

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

Case No. : 63/2022
Date of Institution : 06.08.2021
Date of Order : 29.08.2022

In the matter of:

1. Ms. Sweety Agarwal, 16, kodihalli Main Road, Indiranagar, Bangalore, Karnataka.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Tata Play Limited (formerly Known as M/s Tata Sky Limited), Unit 301 to 305, 3rd Floor, Windsor Off., C.S.T. Road, Kalina, Santaacruz (East), Mumbai-400098.

Respondent

QUORUM:-

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



Present:-

1. Sh. Raminder Singh, Assistant Commissioner for the DGAP.
2. Sh. Bharat Raichandani, Advocate and Sh. Swaminathan Konar, Tax Manager for the Respondent.

Order

1. The present report dated 06.08.2021 has been furnished by the Director General of Anti-Profitereering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, on the basis of application filed by the Applicant No. 1 alleging profiteering in respect of DTH (Direct to Home) Service supplied by the Respondent vide subscription ID No. 1088222136 in respect of payment of half yearly/annual subscription charges. The Applicant No. 1 alleged that the Respondent had not passed on the commensurate benefit of Input Tax Credit (ITC) to her which was available to the Respondent on implementation of GST w.e.f. 01.07.2017, in terms of Section 171 of the CGST Act, 2017.
2. Vide the above mentioned Report dated 06.08.2021, the DGAP has *inter- alia* stated that:-
 - a. The Applicant NO. 1 had submitted that she had paid Rs. 3,290/- towards annual subscription in January, 2018 and prior to that she had paid half yearly subscription in June, 2017 (pre-GST) for the Direct to Home (DTH) services. The said application had been forwarded to State Screening Committee for examination.
 - b. The Karnataka State Screening Committee while forwarding the application to the Standing Committee for further examination and necessary action observed that "The complainant has only intimated that she has paid an amount of Rs. 3,290/- post introduction of GST during January 2018 but has not provided details of the amounts paid prior to introduction of GST. However, it appears *prima facie* that the benefit of higher ITC available subsequent to levy of GST has to be passed on by the service provider in the form of reduced subscription charges". The aforesaid reference was then

examined by the Standing Committee on Anti-profiteering, the minutes of which were received by the DGAP on 06.05.2020.

- c. The Applicant No. 1 vide emails dated 21.07.2021 & 22.07.2021 had submitted that *"Connection is in the name of Mr. Sumit Garg but this connection has been used by me for the past 5-6 years. Before 2015, my husband and Mr. Sumit Garg were sharing the flat and the connection was jointly used by them. Post 2015, we have been using this connection. The registered email id for this account is casagarwal21@gmail.com which belongs to me and current registered mobile number is 9538172000/ 9538174000 (screenshot attached). Both these numbers belong to me and my husband Mr. Nikhil Gupta. Hope this is enough to prove that connection is being used by us though we could not get the name transferred as we are no longer in touch with Mr. Sumit Garg and getting NOC is difficult"*.
- d. On receipt of the said reference from the Standing Committee on 06.05.2020, a Notice under Rule 129 of the CGST Rules, 2017 was issued by the DGAP on 12.06.2020, calling upon the Respondent to reply as to whether he admitted that the benefits in terms of Section 171 of the CGST Act, 2017 (hereinafter referred to as "the Act") has not been passed on to the recipients by way of commensurate reduction in prices of DTH packages with the introduction of GST from 01.07.2017 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. ✓
- e. Consequent to introduction of the GST Act, 2017, the following Central Taxes such as Central Excise Duty, Additional duties of Excise, Excise Duty levied under Medicinal & Toilet Preparation Act, Additional duties of Customs (CVD & SAD), Service Tax & Surcharge & Cesses and State Taxes such as State VAT/ Sales Tax, Central Sales

Tax, Purchase Tax, Entertainment Tax (other than those levied by local bodies), Luxury Tax, Entry Tax (All forms), Taxes on lottery, betting & gambling, Surcharges & Cesses have been subsumed in the GST. As per subsection 1 of Section 16 of the CGST Act, 2017 *"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course of furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person"*. As seen from above, it implied that the taxes charged on any supply of goods or services or both were eligible to be taken as credit unlike the pre GST regime wherein the taxes such as State VAT/Sales Tax, Central Sales Tax, Purchase Tax, Entry Tax, Additional duties of customs (SAD) etc., were not eligible for service provider to be taken as credit. It implied that there was a benefit of credit of Input Tax to such extent as was not allowed in the pre GST regime.

