BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	32/2020
Date of Institution	16.04.2020
Date of Order	27.11.2020

In the matter of:

Director-General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicant

Versus

M/s Urban Essence (Prop. Aniket Nagnath Nimbalkar), D-1, Shop No. 34, Ganga Bhagyodaya Commercial Complex, Singhad Road, Vadgaon B.K. Pune-411041.

Respondent

Quorum:-

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

Present:-

1. None for the Applicant.
2. None for the Respondent.

ORDER

1. The present Report dated 23.03.2020 has been furnished by the Director-General of Anti-Profiteering (DGAP), under Rule 129(6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received by the DGAP from the Standing Committee on Anti-Profiteering on 09.10.2019 recommending a detailed investigation in respect of an application under Rule 128 (2) of the CGST Rules, 2017 alleging profiteering in respect of restaurant service supplied by the Respondent (Franchisee of M/s Subway Systems India Pvt. Ltd.). In the application, it was alleged that despite the reduction in the rate of GST from 18% to 5% w.e.f. 15.11.2017, the Respondent had not passed on the commensurate benefit of tax reduction as he had increased the base prices of his products.
2. The DGAP has reported that on receipt of the said reference from the Standing Committee on Anti-profiteering, a notice under Rule 129(3) of the CGST Rules, 2017 was issued on 23.10.2019 calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 15.11.2017, had not been passed on

to his recipients by way of commensurate reduction in prices and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all the supporting documents. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information which formed the basis of the investigation between 30.10.2019 and 31.10.2019, which was however not availed of by the Respondent.

3. The DGAP has reported that the period covered by the current investigation was from 15.11.2017 to 31.10.2019.

4. The DGAP has also stated that in response to the notice dated 10.05.2019 and subsequent reminders, the Respondent submitted his replies vide his letters/e-mails dated 12.11.2019, 18.12.2019, and 27.12.2019.

5. The reference received from the Standing Committee on Anti-profiteering, the various replies of the Respondent, and the documents/evidence on record had been carefully scrutinized by the DGAP. The main issues to be examined were:-

   a) Whether the rate of GST on the service supplied by the Respondent was reduced from 18% to 5% w.e.f. 15.11.2017.

   b) If so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to their recipients, in terms of Section 171 of the CGST Act, 2017.

6. Further, the DGAP has reported that the Central Government, on the recommendation of the GST Council, vide Notification No. 46/2017-

Central Tax (Rate) dated 14.11.2017 had reduced the GST rate on the restaurant service from 18% to 5% w.e.f. 15.11.2017 with the condition that the ITC on the goods and services used in supplying the service was not to be taken.

7. Further, the DGAP has reported that the Respondent's claim of passing on the benefit of GST rate reduction by providing an extra quantity, free add-ons, Incentive/Offers to Customer, discounts, etc. had been examined and it was seen that the said Section 171 of CGST Act, 2017 nowhere aimed at providing extra quantity and free add-ons, incentive/offers to the customers and discounts and its purpose was only to ensure that the benefit of any reduction in the rate of tax on any supply of goods or services or the benefit of ITC was passed on to the recipients by way of commensurate reduction in prices. Further the transaction value was always exclusive of discount in any form.

8. Further, the DGAP has reported that the Respondent was dealing with a total of 340 items while supplying restaurant services before 15.11.2017. Upon comparing the average selling prices as per details submitted by the Respondent for the period 01.07.2017 to 14.11.2017 and the actual selling prices post rate reduction, i.e. with effect from 15.11.2017, it was seen that the GST rate of 5% had been charged on the increased base price which established that though the tax amount was computed @ 18% before 15.11.2017 and @ 5% w.e.f. 15.11.2017, the fact was that because of the increase in base prices,

the cum-tax price paid by the consumers was not reduced commensurately, despite the reduction in the GST rate. Therefore, having established the fact that the base prices were increased post 15.11.2017, the only remaining point for determination was whether the increase in base price was solely on account of the denial of ITC. Despite several reminders, the Respondent failed to submit the sample copies of Invoices pre and post rate reduction.

