

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

Case No. : 33 /2022  
Date of Institution : 31.03.2021  
Date of Order : 06.07.2022

In the matter of:

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

Applicant

Versus

M/S. NY Cinema LLP, Opp. Private Bus Stand, Govind Nagar,  
Hapur, Uttar Pradesh-245101.

Respondent

Quorum:-

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



Present:-

1. Shri Adarsh Shrivastava, Superintendent for the DGAP.
2. Shri Rajat Talati, Chartered Accountant and Shri Arjun Bhandari, Chief Financial Officer for the Respondent.

Order

1. The Present Report dated 31.03.2021 had been furnished by the Director General of Anti-Profitteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017 in compliance of the Order No. 15/2020 dated 12.03.2020, wherein this Authority had directed the DGAP under Rule 133(5) of the CGST Rules, 2017 (hereinafter referred to as "the Rules") to conduct investigation of all the screens being operated by the Respondent which had not been investigated from the perspective of Section 171 of the CGST Act, 2017.
2. The DGAP in its report dated 31.03.2021 has *inter alia*, stated:-
  - a. That a Notice under Rule 129 of the Rules was issued by the DGAP on 15.05.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of reduction in GST rate w.e.f. 01.01.2019, had not been

passed on to his recipients by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as to furnish all documents in support of his reply. Further, corrigendum to the NOI dated 15.05.2020 was issued on 28.12.2020, in which the words "July, 2017 to March, 2019" were substituted by the words "October, 2018 to February, 2020" in para 3 of the NOI dated 15.05.2020.

- b. That in response to the Notice and several reminder letters, the Respondent did not submit all the requisite documents on the due date. Hence, Summons dated 29.10.2021 under Section 70 of the CGST Act, 2017 read with Rule 132 of the Rules, were issued to the Respondent to submit all the relevant documents. In compliance to said summons, the Respondent submitted the relevant documents.
- c. That the period covered under investigation was from 01.01.2019 to 29.02.2020.
- d. That the statutory time limit to complete the investigation in the case was extended up to 31.03.2021 by virtue of, Notification No. 65/2020-Central Tax dated 01.09.2020 and Notification No. 91/2020-Central Tax dated

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14.12.2020 issued by the Central Government under Section 168A of the Central Goods and Service Tax Act, 2017 where it was provided that, " *any time limit for completion or compliance of any action, by any authority, had been specified in, or prescribed or notified under Section 171 of the said Act, which falls during the period from the 20<sup>th</sup> day of March, 2020 to the shall be extended up to the 31<sup>st</sup> day of March, 2021*".

e. That in reply to the Notice dated 15.05.2020 and subsequent letters/emails the Respondent submitted his reply vide letters and e-mails dated 26.08.2020, 24.09.2020, 08.10.2020, 13.11.2020, 12.01.2021, 22.01.2021, 18.02.2021, 19.03.2021, 24.03.2021, 25.03.2021 and 30.03.2021. The reply of the Respondent received by the DGAP has been, *inter-alia*, summed up below:

(i) That he was engaged in the business of running chain of multiplexes in India. The Respondent during the relevant time had screens operational in Kotakpura district of Punjab, Hapur, Ghazipur, Raebareli, Kanpur and Pilkhuwa district of Uttar Pradesh and Surendranagar & Bhuj districts located



in Gujarat where cinema penetration was still in its infancy.

- (ii) That the Respondent had different ticket prices for the movies depending on the factors namely weekend and weekday show, morning and other than morning show in a day and class of ticket (i.e. Gold, Platinum, Silver etc.). Thus a same movie might be priced differently for the weekday evening show and a weekend evening show.
- (iii) That the screen in Kotkapura (Punjab) was not operational for the period April, 2019 to February, 2020 and thus in respect of said screen he had not submitted relevant data for the period April, 2019 to February, 2020. Further, the Respondent had stated that screens in Sangrur (Punjab) and Ratlam (Madhya Pradesh) were not operational post 01.04.2019. The Respondent also submitted that the screen in Kanpur was closed w.e.f. 27.09.2019 and the screen in Surendranagar started operation in November, 2018.

f. That vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:-

- (i) Copies of GSTR-1 and GSTR-3B returns for the period October, 2018 to February, 2020 for the State of Uttar Pradesh, Punjab, Madhya Pradesh and Gujarat.
- (ii) Movie wise & rate wise data for the screens namely Bhuj, Surendranagar for the State of Gujarat and Ghazipur, Noida, Pilkhuwa and Raebareli for the State of Uttar Pradesh for the period October, 2018 to February, 2020.
- (iii) Movie wise & rate wise data for all screen in Kotkapura (Punjab) for the period October, 2018 to March, 2019.
- (iv) Movie wise & rate wise data for all screen in Kanpur DCR (Uttar Pradesh) for the period October, 2018 to September, 2019.
- (v) Movie wise & rate wise data for all screen in Hapur (Uttar Pradesh) for the period April, 2019 to February, 2020.
- (vi) Movie wise & rate wise data for the screens in Sangrur (Punjab) and Ratlam (Madhya Pradesh) for the period April, 2019 to February, 2020.

- (vii) Reconciliation of turnovers (Box Office, F&B & other sales) with GST Returns for the period December, 2018 to February, 2020.

3. The reference received from the National Anti-Profiteering Authority, various replies of the Respondent and the documents/evidence on record had been examined in detail by the DGAP. The Findings of the DGAP are as under:-

a. The main issues to be examined was whether the GST rate on *"Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees"* were reduced from 28% to 18% and *"Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less"* were 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 had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

b. 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 was above one hundred rupees"*

from 28% to 18% and *"Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less"* from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018.

c. It was important to examine Section 171 of CGST Act, 2017 which governs the anti-profiteering provisions under GST. Section 171(1) reads as *"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"* Thus, the legal requirement was abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could obviously be in money terms only, so that the final price payable by a consumer gets reduced.

d. Based on the Respondent's submissions the 02 screens in Sangrur (Punjab) and Ratlam (Madhya Pradesh) were excluded from the computation of profiteering as the operation in the said screens started post 01.04.2019 and there was no comparable data in respect of the said 02 screens for pre-rate reduction period i.e. prior to



01.01.2019. Further, the profiteering in respect of screen in Kotkapura (Punjab) was computed for the period 01.01.2019 to 31.03.2019 as the said screen was not operational during the further period 01.04.2019 to 29.02.2020 and the profiteering in respect of screen in Kanpur (Uttar Pradesh) was computed for the period 01.01.2019 to 27.09.2019 as the said screen was not operational during the further period i.e. 28.09.2019 to 29.02.2020. In respect of screen in Hapur (Uttar Pradesh), the profiteering for the period 01.01.2019 to 31.03.2019 was already computed by the DGAP and upheld by the Authority vide Order No. 15/2020 dated 12.03.2020. Therefore, profiteering in respect of screen in Hapur was computed for the further period i.e. 01.04.2019 to 29.02.2020 in the present report.