- f. The period covered by the current investigation was from 01.07.2017 to 30.04.2020. However, the Respondent vide his e-mail dated 06.11.2020 against reply to Point No.3 (Price List of all regular channel packages, add ons, applicable taxes, details of their monthly subscriptions and date of launch of the package for the period April 2016 to April 2020) submitted that *"Post February, 2019 the Telecom Regulatory Authority (hereinafter referred to as "TRAI") Orders have specified the pricing regulations based on network carriage fees and channel package price which are being followed by us. Thus we do not price our subscription packages for DTH services based on any cost and taxes computation. Hence, there is no impact of taxes on our package pricing to the*

subscribers and thereby no relevance of input VAT/CST/Entry Tax/SAD on the subscriber prices”.

- g. Therefore, in the light of the provisions of Section 3 and Section 4 of Telecommunication (Broadcasting and Cable) Services (Eighth) (Addressable Systems) Tariff Order, 2017 it appeared that since the pricing of a-la-carte channels, bouquets and free to air (FTA) channels was done as per the guidelines fixed by Telecom Regulatory Authority (TRAI). Hence, the period of investigation had been restricted to January, 2019 in as much as from 1st February, 2019 the guidelines of TRAI had come into force.
- h. The time limit to complete the investigation was up to 05.11.2020, as per Rule 129(6) of the CGST Rules, 2017. However, due to force majeure caused in the light of Covid-19 pandemic, the investigation could not be completed on or before the above date. In terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 wherein it has been provided that *“any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 30th day of June, 2020”.* This was amended vide Notification No. 55/2020 dated 27.06.2020 and 91/2020-Central Tax dated 14.12.2020, issued by the Central Govt. under Section 168A of the Act wherein the last date for submission of report has been extended up to 31.03.2021. Further, Hon'ble Supreme Court of India passed an order dated 08.03.2021 in Suo Moto Writ Petition (Civil) No. 3 of 2020, wherein, it was stated that *“in cases where the*

limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply". The above relief has been extended and the period from 14.03.2021 till further orders also stands excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020.

- i. In response to the DGAP's Notice dated 12.06.2020, the Respondent submitted his reply vide mails / letters dated 24.06.2020, 27.08.2020, 30.09.2020, 06.11.2020, 09.03.2021, 12.03.2021, 24.03.2021, 17.04.2021, 20.04.2021, 26.04.2021, 10.06.2021, 22.07.2021. Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/information:
 - i. Copies of GSTR-1 Returns for the period July, 2017 to April, 2020 for Karnataka.
 - ii. Copies of GSTR-3B Returns for the period July, 2017 to April, 2020 for Karnataka.
 - iii. Copy of Electronic Credit Ledger for the period 01.07.2017 to 30.04.2020 for Karnataka.
 - iv. Centralised Tran-1 for the period July, 2017 to December, 2017.
 - v. Copies of ST-3 Returns for the period April, 2016 to June, 2017 on PAN India basis.
 - vi. Details of turnover, output tax liability/GST payable and ITC availed and also the turnover (including State/UT-

wise bifurcation) and ITC availed specific to Broadcasting Services.