9. Further, the DGAP has submitted that the assessment of the impact of denial of ITC, which was an uncontested fact, required the determination of the ITC in respect of "Restaurant Service" as a percentage of the taxable turnover from the outward supply of "products" during the pre-GST rate reduction period. Therefore, the exercise to work out the ITC in respect of restaurant service as a percentage of the taxable turnover from products during the pre-GST rate reduction period had to be carried out, though by taking into consideration the period from 01.07.2017 to 31.10.2017 and not up to 14.11.2017. From the perusal of GSTR 3B Returns for the month of November, December 2017 filed by the Respondent it was observed that the Respondent had not reversed any ITC though he was no longer eligible to avail credit of ITC on the closing stock of inputs/input services and capital goods after 14.11.2017 which was required under the provisions of Section 17 of the CGST Act, 2017 read with Rule 42 and 43 of the CGST Rules, 2017. Therefore, the taxable turnover and

input tax credit for the period 01.11.2017 to 14.11.2017 had not been considered to work out the ratio of ITC to taxable turnover.

10. Further, the DGAP has submitted that the ratio of ITC to the net taxable turnover had been taken for determining the impact of denial of ITC (which was available to the Respondent till 31.10.2017). On this account, it was observed that as per the Return/statutory documents submitted by the Respondent, it was observed that ITC amounting to ₹1,43,873/- was available to the Respondent during the period July 2017 to October 2017 which was 7.54% of the net taxable turnover of restaurant service amounting to ₹19,07,509/- supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the said ITC was not available to the Respondent. A summary of the computation of the ratio of ITC to the taxable turnover of the Respondent was given in 'Table-H' below:

Table–H **(Amount in ₹)**

Particulars	Jul-17	Aug-17	Sept.-2017	Oct.-2017	Total
ITC Availed as per GSTR-3B (A)	26,144	32,157	32,119	53,453	1,43,873
Total Outward Taxable Turnover as per GSTR-3B (B)	4,83,201	4,74,699	5,08,620	4,40,989	19,07,509
The ratio of Input Tax Credit to Net Outward Taxable Turnover (C)= (A/B*100)					**7.54%**

11. Further, the DGAP has submitted that the analysis of the details of item-wise outward taxable supplies during the period of 15.11.2017 to 31.10.2019, revealed that the Respondent had increased the base prices of items supplied as part of restaurant service to make up for

the denial of ITC post GST rate reduction. The pre and post GST rate reduction prices of the items sold as part of restaurant service during the period 01.07.2017 to 14.11.2017 (pre-GST rate reduction) and 15.11.2017 to 31.10.2019 (Post-GST rate reduction) were compared and it was established that the Respondent had increased the base prices by more than 7.54% i.e., by more than what was required to offset the impact of denial of ITC in respect of invoices sold during the same period.

12. It has also been reported by the DGAP that in respect of these items, the commensurate benefit of reduction in the rate of tax from 18% to 5% had not been passed on. It also appeared that there was no profiteering in respect of the remaining items on which there was no increase in the base price or else, the increase in base price was less or equal to the denial of ITC, or these were new products launched post-GST rate reduction.

13. Further, the DGAP has submitted that having established the fact of profiteering to the extent aforementioned, the next step was to quantify the same. For this purpose, only those items where the increase in base price was more than what was required to offset the impact of denial of ITC, had been considered. The calculation was explained in 'Table-B' below in case of one item 12" Aloo Patty Sub for which average base price had been calculated during the pre-GST rate reduction period of 1st November 2017 to 14th November 2017

and then profiteering had been calculated for post-GST rate reduction invoice No. 1/A-24756 dated 15.11.2017: -

Table-I **(Amount in Rs.)**

Name of item (A)	12" Aloo Patty Sub
Total quantity sold from 01.11.2017 to 14.11.2017 (B)	7
Sum of the taxable value of supplies from 01.11.2017 to 14.11.2017 (C)	1715
Average base price from 01.11.2017 to 14.11.2017 (D=C/B)	245
Base price with denial of input tax credit @7.54% (E=D*1.0754)	263.47
GST @ 5% (F= E*5%)	13.18
Commensurate price to be charged w.e.f. 15.11.2017 (G=E+F)	276.65
Selling price per unit as per Invoice No. 1/A-21261 dated 18.11.2017 (H)	295.00
Total profiteering (I=H-G)	18.35

14. Further, the DGAP has submitted that the GST rate reduction Notification No. 46/2017 Central Tax (Rate) dated 14.11.2017 was effective from 15.11.2017. Accordingly, the average base price before 15.11.2017 had been compared with the actual base price of each transaction (invoice wise) post rate reduction. Based on the aforesaid comparison of the pre and post-tax rate reduction base prices, the impact of denial of ITC and the details of outward supplies (other than zero-rated, nil rated, and exempted supplies) during the period 15.11.2017 to 31.10.2019, as per the product-wise sales registers, the amount of net higher sale realization due to increase in the base price

of the service, despite the reduction in GST rate from 18% to 5% (with denial of ITC) or in other words, the profiteered amount came to ₹5,47,005/- (including GST on the base profiteered amount). From the perusal of the details submitted by the Respondent it was observed that:

(i) The profiteering against most of the invoices was different from each other.