- e. The Respondent had submitted that he had different ticket prices for the movies depending on the factors namely Category of Movies, Movie Type (3D & Non-3D), Ticket type (DIAMOND, GOLD, PLATINUM and SILVER), Weekdays (Monday to Thursday), Weekends (Friday to Sunday), Show timings (Morning, Other than Morning Show) etc. In this regard it was submitted that the profiteering, if any, had been arrived at by comparing

average selling prices for each of the 'unique combination of the above factors' such as "DIAMOND Weekdays Morning Show 3D" screened during the period 01.10.2018 to 31.12.2018 of pre-rate reduction period, and the prices post 01.01.2019 for the movies with the similar 'unique combination of the above factors' in each aspect.

- f. For the purpose of determination of profiteering, the methodology adopted could be explained by illustrating the calculation in respect of a specific 'unique combination of the above factors' as listed in para-12 of the Report, by deriving an average base price (after discount) for each specific 'unique combination of the above factors' by taking the total collection during the period 01.12.2018 to 31.12.2018 (pre-GST rate reduction) for the unique category divided by the number of tickets sold during the period for the unique category. The average base price of the ticket was compared with the actual selling price of the tickets similar in each aspect sold during post- GST rate reduction i.e., on or after 01.01.2019 as illustrated in the table- 'A' below:

Table-'A'

(Amount in Rupees)

Sr. No.	Description	Factors	Pre-Rate Reduction (01.10.2018 to 31.12.2018)	Post Rate Reduction (From 01.01.2019)
1.	Multiplex Name	A	Seven Sky (Bhu], Gujarat)	
2.	Unique Category	B	DIAMOND Weekdays Morning Show3D	
3.	Total No. of tickets sold	C	28	
4.	Total taxable value (after Discount, if any)	D	3,937/-	
5.	Average base price (without GST)	$E=(D/C)$	141/-	
6.	GST Rate	F	28%	18%
7.	Actual Selling price (post rate reduction) (including GST)	$G=128\% \text{ of } E$	180/-	
8.	Commensurate Selling price (post Rate reduction)	$H=118\% \text{ of } E$		166/-
9.	Post Reduction Show Timing, Screen & date	I		09.00 A.M. Screen 3 dated
10.	Total No. of Tickets sold in above Session ID	J		9
11.	Total Tickets Value (including GST)	K		1,620/-
12.	Actual Selling price (post rate reduction) (including GST)	$L=K/J$		180/-
13.	Excess amount charged of Profiteering	$M=L-H$	14.07/-	
14.	Total Profiteering	$N= J*M$	127/-	

From the above table, it was clear that in the said instance, the Respondent had not reduced the selling prices commensurately for the "Movie Tickets", when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018 Central Tax (Rate) dated 31.12.2018 and hence profiteered an amount of Rs. 14.07/- per ticket and thus the benefit of reduction in GST rate had not been passed on to the recipients by way of commensurate reduction in the prices, in terms of Section 171 of the CGST Act, 2017. On the basis of above



calculation as illustrated in table 'A' above, profiteering in case of all the screens being operated by the Respondent had also been arrived in similar way.

- g. The issue that remains was the determination and quantification of profiteering by the Respondent for failing to pass on the benefit of the reduction in the rate of GST on the goods supplied to his recipients, in terms of Section 171 of the CGST Act, 2017. From the session wise sale register made available by the Respondent, it appeared that the Respondent had increased the base prices of the tickets when the rate of GST was reduced from 28% to 18% and from 18% to 12% w.e.f. 01.01.2019, so that the commensurate benefit of GST rate reduction was not passed on to the recipients. On the basis of aforesaid pre and post-reduction GST rates and the details of outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the service by way of admission to exhibition of cinematograph films during the period 01.01.2019 to 29.02.2020, as furnished by the Respondent, the amount of net higher sales realization due to increase in the base prices of the impacted service, despite the reduction in the GST rate or in other words, the profiteered amount comes to



Rs. 2,66,99,340/- in respect of all the screens (namely Bhuj, Ghazipur, Kanpur, Kotkapura, Noida, Pilkhuwa, Raebareli, Surendranagar and Hapur) which were operational during the period of investigation. The screen wise details of the computation are given in Annexure-17 to the DGAP's report dated 31.03.2021. The said profiteered amount in respect of all the screens had been arrived at by comparing the average of the base prices of the tickets having 'unique combination of the various factors/categories' sold during the period 01.12.2018 to 31.12.2018 with the actual prices of the tickets similar in each aspect (Irrespective of the name of Movie screened) sold during the period 01.01.2019 to 29.02.2020. If sale of any unique category was not found during this period, then in that case, the base price of that unique category was arrived at by taking the sales of that particular unique category of ticket during previous months in a sequential manner beginning from November, 2018, if the same was not found then previous month i.e. October, 2018 and then compared with the actual invoice-wise base prices of such tickets sold during the period 01.01.2019 to 29.02.2020. The excess GST so collected from the recipients, was also included in the aforesaid profiteered

amount as the excess price collected from the recipients also included the GST charged on the increased base price.

- h. The state wise profiteering for the period 01.01.2019 to 29.02.2020 has been given below in Table- 'B':-

Table – 'B'

Sr. No.	State	Profiteering Amount
1	Uttar Pradesh	1,76,55,538/-
2	Gujarat	90,42,278/-
3	Punjab	1,524/-
Total Profiteering		2,66,99,340/-

4. The DGAP further concluded that the allegation of profiteering by way of either increasing the base prices of the service while maintaining the same selling price 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 was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less" were reduced from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 stands confirmed against the Respondent. On this account, the Respondent

had realized an additional amount to the tune of Rs. 2,66,99,340/- from the recipients in respect of all the screens operated by the Respondent during the period 01.01.2019 to 29.02.2020, which included both the profiteered amount and GST on the said profiteered amount.

5. The DGAP has also concluded that in view of the aforementioned findings, it appeared 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.
6. The above Report was carefully considered by this Authority and a Notice dated 17.06.2021 was issued to the Respondent to explain why the Report dated 31.03.2021 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions which had been filed on 26.07.2021 wherein the Respondent had submitted:-



a. He objected to the initiation of the anti- profiteering proceedings across India u/s 171 of the CGST Act vide his Notice dated 15.05.2020. It was submitted that the proceedings initiated were devoid of the powers of this Authority in as much as that the Notice dated 15.05.2020 was issued before the date of powers were vested with such initiation prospectively vide amendment to the Rule 133(5) of CGST Rules, 2017 only from June 28, 2020.

