessee to the mercies of the DGAP and this Authority, as there were no principles/parameters/standards/norms, either specific or general for a statutory body to follow. This would be in contrast to Section 9A of the Customs Tariff Act, 1975 and the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995 which laid down clear and discrete principles for the Directorate General of Trade Remedies (a body which investigated cases of dumping and recommended imposition of appropriate duties) to follow. The absence of such principles in the statutory scheme for anti-profiteering proceedings greatly prejudiced the Respondent as a proper defence could not be mounted. Hence, this Authority must provide the methodology that was binding on all the stakeholders and only thereafter proceed with any determination.

v. That the period of investigation for determination of ITC has been decided by the DGAP from 01 July 2017-31 October 2017. The period from 01 November 2017-14 November 2017 has been ignored by the DGAP, although the rate change was with effect from 15 November 2017. Hence, there being absolutely no legal reason to deny the period from 01 November 2017-14 November 2017, this Authority should include this in the period of investigation. The reasons given at Paragraph 15 of the investigation Report were factually incorrect since (a) the Respondent could not be prejudiced as the GST system did not allow for half-month returns and (b) date-wise turnover was provided to the DGAP. As a matter of fact, the Respondent has provided the ITC 9.1

Register till 30 November 2017 on 19 January 2018 as also stock-statement on 05 March 2018. Further, the DGAP at Paragraph 7, Table-A of the investigation Report has admitted that the stock statement has been provided. This Authority should accordingly clarify the period of investigation. Illustrative invoices were provided in the earlier proceedings and if need be, entire output invoices could be presented. Therefore, the period of investigation should be restricted to the months of September 2017 and October 2017 as the Respondent was carrying on transitional inventory on 01 July 2017 and hence, purchases for the months of July 2017 and August 2017 were not representative of normal business. Therefore, the most apt representative months would be September 2017 and October 2017 as procurements were within the GST regime and would help this Authority in arriving at the true cost of the ITC. The Authority might accordingly clarify the period of investigation.

vi. In relation to the computation of ITC, the DGAP has selectively taken the ITC as figuring in the GSTR-3B Returns for the period from July 2017-October 2017 and thereafter, made a few additions as deemed fit according to him in spite of the availability of all the data. This Authority should clarify the manner of computation of ITC viz. whether it would be considered on the basis of availment or on the basis of entitlement. In relation to the computation of ITC, would incremental tax costs due to branch transfers be considered? Under GST law, in the case of supply between related persons where ITC was not fully available, the valuation was to be done as per Rule 30 of the CGST Rules, which was 110% of the cost of production/manufacture/acquisition. As the Respondent regularly conducted branch transfers between various

states, such incremental tax cost should be taken into account for computation of ITC. The Authority should clarify on this aspect.

vii. In relation to the calculation of the ratio of ITC to turnover, whether turnover would be taken at gross level or after deduction of direct variable costs (*rent, royalty and commission*). The Respondent was paying increased royalty, rent and commission due to increased prices and therefore, he was not enjoying the money to that extent and consequently, this must be reduced. As an example, in the order dated 04 May 2018 of this Authority in Case No. 03/2018 (*KRBL Limited*), costs other than tax were also considered.

viii. That as per the DGAP's Report, the ratio of ITC to turnover (9.11%) has been applied to each product individually sold after 15 November 2017. If such was the case, then ratio of ITC to turnover should also have been computed for each product individually. This was because the ITC cost of each product varied e.g. Coffee has sugar as a significant input which was liable to GST @ 12%, while French Fries have oil as a significant input, which was liable to GST @ 5%. Hence it was logical and correct to have a comparison of product-wise ITC cost against product-wise turnover or in the alternative entity-wide ITC cost against entity-wide average increase in prices. In not doing so, the DGAP has engaged in a comparison of apples and oranges.

ix. That the definition of 'profiteering' as occurring in the statute was *'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 or both.'* Therefore, the statutory definition itself required that there should

be a determination of the ITC relevant to the goods/ service and a calculation of the commensurate price of that goods/ service. Therefore, the law envisaged that there be a one-to-one correlation. Further, in the order dated 05.09.2018 passed by this Authority in Case No. 9/2018 (*N. P. Foods*), the comparison of the cost of ITC and output price was done at an entity level. Being the same supply, the same principle should hold good and be applied to the present facts as well. Assuming that comparison was done at the entity-level for both cost of ITC and increase in price, would there be *de-minimis* thresholds applied and what would be the values for the same. In the order dated 05.09.2018 passed by this Authority in Case No. 9/2018 (*N. P. Foods*), the difference of 0.34% between the ITC cost at the entity-level and the average price increase at entity level was found to be negligible by this Authority. Whether the profiteering would be seen at the product level, restaurant level, state level or entity level assumed importance since it has direct correlation with the amount of profiteering.

x. That for the months of December 2017 and January 2018, the Respondent has provided the actual loss of ITC against the actual turnover. Further, the estimated ITC loss against audited expenses incurred in the financial year 2016-17, which represented a correct estimate of the spending was also provided. In such a case, there were three methods available viz. (a) ITC loss against the audited financials (*provided by the Respondent*) (b) ITC loss extrapolated for the future (*provided by the DGAP*) and (iii) ITC loss on the basis of actuals (*provided by the Respondent*). In such a case, and in the absence of a particular method being notified in the statute or by this Authority, no one method could be called unscientific in comparison to the other.

Therefore, this Authority should clarify which was the most appropriate computation methodology to be followed.

xi. That reliance has also been placed on the order dated 26 June 2019 of this Authority in Case No. 42/2019 (*Adarsh Marbles*) wherein at Paragraph 34 (xvii) it was noted that the DGAP has investigated the case correctly and in line with the general principals adopted by this Authority. It is prayed that this Authority may kindly expound on these general principles so as to ascertain whether such principles have indeed been followed.

xii. That this Authority in order dated 25 June 2020 in Case No. 33/2020 has held at Page 42/43 that computation of commensurate reduction in prices was a pure mathematical exercise and hence, the same must be based on logical and reasoned parameters. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax v. B. C. Srinivas Shetty 1981 SCR (2) 938*** has held that without computation provisions, the statutory provision was rendered nugatory and ineffective.

H. TIME BARRED PROCEEDINGS:

i. That in terms of Rule 133 (1) of the CGST Rules, this Authority was required to pass an order within a period of three months from the date of receipt of the investigation Report of the DGAP issued in terms of Rule 129 (6). Vide Notification No. 31/2019-Central Tax dated 28 June 2019, the time period of three months was increased to six months. In the present case, the investigation Report was received by this Authority on 18 June 2018, as was evidenced from the acknowledgment on the first page thereof. Therefore, the order should have been passed on or before 18 September 2018 as provided under Rule 13 of the NAA

Rules. For ease of reference, Rule 13 of the NAA Rules was extracted below:-

"(13) The report received from the Director-General of Anti- profiteering under Para 10 supra and rule 129 (6) of the Central Goods & Services Tax Rules, 2017 shall be registered by endorsing on it the date of its receipt and shall also be caused to be entered in a register to be kept by the Secretary of this Authority as defined under Rule 125."

Thus, there was no scope of the intendment that period of limitation would be counted from the date of institution of case i.e. 20 August 2018 and not from the date of receipt of the Report from DGAP i.e. 18 June 2018. As a matter of fact, the NAA Rules nowhere provided any scheme for institution of the case. The order in the present case was passed by this Authority on 16 November 2018, i.e. after a period of five months. Hence, at this stage and subsequent to the remand vide order dated 01 October 2019, this Authority could not seek to make a wrong a right and pass an order at this juncture. Therefore, no orders could be passed at this juncture and consequently, the entire exercise lapsed and was rendered nugatory.

II. That the rigors of Rule 133 (1) were not directory but mandatory. If they were held to be directory, it would render Notification No. 31/2019-Central Tax dated 28 June 2019, which extended time from 3 months to 6 months by amending the CGST Rules would be redundant. Therefore, the intent of the Government was apparent since had the same been directory, there was no requirement for the amendment in June 2019.

Reliance in this regard has been placed on the judgment of the Hon'ble High Court of Karnataka in the case of ***RNS Infrastructure v. Income Tax Settlement Commission [MANU/KA/3116/2016]*** wherein it has been held that time period provided to the Income Tax Settlement Commission to pass an order under the Income Tax Act, 1961 was mandatory. The time limit stipulated under the Act was also mandatory for the reason that under the CGST Act, wherever the time limit could be extended, the provisions have specifically provided for it. However, in the present instance, there was no extension provided. Once the prescribed mandatory time period had passed, the jurisdiction of this Authority ceased to exist. Therefore, if the Authority did any act beyond the mandatory time period, the same would be without jurisdiction. Therefore, by implication, the proceedings before this Authority were time-barred and could not be resurrected.

III. In the affidavit filed before the Hon'ble High Court of Bombay in Writ Petition No. 3492 of 2018, this Authority has stated that the earlier order dated 16 November 2018 was within the time as clarifications were sought from the DGAP to his Report dated 18 June 2018 and the clarification was received only on 20 August 2018. As per the statutory scheme, any time taken for reference under Rule 133 (2) of the CGST Rules was not excluded in the time period stipulated under Rule 133 (1). In this regard, attention was invited to Rule 17 of the NAA Rules which empowered this Authority to summon any additional record as it deemed fit from any person, interested party, authority of the Central or the State Government, however, nowhere the NAA Rules provided that time taken under Rule 17 was to be excluded. Therefore, the provisions were unambiguous and clear and the time period under Rule 133 (1)

would start from the "*date of the receipt from the Director General of Anti-profiteering*". In the instant case, the DGAP's Report was received on 18 June 2018 and hence, proceedings were time-barred.

52. Further, the Respondent has also submitted the following contentions in respect of the DGAP's Investigation Report:-

A. Preference of any particular methodology for computation of ITC without prescription under law is unsustainable:

i. That in the absence of any specific guidance under the CGST Act or the rules framed thereunder, the suppliers needed to devise their own methodology to comply with the requirement of Section 171 (1) of the CGST Act, which could be based on (i) Estimation of loss of ITC on the basis of audited annual statements of the previous years or (ii) Estimation of loss of ITC on the basis of test period or (iii) Actual loss of ITC during the subsequent months. With effect from 15 November 2017, ITC was prohibited and therefore, it was a cost to the Respondent. Prior to 15 November 2017, GST paid on inward supplies was merely a pass-through (*as ITC was allowed*) but due to denial of ITC, cost of production has necessarily increased compelling the Respondent to revise his prices. The likely loss of ITC on the basis of audited financial statements was as has been detailed below:-

PARTICULARS	2016-17 (*IN Rs. LAKHS*)	% OF REVENUE	AVERAGE GST RATES	IMPACT ON COST AS % OF OPERATING REVENUE
Operating Revenue	93,059.00	100%		
Operating Cost (A)	**88,319.00**	**94.91%**		**11.14%**
Cost of Sales	36,611.30	39.34%	13.00%#	5.11%
Employee benefit expenses	14,073.40	15.12%	0.00%	0.00%
Conducting Charges & Rent	8,590.00	9.23%	18.00%	1.66%
Utilities	9,022.00	9.69%	8.98%#	0.87%

Advertising & sales promotion	5,465.00	5.87%	18.00%	1.06%
Royalty	3,654.20	3.93%	18.00%	0.71%
Maintenance & Repairs	2,903.80	3.12%	18.00%	0.56%
Operating Supplies at Stores	1,382.90	1.49%	18.00%	0.27%
Legal & Professional Fees	765.70	0.82%	18.00%	0.15%
Others	5,850.70	6.29%	11.90%#	0.75%
Capital cost (B)	**5,669.60**			**1.10%**
Restaurant equipment	3,961.20	4.26%	18.00%	0.77%
Furniture and Fixtures	901.90	0.97%	18.00%	0.17%
Office Equipment	4.70	0.01%	18.00%	0.00%
Computers	27.30	0.03%	18.00%	0.01%
Initial Location and License fee	498.10	0.54%	18.00%	0.10%
Computer Software	276.40	0.30%	18.00%	0.05%
TOTAL ITC (A) + (B)				**12.24%**

ii. That the Respondent has taken the ITC availed in the month of October 2017 as the test period to estimate ITC impact on the future. The ITC and turnover reported in the GSTR- 3B Return was given below for the month of October 2017 (*as also found at Table-B, Paragraph 18 of the Investigation Report*):-

SL. NO.	DESCRIPTION	AMOUNT IN RS.
1	ITC Availed as per GSTR-3B Return(A)	11,08,97,125
2	Total outward Turnover as per GSTR-1 (F)	1,10,98,64,117
3	ITC as % of Turnover	10%

In the month of October 2017, there was no capital procurement which usually took place in the beginning of the financial year and therefore, it was estimated that actual ITC would be higher than 10%. Without analyzing the aforesaid computation, the DGAP has devised his own erroneous method for computation of the ITC as (i) Period of ITC was considered from July 2017 to October 2017 ignoring the ITC availed during the period from 1 November 2017 to 14 November 2017 (ii) ITC has been restricted to the amount availed till 14 November 2017 even though the Respondent was eligible and has availed ITC for the supplies received during July 2017 to October 2017 till 31 March 2018 (iii) ITC availed in the month of July 2017 to

October 2017 pertaining to the pre-GST period has been excluded although as per the CGST Act, the time of supply was from July 2017 to October 2017 and the Respondent was eligible and has availed the ITC. In case the DGAP has followed the accrual system, then he ought to have considered the ITC pertaining to July 2017 to 14 November 2017 which was to be billed in subsequent months e.g. the variable rent was billed on yearly basis and telephone company bills for the month in the subsequent month.

III. That there should have been balanced approach on branch transfers on which the additional tax suffered by the Respondent has been ignored. On the basis of the above erroneous computation the investigation Report has quantified the cost of ITC @ 9.11%. The ITC on the supplies received from 1 July 2017 till 14 November 2017 was an accrued and vested right and in terms of Section 16 (4) of the CGST Act, the Respondent was entitled to take credit thereof till 20th October 2018. The Respondent has provided thousands of invoices to the DGAP for verification and not only he was eligible but also has taken ITC thereon as mandated under Section 16 of the CGST Act. Hence, the DGAP has no right to exclude such ITC from the computation. Further, the Respondent has provided B2C outward supply invoices on sample basis as data was huge and itemized details from 1st November-14th November 2017 which duly formed part of the Annexure-36. The correct amount of ITC during the period of 1 July 2017 till 14 November 2017 has been computed by the Respondent as below:-

(*all amounts in '000*)

PARTICULARS	JUL-17	AUG-2017	SEPT-2017	OCT-19	1-14 NOV-17	TOTAL
ITC Availed as per GSTR-3B (A)	54,025	80,077	91,755	1,10,897	57,734	3,94,487
Add: ITC of July, 2017 to October, 2017 availed in the month of November, 2017 GSTR-3B (Annex-34) (B)	6,874	13,642	20,198	44,397		85,111
Add: ITC of July, 2017 to 14 November, 2017 availed in the month of December, 2017	237	708	947	2,249	11,439	15,581
Add: ITC of July, 2017 to 14 November, 2017 availed in the month of January, 2018	456	574	1,057	1,963	3,578	7,628
Add: ITC of July, 2017 to 14 November, 2017 availed in the month of February, 2018	195	144	272	350	692	1,653
Add: ITC of July, 2017 to 14 November, 2017 availed in the month of March, 2018	673	476	852	434	588	3,023
Less: Tax on inter unit branch transfer as per Sales Register (C)	15,987	21,274	17,750	18,019	13,368	86,399
Less: Input tax credit pertaining to prior July, 2017 but availed in July, 2017 to October, 2017 GSTR-3B (Annex-35) (D)	6,272	455	452	1,349		8,528
Add: Incremental tax cost on inter- unit branch transfers	922	746	905	2,573	485	5,632
Net input tax credit available for the period July, 2017 to October, 2017 (E)= (A+B-C-D)	47,396	75,091	98,236	1,44,846	61,147	4,26,716
Total outward Turnover as per GSTR-1 (F)	10,35,861	10,74,433	9,98,733	11,09,864	5,07,776	47,26,668
Less: Inter unit branch transfer included in B2B Sale as per Sale Register (G)	1,18,553	1,29,610	1,18,508	1,26,016	77,505	5,70,191
Net outward Taxable Turnover for the period July, 2017 to October, 2017 (H) = (F-G)	9,17,308	9,44,824	8,80,225	9,83,849	4,30,271	41,56,477
Ratio of Denial (in % terms) of Input Tax Credit to Net Outward Taxable Turnover (I) = (E/H)	**5.17**	**7.95**	**11.16**	**14.72**	**14.21**	**10.27**

IV. That as on 14 November 2017, the Respondent was dependent on the above two analytical tools to asses loss of ITC. Subsequently, he has also computed actual loss of ITC in the month of December 2017 and January 2018 to validate his computation. Based on the information available in GSTR-2A Returns for inward supply and GSTR-3B Returns for outward supply (as per Annexure-37 of the Investigation Report), the Respondent has computed the actual loss as below:-

MONTH	ITC AS PER GSTR-2A	ADD: ITC REFLECTING IN SUBSEQUENT MONTHS	NET ITC (*AFTER REDUCTION ON ACCOUNT OF CREDIT NOTES*)	RESTAURANT TURNOVER	ITC AS % OF TURN OVER
Dec – 2017	11,13,76,672	1,78,649	11,14,23,937	1,01,95,94,798	10.93%
Jan – 2018	8,87,60,727	58,97,046	9,43,04,550	92,29,61,528	10.22%
TOTAL	**20,01,37,400**	**60,75,695**	**20,57,28,488**	**1,94,25,56,326**	**10.59%**

V. That in the absence of prescribed methodology the DGAP's methodology could not be considered as sacrosanct or perfect and therefore, this Authority must also consider other methodologies to assess the ITC loss. The DGAP has not provided any reason to discard the Respondent's computation of loss of ITC on the basis of audited Financial Statements which were for the whole year or ITC loss for October 2017 on the test basis to forecast expected ITC loss in future. Further, there could not be any reason to dismiss actual ITC loss for the relevant period (Dec-2017 to January-2018) and therefore, this Authority must project ITC loss on the other rational basis and compare the same with DGAP's projections to arrive at an independent and unbiased result.

B. COMMENSURATE ADJUSTMENT IN PRICE COMPUTED BY DGAP IS ERRONEOUS:

i. That in view of the denial of ITC, the production cost of the supplies has increased necessitating price revision. However, this price revision has resulted in incremental cost on (i) **Royalty** which the Respondent was paying to the Franchiser for using the brand McDonald's in his business. During the year 2017-18, royalty paid was 3.99% of the restaurant turnover and the Respondent was required to pay additional royalty merely because he was forced to raise base prices resulting in higher turnover (ii) **Variable rent** was

being paid to the landlords for using their premises for operating restaurants. During the year 2017-18, variable rent paid was 3.29% of the restaurant turnover. Therefore, the Respondent was required to pay additional rent merely because he was forced to raise base prices resulting in higher turnover (iii) **Other variable expenses** were being paid to the various service providers like cashless/ digital payments, food aggregators etc. for using their services for restaurants. During the year 2017-18, variable expenses paid were 0.96% of the restaurant turnover. Moreover, GST was also being paid on all the above 3 services @ 18% and due to denial of ITC, even payment of the GST on additional cost would become a cost. On the basis of the above, the commensurate increase in the price in various scenario has been computed as below:-

ITC loss under different scenarios					0%	9.11%	12.24%	10%	10.27 %	10.59%
Cost recovery except following					90.28	99.39	102.52	100.28	102.55	100.87
			Impact %							
Expenses	Rate	GST	Turnover	Cost	Rs	Rs	Rs	Rs	R s	Rs
Royalty	3.99%	0.72%	4.71%	5.22%	4.71	5.19	5.35	5.23	5.35	5.26
Rent	3.29%	0.59%	3.88%	4.30%	3.88	4.27	4.41	4.31	4.41	4.34
Other expenses	0.96%	0.17%	1.13%	1.25%	1.13	1.24	1.28	1.26	1.28	1.26
Sale Price (Without tax)					100	110.09	113.56	111.08	113.59	111.73
% of increase required to maintain same profitability						**10.09**	**13.56**	**11.08**	**11.38**	**11.73**

That in view of the above the Respondent was required to increase the prices between 10.09% to 13.56% depending upon the manner in which ITC loss was computed, to maintain the same margin. It was grossly unjust to ignore above additional costs which were forced on the Respondent solely on account of price increase due to denial of ITC. It could also be analyzed from another angle if the Respondent was allowed to increase his prices by 9.11%, he would be able to recover

additional cost in the form of ITC + variable expenses only to the extent of 8.22%, thus resulting in net loss of 0.89% as has been demonstrated below:-

Cost recovery except following				91.76	98.50	8.22
	Rate	GST	Total			
Royalty	3.99%	0.72%	4.71%	4.71	5.14	0.43
Rent	3.29%	0.59%	3.88%	3.88	4.23	0.35
Other expenses	0.96%	0.17%	1.13%	1.13	1.23	0.10
Base price without tax				100	109.11	9.11

ii. That the aforesaid computation has not factored increase in the inputs cost of other supplies due to inflation or other reasons which also needed to be factored so that the Respondent could earn reasonable profit on the restaurant business. Any restriction on the part of this Authority to deny adjustment of the prices due to increase in the costs would infringe upon fundamental right of the promoters/shareholders of the Respondent to carry business and earn reasonable profit.

C. COMPUTATION OF THE PROFITEERED AMOUNT BY DGAP IS ERRONEOUS:

i. That the DGAP has wrongly computed the amount of profiteering. If it was assumed that the scope of investigation was supply of restaurant service, the statement of net incremental revenue and profit after adjustment of loss of ITC would be as under:-

INCREMENTAL REVENUE STATEMENT	
Revenue for period 15.11.2017 to 31.01.2018 at pre-rate change price (I) (*as per Annexure-36 of the Investigation Report*)	2,37,46,84,157
Revenue for period 15.11.2017 to 31.01.2018 at post rate change price (J) (*as per Annexure-36 of the Investigation Report*)	2,62,28,18,014
Incremental Revenue due to price revision (K) = (J) - (I)	24,81,33,857
Incremental Revenue in % terms	**10.45**
Incremental costs due to price revision (royalty, rent and commission) (L) = 9.72% of (K)	2,41,18,611
Net Incremental Revenue in figures (M) = (K) - (L)	22,40,15,246
Net Incremental Revenue in percentage (N) = (M)/(I)	**9.43%**

ii. The incremental revenue has been compared below with the

actual/projected ITC loss:-

PROFITABILITY STATEMENT DUE TO CHANGE IN RATE OF TAX (FIGURES IN THOUSANDS)								
PARTICULARS	AMOUNT OF ITC		TOTAL AMOUT OF ITC	AMOUNT OF TURNOVER		TOTAL AMOUNT OF TURN OVER	ITC AS % OF TURN OVER	ACTUAL PROFIT /LOSS
	01.07.2017 - 31.10.2017	01.11.2017 - 14.11.2017		01.07.2017 - 31.10.2017	01.11.2017 - 14.11.2017			
(A)	(B)	(C)	(D) = (B) + (C)	(E)	(F)	(G) = (E) + (F)	(H) = (D) / (F)	
Methodology adopted by DGAP								
Per DGAP	3,39,608	-	3,39,608	37,26,206	-	37,26,206	**9.11%**	**0.32%#**
Per HRPL	3,39,608	44,365	3,83,974	37,26,206	4,30,271	41,56,477	**9.24%**	**0.20%#**
Methodology adopted by HRPL								
As per financials for 2016-17							**12.24%**	**-2.81%**
As per ITC eligibility/ availment	3,65,569	61,147	4,26,716	37,26,206	4,30,271	41,56,477	**10.27%**	**-0.83%**
On the basis of October 2017			1,10,897			11,09,864	**10%**	**-0.57%**
Actual loss of ITC	**Dec-17**	**Jan-18**		**Dec-17**	**Jan-18**	-		
Actual loss of ITC	1,11,424	94,305	2,05,728	10,19,595	9,22,962	19,42,556	**10.59%**	**-1.16%**

 # the difference is within the de-minimis thresholds as held in the order of N. P. Foods

iii. That in as much as supply of "Mccafe Reg Latte" was concerned, the alleged profit/loss would be as follows:-

PARTICULARS	RATE	OLD INVOICE	NEW INVOICE	DIFFERENCE
Invoice date		07-Nov-17	15-Nov-17	
Price		**120.34**	**135.24**	**14.89 (A)**
Central GST	@18%	10.83		
	@5%		3.38	
State GST	@18%	10.83		
	@5%		3.38	
Total Value		142	142	
Variable cost		**11.7**	**13.15**	1.45 **(B)**
Royalty	4.71%	5.67	6.37	
Rent	3.88%	4.67	5.25	
Other variable expenses	1.13%	1.36	1.53	
	ITC loss		**(C)**	**(A)-(B)-(C)**
DGAP	9.11%		12.32	1.13
As per financials for 2016-17	12.24%		16.55	-3.1
On the basis of October 2017	10%		13.52	-0.07
As per ITC eligibility/ availment	10.27%		13.89	-0.44
Actual	10.59%		14.32	-0.87

Thus, the Respondent has actually suffered financial loss on the supply of complained product instead of profit as has been alleged by the complainant/DGAP and therefore, the present proceedings must be dropped.

iv. That as evidenced from Annexure-37 of the investigation Report, the DGAP has excluded those items where the price increase was not commensurate to the extent of 9.11%. This practice of zeroing was ex-facie illegal and incorrect as has been the stand of the Government of India before the World Trade Organisation (WTO). ***Report No. WT/DS141/AB/R dated 01 March 2001*** of the Appellate Body of the WTO regarding Anti-Dumping Duties on imports of Cotton-Type Bed Linen from India has frowned upon such practice of zeroing. In the subject case, Indian exporters faced an anti-dumping action by European Union (EU) as an exporter was exporting different varieties of Bed Linen to the EU. In some cases, the exporter was exporting at positive dumping margins, wherein in many cases there was negative dumping margin i.e. the export price was more than the normal value at which goods were sold in India. The European Commission had applied its usual practice of not netting off the positive and negative dumping margins. In fact, it applied 'zero' (0) for negative dumping margins and cumulated only positive dumping margins and thereby arrived at higher dumping margins for the Indian exporters. Government of India objected to this approach of the European Commission and the matter was taken to the Dispute Settlement Body of the WTO which held in favour of Government of India. In an appeal filed by the EU before the Appellate Body of WTO, the Appellate Body held that the practice of not netting off

of the positive and negative dumping margins was not correct. Thus, the Government of India succeeded before the WTO Appellate Body that positive and negative dumping margins must be taken together and therefore got lower dumping margins for the Indian exporters. European Commission accepted the decision and revised dumping margins not only for Bed Linen cases but also for all other cases against India.

v. That the DGAP has calculated the profiteering amount @ 105% i.e. base price + 5% GST. The Respondent has already deposited the 5% GST with the Government and not retained it. Hence, it cannot be termed as "profiteering." In as far the 5% GST was concerned, the Respondent could not be legally said to make profits and thereby indulge in profiteering. Therefore, the amount of alleged profiteering stood reduced to Rs. 3,17,03,988/-. Detailed workings in this regard have already been provided in the submissions dated 23 July 2018.