(ii) In many invoices there was no profiteering and therefore these were not part of the computation of profiteering.

(iii) Many products had been introduced/ launched for the first time i.e. after 15.11.2017. As these newly introduced products could not be compared with products being sold from 01.07.2017 to 14.11.2017 these products were not part of the profiteering calculation.

(iv) In many invoices some products attracted profiteering but other products did not attract profiteering.

(v) The manner of profiteering against each product had been shown in 'Table-I' above and accordingly a summary of total profiteering has been worked out as per 'Table-II' below.

Table-II

Sr.No	Description	Total
1.	Total No. of the impacted products sold between 01.07.2017 to 14.11.2017	340
2.	Total No. of Invoices issued during the period 15.11.2017 to 31.10.2019	1,37,564
3.	Total value of invoices issued during the period 15.11.2017 to 31.10.2019	Rs 1,33,48,132/-

4.	Total no of Product against which profiteering has been found	148
5.	Total no. of Invoice on which profiteering was found	36945
6.	Total value of Invoices of the products on which profiteering was observed	Rs. 89,76,126/-
7.	Total Profiteering against the impacted products	Rs 5,47,005/-

15. Further, the DGAP has stated that based on the details of outward supplies of the restaurant service submitted by the Respondent, it was observed that the said service had been supplied by the Respondent in the State of Maharashtra only.

16. Further, the DGAP has concluded that the allegation of profiteering by way of either increasing the base prices of the products while maintaining the same selling price or by way of not reducing the selling prices of the products commensurately, despite a reduction in GST rate from 18% to 5%w.e.f. 15.11.2017 stood confirmed against the Respondent. On this account, the Respondent had realized an additional amount to the tune of **₹5,47,005/-** (Rupees Five Lakh Forty-Seven Thousand Five only) from the recipients, which included both the profiteered amount and GST on such profiteered amount. The DGAP further concluded that Section 171(1) of the CGST Act, 2017 has been contravened in the present case.

17. The above Report of the DGAP was considered by this Authority and it was decided to hear the Respondent in person on 29.05.2020. A notice dated 05.05.2020 was also issued to the Respondent asking him

to explain why the Report of the DGAP dated 23.03.2020 should not be accepted and his liability for violating the provisions of Section 171 of the above Act should not be fixed.

18. Due to the COVID-19 pandemic outbreak and subsequent lockdown in Delhi, the hearing scheduled for 29.05.2020 could not be held and Accordingly, this Authority, vide its Order dated 29.05.2020 extended another opportunity to the Respondent to file his consolidated written submissions by 19.06.2020.

19. The Respondent vide his e-mail dated 19.06.2020 filed his written submissions, inter-alia stating:-

a) That the method of profit calculation shown in para 19 of the DGAP's report dated 23.03.2020 was not proper as while adopting the methodology, the rise in the cost of the products due to various reasons i.e. employee salary/labour cost, telephone, internet, electricity charges, transportation, rent, advertisement expenses, royalty, home delivery charges, misc. expenses, product purchase price available in the market, etc. were not considered.

b) That in para 16 of the DGAP's report wherein ratio of ITC was determined by the DGAP but it was very clear from the 'Table-H' of the report that DGAP had calculated the ratio based on the period July 2017 to October 2017 as after enactment of GST and as per CBIC Press Release No. 62/2018, dated 18.10.2018, the last date to avail ITC in respect of invoices or debit notes relating to such

invoices pertaining to period from July 2017 to March 2018 was extended up to 31st December 2018.

c) That it was understood that the Anti-Profiteering Application Form (APAF-1) filed by Applicant was concerning only one product and hence the investigation should have been limited to only the product which the Applicant had mentioned in his Application.

