

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

Case No. 73/2020
Date of Institution 19.12.2019
Date of Order 17.11.2020

In the matter of:

1. Principal Commissioner, Central Tax & Central Excise
Hyderabad, GST Commissionerate, GST Bhavan, Basheerbagh,
Hyderabad- 500004.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs,
2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi-110001.

Applicants

Versus

M/s Sudharshan 35 MM, 1-1-143, Ground Floor, RTC X Roads,
Chikkadapally, Hyderabad-500020.

Respondent

Quorum:-

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



Present:-

1. None for the Applicants.
2. Sh. Raj Tadla, Partner for the Respondent.

Order

1. The present Report dated 18.12.2019 has been received from Applicant No. 2, i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that Applicant No. 1 had filed an application dated 06.03.2019 under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of "Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" when GST was reduced from 18% to 12% w.e.f. 01.01.2019 vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018.
2. Vide his Report, the DGAP has reported that Applicant No. 1 had alleged that the Respondent had not passed on the benefit of reduction in the GST rate on the aforesaid movie admission tickets, from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 and instead, increased the base prices to maintain the same cum-tax selling prices. Applicant No. 1 had also alleged in his letter dated 03.04.2019 that the Respondent was selling tickets of different categories priced at Rs.100/- or less than 100/- (excluding Tax). However, the DGAP, on

examination of the record of the monthly sale of tickets in each category, observed that in the month of March 2019 and May 2019, three different categories of tickets, i.e. other than the categories mentioned by Applicant No. 1 had been sold by the Respondent. Scrutiny of the records submitted by the Respondent also revealed that these three categories of tickets were not the matter of the complaint made by the above Applicant and the existence of these categories was also not reflected in the sales data for the pre-tax rate reduction period. As the comparable data/rates of new categories during the month of March 2019 or May 2019 were not available during the last 4 months before rate reduction, profiteering for these categories had not been worked out. Hence the investigation was limited to the reduction in the rate of GST from 18% to 12% only and for only three categories mentioned by Applicant No. 1.

3. The aforesaid application was examined by the Standing Committee on Anti-profiteering, whereby it was decided to forward the same to DGAP to conduct a detailed investigation in the matter. The Standing Committee forwarded the following submission/documents of Applicant No. 1.
 - (i) Anti-profiteering Application form (APAF-1).
 - (ii) Letter dated 13.02.2019 of M/s Sudharshan 35 MM, Hyderabad confirming the fact of the non-reduction of the prices of tickets.

(iii) Letter dated 13.04.2019 of the Applicant to the Standing Committee on Anti-profiteering.

4. The DGAP has further reported that on receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 08.07.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in GST rate had not been passed on to the recipients by way of commensurate reduction in prices and if so, to suo-moto determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all supporting documents. Vide the said Notice, the Respondent was also allowed to inspect the non-confidential evidence/information furnished by Applicant No. 1 during the period 15.07.2019 to 17.07.2019, which the Respondent had not availed of. The period covered by the current investigation is from 01.01.2019 to 30.06.2019.

5. The DGAP has submitted that in response to the notice dated 08.07.2019 and subsequent reminders, the Respondent submitted his reply vide letters and e-mails dated 18.07.2019, 23.10.2019, 07.11.2019, 26.11.2019, 05.12.2019, and 13.12.2019 and inter-alia stated that:-

(i) He had to seek approval from the Licensing Authority, for the change in the basic prices of tickets. He was governed by the State Government's Cinematography Act and the Commissioner of Police, Hyderabad, was his licensing

Authority and any change in prices of tickets could only be done after his approval.