- j. The Respondent vide his letter/mail dated 26.04.2021 submitted to the DGAP that the details shared by him were confidential and were shared as per Notice received from the DGAP. Accordingly, all the information /documents received from the Respondent were treated as confidential.
- k. Further, the Respondent was given an opportunity to inspect the non-confidential evidences/information submitted by the Applicant No. 1 during the period 22.06.2020 to 24.06.2020, which the Respondent did not avail.
- l. The subject application and multiple replies submitted by the Respondent along with the documents had been carefully examined. The main issues for determination were whether there was reduction in rate of tax or additional benefit of ITC availed by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent has passed on such benefit to the recipients, in terms of Section 171 of the CGST Act, 2017.
- m. The present application had been preferred for investigation of non-passing on the benefit of ITC of VAT/SAD/Entry Tax/CST which was not hitherto available was now available post GST. Accordingly, the aspect of non-passing on the benefit of ITC had been examined and it was observed that the following Central Taxes such as Central Excise Duty, Additional duties of Excise, Excise Duty levied under Medicinal & Toilet Preparation Act, Additional duties of Customs (CVD & SAD), Service Tax & Surcharge & Cesses and State Taxes such as State VAT/ Sales Tax, Central Sales Tax, Purchase Tax, Entertainment Tax (other than those levied by local bodies), Luxury Tax, Entry Tax (All forms),

Taxes on lottery, betting & gambling, Surcharges & Cesses had been subsumed in the GST and it was also observed that VAT/SAD/CST/Purchase Tax/Entry Tax etc; were not allowed as credit to a service provider in the pre GST regime whereas on subsuming the same in the GST, credit of the same was allowed in pursuance to the provisions envisaged in sub-section 1 of section 16 of CGST Act. Accordingly, it appeared that the benefit of credit that had so accrued consequent to introduction of GST should have been passed on to the customers by way of commensurate reduction in prices. Proviso to sub-rule 4 of Rule 3 of Cenvat Credit Rules, 2004 which reads as *"Provided also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilized for payment of service tax on any output service"*. Further, as seen from the VAT returns submitted by the Respondent in FORM VAT 100, it is observed that the Respondent has not taken credit of Input Tax under Karnataka VAT Act, 2003 in as much as it was classified as service and not the sale of goods to attract payment of VAT.

- n. In response to the Notice of Initiation of Investigation dated 12.06.2020, the Respondent vide his submissions dated 24.06.2020 submitted that *"We also categorically would like to mention that the complainant 'Sweety Agarwal' specified in your good self's notice is not our DTH subscriber and we haven't rendered any services to such customer. Further, on retrieval of the details pertaining to the subscriber ID 1088222136 specified in your notice, it is observed that the same belongs to our subscriber Mr. Sumit Garg and there is no such complaint received by us from such registered subscriber. In support of the above and as a factual evidence, we are attaching herewith such subscribers private and*

confidential sample recent statement as Annexure-1 for your ready reference. We submit that the applicant has erroneously raised allegations with details of random subscriber to lodge a frivolous complaint and there is nothing on record to substantiate that the above applicant and the subscriber whose details are furnished, were connected to each other in any manner. Therefore, the allegations of profiteering raised by Sweety Agarwal are baseless and cannot be established against the company". In view of the submissions made by the Applicant No. 1 vide her emails dated 26.12.2020, 21.07.2021 & 22.07.2021 that "Connection is in the name of Mr. Sumit Garg but this connection has been used by me for the past 5-6 years. Before 2015, my husband and Mr. Sumit Garg were sharing the flat and the connection was jointly used by them. Post 2015, we have been using this connection. The registered email id for this account is easagarwal21@gmail.com which belongs to me and current registered mobile number is 9538172000/9538174000 (screenshot attached). Both these numbers belong to me and my husband Mr. Nikhil Gupta. Hope this is enough to prove that connection is being used by us though we could not get the name transferred as we are no longer in touch with Mr. Sumit Garg and getting NOC is difficult", it had been decided to continue the investigation. ✓

- o. As per sub-rule 1 of Rule 3 of CENVAT Credit Rules, 2004, a manufacturer or producer of final products or a provider of taxable service shall be allowed to take credit (hereinafter referred to as the CENVAT credit of :-
- (i) The Duty of Excise specified in the First Schedule to the Excise Tariff Act, leviable under the Excise Act;
 - (ii) The Duty of Excise specified in the Second Schedule