In support of the said submission, the Respondent has relied on the following case law:

- (i) Abbott Healthcare Private Limited & Anr. Vs Union of India & Ors. (Delhi High Court) wherein the Petitioners had questioned the constitutional validity of Section 171 of the CGST Act and Chapter 15 of the CGST Rules and in particular Rule 126, 127 and 133.
- (ii) Jubilant Foodworks Ltd. & Anr. v/s Union of India & Ors. (2019-VIL-183-DEL) with regard to the constitutional validity. Since profiteering was a nebulous/vague concept, not surprisingly, most of the orders passed so far had been stayed by various courts. The commentary from the courts staying the cases had primarily questioned the constitutionality of



the anti-profiteering piece of the GST legislation. The courts also seem to be pointing out that there was a lack of a set of rules or methodology that could help determine what "profiteering" constitutes, and how the amount was to be calculated. In the Jubilant Foodworks case, for instance, the Delhi High Court stayed the Authority's order against the company on the grounds that there was a "prima facie" case of lack of methodology to determine profiteering.

- b. Supply of goods V. services – difference in the nature and it's pricing:- the DGAP had alleged and worked out the amount profited based on the price of ticket charged to the cinema goers pre and post reduction of the rate of GST applicable. The methodology adapted by the DGAP was flawed and could not stand the test of rationality and balanced scrutiny. The calculations made by the DGAP were based on certain assumptions. An average of prices for the month of December 2018 was taken based on "unique combination of certain factors". The categories that had been created were not actually comparable. The approach adopted by the DGAP was flawed in as much as the attempt had been made to compare apples with oranges

and the time frame chosen of long duration of 13 months being arbitrary.

c. Period covered for working out the amount profiteered:- the amount of anti-profiteering had been calculated for all the movies post rate reduction until February 29, 2020. There were no rules to determine the 'anti- profiteering' amount and the time for which the pricing of supply is to be examined for the purposes. At the most in case the same movies had been screened pre and post rate reduction, and the benefit of the rate reduction had not been passed to the consumers one might had to examine the scope of anti-profiteering. However, the approach of comparing all the movies until February 29, 2020 post the reduction of rate was incorrect.

Further, the present proceedings had been subjected to unrealistically long period of time. This was in fact against the very norm set up internally by the DGAP and had been regularly applied and followed by this Authority as well. The Respondent referred to the DGAP's supplementary report dated 22.01.2020 in relation to the Respondent's earlier investigation for Hapur (UP) screen the finality of which was attained vide Order No. 15/2020 dated 12.03.2020.

Vide the said supplementary report of the DGAP dated 22.01.2020 at point E of para 5 (Annexure C), it had been clearly admitted and mentioned that:

*"As a practice, his reports on profiteering in GST rate reduction cases covered the period from the date of effect of change in the GST rate to the last day of the month preceding to the month in which the reference was received by him for initiation of investigation from the Standing Committee or this Authority"*

If the above policy was taken into consideration, then in the present case, investigation must be undertaken only up to the month of February, 2019. Whereas the DGAP had considered the period up to February, 2020. This was flawed and unfair towards the Respondent.

d. Methodology for calculation:

- (i) Even the calculations made by the DGAP were based on certain flawed / irrational assumptions. An average of prices for the month of December, 2018 was taken based on "unique combination of certain factors". The categories that had been created were not actually comparable. The classes of movie tickets



keep changing every week depending on the day, time, buzz around movie, star cast, budget of the movie etc. Also, inflation had not been considered while making these calculations. Hence, taking the base of December 2018 for the months up to February 2020 was devoid of any merit. Therefore, the profiteered amount that had been calculated to the tune of Rs. 2,66,99,340/- was without a proper base.

- (ii) The price to be charged to a customer was based on the demand and supply. The categories that existed in the month of December 2018, were in some cases non-existent in the period after the change in rate of tax. There were various reasons due to which the prices had changed in this period.

Example: If we look at the price rates during the pre-rate change and post-rate change period, there had been significant changes in the same. Some examples of the same were as follows:

Sr. No.	Particulars	Change in Rate
1.	Old price of Rs. 118/- had been changed to Rs. 112/-	Earlier 18% was being charged on Rs. 100/- and now 12% was being charged on Rs. 100/-
2.	Old price of Rs. 140/- had been changed to Rs. 130/-	Earlier 28% was being charged on Rs. 110/- and now 18% was being charged on Rs. 110/-



3.	Old price of Rs. 230/- had been changed to Rs. 210/-	Earlier 28% was being charged on Rs. 180/- and now 18% was being charged on Rs. 180/-
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As could be seen in the above table, there had been a reduction in prices in certain classes and categories of tickets. The calculation of the DGAP had missed sight of these very obvious findings. There had been case where there was slight increase in prices due to varied reasons.

- (iii) Capital Expenditure incurred: The firm had incurred Capital expenditure on all the screens across India during the period 01.01.2019 to 29.02.2020 as below:

Sr. No.	Cinema	Total
1	Bhuj	3,36,77,743
2	Ghazipur	82,21,325
3	Hapur	1,33,26,706
4	Kanpur	8,78,750
5	Kotkapura	4,94,600
6	Noida	10,79,878
7	Pilkhuwa	7,05,570
8	Surendranagar	1,21,04,634
9	Rae-bareli	39,32,155
	Total	7,44,21,360

The expenditure tabulated above was in respect of various capital expenditures such as the following:

- New sound system
- Sound proofing (Acoustic system)

- c. Air conditioners
- d. New projectors
- e. Auditorium seats
- f. New screen
- g. Popcorn vending machines, counters, kitchen appliances etc.
- h. Other furniture, fixtures
- i. Plumbing work
- j. Fire-fighting equipment

As could be seen above, the sound quality had improved tremendously. The cine-viewing experience was augmented. The consumer would also quite obviously be willing to spend more to be able to enjoy an enhanced experience of viewing movies. Therefore, it was an economic decision to charge a higher amount by the Respondent on certain classes of tickets during the period - 01.01.2019 to 29.02.2020.

- (iv) Factors determining price of a ticket: the price of a movie ticket was based on a lot of factors. Some of the factors were as follows:

- (1) New/Old movie

- (2) Age of the movie
- (3) Performance of the movie
- (4) Star cast of the movie etc.