- (ii) State Government's GO (Government Order) directed the Respondent to sell tickets at allowed prices, inclusive of taxes. Therefore, he had continued to sell the tickets, for the lower classes at Rs. 80/- and Rs. 50/-, whereas for the upper classes, he had reduced ticket prices because of the different GST tax rates in existence. (18% and 28%)
- (iii) He had faced losses as a result of the introduction of GST w.e.f. July 2017. Before the introduction of GST on 1st July 2017, his ticket rate was Rs. 120/- inclusive of entertainment tax. He was unable to arrive at Rs. 120/- inclusive of GST as the price of his movie ticket since the bandwidth of pricing at any price between Rs. 118/- (100+18%) and Rs. 129/- (101+28%) was made unavailable. Therefore, he was forced to sell the movie tickets at Rs. 2/- lesser than earlier, i.e. at Rs. 100+18%= Rs. 118/- resulting in substantial losses to him.
- (iv) He had changed the pricing a few times during this period of last 6 Months depending upon-
 - a. Type of Movie (Starcast etc.)
 - b. Number of days, the movie ran.
 - c. If the movie was a hit or flop.
- (v) State Government was forcing the Respondent to provide free parking. The local municipal authorities had forced him

not to charge for the parking of vehicles by the cine-goers. This had a lot of effect on the viability of the business and added losses.

(vi) The Respondent explained in respect of the movie ticket slot of Rs. 80, that had he had charged the commensurately reduced base price of Rs. 67.80 and Rs. 8.14 (GST @ 12%) the ticket price would have been Rs. 75.94, which would have resulted in practical difficulties in payment for the cine-goers.

(vii) The Respondent after the issue having been pointed out by the Local GST office had changed the base prices from 11.03.2019. He had restructured the pricing for the First Class @Rs. 75.94, (basic price Rs. 67.80 plus GST @12% Rs. 8.14) and as the collection of Rs. 75.94 would not have been possible, he had started charging a price of Rs. 75 (basic price Rs. 66.97 plus GST @12% Rs. 8.03), compromising his profit. Similar was the case with Second Class ticket prices. Where he had to reduce the Base Price from Rs. 42.37 to Rs. 40.18.

6. The Respondent vide the aforementioned letters; submitted the following documents/information:

- (a) Invoice-wise details of all outward taxable supplies of the movie admission tickets impacted by GST rate reduction w.e.f. 01.01.2019, during the period 01.09.2018 to 30.06.2019.
- (b) Price List of the aforesaid movie admission tickets, pre and post 01.01.2019.

- (c) Sample copies of the invoice/tickets, pre and post 01.01.2019.
- (d) GSTR-1 and GSTR-3B returns from December 2018 to June 2019.
- (e) G.O.Ms. No. 100 Home (General A) Department, issued by the Government of A.P. dated 26.04.2013 concerning the rate of the admission ticket.
- (f) G.O.Ms. No. 75 Home (General A) Department, dated 23.06.2017 issued by Government of A.P. concerning the price of the movie ticket.

7. The DGAP also stated that the respondent vide email dated 13.12.2019 claimed that "It is utmost important that tax matters have to be crystal clear, without any ambiguity and that is possible only when such issues are discussed amongst various concerned respectable Government Offices. Keeping in this mind, he feels, his communication with the Government of India, regarding Tax matters, may be shared for such purpose i.e. his communication may be treated as semi-confidential".

8. The DGAP further reported that the reference received from the Standing Committee on Anti-profiteering, the various replies of the Respondent, and the documents/evidence on record had been examined in detail and the main issue was whether the rate of GST on "Services by way of admission to exhibition of cinematography films where price of admission ticket is above one hundred rupees" was reduced from 28% to 18% w.e.f. 01.01.2019 and "Services by way of admission exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" was reduced from

18% to 12% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rates of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

9. The DGAP also observed that the Central Government, on the recommendation of the GST Council, reduced the GST rate on the "Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" from 18% to 12% w.e.f. 27.07.2018, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. This was a matter of fact which had not been contested by the Respondent.

10. The DGAP reiterated that Section 171(1) of Central Goods and Services Tax Act, 2017 which governed the anti-profiteering provisions under GST stated 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." Thus, the legal requirement 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. Such reduction could obviously be only in terms of money, such that the final price payable by a consumer got reduced commensurate with the reduction in the tax rate. This was the legally prescribed mechanism for passing on the benefit of input tax credit or reduction in the rate of tax to the recipients under the GST regime and there

was no other method that a supplier could adopt to pass on such benefits.

