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

Case No.	:	12/2022
Date of Institution	:	27.11.2020
Date of Order	:	12.05.2022

In the matter of:

1. Shri Kalyan Chakravarthy, H.No. 9-7-284 D1, Flat No. 201, Bharathi Residency, Hanuman Nagar, Karimnagar, Telangana-505001.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, BhaiVir Singh SahityaSadan, BhaiVir Singh Marg,Gole Market, New Delhi-110001.

Applicants

Versus

1. M/s Prathima Multiplex Pvt. Ltd., Collector Office Road, Opp. Police Parade Ground, Mukarampura, North, Karimnagar, Telangana-505001.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member and Chairman.
2. Sh. Pramod Kumar Singh, Technical Member.
3. Sh. Hitesh Shah, Technical Member.

Present:-

1. Shri Kalyan Chakravarthy, Applicant No. 1 in person.
2. Shri P.V.V. Raghavendra Babu, General Manager and Shri R.P. Malladi, Legal Consultant for the Respondent.

ORDER

1. A Report dated 26.11.2020 had been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1 filed application before the National Anti-profiteering Authority under Rule 128 (1) of the CGST Rules, 2017 with respect to supply of "Sevices by way of admission to exhibition of cinematography films".
2. Vide his Report, the DGAP has reported that Applicant No. 1 had alleged that the Respondent did not pass on the benefit of reduction in the GST rate on "Services by way of admission to exhibition of cinematograph films" which were reduced w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 by way of commensurate reduction in price, in terms of Section 171 of

the CGST Act, 2017 and instead, increased the base price to maintain the same cum tax selling price of the admission tickets. Accordingly, it was decided to initiate an investigation and collect evidence necessary to determine whether the benefit of GST rate reduction w.e.f. 01.01.2019, had been passed on by the Respondent to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.

3. The DGAP has stated that the aforesaid application was examined by the Standing Committee on Anti-profiteering, in its meeting, the minutes of which were received in the DGAP on 06.05.2020, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, it was decided to initiate an investigation and collect evidence necessary to determine whether the benefit of reduction in rate of tax had been passed on by the Respondent to the recipients in respect of supply of "Services by way of admission to exhibition of cinematography films" supplied by the Respondent.The Standing Committee forwarded the following submission/documents of the Applicant No. 1.

(i) Online complaint filed by the Applicant No. 1.

(ii) Letter dated 06.12.2019 of the Respondent to the State Screening Committee on Anti-profiteering.

4. The DGAP has reported that on receipt of the reference from the Standing Committee on Anti-profiteering, a Notice of Investigation (NOI) dated 02.06.2020 under Rule 129 of the Rules was issued by the DGAP calling upon the Respondent to reply as to whether he admitted if the

benefit of reduction in rate of tax 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.

5. The DGAP further stated that vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 25.06.2020 to 26.06.2020, which the Respondent did not avail. The Respondent, vide email dated 19.06.2020 requested for a copy of the documents submitted by the Applicant No.1, which were provided to the Respondent vide email dated 01.10.2020.

6. The DGAP has stated that the period for investigation was from 01.01.2019 to 30.04.2020.

7. The DGAP also reported that in response to the Notice dated 02.06.2020, the Respondent submitted his reply vide letters and e-mails dated 19.06.2020, 23.06.2020, 01.07.2020, 10.07.2020, 16.07.2020, 27.07.2020, 07.08.2020, 12.08.2020, 18.08.2020, 11.09.2020, 06.10.2020, 09.10.2020 and 19.11.2020. The reply of the Respondent has been summed up below:

a) The Respondent was a private limited company existing on the records of Registrar of Companies, Hyderabad and had constructed a multiplex with 2 Screens on the land of TSRTC (A Telangana Government Organization), which was given on license under BOT (Build, Operate and Transfer) concept by TSRTC upto 2036, with

construction time upto 2009. The Respondent had paid to TSRTC Upfront Fee and was paying regularly the Annual Ground License Fee (AGLF) and Annual Commercial License Fee (ACLF) on yearly basis and in advance towards the licensing of the land.

b) The Respondent's cinema screens were at only one place of Karimnagar, Telangana. There were no branches at any other place.

c) The price of the cinema screens was decided by the Government of Telangana from time to time. The price fixed only had to be collected by the cinema screen owner and no other separate charges were allowed or permitted. Further, all the taxes calculated on the price were as per the proportion of taxes from time to time and had to be paid. Tax was arrived as prescribed under the relevant Act. In the case of GST, tax was calculated in the proportion of 18/118 or 28/128, as the case might be prescribed under Rule 35 of the CGST Rules, 2017. The price fixed by the Government was "Fixed amount" and did not have any break up of basic price, GST, Total etc. i.e. no GST was collected from customer. The Respondent had also submitted history of Prices fixed by the Government. Thus, the price was fixed by the Government of Telangana only and had to be charged irrespective of the tax rates from time to time and the increased liability was to be borne by the cinema screens only.

d) The Respondent submitted that he had collected prices fixed as per Order No. GO. Ms. No. 114, Home (Gen. A) Department, dt. 07.07.2012 and Order No. GO. Ms. No. 100, Home (Gen. A) Department, dt. 26.04.2013, wherein the Government of Telangana

accorded permission for rate of admission to Class-I as Rs. 100 and for Class-II as Rs. 75/- at that time and ordered increase of tax free maintenance charge.

e) Further the Respondent submitted that irrespective of the GST rate for the period 13.10.2018 to to-date, the price was the same of Rs. 150 and Rs. 130 for the Gold and Silver classes respectively. No GST was separately charged. The Respondent also submitted that ticket price was same and fixed when Entertainment Tax was @7%, 20% or 15%, as per the class of cinema notified by Government, as on 01.07.2017 when GST@18% was applicable i.e. Rs. 100/- or 75/- and revised price from 13.10.2018 to till date i.e. 150/- or 130/-, with so much increase in administration and running costs.

f) The Respondent submitted that Article 246 read with S. No. 33 of List-II of the 7th Schedule to the Constitution of India gives full powers to State Government to regulate the Cinema exhibition industry. S. No. 60 of List-I of the 7thSchedule read with Article 246 of Constitution gives Central Government the power to regulate sanctioning of cinematographic films or censorship of films only. There were no Government Orders issued under GST by Central Government regulating the Cinema Screen price by Central Government, since it did not have power to regulate cinema ticket price. The Company had not charged GST on the Ticket price separately or additionally. Thus, the ticket price was the basic price and it was same pre 01.01.2019 and post 01.01.2019.

g) The Respondent further submitted that Cinema Screens/ Theatre was a "State Government Controlled Industry" w.r.t. price of cinema tickets and operation of cinema theatres. The control had been vested in "Public Interest" with the State Government in specific with regard to price under the Constitution of India. Constitution gave powers to Central Government only to regulate whether the cinema could be screened or not. Hence, the jurisdiction of Central Government, Director General or NAA or Standing Committee of NAA was ousted.

h) The Respondent also submitted that the price had been fixed by the State Government and was modified and fixed by Hon'ble High Court of Telangana. Thus, the price fixation could not be disputed by the DGAP or this Authority. Also, the Cinema Ticket prices fixed did not give the value of taxes included in the prices but cast the liability to pay taxes proportionately, as applicable. Hence, the invoking of Anti-profiteering was untenable, since no GST was added.

i) The Respondent also submitted that the matter of profiteering was already investigated by the Jurisdictional Assessing Officer, the Deputy Commissioner (Economic Intelligence Unit), State Level Screening Committee. Visiting the Respondent with fresh notice by every authority without reference to previous proceedings was impermissible as it was clearly harassment of the Respondent and hence, the jurisdiction was ousted and the same was clearly against all the canons of equity.

j) The Respondent contended that the Scheme of Anti-profiteering was defective for the following reasons:

i) There was no scheme laid down in the Act as to the (a) Methodology (b) How the party could verify the calculations and defended itself.

ii) The Scheme did not envisage "Controlled Industry" where State Government fixed the price of the tickets and no GST was paid or payable. Also, the scheme did not distinguish free trade and controlled industry. Further, in controlled industry, the price did not give any breakup of basic price, GST etc. and GST was calculated proportionately.

iii) The Scheme did not envisage the "Methodology" for fixing the Anti-profiteering calculation and period upto which the anti-profiteering provisions should be applied, since the same price could not rule during the life time of the Respondent.

iv) Also, the commensurate reduction was not defined anywhere and thus, the measurement or calculations failed. As the Scheme was not finding in place in the Act, nor the Act defined the contours of the Scheme to be framed, there was no jurisdiction conferred on any authority.

k) Also, the Respondent quoted that in the case of Rahul Sharma Vs Gyan Books, this Authority held that since the assessee charged no GST pre and post reduction of GST rate, the question of profiteering did not arise and the application was required to be dismissed. The facts were squarely applicable in the present case also. Hence, the application was liable to be rejected.

8. The DGAP has further reported that the Respondent had submitted the following documents/information:

(a) Brief profile of the Respondent.

(b) 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 01.12.2018 to 30.04.2020.

(c) Sample copies of the invoice/tickets, pre and post 01.01.2019.

(d) GSTR-1 and GSTR-3B Returns for the period December, 2018 to April, 2020.

(e) Price list of the movie admission tickets, pre and post 01.01.2019.

(f) Telangana/Andhra Pradesh Government Orders in GO. Ms. No. 101, Home (Gen.A) Department dated 27.04.2010.

(g) Telangana/Andhra Pradesh Government Orders in GO. Ms. No. 114, Home (Gen.A) Department dated 07.07.2012.