- to the Excise Tariff Act, leviable under the Excise Act;
- (iii) The additional Duty of Excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);
 - (iv) The additional Duty of Excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);
 - (v) The National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001);
 - (vi) The Education Cess on Excisable goods leviable under section 91 read with section 93 of the Finance (No.2) Act, 2004 (23 of 2004);
 - (vii) The Secondary and Higher Education Cess on Excisable goods leviable under section 136 read with section 138 of the Finance Act, 2007 (22 of 2007);
 - (viii) The additional Duty leviable under section 3 of the Customs Tariff Act, equivalent to the Duty of Excise specified under clauses (i), (ii), (iii), (iv), (v) (vi) and (via);
 - (ix) The additional Duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, Provided that a provider of taxable service shall not be eligible to take credit of such additional Duty;
 - (x) The additional Duty of Excise leviable under section 157 of the Finance Act, 2003 (32 of 2003);
 - (xi) The Service Tax leviable under section 66 of the Finance Act;
 - (xii) The Education Cess on taxable services leviable under section 91 read with section 95 of the Finance

- (No.2) Act, 2004 (23 of 2004); and
- (xiii) The Secondary and Higher Education Cess on taxable services leviable under section 136 read with section 140 of the Finance Act, 2007 (22 of 2007); and
- (xiv) The additional Duty of Excise leviable under section 85 of Finance Act, 2005 (18 of 2005)

As seen from the above, it appeared that the Respondent who was otherwise a service provider was eligible to take credit of the duties/taxes paid for payment of tax liability on his output service. It was apparent from above that the ITC of VAT/Purchase Tax/CST paid on the inputs/capital goods purchased for providing the output service was not a prescribed tax for being eligible to be taken as credit for payment of Service Tax on his output service. Further, it was also evident from the submissions made by the Respondent and also from the VAT Returns filed in Form VAT 100 that the Respondent had not taken the credit of ITC under KVAT Act, 2003 in as much as the Respondent was not engaged in the sale of goods for being liable for payment of VAT on his output sales. Further, in pursuance to proviso to sub-rule 4 of Rule 3 *ibid* which reads as *"Provided also that no credit of the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, shall be utilized for payment of service tax on any output service"*. However, on introduction of GST Act, 2017, the said taxes discussed supra which were hitherto not available to be taken as credit had been subsumed in the GST and as per the provisions of sub-section 1 of section 16 of CGST Act, 2017 which reads as *"Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on*

any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person” and as such credit of the same was allowed. The very purpose of the introduction of credit of taxes paid was to avoid the cascading effect of taxes and to reduce the burden of tax on the consumers.

- p. As per sub-section 1 of section 171 of the CGST Act, 2017, which reads as *“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”*. Accordingly, the Respondent was under obligation to pass on the benefit of ITC so accrued to him consequent to the introduction of the GST Act, 2017 to his customers who had made payments post-GST by way of commensurate reduction in prices.
- q. From the above, it was observed that prior to 01.07.2017, i.e., before GST was introduced, the Respondent was not eligible to avail CENVAT credit of VAT/CST/Purchase Tax/Entry Tax etc; paid on the inputs or capital goods purchased indigenously and the credit of SAD paid on the inputs or capital goods imported in as much as the Respondent was not engaged in the sale of goods. Further, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and capital goods including the VAT/SAD/CST/Purchase Tax etc. which got subsumed in GST. From the bifurcated information of turn over submitted by the Respondent vide email dated 20.04.2021 for the period April, 2016 to January, 2019 and ITC submitted by the Respondent vide email dated 26.04.2021 for the period April, 2016 to January, 2019 specific to the supply of DTH (Broadcasting) services and the details of the credit of VAT/SAD foregone, ITC availed by

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him pre GST, the percentage of benefit and thereby the amount of benefit consequent to the introduction of GST, during the post-GST (June, 2017 to January, 2019) period was calculated and has been furnished in Table-'A' below and the state-wise bifurcation of the profiteered amount in Table - 'B' is furnished hereunder;

Table- "A" (Amount in Rs.)