11. The DGAP also submitted that the Applicant No. 1, in his letter dated 03.04.2019 and the Annexure attached to APAF-I had furnished the details of prices being charged before 01.01.2019 and price charged from 01.01.2019 and had pointed out that the Respondent was selling tickets of different categories priced at Rs.100/- or less than Rs. 100/- (excluding Tax). However, DGAP had examined the monthly sale of tickets in each category and observed that in the month of March 2019 and May 2019, three different categories of tickets, i.e. other than the categories mentioned above were sold. Thus, in the month of March 2019 two different categories of tickets with base prices of Rs. 40.18 and Rs. 66.96 were also sold and in the month of May 2019 four different categories of tickets where the base price of tickets were Rs. 105.93, Rs. 40.18, Rs. 66.97 and Rs. 89.28 were sold. As these categories of tickets were not a part of the complaint made by Applicant No.1 nor the same were reflected in the sale of December 2018, the Respondent was asked to clarify the same and to submit the details of taxable supplies for the months of September, October, and November 2018. In response, the Respondent vide letter dated 05.12.2019 submitted the sale details for the months of September 2019 to November 2019. A perusal of the sale details showed that from the month of September 2017 to November 2017 the base prices of the tickets were Rs. 100/-, Rs. 67.80 & Rs. 42.37 only. However, no

clarification concerning the variation in prices during the month of March 2019 and May 2019 was submitted. The Respondent was once again sent a letter/email on 13.12.2019, requesting him to submit the reasons for the movie ticket prices in the month of March 2019 & May 2019. The Respondent vide email dated 13.12.2019 submitted that the ticket rate changes in March and May, in his case, should not attract any anti-profiteering penalties, as he had not profited. As the comparable data/rates of new categories during the months of March 2019 or May 2019 were not available during the last 4 months before the rate reduction, the profiteering for these categories had not been worked out. Hence the investigation was limited to the consequences of the reduction in the rate of GST from 18% to 12% only and for only three categories mentioned by Applicant No.1.

12. The DGAP also reported that the Respondent's contention that he did not fall in the category of beneficiaries due to input credit accrual, had not impacted the investigation as the same had neither been alleged by Applicant No.1 nor was part of the investigation report, therefore needed no clarification. Further, the Respondent had also contended that in terms of the State Governments' Cinematography Act his prices were regulated by the Licensing Authority, he had to purchase copyright at a higher rate and received the product from his vendors at higher rates. However, on perusal of the G.O. of the State Government, it was observed that the Licensing Authority Order prescribed the minimum and

maximum rates (inclusive of tax) which could be charged from the recipients and had not prohibited or restricted the commensurate reduction in prices of tickets in the event of GST rate reduction. Further, this investigation had not looked into the aspect of costing or market conditions but was restricted to the aspect of benefit to be passed on in terms of Section 171 of CGST.

13. The DGAP, on examination of the details of sales data, observed that there were three categories of admission tickets i.e. Rs. 50/-, Rs. 80/- and Rs. 118/- (inclusive of tax) sold by the Respondent during the pre-rate reduction period. In the post rate reduction period effective from 01.01.2019 the final prices of the admission tickets (inclusive of tax) in the case of the first two categories, i.e. Rs. 50/- and Rs. 80/- were kept unchanged by the Respondent despite the rate reduction. However, the price of the admission tickets (inclusive of tax) of the third category was reduced from Rs. 118/- to Rs. 112/-.
14. The DGAP also reported that from the sales data made available, it was evident that The Respondent had increased the base prices of the admission tickets when the GST rate was reduced from 18% to 12% w.e.f. 01.01.2019 in the manner illustrated in Table-A below.

Table-A

Sr. No.	Category of Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019				
		Amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	Amount charged i.e inclusive of tax (in Rs.)	GST Rate (%)	Price of Ticket i.e. Base Price (in Rs.)	Commensurate Base Price(in Rs.)	Amount which was to be Charged (in Rs.)
A	B	C	D	E=[C/118%]	F	G	H	I	J= (I*112%)
1	Upper and Lower	118	18	100.00	112	12%	100.00	100.00	112.00

	Balcony								
2	First Class	80	18	67.80	80	12%	71.43	67.80	75.93
3	Second Class	50	18	42.37	50	12%	44.64	42.37	47.45