(h) Telangana/Andhra Pradesh Government Orders in GO. Ms. No. 100, Home (Gen.A) Department dated 26.04.2013.

(i) High Court for Telangana and Andhra Pradesh Orders in WP No. 37873 of 2018.

(j) Licence Copy (Licence No. C2/448/2010-1) dated 25.03.2010 alongwith Appendix-I.

(k) Audited financial statements for the period ending March, 2019.

(l) Notices of Jurisdictional Assessing Officer, the Deputy Commissioner (Economic Intelligence Unit), State Level Screening Committees.

9. The DGAP has also reported that the Central Government, on the recommendation of the GST Council, reduced the GST rate on "*Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees*" 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"* from 18% to 12% w.e.f. 01.01.2019 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 has 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. The main issue to be looked into was whether the rate of GST on the "*Services by way of admission to exhibition of cinematograph 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 rate of GST was passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.

11. The DGAP has further stated that Section 171(1) of CGST Act, 2017 which governs the anti-profiteering provisions under GST states 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 ITC 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. That was the legally prescribed mechanism for passing on the benefit of ITC or reduction in rate of tax to the recipients under the GST regime and there was no other method which a supplier could adopt to pass on such benefits. From 01.01.2019, the Respondent, in terms of Section 171 of the CGST Act, 2017, were bound to maintain the Base price of the tickets across all class of seats/slots and GST should have been charged on the pre rate reduction Base price. The Respondent had charged maximum price fixed by the State Government, which was inclusive of taxes, as applicable, and had paid the same to the Government, which was reflected in his statutory Returns. Thus, the Respondent had collected as well as paid the GST. Thus, the Respondent's contention that the company had not charged GST on the Ticket price separately or additionally and thus, the base price was maintained, was not acceptable.

12. The DGAP has further submitted that the Respondent's contention that the price of cinema screens was decided by State Government, and had to be charged irrespective of tax rates, was not acceptable. The State Government/ Police Commissioner only fixed the maximum rate of movie ticket. The cinema management was free to sell the tickets at the lower price e.g. in the event of reduction in taxes. The State Government/ Police Commissioner came into picture only when the cinema management wanted to increase the price of tickets beyond the maximum rate already fixed. For example, M/s AMB Cinema LLP, Telangana was having cum tax price of Rs. 300/- for platinum seats upto 05.02.2019. On knowing about the Anti-profiteering provisions, they reduced the ticket price to Rs. 277/- after 06.02.2019 and also paid the profiteering amount of Rs. 35,66,308/- and interest of Rs. 60,049/-.

13. The DGAP has further reported that the Respondent's submissions regarding matter of profiteering investigated by various other authorities or the lack of methodology or regarding the definition of "Commensurate Reduction", were unacceptable. The GST Council, constituted under Article 279A of the Indian Constitution as a federal, constitutional body, comprising all the Finance Ministers of all the States and UTs and the Union Finance Minister, in its due wisdom had rightly not prescribed any specific guidelines/mechanism/methodology to determine profiteering in Section 171 of the CGST Act, 2017 and the Rules made thereunder as the facts of each case were different for different sectors as well as in same sector also. Hence, no fixed mechanism could have been provided for in the Act or Rules. However,

it was submitted that the Methodology and Procedure had been notified by the Authority vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. Also, there was standard procedure of examining the anti-profiteering reference at various levels and after proper examination, the Standing Committee on Anti-profiteering decided to refer the matter to the DGAP for detailed investigation. Accordingly, a Notice under Rule 129 of the CGST Rules, 2017 was issued to the Respondent on 02.06.2020. Based on the facts and circumstances of the case, the investigation was carried out covering the period from 01.01.2019 to 30.04.2020, which was a reasonable period of time. As the Notice was issued on 02.06.2020, the period of investigation was taken uptoApril, 2020, as per the practice followed in the DGAP.

14. The DGAP has further stated that the Respondent's contention that the facts of case of Rahul Sharma Vs Gyan Books were applicable in the instant case, was also not correct. The facts and circumstances of the case were entirely different. In the matter of Rahul Sharma VsGyan Books, the product in question was already exempted w.e.f. 01.01.2017 and hence, there was no reduction in rate of tax on the impugned product. However, in the present case, the GST was reduced from 28% to 18% w.e.f. 01.01.2019. Thus, the Respondent's contentions were not correct.

15. The DGAP further reported that on examination of the details of sales data and replies submitted by the Respondent, it was observed that basically there were two classes of tickets i.e. Gold (Rs. 150/-) and

Silver (Rs. 130/-), including taxes, during the pre-rate reduction period effective from 13.10.2018 to 31.12.2018 and the same prices for these two categories were maintained post rate reduction w.e.f. 01.01.2019.

16. The DGAP has also reported that the issue that remained was the determination and quantification of profiteering by the Respondent, if any, for failing to pass on the benefit of the reduction in rate of tax on the "*Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees*" 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"* from 18% to 12% w.e.f. 01.01.2019. From the sales data made available, it appeared that the Respondent increased the base price of the admission ticket when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019 in the manner illustrated in Table-A below. From the Table-A below, it was observed that the prices of two categories of tickets, including taxes, were maintained:

Table-A

S. No.	Category	Period (01.12.2018 to 31.12.2018)			Period (01.01.2019 to 30.04.2020)			Profiteering per unit (Excluding GST)
		Price of Ticket	GST Rate	Base Price	Price of Ticket	GST Rate	Base Price	
A	B	C	D	E=C/128%	F	G	H=F/118%	I=H-E
1	Gold	150	28%	117.19	150	18%	127.12	9.93
2	Silver	130	28%	101.56	130	18%	110.17	8.61

17. The DGAP has further stated that from the above Table- "A" it was apparent that the Respondent had increased the base price of both the admission tickets. Therefore, in terms of Section 171 of the CGST Act, 2017, benefit of GST rate reduction from 28% to 18% in respect of "Services by way of admission to exhibition of cinematography films", was not passed on to the recipients.

18. Further the DGAP has submitted that having established the fact of profiteering, the next step was to quantify the same. The Respondent submitted that due to repairs & maintenance and COVID-19, there were no transactions during the period from 31.01.2020 to 30.04.2020. On the basis of aforesaid pre/ post reduction in GST rates and the details of outward supplies for the period 01.12.2018 to 30.01.2020 submitted by the Respondent, it was observed that profiteering during the period from January, 2019 to April, 2020 from the sale of tickets in two categories mentioned in table 'B' on the next page amounted to ₹37,10,306/- for Gold, ₹5,49,798/- for Silver.The total amount of net higher sales realization due to increase in the base prices of the movie tickets, despite the reduction in GST rate from 28% to 18% or in other words, the profiteered amount came to ₹42,60,104/- (Rupees Fourty Two Lakhs, Sixty Thousands, One Hundred and Four only).The details of the computation have beenfurnished in the Table "B" below:

Table-B								
S No	Category	01.01.2019 to 30.04.2020						
		Base Price per unit in pre rate-reduction (Excl. GST)	Base Price per unit in post rate-reduction (Excl. GST)	Profiteering per unit (Excl. GST)	GST on profiteering per unit	Profiteering per unit (Incl. GST)	Qty. Sold	Total Profiteering (including tax @18%)
A	B	C	D	E= (D-C)	F= (18% of E)	G	H	I= (H*G)
1	Gold	117.19	127.12	9.93	1.79	11.72	3,16,579	37,10,306
2	Silver	101.56	110.17	8.61	1.55	10.16	54,114	5,49,798
Total								42,60,104

19. The DGAP has submitted that on the basis of the details of outward supplies of the tickets (Services) submitted by the Respondent, it was observed that the Respondent had sold admission ticket in the State of Telangana only.

20. The DGAP has concluled that the allegation of profiteering by way of increasing the base prices of the tickets (Services) by not reducing the selling price of the tickets (Services) commensurately, despite the rate reduction in GST rate on "*Services by way of admission to exhibition of cinematograph films*" where price of admission ticket was one hundred rupees or above, from 28% to 18% w.e.f. 01.01.2019 and "*Services by way of admission to exhibition of cinematography films*" where price of admission ticket was one hundred rupees or less, from 18% to 12% w.e.f. 01.01.2019, appeared to be correct. From the Table 'B' above, it was quite clear that the base prices of the admission tickets was indeed increased, as a result of which the benefit of reduction in GST rate from 28% to 18% and 18% to 12% (w.e.f. 01.01.2019),

was not passed on to the recipients by way of commensurate reduction in prices charged (including lower GST @ 18% & 12%). The total amount of profiteering covering the period of 01.01.2019 to 30.04.2020, was ₹42,60,104/-. The recipients of the services were not identifiable as no such details of the consumers had been provided.

21. The DGAP has futher concluled that that Section 171(1) of the CGST Act, 2017, requiring that "*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*", had been contravened by the Respondent in the present case. The DGAP stated that this Report was being furnished under Rule 129(6) of the CGST Rules, 2017.