D. ARBITRARINESS AND LACK OF CONSISTENCY IN THE DGAP INVESTIGATION:

i. That the order dated 05.09.2018 passed by this Authority in Case No. 09/2018 (*N. P. Foods)* dealt with identical factual matrix as was in the present case. Therein, the product under consideration was a food item supplied at a restaurant. Further, the same notification has led to the anti-profiteering investigation against N. P. Foods as was in the present case. Therein, for the period from 01 July 2017 to 14 November 2017, the ratio of ITC to the restaurant was computed as 11.80%. This Authority thereafter has made a categorical finding that the average output increase in prices across all the products was 12.14%. The difference of 0.34% [12.14%-11.80%] was deemed to be miniscule and not warranting action under Section 171 of the CGST Act. Accordingly,

the principles of N. P. Foods *supra* should be equally applicable to the present facts for the reason that the Respondent and the N. P. Foods were identically placed persons viz. both were franchisees and were engaged in the same taxable activity.

ii. That a bare perusal of Annexure-37 of the investigation Report showed that the DGAP has applied the cost of ITC (9.11%) to the average price pre-rate reduction and compared it with the average price post-rate reduction to arrive at the profiteering amount of Rs. 7.49 Crore. Such a computation was erroneous and contrary to the standards set by this Authority. Reference in this regard was made to the order dated 27 February 2020 passed in I.O. No. 11/2020 (*Dough Makers India Private* Limited) vide which this Authority has held at paragraph 23 that the computation of profiteering should be on the basis of the comparison of pre-rate reduction item-wise average base price with the actual transaction-wise/invoice-wise price charged. Vide the order dated 25 June 2020 passed in the Case No. 33/2020 (*Emaar MGF Land Limited*) this Authority has also held at Page 42 that the benefit could not be passed on at entity/ organization/ branch level and must be passed on to each and every buyer. Vide order dated 26 June 2020 passed in I.O. No. 20/2020 (*Mataji Paints and Hardware*) it has been held at para 25 that the correct method of computation would be the comparison of average pre-rate reduction prices of products compared with the actual post-rate reduction prices. Vide order dated 15 June 2020 passed in I.O. No. 19/2020 (*Himalaya Drug Company*) this Authority has again held that the comparison must be of average pre-rate reduction prices of the products compared with the actual post-rate reduction prices. Therefore, the principle of computation adopted by the DGAP was

contrary to the principles of computation judicially developed by this Authority. Hence, for this reason alone, the Investigation Report deserved to be quashed.

53. The Respondent had further submitted his additional submissions dated 03.08.2020 and the same are mentioned as under:-

i. That in as much as the methodology was concerned, this Authority has merely notified the NAA Procedure vide NAA Rules on 28 March 2018 but not methodology even though Rule 126 of the CGST Rules provided for determination of methodology. In an order dated 09 September 2019 passed by the Hon'ble High Court of Bombay in ***Vanashakti Public Trust v. State of Maharashtra (W. P. No. 118/2015)***, it has been held that objective criteria proposed to be adopted has to be made known to the parties. The Hon'ble Court has further observed that unless the process by which a decision was proposed to be taken was made known, the person whose views were solicited would be clueless. There were multiple instances where the Government has sought to control prices to prevent profiteering or ensure availability of essential goods at fair prices. In each such case, the relevant law has prescribed detailed methodology. A few instances were given below by the Respondent:-

LEGISLATION	EXTRACT
Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015	**Section. 15 Factors for determination of fee structure.** - The Fees Regulating Authority shall determine the reasonableness of the fee structure proposed by every unaided institution, in respect of each professional course or group of courses, considering following factors:— (i) the location (Urban or Rural) of the institution; (ii) the cost of land and building ; (iii) minimum mandatorily required infrastructure or facilities, as specified by the appropriate authority;

	(iv) the expenditure proposed or incurred on the facilities and amenities that are not mandatory as per the guidelines of the appropriate authority; (v) available number of qualified regularly appointed teaching and nonteaching staff as per the prescribed norms of the appropriate authority; (vi) `expenses on the prescribed salaries of the teaching and non-teaching staff; the expenditure on administration and the maintenance; (vii) the reasonable revenue surplus required for growth and development of the institution with particular reference to the professional course conducted by it, which shall not be more than fifteen per cent. of educational revenue in the respective professional course or group of courses; (viii) facilities provided by the Government, such as lease of land at concessional rates and use of its infrastructure, for the conduct of the professional courses; (ix) depreciation or contribution for asset replacement fund; (x) rent of building or usage charges; (xi) incentives for quality enhancement, such as— a. faculty strength with Ph. D. qualifications and Research publications in International Journals and Patent filed by the institution; b. faculty training and placement of students; c. accreditation of eligible programmes or the Institute such as NBA, NABET, NAAC, etc.; (Xii) rate of inflation;
J & K Hoarding and Profiteering Prevention Ordinance, 2000	**6. Restriction on price where no maximum is fixed under section 3.** (1.) Where no maximum has been fixed by notification under clause (c) of sub-section (1) of section 3, no dealer or producer shall sell or offer for sale, or otherwise dispose of an article for a consideration which is unreasonable. (2.) For the purposes of this section a consideration is unreasonable if, whether it is exclusively in money or not,- (a) the purchaser is, as a condition of sale, required to purchase at the same time any other article; (b) where the sale is by a dealer, the consideration exceeds the amount represented by the addition allowed by the normal trade practice in force on the 31st day of August, 1939, to- (i) the landed cost of the article, in the case of an article imported from outside India or, where the article is delivered to the consignee elsewhere than at a port, that cost increased by any charges incurred for freight and octroi or other duties before delivery, or (ii) the price at which producer sold the article in the case of article produced in [India excluding the Jammu and Kashmir State] increased by any charges incurred for freight, customs, octroi or other duties before delivery, or (iii) the price at which the producer sold the article, in the case of an article which is not imported; where the sale is by a producer, the consideration exceeds

the amount represented by the addition allowed by the normal trade practice in force on the 1st day of August, 1939, to the cost of production [of the article, such cost of production being deemed to be exclusive of the amount, if any, by which the price paid by the producer for any component part of the article exceeded-

(i) the maximum price fixed for the component part under section 3 and in force at the time of its purchase by the purchaser; or

(ii) where no maximum price has been so fixed for the component part, the amount represented by the addition allowed by normal trade practice in force on the 31st day of August, 1939, to the cost of production of the component part:

Provided that where the addition allowed by such normal trade practice exceeds or is alleged to exceed 20 per cent, the dealer or producer, as the case may be, shall report the fact to the Controller General who may either sanction such addition or, for reasons to be recorded in writing, order its variation; and the dealer or producer, as the case may be, shall be deemed to sell for a consideration which is unreasonable, if such report has not been made or if after such report has been made and the Controller General has varied such addition, the price charged exceeds the limits approved by the Controller General under this proviso.

(3.) The Controller General may make or cause to be made a certificate stating the landed cost of any imported article dealt in by a dealer, and shall, on request made by any dealer, grant or cause to be granted to that dealer a certificate stating the landed cost of any such imported article.

(3A) For the purposes of this section, the landed cost of any imported article shall, save as hereinafter provided, be the cost thereof to the importer, that is to say, the sum of-

(i) the price of article charged by the exporter in the country of origin;

(ii) freight, marine and war risk insurance and other charges, incurred in respect of the article up to the time when it is delivered to the transit sheds at the port of entry;

(iii) the amount of duties payable on the importation of the article :

Provided that if, in the opinion of the Controller General, there is substantial disparity-

(a) between the landed cost so determined of the article and the landed cost of any other similar article; or

(b) between the consideration for the sale of the article computed on the basis of its landed cost so determined and the minimum price fixed under the Ordinance at which any other similar article, whether imported or not, may be sold, the Controller General may, in making a certificate referred to in subsection (3) in respect of the article, take such disparity into consideration to fix the landed cost of the article at such amount as he thinks equitable.

(4.) Where a dealer or a producer disposes of an article by

	having it sold by auction on his behalf, the auctioneer as well as the dealer or producer shall be liable to the penalty provided by sub-section (1) of section 13, if in any such sale, there is a contravention of sub-section (1). (5.) Where any article is sold, offered for sale, or otherwise disposed of in contravention of sub-section (1), by a dealer or producer through any person employed by him or acting on his behalf, such person and also, unless they prove that they exercised due diligence to prevent such contravention, the dealer or producer, as the case may be, and any person having the charge on behalf of the dealer or producer of the place where such contravention occurred, shall be liable to punishment provided by sub-section (1) of section 13, whether or not they were present when the contravention occurred.
Section 3-C of Essential Commodities Act, 1955 in respect of Sugar price control	There shall be paid to that producer an amount therefor which shall be calculated with reference to such price of sugar as the Central Government may, by order, determine, having regard to— (a) the minimum price, if any, fixed for sugarcane by the Central Government under this section (b) the manufacturing cost of sugar; (c) the duty or tax, if any, paid or payable thereon; and the securing of a reasonable return on the capital employed (means the return on net fixed assets plus working capital of a producer in relation to manufacturing of sugar including procurement of sugarcane at a fair and remunerative price determined under this section) in the business of manufacturing sugar.
Sugar Price (Control) Order, 2018 issued under Section 3 of the Essential Commodities Act, 1955	**Para 4 - Methodology for prescribing price of sugar -** The Central Government shall, at the time of issuing any Order regarding price of sugar for sale under clause 3, take into consideration the fair and remunerative price of sugarcane, conversion costs for production of sugar from sugarcane, realization of profit from by-products generated in the process of sugar production and such other costs as it may consider relevant.
Drug (Price Control) Order, 1995	**Para 3 - Power to fix the maximum sale prices of bulk drugs specified in the First Schedule** 2. While fixing the maximum sale price of a bulk drug under subparagraph (1), the Government shall take into consideration a post-tax return of fourteen per cent on net worth or a return of twenty-two percent on capital employed or in respect, of a new plant an internal rate of return of twelve percent based on long term marginal costing depending upon the option for any of the specified rates of return that may be exercised by the manufacturer of a bulk drug. **Para 7 - Calculation of retail price of formulation** The retail price of a formulation shall be calculated by the Government in accordance with the following formula, namely: R.P. = (M.C. + C.C. + P.M. + P.C.) x (1 + MAPE/100) +

	ED "R.P." means retail price; "M.C." means material cost and includes the cost of drugs and other pharmaceutical aids used including overages, if any, plus process loss thereon specified as a norm from time to time by notification in the Official Gazette in this behalf; "C.C." means conversion cost worked out in accordance with established procedures of costing and shall be fixed as a norm every year by notification in the Official Gazette in this behalf; "P.M." means cost of the packing material used in the packing of concerned formulation, including process loss, and shall be fixed as a norm every year by, notification in the Official Gazette in this behalf; "P.C." means packing charges worked out in accordance with established procedures of costing and shall be fixed as a norm every year by notification in the Official Gazette in this behalf; "MAPE" (Maximum Allowable Post-manufacturing Expenses) means all costs incurred by a manufacturer from the stage of ex- factory cost to retailing and includes trade margin and margin for the manufacturer and it shall not exceed one hundred per cent for indigenously manufactured Scheduled formulations; "E.D." means excise duty:
Drug (Price Control) Order, 2013 issued under Section 3 of the Essential Commodities Act, 1955	**Para 4** - Calculation of ceiling price of a scheduled formulation. **Para 5 -** Calculation of retail price of a new drug for existing manufacturers of scheduled formulations **Para 6 -** Ceiling price of a scheduled formulation in case of no reduction in price due to absence of competition **Para 8** - Maximum retail price

Thus, it could be seen that the public was put to notice by the Government before as to how the fee or price would be computed to prevent profiteering or ensure availability of goods at fair prices. However, in the present case, despite having a mandate to determine methodology, this Authority has failed to determine / prescribe any such methodology leaving the suppliers to adopt their own methodology. The Government had felt that the provisions contained

in Section 171 of the CGST Act were not sufficient to compute *commensurate* price, and therefore, Rule 126 of the CGST Rules mandated this Authority to determine methodology. If it was stated that Section 171 of the CGST Act was unambiguous, then direction to determine methodology under Rule 126 was rendered redundant or otiose. Thus, such interpretation went against the scheme of law. Therefore, the methodology adopted by the Respondent to pass on the loss of ITC to the recipient must be accepted so long as the same was rational and reasonable. Had it been known to the Respondent that the loss of ITC was required to be passed on to the customers at the level of each supply of SKU and not at the entity level, he would have happily adhered to the same at the entity level, he has suffered financial loss for not passing the entire burden to the customers.

II. That refusal to consider increase in cost of inputs (including royalty, variable expenses and other expenses) on the pretext that Section 171 only required this Authority to examine loss of ITC and not any other aspect went against Article 19 (1) (g) of the Constitution of India which provided for reasonable profit to the businessman. In this regard, reliance has been placed on the following judgments:-

CAUSE TITLE	EXTRACT
T.M.A. Pai Foundation Vs. State of Karnataka [AIR 2003 SC 355]	In Para 57 of the Judgment, Supreme Court observed that: *"We, however, wish to emphasize one point, and that is that inasmuch as the occupation of education is, in a sense, regarded as charitable, the government can provide regulations that will ensure excellence in education, while forbidding the charging of capitation fee and profiteering by the institution. Since the object of setting up an educational institution is by definition "charitable", it is clear that an educational institution cannot charge such a fee as is not required for the purpose of fulfilling that object. To put it differently, in the establishment of an educational institution, the object should not be to make a profit,*

	inasmuch as education is essentially charitable in nature. There can, however, be a reasonable revenue surplus, which may be generated by the educational institution for the purpose of development of education and expansion of the institution." Thus, even in case where setting up an educational institution is "charitable" in nature, it is permitted to have reasonable revenue surplus and such surplus does not amount to profiteering. In Para 20 of the judgment, Hon'ble Supreme Court observed that Article 19(1)(g) uses the four expressions so as to cover all activities of a citizen in respect of which income or profit is generated. Thus compelling HRPL to incur loss by not allowing adjustment towards direct and indirect increase in the cost of supply would be infringing right to carry on business under Article 19(1)(g) which is done for profit.
Ranjit Ice and General Mills Vs.State of Punjab [MANU/PH/0470/1990]	Punjab Ice Price Control Act, 1968 empowered the District Magistrate to fix the maximum wholesale and retail price which may be charged by a dealer. The statement of objects and reasons of the Act reads as follows :-- "Some unscrupulous elements exploit the consumers by selling ice at exorbitant prices during summer season. With a view to end this exploitation, it has been decided to introduce the Bill enabling the fixation of price of ice." The petitioner challenged the constitutional validity of the Act on the ground that the power to fix price of the ice has been conferred on the District Magistrate without giving any guidelines. It is was also pleaded that the provisions of this Act are illegal, unreasonable and ultra vires of Articles 14 and 19(1)(g) of the Constitution of India. The Hon'ble High Court of Punjab & Haryana held that District Magistrate is bound to determine the price of the ice while taking into consideration manufacturing cost and by allowing reasonable profit of margin to the whole seller and the retailer. The Court held the price fixed by the District Magistrate is violative of petitioner's fundamental right to carry on business guaranteed by Article 19(1)(g) of the Constitution as also violative of Article 14 of the Constitution as the order has not considered manufacturing cost and reasonable profit to the petitioner.
Diwan Sugar and General Mills (Private) Ltd. Vs. Union of India [AIR 1959 SC 626]	Clause 5 provides for factors that the Government will take into account in fixing prices and these are : (i) price or minimum price fixed for sugarcane, (ii) manufacturing cost, (iii) taxes, (iv) reasonable margin of profit for producer and/or trade, and (v) any incidental charges. Para 5: It is amply clear from this that price is to be fixed after taking into account all reasonable factors which go into the consideration of price fixation. In view of this it cannot be said that the Order gives 'uncontrolled, unguided and unfettered' power to the executive to fix prices arbitrarily. Para 7: The safeguards are to be found in clause 5 itself, namely, that the Central Government must give consideration to the relevant factors mentioned therein before fixing the price, and thus these factors are a check on the power of the Central government if it is ever-minded to abuse the power. We are therefore of opinion that the impugned notification is not an unreasonable restriction on

	the petitioners' right to carry on trade under Art. 19(1)(g).
Shree Meenakshi Mills Ltd. Vs. Union of India [AIR 1974 SC 366]	Para 76. The control of prices may have effect either on maintaining or increasing supply of commodity or securing equitable distribution and availability at fair prices. The controlled price has to retain this equilibrium in the supply and demand of the commodity. The cost of production, a reasonable return to the producer of the commodity are to be taken into account. The producer must have an incentive to produce. The fair price must be fair not only from the point of view of the consumer but also from the point of view of the producer. It is submitted that in even under the price control orders issued under Section 3 of the Essential Commodities Act to secure availability at essential commodity at fair prices, the courts have ensured recovery of the cost of production and a reasonable return to the producer. Therefore, in the present case where provisions of Section 171 of the GST Act are not intended to control price, there is no reason to deny recovery of the cost of production and a reasonable return to the supplier.

III. That the provision of Section 171 must yield to Article 19 (1) (g) of the Constitution of India. If this Authority did not take into consideration the costs other than the input tax credit and also provide for a mechanism to generate a reasonable profit, the entire exercise would be *ex-facie* illegal and in complete defiance of the fundamental right to trade under Article 19 (1) (g) of the Constitution, which the Authority was required to implement.

IV. That on 9 January 2018 the Respondent has revised the menu prices for 142 items and depending on the cost of inputs, market competition and other business exigency he was occasionally revising menu prices. If such revisions were also taken into computation of profiteering, it would amount to prohibiting business to decide prices which would be against the grain of Article 19 (1) (g).

V. That the ITC for the period from 1 November 207-14 November 2017 included Rs. 2,15,33,262/- towards reversal of ITC carried forward on the inventory as on 15 November 2017. If such reversal was ignored, ITC for the period from 1 November 2017-14 November 2017 would be Rs. 8,26,80,678/- as against Rs 6,11,47,417/- thereby increasing the total

ITC from 1 July 2017-14 November 2017 to Rs. 44,82,49,192/- from Rs. 42,67,15,930/- and ITC loss from 10.27% to 10.78%.

VI. That if the ITC on the closing stock was excluded, then actual transitional credit of Rs. 5.18 Crore has to be included in the quantum of ITC as it pertained to the inventory carried forward into the GST era as on 01 July 2017. Accordingly, the ITC for the period from 01 July 2017 to 14 November 2017 would be Rs. 45,82,58,308/-. Consequently, the ratio of ITC to the turnover would be 11.03%.

VII. That the Respondent has reversed ITC of Rs. 4,18,08,194/- on inventory of Rs. 30.30 Crore. Therefore, the ITC was 13.80% of the value of the inventory. Even when seen in this perspective, the impugned ratio of 9.11% as computed by the DGAP was illogical. Such a significant difference was arising as the DGAP has included the month of July 2017 in his computations, which was an outlier data as substantial inventory without GST was carried forward. It is trite that in any statistical projection, outlier data was discarded.

54. Copies of the Respondent's submissions were supplied to the DGAP for filing clarifications under Rule 133 (2A). Consequently, the DGAP has filed his clarification dated 24.08.2020 on the submissions of the Respondent dated 13.07.2020 and 03.08.2020 which are described as under:-

A. <u>Section 171 of the CGST Act must be interpreted to include costs including tax/ ITC, failing which it will be a violation of Article 19(1)(g) of the Constitution of India:</u>

Section 171(1) of the Act, envisaged that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in price. In other words, every recipient of goods or services has to get the benefit from the

supplier. The supplier was absolutely free to exercise his right to practise any profession or to carry on any occupation, trade or business, as Article 19 (1) (g) of the Constitution protected it. The supplier could fix any price/margin he wanted but in the event of invocation of Section 171, this Authority has only been mandated to ensure that the benefit which was a sacrifice of precious revenue from the kitty of the Central and State Governments, was passed on to the recipients. The soul of this provision was the welfare of the consumers who were voiceless, unorganized and scattered. The trade was bound to pass on the rate reduction benefit which became available to it due to revenue sacrificed by the welfare Government of a Socialistic economy. This Authority/ DGAP have neither the mandate nor have they meddled with the Respondent's rights to pricing/profits/margins/trade. Article 19 (1) (g) of the Constitution guaranteed all the citizens the right to freedom of trade and commerce and Section 171 of the Act or the Rules 126, 127 and 133 made thereunder nowhere infringe upon that Fundamental Right. The DGAP or this Authority have not acted in any way as price controllers or regulators as there was no legislative intent to regulate when it came to the price hike decisions. Every supplier of goods and services was free to increase the prices of his supply depending upon the various components affecting the cost of production/supply. But under the provisions of this Section no supplier could increase the base prices of the products overnight in such a manner that even with reduction in the rate of tax, the cum-tax selling price would remain unchanged.

B. Constitution of this Authority under delegated legislation is bad in law:

That the Parliament as well as all the State Legislatures have delegated the task of framing of the Rules under the CGST Act, 2017 on the Central Government as per the provisions of Section 164 of the above Act. Accordingly, the Central Government in terms of Section 171 (3) of the CGST Act, 2017 read with Section 2 (87) of the Act, has prescribed the powers and functions of this Authority, on the recommendation of the GST Council, which was a Constitutional federal body created under the 101st Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. The above delegation has been granted to this Authority after careful consideration and there was no ground for claiming that the present delegation was excessive. Since the functions and powers to be exercised by this Authority have been approved by the competent Authority, the same were legal and binding on the Respondent.

C. Constitution of Authority sans a Judicial Member is bad in law:

This Authority has been constituted under Section 171 (2) of the CGST Act, 2017. The Parliament, the State Legislatures, the Central and the State Governments and the GST Council in their wisdom have decided the composition of this Authority without the Judicial Member which has also not been provided in the other Authorities such as TRAI or the Authorities on Advance Rulings under the Dept of Revenue, Ministry of Finance, Government of India. Moreover, the orders passed by this Authority are in full consonance of the "Principles of Natural Justice" and are subject to judicial review and hence, no prejudice has

been caused to the Respondent by the absence of a Judicial Member in this Authority.

D. <u>Section 171 of the CGST Act suffers from the vice of excessive delegation:</u>

The Parliament has delegated the task of framing of the Rules under the CGST Act, 2017 on the Central Government as per the provisions of Section 164 of the above Act. Accordingly, the Central Government in terms of Section 171 (3) of the CGST Act, 2017 read with Section 2 (87) of the Act, has prescribed the powers and functions of this Authority, on the recommendation of the GST Council, which was a Constitutional federal body created under the 101st Amendment of the Constitution, as per Rule 127 and 133 of the CGST Rules, 2017. Further, the power to determine its own Methodology & Procedure has been delegated to this Authority under Rule 126 of the above Rules as per the provisions of Section 164 of the above Act as such power is generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out their functions and duties The above delegation has been granted to this Authority after careful consideration and there was no ground for claiming that the present delegation was excessive. Since the functions and powers to be exercised by this Authority have been approved by competent Authority, the same were legal and binding on the Respondent. This Authority in exercise of power delegated to it under the Rule 126 has notified the Methodology and Procedure vide Notification dated 28.03.2018 which was also available on its website. However, no fixed/uniform mathematical methodology could be determined, as the facts of each case were different. Therefore, the determination of the

profiteered amount has to be done by taking into account particular facts of each case.

E. **Complaints of profiteering filed by the anonymous persons are not cognizable by the Standing Committee under Rule 128 and therefore unsustainable:**

As per Rule 128 and Rule 129 of CGST Rules, 2017, if Standing Committee was satisfied that there was a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in price, it could refer the matter to the DGAP for detailed investigation. In the present case, such reference from Standing Committee was received by the DGAP on 18.12.2017 and accordingly Notice was issued on 29.12.2017.

F. **Investigation Report goes beyond the reference made by the Standing Committee and therefore unsustainable:**

The mandate of Section 171 of the CGST Act, 2017 was very clear which stated that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in price. In other words, every recipient of goods or services has to get the due benefit from the supplier and hence, this benefit has to be calculated for each and every product supplied. Therefore, the objective of Section 171 was to ensure that the benefit of reduction in rate of tax or benefit of input tax credit was passed on to the recipient and not retained by the supplier. The issue involved was that the Respondent did not pass on to the recipients the benefit of reduction in tax rate by not reducing the prices of the products commensurately. If the investigation was restricted to the

alleged product then the recipients/customers of the other impacted products who have not made any complaint against the Respondent, would never get the commensurate benefit from the Respondent. Further, there is no stipulation in the law to restrict the investigation only to the alleged product or to the complainant/applicant. Rule 133 (5) of the CGST Rules, 2017, further clarifies the scope of expanded investigation in order to remove any doubt. The above Rule was just a re-iteration of the provisions of Section 171 (2) which was in the statute since the inception of the CGST Act, 2017.

Further, the GST Tariff Heading 996331 covered "Services provided by Restaurants, Cafes and similar eating facilities including takeaway services, Room services and door delivery of food." Thus, the services provided by the Respondent also included eating facilities, including takeaway services, Room services and door delivery of food. Therefore, the DGAP's investigation Report dealt with the Restaurant Service as a whole (including eateries).

G. <u>Lack of methodology, parameters and standards are bad in law:</u>

The GST Council, constituted under Article 279A of the Indian Constitution as a federal constitutional body, comprising the Finance Ministers of all the States, UTs and the Union Finance Minister, in its wisdom has rightly not prescribed any specific guidelines/mechanism/methodology to determine profiteering in Section 171 of the Act and the Rules made thereunder as the facts of each case were different for different sectors as well as in the same sector also. Hence, no fixed mechanism could have been provided in the Act or the Rules. However, the Methodology and Procedure has

been notified by this Authority under Rule 126 of the CGST Rules, 2017 on 28.03.2018. There were different type of sectors i.e. Real Estate, FMCGs, Cinema etc. wherein the profiteering amount could not be calculated in the same manner or through the same procedure. Hence, there could not be a fixed and ready to use methodology for all the cases of profiteering.

Further, the DGAP has submitted his investigation Report dated 15.06.2018 only on the basis of the documents/ information submitted by the Respondent during investigation. All the submissions by the Respondent during investigation were duly accounted for and incorporated in the investigation report. Therefore, the Respondent's contention that proceedings were arbitrary and in gross miscarriage of justice were unacceptable.

III Submissions regarding Investigation report:

A. Preference of any particular methodology for computation of ITC without prescription under law is unsustainable:

(i) to (iii) As discussed above, the facts of each case were different for different sectors as well as in the same sector also. Hence, no fixed mechanism could have been provided for in the Act or Rules. Thus, the methodology adopted was the best suited in the instant case based on the facts and circumstances of the case. In reply to the Respondent's objection that w.e.f. 15.11.2017 the ITC was prohibited and therefore, cost of production has increased, compelling the Respondent to revise prices, it was submitted that loss of ITC was on account of reduction in the rate of tax and the same has already been

considered. After due consideration, the cost of ITC has been calculated.

(iv) **Submissions on DGAP's Report**:

1 & 2 Period and restriction on ITC:

During investigation, the Respondent has submitted SKU wise summary sale for the period from 1-14 November, 2017 but has not submitted invoice wise B2C outward taxable supplies during this period. Therefore, net taxable turnover could not be computed on the basis of summary sales. Further, random checks of the invoices for the ITC availed in November, 2017 revealed that in some cases, credit was taken by the Respondent without being in possession of the invoices on the date of availing of ITC, in contravention of the provisions of Section 16 (2) (a) of the CGST Act, 2017. Therefore, the ITC pertaining to the invoices issued on or after 01.11.2017 and availed during 1-14th November 2017 has been left out. Further, as the net taxable turnover for the same period has also been excluded from the total pre rate reduction turnover, this has no bearing on the computation of the impact of denial of input tax credit on the basis of the ratio of input tax credit to net taxable turnover during the period from 01.07.2017 to 31.10.2017. Reference was also made to points A, B & C on pages 3 to 7 of DGAP's Office letter No. 22011/API/5/2017/2594 dated 08.08.2020.