ii) That he had to increase the prices of the products which did not increase his profit due to various reasons including denial of ITC. Thus, the allegation that the price was enhanced to adjust the profit margin was not correct.

iii) That due to the lockdown of the restaurant, as stated above, he had no worker and part-time manager to examine all aspects raised in the DGAP's Report dated 23.03.2020 and due to worse financial condition he was unable to hire any expert legal consultant and therefore submitted that, if his above submissions were not considered and it was concluded that he had charged the profit margin from the customers, he agreed to return the same to the customers and to submit the acknowledgment copy of the receipt or copy of counterfoil of cheque or bank statement to establish that the amount had been returned to the customers, as most of the customers were fixed and they were regular customers. If any customer was not available and any amount remained to be paid to the customer, he was ready to deposit the same to the CWF and submit the receipt of the same.

20. A supplementary report was sought from the DGAP in response to the above submissions of the Respondent. The DGAP vide his submissions dated 01.07.2020 had filed his clarifications under Rule 133(2) of the CGST Rules, 2017 in respect of Respondent's above submissions dated 19.06.2020 and has stated :-

a. That the increase or decrease in cost had nothing to do with the rate reduction in tax and availability of ITC. These financial and commercial considerations and other issues such as inflation were already accounted for by the Petitioner while launching a supply service/project/manufacture, and his lack of wisdom could not come at the cost of the benefit of ITC/reduction in the rate of tax that was additionally accruing to the customers on account of Section 171 of the CGST ACT, 2017 and the CGST Rules, 2017, which deal with the provisions of anti-profiteering and which were very clear and looked into the aspect as to whether additional ITC availed by any registered person or the reduction in the tax rate had actually resulted in a commensurate reduction in the price of the goods or services or both supplied by the Respondent. Further, the commercial decision to purchase branded raw materials, advertisement, royalty charge, etc. could not change overnight and Section 171 did not require the Respondent to seek approval to conduct his trade or fix the prices of the goods or services being supplied by him. It was only concerned with the fact that any reduction in the rate of

tax or the benefit of ITC was passed on to the recipient. It was nowhere concerned with the process of fixation of prices or margins of profit of a particular business and it was limited only to the extent of finding out whether the benefit of tax reduction had been passed on to the recipients or not. The objective of Section 171 of the Act was to ensure that the benefit of reduction in the rate of tax and benefit of ITC was passed on to the recipient and not pocketed by the supplier. Further, the objective of the statute was not to curtail the profit margin of any business. Every supplier of goods and services was free to increase the price of his supply depending upon the various components affecting his cost of supply but under the provisions of Section 171 of the Act, no supplier could increase the base prices of the products overnight in such a manner that even with the reduction in the rate of tax, the selling price would remain unchanged. The commensurate reduction of the price was the requirement of the statute. Hence the averment of the Respondent was incorrect.

b. That the contention of the Respondent that by virtue of the Press Release No. 62/2018 dated 18.10.2018, the last date to avail ITC in respect of invoices or debit notes issued before March 2018 was extended up to December 2018 had in no way restricted the Respondent to place the details of said invoices for the period July 2017 to October 2017 before the

DGAP as the investigation Report of the DGAP was submitted to this Authority only in March 2020. The Respondent had enough time to place these facts with corroboratory evidence before the DGAP. Thus the contention of the Respondent in absence of any proof could not be accepted.

c. That in terms of Section 171(2) of the CGST Act, 2017 the DGAP has been mandated to examine the cases forwarded to him and to find out as to whether ITC availed by any registered person or the reduction in the tax rate has actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him. The above Section did not mention any particular recipient; it meant that all of the supplies of the registered person needed to be examined from a profiteering angle. Such expanded investigation was the only obvious method to compute the profiteering because there was a single GST return for the supply of all the SKUs put together, supplied by a particular registered person, and also a single credit entry in the ITC ledger of the registered person for the particular month. It was not feasible to earmark a portion of the total ITC to a particular product SKU being supplied by him as there were a lot of common inputs services for the products being supplied. Further, during the investigation, it was observed that the Respondent did not pass on the benefit of rate

reduction for the same product or other products sold to various other recipients. Once the above finding was observed the same had to be mentioned in the Investigation Report. Thus, the contention of the Respondent did not hold any ground.