22. The Investigation Report was received by this Authority on 26.11.2020. Notice dated 04.12.2020 was issued to the Respondent directing him to explain why the Report dated 26.11.2020 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. The Respondent vide his submissions dated 05.01.2021 has submitted as follows:-

i) That the Complainant/ DGAP had not supplied the Cinema Ticket purchased to prove that the GST had been charged / collected in the Ticket price.

ii) That the DGAP failed to appreciate the High Court Order fixing the Price while upholding the State Government

Power to fix the Cinema Ticket prices through a new committee.

iii) That the DGAP had also not considered that the Cinema Screen was a controlled industry by State and could only charge the Price fixed by the Government of Telangana. And could not charge Tax on any account but had to meet from the Price collected as applicable. That there was no clause in State Government Orders that for any change in taxes, the Cinema Ticket price should be increased or reduced since they did not include the same and had to be met from the profit margin

iv) That the DGAP had failed to notice that the Price was the same before and after the above cited impugned date and also failed to appreciate Statutory Maintenance of Rs.2 per ticket was not part of Ticket price as it was to meet the Statutory Obligations.

v) That the DGAP had not considered the Cinema Ticket prices before and after the impugned date of 01.01.2019 submitted by him while making the allegation of profiteering.

vi) That the DGAP had failed to trace the constitutional provisions under which the DGAP or NAA had jurisdiction but cited CGST 2017 provisions. Even the GST Council was a creature of law and could not amend Constitution but had to follow Constitution.

vii) That the DGAP said prior to 01.01.2019 at applicable rate of 28%, in Gold Class Ticket – Rs.32.81 GST and in Silver Class – Rs.28.44 GST was included and post 01.01.2019 at applicable rate of 18%, in Gold Class Ticket – Rs.22.88 GST and in Silver Class – Rs.19.83 GST was included without there being any change in Price.

viii) That the DGAP having concluded post 01.01.2019 excess GST was included in the Price ought to have concluded wrongful excess collection of GST under Section 76 of CGST Act 2017 than under Section171 (3) and ordered for forfeiture.

ix) That the DGAP had attempted to derive a new parameter of Base Price as per his own calculations ignoring that the Statute of Section 171 of CGST Act, 2017 also required the "Price" charged, the Statutorily Fixed Price by the State Government.

x) That the DGAPhad failed to note that Section 171(3) was confiscatory in nature and hence was not satisfying the Article 19(1)(g), Article 246, Article 300A etc., and that it was not a tax within the powers of Central Government or State Government or GST Council.

xi) That the DGAP had also not noted that the Cinema Screen had discharged the GST liability from its Receipts and in full

xii) That the DGAP had also not noted that the Scheme or machinery provisions of Computation of Profiteering was

presently at the discretion of the DGAP without any computation methodology in the CGST Act, 2017 or the CGST Rules, 2017 and by innovating "base price" and thus had been administrative in character than under any authority of law.

xiii) That the DGAP had taken the conduct of M/s. AMB Cinema LLP as the Law and made no effort to analyse the law. This had been acknowledged in Para 16 of the DGAP's Report.

xiv) That the Report was concluded without considering the submitted facts and the applicable law and that the Company was incurring losses continuously.

xv) That the DGAP's Report presumed that price was a non-changing element and should remain the same so long the provisions of anti-profiteering were on statute book. Inflation was not factored in calculation of profiteering.

xvi) That the machinery provisions could not be provided by circulars or the discretionary powers of administrative character and the machinery provisions must find place in the Act itself.

xvii) That Para 24 of the Report was not specific whether it was (a) Any reduction in rate of tax on any supply of goods or services, or (b) the benefit of ITC should be passed on to the recipient, that was the violation on the Cinema Screen.

xviii) That the Applicant No. 1 had not filed the ticket purchased nor it was supplied by the DGAP. What was supplied was

the online complaint from screen shot. Delhi was the hot bed of Corona and the residents there were facing severe hardships. The DGAP ought to have given the opportunity to inspect the documents at Hyderabad Office.

xix) That he could not follow the sanctity in extending the investigation upto 30.04.2020 and when Central Government had no power to control the prices as submitted in detailed submissions and that there were no dues of GST from the Cinema Screen.

xx) That the DGAP in his Report innovated the terms "final price", "legally prescribed mechanism", "Base Price". Further, the DGAP mis-understood the "price" fixed by the State Government holding that it was inclusive of taxes and that the Cinema Screen could have collected lesser than the Price fixed by the State Government, the Cinema Screen should be deemed to have collected taxes, that M/s. AMB Cinema LLP had reduced the price and that the firm paid Anti-Profiteering amount also. he refrained from making any comment without full facts whether M/s. AMB Cinema LLP had any Government Orders on Price. Further, somebody's conduct was not law nor it was a guiding factor in interpretation of law. The DGAP had to consider the fact that price was regulated by Telangana Government orders and the said orders were issued not subject acceptance by the DGAP.

xxi) That the DGAP had not properly read the applicable law, Constitutional Provisions and the Scheme of Anti-Profiteering. The DGAP's rigid approach that Price should be the same for all the period the Section 171 of CGST Act, 2017 was on statute book lead to illegal, undesirable and unintended consequences and the same were beyond the powers of the DGAP/Central Government.

xxii) That whether the product was exempted or not, where the price was the same before and after reduction of the tax rate, the Case of Rahul Sharma Vs. Gyan Books would be applicable.

xxiii) That there was no merit in the Orders of the DGAP holding that the Cinema Screen had Profiteered. There was no jurisdiction conferred as per the extant law in the facts of his Cinema Screen case.

xxiv) That the CGST Act, 2017 under Section 171 contemplated "confiscation" of the amount received and not levy of tax.

xxv) That this was not a case of unjust enrichment of excess tax collected and paid less tax.

xxvi) That it was also not a case of free enterprise that was free to fix the price and collect applicable taxes as an agent of the Government and remitted the taxes so collected.

xxvii) That the levy of Tax was a function of Government under Article 265 of Constitution of India. The Respondent referred to Article 246 dealing with Central and State

Government powers. Sl. No.60 of List-I of the 7th Schedule read with Article 246 of Constitution gives Central Government the power to regulate sanctioning of cinematographic films or censorship of films only. Sl. No.33 of List-II of the 7th Schedule to the Constitution of India gave full powers to State Government to regulate the cinema exhibition industry. Therefore, the Central Government controls the exhibition of cinematograph like Censor Board, while the State Government controls the business of Cinema Screens like licensing etc. Hence, State Government under the constitutional powers granted the Cinema Screen license subject to the cinema screen following the regulation of price fixed by the Government of Telangana and administered by the District Superintendent of Police. His Cinema Screen license clearly provided the same as a condition No.11 and a copy of the same was already filed with the DGAP.

xxviii) The Respondent referred to the decision of Hon'ble Supreme Court decision in case of Commissioner, Central Excise & Customs, Kerala Vs. M/S. Larsen & Toubro Ltd. (2015) 39 STR 913 (SC).

xxix) That vide License No.C2/448/2010-1, Office of the Collector ,Karimnagar, Govt. of Andhra Pradesh, Revenue Department dated 25.03.2010, it was stipulated that the rates of admission should not be increased during the

currency / license without an order in writing by the licensing authority permitting such increase.

xxx) That the price fixed by the Government could not be exceeded irrespective of the position of Profit/ Loss to the Company. Further any tax or additional tax liability was to be borne by the Company only.

xxxi) That the price had been fixed by the State Government and was modified and fixed by Hon'ble High Court of Telangana vide orders in WP No. 37873 of 2018 read with WP No.19046 of 2014, subject to the condition of the payment of Proportionate taxes and intimation to Government and further subject to State Government appointing a committee and fixing the new prices.

xxxii) That the price fixation could not be disputed by the DGAP or this Authority since the price had been fixed under the orders of the Government and legally approved by the Hon'ble High Court and that the party was following the High Court orders. Thus, it was beyond the jurisdiction of this Authority, since the company was controlled by the State Government Orders.

xxxiii) That what the Cinema Screen received was the price fixed by the Government of Telangana which was a fixed sum without any break up of basic price, taxes etc. Therefore for all purposes the price of cinema ticket was (i) Gold Class – Rs.148 per ticket, and (ii) Silver Class – Rs.128 per

ticket w.e.f. 13-10-2018. Rs.2 per ticket was to be added towards statutory maintenance. There was no increase of basic price from the impugned date of 01-01-2019.

xxxiv) That assuming without acknowledging for a moment, GST was included in the price fixed by the Government of Telangana, the GST included would be (i) Gold Class – Rs.148 per ticket – Rs.32.81 GST, and (ii) Silver Class – Rs.128 per ticket – Rs.28.44 GST, w.e.f. 13-10-2018 at the then prevailing rate of 28%.There was no price change till date. However, the DGAP Report saidthat GST included in the Price was Rs.22.88 for Gold Class and Rs. 19.83 for Silver Class w.e.f. 01.01.2019. How could GST included in the Price change with reference to change in GST Rates was not explained. Given the above, the DGAP ought to have given a finding of excess collection of GST and unjust enrichment for forfeiture under Section 76 of CGST Act, 2017 and not Section 171. Therefore, the DGAP findings and Report are self-contradictory of how much GST was included in the price and findings were a matter of conveniently confiscating Cinema Screen rightful amount, which was illegal and was not supported by any constitutional article. Whereas the Cinema Screen submissions were supported and confirmed by the fact that no GST was included or charged from customer but was paid by the Cinema Screen from its Gross Profit. Further,

the DGAP had not understood the Statutory Repairs amount of Rs.2 per ticket and wrongly included in the ticket price in above calculations.

xxxv) That the Cinema Ticket prices fixed did not give the value of taxes included in the prices but cast the liability to pay taxes as applicable. Hence, the invoking of Anti-Profiteering was untenable since no GST was added or collected and thus there was no jurisdiction. The Government orders on price were not subjected to acceptance of the same by any other Authority.