2. **ITC pertaining to pre-GST period has been expunged:**

The DGAP has not considered the ITC pertaining to pre-GST period while computing ratio of denial of ITC to net turnover as this credit pertained to the period prior to the implementation of GST which has no bearing on the supplies made post-GST.

3. **ITC pertaining to July, 2017 to November 14, 2017 which will be billed in subsequent months:**

The Respondent was eligible to avail ITC during July, 2017 to 14th November 2017 for all the services he was entitled to. The ITC has been denied w.e.f. 15.11.2017. The Respondent was eligible to take proportional credit till the period the same was available. Thus, this contention of the Respondent was untenable.

4. **Additional tax on Branch Transfer:**

As the Respondent has already availed ITC on the original purchase of inputs, the same has been considered in the computation of denial of ITC to net turnover. Further, output tax liability on inter-unit branch transfers has been excluded from the outward taxable turnover on the other hand, it neutralised the impact of branch transfer transactions on the computation.

(iv) to (vii) As discussed above, the DGAP's Report was furnished on the facts and documents available on record during investigation. Therefore, the Respondent's contentions were not tenable.

B. **Commensurate adjustment in price computed by DGAP is erroneous:**

The objective of Section 171 was to ensure that the benefit of reduction in the rate of tax or benefit of input tax credit was passed on to the recipient and not retained by the supplier. Therefore, Section 171 of the CGST Act, 2017 required the supplier of goods or services to pass on the benefit of reduction in the tax rate or input tax credit to the recipients by way of commensurate reduction in prices. If such benefit was not passed on by way of reduction in prices and the benefit was appropriated by the supplier, it amounted to profiteering. The increase in cost of inputs (including royalty, variable rent and other expenses) was a factor in determination of price but this factor was independent of the output GST rate. It could not be asserted that elements of cost unrelated to GST were affected by the change in the output GST rate. Therefore, in terms of Section 171, the claimed increase in cost of inputs has not been considered, as the act of profiteering has got nothing to do with the cost component.

C. **Computation of the profiteered amount by DGAP is erroneous:**

As discussed above, the objective of Section 171 was to ensure that the benefit of reduction in rate of tax or benefit of input tax credit was passed on to the recipient and not retained by the supplier. Therefore, Section 171 of the CGST Act, 2017 required the supplier of goods or services to pass on the benefit of reduction in tax rate or input tax credit to the recipients by way of commensurate reduction in prices. If such benefit was not passed on by way of reduction in price

and the benefit was appropriated by the supplier, it amounted to profiteering.

Also, the mandate of Section 171 of the CGST Act, 2017 was very clear which required that every recipient of goods or services has to get the due benefit from the supplier. Therefore, in the cases where the prices of the products were reduced more than what was required to, in those cases though there would be no profiteering but this extra reduction of price could not be adjusted against the other products where the reduction was less or not at par with the commensurate reduction. Every recipient was eligible for his due benefit from the supplier. The benefit of one recipient could not be adjusted with the other recipient. Further, the legal requirement of Section 171 was that in the event of a benefit of input tax credit or reduction in rate of tax, there must be a commensurate reduction in prices of the goods or services. The price included both the basic price and the tax charged on it. Therefore, any excess amount collected from the recipients, even in the form of tax, must be returned to the recipients. In case, the recipients were not identifiable, the said amount was required to be deposited in the Consumer Welfare Fund. By increasing the base price, the Respondent has forced his customers/recipients to pay extra tax which they were not liable to pay. Therefore, it was clear that the amount of extra tax (GST) on the increased base price was an amount paid by the customers/recipients which they were not supposed to pay. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such amount be refunded to the eligible recipients or alternatively deposited in the Consumer Welfare Fund, regardless of whether such

9.1

extra tax collected from the recipient has been deposited in the Government account or not.

D. **Arbitrariness and lack of consistency in the DGAP investigations:**

The Respondent has quoted the order 09/2018 passed in the case of N. P. Foods sighting identical factual matrix as was in the present case. However, the facts and circumstances were totally different in the order related to N. P. Foods.

Also, regarding the methodology adopted for comparison as average price pre-rate reduction to the average price post rate reduction, it was clarified that the DGAP had requested the Respondent to provide invoice wise details of outward taxable supplies in respect of all GST Registrations. The Respondent himself had expressed his inability to provide the invoice wise item wise outward taxable supply data for B2C supplies due to extremely voluminous nature and had intimated that he would provide date in summarized manner on product/ SKU basis, which was considered after keeping in view the Respondent's inability to provide the details of invoice wise and item wise outward taxable supplies.

Submissions dated 03.08.2020:

1. **The noticee has quoted various case laws and situations where public was put to notice by the Government beforehand as to how the price would be computed in different scenarios. However, no methodology has been determined in the present case:**

As discussed above, facts of each case were different for different sectors as well as in the same sector also. Hence, no fixed

mechanism could have been provided for in the Act or the Rules. Thus, the methodology adopted was the best suited in the instant case based on the facts and circumstances of the case.

2. **Refusal in increase in cost:**

The legislative intent behind Section 171 of the CGST Act, 2017 was to pass on the benefit of tax rate reduction by way of commensurate reduction in price. In other words, every recipient of goods or services has to get the due benefit from the supplier. Every supplier in the supply chain was legally required to pass on the benefit of tax rate reduction by maintaining the base price and charging GST at the reduced rate on such base price. Every supplier of goods and services was free to increase the price of his supply depending upon the various components affecting the cost of production/supply. But under the provisions of Section 171, no supplier could increase the base prices of the products overnight in such a manner that even with reduction in the rate of tax, the cum-tax selling price would remain unchanged. In the present case, the Respondent has increased the base prices overnight w.e.f. 15.11.2017, which proved that the petitioner's intent was to make profit out of the rate reduction.

4&5 The Respondent was absolutely free to exercise his right to practise any profession or to carry on any occupation, trade or business, as Article 19 (1) (g) of the Constitution protected it. The Respondent could fix any price/margin he wanted but in the event of invocation of Section 171, this Authority has been mandated to ensure that the benefit which was a sacrifice of precious revenue from the kitty of

Central and State Governments, was passed on to the recipients. The soul of this provision was the welfare of the consumers who were voiceless, unorganized and scattered. The trade was bound to pass on the rate reduction benefit which became available to it due to revenue sacrificed by the welfare Government of a Socialistic economy. This Authority/ DGAP have neither the mandate nor could interfere with the Respondent's right to pricing/profits/margins/trade.

6 Regarding reversal of ITC for the period from 01.11.2017 to 14.11.2017 towards ITC carried forward on the inventory as on 15.11.2017, it was to submit that both the net taxable turnover as well as ITC for the same period has been excluded for calculation of ITC loss. Therefore, this reversal has no bearing on the ITC loss.

7 Regarding the Respondent's submissions for including credit of inventory as on 01.07.2017, it was submitted that for calculation of ITC ratio, the ITCs on inventory on 01.07.2017 & 15.11.2017 have not been considered. Thus, they would tend to balance out and Respondent should not have no grievance on this score. Further, for calculating the ratio of ITC to turnover, a very long period of 04 months from July, 2017 to October, 2017 has been considered and minor issues would balance out.

55. The Respondent has submitted re-joinder dated 22.09.2020 on the clarifications of the DGAP dated 24.08.2020. The submissions of the Respondent are as follows:-

I. The Respondent has submitted the following Table as given below:-

PARA	SUBMISSION OF DGAP	REJOINDER OF THE RESPONDENT
Submissions of the Respondent dated 13 July 2020		
II.A	Section 171 of the Central Goods and Services Tax Act, 2017 ("CGST Act") is not an affront to Article 19(1)(g) of the Constitution of India as the law only requires the benefit of tax component to be passed on and that there is no interference in the price fixation, which is the sole right of the supplier of goods/ services. Further, the DGAP has claimed that the present proceedings are legal in as much as overnight increase in prices coinciding with the reduction in the rate of tax such that total price would be the same is within the four corners of Section 171 of the CGST Act.	Submission of the DGAP is fallacious and inherently contradictory. Article 19(1)(g) of the Constitution of India guarantees a person to carry on business for profit. Profit is nothing but surplus of revenue over cost. In a situation, where any authority restrains any person to recover cost and thereby compel the said person to incur loss is nothing but a violation of his fundamental right to carry on business as guaranteed under Article19(1)(g) of the Constitution. [***Ranjit Ice and General Mills vs State of Punjab, MANU/PH/0470/1990***]. In the present case, the DGAP has only considered impact of input tax credit (**"ITC"**) to arrive at the *factum* of commensurate price and consequently, profiteering. As has been shown time and again by the Respondent, there was increase in cost of other inputs (*for e.g., rent, royalty, aggregator commissions*) directly attributed to change in the tax regime, however, DGAP has persistently refused to consider the same. Non-inclusion of these costs directly affects the fundamental right of the Respondent under Article 19(1)(g) of the Constitution of India, as effectively, the Respondent is being asked to bear these costs from their own pocket. Further, it is submitted that the DGAP, on the one hand states that the Respondent is eligible to increase price by 9.11%, while on the other hand, it also states that price

		fixation is the sole Submission of the DGAP is fallacious and inherently contradictory. Article 19(1)(g) of the Constitution of India guarantees a person to carry on business for profit. Profit is nothing but surplus of revenue over cost. In a situation, where any authority restrains any person to recover cost and thereby compel the said person to incur loss is nothing but a violation of his fundamental right to carry on business as guaranteed under Article19(1)(g) of the Constitution. [***Ranjit Ice and General Mills vs State of Punjab, MANU/PH/0470/1990***]. In the present case, the DGAP has only considered impact of input tax credit (**"ITC"**) to arrive at the *factum* of commensurate price and consequently, profiteering. As has been shown time and again by the Respondent, there was increase in cost of other inputs (*for e.g., rent, royalty, aggregator commissions*) directly attributed to change in the tax regime, however, DGAP has persistently refused to consider the same. Non-inclusion of these costs directly affects the fundamental right of the Respondent under Article 19(1)(g) of the Constitution of India, as effectively, the Respondent is being asked to bear these costs from their own pocket. Further, it is submitted that the DGAP, on the one hand states that the Respondent is eligible to increase price by 9.11%, while on the other hand, it also states that price fixation is the sole right of the supplier of goods/ services. This itself is inherently flawed and contradictory. DGAP is wrongly emphasizing reduction in the rate of tax, whereas the

		fact of the matter is that Respondent was also disallowed to take ITC with effect from 15 November 2017. Denial of ITC resulted in increase in the direct and indirect costs, which required immediate or rather overnight increase in prices. It is further submitted that the Respondent has relied on a number of judgments of the Supreme Court and High courts, however DGAP has failed to offer any comments thereon. It is submitted that judgments of the Court are binding on all subjects and therefore, DGAP as well as this Authority is bound to follow the same without the sanction of law and hence, all proceedings must necessarily abate. It is submitted that DGAP has failed to distinguish judgments relied by the Respondent and therefore, this Authority is bound to follow the same to maintain judicial discipline.
II.B	The composition of the National Anti- Profiteering Authority **("Authority")** It in Rule 122 of the CGST Rules is correct in law per Sections 2(87) read with 164 of the CGST Act. Hence, there is no excessive delegation and the composition of this Authority is left just and proper and consequently, binding on the Respondent.	This submission of the DGAP is denied in toto. It appears that the DGAP has failed to understand the purport of this averment. Section 171 of the CGST Act neither provides for the composition of the Authority nor prescribes qualifications etc. These have been left to the determination by the Government of India, under Rule 122 of the CGST Rules. It is trite that under law, **"essential legislative functions"** cannot be delegated **[In Re: Delhi Laws Act, AIR 1951 SC 332]**. One such essential legislative function is that of composition **[Adambhai Ranabhai vs The Regional Transport Authority, (1968) 9 GLR 674].** It is further submitted that no qualifications are prescribed in Section 171 of the CGST Act, which was the very basis of the Hon'ble

		Supreme Court for holding that essential legislative functions have not been delegated and hence upheld the constitutional validity of Section 184 of the Finance Act, 2017 **[Roger Mathew vs South Indian Bank Limited, judgment dated 13 November 2019 in Civil Appeal No. 8588 of 2019]**. Hence, the very basis of composition and qualifications not being provided in Section 171 of the CGST Act but in Rule 122 of the CGST Rules renders the Authority as being an authority without the sanction of law and hence, all proceedings must necessarily abate. It is submitted that DGAP has failed to distinguish judgments relied by the Respondents and therefore, this Authority is bound to follow the same to maintain judicial discipline.
II.C	Absence of a judicial member does not make the Authority as illegal. This is further because the orders passed by Authority are subject to natural justice and judicial review. Similarity has been alluded to TRAI in this regard.	The contention is denied *in toto*. It has been conclusively held that absence of a judicial member in the composition renders all proceedings *ex-facie* illegal and void *ab-initio* [***Revenue Bar Association vs Union of India, judgment dated 20 September 2019 of the Hon'ble High Court of Madras***]. Further, the mere fact that natural justice is complied with is not good reason to hold the composition as illegal. Natural justice and composition are two entirely distinct and separate tenets of law. On account of composition, the Authority is naturally biased and merely granting a hearing cannot cure this fatal error. It is further submitted that no parallel can be drawn with respect to TRAI for the reason that their orders are appealable to statutorily authorities (*TDSAT*) which have a judicial member. In the present, the Authority is the accuser, prosecutor and judge without any statutory

		appeal. In Writ petitions, Courts mostly decides question of law and, more as exception then rule, also examine question on facts when it involves gross miscarriage of justice. Ordinarily appellate Tribunal becomes final fact-finding authority but in the present case, this Authority itself is the final fact-finding authority as there is no provision of appeal in the CGST Act. In as much as Authority for Advance Rulings is concerned, no one is compelled to approach them. Choice of forum is voluntary. Therefore, an independent scrutiny mechanism being absent, it is mandatory for a judicial member to be in the composition of the Authority. For this reason alone, the present proceedings must necessarily abate.
II.D	There is no excessive delegation *re* the absence of the methodology as the same has been done by the Authority in terms of Section 164 of the CGST Act. Further, the Authority has formulated a methodology in exercise of power under Rule 126 of the CGST Rules. The DGAP has also contended that no fixed methodology can be prescribed as facts vary from case to case.	This averment of the DGAP is denied *in toto*. At the outset, it is submitted that no reference can be made to Section 164 of the CGST Act, since the exercise of powers by the Authority has to be in terms of rules notified under Section 171(3) of the CGST Act. Further, power under Section 164 of the CGST Act can only be exercised by the Government of India and not any other authority, which includes the Authority and DGAP and hence, such a statement by the DGAP is *ex- facie* illegal. It is reiterated that the DGAP has lost sight of the averment. It is a settled principle of law that the essential legislative functions cannot be delegated. In the present case, the determination of methodology has been left completely to the determination of the Authority/ DGAP without

		any guiding principles or aspects thereof. Hence, this is tantamount to excessive delegation of power and consequently therefore, all proceedings *qua* the Respondent must necessarily abate. Without prejudice to *supra* and in addition thereto, it is submitted that the methodology notified by the Authority in 2018 is one of procedure and not a single regulation therein provides for a substantive determination of profiteering or the like. Hence, no reliance can be placed therein by the DGAP or the Authority to justify the present proceedings. Further, *de hors* a general prescription of methodology, the Respondent asked for responses to specific questions *qua* their case, to which no responses have been provided till date. Hence, for the reasons and illegalities *supra*, the entire proceedings must be quashed forthwith. It is submitted that the Respondent has cited many instances where law makers provided guidance / methodology for determination of price. These facts have not been refuted by DGAP. In such circumstances, it is submitted that submission of DGAP that no fixed methodology can be prescribed as facts vary from case to case is flawed and must be rejected.
II.E	The Standing Committee has found a *prima facie* case under Rules 128 and 129 of the CGST Rules pursuant to which the investigation was carried out by the DGAP. The DGAP has also stated that further comments may be solicited from the Standing Committee.	Denied *in toto*. Under Rule 128(1) of the CGST Rules, the Standing Committee is required to ascertain the accuracy and adequacy of the complaint filed in such form and manner as may be specified. Post such examination, if there is *prima facie* satisfactory evidence that benefits have not been passed, matter can

		be referred for further investigation. In the present case, Form APAF-1, which is mandatory has not been filed by any complainant and neither is there compliance with the requirements including that of self- attestation. The only piece of information available is that of two invoices being circulated on social media with no authenticity thereof. In addition to *supra,* the Standing Committee has not conducted any examination of either adequacy or accuracy. The minutes dated 29 November 2017 itself show the comments that ***"only tax invoice attached."*** No further examination was carried out and a reference was made to DGAP. Hence, the very reference was without this Authority of law and entire proceedings must abate on this count itself.
II.F	The DGAP has contended that there is no illegality in investigating all products offered by the Respondent as (i) the investigation was *qua* restaurant services (ii) in terms of Section 171(2) of the CGST Act read with Rule 133(5) of the CGST Rules allows for an expanded investigation (iii) Section 171 requires that each and every supplier reduce prices commensurately such that benefit is passed on to each and every recipient.	Denied *in toto*. The reliance placed on Rule 133(5) of the CGST Rules is *ex-facie* illegal since that is the power available with the Authority to direct a further investigation. The DGAP cannot *suo moto* justify expansion to all products of the Respondent under Rule 133(5) of the CGST Rules. In addition, the investigation was with respect to *"restaurant services"*. Therefore, by the conduct of the DGAP itself, what was required to be investigated was one single product and not 1800 individual products as done so in the present case. Further to *supra,* it is also submitted that the DGAP cannot place reliance on Section 171(2) of the CGST Act as the same merely prescribes that the powers of

		examination as to the *factum* of profiteering shall be as per the CGST Rules. This is merely a legislative sanction providing that conduct of the DGAP and Authority should be in terms of the CGST.
II.G	The DGAP has contended that no fixed methodology can be prescribed for all cases and that the Authority has notified a methodology in 2018, being the Goods & Services Tax (here- in-after referred to as the Authority) Methodology and Procedure, 2018. Further, all seminal aspects raised by the Respondent in point vi. Have been addressed in the DGAP report dated 15 June 2018.	Denied *in toto*. It is submitted that the Respondent has never wanted a general methodology to cover all kinds of cases and matters that the Authority is seized with. On the contrary, the Respondent asked for very specific questions applicable to their case only to which no responses have been provided. The claim of the DGAP that all such doubts have been addressed in the report dated 15 June 2018 is incorrect on facts and tantamounts to misleading the Authority. This is for the reason that (a) the questions were asked for the first time in October 2019, much after the issuance of the report dated 15 June 2018, or, in any case in the submissions made before the Authority after receipt of the said report and (b) a bare perusal of the report dated 15 June 2018 would show that no answers have been provided for. As an example, the Respondent requested for treatment of direct variable costs which do not find a whisper in the report dated 15 June 2018. Hence, this averment of the DGAP is *ex-facie* illegal. In addition to supra, reliance on the rules of 2018 as notified by the Authority is also incorrect since the same only relate to procedure and not substantive aspects of methodology
II.H	The DGAP has left the issue of limitation to the determination of the Authority	It is reiterated that the Authority does not have jurisdiction to continue the proceedings since there is a patent violation of Rule 133(1) of the CGST Rules, as it stood on the date of receipt

		of the report dated 15 June 2018 of the DGAP. Hence, for this reason alone, the proceedings must be quashed forthwith.
II.A.(i) to (iii)	The DGAP has contended that no fixed methodology can be considered as facts differ from case to case. Further, on the point of methodologies available to the Respondent, cost of ITC has been considered.	Denied *in toto*. It is submitted that the DGAP has misunderstood the averment. *Sans* a prescribed methodology, the Respondent averred that there cannot be preference towards a particular methodology as adopted by the DGAP since there were multiple methodologies available to the case of the Respondent itself and not for other sectors. This is not a case where the Respondent is asking for methodology for say, real estate being applied to the present facts. On the contrary, the Respondent has submitted that for their own case only, multiple methods of perspective were available with each being equal and hence, manner as followed by DGAP is not sacred. *Re* the contention of ITC, it is submitted that the same is not part of this averment but the subsequent ones. As shown *infra,* assuming without accepting that the method adopted by DGAP is correct, they have not considered all ITC elements in their exercise and hence, the entire proceedings are illegal.
IIIA.(iv) (Point 1 & 2)	The DGAP has contended that ITC for the 01 November 2017 – 14 November 2017 has been expunged for the reason that (a) invoice wise B2C outward taxable supplies for the same period were not provided; (b) random checks on inward invoices for this period revealed that ITC was taken in contravention to Section 16(2)(a) of the CGST Act; and (c) that as both ITC and turnover was left out, there is no impact on the Respondent.	Denied *in toto*. It is submitted that for calculation of the ITC to taxable turnover ratio for the period 01 November 2017 – 14 November 2017, the DGAP required (i) ITC amount and (ii) turnover of the restaurant. The Respondent has supplied the product-wise turnover of the restaurant for this restaurant (*submission to DGAP dated 17 January 2018, 06 April 2018*). As a matter of fact, the DGAP has prepared Annexure-36 and Annexure-37 for 01 November 2017 – 14 November 2017 also on

		the basis of the product-wise turnover supplied by the Respondent and therefore, absence of invoice-wise turnover cannot be a reason to exclude this period, as it is inconsequential to compute ITC amount or restaurant turnover. It is reiterated that invoice wise B2C outward taxable supplies have no bearing on the ITC computation. *Re* the exclusion of the ITC for the period 01 November 2017 – 14 November 2017, it is submitted that the DGAP is seeking to mislead the Authority. Per the table at Page 6 of their submissions dated 08 August 2018, the DGAP has taken the last date of taking input tax credit as 14 November 2017 and as invoices were received after this date, credit is unavailable. It is submitted that date of receipt of the invoice as plotted by the DGAP is not only irrelevant but is also the date taken by the accounts function of the Respondent for processing the invoice and hence, does not represent the date of receipt. Under the CGST Act, it is undisputed that input tax credit for the month of November 2017 is taken in the return for the same month, which is due in December 2017. Hence, the date of receipt of invoice is not material in as far as entitlement to input tax credit is concerned. Further, the CGST Act requires that the recipient be in possession of the invoice (*which the Respondent undoubtedly was*) at the time of taking ITC and that the date of invoice be prior to 15 November 2017, as till such date all supplies were eligible to credit as provision of goods/ service was over as per time of supply provisions. As a matter of fact, the

		Respondent was in receipt of the goods/ services well before 15 November 2017. Hence, as both conditions, viz., (a) possession of the invoice at the time of taking ITC and (b) date of invoice as also time of supply being prior to 15 November 2017 are fulfilled and therefore, the Respondent is undoubtedly entitled to input tax credit and the DGAP cannot brush this claim aside. Detailed comments in this regard are made in the table at **Annexure "A"**. In addition and specifically with reference to Sr. No. 6 of the table prepared by the DGAP in their submissions dated 08 August 2018, it is submitted that in any case, the Respondent provided full extract of the ITC register (*submissions to DGAP dated 17 January 2018, 09 March 2018*) and therefore, any ITC as deemed ineligible to the Respondent could have been expunged by the DGAP. However, to deny the entire ITC on the basis of a singular entry clearly shows that the DGAP has been callous in the investigation and this aspect requires re-determination. It is further submitted that non-consideration of both ITC and taxable turnover for this period will not be neutral to the Respondent, but extremely prejudicial. Pure mathematics would lead to the conclusion that this statement by the DGAP is illogical and incorrect.
IIIA. (iv) (Point 3)	The DGAP has excluded the ITC pertaining to the period prior to 01 July 2017 on the ground that the same is for the services received prior to GST.	Denied *in toto*. It is an undisputed fact that the invoices were received by the Respondent with GST as they were issued subsequent to 01 July 2017, and therefore, under the GST laws, time of supply is the date of invoice.

		Without prejudice, it is submitted that if the ITC pertaining to the period prior to 01 July 2017 but invoiced subsequent to 01 July 2017 is excluded, then ITC pertaining to the period prior to 15 November but invoiced subsequent to 15 November 2017 must be included. However, DGAP has refused to consider the same thus, distorting balance.
IIIA. (iv) (Point 4)	The DGAP has sought to deny ITC on invoices which are for the period up to 14 November 2017 but	Denied *in toto*. It is submitted that the exercise of the DGAP was to ascertain the cost of ITC and not examine the eligibility of ITC. Hence, any inward supply received by the Respondent for the period up to 14 November 2017 should have been considered by the DGAP in ascertaining the impact of ITC. It is trite that ITC is a vested right under Section 16(4) of the CGST Act, the credit on which can be claimed till the return for September of the next financial year. It is a matter of fact that the Respondent is not only eligible but has also claimed ITC on such invoices. Hence, exclusion of invoices received subsequently but for the period prior to 15 November 2017 should necessarily be included in the computation. Failure to consider ITC on such invoice by the DGAP is gross miscarriage of investigation and smack not only ignorance of law but utter contempt for the GST law passed by the Parliament by the DGAP.
IIIA. (iv) (Point 5)	The DGAP has sought to deny the ITC impact on branch transfer for the reason that the net ITC and net turnover has been considered.	Denied *in toto*. The Respondent has raised the question of additional ITC impact arising due valuation rule of 110% of the cost of production under the CGST Rules. The 10% additional element and GST thereon is not included in the net ITC or net taxable turnover and therefore, non-consideration greatly prejudices the

		assessee.
IIIA. (v) to (vii)	The DGAP has merely stated that the report has been issued on the facts and therefore, contention of the Respondent is untenable.	amount of ITC should necessarily be taken into consideration failing which, great prejudice will be caused to the Respondent. It is reiterated that the duty of the DGAP is to arrive at the cost of ITC for which, entitlement should be seen and not actual availment. The CGST Act contains a provision in Section 36 that ITC need not be taken in a month of the invoice itself, but can be taken up to September of the next financial year. Hence, when the CGST Act itself recognizes ITC as a fungible vested right, the DGAP in denying any ITC is *ex-facie* illegal. Considering this, the ratio of ITC to taxable turnover is 10.27% as provided by the Respondent in their reply dated 13 July 2020. Without prejudice, the Respondent has displayed as to how actual loss of ITC is 10.59% for the period December 2017 and January 2018. It is undisputed that this is a better metric than the extrapolation of the DGAP, which is purely hypothetical exercise as it is an extension of ITC loss computation up to October 2017 to a period post 15 November 2017. Hence, for the reasons submitted *supra,* the inevitable conclusion is that the Respondent has not profiteered and the proceedings deserve to be quashed forthwith.
III.B	The DGAP has sought to deny impact of direct variable costs for the reason that the same is independent of the output GST rate.	Denied *in toto*. Section 171 of the CGST Act requires a commensurate reduction in 'price' and not 'tax'. Hence, when the DGAP is analyzing the aspect of correctness of 'price', all factors which affect the same should be duly considered. The AUTHORITY in earlier orders has considered costs

		other than tax [***order dated 04 May 2018 in Case No. 03/2018 in KRBL Limited***]. Further, Article 19(1)(g) guarantees the Notice to carry on business for profit. Non- consideration of direct variable costs in computation of the commensurate price would violate Article 19(1)(g) of the Constitution. Hence, it is imperative that other costs be factored in prior to arriving in a determination of commensurate price and profiteering.
III.C	The DGAP has termed their computation of profiteering as being correct for the reason that profiteering is to be seen *qua* each supply and one cannot be substituted with the other. Further, inclusion of GST in the profiteered amount is also correct because the recipient has suffered its brunt, irrespective of the fact that the same has been deposited with the exchequer.	Denied in toto. At the outset, it is submitted that the averment of the DGAP is completely irrelevant and does not address the submission of the Respondent. The Respondent has questioned scope of supply for the purpose of investigation and consequently, determination of the profiteering. DGAP has taken "restaurant service" as the scope of supply for the purpose of investigation but determined amount of profiteering product wise. It is submitted that there is no entry in the CGST Act providing for 'restaurant services.' On the contrary, the notifications in question pertain to supply of food/ drink for valuable consideration. Without prejudice, if the scope of supply is restaurant service, then individual product prices and increase/ decrease thereof is irrelevant and a comparison must be done on average of increased cost (direct & indirect) against average increase price of the restaurant service. On the other hand if price are required to compared product wise, then investigation must be limited to the complained

		product alone. It is submitted that as per the Respondent's computation under different methods, the actual surplus revenue works out to between (-2.81%) to 0.32% and hence, cannot be construed as profiteering (applying *de-minimis* thresholds of N. P. Foods order dated 05 September 2018). The DGAP has not refuted this aspect and hence, connotes acceptance. Therefore, on this ground alone, the impugned proceedings deserve to be quashed forthwith. It is further submitted that profiteering if any, represents the amount of ill-gotten gain of the Respondent. As the Respondent has deposited the GST amount with the exchequer, it cannot represent a monies or assets of the Respondent and hence, inclusion of the same is ex-facie illegal.
III.D	The DGAP has contended that the order dated 05 September 2019 in N.P. Foods of the Authority cannot be applied to the present case. Further, it has also been contended that comparison of pre-rate reduction average price with post-rate reduction average price could not be done due to inability of the Respondent to provide details.	Denied *in toto*. Although claimed by the DGAP, it has not been demonstrated as to how the case of N. P. Foods is different from the present facts. Both are absolutely identical in terms of the product investigated and the method of calculation of ITC. However, for reasons unknown to the Respondent, the ITC (*taken at entity level*) has been compared to individual product price in the present case, while in N. P. Foods the metric taken was average increase in price. Hence, for the same service, the DGAP and Authority are following differing standards without any reasons. Applying the ratio of N.P. Foods to the present facts, it is inevitable that there cannot be an allegation of profiteering.