The DGAP further observed that from the above Table- "A" it was apparent that in case of admission tickets of "Upper and Lower Balcony" the base price i.e. the taxable price had not been changed from Rs.100/- and the cum tax price had been reduced from Rs.118/- to Rs.112/- resulting into reduction of Rs. 6/-. However, the Respondent had increased the base price of the admission ticket from Rs. 67.80 to 71.43 for the First class and from Rs. 42.37 to 44.64 for the Second Class. Thus it was observed that the actual cum tax prices of the tickets were not reduced though they should have been revised as Rs. 75.93 for First class and Rs. 47.45 for the second class but the Respondent continued to charge the pre rate reduction prices and maintained the actual cum tax prices by increasing the base prices of the tickets. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of GST rate reduction from 18% to 12% in respect of "Services by way of admission to exhibition of cinematography films" was not passed on to the recipients in case of two categories of admission tickets.

15. The DGAP reported that based on aforesaid pre/ post reduction in GST rates and the details of outward supplies for the period 01.12.2018 to 30.06.2019 submitted by the Respondent, it was observed that profiteering during the period from January 2019 to

June 2019 from the sale of tickets in three categories mentioned in Table A above amounted to Rs. 94,965/- for the First class and Rs. 1,28,885/ for the second class. The total amount of net higher sale realization due to the increase in the base prices of the movie tickets, despite the reduction in GST rate from 18% to 12% or in other words, the profiteered amount came to Rs. 2,23,850/-. The details of the computation are given in Table "B" below.

Table-B

Sr. No	Admission ticket	01.01.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	The excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 12%	Profiteering per unit (Rs.)	Qty. Sold	Total Profiteering (including tax @12%) (in Rs.)
A	B	C	D	E= (C-D)	F= (E*12%)	G= (E+F)	H	I= (H*G)
1	First Class	71.43	67.80	3.63	0.44	4.07	23333	94,965
2	Second Class	44.64	42.37	2.27	0.27	2.54	50742	1,28,885
3	Upper and Lower Balcony	100.00	100.00	0	0	0	156874	0
Grand Total								2,23,850/-

16. The DGAP, based on the details of outward supplies of the service submitted by the Respondent, has stated that the Respondent had sold movie tickets in the State of Telangana only.

17. The DGAP further submitted that from the Table above it was proved that the base price of the admission tickets of (First class was indeed increased from Rs. 67.80 to Rs. 71.43 and Second class has increased from Rs 42.37/- to Rs 44.64/-, as a result of which the benefit of reduction in GST rate from 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in price charged (including lower GST @

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12%) which remained unchanged at Rs 50/- and 80/-. The total amount of alleged profiteering covering the period from 01.01.2019 to 30.06.2019, was Rs. 2,23,850/- (**Rupees Two Lakh Twenty Three Thousand and Fifty only**). The recipients of the services were not identifiable as no such details of the customers had been provided.

18. The investigation report was received by this Authority on 18.12.2019 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 13.01.2020. Notice dated 20.12.2020 was thus issued to the Respondent directing him to explain why the Report dated 18.12.2019 furnished by the DGAP should not be accepted and why his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed.
19. The first hearing was held on 27.01.2020 wherein Sh. Raj Tadla, Partner, appeared for the Respondent and furnished written submissions dated 27.01.2020, whereby the Respondent has contended as follows:-
- a. That from the date when the tax rate was reduced, he had charged the customers reduced prices.
 - b. That since a movie ticket was a service and no stocking was required, he did not have any benefit of ITC due to tax rate changes and that he had forwarded the benefit of ITC accrued to his customers.



- c. That he kept changing the prices of the movie admission tickets depending on whether the movie was old or a new release; whether it was a well-performing movie with high viewership/ demand or otherwise.
- d. That he also kept changing his movie ticket prices depending on the day of the week, charging higher movie ticket prices for weekends and holidays
- e. That the movie ticket prices depended on the price at which he had procured the rights to exhibit the movie from its producer/distributor and the price of the movie was decided by him based on the demand for the movie.
- f. That the difference amount i.e. the amount that he was charged with having profiteered had been paid to the producer/distributor and hence, his margins remained the same.
- g. That he had submitted the invoices raised by the producers/distributors of the movies.
- h. That the computations done by the DGAP to arrive at the profiteered amount were wrong and unsustainable. During a tax rate change, the period for which he could not raise the prices of his products/outward supplies was not prescribed.
- i. That he was penalized under the pretext of profiteering, for increasing the ticket prices even after a few months had passed.
- j. That he could not be expected to not increase the movie ticket prices even when a new movie came.