xxxvi) That the appropriate Government had fixed the prices without any breakup of the extent of taxes included. Therefore, the Respondent was statutorily discharging the tax liability under the CGST Act or SGST Act read with Rule 35 of the CGST Rules 2017 since non-collection of GST would not render the liability a nullity. Since the price fixation was governed and controlled by the appropriate Government, the State Government, no dispute of profiteering could be created.

xxxvii) That according to Article 246A Clause (1) State Government was the competent authority for the purposes of GST except in the case of supply in the course of inter-state trade or commerce. Since the disputed matter was an intra-state matter and that the State Government was regulating the price the dispute of profiteering could not be

created and it was beyond the jurisdiction of the Authority or the DGAP.

xxxviii) That the impugned matter of profiteering was investigated by the (i) jurisdictional assessing officer vide his Notice dated 14.02.2019 and 26.07.2019, (ii) by the Deputy Commissioner (ST)-1, Economic Intelligence Unit, (iii) office of the Commissioner (State Tax), Commercial Taxes Department, Government of Telangana, vide their Notice No. RC.No.EIU/A1/Movie Theatres/13/2019, dated 04.11.2019, (iv) by the State Level Screening Committee vide Ref. No. C.No. IV/16/07/2019-A.P, dated 28.11.2019 and (v) by The DGAP and this Authority from 02.06.2020 till date wasclearly harassment and this wasclearly against all the canons of equity.

xxxix) That Standard Operating Procedure for Anti Profiteering list the following three parameters for enquiry:-

- Swelling up of ITC due to rate reduction.
- Abrupt increase in Net Profits during rate reduction.
- Enhancement of the base price immediately after announcement of GST rates.

The above did not arise in their case due to rate reduction since there was no swelling up of ITC, abrupt increase in Net Profit or enhancement of the base price. That he understood base price was the price on which GST was charged. When no GST was charged/collected, the price

Collected was the base price and it could not be derived by the DGAP. Rule 35 provided the mechanism for payment of GST in such a scenario. It did not provide for base price or for calculation of base price.

xl) That the Cinema Screen was incurring losses continuously and the Government of Telangana did not fix Price every time there waschange in GST Rates. The Cinema Ticket price wasa fixed amount irrespective of whether GST or Service Tax or any other tax waspayable. There wasno jurisdiction conferred on any other authority except State Government to fix the Price. In a loss situation, the DGAP observing that Cinema Screen could have collected lesser ticket price since there wasno prohibition waslike imposing more losses on the Cinema Screen, which was impermissible.

xli) That the jurisdiction in the subject matter was clearly vested with the State Government. Therefore, the Applicant No. 1 has to approach the State Government for suitable reduction, if any, in the Cinema Ticket prices. It was for the State Government to decide the matter after affording "audialterampartem". Therefore, there wasno Jurisdiction conferred on the DGAP / NAA etc. The DGAP or this Authority might have directed the Applicant No. 1 to approach the State Government or alternatively, it might

have made a reference of the matter to the Home Department, Government of Telangana.

xlii) The provisions of Anti Profiteering in CGST Act and the Rule 133 was defective for the following reasons and hence did not confer any Jurisdiction on this Authority orthe DGAP or any other person:-

xliii) That the Act was being silent as to the machinery and procedure to be followed in making the assessment left it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, was treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property was at least of a quasi-judicial character. The Act was silent as to the (a) Methodology, (b) How the party could verify the calculations and defended itself. The absence of calculation methodology for profiteering had been duly acknowledged by the DGAP in Para 16 of his Report.

xliv) That the scheme did not envisage "Controlled Industry" where State Government fixed the "Price" of the tickets and no GST was paid or payable by the Consumer. Application of Anti-Profiteering to Price Controlled business where GST was paid out of receipts and not separately charged or passed was like giving an amount to a person and finding him guilty of possessing the amount. Therefore,

Government could not find fault of anti-profiteering with the Company for receiving the prescribed price only and was still incurring losses.

xlv) The law or administrative scheme did not say the period upto which, from the date of change in GST rate, the anti profiteering provisions should be applied since the same price could not rule during the life time of the Company or during the period Anti- Profiteering provisions were on the Statute Book.

xlvi) That the anti-profiteering provisions could not be applied with short sighted approach and the whole gamut of business should be considered including the inflation and increase of expenditure.

xlvii) That the company had been continuously incurring losses despite promoters pumping resources in crores of rupees free of cost. The Company had incurred a loss of Rs.25.56 Lakhs in F.Y.2017-18 and Rs.158.09 Lakhs in F.Y.2018-19. For last quarter of the F.Y.2019-20 and in 2020-21 till date the cinema screens were under lock down and repaired and maintenance and for these years also there would be loss. Cumulative loss wasRs.600 lakhs approx. The turnover wasabout generally Rs.250 lakhs a year. Even today the screens were under Lock Down of the State Government. Moreover, crores of promoters money was locked up duly

interest free. The loss would mount if the interest was also applied.

xlviii) That the Supplier had constructed the two Screens on the land of TSRTC (A Telangana Government Organization). The land was given on License under BOT (Build Operate and Transfer) concept by TSRTC up to 2036 with construction time up to 2009.

xlix) That the Respondent had paid to TSRTC up front Fee and had been paying regularly the AGLF (Annual Ground License Fee) and ACLF (Annual Commercial License Fee) on yearly basis and in advance towards the licensing of the land. The AGLF and ACLF for the years 17-18, 18-19 and 19-20 were Rs.86,94,348/- , Rs.1,01,20,711/- and Rs.1,06,26,746/- respectively with annual increase of 5% and GST @ 18%.

l) That the price fixed only had to be collected by the cinema screens owner and no other separate charges were allowed or permitted. Further all the taxes calculated on the price were as per the proportion of taxes from time to time and had to be paid. Tax wasarrived as prescribed under the relevant Act. In the case of GST, tax wascalculated in the proportion of 18/118 or 28/128 as the case may be as prescribed under Rule 35 of the CGST Rules 2017.

li) The price fixed by the Government was"fixed amount" and did not have any break up of basic price, GST, Total etc. No

GST was collected from customer and was proved by the very fact that the price was the same before and after rate change of GST.

liii) That State Government was the authority to fix the price and to change the same also. Since no specific rate of tax or amount of tax was included in the price or wasdeemed to have been included in the price, the cinema screen had to discharge the tax liability proportionately at applicable tax rates. Similarly, the profit element considered if any wasalso not known to state the anti-profiteering charge. Therefore, the matter deserved to be referred by this Authority to the Telangana Government.

liii) That as per the Annexure-I submitted by the Respondent along with these submissions, the ticket price was the same when Entertainment Tax was 7% or 20% or 15% as per class of cinema notified by the Government. Further, the ticket price wasthe same as on 01.07.2017 also when GST applicable was 18% only in his case. Further, pre-01.01.2019, on 13.10.2018 in his case the Ticket price of Rs.148 and Rs.128 were fixed and they continued even today with so much increase in administration and running costs also.

liv) That the Hon'ble High Court of Telangana approved the price subject to the condition that it was informed to State Government and Proportionate Taxes thereon were paid

vide its orders in WP No.37873/2018 read with WP No.19046/2014.

lv) That there were no Government Orders issued under GST by Central Government regulating the Cinema Screen price by Central Government, since it did not have power to regulate cinema ticket prices.

lvi) That the ticket price was the base price/price and it wasthe same pre-01.01.2019 and post 01.01.2019.There was no clause in Government Orders that for any change in taxes the Cinema Ticket price should be increased or reduced.

lvii) That penalty was prescribed under Sec.171(3A) of the CGST Act, 2017 and was introduced by Finance (No.2) Act, 2019 w.e.f. 01.01.2020. Prior to the same there was no penalty prescribed under the CGST Act, 2017.

lviii) That the Telangana GST Act, 2017 was amended vide Act No.3 of 2020 w.e.f. 21.03.2020 through Telangana Gazette. Section 21 of the Act No.3 amended Sec.171 by introducing sub section 3A. That TGST Act had introduced penalty clause w.e.f. 21.03.2020 only and not before.

lix) That Sec.171(3A) was applicable in Telangana State only for the period on or after 21.03.2020 and never before. Therefore the levy of the penalty in the case of the Respondent did not arise legally since the allegation was for the period prior to the said date.

lx) That the purposes of Sec.171 (3A) "profiteered" should mean the amount determined on account of not passing the benefit of reduction in Rate of Tax on Supply or the benefit of ITC not passed on with commensurate reduction in price. Commensurate was defined to mean "in due proportion" as per the Chambers Twentieth Century Dictionary, New Edition 1972.

lxi) That Rule 133(3) layed down that in case of not passing on the benefit reduction in the Rate of Tax on the supply or the benefit of ITC to the recipient by way of commensurate reduction in prices, the Authority might require (a) Reduction in Prices, (b) Return to the recipient an amount equivalent to the amount not passed on, and (c) Deposit of an amount equivalent to 50% of the amount not passed on in the fund constituted under Section 57 of CGST Act, 2017 and the balance 50% in SGST fund under Section 57 of the TGST Act, 2017, where the eligible person did not claim return of the amount or was not identifiable.

lxii) That in his case, the Ticket price was fixed by the State Government of Telangana. The ticket prices fixed and applicable for the impugned period from 01.01.2019 are (i) Gold Class – Rs.148 per ticket, and (ii) Silver Class – Rs.128 per ticket. Ticket price only should be collected. Taxes if any applicable should be paid by the Cinema Screen. These prices were effective from 13-10-2018.