Further, during the period 01.01.2019 to 29.02.2020, a lot of movies which had a premium star cast were showcased at all the screens by the Respondent. Such movies command a premium price.

e.g.:-

1. "Bharat & Dabangg-3" starred "Salman Khan". Since Salman Khan was a Bollywood A-lister, a premium was attracted on the movie tickets starring him.
2. "Avengers" was a premium Hollywood movie. Hollywood movies were sold at premium pricing across globe.
3. "Kesari & Housefull 4" starred "Akshay Kumar". Again, Akshay Kumar was another Bollywood A-lister. Therefore, a premium was attracted on the movie tickets starring him.
4. "Kalank" was a multi-starrer. It had A-listers such as Alia Bhatt, Varun Dhawan, Madhuri Dixit, Sanjay Dutt, Sonakshi Sinha etc. Such multi-

starrers again were sold at higher rates compared to normal movie tickets.

5. "Tanhaji" starred "Ajay Devgan". Also, it was a historical movie describing the valour of the Great Maratha warrior Tanhaji Malusare. Hence, it was priced higher due to star-cast and interest of audience.

6. "War" was another multi-starrer. It had "Hrithik Roshan & Tiger Shroff" in the lead. Plus, it was an action-packed movie. Hence it was expected to do well. Thereby affecting prices.

(v) Percentage of share in revenue of distributors:

Another factor that affects pricing was the high percentage of share in the ticket revenue that was charged by the distributors. We procure the right to exhibit any movie from a producer/distributor and the price of the movie was decided by the producer/distributor based on the expected euphoria / buzz created around that movie and the factors mentioned above. Some of the movies where the cost of acquiring theatrical rights was high were as follows:

Sr. No	Name of Movie	Rate
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1.	Bharat (Starring Salman Khan)	52.50%
2.	Good Newzz (Starring Akshay Kumar)	52.50%
3.	Avengers Endgame (Hollywood movie)	50.00%
4.	Kalank (Starring Alia Bhatt, Varun Dhawan, Madhuri Dixit, Sanjay Dutt, Sonakshi Sinha etc.)	50.00%
5.	Kesari (Starring Akshay Kumar)	52.50%
6.	Gully Boy (Starring Ranveer Singh, Alia Bhatt)	52.50%

As seen herein, high amount of collections of movie tickets was paid to distributors. In most cases, more than half of the collections of ticket prices were paid to distributors. Here, the cinema owner was obviously to charge more for the tickets. In such a scenario, the question of profiteering does not arise. The amount that was left over was bare minimum and required to re-coup the fixed and variable overheads of the Respondent itself.

- (vi) Methodology used by the Respondent: While the Respondent did not admit to any profiteering, it however was assuming such a scenario and proposes that the following methodology could be used for calculation of the amount of profiteering.

- New price points: the Respondent made a comparison of the rates that existed prior to change of rate of tax. Certain price ranges were the same as the period before the change in rate and certain price ranges were completely new in comparison to the prior period range.
- In case of rates that remained unchanged, the calculation could be:  $\text{Prior period price} / (100 + \text{Old rate}) * (100 + \text{New rate})$

This gives the selling price that should have been the new selling price. In majority of the cases, it was observed that the amount so worked out would have reasons because of which such amount of sale price was so arrived at and that would have been justified on the basis of discussions made here in above. It was therefore submitted that the DGAP had failed to prove profiteering, if any. The approach of the DGAP had been marred by preconceived notions and had been swayed away by the wrong line of argument with which he had started. In these circumstances, the entire proceedings and the resultant amount of alleged profited amount was misconceived.

There was no amount of profiteering and the DGAP had flawed in his exercise of calculation in as much as a longer period of time was taken for the same and moreover, assumptions taken were also flawed or without considering the business and the factual matrix of the case.

7. Copy of the above submissions dated 21.07.2021 filed by the Respondent was supplied to the DGAP for supplementary Report under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications on the Respondent's submissions dated 27.07.2021 vide supplementary Report dated 25.03.2022 and had clarified:-

- a. The case of Abbott Healthcare Private Ltd. & Anr. Vs. UOI had not attained finality, its ratio cannot be applied to the instant case. Further, challenging the constitutional validity of Section 171 of the CGST Act, 2017 (on Anti-profiteering) and Rules made thereunder was erroneous and without any legal backing. The provisions of Section 171 of the CGST Act, 2017 on Anti-profiteering and Rules made thereunder had been passed by the Parliament. The Respondent could not proceed with an assumption that the Legislature enacting the statute had committed a



mistake and where the language of the statute was plain and unambiguous. The Respondent was not at liberty to find a defect but to proceed on a footing to follow the intention of the Statute. If the view of the Respondent was accepted the whole exercise of the legislature would be an exercise in futility. Section 171(1) of the Act, envisages that any reduction in the rate of tax or the benefit of ITC had to be passed on to the recipient by way of commensurate reduction in price. In other words, every recipient of goods or services had to get the benefit from the supplier and hence, this benefit had to be calculated for each and every product supplied. The investigation by the DGAP was conducted under the provisions of Section 171 of the Act read with Rule 129 of the CGST Rules, 2017, on the recommendation of the Standing Committee on Anti-profiteering and the Investigation Report was submitted to the Authority under Rule 129(6) of the Rules. The Report of the DGAP was only a finding, prepared on the basis of documents /replies/ statements given by the Respondent. The soul of this provision was the welfare of the consumers who were voiceless, unorganised and scattered. The DGAP had neither mandate nor does it meddle with the suppliers' rights to

pricing/profits/margins/trade. It was further submitted that Article 19 (1) (g) of the Constitution guarantees all the citizens the right to freedom of trade and commerce and Section 171 of the Act or the Rules 126, 127 and 133 made thereunder nowhere infringe upon this Fundamental Right.

- b. As there was no specific stay in the case in case of Jubilant Foodworks & Anr. Vs. Union of India & Ors. (2019-VIL-183-DEL) and as in those cases where stay had been granted, the issue was yet to attain finality, the findings in the case law cited by the Respondent cannot be relied upon in this case.

As far as methodology and procedure was concerned, it was submitted that the GST Council had been 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 which in its due wisdom had rightly not prescribed any specific guidelines/ mechanism/ methodology to determine the profiteering in Section 171 of the Act and the Rules made thereunder as the facts of each case are different for different sectors as well as in

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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 his Notification dated 28.03.2018 under Rule 126 of the CGST Rules, 2017. Further, any fixed methodology prescribed for all cases could have led to chaos. For example, a real estate project involves various parameters like percentage of completion of project, different proportion of ITC availed because of different purchase pattern of inputs like cement, steel, fittings, etc.; area sold; taxable turnover etc. before or after the GST implementation. Similarly, various parameters in cases related to FMCG, restaurants, construction and cinema sectors are completely different and at times mutually exclusive to each other. Applying the same mechanical/mathematical methodology of FMCG sector to a supplier of a cinema sector would in fact lead to erosion of justice in the name of uniformity. Therefore, it was submitted that there cannot be a fixed and ready to use methodology for all the cases of profiteering.