		Re the aspect of comparison of average pre-rate reduction prices with average post-rate reduction prices being contrary to a plethora of orders passed by the Authority, it is submitted that the Respondent provided sale register for two months on an illustrative basis vide their letter dated 29 January 2018 to the DGAP. Should the DGAP have requisitioned, the Respondent would have provided the same. Therefore, the statement of fact of the DGAP is incorrect and the Respondent cannot be punished for a fault of the DGAP.
Submissions of the Respondent dated 03 August 2020		
II.2	The DGAP has tried to discard the judicial precedents on the basis that the same are in respect of different sectors and hence, cannot be adopted.	Denied *in toto*. The DGAP cannot brush aside a judgment of a constitutional court such as the Supreme Court or the High Court merely on the ground that sectors are different. It is imperative that the DGAP follow the same in letter and spirit. As shown consistently by the Respondent, any investigation into profiteering or price fixation has a detailed methodology considering various items and aspects. In not prescribing a methodology for the present case on the same lines, the Authority has not performed its statutory duty cast in Rule 126 of the CGST Rules and therefore, the entire proceedings are vitiated. The DGAP has misinterpreted this averment.
II.3	The DGAP has refused to take into account elements of cost other than tax as that is the mandate of Section 171.	Denied *in toto*. Section 171 of the CGST Act requires a commensurate reduction in 'price' and not 'tax'. Hence, when the DGAP is analyzing the aspect of correctness of 'price', all factors which affect the same should be duly considered. Judicial precedents clearly amplify the averment that a

		law considering all costs and ensuring a reasonable return is in compliance with the tenets of Article 19(1)(g) of the Constitution of India. The Authority in earlier orders has considered costs other than tax [***order dated 04 May 2018 in Case No. 03/2018 in KRBL Limited***]. Hence, it is imperative that other costs be factored in prior to arriving in a determination of profiteering. It is further submitted that the Respondent has a fundamental right to trade and business vide Article 19(1)(g) of the Constitution of India and therefore, price fixation coinciding with the day of change in rate of tax has no bearing whatsoever for fixing a charge of profiteering on the Respondent and is infact, completely irrelevant.
II.4 and II.5	The DGAP has contended that Section 171 does not interfere with the fundamental right to trade enshrined in Article 19(1)(g) of the Constitution of India as it mandates passing on the benefit of tax to the recipient.	Denied *in toto*. As has been shown by the Respondent, prices were increased in January 2018 of certain products. This increase was based on business and commercial facts which is well within the domain of fundamental right to trade under Article 19(1)(g) of the Constitution of India. However, no adjustment has been reflected in the report. Therefore, the DGAP and the Authority are acting as price regulators, contrary to their claim that Section 171 of the CGST Act does not impose any fetters on ability of pricing.
II.6	The DGAP has contended that reversal of approximately Rs. 2.15 Crores already considered for 01 November 2017 - 14 November 2017 cannot be expunged from the quantum of ITC as net taxable turnover for the same period has also been ignored.	Denied *in toto*. Non-consideration of the correct ITC amount removing the impact of reversal for the period 01 November 2017 - 14 November 2017 for the reason that taxable turnover has also been excluded is absolutely illogical and incorrect. The impact if considered is not neutral and logically, cannot lead to the same result. Addition of amounts to numerator and denominator will necessarily lead to a change in the

		percentage and cannot mathematically be the same. Sole reason for exclusion of ITC for the period 01 November 2017 - 14 November 2017 is to illegally deny large amount of ITC taken by the Respondent during this period. As stated earlier each and every paisa taken by the Respondent as ITC remains undisputed by the GST Authorities.
II.7	The DGAP has contended that amount of transitional credit being Rs. 5.18 Crores cannot be included in the ITC quantum since the impact of reversal of ITC done on 14 November 2017 has also been excluded and hence, balance each other out.	Denied *in toto*. The amount of transitional credit is Rs. 5.18 Crores while that reversed is Rs. 4.18 Crores. Hence, there is no question of balancing and non-consideration has a prejudicial impact on the Respondent. On the basis of this, the ratio of ITC to taxable turnover will be 11.03%, much greater than the average price increase of 10.45%.
II.8	The DGAP has relied upon their averments at Paragraph II.6 *supra* to hold that cost of ITC on closing inventory (*being 13.80%*) as of 14 November 2017 has no bearing on the present facts.	Denied *in toto*. The ratio of ITC to cost of closing turnover of inventory being 13.80% shows that the approximate cost of ITC should be in the same range. The reason why the DGAP has computed the ratio at 9.11% is because of inclusion of the months of July and August 2017, during which period the Respondent was carrying forward pre-GST inventory and hence, artificially reduces the cost of ITC over the period July 2017 – October 2017. Being akin to a statistical exercise, it is trite that outlier months of July 2017 and August 2017 be excluded from the present investigation.

56. A copy of the rejoinder of the Respondent was supplied to the DGAP for filing clarifications under Rule 133 (2A) of the CGST Rules, 2017. Accordingly, the DGAP has filed his clarifications on 16.10.2020 which are mentioned as under:-

Para III A (iv) Point No. 1 & 2:

That the product wise turnover would not suffice as in cases of rejections, the same would have to be deducted which was possible only in case of invoice wise details. Further, random checks of the invoices for the ITC availed in November, 2017 revealed that in some cases, credit was taken by the Respondent without being in possession of these invoices on the date of availing of ITC, in contravention of the provisions of Section 16 (2) (a) of the CGST Act, 2017. Therefore, the turnover and the ITC pertaining to the invoices issued on or after 01.11.2017 and availed during 01-14th November 2017, have been left out. Reference may also be made to points A, B & C on pages 3 to 7 of DGAP's Office letter No. 22011/API/5/2017/2594 dated 08.08.2018. It was not as if the entire ITC for the period from 01.11.2017 to 14.11.2017 has been denied. In fact, since for this period, both the ITC and the turnover have not been considered, it would not have any impact on ITC to turnover ratio.

Para III A (iv) Point No. 4:

The Respondent was eligible to avail ITC during July 2017 to 14th November 2017 for all the services he was entitled to. The Respondent was eligible to take proportional credit till the period the same was available e.g. proportional credit of variable rent could be taken by the Respondent till 14.11.2017. The ITC between 01.11.2017 to 14.11.2017 has not been denied by DGAP. In fact, since for this period, both the ITC and turnover have not been considered, it would not have any impact on the ITC to turnover ratio.

Para II.6:

Regarding reversal of ITC for the period from 01.11.2017 to 14.11.2017 towards ITC carried forward on the inventory as on 15.11.2017, it was submitted that both the net taxable turnover as well as ITC for the same period has been excluded for calculation of ITC loss. Therefore, this reversal has no bearing on the ITC loss.

Para II.7:

The Respondent was availing CENVAT Credit of tax paid on input services and capital goods along with ITC of VAT on the purchase of goods in the pre-GST period and has carried forward Transitional Credit of Rs. 5.18 Crore on 01.07.2017 for the stock held on 30.06.2017. Full ITC was allowed after implementation of GST w.e.f. 01.07.2017 on purchase of Inputs, Input Services and Capital Goods on or after 01.07.2017 (which the Respondent has also availed). Respondent has informed during the investigation that he usually carried the same level of inventory at the end of each period and therefore, carried the same level of inventory as on 30.06.2017 and on 31.10.2017. Therefore, for the purpose of computing ratio of denial of ITC to taxable turnover, the ITC for the period from July, 2017 to October, 2017, as furnished in the GSTR-3B Returns filed by the Respondent, has been considered by adding the amount of input tax credit pertaining to the period from July, 2017 to October, 2017, as furnished in the GSTR-3B Returns filed by the Respondent, but availed in the month of November, 2017 as per GSTR-3B Return and excluding the amount of tax paid on inter unit branch transfers as per

Sales Register and the ITC pertaining to the period before July, 2017 which was availed during July, 2017 to October, 2017 as per GSTR-3B Returns. Therefore, this contention of the Respondent was untenable.

57. The above clarifications of the DGAP were supplied to the Respondent for filing final re-joinder vide order dated 21.10.2020. Accordingly the Respondent has filed re-joinder dated 28.10.2020. The submissions of the Respondent are mentioned as follows:-

Paragraph reference in DGAP submissions dated 15 October 2020	**Allegation of DGAP**	**Submission of Respondent**
Para IIIA(iv) Point No. 1 & 2	Period 01 November 2017 – 14 November 2017 cannot be included for the following reasons:	Denied *in toto*. At the outset, it is submitted that the DGAP has not raised any new and/ or additional point. A detailed rebuttal has been provided in the submissions dated 21 September 2020 and the same may be treated as part and parcel of the present rebuttal.
	(a) Net taxable turnover cannot be computed on the basis of SKU Sales but on the basis of invoice sales only; (b) Input Tax Credit (**"ITC"**) has been taken in contravention to Section 16(2)(a) of the Central Goods and Services Tax Act, 2017 (**"CGST Act"**) as revealed by random checks; (c) As both ITC and turnover for this period have been excluded, it will have n bearing on computation of ITC cost.	In addition, it is submitted that the reason for exclusion for want of invoice details is illegal as the DGAP could have directed the Respondent to provide the same. In the absence of a specific direction, the DGAP is seeking to hide their own shortcomings in the investigation. It is submitted that determination of profiteering under Section 171 of the CGST Act has to be based on a scientific manner and cannot vary on the basis of the information supplied by the Respondent. It is the statutory mandate of the DGAP to conduct investigation properly. *Re* the aspect of invoices and ITC Section 16(2)(a) of the CGST Act, it is submitted that detailed justification including copies of invoices have been provided which show that Respondent was entitled to ITC and therefore, this cannot be a cause to remove this period.

		Lastly, it is submitted that exclusion of both ITC and turnover for November 2017 results in change in the cost of ITC and hence, is not mathematically equivalent. As an example, if ITC for July 2017 – October 2017 was Rs. 10/- and turnover was Rs. 80/, the cost of ITC is 12.5% (*10/80%*). Assuming that credit for 01 November 2017 – 14 November 2017 is Rs. 3/- and turnover is Rs. 12/- the cost of ITC will be enhanced to 14.13% (*13/92%*). Hence, this reason of the DGAP is erroneous and devoid of common sense.
Para IIIA(iv) Point No. 4	Although the DGAP holds that the Respondent is entitled to take ITC on invoices till 14 November 2017 and such availment has not been denied by the DGAP, the fact that both ITC and turnover for November 2017 have been excluded results in a mathematical equivalence. A bare perusal of the submissions dated 24 August 2020 of the DGAP would show that the ITC of invoices pertaining to the period 01 November 2017 14 November 2017 received after 15 November 2017 cannot be availed, and hence, cannot be factored in the computation of the ITC to turnoverratio.	Denied *in toto*. The Respondent has made a detailed rebuttal against this aspect in their rejoinder dated 21 September 2020 and the same may be treated as part and parcel of the present submission. It is also submitted that the DGAP should compute ITC on the basis of entitlement/eligibility and date of receipt of invoice in this regard should be immaterial as long as the date of the invoice is prior to 15 November 2017 as this represents a vested right of the Respondent to take ITC per Section 16(4) of the CGST Act. DGAP has not provided any comment whatsoever with respect to Section 16(4) of the CGST Act. Further, mere exclusion of both ITC and turnover for November 2017 being neutral is illogical and devoid of common sense. It is submitted that by same logic, if turnover and ITC for the month of July 2017 is excluded of the computation of the DGAP, there is vast change in the ITC percentage as shown below. Hence, this reason of the DGAP is erroneous and devoid of common sense.
Para II.6	Adjustment towards ITC on closing stock on 14 November 2017 is not to be taken since exclusion of ITC and turnover for the month of November 2017 results in no change of the cost of ITC for the period July 2017 – October 2017.	Denied in toto. It is submitted that detailed submissions have been made in the rejoinder dated 21 September 2020 and the same may be treated as part and parcel of the present submission. Further, it is reiterated that exclusion of both ITC (including reversal and transitional credits) and turnover for November 2017 cannot and will not result in the same ratio as has been demonstrated above. This submission of the DGAP is devoid of common sense and deserves to be quashed forthwith.
Para II.7	The DGAP has contended that amountof transitional credit being Rs. 5.18 Crores cannot be included in the ITC quantum since the impact of reversal of ITC done on 14 November 2017 has also been excluded and hence, balance each other out.	Denied in toto. The amount of transitional credit is Rs. 5.18 Crores while that reversed is Rs. 4.18 Crores. Hence, there is no question of balancing and non-consideration has a prejudicial impact on the Respondent and will never be mathematically equivalent.

a. The Respondent has also submitted that in the present case, the DGAP has determined that the ratio of ITC to taxable turnover was 9.11% for the period from July 2017-October 2017. During this period, the applicable output rate of GST was 18%. As 9.11% was already available as ITC, the net output tax payment was 8.89% [*18%-9.11%*]. With effect from 15 November 2017, rate of tax has been reduced to 5.45% (*being 5% of 109.11)* with a complete blockage of ITC and hence, the effective benefit of reduction in rate of tax was 3.44% [*8.89% - 5.45%*].

b. It is also submitted by the Respondent that the DGAP, in respect of some items, has computed the profiteered amount in excess of the amount of the benefit of the reduction in the rate of tax after adjustment of the ITC. By virtue of the aforesaid explanation, the profiteered amount would be restricted to the 3.44% of the base price, even though the price increase was in excess of 3.44%.

c. It was further submitted by the Respondent that the correct cost of ITC was 10.78% and hence, the net output payment in tax prior to the rate change was 7.22% *[18%-10.78%]* and therefore, the actual reduction in tax after the rate change was 5.54% [*being 5% of 110.78*). Subsequently, the actual benefit of reduction in the rate of tax was 1.68% *[7.22%-5.54%]*. Further, there was incremental cost of 1.16% (on base price increase solely due to additional ITC cost) in the form of variable rent etc. and therefore, the amount of the benefit of the reduction in the rate of tax after adjustment of the ITC and incremental cost worked out to 0.52% [*7.22%-(5.54%+1.16%)*]. Thus, if the profiteering was computed item-wise and not for restaurant service as claimed by the Respondent, the revised computation of the alleged profiteering was computed in Annexure-2. However, there would not be any profiteering if profiteering was computed

for supply of restaurant service per initiation notification dated 29 December 2017.

58. The Respondent has also filed additional submissions dated 21.11.2020 wherein it has been submitted that the alleged complaint was against a supply made from an outlet of the Respondent having GSTIN 27AAAFH1333H1ZT, located in the State of Maharashtra and therefore, alleged profiteering investigation under Section 171 (2) has to remain confined to the supplies made vide the said GSTIN. However, the investigation Report has covered supplies made by other GSTIN also and therefore, investigation in respect of the following GSTINs was *ultra vires* of Section 171 (2) of the CGST Act:-

S/N	GSTIN	State
1.	24AAAFH1333H1ZZ	Gujarat
2.	30AAAFH1333H1Z6	Goa
3.	22AAAFH1333H1Z3	Chhattisgarh
4.	23AAAFH1333H1Z1	Madhya Pradesh
5.	32AAAFH1333H1Z2	Kerala
6.	33AAAFH1333H1Z0	Tamil Nadu
7.	29AAAFH1333H1ZP	Karnataka
8.	36AAAFH1333H1ZU	Telangana
9.	37AAAFH1333H1ZS	Andhra Pradesh

59. We have carefully considered the complaints made by the Applicant No. 1 to 4, the Reports and the clarifications furnished by the DGAP and the oral and written submissions filed by the Respondent and it is revealed that the Respondent is a company registered under the Companies Act, 1956 and is engaged in the business of operating quick service restaurants under the brand name of "Mcdonalds" under a franchisee

agreement with the multi-national company Mcdonalds India Private Limited. The Respondent is operating about 300 restaurants in the 10 States of Andhra Pradesh, Chhattisgarh, Goa, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Tamilnadu and Telangana. He was selling 1844 products as on 15.11.2017 when the rate of GST on the restaurant services being provided by him was reduced from 18% to 5% by the Central and the State Governments vide Notification No. 26/2017-Central Tax (Rate) dated 14.11.2017 with the stipulation that the Respondent would not be entitled to the benefit of ITC on the above service w.e.f. 15.11.2017. Accordingly, the Respondent was required to pass on the benefit of tax reduction to his recipients as per the provisions of Section 171 of the CGST Act, 2017 and its consequences if he did not pass on the above benefit. Section 171 states 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 or both."

60. Keeping in view the above provisions of Section 171 the following issues need to be determined in the present proceedings:-

(iv) Whether the Respondent has passed on the benefit of tax reduction to his customers w.e.f. 15.11.2017 as per the provisions of Section 171 (1) or not?

(v) If not then what is the quantum of the profiteered amount as per the provisions of Section 171 (1) read with the Explanation attached to Section 171?

(vi) Whether he is liable to the penalty prescribed under Section 171 (3A)?

61. It is also revealed that the Applicants No. 1 to 4 had lodged complaints on 15.11.2017, 17.11.2017 and 23.11.2017, alleging that the Respondent had charged price of Rs. 142/- vide invoice No. 210 dated 07.11.2017 on the product 'Mccafe Reg Latte' before the tax reduction and had again charged the same price of Rs. 142/- on the above item vide invoice No. 320 dated 15.11.2017, after the rate of tax had been reduced from 18% to 5% and hence, he had not passed on the benefit of tax reduction to the customers. The above complaints were examined by the Standing Committee on Anti-Profiteering under Rule 128 (1) of the above Rules and were forwarded to the DGAP for detailed investigation as per the provisions of Rule 129 (1). The DGAP had issued notice for initiation of investigation for collecting evidence under Rule 129 (3) and asked the Respondent whether he admitted that he had not passed on the benefit of tax reduction on the restaurant services being supplied by him and if so to suo moto determine the benefit not passed on and submit all the supporting evidence. On the basis of the information supplied by the Respondent the DGAP had conducted detailed investigation and submitted his Report on 15.06.2018 under Rule 129 (6).

62. The DGAP had submitted in his above Report that the Respondent was selling 1,844 products and after comparing the price lists published before and after 15.11.2017, when the rate of tax was reduced, which was indicated in Annexure-32, the Respondent had increased the base prices in respect of 1,774 (96.20%) products. He had further submitted that although the Respondent had charged GST @ 5% on and after 15.11.2017 but due to increase in the base prices the customers were forced to pay the same prices or more which were

being charged from them before 15.11.2017, whereas they should have been charged the lower prices after commensurate reduction due to reduction in the rate of tax and hence they were denied the benefit of tax reduction in terms of Section 171 (1).

63. The DGAP had computed the ITC as a percentage of the total taxable turnover as 9.11% vide Annexure-33 of his above Report to compare it with the increase in the average base price of each product post rate reduction to arrive at the profiteered amount. He had calculated the ITC from the period from 01.07.2017 to 31.10.2017 as the breakup of the closing stock of inputs and the ITC on the closing stock as on 14.11.2017 was not available in the GSTR-3B Return of November, 2017 filed by the Respondent. The DGAP had also intimated that the date wise outward taxable turnover was also not supplied by the Respondent up to 14.11.2017. The DGAP while determining the ITC as a ratio of the total taxable turnover of the Respondent had taken into account the ITC for the period from July, 2017 to October, 2017, as was shown in the GSTR-3B Returns, which had been adjusted by adding the amount of ITC which was availed in the month of November, 2017 as per GSTR-3B Return (Annexure-34) and by excluding the amount of tax which was paid on inter unit branch transfers as per the Sales Register (Annexure-33) and the input tax credit pertaining to the period before July 2017 which was availed during the period between July, 2017 to October, 2017 as per the GSTR-3B Returns (Annexure-35).

64. On the basis of the analysis of the details of the product-wise outward taxable supplies made during the period between 15.11.2017 to

31.01.2018, the DGAP had found that the Respondent had increased the base prices of the items supplied by him to neutralise the effect of ITC of 9.11% which was not available to him after the rate reduction w.e.f. 15.11.2017. The DGAP had compared the pre and post GST rate reduction average prices of the items sold during the period between 15.11.2017 to 31.01.2018 and after taking into account the entire quantity of the products sold during the above period, he had found that the Respondent had increased the average output taxable value i.e. the base price by 10.45% to offset the denial of input tax credit of 9.11% as was evident from Annexure-36 of the Report. Therefore, the DGAP had concluded that the Respondent had not passed on the benefit of reduction in the rate of tax from 18% to 5% as he had increased the base prices by more than 9.11% to 100.09% in respect of 1,730 items out of total 1,844 items i.e. 93.82% of the total items supplied by him after 15.11.2017.

65. The DGAP had also stated that on the basis of the pre and post reduction GST rates, the impact of the denial of ITC and the details of the outward supplies made during the period between 15.11.2017 to 31.01.2018, as per the GSTR-1 or GSTR-3B Returns of the Respondent, 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 18% to 5%, with denial of ITC, the profiteered amount came to Rs. 7,49,27,786/- in respect of the above 10 States as per Annexures-37 of the Report. Accordingly, after careful consideration of the Report of the DGAP and the submissions of the Respondent, this Authority had held the Respondent liable for profiteering under Section

171 (1) of the above Act and directed him to deposit the profiteered amount vide order dated 16.11.2018.

66. The Respondent had filed Writ Petition No. 3492/2018 before the Hon'ble High Court of Bombay against the order dated 16.11.2018, which vide its Judgement dated 01.10.2019 had set aside the above order and remanded the case back to this Authority. However, the Respondent had filed another Writ Petition No. 3536/2019 before the Hon'ble High Court of Bombay challenging constitutional validity of Rule 126 of the CGST Rules, 2017. This Authority had filed Transfer Applications No. 290-292/2020 before the Hon'ble Supreme Court for transfer of the above Writ Petition to the Hon'ble High Court of Delhi and the Hon'ble Supreme Court had transferred the above Writ Petition to the Hon'ble High Court of Delhi vide its order dated 19.02.2020 which was listed as Writ Petition (C) No. 3909/2020 before the Hon'ble High Court of Delhi. The above Writ Petition was listed before the Hon'ble High Court on 06.07.2020 when it was withdrawn by the Petitioner with the liberty to raise all the issues before this Authority. Accordingly, the Respondent has raised the following issues vide his submissions mentioned above, which have been discussed in the subsequent paras.

67. The Respondent has stated that as per Rule 133 (1) the last date for passing of the order in this case was on or before 17.09.2018 as the order was required to be passed within a period of three (3) months from the date of receipt of the Report from the DGAP on 18.06. 2018, however, the order was passed on 16.11.2018, therefore, the proceedings have abated and could not be revived under the remand proceedings. In this connection perusal of the record shows that the Report of the DGAP was received by this Authority on 18.06.2018 and

was considered by this Authority in its meeting held on 05.07.2018 and the Respondent was directed vide notice dated 05.07.2018 to appear on 24.07.2018. The Respondent had filed his written submissions on 24.07.2018 which were sent to the DGAP on 24.07.2018 for filing Report on the reply filed by the Respondent. The DGAP had filed his Report on 07/08.08.2018. The Respondent had again filed additional submissions on 09.08.2018 which were sent to the DGAP on 14.08.2018 for filing further Report. The Respondent had further filed additional submissions on 16.08.2018 which were also sent to the DGAP for filing Report. The DGAP had filed his Report on the above submissions of the Respondent on 20.08.2018. As per the provisions of Rule 129 the findings of the DGAP are required to be furnished to this Authority in the form of a Report under Rule 129 (6). There is no other method of furnishing information to this Authority by the DGAP except by way of furnishing a Report under the above Rule. Since, the last Report was furnished by the DGAP to this Authority on 20.08.2018 hence it has to be considered the date for computing the period of 3 months under Rule 133 (1) of the above Rules for passing of the order. Since, the order was passed on 16.11.2018 it was well within the time limit of 3 months prescribed under the above Rule. Moreover, no just and equitable order could have been passed without giving opportunity of rebuttal to both the parties as per the principles of natural justice. The Respondent had also filed written submissions repeatedly, the last of which were filed on 22.08.2018. If the Respondent was so much concerned with the time limit prescribed under Rule 133 (1) then he should not have filed additional written submissions time and again. In case the time taken by the Respondent to file the additional written submissions is excluded up to 22.08.2018

from the period of limitation prescribed under Rule 133 (1), the order dated 16.11.2018 has been passed perfectly well within the period of 3 months. Further, pursuant to the final judgment of the Hon'ble High Court of Bombay dated 01.10.2019, the proceedings against the Petitioner before this Authority have been "restored". The averment of the Respondent that the proceedings cannot be resurrected being time barred under Rule 133 (1) amounts to review and contempt of the final judgment of the Hon'ble High Court which the Respondent cannot do as he has no such authority. In view of the above the contention of the Respondent that the time period under Rule 133 (1) would start from the date of receipt of Report from the DGAP on 18.06.2018, as per Para 13 of the Methodology & Procedure 2018 and the period during which replies were sought from the DGAP under Para 17 could not be excluded from the period of 3 months is incorrect as every reply filed by the DGAP has to be considered as a Report under Rule 129 (6). Hence, the present proceedings have not abated and therefore, the above claim of the Respondent is not tenable.