There was no clause in Government Orders that for any change in taxes the Cinema Ticket price should be increased or reduced.

lxiii) That prior to the said date, the Prices were fixed on 20-07-2012 and were effective till 12-10-2018, that was for a very long period of above 5 years at Rs.98 per ticket for Gold Class and Rs. 73 per ticket for Silver Class was prevailing.

lxiv) That the revision of prices was effected on 13-10-2018 after 5 years 2 months and 20 days. In the mean time, the inflation or increase in expenditure was to the account of Cinema Screen resulting in losses. The rate of inflation between 2012 to 2018 was above 40% over 2012. That while revising the Cinema Ticket prices in 2018, Government had only provided for inflation in expenditure.

lxv) That Penalty was not automatic but was discretionary in nature which was to be exercised keeping in view the relevant factors and the department was required to prove *mensrea*, i.e., consciousness on the part of assessee to evade the obligation / liability [Dilip N Shroff V/s. JCIT, 291 ITR 521]. Further, the conditions stated in the section should exist.

lxvi) That for the aforesaid reasons, the levy of penalty was unreasonable, unjustified, impermissible, and was not to be levied.

23. Clarifications were called from the DGAP on the above submissions of the Respondent. The DGAP vide his report dated 27.01.2021 has submitted his clarifications and has stated:-

a. That the Respondent's contention that the Applicant No. 1 /the DGAP had not supplied the Cinema Ticket purchased to prove that the GST had been charged / collected in the Ticket price was not relevant in the present case. Section 171 of the CGST Act, 2017 and Rules made thereunder had given a detailed mechanism for filing of complaint to the determination of profiteering by this Authority. In the instant case also, the same procedure had been followed and the facts in brief were that the Standing Committee examined the accuracy and adequacy of the evidence provided in the application to determine whether there was prima facie evidence to support the claim of the Applicant No.1 that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC had not been passed on to the recipient by way of commensurate reduction in prices. The Standing Committee on being satisfied that there was a prima facie evidence to show that the supplier had not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, refered the matter to the DGAP for a detailed investigation.Accordingly, the DGAP had conducted

investigation and furnished his Report under Rule 129(6) of the CGST Rules, 2017 on the basis of documents supplied by the Respondent.

b. That the Respondent's contention that the DGAP failed to appreciate the High Court Order fixing the Price whileupholding the State Government Power to fix the Cinema Ticket pricesthrough a new committee was not correct. The State Government only fixed the maximum price at which a movie ticket couldbe sold. The cinema management was free to sell the tickets at the lower price e.g. in the event of reduction in taxes. The Hon'ble High Court or the State Government came into picture only when the cinema management wanted to increase the price of tickets beyond the maximum rate already fixed. Section 171 of the CGST Act, 2017 and Rules made thereunder was limited to the extent of passing of benefit of rate reduction and could not or did not interfere with the powers of the Hon'ble High Court.

c. That the Respondent's contention that the DGAP had also not considered that the Cinema Screen was a controlled industry by State and could only charge the price fixed by the Government of Telangana was incorrect. Levy of GST was increased or decreased or fixed by the GST Council which was a Federal Constitutional body and all the State Governments were part of the GST Council. GST leviable on

cinema tickets and the authority of extending the benefit of rate reduction to the recipient was well within the purview of the GST Council and all trade and industry falling under GST law had to abide by it.

d. That the Respondent's contention that the DGAP had failed to notice that the price was the same before and after the Impugned date of 01.01.2019 and also failed to appreciate Statutory Maintenance of Rs.2 per ticket is not part of Ticket price was not acceptable. In fact, the very gist of the complaint was that the prices of tickets were kept unchanged even after reduction in GST rates, The Respondent ought to have reduced the prices of the tickets, commensurate to the reduction of GST rate in terms of Section 171 of the CGST Act, 2017.

e. That the Respondent's contention that the DGAP had failed to trace the constitutional provisions under which the DGAP or this Authority had jurisdiction but cited CGST 2017 provisions was baseless. The GST Council which had been constituted under 101st Amendment of the constitution under Article 279A of the Indian Constitution as a federal, constitutional body, comprising of the Finance Ministers of all the States and UTs and the Union Finance Minister. On the recommendation of the GST Council, this Authority had been constituted under Section 171 (2) of the CGST Act, 2017 read with Rule 122 of CGST Rules, 2017. Chapter XV

of CGST Rules, 2017 had been framed under Section 164 of the said Act which had the sanction of the Parliamentand the State Legislatures. It also showed that the delegated power to the Authority given under section 171(3) of the said Act had been duly exercised by the Central Government by formulating the Rules, on the recommendation of the GST Council. Since the functions and powers to be exercised by the Authority had been approved by competent legislatures, the same were legal and binding on the Respondent.

f. That Section 171 of the CGST Act, 2017 mandated that any benefit of reduction in the rate of tax or the benefit of ITC which accrued a supplier must be passed on to the consumers as both were concessions given by the Government and the suppliers were not entitled to appropriate such benefits by increasing their profit margin at the cost of the consumers. Such benefits must go to the consumers.

While arriving at the quantification, the DGAP had to adopt a mathematical methodology to arrive at the amount profiteered. In the course of such calculations of profiteered amount the DGAP determined an amount which ought to have been charged from the recipient and it also included additional amount of GST charged prior to reduction of rate of tax and after reduction of rate of tax. Further, the report of DGAP had not discussed about excess or short levy of GST.

g. That the Respondent's contention that the DGAP had attempted to derive a new parameter of "Base" Price as per their own calculations ignoring that the Statute of Sec. 171 of CGST Act, 2017 was not acceptable. As per Section 171 of the CGST Act, 2017, any reduction in rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the recipient by way of commensurate reduction in prices. The price to be arrived at after commensurate reduction due reduction in rate of tax needed a base price for calculation. Such price required for calculation might be denoted by any term. The DGAP, in its Report dated 26.11.2020 used the term 'base price'. Also, this concept of Base Price was not a new parameter. It was tried and tested parameter applied in all the cases investigated by the DGAP. It had been approved and upheld by this Authority.

h. That the Respondent's contention that the DGAP had failed to note that Sec. 171(3) was confiscatory in nature and hence was not satisfying the Article 19(1)(g), Article 246, Article 300A etc. was incorrect. Section 171 (3) of the CGST Act, 2017 states that the Authority referred to in Sub-section (2) shall exercise such powers and discharge such functions as may be prescribed. Section 171 (3) did not violate the Article 19(1)(g), Article 246 or Article 300A of the Constitution. It nowhere determined the nature of this

Authority. It only prescribed functions and powers to be exercised by this Authority. The Respondent who was registered under GST was liable to pass on the benefit accrued to him on account of reduction in rate of tax which he did not pass on. The DGAP had neither examined nor questioned the prices at which the Respondent sold the tickets to his customers but only determined the amount of benefit of rate reduction which he had not passed on in terms of Section 171 of the CGST Act. Therefore, the DGAP had carried out his functions as per mandate given by Section 171 of the CGST Act read with Rule 129 of CGST Rules 2017 and there was no violation of article 19(1)(g) of Constitution of India.

i. That the Respondent's contention that the DGAP had also not noted that the Cinema Screen had discharged the GST liability from its Receipts and in frill was not acceptable. The DGAP, in para 19 and 20 of the Report dated 26.11.2020 had discussed the calculation method wherein the GST element also was discussed. Further, the Respondent's plea that being a Cinema Screen, they were mandated to sell at prices, pre-determined by the State authorities, could not discharge them from their obligation to comply with the provisions of Section 171 of CGST Act, 2017 as being a registered person in GST law, they were legally and morally liable to pass on the benefit of reduction in rate of tax to the

recipients. However, in the present case, although the Central Government on the recommendation of the GST council reduced the rate of tax on various products from 28% to 18% w.e.f. 01.01.2019, the Respondent increased the base price of the cinema tickets in such a way as to make the cum tax price exactly equal to the pre-rate reduction cum tax selling price and denied the benefit of such reduction in rate of tax to his customers and indulged in the violation of provisions of Section 171 of the CGST Act, 2017. It was the moral and legal responsibility of the Respondent to keep the base price (excluding GST) unchanged & charge reduced rate of tax on such unchanged base price, thereby, passing on such benefit of rate reduction to his customers. However, the Respondent chose to increase the base prices and denied the benefit to his customers/ recipients.

j. That the Respondent's contention that the DGAP had also not noted that the Scheme or machinery provisions of Computation of Profiteering was presently at the discretion of the DGAPwas not acceptable as the DGAP had no power to prescribe a methodology. The DGAP only submittedhis findings to this Authority as mandated under the CGST Rules, 2017. The power to determine Methodology & Procedure was vested with Authority under Rule 126 of the Rules as per the provisions of Section 164 of the CGST Act

2017. Such power was generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out their functions and duties.

Accordingly, the Methodology and Procedure was notified by this Authority vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017 which was also available on its website. This Authority could pass appropriate order on receipt of Investigation Report from the DGAP after considering the facts of cach case. Moreover, the powers conferred upon this Authority, Standing Committee, the State Screening Committees & the DGAP had been clearly defined under Rule 122-137 of the CGST Rules, 2017.

k. That the Respondent's contention that the DGAP had taken the conduct of M/s. AMB Cinema LLP as the Law and made no effort to analyse the law was not correct as the conduct of M/s. AMB Cinema LLP was taken as an example to contradict the Respondent's contention that the price of cinema screens was decided by State Government, and had to be charged irrespective of tax rates. It was not taken as the Law.