- c. Profiteering was arrived at strictly in terms of Rule 129(2) of the CGST Rule, 2017, according to which the DGAP



shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC had been passed on to the recipient by way of commensurate reduction in prices.

Accordingly, it was stated that the examples of supply of photography services and hairstyling services could not be likened to the supply of services made by the Respondent. Further, while calculating profiteering, consideration of no other factors of cost was provided under the Anti-Profiteering law.

- d. The period of investigation was normally taken from the date the Respondent was required to pass on the benefit on account of reduction in tax rate to the last date of preceding month of receipt of complaint from Standing Committee. This practice had been uniformly followed in investigation by the DGAP without any variations so that the due benefit was extended to the maximum possible number of recipients.

As the Order No. 15/2020 dated 12.03.2020 of the Authority was received by the DGAP on 13.03.2020.

Therefore, data up to February 2020 was asked to carry out the investigation.

- e. For the contention raised by the Respondent regarding Methodology used by the DGAP for calculation it was stated that the amount of profiteering on part of the Respondent had been correctly calculated based on the data submitted by him.

The contentions of the Respondent made in this para was wrong as the impugned order had been passed strictly as per Section 171 of CGST Act, 2017. The main contours of the 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC were enshrined in Section 171 (1) of the CGST Act, 2017 itself which states 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"*. The above Section mentions "any supply" i.e., each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier was not allowed. Each customer was entitled to receive the benefit of tax reduction on each product purchased by him. The word

"commensurate" mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which had to be computed in respect of each product based on the tax reduction as well as the existing base price (price without GST) of the product. The computation of commensurate reduction in prices was purely a mathematical exercise which was based upon the above parameters and hence it would vary from product to product and hence no fixed mathematical methodology could be prescribed to determine the amount of benefit which a supplier was required to pass on to a recipient or the profiteered amount. However, to give further clarifications and to elaborate upon this legislative intent behind the law, the Authority had been empowered to determine/expand the Procedure and Methodology in detail.

One formula which fits all cannot be set while determining such a "Methodology and Procedure" as the facts of each case were different. Moreover, both the benefits of rate reduction and benefit of additional ITC to be passed to the customers had been granted by the Central as well as the State Governments by sacrificing their tax revenue in the public interest and hence the

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suppliers was not required to pay even a single penny from their own pocket and hence, they have to pass on the above benefits as per the provisions of Section 171 (1). Therefore, the provisions of Sec.171 and Rule 126 are not violative of Article 14 & 19.

The power to determine his own Methodology & Procedure had been delegated to the Authority under Rule 126 of the above Rules as per the provisions of Section 164 of the above Act. Such power was generally and widely available to all the judicial, quasi-judicial and statutory authorities to carry out their functions and duties. The above delegation had been granted to the Authority after careful consideration at several levels. Since the functions and powers to be exercised by the Authority had been approved by the competent bodies, the same were legal and binding on the Respondent.

- f. During the course of investigation, the data/documents submitted by the Respondent were scrutinised and it was observed that the Respondent had increased the base prices of the tickets across some categories. As such, the cum tax prices of admission tickets had not been reduced commensurately for the period 01.01.2019 onwards. In

terms of Section 171 of the CGST Act, 2017, the Respondent was required to reduce the base prices commensurate with the reduction in rate of tax so that the recipients would have got the legitimate benefit in accordance with Anti-profiteering provisions. Any market forces like demand and supply or management decisions cannot obviate the legitimate benefit of recipients provided under the Anti-profiteering law.

- g. With regard to the contention raised by the Respondent related to Capital Expenditure incurred it was submitted that the main factor under consideration for the sake of profiteering was base prices of tickets and not the factors like capital expenditure cost incurred by the Respondent.

In terms of Section 171 of the CGST Act, 2017, the suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of ITC to the recipients by way of commensurate reduction in prices. The wilful action of not passing on the above benefits to the recipients in the manner prescribed was known as profiteering and the Respondent had indulged in profiteering by increasing the base prices of the tickets with intent of not passing on the benefit of reduction in the rate

of tax to the recipients. The Respondent does not have the liberty to increase the base prices and maintain the same selling price when there was reduction in the rate of tax. In such a case, the Respondent was obliged to reduce the base prices commensurate with reduction in tax rate so that the due benefit of recipients was passed on to them in terms of Section 171 of the CGST Act, 2017. The variations in prices on account of demand of film, class, weekdays, and weekends might depend on cost factors, which were not factored in while computing profiteering under Section 171 of the CGST Act, 2017. The mandate of the DGAP was not to go into the Cost components.

- h. For the contention raised by the Respondent regarding the factors determining price of a ticket. It was submitted that Under the HS Code 9996 the impugned service had been classified as 'services by way of exhibition of cinematograph films'. There was no further sub-classification of this service except where price of admission ticket was less than one hundred rupees or more. It was incorrect on part of the Respondent to claim that there was any mistake in understanding the services rendered by the Respondent. The contention of the



Respondent that viewers come to the multiplex screens of the Respondent to watch a particular film of their choice and pay the admission charges to watch such particular film and no one would pay for entering multiplex screens only, had little to do with classification of service rendered by the Respondent. Further, the Respondent's contention that his main business was exhibiting cinematograph films for which the viewer's come and was not just giving admission to his multiplex screens, and thus, the service rendered by the Respondent was exhibiting cinematograph films that varied from film to film based on popularity, was also vague and untenable.

In the investigation report, unique classification for categories and sub categories like type of movie (3D and non 3D), ticket type (DIAMOND, GOLD, PLATINUM and SILVER), Weekdays and Weekends and show timings for pre and post rate reduction had been considered.

- i. With regard to the contention of the Respondent related to Percentage of share in revenue of distributors, it was submitted by the DGAP that the main factor under consideration for the sake of profiteering was base price

of tickets and not the factors like revenue to distributors that might have incurred to the Respondent.

- j. For the Methodology used by the Respondent it was stated by the DGAP that it was nothing but a stretch of his imagination. In the investigation, the data submitted by the Respondent was thoroughly scrutinised and profiteering was established on the basis of the same data. It was observed that the Respondent had increased the base prices of the tickets across some categories. As such, the cum tax prices of admission tickets had not been reduced commensurately for the period 01.01.2019 onwards. In terms of Section 171 of the CGST Act, 2017, the Respondent was required to reduce the base prices commensurate with the reduction in rate of tax so that the recipients would have got the legitimate benefit in accordance with Anti-profiteering provisions. The submissions made herein under were generic in nature and not supported by any documentary evidence, and hence were not acceptable.