d. That the contention of the Respondent that he had to increase the prices of his products due to various reasons other than the denial of ITC is incorrect. The issue related to costing, inflation, and other factors affecting the price had been dealt with in para 20(a) above. As regards the denial of ITC it had been clearly mentioned at Para 19 of the Investigation Report that the denial of ITC of 7.54% was added to the base price of each product sold on or after 15.11.2017 for calculating profiteering and it was observed that the Respondent did not reduce the prices commensurately in terms of Section 171 of CGST Act, 2017 even after the benefit of reduced input credit were allowed to them.

e. That the submission of the Respondent concerning the transfer of Writ petition pending before other Courts to Hon'ble High Court of Delhi has no bearing on the profiteering. The other facts mentioned also did not impact the profiteering.

21. Further vide his submissions dated 22.07.2020, the Respondent had submitted his written submissions in respect of the clarifications made by the DGAP and has stated :-

a. That the Anti-Profiteering Investigation was conducted by the DGAP and the report of the investigation in respect of the supply of restaurant services under rule 129 of the CGST rules, 2017 was received on 10.07.2020 in which the DGAP had not considered all the points in his written submissions dated 19.06.2020.

b. That in the DGAP's report dated 23.03.2020, in point no. 14 it had been mentioned that he had not submitted sample invoices pre and post rate reduction. The Respondent iterated that he had submitted sample invoices during the first visit of the Govt. of Maharashtra State Tax Inspector at the outlet on 28.12.2018. That he had again submitted more sample invoices at the state tax office in the due course of investigation by the Department of Goods and Service Tax, Govt. of Maharashtra.

c. The Respondent further requested for the detailed calculations of profiteering in excel format to enable him to verify the same and submit his reply.

d. That due to the Covid19 pandemic, the Government had imposed a lockdown in Pune and his restaurant was shut since March 2020 to date. His restaurant business revenue was almost zero for the last 4 months, but operating expenses such as electricity bill, rent, employee salary/ labour cost, fuel, etc.

were fixed. Hence he had taken loans from family and friends for payment of such fixed expenses.

e. That he wishes to reiterate his submissions dated 19.06.2020.

22. Further the Respondent, vide his written submissions dated 06.10.2020 on the report of the DGAP, has interalia submitted that the calculation of the profiteering amount per item was done by the DGAP using the difference between the gross values of products. But whatever tax had been collected pre and post GST rate reduction had been deposited with the Government. Thus the tax amount could not be considered as profiteered amount. Hence using gross values for calculating profiteered amount was incorrect and the GST amount should have been reduced from the amount calculated; that the DGAP while calculating the profiteered amount had considered sales from November 2017 to October 2019 for a period of 2 years. The period of investigation should not have exceeded beyond a certain logical period.

23. This Authority directed the DGAP to file his clarifications under Rule 133(2A) of the CGST Rules, 2017 against the Respondent's submissions dated 06.10.2020. The DGAP has filed his clarifications dated 28.10.2020 under Rule 133(2A) of the CGST Rules, 2017 and stated that:-

a. the Respondent had not only collected excess base price from his customers which they were not required to pay due to the reduction in the rate of tax but the Respondent had also compelled customers to pay additional GST on the excess base

price. By doing so, the Respondent had defeated the objective of both the Central and the State Governments which aimed to provide the benefit of rate reduction to the general public. The Respondent was legally not required to collect the excess GST and therefore, he had contravened the provisions of Section 171 (1) of the Act supra, as he had denied the benefit of tax reduction to his customers by charging excess GST. Had he not charged the excess GST, the customers would have paid a lesser price while purchasing goods from the Respondent and hence gross amount had rightly been included in the profiteering amount. The Profiteering amount could also not be paid from the GST deposited by the Respondent in the accounts of the Central and State Governments because the amount was required to be deposited in the Consumer Welfare Funds (CWFs) as per the provisions of Rule 133 (3) (a) of the CGST Rules 2017. Hence, his having deposited the excess tax collected on the profiteered amount in the form of taxes was no ground to escape from passing on the benefit to his recipients/ customers.