S. No.	Description	Factor	Pre-GST Amount/ %)	Post-GST (Amount/ %)
1	Total Credit taken (01.04.2016 to 30.06.2017) as taken from the ST Returns	(a)	7,72,43,88,961	
2	Total Taxable value for the period(01.04.2016 to 30.06.2017)	(b)	71,13,90,35,728	
3	% age of credit taken to turn over for the period (01.04.2016 to 30.06.2017)	(c)=(a/b*100)	10.86	
4	Total Credit taken (01.07.2017 to 31.01.2019)	(d)		13,70,60,74,243
5	Total Taxable value for the period (01.07.2017 to 31.01.2019)	(e)		91,05,22,88,718*
6	% age of ITC taken to turn over for the period (01.07.2017 to 31.01.2019)	(f)=(d/e*100)		15.05
7	Difference in % age of Credit taken to Turnover in pre and post GST regime	(g) = (f-c)		4.19
8	GST @18% on the total taxable value for the period(01.07.2017 to 31.01.2019)	(h)=(e*18%)		16,38,94,11,999
9	Total value inclusive of GST for the period(01.07.2017 to 31.01.2019)	(i) = (e+h)		1,07,44,17,00,687
10	Re-calibrated turn over	(j)=[e*(100-g)]		87,23,71,97,821
11	GST on Re-calibrated turn over	(k) = (j*18%)		15,70,26,95,608
12	Re-calibrated turn over inclusive of GST	(l) = (j+k)		1,02,93,98,93,429
13	Profiteered amount	(m)=(i-l)		4,50,18,07,258

* The total taxable value as submitted by the Respondent vide email dated 20.04.2021 was Rs. 91,05,22,88,719 however the total taxable value from state-wise bifurcation as submitted by

the Respondent vide email dated 22.07.2021 was Rs. 91,05,22,88,718. The difference of Rs. 1 appeared to be because of rounding off the values. For the sake of uniformity, the total taxable turnover for the period 01.07.2017 to 31.01.2019 had been taken as 91,05,22,88,718 as mentioned in S. No. 5 of Table-'A', which had no bearing on final profiteering.

Table- "B"

(Amount in Rs.)

S. No.	State/UT Name	State-wise Turnover(From July 17 to Jan 19)	% Turnover State-wise to Overall Turnover	State-wise Profiteered Amount
1	Andhra Pradesh	1,24,54,22,017	1.37	6,15,76,155
2	Arunachal Pradesh	29,27,79,030	0.32	1,44,75,581
3	Assam	2,66,31,92,951	2.92	13,16,73,586
4	Bihar	1,05,36,23,972	1.16	5,20,93,276
5	Chandigarh	37,80,04,113	0.42	1,86,89,279
6	Chhattisgarh	1,12,41,58,363	1.23	5,55,80,638
7	Dadra & Nagar Haveli	1,55,82,255	0.02	7,70,418
8	Daman & Diu	97,26,383	0.01	4,80,892
9	Delhi	3,93,90,83,514	4.33	19,47,56,167
10	Goa	55,43,64,229	0.61	2,74,08,876
11	Gujarat	2,95,15,09,092	3.24	14,59,28,513
12	Haryana	2,38,32,85,341	2.62	11,78,34,394
13	Himachal Pradesh	46,69,50,017	0.51	2,30,86,943
14	Jammu & Kashmir	39,08,55,863	0.43	1,93,24,696
15	Jharkhand	89,99,06,282	0.99	4,44,93,166
16	Karnataka	6,17,84,95,484	6.79	30,54,77,174
17	Kerala	79,82,50,277	0.88	3,94,67,090
18	Madhya Pradesh	1,47,85,93,207	1.62	7,31,04,605
19	Maharashtra	39,57,42,37,026	43.46	1,95,66,29,427
20	Manipur	24,06,99,977	0.26	1,19,00,688
21	Meghalaya	34,16,29,609	0.38	1,68,90,851
22	Mizoram	2,07,48,348	0.02	10,25,840
23	Nagaland	34,33,42,238	0.38	1,69,75,527