8. On the basis of the above clarifications of the DGAP, The Respondent vide his Rejoinder dated 15.04.2022 had submitted:-

- a. The Respondent questioned the Validity of Rule 133(5) of CGST Rules, 2017:

According to Rule 133(5)(a) of CGST Rules, 2017,

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

- (b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the*

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*provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."*

The above rule was inserted vide Notification No. 31/2019-Central Tax, dated 28.06.2019 and had come into effect prospectively.

- b. The Authority had received a complaint dated 18.02.2019 from Shri Himanshu Sharma only for the cinema located in Hapur, Uttar Pradesh and not for the cinemas located all over India. During proceedings, the Respondent in his submissions had stated that it had several screens located all over India. However, since there was no legitimate complaint received for other cinemas, the DGAP could not initiate any inquiry.

The Respondent had received Notice for initiation of investigation in the case of his several screens under Rule 133 of CGST Rules, 2019 on 15.05.2020 which evidently and clearly gives reference to the initial complaint received for the cinema located in Hapur, UP on 18.02.2019.

Cause or event that triggered the department to issue all India notice for investigation had already occurred on 18<sup>th</sup> February 2019. As on February 2019, Rule 133(5) of CGST Rules, 2017 had not come into effect.

During February 2019, the authority had no powers to *Suo moto* initiate any proceedings or investigation unless a complaint was received to initiate an investigation. It was only after 28.06.2019, that these powers came into effect. The initiation of investigation was bad in law, as the Authority had no powers to do so retrospectively. In short, the initiation of proceedings for cinemas located all over India dates to the initial complaint received on 18th February 2019 for the cinema located in Hapur, UP.

- c. Considering the facts of the case, the initiation of investigation dates to the original complaint and hence the fresh examination of the cinemas located all over India was beyond the powers mentioned in Rule 133(5) of CGST Rules, 2017.

In this regard reliance was placed by the Respondent in the following cases to provision the present matter:

- (i) Finolex Cables Limited Vs. The State Of Maharashtra (016-VIL-472-BOM)
- (ii) M/s Tin Manufacturing Co. (India) Vs. Commissioner Of Central Excise, Ghaziabad (2016-VIL-320-CESTAT-ALH-CE)

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- (iii) Joydeep Sarkar, General Secretary, All India Chemists & Distributors Federation, West Bengal Vs. M/S Himalaya Drug Company (2020-VIL-48-NAA)
- (iv) Reckitt Benckiser India Pvt. Ltd. Vs. Union of India 2020-VIL-314

Further the Respondent has reiterated and relied upon his earlier written submissions dated 21.07.2021 which are not being re-iterated here to avoid repetition.

9. The 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 further proceedings vide Order dated 10.03.2022 and the Respondent was granted hearing in the matter on 10.05.2022 through Video Conferencing.

10. The hearing in the matter through Video Conferencing was held on 10.05.2022. It was attended by Shri Rajat Talati, Chartered Accountant and Shri Arjun Bhandari, Chief Financial Officer for the Respondent and Shri Adarsh Shrivastava, Superintendent for the DGAP. During the hearing the Respondent



has re-iterated his earlier written submissions dated 21.07.2021 and 15.04.2022. The Respondent during hearing further requested time till 16.05.2022 to file his written submissions against the Report of the DGAP which have been filed by the Respondent vide his email dated 16.05.2022.

11. The Respondent vide his submissions dated 16.05.2022 submitted the details of the Capital Expenditure incurred for the screens in Surendranagar, Hapur, Ghazipur and Raebareli. The Respondent stated that he had incurred Capital Expenditure throughout the Financial Year 2018-19 as also 2019-20. However, it was important to note that, Capital Expenditure budgets needed adequate preparations before commencement. Before starting any project, the Respondent had to analyse the scope of the project, work out realistic deadlines, and ensure that the whole plan was reviewed and approved. Thus, making any Capital Expenditure decision was of critical Importance to the financial health of a company.

The Respondent had initiated the process of incurring the capital expenditure and also met for preliminary discussions several times for a number of cinemas in the FY 2018-19. The Respondent after taking into consideration the cost factors, the suppliers/vendors/contractors to whom the contract for the Capex was awarded, the time involved to complete the projects had

incurred the capital expenditure in several states in FY 2018-19 and FY 2019-20. The Respondent had listed several work orders which were initiated in Oct/Nov 2018 and were completed in Jan/Feb/March 2019:-

- a. Surendranagar: In the cinema located in Surendranagar, capital expenditure pertaining to Audi acoustical, interior works, electrical and firefighting services etc. amounting to Rs. 1 crore approx. were initiated in the month of Oct/Nov 2018 which were completed in Jan/March 2019.
- b. Hapur: In the cinema located in Hapur, capital expenditure works pertaining to audi acoustical, electrical works, LT panel & Cable, CCTV, Fire automation etc. amounting to Rs. 1.03 crore approx. were initiated in the month of May/Oct 2018 which were completed in April/May.
- c. Ghazipur: In the cinema located in Ghazipur, capital expenditure pertaining audi acoustical, electrical works, F&B machines, etc. amounting to Rs. 60 lakhs approx, were initiated in the month of April/May 2018 which were completed in Jan/Feb 2019.
- d. Raebareli: In the cinema located in Raebareli, capital expenditure works pertaining to interior works amounting to Rs.18 lakhs approx. were initiated in the month of Dec 2018 which were completed in April 2019.

It was a continuous process and required evaluation of various factors after which the management could take a decision to incur the capital expenditure. Therefore, the discussions/plan for incurring capital expenditure was already initiated in the year 2018,

The expenditure tabulated above had been in respect of various capital expenditures such as the following:

- a. New sound system
- b. Sound proofing (Acoustic system)
- c. Air conditioners
- d. New projectors
- e. Auditorium seats
- f. New screen
- g. Popcorn vending machines, counters, kitchen appliances etc.
- h. Other furniture, fixtures
- i. Plumbing work
- j. Fire-fighting equipment

Theatres must evolve with value-added benefits and experiences that could not be duplicated anywhere else. The sound quality and the cine viewing experience were augmented. The new age customers were willing to shell out big bucks for a premium experience, but they increasingly wanted a theatre that



delivered for the price being charged. The Respondent had incurred heavy capital expenditure to enable the consumers to enjoy an enhanced experience of viewing movies. Taking into consideration the above factors, it was managements' decision to charge a higher amount by the Respondent on certain classes of tickets. The Respondent thereby decided to charge a higher amount on certain classes of tickets to recover the heavy capital expenses incurred. It was therefore obvious and reasonable that to run the business effectively, the firm would require increasing the cost of the tickets to recover the cost incurred and to evade any losses in the business.