b. That the contention of the Respondent made in para 2 of his reply dated 06.10.2020 was not correct and it was submitted that Section 171 (2) of the CGST Act, 2017 states that *"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". Therefore, the above Section has already given powers to this Authority to investigate all the supplies made by a registered person. This Section empowered this Authority to examine if the benefit of the ITC and reduced tax rates had been passed on by the Respondent or not. The Section did not envisage that the said benefit has to be passed on to a specific recipient alone but it provided that it would apply to all the supplies made by the Respondent to all his recipients which were needed to be examined from the perspective of passing on the benefit to each buyer. Therefore, all the supplies were required to be investigated because there was a single GST return for all the supplies made by a particular registered person, and there was also a single credit entry in the ITC ledger of the registered person. It was not possible to earmark a portion of the total ITC to a particular product/SKU being supplied by a registered person, which could be done only after all the supplies were investigated. That Rule 133 (5) of the CGST Rules, 2017, further clarified the scope of the expanded investigation 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.

c. That the investigation period was taken up to the last completed month of the reference received from the Standing Committee by the DGAP.

d. That the DGAP's Report dated 23.03.2020 had been submitted considering all the aspects and submissions made by the Respondent and profiteering had been worked out in terms of Section 171 of the CGST Act, 2017.

24. The Respondent vide his written submissions dated 09.11.2020 had stated that he had put forth his contentions through his previous replies dated 27.12.2019, 19.06.2020, 22.07.2020, and 06.10.2020 and has requested to consider them.

25. We have carefully considered the Report furnished by the DGAP, the submissions made by the Respondent, and the other material placed on record. On examining the various submissions, the observations of this Authority are as follows:-

a. The Respondent has contended that the ratio of ITC to the turnover during the pre rate reduction period has been calculated by the DGAP considering the period from July 2017 to October 2017. As per CBIC Press Release No. 62/2018, dated 18.10.2018, the last date to avail ITC in respect of invoices or debit notes relating to such invoices pertaining to the period from July 2017 to March 2018 was extended up to 31st December 2018. Therefore, the credit availed only during the period July 2017 to October 2017 considered for determination of ITC ratio was not proper.

b. The DGAP has also reported that Press Release No. 62/2018 has in no way restricted the Respondent to place the details of the invoices or the debit notes for the period from July 2017 to October 2017 before him.

26. Given the above discussion, we observe that as per the C.B.I.C. Press Release No. 62/2018, dated 18.10.2018, the last date to avail ITC in respect of invoices or debit notes relating to such invoices pertaining to the period from July 2017 to March 2018 was extended up to 31st December 2018. However, the Respondent has not submitted the details of the same to the DGAP during the investigation. Therefore, in the interest of natural justice and keeping in view that Covid 19 pandemic could have prevented the Respondent from making his submissions in a timely manner, we are of the view that the matter needs to be reinvestigated by the DGAP under Rule 133(4) of the CGST Rules, 2017. On his part, the Respondent is directed to fully cooperate with the DGAP in the process of reinvestigation which includes submission of the requisite invoices/ debit notes pertaining to his supplies during the period July 2017 to October 2017, the ITC of which might have been claimed later till 31.12.2018.

27. Therefore, without going into any merits of the case and without dwelling on the submissions made by the Respondent and the Applicant at this stage, we find this case to be a case that requires to be reinvestigated by the DGAP based on the above observations of

this Authority. Thus, we direct the DGAP to reinvestigate the matter as per provisions of Rule 133(4) of the CGST Rules 2017.

27. As per provisions of Rule 133 (1) of the CGST Rules, 2017 this Order was required to be passed within a period of 6 months from the date of receipt of the Report furnished by the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 19.03.2020, this Order was to be passed by 18.09.2020. However, due to the prevalent pandemic of COVID-19 in the country, this Order could not be passed before the above date due to *force majeure.* Accordingly, this Order is being passed today in terms of Notification No. 65/2020- Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes and Customs under Section 168 A of the CGST Act, 2017.

28. A copy each of this Order be supplied to the Applicant and the Respondent for necessary action. File be consigned after completion.

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

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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

27.11.2020

(A.K Goel)
Secretary, NAA

File No. 22011/ NAA/146/Urban/2020/6416-18 Dated: 27.11.2020
09.12.2020

Copy To:-

1. M/s Aniket Nagnath Nimbalkar, (Trade Name- M/s Urban Essence), Shop No. 34, Building D1, Ganga Bhagyodaya Commercial Complex, Sinhagad Road, Vadgaon B.K. Pune-411051.

2. 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.
3. Guard File/Website.

27.11

A. K. GOEL
SECRETARY, NAA