68. In this connection it would also be relevant to mention that the time limit prescribed under Rule 133 (1) is only directory and is not mandatory as no consequences have been provided in the above Rule or the CGST Act, 2017 in case the limit of 3 months is not observed. The Hon'ble High Court of Delhi while considering the time limit specifically prescribed under Rule 133 (1) vide its order dated 27.01.2020 passed in W. P. (C) 969/2020 in the case of ***M/s Nestle India Ltd. & another. v. Union of India & others*** has ruled as under:-

"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the Authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non adherence of the staid period of six months is prescribed either in the CGST Act or the rules framed there under."

69. Reliance in this regard is also placed on the judgment of the Hon'ble Supreme Court in the case of ***Mahadev Govind Gharge v. Special Land Acquisition Officer (2011) 6 SCC 321*** wherein it was held that:-

"37. Procedural laws, like the Code, are intended to control and regulate the procedure of judicial proceedings to achieve the objects of justice and expeditious disposal of cases. The provisions of procedural law which do not provide for penal consequences in default of their compliance should normally be construed as directory in nature and should receive liberal construction. The Court should always keep in mind the object of the statute and adopt an interpretation which would further such cause in light of attendant circumstances. To put it simply, the procedural law must act as a linchpin to keep the wheel of expeditious and effective determination of dispute moving in its place. The procedural checks must achieve its end object of just, fair and expeditious justice to parties without seriously prejudicing the rights of any of them."

70. Reliance in this regard is further placed on the following judgement of the Hon'ble Supreme Court passed in the case of ***P. T. Rajan v. T. P. M. Sahir and Ors. (2003) 8 SCC 498***:-

"48. It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory. (See Shiveshwar Prasad Sinha v. The District Magistrate of Mongher & Anr. AIR (1966) Patna 144, Nomita Chowdhury v. The State of West Bengal & Ors. (1999) CLJ 21 and Garbari Union Co-operative Agricultural Credit Society Limited & Anr. V. Swapan Kumar Jana & Ors. (1997) 1 CHN 189).

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused."

Therefore the time limit prescribed under Rule 133 (1) is not mandatory and it is only directory as has been specifically ruled by the Hon'ble High Court of Delhi in respect of Rule 133 (1) and in the judgements of the Hon'ble Supreme Court. Therefore, the contention of the Respondent that Notification No. 31/2019-Central Tax dated 28 June 2019, which extended time from 3 months to 6 months by amending the Rule 133 (1) would become redundant is untenable. Accordingly, the judgment of the Hon'ble High Court of Karnataka in the case of ***RNS Infrastructure v. Income Tax Settlement Commission [MANU/KA/3116/2016]*** is also not being relied. Hence all the claims

made by the Respondents on the ground of not observing the time limit prescribed by the above Rule or its being mandatory are wrong.

71. The Respondent has also stated that the order dated 16.11.2018 was passed in a cursory manner as was evident from Para 35 and 16 of the order. Vide Para 35 it was recorded that "*The respondent has wrongly claimed that the DGAP had assessed that the respondent had made a profit of ₹ 24,81,33,857 due to the average increase in the base price by 10.45%. The claim made by the Respondent is incorrect as the DGAP has taken the above amount as additional sales realisation made by the Respondent on account of the increase in the prices and not the profiteered amount as this amount has been assessed to be ₹ 7,49,27,786 only as per Annexure-37 of the report submitted by the DGAP.*" However, vide Para 16 of the same order this Authority has recorded that "*the respondent has also pleaded that the DGAP has concluded that the turnover has increased by ₹ 24,81,33,857 solely due to the increase in the base price by 10.45%.*" The above claim of the Respondent is absolutely wrong as both these paras are not contradictory. In para 16 it has been clearly recorded that the Respondent had himself claimed that his turnover has increased by ₹ 24,81,33,857/-, due to increase in the prices and his profit margin was 9.43%, which could be taken as the profiteered amount as it was due to increase in the prices however, in Para 35 it was clarified that the above amount was not the profiteered amount. The Respondent had also submitted a Table in support of his above claim in Para 16. Hence, there is no contradiction in the above two paras.

72. The Respondent has further submitted that the observations of this Authority made at Para 36 of the order dated 16.11.2018 were wrong,

which stated that "the Respondent has himself admitted that the DGAP has calculated the ratio of denial of ITC to total taxable turnover as 9.11% whereas it was 9.43% as per his own assessment and hence he has profiteered by 0.32% which demolishes his entire defence of having not profiteered". The Respondent has also invited attention to the Table mentioned in Para 16, from which the figure of 9.43% has been taken. The Respondent has also submitted that his effective margin was 9.43% after considering his incremental revenue and incremental cost. If the ITC loss computed by the DGAP @ 9.11% was taken as sacrosanct, then the gain would be meagre 0.32%. However, this ITC loss @ 9.11% computed by the DGAP was disputed at Para 27 where the Respondent has claimed historical ITC loss @10.27%. Attention has also been invited to the Table furnished in Para 20 of the order where the Respondent has projected net loss in the range of 0.67% to 2.81% of the turnover. In this regard it would be pertinent to mention that vide his submissions dated 24.07.2018 in Para C (V) the Respondent had himself submitted that "Therefore, the profit after considering the incremental cost works out to 9.43%." As the denial of benefit of ITC was only 9.11% and as per the admission of the Respondent his profit was 9.43%, therefore, he had clearly admitted profiteering of 0.32%. The Respondent is intentionally trying to mislead to wriggle out of his above admission by stating that his historical ITC loss was 10.27% and his net loss was in the range of 0.67% to 2.81% of the turnover. Therefore, the observations made by this Authority in Para 36 of the order are absolutely correct and hence, the claim made by the Respondent on this ground is completely wrong and fallacious.

73. The Respondent has also claimed that the findings recorded in Para 37 of the order dated 16.11.2018 were not correct as he had given reasons in Para 18 of the above order for computing the ratio of ITC to turnover on the basis of the ITC availed during the month of October or September and October 2018. In this connection it would be pertinent to mention that computation of the above ratio on the basis of the ITC availed by the Respondent during the month of September or September and October had no reason except that the ratio if calculated on the basis of the ITC availed in these months would have been more than the ratio of 9.11% computed by the DGAP. The Respondent had failed to explain why the above ratio should not be calculated from the month of July to October 2018 or why it should not be computed on the basis of the ITC availed during the month of August 2018. The most appropriate, reasonable and justifiable method would have been by computing the above ratio on the basis of the ITC availed during the months from July to October 2018 which the DGAP has adopted. The above claim of the Respondent was further not reliable due to the reason that he had neither given any evidence nor supplied details during the investigation to prove that he had procured inventory of 25 Crore before coming in to force of the GST w.e.f. 01.07.2017 due to which his availment of ITC was low in July and August. There is also doubt that the period of consumption of inventory of perishable goods used in the restaurant service would have been spread over a period of 2 months. Maintaining of inventory of apprx. 27% of the turnover for the month of July 2018 also appears to be exaggerated. The Respondent has also not explained why the ITC availed by him during the months of July and August was only Rs. 3,86,39,749/- and Rs. 7,19,89,428/-

respectively when his net taxable turnover was Rs. 91,73,07,681/- and Rs. 94,48,23,817/- for the above two months whereas his ITC was Rs. 9,30,52,745/- and Rs. 13,59,26,262/- for the months of September and October 2018 respectively but his turnover was Rs. 80,02,25,442/- and Rs. 98,38,48,569/- only for the above months. In case the turnover was more he should have availed more ITC. The only inference which can be derived from the above mismatch is that the Respondent had not claimed ITC during the months of July and August 2018 on the purchases made by him in these months and had booked them in the months of September and October 2018. Therefore, the DGAP has rightly taken the average of the 4 months to compute the above ratio. Accordingly, the above claim of the Respondent is wrong and the observation of this Authority made in Para 37 is correct.

74. The Respondent has further claimed that in Para 39 this Authority has observed that "the Respondent has himself admitted that he had made marginal gain of 2.81% and the total profiteering was to the tune of ₹ 3,17,03,988/-. After this admission, the Respondent can hardly claim that the price increase was based on the audited statements." In this regard attention was invited to the Table at Para 20 wherein the Respondent had computed Net Marginal Gain/(Loss). The figure 2.81% was in brackets which meant loss. In this regard it would be pertinent to mention that the Respondent had no where mentioned the figure of 2.81% as loss as it was mentioned as "Net margin/Gain/(Loss). The above figure cannot be treated to be loss when the Respondent has himself admitted profiteering of Rs. 3,17,03,988/- vide Para G (VIII) (ii) of his submissions dated 24.07.2018. Hence, the above claim of the Respondent is incorrect.

75. The Respondent has also contended that in Para 40, this Authority has wrongly observed that the Respondent has failed to provide his methodology which has been duly recorded at Para 16, 20 and 27 of the order. In this regard it would be relevant to mention that the Respondent had allegedly floated three methodologies viz. (i) on the basis of the incremental cost on royalty, rent and other expenses (ii) on the basis of the audited financial statements and (iii) on the basis of the ratio of ITC to turnover from 01.07.2017 to 14.11.2017. Perusal of the above methodologies shows that all of them were based on different parameters and they basically computed the loss and profit of the Respondent and not the amount of benefit to be passed on. Even if the Respondent had computed the denial of ITC more than 9.11% it was incumbent upon him to prove to what extent the price increase made by him has resulted in passing on the benefit of tax reduction. He had also not given the details of the prices which he had commensurately fixed in respect of each product after the rate reduction to justify his methodology. By no stretch of imagination the Respondent can claim that increase in prices made by him was less than the denial of benefit of ITC as he has increased his prices from more than 9.11% to 100.09% as is evident from the perusal of Annexure-32 of the Report. A list of the top 20 products in which the prices were increased by more than the computation of loss of ITC even by the Respondent himself, are mentioned in the Table below:-

S.No.	Menu Product Name	Average Price of Oct. to 14.11.2017	Average Price of 15.11.2017 to 31.01.2018	Increase in price
1	DOSA MASALA BRIOCHE+CAPP@50	42.36	84.76	100.09%
2	DOSA MASALA BRIOCHE+CAPP@50	42.36	84.76	100.09%
3	DOSA MASALA BRIOCHE+CAPP@50	42.36	84.76	100.09%

4	HM INDI CHATP NAAN KEBAB	30.14	48.00	59.26%
5	FRIES MED 2 WEDGES MED	3.38	5.18	53.13%
6	HM INDI CHATP NAAN KEBAB	33.39	48.00	43.75%
7	HM -AMERICAN CHEESY VEG	57.93	80.38	38.75%
8	HM -CHEESY ITALIANO VEG	58.03	80.38	38.51%
9	HM -CHEESY ITALIANO CHK	68.81	94.66	37.57%
10	HM INDI CHATP NAAN KEBAB	35.01	48.00	37.11%
11	NP6-HAPPY MEAL P PUFF	17.16	23.24	35.43%
12	NP6-HAPPY MEAL EGG BURGER	17.16	23.24	35.43%
13	NP6-HAPPY MEAL P PUFF	17.16	23.24	35.43%
14	NP6-HAPPY MEAL ALOO TIKKI	17.16	23.24	35.43%
15	NP6-HAPPY MEAL ALOO TIKKI	17.16	23.24	35.43%
16	NP6-HAPPY MEAL EGG BURGER	17.16	23.24	35.43%
17	NP6-HAPPY MEAL P PUFF	17.16	23.24	35.43%
18	NP6-HAPPY MEAL EGG BURGER	17.16	23.24	35.43%
19	NP6-HAPPY MEAL ALOO TIKKI	17.16	23.24	35.43%
20	HM -AMERICAN CHEESY CHK	69.92	94.66	35.39%

Moreover, all the three methodologies were contradictory as the Respondent was himself not sure which methodology should be adopted. The alleged methodologies were not reasonable, logical and equitable and in consonance with the provisions of Section 171 and hence they could not be termed as the methodologies under Section 171. Hence, the above claim of the Respondent is untenable.

76. The Respondent has also argued that this Authority was required to determine the *'methodology'* and *'procedure'* but the Respondent was unaware about framing of methodology nor he has been provided any computation methodology till date. The above contention of the Respondent is frivolous as the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and ITC or for computation of the profiteered amount has been outlined in Section 171 (1) of the CGST Act, 2017 itself which provides that *"any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."* It is clear from the plain reading of the above provision that it

mentions "reduction in the rate of tax or benefit of ITC" which means that if any reduction in the rate of tax is ordered by the Central and the State Governments or a registered supplier avails benefit of additional ITC post GST implementation, the same have to be passed on by him to his recipients since both the above benefits are being given by the above Governments out of their scarce and precious tax revenue. It also provides that the above benefits are to be passed on any supply i.e. on each product or unit of construction or service to every buyer and in case they are not passed on, the quantum of denial of these benefits or the profiteered amount has to be computed for which investigation has to be conducted in respect of all such products/units/services by the DGAP. What would be the 'profiteered amount' has been clearly defined in the explanation attached to Section 171 quoted above. These benefits can also not be passed on at the entity / organisation / branch/ invoice/ business vertical level as they have to be passed on to each and every buyer at each product/unit/service level by treating them equally. The above provision also mentions "any supply" which connotes each taxable supply made to each recipient thereby making it evident that a supplier cannot claim that he has passed on more benefit to one customer on a particular product therefore he would pass less benefit or no benefit to another customer than what is actually due to that customer, on another product. Each customer is entitled to receive the benefit of tax reduction or ITC on each product or unit or service purchased by him subject to his eligibility. The term "commensurate" mentioned in the above Sub-Section provides the extent of benefit to be passed on by way of reduction in the price which has to be computed in respect of each product or unit or service based on the price and the

rate of tax reduction or the additional ITC which has become available to a registered person. The legislature has deliberately not used the word 'equal' or 'equivalent' in this Section and used the word 'Commensurate' as it had no intention that it should be used to denote proportionality and adequacy. The benefit of additional ITC would depend on the comparison of the ITC/CENVAT credit which was available to a builder in the pre-GST period with the ITC available to him in the post GST period w.e.f. 01.07.2017. Similarly, the benefit of tax reduction would depend upon the pre rate reduction price of the product and quantum of reduction in the rate of tax from the date of its notification. Computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product or unit to unit or service to service and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a buyer. Similarly, computation of the profiteered amount is also a mathematical exercise which can be done by any person who has elementary knowledge of accounts and mathematics as per the Explanation attached to Section 171. However, to further explain the legislative intent behind the above provision, this Authority has been authorised to determine the 'Procedure and Methodology' which has been done by it vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. However, no fixed mathematical formula, in respect of all the Sectors or the products or the services, can be set for passing on the above benefits or for computation of the profiteered amount, as the facts of each case are different. In the case of one real estate project, date of start and completion of the project, price of the flat/shop, mode of

payment of price or instalments, stage of completion of the project, rates of taxes pre and post GST implementation, amount of CENVAT credit and ITC available, total saleable area, area sold and the taxable turnover received before and after the GST implementation would always be different from the other project and hence the amount of benefit of additional ITC to be passed on in respect of one project would not be similar to the other project. Therefore, no set procedure or mathematical methodology can be framed for determining the benefit of additional ITC which has to be passed on to the buyers of the units. Moreover, this Authority under Rule 126 has been empowered to 'determine' Methodology & Procedure and not to 'prescribe' it. Similarly, the facts of the cases relating to the sectors of Fast Moving Consumer Goods (FMCG), restaurant service, construction service and cinema service are completely different from each other and therefore, the mathematical methodology adopted in the case of one sector cannot be applied to the other sector. Moreover, both the above benefits are being given by the Central as well as the State Governments as a special concession out of their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and therefore, they are bound to pass on the above benefits as per the provisions of Section 171 (1) which are abundantly clear, unambiguous, mandatory and legally enforceable. The above provisions also reflect that the true intent behind the above provisions, made by the Central and the State legislatures in their respective GST Acts, is to pass on the above benefits to the common buyers who bear the burden of tax and who are unorganised, voiceless and vulnerable. The Respondent is trying to deliberately mislead by claiming that he was

required to carry out highly complex and exhaustive mathematical computations for passing on the benefit of tax reduction which he could not do in the absence of the methodology framed by this Authority. However, no such elaborate computation was required to be carried out as the Respondent was to maintain the base prices of the products which he was charging as on 14.11.2017, add 9.11% of the base prices on account of denial of ITC and charge GST @ 5% w.e.f. 15.11.2017. Instead of doing that he has raised his prices by more than 9.11% to 100.09%. As is evident from the invoice dated 07.11.2017 the base price of the product Mccafe Reg Latte was Rs. 120.34 and after adding GST @ 18% of Rs. 21.66, the Respondent had sold it at the price of Rs. 142. After the reduction in the rate of tax w.e.f. 15.11.2017 he was required to maintain the pre rate reduction base price of Rs. 120.34 but he had increased it by Rs. 14.90 to Rs. 135.24 and charged Rs. 6.76 on account of GST @ 5% and again sold it at the price of Rs. 142/- as is evident from the invoice dated 15.11.2017 and hence, he had not only forced his customers to pay extra base price of Rs. 3.94 but he had also compelled them to pay additional GST of Rs. 0.20 on the above additional price and hence he had denied the benefit of tax reduction or he had profiteered to the extent of Rs. 4.14 by increasing his prices by 12.38% instead of 9.11% on the above item. Had the Respondent not increased the price of the above product the same would have been supplied at the price of Rs. 137.86 only. It is abundantly clear from the above narration of the facts and the law that no elaborate mathematical calculations are required to be prescribed separately for passing on the benefit of tax reduction and computation of the profiteered amount. This Authority was under no obligation to provide the same to the

Respondent. The Respondent cannot deny the benefit of tax reduction to his customers on the above ground and enrich himself at the expense of his buyers as Section 171 provides clear cut methodology and procedure to compute the benefit of tax reduction and the profiteered amount. Therefore, the above plea of the Respondent is wrong and hence, it cannot be accepted.

77. In this connection the Respondent has also cited the order dated 09.09.2019 passed by the Hon'ble High Court of Bombay in ***Vanashakti Public Trust v. State of Maharashtra (W. P. No. 118/2015)*** by claiming that the Hon'ble High Court has held that the objective criteria proposed to be adopted has to be made known to the parties. The Hon'ble Court has further observed that unless the process by which a decision was proposed to be taken was made known, the person whose views were solicited would be clueless. In this behalf it would be relevant to mention that the criteria of passing on the above benefits has been clearly and unambiguously prescribed in Section 171 which has been approved by the Parliament and all the State Legislature after detailed discussions and has also been published in the Official Gazette which amounts to notice to the public at large including the Respondent. Hence, it was not required to be made known to the Respondent specifically as it is well settled that every person is supposed to know the law which governs him. Moreover, the views of the Respondent on the passing on of the benefit of tax reduction were also not required to be sought. Hence, the law settled in the above case is not being relied.

78. The Respondent has further argued that he has earned net incremental revenue of Rs. 17,68,32,498/- during the months of December 2017 and January 2018, his total loss of ITC was Rs. 20,57,28,488/- for the above

two months and hence he has suffered loss of Rs. 2,88,95,990/- during these months and therefore, there was no question of profiteering by him. He has also furnished 3 Tables claimed to have been prepared on the basis of his GSTR-2A Returns and Annexure-37 of the DGAP's Report, in his support. Perusal of the above Tables shows that the Respondent has claimed that he has availed ITC of Rs. 20,57,28,488/- during the months of December 2017 and January 2018 through his GSTR-2A Returns. However, the above claim of the Respondent is incorrect as he could not have claimed ITC during the above months as the benefit of ITC had been withdrawn w.e.f. 15.11.2017. Hence, he has furnished wrong information in his GSTR-2A Returns. The total turnover of restaurant supplies for the above two months of Rs. 213,84,28,503/- has been reduced by adjustment of Rs. 194,25,56,326/- by the Respondent and the net sales realization due to price rise has been shown as Rs. 19,58,72,177/- for the above two months. Additional variable expenses on account of price increase have been computed @ 9.72% as Rs. 1,90,38,776/- and net incremental revenue has been shown as Rs. 17,68,33,401/-. No reasons for adjustment have been explained by the Respondent. The variable expenses have been computed as per the convenience of the Respondent as they were not required to be computed separately as they were already built in the price increase made w.e.f. 15.11.2017 and hence all the computations shown in these Tables are wrong and hence they cannot be relied upon.

79. The Respondent has also pleaded that the 8 issues mentioned in Para 12 of his submissions dated 23.10.2019 including the 12 issues raised in Para 16 of his submissions dated 04.12.2019 should be appropriately responded and the matter should be proceeded with only after he has

been provided with the adequate response on them. Perusal of the issues mentioned by the Respondent in his above submissions shows that all these issues are required to be decided by this Authority on the basis of the pleadings of the Respondent as well as that of the DGAP and hence no findings can be recorded on them unless both the parties have filed their pleadings and have been heard. The Respondent appears to be trying to pre-empt these issues without disclosing his stand with ulterior motives. The Respondent cannot dictate this Authority to pronounce its findings without even having seen his pleadings. Therefore, the above claim of the Respondent is malafide and illegal and hence the same deserves rejection.

80. The Respondent has further pleaded that Article 19 (1) (g) guaranteed fundamental right to carry business and trade including right to earn profit and hence any law which ignored cost and restricted profit was violative of the above Article. In this connection it would be appropriate to mention that as per the provisions of Section 171 (1) the respondent is only required to pass on the benefit of tax reduction by reducing his prices commensurately. There is no mention in the above provisions that while passing on the above benefit the costs of the Respondent will also be taken in to account. Had it been the intention of the Legislature it would have provided for the same in the above Section. Moreover, there cannot be sudden increase in the cost of the Respondent on the intervening night of 14/15.11.2017 exactly equal to the price which he was charging before the rate reduction. Such a coincidence is unheard of and malafide. As per the computation of the DGAP the loss in the ITC was 9.11% and hence the Respondent should have increased his prices by not more than 9.11% and not from more than 11.91% to 12.38% as

he has done in the case of Mccafe Reg Latte. There is also no connection of profit with passing on of the benefit of tax reduction which is legally required to be passed on irrespective of the fact whether the Respondent is in loss or in profit, as he is not paying it from his own pocket. The Respondent is fully free to fix his prices and margins of profit but under the pretext of Article 19 (1) (g) he cannot deny the benefit of tax reduction to the customers and enrich himself at their expense as it would be against the provisions of Section 171 (1) as well as Article 14 of the Constitution. The Respondent has also placed reliance on the judgment passed in the case of ***Sodan Singh & Ors. V. New Delhi Municipal Committee & Ors. supra*** perusal of which shows that it pertains to the right to carry on business on the pavements of roads in Delhi and hence the facts of the above case are not similar to the present case and hence the law settled in the above case is not applicable in the present case.

81. The Respondent has also averred that the fundamental right enshrined in Article 19 (1) (g) could be reasonably restricted, however, if the price did not secure a reasonable return on the capital employed, such a fixation of price would be violation of the above Article. Thus, while determining profiteering direct or indirect increase in the cost must also be considered. In this regard it would be appropriate to mention that the Respondent is only required to pass on the benefit of tax reduction under Section 171 (1) and it nowhere places restriction on the right of the Respondent to fix his prices and profit margins. Neither this Authority or the DGAP has mandate to fix prices under Section 171 (1) nor they are acting as price controllers or regulators. There is also no mention in Section 171 that while passing on the benefit increase in the cost will also be

considered. Even when there is no provision of considering the cost in the above Section many suppliers including the present Respondent are not willing to pass on the above benefit on the standard excuse of increase in the cost immediately after the rate reduction. In case such increase in the cost is also considered then no supplier is going to pass on the above benefit. It is also far the Respondent to earn reasonable return on his business and the profiteered amount cannot be adjusted to increase it. Any loss suffered by the Respondent depends on his efficiency of operations which can also not be adjusted against the profiteered amount as the Respondent has no such fundamental right. Reliance in this regard has also been placed on the order dated 01 June 2012 of the Hon'ble High Court of Delhi in the case of ***Indraprastha Gas Limited v. Petroleum and Natural Gas Regulatory Board supra*** which is not applicable in the facts of the present case as in the above case the Board was not held competent to fix the prices of the Gas whereas no such price fixation has been done in the present case and hence the same is not being followed. Therefore, the above claim of the Respondent cannot be accepted.

82. The Respondent has further averred that the provisions of Section 171 nowhere restrained the suppliers from revising their prices coinciding with the change in the rate of tax and hence they should be free to revise their prices on the date of change in the rate of tax to take care of the increased cost. Thus, denial of revision of price on account of increase in cost or only allowing partially for ITC loss would amount to violation of Article 14. In this regard it is mentioned that the Respondent cannot pass on and withdraw the benefit of tax reduction simultaneously on the same day. Section 171 (1) provides for only passing on the benefit of tax

reduction by commensurate reduction in the price and there is no provision of taking in to account the cost of production as per the provisions of above Section. The Respondent can only increase his prices up to denial of benefit of ITC to him and no more and any increase in the prices more than the denial of the ITC amounts to violation of the above provisions. The Respondent cannot claim violation of Article 14 on the ground that he has not been allowed to include his costs in the prices on the date of reduction in the rate of tax as such a claim would be against the provisions of Section 171 (1). The Respondent had enough time from 01.07.2017 to 14.11.2017 to increase his prices due to increase in his cost however, sudden increase in his cost on 15.11.2017 is a deliberate attempt not to pass on the benefit of tax reduction and appropriate the amount of benefit. Therefore, the above contention of the Respondent is not maintainable.

83. The Respondent has also contended that this Authority has stated in its various orders that only tax reduction and ITC impact were to be considered while fixing the prices under Section 171 and the cost was not to be considered. This approach was also adopted in the order dated 16.11. 2018 which was set aside by the Hon'ble High Court of Bombay. In this connection it would be appropriate to mention that the Hon'ble High Court has not considered the issue of cost in its judgement dated 01.10.2019 at all and it has set aside the above order by observing in Para 29 that:-

"We conclude that when the three members of the Authority had heard the Petitioner and participated in the entire hearing, the collectively signed decision, when fourth member joined only for signing the order

has resulted in violation of natural justice and fairness, and is liable to be set aside."

The Hon'ble Court has further mentioned in Para 33 of its judgement that "We keep all the contentions of the parties on merits, jurisdiction and validity of the Authority, open." Therefore, the above contention of the Respondent that the order dated 16.11.2017 has been set aside for not considering the issue of cost is sheer misinterpretation of the above judgement of the Hon'ble Court and amounts to grave contempt of the Hon'ble Court. Therefore, the above contention of the Respondent is untenable.