24	Orissa	1,69,84,71,257	1.87	8,39,75,816
25	Puducherry	3,77,01,392	0.04	18,64,032
26	Punjab	1,41,64,66,507	1.56	7,00,32,937
27	Rajasthan	2,59,40,03,221	2.85	12,82,52,707
28	Sikkim	15,80,20,625	0.17	78,12,856
29	Tamil Nadu	4,36,41,53,015	4.79	21,57,72,453
30	Telangana	2,66,18,03,291	2.92	13,16,04,878
31	Tripura	11,67,10,279	0.13	57,70,390
32	Uttar Pradesh	7,21,01,99,146	7.92	35,64,86,666
33	Uttarakhand	53,65,41,738	0.59	2,65,27,697
34	West Bengal	3,87,45,21,303	3.16	14,21,22,082
	Grand Total	91,05,22,88,718	100.00	4,50,18,07,258

The Profiteered amount (including the State/UT-wise bifurcation) had been calculated considering the CENVAT Credit of Duty of Excise paid on the Input of the Capital Goods and the Credit of Service Tax paid on Input Services received as available in the ST Returns of the period April 2016 to June 2017. Further, the attributable turnover in respect of the Broadcasting/DTH Services for the period April, 2016 to June, 2017 in the pre-GST regime and the attributable turnover in ITC for the period July, 2017 to 31st Jan, 2019 for the post-GST regime as provided by the Respondent vide his emails dated 20.04.2021, 26.04.2021 & 22.07.2021 was taken into consideration for calculating pan India / state-wise profiteered amount as in Table – 'A' & Table – 'B' respectively.

- t. From the above discussion, it appeared that post-GST, the benefit of additional ITC to the tune of 4.19%, accrued to the Respondent and the same was required to be passed on by the Respondent to the Applicant No. 1 and the other eligible recipients. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the

benefit of additional ITC on the demand raised by the Respondent during the post-GST period from 01.07.2017 to 31.01.2019, had not been commensurately passed on to the Applicant No. 1 and the other recipients. On this account, the Respondent had been found to have profiteered an amount of Rs. 450,18,07,258/- (which includes GST) in respect of all the recipients who had made payments for the period 01.07.2017 to 31.01.2019. As the Tata Sky as a Service provider operates on pan India basis having different plans at different points of time, it was not possible to identify all the recipients and the profiteered amount to be passed on to them. In the instant case on the basis of the submissions made by the Applicant No. 1, it appeared that the Applicant No. 1 was an interested party and was not a direct subscriber of M/s. Tata Sky. Therefore, it was proposed to deposit the profiteered amount in respect of the Applicant No. 1 and all other subscribers in the consumer welfare fund as envisaged in Rule of 133(3)(c) of CGST Rules, 2017.

s. In view of the aforementioned findings, it appeared that the provisions of 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 input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*, had been contravened by the Respondent in the present case.

3. The above Report had been carefully considered by this Authority and a Notice dated 10.05.2022 was issued to the Respondent to explain why 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 12.06.2022 and 11.07.2022, wherein the Respondent had *inter- alia*, submitted that:-

a. The Applicant No. 1 was not an affected party nor had submitted any evidence of profiteering and hence the Notice issued by this Authority was void *ab initio*:-

(i) As per the DGAP's Notice dated 15 June 2020, the Applicant No. 1 in respect of subscription id 1088222136 had filed a complaint alleging profiteering by the Respondent vide email dated 22.12.2018. In this regard the Respondent submitted that Applicant No. 1 was not his DTH subscriber, and the Respondent had not rendered any services to her. The Applicant No. 1 vide emails dated 21.07.2021 and 22.07.2022 submitted to the DGAP that the DTH connection was in the name of Sh. Sumit Garg who was sharing flat with the Applicant No. 1's husband, however the registered mobile Number and Email id for the given subscription id belonged to the Applicant No. 1 and her husband Sh. Nikhil Gupta.