12. This Authority has carefully perused all the submissions and the documents placed on record, and the arguments advanced by the Respondent. 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."*

13. The Authority finds that, as per the details and calculations given 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 prices 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% and *"Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less"* were reduced from 18% to 12% w.e.f. 01.01.2019. From the Table 'A' above, it is evident that the base prices of the admission tickets were indeed increased, as a result of which the benefit of reduction in GST rate from 28% to 18% (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 29.02.2020, was Rs.2,66,99,340/-.

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14. Further, the Authority finds that the Respondent has placed reliance on the cases of Abbott Healthcare Private Limited & Anr. Vs. Union of India & Ors. and Jubilant Foodworks Ltd. & Anr. Vs.

Union of India & Ors. (2019-VIL-183-DEL). In this regard it is to mention that these cases have not attained finality, therefore their ratio cannot be applied in the present case.

15. The Authority finds that one of the contentions of the Respondent is that the proceedings initiated against him were not maintainable as there was no power vested in this Authority to initiate the Notice of Investigation by the DGAP dated 15.05.2020 was issued before the amendment in Rule 133(5) of CGST Rules, 2017 which came in effect only from 28.06.2020. The Respondent has also contended that the cause or event that triggered the Authority to issue all India Notice for investigation had already occurred on 18.02.2019. As in February 2019, Rule 133(5) of CGST Rules, 2017 had not come into effect. In this regard it is to mention that the Sub Rule (5) to Rule 133 of the CGST Rules, 2017 was inserted vide Central Tax Notification 31/2019 dated 28.06.2019 which states that :-

*"(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the*



*said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.*

*(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry."*

Interim Order No. 15/2020 dated 12.03.2020 to investigate other cinema screens situated in other states was issued after coming into force of Rule 133(5) w.e.f. 28.06.2019. Otherwise also, section 171(2) empowers this Authority to examine whether a supplier has passed on the benefits of tax reduction or ITC irrespective of the provisions of Rule 133(5) which is only explanation/clarification of Section 171(2).

Therefore, in view of the above mentioned Rule, the contentions raised by the Respondent are not tenable.

16. The Authority finds that, the Respondent also questioned the Methodology adopted by the DGAP for the calculation of profiteering amount and further advocated his own methodology

which can be used for calculation of the amount of profiteering. 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 'Procedure and Methodology' for passing on the benefits of reduction in the rate of tax and the benefit of ITC are enshrined in Section 171 (1) of the CGST Act, 2017 itself which 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."*

It is clear from the perusal of the above provision that it mentions "reduction in the rate of tax on any supply of goods or services" which does not mean that the reduction in the rate of tax is to be taken at the level of an entity/group/company for the entire supplies made by it. Therefore, the benefit of tax reduction has to be passed on at the level of each supply of each unit to each buyer of such unit and in case it is not passed on the profiteered amount has to be calculated on each unit. Further, the above Section mentions "any supply" i.e. each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of tax reduction by any supplier is not allowed. Each customer is entitled to receive the benefit of tax reduction on each product

purchased by him. The word "commensurate" mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices which has to be computed in respect of each product based on the tax reduction or availability of additional ITC as well as the existing base price (price without GST) of the product. The computation of commensurate reduction in prices is purely a mathematical exercise which is based upon the above parameters and hence it would vary from product to product and hence no fixed mathematical methodology can be prescribed to determine the amount of benefit which a supplier is required to pass on to a recipient or the profiteered amount.

One formula, which fits all, cannot be set while determining such a "Methodology and Procedure" as the facts of each case are different. Therefore, no set parameters can be fixed for determining methodology to compute the benefit of additional ITC which would be required to be passed on to the buyers of such units.

Further, the facts of the cases relating to the Fast Moving Consumer Goods (FMCGs), restaurants, construction and cinema houses are completely different and therefore, the mathematical methodology employed in the case of one sector cannot be applied in the other sector otherwise it would result in denial of the benefit to the eligible recipients. Moreover, both the above benefits have been granted by the Central as well as the State Governments by



sacrificing their tax revenue in the public interest and hence the suppliers are not required to pay even a single penny from their own pocket and hence they have to pass on the above benefits as per the provisions of Section 171 (1). The Respondent was only required to maintain the same base prices of the tickets which he was charging before reduction in the rate of tax and then charge GST at the reduced rate of 18%. However, the Respondent had increased the base prices and thus he had not passed on the benefit of tax reduction. Hence, the Authority finds that, the above contention of the Respondent cannot be accepted.

17. Further, the methodology suggested by the Respondent is not in accordance with provisions of law and does not capture the relevant situation of reduction in rate. Such methodology is self-serving and devoid of any reasonable basis. The Authority finds that, during the investigation by the DGAP, the data submitted by the Respondent was thoroughly scrutinized and profiteering was established on the basis of the data. It was observed that the Respondent had increased the base prices of the tickets. As such, the cum tax prices of admission tickets had not been reduced commensurately for the period 01.01.2019 onwards. In terms of Section 171 of the CGST Act, 2017, the Respondent was required to maintain the base prices which he was charging

before tax reduction but he had in fact increased thereafter reduction in rate of tax so that the recipients would have got the legitimate benefit in accordance with Anti-profiteering provisions.

18. The Authority finds that, the Respondent contended that the calculations made by the DGAP are based on certain assumptions. An average of prices for the month of December 2018 was taken based on "unique combination of certain factors". The Respondent has alleged that, the categories that have been created are not actually comparable. In this regard, the Authority agrees with the methodology adopted by the DGAP. The same methodology was adopted by the DGAP in calculating the amount profited by the Respondent as determined in this Authority's Order no. 15/2020 dated 12.03.2020. The Authority finds that average base price for each specific 'unique combination of the above factors' (i.e. type of movie (3D and non 3D), ticket type (DIAMOND, GOLD, PLATINUM and SILVER), weekdays and weekends and show timings for pre and post rate reduction period is required to be compared to arrive at the quantum of profiteering by taking the total collection during the period 01.10.2018 to 31.12.2018 for the unique category. The average base price of the tickets was compared with the actual selling price of the tickets post GST rate reduction. Therefore the

contention of the Respondent is not tenable as the computation is based on the material facts and not on assumptions.

19. The Authority finds that the Respondent has also made averment that supply of goods and supply of services have different nature which affects their pricing and positioning in the market. In this regard it is to mention that the various parameters related to FMCG, restaurants, construction and cinema sectors are completely different and at times mutually exclusive to each other. Applying the same mechanical/mathematical methodology of FMCG sector to a supplier of a cinema sector will in fact lead to denial of justice in the name of uniformity. Therefore, the above contention of the Respondent cannot be accepted.

Profiteering has been arrived at strictly in terms of Section 171 of the CGST Act, 2017, according to which the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has to be passed on to the recipients by way of commensurate reduction in prices.