84. The Respondent has further contended that constitution of this Authority under Rule 122 of the CGST Rules suffered from the vice of excessive delegation as its constitution and powers were required to be laid down under Section 171 (2). In this regard it would be pertinent to mention that Rule 122 has been framed by the Central Government under Section 164 read with Section 171 (3) of the CGST Act, 2017 on the recommendation of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and comprises of all the Finance/Taxation Ministers of the States and the Union Finance Minister. Hence, the above Rule has express approval of the Parliament, all the State Legislatures, the Central and all the State Governments and the GST Council and therefore, constitution of this Authority under Rule 122 is legal and does not amount to excessive delegation. It is also mentioned that the above Rule only prescribes the qualifications of the members of the Authority whereas its constitution has been duly provided in Section 171 (2). Further it has been

specifically provided in Section 171 (3) that "*The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.*" and hence, the functions and powers conferred on this Authority under Rule 127 also have mandate of the Parliament, the State Legislatures, the Central and the State Governments as well as of the GST Council and hence the conferring of powers and functions under the above Rule on this Authority does not tantamount to excessive delegation. Therefore, both the above Rules do not violate the provisions of Article 14. In this regard the Respondent has also drawn reference to the judgment of the Hon'ble High Court of Gujarat in the case of ***Adambhai Ranabhai v. The Regional Transport Authority supra,*** however, the law settled in the above case is not applicable as this Authority has been legally constituted and conferred with powers and functions in terms of Section 171 (2), 171 (3), 164 read with Rule 122 and 127. Hence, the above claim of the Respondent is not tenable.

85. The Respondent has vehemently argued that this Authority was a Tribunal as it was discharging adjudicatory and quasi-judicial functions with grave consequences and hence fair and impartial justice could be dispensed only if there were Judicial Member(s) in this Authority and in majority. Reliance in this regard has been placed on the cases of ***L. Chandra Kumar v. Union of India, Union of India v. R. Gandhi, Madras Bar Association v. Union of India, S. Manoharan v. The Deputy Registrar and Ors., Order dated 20 September 2019 of the Hon'ble High Court of Madras in Revenue Bar Association v. Union of India*** and ***Order dated 13.11.2019 of the Hon'ble Supreme Court in Roger Mathew v. South Indian Bank Limited.***

86. In this regard it would be pertinent to mention that the Hon'ble Supreme Court has applied the principle laid down in the case of ***S. P. Sampath Kumar v. Union of India & others 1987 SCC Sppl. 734,*** including in the relatively recent cases of ***Union of India v. R. Gandhi***, ***Madras Bar Association v. Union of India supra*** and more recently in ***Rojer Mathews v. South Indian Bank & Ors. Supra,*** in which it was held that that the Tribunals which were required to discharge those functions which were earlier being discharged by the Courts should have Judicial Members. In the case of ***R. Gandhi supra***, the Hon'ble Supreme Court was dealing with the challenge to the constitution of the NCLT/NCLAT under the provisions of the Companies Act, 1956. It was inter-alia, held by the Hon'ble Court as follows:-

"90. But when we say that the legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of the judiciary and keeping in view the principles of the rule of law and separation of powers. ***If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with courts****..... Therefore, when transferring the jurisdiction exercised by courts to Tribunals, which does not involve any specialised knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the judiciary and the rule of law and would be unconstitutional."*

(Emphasis supplied)

In the case of ***Madras Bar Association supra***, the Hon'ble Supreme Court was considering the constitution/composition of the National Tax Tribunal. It was held by the Hon'ble Supreme Court as follows:-

"113.2. ..... ***The power of discharging judicial functions which was exercised by members of the higher judiciary at the time when the Constitution came into force should ordinarily remain with the court, which exercised the said jurisdiction at the time of promulgation of the new Constitution. But the judicial power could be allowed to be exercised by an analogous/similar court/Tribunal with a different name. However, by virtue of the constitutional convention while constituting the analogous court/Tribunal it will have to be ensured that the appointment and security of tenure of Judges of that court would be the same as of the court sought to be substituted....*** *it is not possible for us to accept that under recognised constitutional conventions, judicial power vested in superior courts cannot be transferred to coordinate courts/Tribunals. The answer is, that such transfer is permissible. But whenever there is such transfer, all conventions/customs/practices of the court sought to be replaced have to be incorporated in the court/Tribunal created. The newly created court/Tribunal would have to be established in consonance with the salient characteristics and standards of the court which is sought to be substituted."*

(Emphasis supplied)

In the case of ***Rojer Mathew supra***, the Hon'ble Court was inter alia considering provisions of the Finance Act, 2017 which led to merger of several Tribunals as well as the rules therein, where one of the issue was absence of a Judicial Member. With regard to this question, the relevant findings of the Hon'ble Court are reproduced herein below:-

"163. We concur with the above which reiterates the consistent view taken by this Court in a number of cases. ***It is also a well-***

established principle followed throughout in various other jurisdictions as well, that wherever Parliament decides to divest the traditional Courts of their jurisdiction and transfer the lis to some other analogous Court/Tribunal, the qualification and acumen of the members in such Tribunal must be commensurate with that of the Court from which the adjudicatory function is transferred. *Adjudication of disputes, which was originally vested in Judges of Courts, if done by technical or non-judicial member, is clearly a dilution and encroachment on judicial domain. With great respect, Parliament cannot divest judicial functions upon technical members, devoid of the either adjudicatory experience or legal knowledge."*

(Emphasis supplied)

The decision in the case of ***Namit Sharma v. Union of India (2013) 1 SCC 745*** is also instructive, where the Hon'ble Supreme Court was considering the requirement of a judicial mind for performing the functions and exercising the powers of the Chief Information Commission. The Hon'ble Court had originally held that the Information Commissions and the Central Information Commission performed judicial functions having the trappings of a Court and hence, they must have Judicial Members. It was further held that the legislative requirement that members have knowledge and experience in their respective fields, including law, pre-supposed the requirement of a basic degree in the said field. Relevant portions of the original Judgment are reproduced herein below:-

"82. Once it is held that the Information Commission is essentially quasi-judicial in nature, the Chief Information Commissioner and members of the Commission should be the persons possessing requisite qualification and experience in the field of law and/or other

specified fields. We have discussed in some detail the requirement of a judicial mind for effectively performing the functions and exercising the powers of the Information Commission.

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87. The various provisions of this Act are clear indicators to the unquestionable proposition of law that the Commission is a judicial Tribunal and not a ministerial Tribunal. It is an important cog in and is part of court attached system of administration of justice unlike a ministerial Tribunal which is more influenced and controlled and performs functions akin to machinery of administration.

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95. .... The term "experience in law" is an expression of wide connotation. It presupposes that a person should have the requisite qualification in law as well as experience in the field of law. However, it is worthwhile to note that having a qualification in law is not equivalent to having experience in law and vice versa. "Experience in law", thus, is an expression of composite content and would take within its ambit both the requisite qualification in law as well as experience in the field of law...."

Some findings of the Hon'ble Supreme Court in the case of ***Namit Sharma supra***, reproduced herein above, have been reversed by the Hon'ble Court in the Review Petition filed by the Union of India. The Judgment in the review Petition has been reported as ***Union of India v. Namit Sharma (2013) 10 SCC 359***. The relevant findings from the said judgment are reproduced herein below:-

"29. ***Once the Court is clear that the Information Commissions do not exercise judicial powers and actually discharge administrative functions, the Court cannot rely on the***

constitutional principles of separation of powers and independence of judiciary to direct that the Information Commissions must be manned by persons with judicial training, experience and acumen or former Judges of the High Court or the Supreme Court. The principles of separation of powers and independence of judiciary embodied in our Constitution no doubt require that judicial power should be exercised by persons with judicial experience, training and acumen. For this reason, when judicial powers vested in the High Court were sought to be transferred to the Tribunals or judicial powers are vested in the Tribunals by an Act of the legislature, this Court has insisted that such Tribunals be manned by persons with judicial experience and training, such as High Court Judges and District Judges of some experience.

30.... ***But, as we have seen, the powers exercised by the Information Commissions under the Act were not earlier vested in the High Court or subordinate court or any other court and are not in any case judicial powers and therefore the legislature need not provide for appointment of judicial members in the Information Commissions.***

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31. Perhaps for this reason, Parliament has not provided in Sections 12(5) and 15(5) of the Act for appointment of persons with judicial experience and acumen and retired Judges of the High Court as Information Commissioners and retired Judges of the Supreme Court and Chief Justice of the High Court as Chief Information Commissioner and ***any direction by this Court for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioners and Chief Information Commissioner would amount to encroachment in the field of legislation.....”***

(Emphasis supplied)

As this Authority has not assumed any jurisdiction, which was hitherto being exercised by the High Court or any other judicial body, the principle that there must be a Judicial Member laid down in certain decisions does not apply to the composition of this Authority.

As stated in Section 171 (2) of the CGST Act, 2017, the role of this Authority is "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." The duties of this Authority have been further elaborated in Rule 127 of the CGST Rules, 2017 which reads as follows:-

"127. Duties of the Authority.- It shall be the duty of the Authority,-

(i) to determine whether any 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;

(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;

(iii) to order,

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or

recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;

(c) imposition of penalty as specified in the Act; and

(d) cancellation of registration under the Act.

(iv) to furnish a performance report to the Council by the tenth day of the close of each quarter."

The aforementioned duties clearly do not involve settling of any question of law and these are the expert functions being discharged by the domain experts who have experience in the field of indirect taxation. Therefore, the sequitur of the discussion above is that (a) this Authority has not replaced or substituted any function which the Courts were exercising hitherto (b) it was performing quasi-judicial functions but it cannot be equated with a judicial Tribunal (c) it performs its functions in a fair and reasonable manner in accordance with the Act but does not have the trappings of a Court and (d) absence of a Judicial Member does not render the constitution of this Authority unconstitutional or legally invalid.

Further, there are several statutory bodies which exercise quasi-judicial functions but they are not required to be composed of Judicial Members. There is no Judicial Member in the SEBI which has been constituted under the Securities and Exchange Board of India Act, 1992. Neither the statute nor any decision of the Court requires the SEBI to be composed of a Judicial Member simply because it also performs quasi-judicial functions under the Act apart

from its other roles. SEBI's composition has been provided in Section 4 (1) of the aforementioned Act. The Hon'ble Supreme Court in the case of ***Clariant International Ltd. & Anr. v. Securities and Exchange Board of India (2004) 8 SCC 524*** has held that SEBI exercises its legislative power, executive power and judicial power:-

"77. The Board exercises its legislative power by making regulations, executive power by administering the regulations framed by it and taking action against any entity violating these regulations and judicial power by adjudicating disputes in the implementation thereof."

Similarly, the TRAI which also performs quasi-judicial functions has been constituted under the Telecom Regulatory Authority Act, 1997 but does not have a Judicial Member. Section 3 of the said Act provides for the composition of the Authority. Again, the Medical Council of India has been constituted under the Indian Medical Council Act, 1956. The various disciplinary powers which it exercises under the Act can be said to be quasi-judicial in nature but it does not require a Judicial Member in its Council. The constitution and composition of the Council is provided in Section 3 of the said Act. The Institute of Chartered Accountants of India has been constituted under the Chartered Accountants Act, 1949. The ICAI also exercises quasi-judicial functions over its registered members and can pass orders which have far reaching consequences affecting the rights of Chartered Accountants but even its composition does not require a Judicial Member's presence. Its composition is provided in Section 9

(2) of the above Act and the same does not include a mandatory Judicial Member.

Similarly, the Assessing Officers, Commissioners of Appeal under the Income Tax Act, 1961 and the CGST Act, 2017, the Authorities on Advance Rulings under both the above Acts and the Dispute Resolution Panel under the Income Tax Act, 1961 all perform quasi-judicial functions but there is no requirement that such persons who must be possessing either a law degree or have had judicial experience. Such a requirement is not only impractical but would also render several statutory authorities unworkable, which could never have been the intention of the Hon'ble Supreme Court while laying down the legal principles discussed above.

Therefore, in light of the above, it can be concluded that this Authority has not having replaced any Courts, cannot be equated to a Court or a Tribunal and hence the mandate of having a Judicial Member cannot be said to apply to this Authority.

It is also submitted that this Authority has been constituted as per Section 171 (2), 171 (3) read with Rule 122 of the CGST Rules, 2017. The said Act or the Rules, nowhere mention requirement of a Judicial Member in this Authority. The Parliament, the State legislatures, the Central and the State Government as well as the GST Council in their wisdom, have not found it expedient to constitute this Authority by providing a Judicial Member in this Authority. Hence, the allegations made by the Respondent regarding the unconstitutionality of the Authority are devoid of any legal merit. Moreover, the orders passed by this Authority are subject to judicial

review and hence no prejudice would be caused to the Respondent. Hence, the above contention of the Respondent is grossly misplaced and hence, it cannot be accepted.

87. Reliance in this regard has also been placed on the cases of ***Jaswant Sugar Mills Ltd. v. Lakshmichand & Ors.*** and ***Columbia Sportswear Company v. Director of Income Tax, Bangalore supra*** however, the same are not being relied as no Judicial Member is required to be appointed in this Authority on the basis of the cases cited above as has been discussed in detail above.

88. Reliance in this regard has further been placed by the Respondent on the cases of ***L. Chandra Kumar v. Union of India, Union of India v. R. Gandhi, Madras Bar Association v. Union of India, S. Manoharan v. The Deputy Registrar and Ors., Order dated 20 September 2019 of the Hon'ble High Court of Madras in Revenue Bar Association v. Union of India*** and ***Order dated 13.11.2019 of the Hon'ble Supreme Court in Roger Mathew v. South Indian Bank Limited supra.*** However, the actual implication of the law settled in the above cases has been mentioned in detail in the Paras supra in view of which the interpretation given by the Respondent is not being followed. This Authority can also not examine the vires of Rule 122 as has been suggested by the Respondent as per the law settled in the case of ***L. Chandra Kumar supra*** as it has no power to examine the vires of Section 171(3) and 164 under which it has been framed.

89. The Respondent has also argued that the reasoning given by this Authority that the SEBI and TRAI etc. were specialized bodies and have no Judicial Members was not correct as the final fact finding authority

was the Securities Appellate Tribunal constituted under the Securities Exchange Board of India Act, 1992 which has a Judicial Member. Similarly, the Telecom Disputes Settlement and Appellate Tribunal also has a Judicial Chairperson. In this regard it would be relevant to mention that both the above Tribunals cannot be compared with this Authority as they are appellate bodies whereas this Authority is not an appellate body or a Tribunal. The above Tribunals are also not fact finding authorities as has been claimed by the Respondent. Hence, the above contention of the Respondent is not correct.

90. The Respondent has further argued that vide Section 171 (3) read with Rule 126 it was mandated that this Authority must prescribe a methodology to determine profiteering. In the formulation of such methodology, suitable guidance should have been provided to guide the exercise of powers by this Authority and failure to provide such guidance amounted to "excessive delegation", which was bad in law. As discussed above the procedure and methodology to pass on the benefits of tax reduction and ITC and computation of profiteering has already been prescribed in Section 171 (1) itself and hence, no separate methodology/guidelines are required to be provided to guide the exercise of power by this Authority. Hence, there is no question of excessive delegation without prescription and hence the law propounded in the cases of ***K. T. Moopil Nair v. State of Kerala, Devi Das Gopal Krishnan and Ors. v. State of Punjab and Ors., Municipal Corporation of Delhi v. Birla Cotton, Spinning and Weaving Mills, Delhi and Anr.*** and ***K. T. Plantation Pvt. Ltd. and Anr. v. State of Karnataka supra*** is not being followed.

91. The Respondent has also submitted that on the issue of prescribing a methodology, a useful recourse could be made to the analogous anti-profiteering provisions in Malaysia and Australia where statutorily methodology has been prescribed for the determination of the price. In this regard it would be pertinent to mention that in both the above countries the anti-profiteering measures introduced at the time of implementing the GST had prescribed methodology to determine prices whereas no such provision has been made in this country under Section 171 as it would be hit by Article 19 (1) (g). It is strange that where on the one hand the Respondent is claiming freedom to fix his prices under the above Article and alleging violation even on passing on the benefit of tax reduction under Section 171 (1), he is advocating price control on the other hand. Such a contradictory stand of the Respondent is illegal and against the provisions of Article 19 (1) (g). Moreover, the Government of Malaysia has already withdrawn the GST and the anti-profiteering measures as they were not working properly in that country. Hence, the above submissions of the Respondent are not tenable.

92. The Respondent has further submitted that under the Indian law, reference could be made to the anti-dumping laws under the Customs Tariff Act, 1975 under which detailed guidelines to determine margin of dumping, injury margin and non-injurious price have been provided in the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. Similarly, detailed methodologies have been prescribed with respect to Safeguard Duty and Countervailing Duty. Therefore, in the absence of the guidelines exercise of power by this Authority was arbitrary. In this respect it is reiterated that an elaborate, detailed and

unambiguous methodology has been duly prescribed under Section 171 to pass on the benefits of tax reduction and ITC and computation of profiteering, hence, no separate guidelines are required to be framed in this regard. Accordingly, the above claim of the Respondent cannot be accepted.

93. The Respondent has also alleged that in terms of Rule 128 the Standing and the Screening Committees were empowered to receive written complaints in the prescribed form APAF-1 only with supporting documents and prima facie examine accuracy and adequacy of the evidence to initiate investigation. In the present case, all the complainants have submitted copies of the same invoices without any self-attested identity documents, hence the complaints were neither accurate nor had adequate evidence. On this account it would be appropriate to note that there was accurate and adequate evidence before the Standing Committee to recommend investigation against the Respondent as both the invoices dated 07.11.2017 and 15.11.2017 issued by the Respondent clearly showed that he had charged the same price of Rs. 142/- on the item Mccafe Reg Latte before and after the tax reduction whereas he was required to reduce it w.e.f. 15.11.2017 keeping in view the denial of ITC and the reduction in the rate of tax. There could be no better accurate and adequate evidence except the invoices issued by the Respondent himself, which have not been denied by him and the bare perusal of which showed that the Respondent had charged the same price after rate reduction on Mccafe Reg Latte which he was charging before such reduction. The Applicant No. 1 to 4 while making the complaint had clearly stated that the Respondent has not passed on the benefit of tax reduction and has increased his menu

prices after the rate reduction and hence he should be investigated for not passing on the above benefit. All the above Applicants had forwarded their complaints through e-mails and hence there was sufficient proof of their identity. The Form APAF-1 had not been prescribed at the time of making the above complaints and hence there is no question of making the above complaints in the prescribed form. Moreover, even if had been prescribed it was not required to be filled as mere not applying on the prescribed form does not allow the Respondent to fleece his customers by denying them the benefit of tax reduction. Therefore, the above contention of the Respondent is not maintainable.

94. It has further been alleged that in terms of Rule 129, upon receiving reference from the Standing Committee, the DGAP was empowered to conduct investigation which could not go beyond the matter referred by the Standing Committee. Since, the complaint was for sale of McCafe Reg Latte the reference was restricted to the product complained of only. The CGST Rules did not provide power to either the Standing Committee or to the DGAP to *suo moto* expand the scope of the investigation which could be done by this Authority only in terms of Rule 133 (5). 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." (Emphasis supplied)

It is clear from the perusal of the above Sub-Sections that the benefits of tax reduction and ITC are 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 while making such examination 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 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."

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 the 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 also has 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 of the above Act. Moreover Section 171 (2) of the above Act empowers this Authority to examine all such cases in which the benefit of tax and ITC is required to be passed on. Since account of ITC is kept for all the products in one common ledger/Register the same cannot be apportioned product wise hence, all the products being supplied by the Respondent are required to be investigated to determine whether the benefit of tax reduction after duly considering the denial of ITC has been passed on on each product to each buyer or not. Rule 133 (5) is a mere clarification of the provisions of Section 171 (2) and hence, the DGAP has rightly conducted investigation in respect of 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. Moreover, the Applicant No. 2 in his email dated 23.11.2017 (Annexure-1 of the Report) had intimated the DGAP as under:-

"Since the implementation of GST from 1st July 2017 and subsequent changes carried out till 15th November it has been seen that many vendors especially ***MNC fast food chains are excessively profiteering*** and actually cheating buyers by overcharging. When GST was introduced they initially straight forward added GST

amounts to Menu prices and charged to customer. ***Then when GST rates was changed to 5%, across the board without ITC the vendors increased Menu rates and applied 5% to either keep Customer payment same or even higher.***

Please see attached bills for same product purchase from same vendor after first GST Implementation and after 15th November.

Please take strict action as per GST laws not only against this franchise but against all franchise of fast food chains. Please carry out forensic audit of these chains of how much ITC benefit they got between 1/7 to 15/11 and how much they passed on. How much GST was collected from Customers and how much was deposited with the Govt.?"

(Emphasis supplied)

It is absolutely clear from the above complaint that the Applicant No. 2 had not only produced the invoices issued by the Respondent, who is a MNC fast food chain, to establish that the Respondent, when the GST rate was changed to 5% across the board without ITC, had profiteered by increasing the menu rates and had applied 5% GST to either keep the customer payment same or even higher but strict action was also sought to be taken against him under the GST law. Therefore, as per the specific request of the above Applicant as well as other complainants investigation was required to be carried out in respect of all the products in respect of which the rate of tax had been reduced and the Respondent had increased their prices to deny the benefit of tax reduction and not only against the product Mccafe Reg Latte. The Respondent cannot get away by appropriating the benefit which he is legally bound to pass on, on the ground that no complaint

has been made in respect of the other products. Moreover, 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 consumers. Therefore, the above claim of the Respondent is not correct and hence the same cannot be accepted.

95. The Respondent has also stated that the power under Rule 133 (5) (a) could be exercised by this Authority only subsequent to the receipt of the Report from the DGAP under Rule 129 (6). In the present case, this Authority has not issued any direction under Rule 133 (5) (a) and therefore, the DGAP has no right to expand the scope of investigation beyond the supply of McCafe Reg Latte. As has been discussed in Para supra no order was required to be passed by this Authority under Rule 133 (5) (a) nor the DGAP has expanded the investigation on his own and hence the above claim of the Respondent is incorrect.

96. The Respondent has further stated that although the DGAP in the notice dated 29 December 2017 has determined the scope of investigation as supply of "restaurant service" but he has investigated 1800 products. As per Entry 6 (b) of the Schedule II to the CGST Act, the restaurant service was a single supply and hence the DGAP could not have investigated 1800 products and therefore, the Investigation Report itself was contrary to the scope of investigation determined by the DGAP. In this connection it would be appropriate to mention that as per the provisions of Section 171 (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.*" Therefore, the benefit has to be

passed on the goods and services and not on the restaurant service as only reduction in the rate of tax on this service is required to be taken in to account. It is completely illogical to fathom how price of the service can be reduced commensurately to pass on the benefit when no such price has been fixed. Therefore, only the goods and services being supplied by the Respondent under the restaurant services are required to be investigated, which have been rightly investigated by the DGAP. Hence, the above contention of the Respondent is untenable.

97. The Respondent has also cited the order dated 29 October 2018 passed in the Case No. 11/2018 of ***Raman Khaira & another v. Yum Restaurants India Private Limited*** by this Authority by claiming that in this case it was held that in the absence of credible evidence *re* a particular product, the investigation would not be meaningful and hence it had dismissed the proceedings therefore, the present case should also be dismissed. In this regard it would be appropriate to mention that there was enough accurate and adequate evidence available to launch investigation against the Respondent in the present case as has been discussed in detail above, whereas no such evidence was available in the above cited case and hence, the above case is of no help to him.

98. Reference has also been made by the Respondent to the order dated 26 September 2019 passed by this Authority in Case No. 47/2019 of ***Gaurav Gulati & others v. M/s Paramount Propbuilt Pvt. Ltd.*** by claiming that although the ITC was consolidated for all the real estate projects, the determination of profiteering was done for the project in question in which the Applicant had bought the flat. Further reference

has also been made to the order dated 04 July 2019 passed by this Authority in Case No. 46/2019 of ***Rahul Sharma & another v. HP India sales Ltd.*** by contending that the analysis was only done *qua* the product complained and not even its variant. Similar references have also been made to the orders passed in the Case No. 34/2019 of ***Varun Goel & another v. Eldeco Infrastructure & Properties Ltd.***, Case No. 30/2019 of ***Pallavi Gulati & another v. Puri Constructions Pvt. Ltd.*** and Case No. 7/2018 of ***Sukhvir Rohilla & another v. Pyramid Infratech Pvt. Ltd.*** In this regard it is submitted that in the case of ***Gaurav Gulati supra*** there was no conclusive evidence on record that the Respondent has not passed on the benefit of ITC in respect of the other projects, hence other projects were not required to be investigated. In the case of ***Rahul Sharma*** the rate of tax had not been reduced on the complained product, hence, provisions of Section 171 (1) were not attracted. In respect of the cases of ***Varun Goel*** and ***Pallavi Gulati supra*** there was no evidence on record to investigate other projects of the Respondents and hence other projects were not ordered to be investigated. In the case of ***Sukhvir Rohilla supra*** the Respondent was having only one project and hence there was no question of investigating his other projects. Therefore, the above cases do not support the claim of the Respondent.

99. Reliance has also been placed on the order dated 30 June 2020 of the Hon'ble High Court of Gujarat in the case of ***Sapphire Foods India Private Limited v. Union of India*** wherein by way of *ad-interim* relief, it was directed that the proceedings would only continue to the extent of the complained product. Further reliance has also been

placed on the order dated 19 July 2019 of the Hon'ble High Court of Delhi in the case of ***Reckitt Benckiser India Private Limited v. Union of India*** wherein the DGAP had sought information on 3500 products, which the Hon'ble Court had restricted to only one product. In pursuance to the order dated 19 July 2019, this Authority has passed an order dated 19 March 2020 in Case No. 20/2020 of ***Rahul Sharma & another v. M/s Reckitt Benckiser India Pvt. Ltd. & another*** restricting findings only to the complained product. In this context it would be relevant to mention that the orders passed in the cases of ***Sapphire Foods*** and ***Reckitt Benckiser supra*** pertain to these cases only. No such order has been passed in the case of the Respondent and hence the above orders have no impact on the case of the Respondent. Moreover, as has been discussed in Para supra complaint was made by the Applicant No. 2 in respect of all the products which were being supplied by the Respondent on which the rate of tax has been reduced and hence his case is not covered by the above orders. In the case of ***Rahul Sharma supra*** the investigation was restricted to one product only on the directions of the Hon'ble High Court of Delhi and hence the above case is of no help to the Respondent.

100. The Respondent has also claimed that as per the practice of this Authority, the investigation and findings should be restricted to the product complained only otherwise it would be arbitrary as per the Hon'ble Supreme Court's judgement in the case of ***Damodar J. Malpani v. Collector of Central Excise 2002 (146) ELT 483 SC***. As discussed in Paras supra all the products of the Respondent on which the rate of tax was reduced were required to be investigated as

specific complaint had been made to investigate them and thus they have been rightly investigated. In this connection it would also be pertinent to mention that Section 171 (2) of the above Act requires this Authority to examine all such cases in which the benefit of tax and ITC is required to be passed on. As account of ITC is kept for all the products in one common ledger/Register the same cannot be apportioned product wise hence, all the products being supplied by the Respondent are required to be investigated to determine whether the benefit of tax reduction after taking in to account the denial of ITC has been passed on or not. Therefore, the above claim of the Respondent is incorrect and hence the law settled in the above case is not being relied.

101. The Respondent has further claimed that a bare perusal of this Authority's Methodology and Procedure, 2018 would show that it was purely determinative of procedural aspects and aspects of methodology for determining profiteering have not been addressed in it. In this regard it is again reiterated that the substantive part of the Methodology to pass on the benefit of rate reduction and computation of profiteering has been clearly outlined in Section 171 (1) and hence separate Methodology & Procedure was not required to be prescribed under Rule 126. Hence, the above plea of the Respondent is not maintainable.