l. That the Respondent's contention that the report of the DGAP was concluded without considering the submitted facts and the applicable law was not acceptable as in terms of Section 171 the benefits of tax reduction and ITC which were the sacrifices of precious tax revenue made from the

kitty of the Central and the State Governments were required to be passed on to the consumers / recipients ensuring that both the above benefits were passed on to the general public as per the provisions of Section 171 read with Rule 127 and 133 of the CGST Rules, 2017. The report of DGAP had restricted itself to the mandate given under Section 171 of the CGST Act, 2017, it did not interfere with the profit /loss or commercial decision of the Respondent.

m. That the Respondent's contention that the Report presumed that price was a non-changing element and should remain the same so long the provisions of anti-profiteering were on statute book was incorrect. The DGAP had investigated the issue whether the benefit of the reduction in rate of taxes had been passed on to the customer or not. It was the duty of all the registered persons to pass on the benefit of reduction in tax rate to the customer by way of commensurate reduction in prices. The profiteering aspect was very much in vogue until the intended benefit by way of commensurate reduction in prices was passed on. Also, The DGAP or this Authority had not acted in any way as price controller or regulator as it did not have legislative intent to regulate when it came to price hike decisions. The supplier was absolutely free to exercise his right to practise any profession, or to carry on any occupation, trade or business. The Authority had only 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 Authority/DGAP had neither mandate nor didit meddle with the suppliers' rights to pricing/profits/margins/trade.

n. That the Respondent failed to perceive the contents of Para 24 by reading it in isolation. In fact, the discussions of the facts and circumstances in the previous paras needed to be read in its entirety to arrive at the contravention. Once the preceding paras were read, the coherence and the outcome of the discussion was abundantly clear. However, it was once again clarified that the Notification quoted and mentioned in the DGAP report pertained to reduction in tax rate and the entire investigation and Annexures confirming the profiteering was with respect to reduction in tax rate.

o. That the Respondentwas given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 25.06.2020 to 26.06.2020, which the Respondent did not avail. The Respondent, vide email requested for a copy of the documents submitted by the Applicant No. 1, which were provided to him vide email dated 01.10.2020.

p. That the period covered in the investigation was upto 30.04.2020, i.e. one month before the Notice of Initiation of Investigation. The period of investigation did not violate the Section 171 of the CGST Act, 2017. Further, the Respondent had not passed on the benefit of rate reduction to his customers till 30.04.2020 and therefore, he had been investigated till 30.04.2020. Had the Respondent passed on the benefit before the above date, he would not have been investigated beyond that date.

q. That the contention of the Respondent that the DGAP in his report innovated the terms "final price", "legally prescribed mechanism", "Base Price" was incorrect.Section 171 and Rules made thereunder and price fixation by State Government act independently and had different purpose. Further both the Act / provision did not undermine each other.

The price regulation by the Telangana Government was to ensure that the ticket prices should not breach a certain threshold. The regulatory Orders nowhere restrict the Respondent to charge lesser amount than the threshold. The instance of M/s. AMB Cinema LLP was illustrated to bring home the concept of commensurate reduction in prices and it was not intended as a law.

r. That the DGAP, in terms of the Rule 129 of the CGST Rules, 2017, was required to submit his findings to this

Authority. It had only done his duty in investigation of the present case and submitted it's report to this Authority. Profiteering was strictly determined in terms of provisions of Section 171 of CGST Act, 2017 and the rules made thereunder. While determining profiteering the costing aspect was not taken into account. Only the benefit accrued on account of reduction in the rate of tax or benefit of ITC was the parameter on which the exercise of determination of profiteering was based. This approach of the DGAP had been consistent and the same had been upheld by this Authority. The Central Government, representing in the form of this Authority and the DGAP was well within its powers ensured that any reduction in rate of tax on any supply of goods or services or benefit of ITC should be passed on to the recipient by way of commensurate reduction in prices.

s. That para 18, 19, 20, 21, 23, 24 of the DGAP Report dated 26.11.20120 elaborated the steps adopted to arrive at the profiteered amount by the Respondent. This was done after ensuring that there was an element of profiteering in the case. Moreover, the amount of profiteering was calculated based on the details provided by the Respondent. Therefore, the Respondent's contention that it was contrary to the facts and wrongly understood was not acceptable.

t. That the Respondent's contention that there was no merit in the Orders of the DGAP holding that the Cinema Screen

hadProfiteered and that there was no jurisdiction as per the extant law was not acceptable. The mandate of the DGAP was to conduct investigation based on the recommendation of the Standing Committee on Anti-profiteering. The DGAP submits a Report of his findings to this Authority under Rule 129 of the CGST Rules, 2017 and this Authoritypasses the Order under Rule 133 of the CGST Rules, 2017. While the DGAP was the investigating agency, the adjudication to establish profiteering or the absence of it, was done by this Autority. The entire investigation proceeding by the DGAP was conducted under Section 171 of the CGST Act, 2017 read with Rule 129 of the CGST Rules, 2017, as per the directions of the Standing Committee on Anti profiteering. Therefore, the proceedings undertaken by the DGAP were well within confines of the law and its jurisdiction.

The Respondent's submissions revolve around the powers of the Central and State Government to make laws on the matters enumerated in the Lists in the 7th Schedule to the Constitution of India. In this regard, the Respondent had clearly misinterpreted Section 171 as anti-profiteering provisions were not a tax but were meant to ensure that sacrifice of tax revenue by Central and State Governments for the welfare of consumers was passed on to them by the suppliers.

u. That this Authority was empowered under Section 171 of the CGST Act, 2017 to ensure that any reduction in rate of tax on any supply of goods or services or the benefit of ITC was passed on to the recipient by way of commensurate reduction in prices. Even Section 171 of the Telangana Goods and Services Act, 2017 refered to this Authority as the authority intended. The provisions of the Statute controlling the functioning of the DGAP and this Authority did not require them to refer the matter to Telangana Government at the investigation stage. In terms of Rule 133 of the CGST Rules, 2017, this Authority gave ample opportunities to the interested parties to give their views before them.

24. In response to the above clarifications of the DGAP dated 27.01.2021, the Respondent vide letters dated 15.02.2021 and 27.02.2021 has reiterated the contentions of his earlier submissions dated 5.01.2021 detailed above and added that:-

i) That the DGAP presumed that the Cinema Ticket price was inclusive of GST.

ii) That the DGAP applied the mathematical formula of Rule 35 of CGST Rules for Price pre and post 01.01.2019 [Ticket price X GST Rate ÷ (100+GST Rate)] on which date the applicable GST rate wasreduced from 28% to 18%.

iii) That the DGAP was wrong in taking the Cinema Ticket price at (i) Gold Class–Rs.150 per ticket instead of Rs.148, and (ii) Silver Class–Rs.130 per ticket instead of Rs.128, ignoring the Statutory Provision and Government Orders that Rs.2 per ticket wascollected towards the statutory maintenance to be spent for the specified purposes of customer facilities only and, hence, the amount of Rs. 2 per ticket wasto be reduced from the price of Cinema Ticket making it Rs.148 for Gold, and Rs.128 for Silver.

iv) That the DGAP calculated the Profiteering amount as Rs.150*28/128 minus 150*18/118. That was Rs.9.93 per Gold Class Ticket. Likewise Rs.130*28/128 minus 130*18/118. That was Rs.8.61 (8.60699) for Silver Class.

v) That the DGAP further added GST @18% on above amounts per ticket or Rs.1.79 for Gold Class Ticket and Rs.1.55 for Silver Class Ticket. With the addition, the alleged profiteering per ticket of Gold Class was Rs.11.72 and for Silver Class Rs.10.16. The same multiplied by quantity of tickets sold wasthe sum of Rs.42,60,104 (Rs.37,10,306 for Gold class, Rs.5,49,798 for Silver Class).

vi) That the DGAP calculations were based on the presumption that the ticket price included 28% GST

prior to 01.01.2019 and with reduction of GST to 18%, the GST included in the ticket price should have been reduced to 18% and so the Ticket price should have been reduced correspondingly by differential amount.

vii) That the DGAP presumptions were contrary to the facts placed on record being the Government Orders allowing the supplier to receive the Ticket price upto an amount and pay the applicable taxes on his own account.

viii) That the DGAP presumed that the Price fixed by the Government of Telangana was inclusive of GST. In the case of presumptions, the presumptions should be taken to its logical end.

ix) That the presumption would be right if the Supplier was authorized to vary (increase or decrease) for any variation in the GST upwards or downwards.

x) That the Telangana Government Orders (G.O.) placed on record did not authorize any change in the Price. Further, the G.O. did not stipulate that the Price wasinclusive of the GST. Going further, the GO did not specify any breakup of the Price.

xi) That under Rule 11B of Telangana Cinemas (Regulation) Rules 1970, sub rule (3), Clause (a) and (b) were very clear and provide that :

(a) The licensing authority, while granting or renewing a license in Form-B, should also fix the maximum rates of payment for admission to the different classes in the licensed premises.