(ii) Section 171 of the CGST Act, 2017 provides that the reduction in the rate of tax should be passed on to the recipient by way of commensurate reduction in price. Therefore, the recipient being the affected party, for not receiving the commensurate reduction in price, was aggrieved and should file a written complaint before the Screening Committee. Relevant extract of Section 171 is reproduced below for ready reference:

"171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices..."

(iii) In the present case, the Complainant was neither the subscriber of the Respondent nor the recipient of the

services as per Section 2(93) of the CGST Act, 2017 which defines the term 'recipient', reproduced below:

"93) "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,..."*

(iv) The Respondent without prejudice submits that even otherwise Section 171 provides that the recipient is the only person who can file a written complaint against an assessee who has allegedly profiteered and not by any person. The Applicant No. 1 admittedly was not the subscriber of the Respondent and did not have any *locus standi* to file the present written complaint against the Respondent.

(v) The Applicant No. 1, clearly as an afterthought submitted that the connection was in the name of the Sumit Garg, who was the room mate of Mr. Nikhil Gupta, who is the husband of the Applicant No. 1. The Applicant No. 1 neither had the subscription in her own name nor in the name of her husband but in the name of a third person who was not at all related to the present complaint. Therefore, the Applicant No. 1 had with clear malafide filed the present complaint against the Respondent.

(vi) The Applicant No. 1, in her attempt to clear the defect and create false locus, as an afterthought submitted that she has her registered mobile number and email ID against the subscription with the Respondent. The submissions made by the Applicant No. 1 were erroneous and made with *mala fide* intentions. The Applicant No. 1 had *post facto* changed the registered mobile number in May 2021 to hold herself out as eligible complainant to counter the Respondent's reply filed in June 2020 *prima facie* denying acceptance of such complainant as his registered subscriber. The complaint was filed in 2018 during which the Applicant No. 1 neither had connection in her name nor had her mobile number registered against the subscription ID. Thus, the change of mobile number in May 2021 was only an afterthought and with *mala fide* intention only to counter the rightful claim made by the Respondent.

b. No Supporting evidence provided by the Complainant:-

- i. The Applicant No. 1 had merely stated that as a service provider the Respondent was not eligible for ITC of VAT/Entry Tax/SAD/CST which was a cost in pre-GST and post-GST the Respondent would have availed input on all procurement of goods and service without any evidence /supporting.
- ii. The Applicant No. 1 had written a letter to the Screening Committee about the erroneous allegation of profiteering by making generic statement applicable to a service industry without adducing any evidence thereof.
- iii. The Karnataka Screening Committee had observed that the Applicant No. 1 had only shared details of payment made for post GST period however no such details of

amount paid had been provided for prior to GST period. Accordingly, the Respondent would like to reiterate that there was baseless allegation of profiteering in relation to his DTH services rendered to his subscriber.

- iv. This Authority had dismissed several applications on the ground of lack of evidence to support the allegations of profiteering. Reliance in this regard was placed on the case of Raman Khaira & another Vs. M/s Yum Restaurants Pvt. Ltd. in Case No. 11/2018 on 29.10.2018, vide which the application was dismissed for the Applicant No. 1's failure to furnish requisite evidence of profiteering to initiate the investigation. Also, in the case of M/s Amway India Enterprises Pvt. Ltd. in Case No. 12/2018 decided on 29.10.2018, the Authority had dropped the proceedings due to the Applicant No. 1's failure to furnish any evidence in support of his/her allegation of profiteering, in the form of invoices of pre-GST and post-GST periods.

c. Pricing policy – Competitive pricing and not linked to taxes:-

- (i) The pricing adopted by the Respondent were generally set based on the perceived service value of his products and as charged by market forces/competitors such as cable and other operators. Thus, the Respondent did not price his subscription packages for DTH services based on any cost and taxes computation. Hence there was no impact of taxes on his package pricing to the subscribers and thereby no relevance of input VAT/CST/Entry Tax/SAD on the subscriber prices.