102. The Respondent has also contended that failure to formulate and communicate the methodology has tainted the proceedings due to lack of fairness and transparency, as has been held by the Hon'ble High Court of Bombay in the judgement dated 01 October 2019. In this regard it would be relevant to state that as has been mentioned

above the order dated 16.11.2017 has not been set aside due to non prescribing of the methodology under Rule 126. Such a claim amounts to contempt of the judgement of the Hon'ble High Court and hence the same cannot be accepted.

103. The Respondent has further contended that the absence of methodology has resulted in this Authority taking a contradictory stance on identical issues as could be evidenced from the order dated 05 September 2018 passed in the Case No. 09/2018 of **Jijrushu N. Bhattcharya & another v. *N. P. Foods*** and the order dated 31 January 2019 passed in the Case No. 04/2019 of ***Kiran Chimirala & another v. Jubillant Food Works Ltd.*** (*Dominos*). In this regard it would be pertinent to mention that in the case of ***N. P. Foods*** the Respondent had not denied the benefit of rate reduction as the increase made in the prices by the Respondent after reduction in the rate of tax reduction with denial of benefit of ITC was commensurate as per the provisions of Section 171 (1). In the case of ***Jubillant Food Works*** the denial of benefit of ITC was 5.75% whereas the above Respondent had increased his prices up to 84.55%. Hence, both the above cases have been decided on different facts and hence the orders passed in them cannot be said to be contradictory.

104. Further reference has also been drawn to the ***order dated 28 January 2020 of the Hon'ble High Court of Madras in Shree Mahalaxmi Enterprises v. Union of India supra.*** The order passed in the above Writ Petition also pertains to the above case and hence it cannot be applied in the case of the Respondent.

105. The Respondent has also stated that the period of investigation for

determination of ITC has been decided by the DGAP from 01 July 2017-31 October 2017. The period from 01 November 2017-14 November 2017 has been ignored by the DGAP although the rate change was with effect from 15 November 2017. Hence, there was no legal reason to deny the period from 01 November 2017-14 November 2017 and this period should be included in the investigation. The reasons given at Paragraph 15 of the investigation Report were factually incorrect since (a) the Respondent could not be prejudiced as the GST system did not allow for half-month returns and (b) date-wise turnover was provided to the DGAP. As a matter of fact, the Respondent has provided the ITC register till 30 November 2017 on 19 January 2018 as also stock-statement on 05 March 2018. Further, the DGAP at Paragraph 7, Table-A of the investigation Report has admitted that the stock statement has been provided. Therefore, the period of investigation should be restricted to the months of September 2017 and October 2017 as the Respondent was carrying on transitional inventory on 01 July 2017 and hence, purchases for the months of July 2017 and August 2017 were not representative of normal business. Therefore, the most apt representative months would be September 2017 and October 2017 as procurements were within the GST regime and would help this Authority in arriving at the true cost of the ITC. In this regard perusal of the CGST Act, 2017 shows that it prescribes the following conditions for entitlement to ITC:-

(i) The Respondent should be in possession of a tax invoice or debit note issued by a supplier registered under this Act or such other tax paying documents as may be prescribed.

(ii) The Respondent has received the goods or services or both.

(iii) The Respondent, subject to the provisions of section 41, has paid the tax charged in respect of such supply to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply :and

(iv) The Respondent has furnished the return under Section 39.

Further, with effect from 15.11.2017. the Respondent was not entitled to avail ITC In terms of Notification No. 46/2017- Central Tax (Rate) dated 14.11.2017. Therefore, the Respondent is not eligible to take benefit of ITC w.e.f. 15.11.2017 on the strength of the invoices received post 15.11.2017 when the aforesaid notification had debarred the Respondent from ITC availment. The DGAP has not considered the ITC of Rs. 85,27,917/- while computing the ratio of denial of ITC to net turnover as this credit pertained to the period prior to the implementation of the GST which has no bearing on the supplies made during the period from July 2017 to October 2017. As the Respondent has received the taxable invoices post 15.11.2017 he was again not eligible to avail ITC in terms of the Notification dated 14.11.2017, therefore the same cannot be considered for computation of the denial of ITC to net turnover ratio. As the Respondent has already availed ITC on the original purchase of the inputs, the same has been considered in the computation of denial of ITC to net turnover ratio. Further, output tax liability on the inter-unit branch

transfers has been excluded from the ITC on the one hand and the inter-unit branch transfer turnover has also been excluded from the outward taxable turnover on the other hand which has neutralised the impact of branch transfer transactions on the computation. There was reversal of ITC on the closing stock of inputs and capital goods as on 14.11.2017 by the Respondent. This credit was not available in the GSTR-3B Return of November, 2017. The Respondent has submitted the following break-up details of ITC on the closing stock as on 14.11.2017:-

Code	Inventories	As on 14.11.2017 (in Rs.)
	Food inventory	
114-010	Inventory-Food	8,06,10,280
114-010-AUTO		
114-011	Inventory-Food (DC)	7,98,48,755
611-201	Goods in transit	
114-010001	Branch (Thane) Control	
	Inventory with Thane Branch	
	TOTAL	**16,04,59,035**
	Paper- Inventory	
114—020	Inventory-Paper	3,49,74,880
114—020-AUTO		
114-021	Inventory –Paper (DC)	2,19,29,709
	TOTAL	**5,69,04,589**
	Non-Product Inventory	
119-020001	Inventory Non-Product	81,59,062
119-020001-AUTO		
119-020002	Obsolete Inventory - Toys	
119-020003	Inventory- B'Party Materials	
119-021	Inventory Non-Product (DC)	5,15,83,164
	TOTAL	**5,97,42,226**
	Store and Spares - Inventory	
119-040001	Store & Equipment Spares-Godown	-
119-040002	Stores& Equipment spares	-
	Total	-
	Ops. Supplies - Inventory	
119-040	Inventory – Operating Supplies	1,31,56,021
119-041-		

AUTO		
119-041-	Inventory – Operating Supplies (DC)	61,70,674
	Total	1,93,26,696
	Other-Inventory	
119-010001	IT Spare at HO	-
119-010002	Spare at HO	-
119-020	Inventory – McBucks – DC	-
119-040003	INVENTORY – TRAINING MATERIAL - DC	-
119-050	Inventory – Linen – Delivery Material	-
119-051	Inventory – Linen (DC)	66,03,722
119-051-AUTO	Inventory – Linen (DC) - Auto	-
	TOTAL	66,03,722
	GRAND TOTAL	30,30,36,268
	PROVISIONAL GST	4,18,08,194

From the Table given above, the correctness of the computation of ITC on stock as on 14.11.2017 could not be ascertained as the details were neither clear nor comprehensible and therefore they could not be relied upon. The Respondent has also submitted SKU wise summary sale for the period from 1-14 November 2017 but has not submitted invoice wise B2C outward taxable supplies during this period. Therefore, net taxable turnover could not be computed on the basis of summary sales. Random checks of the invoices of the ITC availed in November 2017 have revealed that in some cases, credit of ITC was taken by the Respondent without being in possession of the relevant invoices on the date of availing of ITC, in contravention of the provisions of Section 16 (2) (a) of the Act. Therefore, the ITC pertaining to the invoices issued on or after 1st November 2017 and availed during 1-14th November 2017 has been left out. Further, net turnover for the same period has also been left out and therefore, there would be no impact on the computation of denial of ITC ratio to the net turnover during the period from 1st July 2017 to 31st October 2017. Some sample invoices confirming inadmissibility of ITC are given below:-

S.No.	Invoice No.	Invoice Date	Supplier's Name	Invoice Receipt Date	ICT Availment Date	ITC Amount (Rs.)
1	P423	08.11.2017	Visheshh Globe Pvt. Ltd.	17.11.2017	14.11.2017	2540
2	P395	03.11.2017	Visheshh Globe Pvt. Ltd.	20.11.2017	14.11.2017	4662
3	P394	03.11.2017	Visheshh Globe Pvt. Ltd.	20.11.2017	14.11.2017	3540
4	P393	03.11.2017	Visheshh Globe Pvt. Ltd.	20.11.2017	14.11.2017	7200
5	081721	01.08.2017	Trion Properties Pvt. Ltd.	20.11.2017	14.11.2017	1890
6	M-577	30.11.2017	K P Corporate Solution	07.12.2017	14.11.2017	5018
7	RNV000261	09.11.2017	Anukool India Pvt. Ltd.	21.11.2017	14.11.2017	23306
8	17	10.11.2017	Kaveri consultancy Services	27.11.2017	14.11.2017	7200
9	P412	07.11.2017	Visheshh Globe Pvt. Ltd.	20.11.2017	14.11.2017	842
10	4428	13.11.2017	Wang Professional Pvt. Ltd.	23.11.2017	14.11.2017	2706
11	4429	13.11.2017	Wang Professional Pvt. Ltd.	23.11.2017	14.11.2017	3810
12	042	06.11.2017	Shimer the	20.11.2017	14.11.2017	9360

			Lighting concept			
13	145	13.11.2017	Atul Kudtarkar & Associates	21.11.2017	14.11.2017	4500
					Total	76074

Based on the above reasons the period of investigation for determination of ITC and turnover has been rightly taken from 01 July 2017-31 October 2017 and the period from 01 November 2017-14 November 2017 has been correctly ignored by the DGAP. Accordingly, the reasons given at Paragraph 15 of the investigation Report are also correct. Mere furnishing of the ITC Register and the stock-statement when their correctness cannot be ascertained does not establish the claim of the Respondent. Therefore, the period of investigation cannot be restricted to the months of September 2017 and October 2017 as the computation of the ITC has been done correctly by the DGAP by considering the period from July 2017 to October 2017. As has been detailed above the Respondent has no ground to claim that the months of July and August were not representative of normal business as it can also be claimed that the business was also not normal during the months of September and October 2017 and they are not representative months. Therefore, computation of the ITC loss on the basis of the months of September and October 2017 cannot be considered. Hence, the ratio of 9.11% of the denial of benefit of ITC from July 2017 to October 2017 has been correctly computed by the DGAP which can be safely relied upon.

106. The Respondent has also alleged that the DGAP while computing the ITC, has selectively taken figures mentioned in the GSTR-3B Returns for

the period from July 2017-October 2017 and thereafter, made a few additions as deemed fit according to him in spite of the availability of all the data. In this regard it would be appropriate to mention that the method of accrual of ITC has been clearly mentioned in Section 16 and basis of considering it has been discussed in detail in para supra and hence the Respondent is entitled to claim only that ITC which is covered under the above Section and the Notification dated 14.11.2017 and not on the basis of the availment or entitlement as per his own perception. As the Respondent has already availed ITC on the original purchase of the inputs, it has been considered in the computation of denial of ITC to net turnover ratio. Since, both the GST paid on the inter branch transfers and the turnover of such transfers have been excluded from the computations they are not going to impact the ratio of denial of ITC. Accordingly, the incremental cost under Rule 30 has no adverse affect on the above ratio. Therefore, the above contention of the Respondent is not maintainable.

107. The Respondent has also contended that it should be clarified for calculation of the ratio of ITC to turnover, whether turnover would be taken at the gross level or after deduction of the direct variable costs. In this regard it would be relevant to mention that the direct variable costs of royalty, rent and commission were already included in the prices which were being charged by the Respondent in the pre rate reduction period hence, they still continue to be part of the prices which are being charged by the Respondent in the post rate reduction period in the same percentage in which they were being charged earlier. If there has been increase in the prices due to denial of ITC there has also been increase in the realisation on account of royalty, rent and the commission cost post rate reduction as they form part of the price. The Respondent has

only been denied the benefit of ITC on his inputs w.e.f. 15.11.2017 and therefore, he can increase his prices to the extent of denial of ITC which would cover the above additional costs also. Further, the provisions of Section 171 (1) do not prescribe that while passing on the benefit of tax reduction increase in the cost of the Respondent would also be considered and hence the ratio of ITC to turnover has been rightly computed by the DGAP on the basis of the gross turnover and hence the variable costs cannot be deducted from it. In this regard the Respondent has also cited the order dated 04 May 2018 passed by this Authority in the Case No. 03/2018 of ***Kumar Gandharv v. KRBL Limited*** by claiming that the costs other than tax were also considered in this case. In this regard it would be pertinent to state that the rate of tax was not reduced in the above case and hence the provisions of Section 171 were not attracted as they apply in the case of rate reduction only and hence the above case is not applicable in the facts of the present case as the rate of tax has been reduced.

108. The Respondent has further contended that as per the DGAP's Report, the ratio of ITC to turnover of 9.11% has been applied to each product individually sold after 15 November 2017 and hence, the ratio of ITC to turnover should also have been computed for each product individually as the ITC cost of each product was different. The above claim of the Respondent is not only wrong but it is also illogical as the Respondent is claiming benefit of ITC on the gross turnover and is not claiming it product wise nor he is computing ITC on each product. The product wise ITC and turnover is also not being calculated and furnished by the Respondent in his returns nor it is being maintained for each product in the ITC Register. The Respondent has not even furnished the ITC, the

turnover and the ratio of ITC to turnover on Coffee and French Fries both of which he has cited, which shows the hollowness of his claim. He has also stated that in the alternative, entity-wide ITC cost against entity-wide average increase in prices should have been computed which is also illogical as the Respondent is making supplies at the product level and not at the entity level. Moreover, as per the provisions of Section 171 (1) the benefit is required to be passed on each supply to each customer and in case it is computed at the entity level the benefit cannot be passed to every eligible customer which will be against the above provisions as well as Article 14 of the Constitution.

109. The Respondent has also argued that as per the definition of 'profiteering' given in Section 171 it was required that there should be a determination of the ITC relevant to the goods/ service and a calculation of the commensurate price of that goods/ service. In this context it would be pertinent to mention that there is no stipulation in the definition of profiteering that the ITC should be determined on each product. The only stipulation is passing on the benefit of tax reduction by commensurate reduction in the price of each product which can be easily calculated on the basis of the pre rate reduction base price of the product and by adding 9.11% of the base price in it on account of denial of ITC and then by charging 5% GST. Therefore, the above argument of the Respondent is not tenable.

110. The Respondent has again cited the order of ***N. P. Foods supra*** and claimed that the comparison of the cost of ITC and output price was done at the entity level which should also be done in his case. He has also submitted that the *de-minimis* threshold should be applied in his case also as was applied the case of ***N. P. Foods*** due to the difference of 0.34%

between ITC cost at entity-level and average price-increase at the entity level. In this respect it is apparent from the record that the Respondent has been denied benefit of ITC of 9.11% of the turnover w.e.f. 15.11.2017 whereas he has increased his prices by an average of 10.45%. It is also apparent from the Annexure-36 that the increase in prices ranges from 9.12% to 100.09% in respect of 1730 products out of 1844 products which constitutes 93.82% of the total products sold by the Respondent, as is evident from Annexure-32 of the Report. Therefore, the increase in the prices cannot be claimed to fall under the de-minimis threshold. The above ratio can also not be computed at the entity level as the benefit is to be passed on each product. Therefore, no comparison can be made between the case of ***N. P. Foods*** and that of the Respondent and hence, the above claim of the Respondent cannot be accepted.

111. The Respondent has further argued that there were three methods available viz. (a) ITC loss against the audited financials (b) ITC loss extrapolated for the future and (iii) ITC loss on the basis of actuals, to compute the ratio of ITC to turnover. Therefore, this Authority should clarify which was the most appropriate computation methodology to be followed. In this connection it would be relevant to mention that the ITC has to be computed on the basis of the provision of Section 16 of the Act. Similarly, the turnover also has to be computed on the basis of the value of the supply as per the provisions of Section 15 of the Act and hence all the above methods cannot be taken in to account for computation of the above ratio unless they fulfil the conditions mentioned in Section 15 and 16 of the above Act. When there are specific conditions prescribed for claiming benefit of ITC and for determination of the value of supply the

above ratio cannot be computed on the basis of the financial statements or extrapolation. The ratio can also not be computed correctly on actuals unless the claims of ITC are made in consonance with the provisions of Section 16 of the Act.

112. The Respondent has also directed this Authority to explain how it has observed that the DGAP has investigated the case correctly and in line with the general principals adopted by this Authority in the case of ***Adarsh Marbles supra***. In this regard it would be pertinent to mention that this Authority does not function under the control of the Respondent and hence it is not liable to furnish any explanation to the Respondent. The above case has been decided by taking in to account its facts which are not similar to the case of the Respondent.

113. The Respondent has also claimed that this Authority in its order dated 25 June 2020 passed in Case No. 33/2020 of ***Emmar MGF Land Ltd.*** has held at Page 42/43 that computation of commensurate reduction in prices was a pure mathematical exercise and hence, the same must be based on logical and reasoned parameters. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax v. B. C. Srinivas Shetty supra*** has held that without computation provisions, the statutory provision was rendered nugatory and ineffective. In this connection it is mentioned that under Section 171 (1) no tax has been imposed and hence no computation provisions mentioned in the above case are required to be made. As has been explained in para supra the commensurate price can be fixed by the Respondent by maintain the pre rate reduction base price and by increasing it by 9.11% due to denial of ITC and then by charging GST @ 5%.The whole exercise is purely mathematical and simple. Therefore, the law settled in the above case is

not applicable.

114. The respondent has further claimed that in the absence of any specific methodology the suppliers needed to devise their own methodology to comply with the requirement of Section 171 (1) which could be based on (i) Estimation of loss of ITC on the basis of audited annual statements of the previous years or (ii) Estimation of loss of ITC on the basis of test period or (iii) Actual loss of ITC during the subsequent months. In this regard the Respondent has furnished a Table for the year 2016-17 on the basis of the audited financial statements which shows the Operating Revenue as Rs. 93059.00 Lakh and the Operating Cost as Rs. 88319.00 Lakh being 94.91% of the Operating Revenue. The Capital Cost has been shown as Rs. 5,669.60 Lakh being 1.10% of the Operating Revenue and impact on the cost as % of Operating Revenue has been shown as 12.24%. Perusal of the above Table shows that the Respondent has not computed the amount of benefit of tax reduction which he is required to pass on due to reduction in the rate of tax. He has only harped upon his costs to show that his costs were more than the denial of ITC and hence, the above methodology suggested by the Respondent is unreasonable, arbitrary, illogical and against the provisions of Section 171 (1). Even if the impact of cost is taken to be 12.24% (for the sake of academic discussion) as has been claimed by the Respondent, he has increased his prices more than the above percentage in respect of the 446 products as is evident from Annexure-32. Hence, the alleged methodology devised by the Respondent cannot be adopted to pass on the above benefit.

115. The Respondent has also contended that he has taken the ITC availed in the month of October 2017 as the test period to estimate the ITC impact

on the future. He has taken the amount of ITC availed during the above month as Rs. 11,08,97,125/-, the total outward turnover as Rs. 1,10,98,64,117/- and ratio of ITC to turnover as 10% whereas the DGAP has taken the available ITC as Rs. 13,59,26,262/-, the turnover as Rs. 98,38,48,569/- and the ratio as 13.82%. In this connection it can be noted that the above figures have been taken by the DGAP from the GSTR-1, GSTR-3B and the ITC Register which has been furnished by the Respondent himself. Therefore, the figures taken by the Respondent for computation of the above ratio are not based on the GSTR-3B Return or as per the Table-B of para 18 of the Report of the DGAP nor the basis of taking these figures has been explained by the Respondent, therefore, they cannot be relied upon. In case the ratio of ITC to turnover is even taken as 10% as has been stated by the Respondent, although his claim is incorrect, he has increased his prices by more than 10% in respect of 1710 products as is established from Annexure-32. Hence, the ratio of ITC to turnover calculated by the Respondent cannot be taken to be correct.

116. The Respondent has further contended that without analyzing the computation mentioned in para supra, the DGAP has erroneously calculated the ITC by (i) Ignoring the ITC availed during the period from 1 November 2017 to 14 November 2017 (ii) ITC has been restricted to the amount availed till 14 November 2017 even though the Respondent was eligible and has availed ITC for the supplies received during July 2017 to October 2017 till 31 March 2018 and (iii) ITC availed in the month of July 2017 to October 2017 pertaining to the pre-GST period has been excluded although as per the CGST Act, the time of supply was from July 2017 to October 2017 and the Respondent was eligible and has availed

the ITC. In this regard it would be appropriate to mention that the Respondent was availing CENVAT Credit of tax paid on input services and capital goods along with ITC of VAT on the purchase of goods in the pre-GST period and has carried forward Transitional Credit of Rs. 5.18 Crore on 01.07.2017 for the stock held on 30.06.2017. Full ITC was allowed to the Respondent after implementation of the GST w.e.f. 01.07.2017 on purchase of Inputs, Input Services and Capital Goods on or after 01.07.2017 which the Respondent has also availed. The Respondent has informed during the investigation that he usually carried the same level of inventory at the end of each period and therefore, carried the same level of inventory as on 30.06.2017 and on 31.10.2017. Therefore, for the purpose of computing ratio of denial of ITC to taxable turnover, the ITC for the period from July, 2017 to October, 2017, as furnished in the GSTR-3B Returns filed by the Respondent, has been considered by adding the amount of input tax credit pertaining to the period from July, 2017 to October, 2017, as furnished in the GSTR-3B Returns filed by the Respondent, but availed in the month of November, 2017 as per GSTR-3B Return and by excluding the amount of tax paid on inter unit branch transfers as per Sales Register and the ITC pertaining to the period before July, 2017 which was availed during July, 2017 to October, 2017 as per GSTR-3B Returns. The Respondent should have paid the variable rent every month to claim the benefit of ITC. He cannot blame the DGAP for not taking in to account the annual payments on account of rent as no ITC would be available on them as per the provisions of Section 16 as no tax had been paid on the rent till 14.11.2017. Detailed reasons for ignoring the ITC availed during the period from 1 November 2017 to 14 November 2017, restricting it to the

amount availed till 31 October 2017 and excluding the ITC pertaining to the pre-GST period have been given in para supra and hence the Respondent cannot compel the DGAP to adopt his method to compute the ITC as per his whims and preferences which have no legal basis as he is bound to follow the provisions of Section 16 and hence, the above contention of the Respondent cannot be accepted.

117. The Respondent has also furnished a Table in which he has computed the ITC w.e.f. 01.07.2017 to 14.11.2017 claiming it to be based on his GSTR-3B Returns. He has also added the ITC which he has claimed to have availed in the months of November 2017 to March 2018. He has reduced the amount of tax which he has paid on the inter unit branch transfers, the Input tax credit pertaining to the period prior to July 2017 but availed from July 2017 to October 2017 as per GSTR-3B Returns and has added the incremental tax cost on the inter-unit branch transfers. Similarly, he has claimed to have taken the Total Outward Turnover for the above months as per the GSTR-1 Returns and by excluding the inter unit branch transfers included in the B2B Sales as per the Sales Register. Perusal of the Table submitted by the Respondent shows that he has wrongly included the ITC which he has availed w.e.f. 15.11.2017 to 31.03.2018 as he was not eligible to avail it as the benefit of ITC had been withdrawn by the Government vide Notification dated 14.11.2017. He has further added the incremental tax cost incurred on the inter-unit branch transfers but he has not included the corresponding turnover in his computations. Accordingly, he has computed the ratio of ITC to turnover as 5.17% for the month of July 2017, 7.95% for August 2017, 11.16% for the month of September 2017, 14.72% for the month of October 2017, 14.21% from 01.11.2017 to 14.11.2017 and total ratio as

10.27%. The above calculation of the ratios of denial of ITC to turnover is completely wrong, manipulated, illogical, devoid of material evidence and in violation of the provisions of Section 15 & 16 of the above Act as has been explained above and hence the same cannot be taken to be correct and no reliance can be placed on it.

118. The Respondent has submitted another Table vide which he has claimed to have computed the actual loss of ITC in the month of December 2017 and January 2018 as per the GSTR-2A Returns for the inward supplies and GSTR-3B Returns for the outward supplies and has arrived at the % of denial of ITC to turnover as 10.59%. Perusal of the above Table shows that all the computations made by the Respondent for the above months are hypothetical as he was not eligible to claim benefit of ITC w.e.f. 15.11.2017. Therefore, the Respondent has wrongly taken benefit of ITC for both the above months and hence the above figures cannot be taken to be correct. Accordingly, all the 3 methodologies suggested by the Respondent on the basis of audited Financial Statements or based on the month of October 2017 or on the test basis to forecast expected ITC loss in future are illogical, unreasonable, arbitrary and based on manipulated figures and hence, they cannot be accepted.

119. The Respondent has also argued that in view of the denial of ITC, his production cost has increased necessitating price revision. However, the price revision has also resulted in incremental increase in (i) **Royalty** which he was paying to M/s Mcdonalds India Ltd. @ 3.99% of the turnover (ii) **Variable rent** which was being paid @ 3.29% of the turnover and the (iii) **Other variable expenses** which were being paid to the service providers and which amounted to 0.96% of the turnover. Moreover, GST was also being paid on all the above 3 services @ 18% which

also formed part of his cost. On the basis of the above factors the Respondent has computed the commensurate increase in the prices as per the Table submitted by him. Perusal of the Table shows that in case the percentage of denial of ITC to turnover was 9.11%, 12.24%, 10%, 10.27% and 10.59% respectively then the percentage increase required in prices to maintain the same profitability would be 10.09%, 13.56%, 11.08%, 11.38% and 11.73% respectively. In this regard it would be pertinent to mention that royalty, rent and other variable expenses already formed part of the prices which were being charged by the Respondent during the pre rate reduction period as fixation of price of any product takes in to consideration the cost of inputs, costs on account of royalty, rent and other variables, administrative expenses and the profit margin of the Respondent. The only loss was the denial of ITC w.e.f. 15.11.2017 which now formed part of his cost and to compensate it he could increase his prices to the extent of such denial. Any increase in price in the post rate reduction period due to denial of ITC would also increase the realisation on account of royalty, rent and other variable expenses as they are already built in the price. The Respondent is unnecessarily trying to claim that his cost on account of the above 3 components would increase additionally and he would not be able to recover it through the increase in his prices. The above claim of the Respondent is frivolous, wrong and illogical and hence the same is not tenable.

120. The Respondent has further argued that if he was allowed to increase his prices by 9.11%, he would be able to recover additional cost in the form of ITC + variable expenses only to the extent of 8.22%, thus he would suffer net loss of 0.89% as has been claimed by him in the Table

mentioned supra. As discussed in detail above the Respondent would not suffer any loss in case he increase his prices by 9.11% on account of denial of ITC, as he would recover the additional amount paid on royalty, rent and other variable expenses from the increase in the prices as all three of them form part of the prices of his products. Hence, the above argument of the Respondent is not convincing.

121. The Respondent has also stated that the aforesaid computation has not factored increase in the input cost of other supplies due to inflation or other reasons. The above claim of the Respondent is illogical as there could not have been any sudden increase in the inflation on the intervening night of 14/15.11.2017 which has compelled the Respondent to increase his prices suddenly nor Section 171 (1) provides for consideration of such costs. Hence, the above claim of the Respondent is not maintainable.