(b) These rates should not be increased during the currency of the license without an order in writing by the licensing authority permitting such increase.

xii) That the DGAP presumed on the contrary that GST was included in the Price and that it was not paid by the Supplier from its receipts.

xiii) That the presumption go to the root of the issue and wascontrary to the facts of the case.

xiv) That certain amount of Tax was included in the price, the natural consequence was unjust enrichment for the given reduction in tax liability amount as against tax deemed to be included in the priceand could only be considered as excess collection of taxand not profiteering under any circumstances could be alleged.

xv) That the long gap in revision of prices without any linkage of taxes applicable also clearly show that the price was independent and could not be changed for variation in taxes.

xvi) The presumption by the DGAP that the Supplier could reduce the price was not based on the cost benefit analysis. The Supplier was not a Charitable

Organization but a Commercial / for Profit Organization and Government could not expect the Supplier to work on charitable lines or to incur losses in the course of operations. To Tax was the right of the Government under Article 265 of the Constitution. To confiscate was not.

xvii) That the Profiteering allegation did not apply if the Supplier of Services had not collected any GST from the recipient of services and instead paid on his own account from the price for the services. There was no law that authorized the Government to confiscate the legally receivable / received or collectible / collected amount from the supplier on the presumption that he was saving on his own account some expenditure, in the case the GST payable by him.

xviii) That DGAP's contention that the the supplier was free to reduce the price fixed by the State Government was against all the canons of equity since the DGAP had no power to give freedom to increase when there was increase in taxes. It would cause double jeopardy to Supplier of Price not increasing for Tax Increase and for Tax Decrease, Anti-Profiteering was applied and the legal revenue of the supplier was confiscated. It was clear violation of Article 19(1)(g), 300A, 265, 246 of the Constitution. Further, GST Council under Article

279A could only make recommendations and could not contravene nor could change the basic character of Constitution. It wassubmitted that there were no dues of GST from the Supplier.

xix) that the ticket price received had gone towards the following expenses for the last 3 years of GST period as under:

S.No.	PARTICULARS	2019-20		2018-19		2017-2018	
		AMOUNT	% ON .A.	AMOUNT	% ON .A.	AMOUNT	% ON .A.
A	BOX OFFICE COLLECTION	4,41,05,380		6,18,38,335		4,48,58,650	
LESS:	OUTPUT GST (CGST&SGST)	66,36,484	15,05	1,02,17,771	16.52	66,99,076	14.93
	SUB TOTAL	3,74,68,896		5,16,20,564		3,81,59,574	
LESS:	DISTRIBUTOR SHARE & REPRESENTATIVE BATTA	2,04,45,834	46.36	2,77,90,232	44.94	2,00,12,737	44.61
	SUB TOTAL	1,70,23,062		2,38,30,332		1,81,46,837	
LESS:	STATUTORY THEATRE MAINTENANCE	5,99,539	1.36	11,15,546	1.81	9,44,527	2.11
B	NET THEATRE RECEIPTS	1,64,23,523	37.24	2,27,14,786	36.73	1,72,02,310	38.35
C	INPUT TAX CREDIT	23,84,909	5.41	41,30,424	6.68	29,56,302	6.59

The above Table clearly shows the increase in distributor share in 2019-20 to 6.36% as against the 44.94% during 2018-19 i.e. an increase of 1.42% on average Ticket price. Further, the statutory maintenance receipt had reduced to 1.36% in 2019-20 as against 1.80% in 2018 19. The GST reduced is just 1.47% in 2019-20 as against 2018-19. The input credit available has reduced by 1.47% equivalent to the reduction in GST Rate.

From the above it was clear that there was no profiteering as alleged and the net increase/decrease percentage to average ticket price was as follows:

S.No.	Particulars	% of Increase / (Decrease)
1	Average reduction in GST	1.47
2	Loss of ITC	(1.27)
3	Loss due to increase in Distributor cost	(1.42)
4	Loss due to reduction in Statutory maintenance	(0.45)
5	Increase in net receipt towards Theatre Expenses	0.50
6	Average loss per Ticket	(1.17) of Average Ticket price

In addition to the above, Theatre Net Loss Operational Expenses were also increased. Audited financial statements for F.Y. 2019-20 were attached.

25. First hearing in the case via video conferencing was held on 16.03.2021. Shri Kalyan Chakravarthy, Applicant No. 1 in person and Shri P.V.V Raghavendra Babu, General Manager and Shri R.P. Malladi, Legal Consultant for the Respondent appeared for the hearing. During the hearing the Respondent had re-iterated his arguments based on his written submissions dated 05.01.2021, 15.02.2021 and 27.02.2021.

26. The quasi-judicial proceedings in the matter could not be completed by the Authority due to lack of required quorum of members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for

quasi-judicial proceedings vide Order dated 23.03.2022 and the Respondent and the Applicant No. 1 were granted hearing in the matter on 21.03.2022 through Video Conferencing.

27. However, the Respondent vide his email dated 07.03.2022 has raised the following objection:-

a. Section 171(2) of the Act provides that *"the Central Government may constitute an Authority to examine whether 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"*.

Rule 133(1) of the Rules provides that *"Order of the Authority – (1) The Authority shall, within a period of six months from the date of the receipt of the report from the DGAP determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices"*.

A combined reading of the Rule 133(1) and Sec. 171(2) makes it clear that the proceedings of this Authority after the receipt of the DGAP's Report should be complete within a period of six months.

b. That the Report of the DGAP was dated 26.11.2020. Therefore, the proceedings should be completed and Order should be issued

within the six months, that is, on or before 26.04.2021. However, due to Covid Pendemic the Central Government (Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, New Delhi, had extended the due dated from time to time vide Notifications no.s : 65/2020, 91/2020, 14/2021 & 24/2021, Central Tax Notifications, and the last date notified under latest Notification No. 24/2021 for purposes of completion of any proceeding or passing of any order or issuance of any Notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above, was 29.06.2021.

c. That after 29.06.2021 no proceeding or order could be passed under the CGST Act, 2017 read with CGST Rules, 2017. That the passing of the order was under the prohibition of "Limitation" and hence no legally valid order could be passed after that date. Hence, the jurisdiction of this Authority, was also subject to Limitation or in other words the jurisdiction was restricted upto that date only. And, there was no jurisdiction after that date or the jurisdiction was nullified after that date. No proceedings could be taken up or no order could be passed. It was also submitted that the excercise of powers by this Authority after the limitation of period was legally nullified by the law maker. Therefore, the jurisdiction which was the power to grant remedies provided by

law was also subject to the limitation of time. Hence, there was no jurisdiction to the NAA over the matter as of the said date.

d. That jurisdiction might be defined to be the power of a court to hear and determine a cause, to adjudicate and excercise any judicial power in relation to it; in other words, by jurisdiction was meant the authority which a court had to decide matters that were litigated before it or to take congnizance of matters presented in a formal way for its decision [Indian Farmers Fertilizers Cooperative Limited v. Bhadra Products, (2018) 2 SCC 534]. It was further submitted that in matter of limitation prexcribed under the special statutes even the courts had no power to extend or condone the delay as held by Supreme Court under Arbitration Act, 1996.

e. That there might be a statutory provision, which caused great hardship or inconvenience to either the party concerned, or to an individual, but the court had no choice but to enforce it in full rigour. It was a well settled principle of interpretation that hardship or inconvenience caused could not be used a basis to alter the meaning of the language employed by the legislature if such meaning was clear upon a bare perusal of the statute. If the language was plain and hence allowed only on meaning, the same had to be given effect to, even if it caused hardship or possible injustice. [Vide CIT (Ag) v. Keshab Chandra Mandal AIR 1950 SC 265 and D.D. Joshi v. Union of India (1983) 2 SCC 235]. Hence, jurisdiction conferred by the statute could be excercised

subject to the limitation imposed by the statute. The Authority could not transgress the limits set out by the statute however admirable the intention might be. When an order suffered from want of jurisdiction, it was a nullity.

f. That for kind consideration that the excercise of powers by this Authority after the limitation period was legally not permitted by the law maker and hence the proceedings were a nullity. Since the subject matter was specifically and under the Constitution of India reserved for the State Government and the State Government had exercised the said power also, the specific law would have application to other laws. Hence, the matter was outside the jurisdiction.

g. That the subject matter could not be taken up afresh also since what could not be accomplished in the regular proceedings could not be initiated or tried to meet in fresh proceedings as the same was not provided in the law and hence illegal.

h. The Respondent further prayed to communicate the orders on jurisdiction since the subject matter was legally subject to limitation of time and curtails jurisdiction of NAA. The Respondent further prayed for closure of the matter in the light of the law and facts of limitation of matter.

28. The Respodent vide his email dated 17.03.2022 and 15.04.2022 has re-iterated his submissions dated 07.03.2022 and further

stated that the Respondent's participation in the hearing was without any prejudice to his rights to contest the limitation of jurisdiction to pass orders and the cessation of jurisdiction.

29. The Respondent was informed vide Order Sheet dated 14.03.2022 of this Authority that, in terms of the Hon'ble Supreme Court's directions, from time to time, in Suo Moto Writ Petition (C) no. 3/2020, the present proceedings were not barred by limitation. Therefore, the hearing in the matter was rescheduled on 27.04.2022.

30. The Respondent vide his email dated 21.04.2022 submitted copies of Orders of Telangana High Court in Writ Petition No. 19046 of 2014 dated 31.10.2016, WP. No. 37873 of 2018 dated 12.10.2018, WP. No. 24293 of 2021 dated 30.09.2021 related to rate fixation against the licensing Authorities of the State.

31. Finally, hearing in the matter, through video conferencing, was held on 27.04.2022. The hearing was attended by Shri Kalyan Chakravarthy, Applicant No. 1 in person, Shri P.V.V. Raghavendra Babu, General Manager and Shri R.P. Malladi, Legal Consultant for the Respondent, Shri Lal Bahadur, Assistant Commissioner for the DGAP. The Applicant No. 1 and the Respondent were heard. During the hearing the Respondent has re-iterated their earlier written submissions dated 05.01.2021, 15.02.2021, 27.02.2021, 07.03.2022, 17.03.2022, 15.04.2022 and 21.04.2022. The Respondent during hearing further requested time till

28.04.2022 to file his written submissions against the Report of the DGAP which have been filed by the Respondent vide his email dated 28.04.2022.