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- k. That since there was no basis to penalize him with anti-profiteering proceedings, he had requested to direct the Applicants to either re-compute the amount of profiteering or drop the proceedings.
- l. That there were no guidelines that were issued which needed to be followed regarding affecting pricing changes during the tax rate changes.
- m. That he had not contravened the provisions of Section 171 of the CGST Act, 2017 and he had charged and collected the correct tax rate from his customers that he had not availed and not withheld any benefit of ITC for movies tickets that ought to have been passed on to the customers.
- n. That he had bought the movies at a higher rate from the producers/distributors and hence, he had not profited.
- o. That he had the right to change his ticket prices after a certain period after the tax rate change came into effect.
20. Further, vide e-mailed dated 21.08.2020 the Respondent submitted that different movies were different products. Though they were of the same category as "movies" according to common understanding, however, they came from different vendors (producers) and had different star-cast, music directors, technical teams, costs, and budgets, etc. He also elaborated it through various examples.
- (a) Supplementary Report was also called from the DGAP on the above submissions of the Respondent. The DGAP submitted

his supplementary report dated 20.02.2020 under Rule 133(2A) of CGST Rules, 2017 on the submission made by Respondent. In respect of the contention of the Respondent regarding payment of the profiteered amount to the producer/distributor to procure the right to exhibit the movie and keeping his profit margins the same, the DGAP submitted that the costing of the product has not been looked into in the investigation. Further, the Respondent has three categories of admission tickets, and the cum tax prices of the admission tickets before 31.12.2018 were fixed for upper & lower balcony as Rs. 118/-, First Class as Rs. 80/- and Second Class as Rs. 50/-. The Respondent had reduced the price of upper & lower Balcony tickets from Rs. 118/- to Rs. 112/- but no price reduction was done in the case of the other two categories. Further, the contention that the amount which he has been alleged to have profiteered has been paid to the producer did not absolve the Respondent from the allegation of profiteering as ultimately the recipients/consumer had to pay the excess amount. Hence, the contention of the Respondent may not be accepted.

21. We have carefully heard the Respondent and perused the submissions of the Applicants and the Respondent as also the case record placed before us and it has been revealed that the Central and the State Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph

films where the price of admission ticket was above one hundred rupees” from 28% to 18% and “Services by way of admission to exhibition of cinematograph films where the price of admission ticket was one hundred rupees or less” from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.

22. On examining the various submissions placed on record, we need to find whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.
23. Section 171 of the CGST Act provides as under:-

“(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC 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 ITCs 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 percent of the amount so profiteered:*

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

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

24. The Respondent has contended that he has been providing the service in respect of admission to the exhibition of cinematography films and no stocking was required and hence, he did not have any benefit of ITC due to tax rate changes in the present case. In this connection, it would be relevant to mention that the DGAP has carried out the investigation in respect of the services provided by the Respondent and looked into the aspect of reduction in the price of movie tickets following the GST rate

reduction from 18% to 12% as per the Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. Therefore, the question of stocking of the goods does not arise in the present case. The Respondent has to pass on the benefit of reduction in the tax rate of GST not the benefit of additional ITC. Hence, the above contention made by the Respondent is not correct.

25. The Respondent has argued that the State Government has provided him with a range of ticket prices within which he kept changing the prices of the tickets based on various factors like new/old movies, age & performance of the movies. The above contention of the Respondent is not correct. In this connection, it was observed that as per the data made available by the Respondent to the DGAP during the investigation, he had not categorized/rated the movie ticket prices as per the above-mentioned factors, and the DGAP after scrutinizing the above data, found that the prices of the admission tickets remained more or less uniform post-tax rate reduction and were not dynamically changing. Further, the Respondent has not submitted any documentary evidence to sustain his claim. Therefore, in the absence of any documentary evidence, the claim of the Respondent cannot be accepted.
26. The Respondent has also averred that he had procured the cinema license at a higher rate from the market and he had been procuring the right to exhibit the movies from the producers/distributors, who decided the prices for his movies based on the

demand of the movie. Hence, the amount that was being alleged to have been profiteered had been paid to the producers/distributors. While this contention of the Respondent is not backed by any documentary evidence, it is nonetheless irrelevant from the perspective of quantification of profiteering, which has arisen in this case since the benefit of reduction in the tax rate has not been passed on by the respondent to his customers/ recipients. It is also pertinent to mention that this Authority does not function as a price controller/regulator as it is only empowered to ensure that the benefit of tax reduction and ITC are passed to the consumers as per the specific provisions of Section 171 (1) of the CGST Act, 2017.