122. The Respondent has further stated that the DGAP has wrongly computed the amount of profiteering. The Respondent has computed the net incremental revenue as 9.43% on the Restaurant service by comparing the revenue at the pre rate change prices and the post rate change prices after reducing the incremental costs from it. In this regard it can be noted that in case the incremental revenue is taken to be 9.43% then it is more than the denial of ITC of 9.11% and hence the Respondent has profit margin of 0.32% as per his own admission which proves that he has profiteered to the extent of 0.32%. Therefore, the Respondent cannot claim that he was not required to pass on the benefit of tax reduction.

123. The Respondent has also computed the total amount of ITC, total amount of turnover, % of turnover and the actual profit/loss through the

Table prepared by him. Vide another Table he has computed the actual profit/loss as 0.32% as per the methodology adopted by the DGAP, as 0.20% as per his own methodology, (-) 2.81% as per the financial statements, (-) 0,83% as per the ITC eligibility/availment, (-) 0.57% on the basis of month of October 2017 and (-) 1.16% on the basis of months of December 2017 and January 2018. He has also claimed that the above percentages fell under the principles of de-minimis threshold as per the case of ***N. P. Foods***. In this context it would be relevant to mention that all the above methodologies and computations have been held to be illogical, wrong, manipulated, arbitrary and against the provisions of Section 171 (1) as has been discussed in detail in Para supra and hence, they cannot be taken cognizance of. The objective of the present proceedings is to determine the amount of benefit of tax reduction which the Respondent is required to pass on and not his profit or loss. As has further been mentioned above the case of ***N. P. Foods*** is not applicable in the facts of the present case and hence it does not fall under the de-minimis threshold.

124. He has also computed the actual loss as (-) 0.87% on the supply of McCafe Reg Latte as per another Table submitted by him after reducing the variable costs which is absolutely wrong, illogical and arbitrary as it cannot be understood how he would fix a price by which he was going to suffer loss of 0.87% and how it can be exactly similar to the pre rate reduction price. The post rate reduction price fixed by the Respondent was fixed with the sole motive of not passing on the benefit of tax reduction by misleading the customers and no such grand calculations were done by him which are being shown by him

now as he had simply adopted the pre rate reduction price. Therefore, the above claim of the Respondent is not tenable.

125. The Respondent has also alleged that the DGAP has used methodology of 'Zeroing' which was used by the Anti-dumping Authorities in the European Union (EU) to compute profiteering which was incorrect. In this regard, the Respondent has referred to the ***Report No. WT/DSI41/AB/R dated 01.03.2001*** of the Appellate Body of the World Trade Organisation (WTO) regarding Anti-Dumping Duties on imports of Cotton-Type Bed Linen from India vide which it was held that the methodology of 'Zeroing' could not be applied and the methodology of 'netting off' should be applied and both the negative and positive margins should be considered while applying the anti-dumping provisions. The above contention of the Respondent is not correct as no 'netting off' can be applied in the cases of profiteering as the benefit has to be passed on to each customer which has to be computed on each product. Netting off implies that the amount of benefit not passed on certain product will be subtracted from the amount of benefit passed on other product and the resultant amount shall be determined as the profiteered amount as has been claimed by the Respondent on the basis of Annexure-37 of the Report of DGAP. If this methodology is applied the Respondent would be entitled to subtract the amount of benefit which he has not passed on one product from the amount of benefit which he has claimed to have passed on the other product, which will result in complete denial of benefit to the customer who has purchased a particular product on which no benefit or less benefit has been passed on. Hence, the methodology of 'netting off' cannot be applied in the case of FMCGs

and the methodology of 'Zeroing' has to be applied as the customers have to be considered as individual beneficiaries and they cannot be dumped and netted off against each other. This Authority has also clarified in its various orders that the benefit cannot be computed at the entity level as the benefit has to be passed on each product to each buyer per the provisions of Section 171 (1). Hence, the above contention of the Respondent is not correct as the Respondent cannot insist on not applying the methodology of 'Zeroing' which has been applied in the present case as it would amount to violation of the provisions of Section 171 of the above Act as well as Article 14 of the Constitution.

126. The Respondent has also submitted that the DGAP has wrongly computed the profiteered amount @ 105% i.e. base price plus GST where as he has deposited the GST with the Government and hence no profiteering can be alleged against him. In this connection it would be appropriate to mention that the Respondent has not only collected excess base prices from his customers which they were not required to pay due to the reduction in the rate of tax but he has also compelled them to pay additional GST on these excess base prices which they should not have paid. The Respondent has thus defeated the objective of both the Central and the State Governments to provide the benefit of rate reduction to the ordinary customers by sacrificing their tax revenue. The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of tax reduction to the ordinary buyers by charging excess

GST. Had he not charged the excess GST the customers would have paid less price while purchasing goods from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the above Respondent as per the Explanation attached to Section 171. It would also be appropriate to state here that price includes tax also. Therefore, the amount of profiteering cannot be reduced to Rs. 3,17,03,988/- on account of deposit of additional GST as per the submissions dated 23 July 2018 of the Respondent.

127. The Respondent has also submitted that the DGAP has applied the cost of ITC of 9.11% to the average price pre-rate reduction and compared it with the average price post-rate reduction to arrive at the profiteering amount of Rs. 7.49 Crore. Such a computation was erroneous and contrary to the order dated 27 February 2020 passed in I.O. No. 11/2020 of ***Dough Makers India Private Limited*** vide which this Authority has held that the computation of profiteering should be on the basis of the comparison of pre-rate reduction item-wise average base price with the actual transaction-wise/invoice-wise price charged post rate reduction. Similar stand has been taken by this Authority vide its order dated 25 June 2020 passed in the Case No. 33/2020 of ***Emaar MGF Land Limited***, order dated 26 June 2020 passed in I.O. No. 20/2020 in the case of ***Mataji Paints and Hardware*** and the order dated 15 June 2020 passed in I.O. No. 19/2020 in the case of ***Himalaya Drug Company***. Therefore, the principle of computation adopted by the DGAP was contrary to the principles of computation judicially developed by this Authority. In this connection it is to be noted that the Respondent himself had expressed his inability to

provide the invoice wise item wise outward taxable supply data for B2C supplies due to extremely voluminous nature and had intimated that he would provide data in the summarized manner on product/ SKU basis, which has forced the DGAP to compare the average prices during the pre and post rate reduction periods as is evident from Annexure-37 of the Report. The product wise turnover would not have sufficed as in cases of rejections, the same would have to be deducted, which could have been possible only in case the invoice wise details were provided by the Respondent. Further, random checks by the DGAP could not have computed the profiteered amount by comparing the average pre rate reduction prices with the actual post rate reduction prices due to non-supply of details mentioned above. The above claim of the Respondent was palpably fallacious as much bigger suppliers than him have supplied the invoice wise details of the outward supplies during the course of the anti-profiteering proceedings against them. The above excuse appears to be deliberate, made with the sole intention of reducing the liability of the Respondent on account of denial of benefit of tax reduction to the customers. The Respondent has not come out with clean hands and hence, he cannot claim benefit of the orders passed by this Authority in the above mentioned cases. Therefore, the above contention of the Respondent cannot be accepted.

128. The Respondent has also averred that no methodology has been provided under Rule 126 although there were multiple instances where the Government had sought to control prices to prevent profiteering or ensure availability of essential goods at fair prices in which the relevant law has prescribed detailed methodology viz. ***Maharashtra***

Unaided Private Professional Educational Institutions (Regulation of Admission and Fees) Act, 2015, J & K Hoarding and Profiteering Prevention Ordinance, 2000, Section 3-C of Essential Commodities Act, 1955 in respect of Sugar Price Control, Sugar Price (Control) Order, 2018 issued under Section 3 of the Essential Commodities Act, 1955, Drug (Price Control) Order, 2013 issued under Section 3 of the Essential Commodities Act, 1955 and Drug (Price Control) Order, 1995 provided such methodology. In this connection it would be appropriate to mention that contours of the substantive methodology have already been prescribed under the provisions of Section 171 of the above Act to compute the benefit of tax reduction as well the amount of profiteering as has been discussed in detail in Para supra, hence no separate prescription is required to be made on this account. There was also no need to put the public on notice as Section 171 has been approved by the Parliament and the State Legislatures after detailed discussions at several levels and the CGST/SGST Acts have been duly brought to the notice of the public. The Government had also not felt that the provisions of Section 171 were inadequate in deciding both the above issues of tax reduction and profiteering. Power to frame methodology and procedure is generally and widely available to all the judicial, quasi-judicial and other statutory bodies and no favour has been shown to this Authority by granting it power to frame its own methodology and procedure under Rule 126. Such a power has been conferred on the GST Tribunal under Section 111 (1) of the CGST Act, 2017 and the Competition Commission under Section 36 of the Competition Act, 2002. This Authority has similarly framed its

methodology and procedure under Rule 126 vide Notification dated 28.03.2018. The Respondent does not have the power of legislature to frame the methodology and procedure and hence any such methodology and procedure suggested by him cannot be accepted being illogical, arbitrary, inequitable and being ultra vires of Section 171 and Article 14 of the Constitution. The Respondent had wrongly claimed that he had passed on the benefit at the entity level whereas the evidence on record shows otherwise. Hence, the claim made by the Respondent on the basis of the above Acts and Ordinances is incorrect and hence the same is not maintainable.

129. The Respondent has further averred that refusal to consider increase in cost of inputs on the pretext that Section 171 only required this Authority to examine loss of ITC went against Article 19 (1) (g) of the Constitution of India which provided for reasonable profit to the businessman. In this regard, reliance has been placed by the Respondent on the judgments passed in the cases of ***T. M. A. Pai Foundation v. State of Karnataka, Ranjit Ice and General Mills v. State of Punjab, Diwan Sugar and General Mills (Private) Ltd. v. Union of India*** and ***Shree Meenakshi Mills Ltd. v. Union of India supra.*** In this regard it would be pertinent to mention that Section 171 has not been framed to ensure profit of the Respondent as the benefit has to be passed irrespective of the fact whether he is in profit or loss as he does not have to pass it from his own pocket since the same has been given to the ordinary consumer by the Central and the State Governments from their precious tax revenue by cutting down on the welfare schemes. The Respondent cannot misappropriate it against his profit at the expense of voiceless, unorganised and vulnerable

public. Section 171 also does not require consideration of cost as it requires computation of the benefit of tax reduction to be passed on by the Respondent and in case he does not pass it then the profiteered amount has to be computed. Therefore, the reliance placed by the Respondent on the above judgements is misplaced which does not help his case.

130. The Respondent has also submitted that if this Authority did not take into consideration the costs and also did not provide for a mechanism to generate a reasonable profit the entire exercise would be unconstitutional. On this aspect it would be relevant to note that as has been discussed in detail in Para Supra Section 171 only provides for passing on the benefit of tax reduction and does not provide for considering costs while passing on such benefit. Moreover, this Authority is under no obligation to suggest ways to the Respondent to increase his profit with which the Respondent appears to be completely fixated even at the cost of denial of benefit of tax reduction which has been given to him from the public exchequer. Therefore, the above contention of the Respondent is not tenable.

131. The Respondent has further submitted that on 9 January 2018 he has revised the menu prices for 142 items and depending on the cost of inputs, market competition and other business exigency he was occasionally revising the menu prices which could not be taken as profiteering. In this connection it would be correct to point out that the Respondent has at no stage passed on the benefit of tax reduction but instead he has claimed to have increased his prices on 09.01.2018 which shows complete and wilful disregard of the provisions of Section 171. The Respondent has no legal right to revise his prices unless he

passes on the benefit. Hence, all such increases in prices made by the Respondent amount to profiteering. The Respondent cannot increase his prices in violation of the provisions of Section 171 under the pretext of protection granted under Article 19 (1) (g) as such a claim would be hit by Article 14 of the Constitution.

132. The Respondent has also submitted that the ITC for the period from 1 November 207-14 November 2017 included Rs. 2,15,33,262/- towards reversal of ITC carried forward on the inventory as on 15 November 2017. If such reversal was ignored, ITC for the period from 1 November 2017-14 November 2017 would be Rs. 8,26,80,678/- as against Rs. 6,11,47,417/- thereby increasing the total ITC from 1 July 2017-14 November 2017 to Rs. 44,82,49,192/- from Rs. 42,67,15,930/- and ITC loss from 10.27% to 10.78%. In this connection it would be appropriate to mention that for calculation of ITC ratio, the ITC on inventory as on 01.07.2017 & 15.11.2017 has not been considered as the Respondent had claimed that he was carrying the same amount of inventory on both the above dates. Thus, the above exclusion of ITC on inventory would balance out and Respondent should have no grievance on this score. Further, for calculating the ratio of ITC to turnover, a very long period of 04 months from July, 2017 to October, 2017 has been considered which would give accurate and reasonable value of the ratio of ITC to turnover. Hence the ITC loss cannot be taken as 10.78% as has been claimed by the Respondent. Therefore, the above claim of the Respondent cannot be accepted.

133. The Respondent has further submitted that if the ITC on the closing stock was excluded, then actual transitional credit of Rs. 5.18 Crore

has to be included in the quantum of ITC as it pertained to the inventory carried forward into the GST era as on 01 July 2017. Accordingly, the ITC for the period from 01 July 2017 to 14 November 2017 would be Rs. 45,82,58,308/-. Consequently, the ratio of ITC to the turnover would be 11.03%. As discussed supra the Respondent has carried forward the transitional credit of Rs. 5.18 Crore which has been duly considered by the DGAP and hence the ratio of ITC to turnover cannot be taken as 11.03% as has been claimed by the Respondent.

134. The Respondent has also claimed that he has reversed ITC of Rs. 4,18,08,194/- on inventory of Rs. 30.30 Crore. Therefore, the ITC was 13.80% of the value of the inventory and hence the ratio of 9.11% was illogical as the DGAP has included the month of July 2017 in his computations, which was an outlier data. In this connection it is to be noted that the ratio has to be computed for the period from 01.07.2017 to 31.10.2017 on the basis of the GSTR-3B Returns filed by the Respondent and in terms of Section 15 and 16 as has been explained above. The ITC on inventory as on 30.06.2017 has been duly dealt with by the DGAP as has been explained above. The SGST Act does not define the outlier data and hence the claim made by the Respondent on this ground is untenable.

135. The Respondent has also submitted that the DGAP has determined the ratio of ITC to taxable turnover as 9.11% for the period from July 2017-October 2017 whereas the applicable output rate of GST was 18%. As 9.11% was already available as ITC, the net output tax payment was 8.89% (18%-9.11%). With effect from 15 November 2017, rate of tax has been reduced to 5.45% (being 5% of 109.11) with a complete blockage

of ITC and hence, the effective benefit of reduction in rate of tax was 3.44% (8.89% - 5.45%). In this connection it is to be noted that the benefit of tax has to be computed on each product by taking in to account its pre rate reduction base price, the denial of ITC @ 9.11%, on which the GST is to be charged @ 5% and then its commensurate price is to be fixed and charged to the customers. In case the commensurate price is not charged the actual price charged has to be taken in to account for computation of the profiteered amount. The benefit of tax cannot be claimed to be 3.44% as it cannot be calculated by comparing the pre and post reduction tax rates arbitrarily as the benefit has to accrue to the customers who are bearing the burden of tax and not to the Respondent who is not paying it from his pocket. The customers do not have any benefit of ITC which the Respondent is enjoying. In case the above claim of the Respondent is taken in to account then he had no justifiable ground to increase his post rate reduction prices by more than 3.44% to 100.09% as is evident from Annexure-32. Therefore, the above claim of the Respondent is incorrect.

136. It is also submitted by the Respondent that the DGAP, in respect of some items, has computed the profiteered amount in excess of the amount of the benefit of the reduction in the rate of tax after adjustment of the ITC. By virtue of the aforesaid explanation, the profiteered amount should be restricted to the 3.44% of the base price, even though the price increase was in excess of 3.44%. In this connection it would be relevant to mention that the Respondent has increased his prices by more than 9.11% and up to 100.09% on the same date from which the rate of tax was reduced. The Respondent cannot claim to have extended the benefit of ITC on the one hand and withdraw it on the other

hand on the same day on the ground that the profiteered amount could not be more than 3.44%. Any extra amount charged by the Respondent on the pretext of passing on the benefit of tax reduction has to be considered as the profiteered amount otherwise the provisions of Section 171 would be rendered superfluous and redundant. Therefore, the above claim of the Respondent is untenable.

137. It is further submitted by the Respondent that the correct cost of ITC was 10.78% and hence, the net output payment in tax prior to the rate change was 7.22% (18% - 10.78%) and therefore, the actual reduction in tax after the rate change was 5.54% (being 5% of 110.78). Subsequently, the actual benefit of reduction in the rate of tax was 1.68% (7.22% - 5.54%). Further, there was incremental cost of 1.16% (on base price increase solely due to additional ITC cost) in the form of variable rent etc. and therefore, the amount of the benefit of the reduction in the rate of tax after adjustment of the ITC and incremental cost worked out to be 0.52% [7.22% - (5.54%+1.16%)]. Thus, if the profiteering was computed item-wise and not for restaurant service, as claimed by the Respondent, the revised computation of the alleged profiteering was computed in Annexure-2. However, there would not be any profiteering if profiteering was computed for supply of restaurant service per initiation notification dated 29 December 2017. In this regard it would be relevant to mention that the claim of the Respondent that the benefit of tax reduction would be 0.52% on all the products is absolutely wrong as commensurate price as per the provisions of Section 171 (1) is required to be computed on each product keeping in view its pre rate reduction base price including the denial of ITC and the rate of tax and then compared with the actual price charged by the Respondent including the tax during the post rate

reduction period. Since, the Respondent has increased his prices from more than 9.11% to 100.09% as is evident from Annexure-32, the amount and percentage of benefit to be passed on can never be the same on each product. Perusal of Annexure-2 shows that the Respondent has applied 10.78% as the denial of ITC and then netted off the positive and negative values to claim that the net profiteered amount would be (-) 2,86,96,480/-. As has already been explained above the Respondent cannot apply netting off and the profiteered amount has to be considered on the basis of the price which is more than the pre rate reduction base price, the denial of ITC of 9.11% and the GST of 5%. The benefit is also required to be computed on every product and not at the level of restaurant service as the respondent is to reduce prices on the products and not on service. Therefore, the above claim of the Respondent is wrong and fallacious and hence, the same in not tenable.

138. The Respondent has also claimed that the alleged complaint was against a supply made from an outlet of the Respondent having GSTIN 27AAAFH1333H1ZT, located in the State of Maharashtra and therefore, the profiteering investigation under Section 171 (2) has to remain confined to the supplies made from the said GSTIN. However, the investigation Report has covered supplies made by other 9 GSTINs also and therefore; the investigation made in respect of the other GSTINs was *ultra vires* of Section 171 (2) of the CGST Act. In this connection it is reiterated that the complaint was made in respect of all the products sold by the Respondent as is clear from the complaint of the Applicant No. 2 which has been discussed in para supra. Section 171 (2) also requires that all the products on which the rate of tax has been reduced should be investigated. Hence, the investigation has to be conducted in

respect of all the GSTINs. Therefore, the above claim of the Respondent is not maintainable.

139. Based on the above findings it is abundantly clear that the Respondent is liable to pass on the benefit of GST rate reduction from 18% to 5% with denial of benefit of ITC, as was notified by the Central and the State Governments vide Notification No. 41/2017-Central tax (Rate) dated 14.11.2017 w.e.f. 15.11.2017. It is also established that the Respondent has not passed on the benefit of above tax reduction to his customers in terms of Section 171 (1) w.e.f. 15.11.2017 to 31.01.2018. On the basis of the pre rate reduction GST rate of 18% and the post rate reduction GST rate of 5% with denial of ITC of 9.11% of the turnover and the details of the product wise supplies made during the period from 15.11.2017 to 31.01.2018, 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 products after comparing the average pre and post rate reduction prices of the products, despite the reduction in the GST rate from 18% to 5% or the profiteered amount is determined as Rs. 7,49,27, 786/- as per the provisions of Section 171(1) & (2) of the CGST Act, 2017 read with Rule 133 (1) of the CGST Rules, 2017. The consolidated place of supply wise i.e. State wise breakup of the total profiteered amount of Rs. 7,49,27, 786/- is given in the Table below:-

S. No.	State (Place of Supply)	Profiteering (In Rs.)
1	Andhra Pradesh	8,36,602
2	Chhattisgarh	3,99,904
3	Goa	8,29,314
4	Gujarat	88,48,919
5	Karnataka	1,18,30,563
6	Kerala	13,34,341
7	Madhya Pradesh	9,68,540
8	Maharashtra	3,96,68,520
9	Tamilnadu	43,19,803
10	Telangana	58,91,280
Total:		**7,49,27,786**

140. Accordingly, the Respondent is directed to reduce prices of all the impacted products commensurately in respect of which profiteering has been computed as per Annexure-37 of the DGAP's Report dated 15.06.2018 forthwith in terms of Rule 133 (3) (a) of the above Rules read with Section 171(1) of the above Act.

141. The Respondent is also directed to deposit 50% of the profited amount of Rs. 7,49,27,786/- i.e. Rs. 3,74,63,893/- in the Central Consumer Welfare Fund and the balance 50% in the Consumer Welfare Funds of the 10 States mentioned above as per the provisions of Rule 133 (3) (c) of the above Rules read with Section 171 (1) since the recipients who are millions of ordinary customers 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 respective Consumer Welfare Funds as per the provisions of the above Rule. The above amount of Rs. 7,49,27,786/- along with the 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 Commissioners

of the Central and the State Tax of the concerned State Governments as per the provisions of their CGST/SGST Acts.

142. 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 this Authority is deposited in the CWFs of the Central and the concerned State/UT Governments as per the details given above. A report in compliance of this order shall be submitted to this Authority by the concerned Commissioners CGST/SGST within a period of 4 months from the date of receipt of this order through the DGAP.

143. 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 15.11.2017 to 31.01.2018 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 15.11.2017 to 31.01.2018 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 Respondents.

144. 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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

(A.K Goel)
Secretary, NAA

File No. 22011/NAA/42/2018/Part-II/6351-98 Dated: 09.12.2020

Copy To:-

1. Shri Ravi Charaya, ravi@xofootwear.com
2. Shri Chandranath Sarkar, sarkarcs10@gmail.com
3. Shri Shreepad Shende, sgshende@gmail.com
4. Shri Jayasankar Venkatramani, jay.jayashankar.v@gmail.com
5. M/s Hardcastle Restaurants Pvt. Ltd., 1001/1002, Tower 3, 10th Floor, Indiabulls Finance Centre, Senapati Bapat Marg, Elphinstone Road, Mumbai-400013.
6. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. Commissioner of Commercial Taxes, Office of The Chief Commissioner of State Tax, Eedupugallu, Krishna District, Andhra Pradesh.

A. K. GOEL
SECRETARY, NAA

8.Commissioner of Commercial Taxes, Office of The Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.

9.Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna – 800 001.

10.Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001.

11.Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.

12.Commissioner Of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula- 134 151.

13.Commissioner of Commercial Taxes, Excise & Taxation Complex, Rail Head Jammu.

14.Commissioner of Commercial Taxes, Commercial Taxes Department, Project Bhawan, Dhurva, Ranchi- 834 004.

15.Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009.

16.Commissioner of Commercial Taxes, Government Secretariat, Thiruvananthapuram -695001.

17.Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore.

18.Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai-400 010.

19.Commissioner of Commercial Taxes, Office of The Commissioner of State Tax, Banijyakar Bhawan, Old Secretariat Compound, Cuttack - 753 001.

A. K. GOEL
SECRETARY, NAA

20. Commissioner of Commercial Taxes, Office Of Excise And Taxation Commissioner, Bhupindra Road, Patiala- 147 001.

21. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.

22. Commissioner of Commercial Taxes, Papjm Building, Greams Road, Chennai – 600 006.

23. Commissioner of Commercial Taxes, O/O The Commissioner of State Tax, Ct Complex, Nampally Station Road, Hyderabad - 500 001.

24. Commissioner of Commercial Taxes, Office Of The Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P).

25. Commissioner of Commercial Taxes, State Tax Department, Head Office Uttarakhand, Ring Road, Near Pulia No. 6, Natthanpur, Dehradun.

26. Commissioner of Commercial Taxes, 14, Beliaghata Road, Kolkata - 700 015.

27. Commissioner of Commercial Taxes, Deptt Of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin-110 002.

28. Chief Commissioner Central Goods & Service Tax , Cochin Zone C.R.Building, I.S.Press Road, Ernakulum Cochin-682018.

29. Chief Commissioner of Central Goods & Services Tax Delhi Zone C.R. Building, I.P. Estate, New Delhi-110109.

30. Chief Commissioner of Central Goods & Services Tax, Vadodara Zone 2nd Floor, Central Excise Building, Race Course Circle, Vadodara 390 007.

A. K. GOEL
SECRETARY, NAA

31. Chief Commissioner of Central Goods & Services Tax, Ahmedabad Zone, 7th Floor, CGST Bhavan, Revenue Marg, Opp. Poly., Ambawadi, Ahmedabad-380015.

32. Chief Commissioner of Central Goods & Services Tax, Bengaluru Zone, C.R. Building, Queen's Road, Bengaluru-560001.

33. Chief Commissioner of Central Goods & Services Tax, Bhopal Zone, 35-C, GST Bhavan, Administrative Area, Arera Hills, Bhopal-462100.

34. Chief Commissioner of Central Goods & Services Tax, Bhubaneshwar Zone, C.R. Building, GST Bhavan, Rajaswa Vihar, Bhubaneshwar, Odisha-751007.

35. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone, C.R. Building, Plot No. 19, Sector-17/C, Chandigarh-160017.

36. Chief Commissioner of Central Goods & Services Tax, Chennai Zone, 26/1, Mahatama Gandhi Road, Nungambakkam, Chennai-600034.

37. Chief Commissioner of Central Goods & Services Tax, Lucknow Zone, 7-A, Ashok Marg, Lucknow-226001.

38. Chief Commissioner of Central Goods & Services Tax, Ranchi Zone, 1st Floor, C.R. Building (Annexe), Veerchand Patel Path,Patna-800001.

39. Chief Commissioner of Central Goods & Services Tax, Thiruvananthapuram Zone, C.R. Building, I.S. Press Road, Ernakulam, Cochin-682018.

40. Chief Commissioner of Central Goods & Service Tax, Hyderabad Zone GST Bhavan, I.B.Stadium Road, Basheer Bagh, Hyderabad 500 004.

41. Chief Commissioner of Central Goods & Services Tax Jaipur Zone, New Central Revenue Building, Statue Circle, Jaipur 302 005.

42. Chief Commissioner of Central Goods & Services Tax, Meerut Zone, Opp. Ccs University,Mangal Pandey Nagar, Meerut-250004.

A. K. GOEL
SECRETARY, NAA

43. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building, 115 M.K. Road, Opp. Churchagate Station, Mumbai-400020.

44. Chief Commissioner of Central Goods & Services Tax, Telangkhedi Road, Civil Lines, Nagpur 440001.

45. Chief Commissioner of Central Goods & Services Tax Panchkula Sco 407408, Sector-8, Panchkula.

46. Chief Commissioner of Central Goods & Services Tax, Pune Zone GST Bhawan Ice House, 41a, Sasoon Road, Opp. Wadia College, Pune-411001.

47. Chief Commissioner of Central Goods & Services Tax Visakhapatnam Zone GST Bhavan, Port Area, Visakhapatnam-530 035

48. Guard File.

A. K. GOEL
SECRETARY, NAA