Accordingly, the examples of supply of photography services and hairstyling services cannot be likened to the supply of services made by the Respondent. Further, while calculating profiteering, consideration of other factors of cost is not provided under the Anti-Profiteering law.



20. The Respondent has also contended that the amount of profiteering has been calculated for all the movies post rate reduction until 29.02.2020. In this regard it is to mention that according to Notification No. 27/2018-Central Tax dated 31.12.2018 w.e.f. 01.01.2019 the GST rates for "*Services by way of admission to exhibition of cinematograph films where price of admission ticket was above one hundred rupees*" were reduced from 28% to 18% and "*Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less*" were reduced from 18% to 12% and therefore it is required to be examined whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017. Since the rate of tax was reduced w.e.f. 01.01.2019 and Interim Order No. 15/2020 was passed on 12.03.2020, the Respondent has been rightly investigated upto 29.02.2020. The Respondent has failed to show any evidence that he has reduced the rates of tickets till 29.02.2020, he is liable to be investigated further till the time he reduced his rates to pass on the benefit of tax. Therefore, the above contention of the Respondent is not tenable and the case law cited of Finolex Cables Limited Vs. the State of

Maharashtra (016-VIL-742-BOM) is not applicable in the present case.

21. The Respondent vide his written submissions has also stated that the price of a movie ticket is based on a number of factors i.e. New/Old movie, age of the movie, performance of the movie, star cast of the movie etc. The Respondent has also contended that viewers come to the multiplex screens of the Respondent to watch a particular film of their choice and pay the admission charges to watch such particular film and no one will pay for entering multiplex screens only. In this regard, the Authority finds that, the above contention made by the Respondent has little to do with classification of service rendered by the Respondent. Further, the Respondent's contention that his main business is exhibiting cinematograph films for which the viewers come and is not just giving admission to its multiplex screens, and thus, the service rendered by the Respondent is exhibiting cinematograph films that vary from films to films based on their popularity, is also vague and untenable.

22. It is also revealed that, the Respondent has stated that the high percentage of share in the ticket revenue is charged by the distributors. In this regard it is to mention that the main factor

under consideration for the calculation of profiteering amount are base prices of tickets and not the factors like revenue to be paid to the distributors by the Respondent. The provisions of Section 171 of the CGST, 2017 require a registered person under GST to pass on the benefit of additional ITC or reduction in rate of tax by way of commensurate reduction in the prices of goods or services supplied by him. Hence, it was the responsibility of the Respondent to comply with the provisions of Section 171 of the CGST Act, 2017. Therefore, the submission of the Respondent is untenable.

23. The Authority also finds that, the Respondent has also stated that he had incurred Capital Expenditure throughout the Financial Year 2018-19 as also 2019-20 for the screens located in Surendranagar, Hapur, Ghazipur, Raebarely. In this regard it is to mention that the main factor under consideration for determining the profiteered amount are base prices of tickets and not the factors like capital expenditure cost incurred by the Respondent. Furthermore, it is found that the reply of the Respondent that they have claimed to have incurred capital expenditure on the Air Conditioning, Sound System, New Projectors, Auditorium seats, New Screen etc. However, the Respondent has not given the average time list of these capital expenditures and also the



amortization of the said cost over any specified period. As said, in absence of such information, the claim of adjustment on account of capital expenditure cannot be sustained and hence rejected.

24. 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.

The Authority finds that, as per the details and calculations given in Tables 'A' & 'B' above, the Respondent has profited 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% and "*Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less*" were reduced from 18% to 12% w.e.f. 01.01.2019. It is evident that the base prices of the admission tickets were indeed increased, as a result of which the benefit of reduction in GST rate from 28% to 18% (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 29.02.2020, comes to Rs. 2,66,99,340/-.

25. This Authority based on the facts discussed above has found that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on *"Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees"* from 28% to 18%" and *"Services by way of admission to exhibition of cinematograph films where price of admission ticket was one hundred rupees or less"* were reduced from 18% to 12% w.e.f. 01.01.2019 to 29.02.2020. On this account, the Respondent has realized an additional amount to the tune of Rs. 2,66,99,340/- from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteering amount is determined as Rs. 2,66,99,340/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is

passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 2,66,99,340/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 1,33,49,670/- in the Central Consumer Welfare Fund (CWF) and Rs. 88,27,769/- in the Uttar Pradesh State CWF, Rs. 45,21,139/- in the Gujarat State CWF and Rs. 762/- in the Punjab State CWF respectively, as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of this Order failing which the same shall be recovered by the Commissioner CGST/SGST as per the provisions of the CGST Act, 2017.

26. 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 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. Therefore, he 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 for the profiteered amount collected from 01.01.2020 to 29.02.2020.

27. Further, the Authority as per Rule 136 of the CGST Rules 2017 directs the jurisdictional Commissioners of CGST/SGST Uttar Pradesh, Gujarat and Punjab to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as Ordered by the Authority is deposited in the respective CWFs. A Report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 4 months from the date of receipt of this Order.

28. Further, the profiteering has been computed for the period April, 2019 to February, 2020. Profiteering, if any, for the period post February, 2020 has not been examined and calculated. Therefore, the DGAP is directed to compute profiteering w.e.f. 01.03.2020 till the date the Respondent has passed on the benefit of tax reduction.

29. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) No. 3/2020

while taking *suo moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under general law of limitation or any other special 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 or 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.

30. A copy of this order be supplied to the Respondent, DGAP and respective Commissioner CGST/SGST. File of the case be consigned after completion.

S/d  
(Amand Shah)  
Technical Member &  
Chairman

S/d  
(Pramod Kumar Singh)  
Technical Member

S/d  
(Hitesh Shah)  
Technical Member

  
(Dinesh Meena)  
NAA, Secretary

File No. 22011/NAA/07/NY Cinema LLP/202-22

Date:-11.07.2022

Copy To:-

1. M/s NY Cinema LLP, Opp. Private Bus Stand, Govind Nagar, Hapur, Uttar Pradesh -245101.
2. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.
4. Commissioner of Commercial Taxes, Office Of Excise And Taxation Commissioner, Bhupindra Road, Patiala, Punjab- 147 001
5. Commissioner of Commercial Taxes, Office Of The Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow-226010 (U.P).
6. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone, C.R. Building, Plot No. 19, Sector-17/C, Chandigarh-160017.



7. Chief Commissioner of Central Goods & Services Tax, Ahmedabad Zone, 7<sup>th</sup> Floor, CGST Bhavan, Revenue Marg, Opp. Poly., Ambawadi, Ahmedabad-380015.
8. Chief Commissioner of Central Goods & Services Tax, Lucknow Zone, 7-A, Ashok Marg, Lucknow-226001.
9. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. Ccs University, Mangal Pandey Nagar, Meerut-250004.
10. Guard File.