27. Further, the Respondent in his submissions mentioned in the Para 17 above has also stated that he has no right to fix the prices of the tickets and the appropriate State Government had provided him with a range of ticket prices within which he could fix the prices based on certain factors of the movies. The Respondent has neither submitted the order showing fixation of prices by the State Government nor he has submitted any documentary evidence/ agreement to evidence that the price was fixed by the film producers/distributors. Hence, the above two statements made by the Respondent are not correct. Therefore, the contention made by the Respondent cannot be accepted.
28. The Respondent has further contended that the computation made by the DGAP to arrive at the profiteering amount was wrong

and unsustainable as there wasn't any period prescribed for raising the price of his services. In this context, we observe that in this case, while the rate of GST was reduced from 18% to 12% in respect of the "Services by way of admission to exhibition of cinematography films where price of admission ticket is one hundred rupees or less" w.e.f. 01.01.2019, the Respondent had increased the base prices of his tickets immediately thereafter and did not pass on the resultant benefit by a commensurate reduction in the prices of his supplies at any point of time till 30.06.2019. In other words, the violation of the provisions of Section 171 of the CGST Act 2017 has continued unabated in this case and the offence continues to date. The Respondent has nowhere produced any evidence to prove from which date the benefit was passed on by him. The fact that the Respondent has not complied with Section-171 of the CGST Act 2017 till 30.06.2019 implies that profiteering has to be computed for the entire period and hence we do not see any reason to accept this contention of the Respondent. We further observe that had the Respondent passed on the benefit before 30.06.2019, he would have been investigated only till that date. However, it has also been revealed from the Report of the DGAP that the Respondent has reduced the base prices of the tickets to Rs. 75/- and Rs. 45/- for the first class and the second class tickets for a certain period from 11.03.2019 to 08.05.2019 and thus, the same has been considered by the DGAP while calculating profiteering. Therefore,

the period of investigation from 01.01.2019 to 30.06.2019 has been rightly taken by the DGAP.

29. This Authority based on the facts discussed above has found that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket is one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019 to 30.06.2019. On this account, the Respondent has realized an additional amount to the tune of Rs. 2,23,850/- from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteering is determined as Rs. 2,23,850/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 2,23,850/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 1,11,925/- in the Central Consumer Welfare

Fund (CWF) and Rs. 1,11,925/- in the Telangana State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the Commissioner CGST and SGST as per the provisions of the SGST Act, 2017.

30. Further, this Authority as per Rule 136 of the CGST Rules 2017 directs the Commissioners of SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as Ordered by the Authority is deposited in the respective CWFs. A report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 3 months from the date of receipt of this Order.
31. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this Order was required to be passed within a period of 6 months from the date of receipt of the Report furnished by the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 30.10.2019, this Order was to be passed by 29.04.2020. 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 on 17.11.2020 in terms of the Notification No. 65/2020- Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of

Revenue), Central Board of Indirect Taxes and Customs under Section 168 A of the CGST Act, 2017.

32. A copy each of this Order be supplied to the Applicants, the Respondent, Commissioners CGST/SGST 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


19.11.2020

(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/110/Sudarshan/2019/6036-6040 Date: 19.11.2020

Copy To:-

1. M/s Sudarshan 35 MM, 1-1-143, Ground Floor, RTC X Roads, Chikkadapally, Hyderabad-500020.
2. Principal Commissioner, Central Tax & Central Excise Hyderabad, GST Commissionerate, GST Bhavan, Basheerbagh, Hyderabad-500004.
3. The Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad-500001.
4. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
5. Guard File/NAA Website.

o/c


19.11.20

A. K. GOEL
SECRETARY, NAA
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