32. The Respondent vide his submissions dated 28.04.2022 referred to rely upon his earlier written submissions and submitted a copies of tickets for pre rate reduction of GST and post rate reduction, with same final (including GST) price on both the tickets priced at 450/-. The tickets mentioned the CGST and SGST written on the ticket as "0".

33. We have carefully heard the Respondent and 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% 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.

34. On examining the various submissions placed on record, the Authority needs to determine as to 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.

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 ITC 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."

The Authority finds that, as per the details and calculations in Tables A & B above, the Respondent has been profiteering by way of increasing the base prices of the tickets (Services) by not reducing the selling price of the tickets (Services) commensurately, despite the rate reduction in GST rate on "*Services by way of admission to exhibition of cinematograph films"* where price of admission ticket was one hundred rupees or above, from 28% to 18% w.e.f. 01.01.2019. From the Table 'B' above, it is evident that the base prices of the admission tickets was indeed increased, as a result of which the benefit of reduction in GST rate from 28% to 18% and 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged (including lower GST @ 18%). The total amount of profiteering covering the period of 01.01.2019 to 30.04.2020, was ₹42,60,104/-.

35. The Authority finds that, one of the contentions of the Respondent is that the DGAP failed to appreciate the High Court Order fixing the Price while upholding the State Government Power to fix the Cinema Ticket prices through a new committee. In this regard the Authority finds that the State Government only fixes the maximum price at which a movie ticket can be sold. The cinema management is free to sell the tickets at the lower price. The Hon'ble High Court or the State Government come into picture only

when the cinema management wants to increase the price of tickets beyond the maximum rate already fixed. Section 171 of the CGST Act, 2017 and Rules made thereunder is limited to the extent of passing of benefit of rate reduction and cannot or does not interfere with the powers of the Hon'ble High Court. Levy of GST is increased or decreased or fixed by the GST Council which is a Federal Constitutional body and all the State Governments are part of the GST Council.

36. The Respondent's submitted that the DGAP has failed to notice that the price was the same before and after the above cited impugned date i.e. 1.01.2019. In fact, the very gist of the complaint is that the prices of tickets were kept unchanged even after reduction in GST rates, the Respondent ought to have reduced the prices of the tickets, commensurate to the reduction of GST rate in terms of Section 171 of the CGST Act, 2017.

37. The Authority finds that, the Respondent has submitted that the DGAP failed to trace the Constitutional provisions under which the DGAP or this Authority has jurisdiction. In this regard, The Authority finds that, the GST Council has been constituted under 101stAmendment of the constitution under Article 279A of the Constitution as a Federal, Constitutional body, comprising of the Finance Ministers of all the States and UTs and the Union Finance Minister. On the recommendation of the GST Council, this Authority has been constituted under Section 171 (2) of the CGST Act, 2017 read with Rule 122 of CGST Rules, 2017. Chapter XV of

CGST Rules, 2017 have been framed under Section 164 of the said Act which has the sanction of the Parliament and the State Legislatures. Therefore, the contention raised by the Respondent is not tenable.

38. The Authority finds that, the Respondent has submitted that the DGAP having concluded that, post 01.01.2019 excess GST is included in the Price ought to have concluded wrongful excess collection of GST under Section 76 of CGST Act 2017 rather than profiteering under Section 171 (3) and ordered for forfeiture. The Authority finds that, Section 171 of the CGST Act, 2017 mandates that any benefit of reduction in the rate of tax or the benefit of ITC which accrues to a supplier must be passed on to the recipients of supply, as both are concessions given by the Government and the suppliers are not entitled to appropriate such benefits by increasing their profit margin at the cost of the consumers. Such benefits must go to the consumers.The DGAP has to adopt a mathematical methodology to arrive at the amount profiteered. An amount which ought to have been charged by the supplier from the recipient after factoring the benefit of ITC or reduction in rate of tax, is to be determined by the DGAP in the course of such calculations of profiteered amount.

39. The Authority finds that, the Respondent has submitted that the DGAP has attempted to derive a new parameter of 'Base' Price as per their own calculations ignoring that the provisions of Section 171 of CGST Act, 2017. In this regard, The Authority finds that, as

per Section 171 of the CGST Act, 2017, 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. The price to be arrived at after commensurate reduction in rate of tax needs a base price for calculation. Such price required for calculation may be denoted by any term. The DGAP in his Report dated 26.11.2020 used the term 'base' price. Hence, The Authority finds that, the methodology adopted by the DGAP is reasonable and correct.

40. The Authority finds that, the Respondent has also contended that the DGAP has not noted that the scheme or machinery provisions of Computation of Profiteering is presently at the discretion of the DGAP without any computation methodology in the CGST Act, 2017 or the CGST Rules, 2017. In this regard it is to mention that the Methodology and Procedure was notified by this Authority vide its Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017 which is also available on its website. The Authority can pass appropriate order on receipt of Investigation Report from the DGAP after considering the facts of each case.

41. The Authority finds that, the Respondent has also averred that the DGAP's Report presumes that price is a non-changing element and shall remain the same as long as the provisions of anti-profiteering are on the statute book. In this regard, the Authority finds that the DGAP has investigated the issue whether the benefit of the reduction in rate of taxes has been passed on to the

customer or not. It is the duty of all the registered persons to pass on the benefit of reduction in tax rate to the customer by way of commensurate reduction in prices. The profiteering aspect is very much in vogue until the intended benefit by way of commensurate reduction in prices is passed on. Also, the DGAP or this Authority has not acted in any way as price controller or regulator as it does not have legislative intent to regulate when it comes to price hike decisions. The supplier is absolutely free to exercise his right to practise any profession, or to carry on any occupation, trade or business. This Authority has only been mandated to ensure that, the benefit of reduction in rate of tax or availability of ITC which are a sacrifice of precious revenue from the kitty of the Central and State Governments is passed on to the recipients. The soul of this provision is the welfare of the consumers who are voiceless, unorganized and scattered. Therefore, the contention raised by the Respondent is not acceptable.

42. The Respondent vide his submissions has contended that the matter has become time barred in terms of Rule 133(1) of Central GST Rules, 2017. In this context, it is to mention that :-

The Hon'ble Supreme Court, vide its Order dated 23.03.2020, in Suo Moto Writ Petition (C) no. 3/2020 while taking *suomoto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other specified laws (both Central and State) including those prescribed under

Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general of special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

43. The Respondent vide his submissions dated 28.04.2022 has submitted copies of Orders of the Hon'ble High Court for the State of Telangana & State of Andhra Pradesh in Writ Petition No. 19046 of 2014 dated 31.10.2016, WP. No. 37873 of 2018 dated

12.10.2018, WP. No. 24293 of 2021 dated 30.09.2021. The Authority finds that, the said Orders of the Hon'ble High court are related to rate fixation and those Writ Petitions were filed against the Licensing Authorities of the State and therefore are are not applicable to the matter under consideration before this Authority i.e. Anti-profiteering and determination of the profiteered amount as well as passing the benefit of reduction in rate of tax as per Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 by the suppliers to the recipients of the service.

44. This Authority, based on the facts discussed above, finds 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 above one hundred rupees*" from 28% to 18% w.e.f. 01.01.2019 upto 30.06.2019. On this account, the Respondent has realised an additional amount to the tune of Rs. 42,60,104/-from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteered amount is determined as Rs. 42,60,104/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. As per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, the Respondent is therefore directed to reduce the prices of his tickets, 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. 42,60,104/- 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 in two equal parts, of Rs. 21,30,052/- in the Central Consumer Welfare Fund (CWF) and Rs. 21,30,052/- in the Telangana State Consumer Welfare Fund as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with interest @18%. 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 jurisdictional Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017.

45. It has also been found that the Respondent has denied the benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171(1) of the CGST Act, 2017 andresorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. Therefore, the Respondent is liable for the imposition of penalty under the provisions of the above Section. Accordingly, a notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

46. Further, the Authority in terms of Rule 136 of the CGST Rules, 2017 directs the jurisdictional Commissioners of CGST/SGST, Telangana to monitor compliance with 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 Consumer Welfare Funds along with interest thereon. A report regarding compliance of this Order shall be submitted to this Authority by the DGAP within a period of four months from the date of receipt of this Order.

47. A copy each of this Order be supplied, free of cost, to the Applicant, the Respondent, Commissioners CGST/SGST for necessary action. File be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified copy

(Dinesh Meena)
NAA, Secretary

File No. 22011/NAA/231/Prathima Multiplex/2020 Date:12.05.2022

Copy To:-

1. M/s Prathima Multiplex Pvt. Ltd., Collector Office Road, Opp. Police Parade Ground, Mukarampura, North, Karimnagar, Telengana-505001.
2. Shri Kalyan Chakravarthy, H.No. 9-7-284 D1, Flat No. 201, Bharathi Residency, Hanuman Nagar, Karimnagar, Telangana-505001.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.

4. The Chief Commissioner of Central Goods & Service Tax, Hyderabad Zone GST Bhavan, I.B.Stadium Road, Basheer Bagh, Hyderabad, Telangana-500 004.
5. The Commissioner of Commercial Taxes Department, C.T Complex, Nampally, Hyderabad, Telangana-500 001
6. Guard File.