- (ii) No business house would survive without taking into consideration market factors while pricing its product. Thus, the

question of taking any benefit of ITC in isolation was absurd and devoid of market realities. The broadcast sector, in particular the Distribution Platforms space was highly competitive and no entity could function in isolation of what prices were available in the market.

d. Adhoc basis of computation adopted by the DGAP:-

(i) The Computation table in the DGAP's Report provided an *ad hoc* comparison of percentage of ITC availed to the turnover in the pre-GST period from April 2016 to June 2017 (15 months) and the percentage of ITC availed to the turnover in post GST period from July 2017 to Jan 2019 (19 months).

(ii) During the pre-GST regime the Respondent had discharged Service Tax on the MRP value whereas in the GST regime, taxable turnover was the transaction value and the Respondent discharged GST on transaction value. Thus, the base of taxable turnover comparison was incorrect as, in pre- GST period the total value of transaction was reported in Service Tax Returns whereas in post GST period the transaction value was reported (in accordance with section 15 of CGST act 2017) in GST Returns. Further on the subsequent supplies to distributors and in turn to the dealers, the concerned person discharged his applicable GST on the transaction value and was reported in his respective GST Returns.

4. Copy of the above submissions dated 12.06.2022 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 vide supplementary report dated 21.06.2022 wherein he has submitted that: -

- a. For the contention raised by the Respondent that the Applicant No. 1 was not an affected party nor had submitted any evidence of profiteering and hence the Notice was void ab initio, the DGAP has clarified that the Karnataka State Screening Committee observed that *"Prima facie that the benefit of higher input tax credits available subsequent to levy of GST has to be passed on by the service provider in the form of reduced subscription charges. Documents to verify this aspect are not available on record and therefore, it is observed that further verification is required to be undertaken to establish contravention of the provisions of Section 171 of the CGST Act, 2017. In view of the above and in terms of Rule, 128 of the CGST Rules, 2017, it is decided to forward the complaint from Ms Sweety Agarwal for further examination and necessary action to the Standing Committee."*

The Standing Committee observed that *"Prima facie evidence found. This complaint is being forwarded to the DGAP for further detailed investigation"*.

The Applicant No. 1 (Subscription ID-1088222136), Indira Nagar, Bangalore submitted that *"Connection is in the name of Mr. Sumit Garg but this connection has been used by me for the past 5-6 years. Before, 2015, my husband and Mr. Sumit Garg were sharing the flat and the connection was jointly used by them. Post 2015, we have been using this connection. The registered email ID for this account is casagarwal21@gmail.com which belongs to me and current registered mobile number is 9538172000 / 9538174000. Both these numbers belong to me and my husband Mr. Nikhil Gupta. Hope this is enough to prove that connection is being used by us though we could not get the name transferred as we are no longer in touch with Mr. Sumit Garg and getting NOC is difficult."*

The same has been discussed in the DGAP's report dated 05.08.2021 at para No.16.

Further, after substitution of the following after rule 137, in the Explanation, in clause (c), after sub-clause b, namely: - "*c. any other person alleging, under sub-rule (1) of rule 128, that a registered person had not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices.*" vide Notification No.14/2018-CT dated 23.03.2018 any other person can be considered as an "Interested party".

The Standing Committee shall, within a period of two months from the date of the receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices. Once the Standing Committee has forwarded the application to the DGAP for further investigation, the DGAP is under obligation to complete the investigation under the provisions Rule 129 of the CGST Rules, 2017. Accordingly the investigation had been continued.

- b. For the contention raised by the Respondent that no supporting evidence was provided by the Applicant No. 1, the DGAP has clarified that albeit, it was observed by the State Screening Committee that documents to verify this aspect were not available on record, it was forwarded to Standing Committee and the Standing Committee in turn forwarded the same to the

DGAP for further examination in as much as both the Screening Committee and the Standing Committee had found *prima facie* evidence.

Once the Standing Committee forward the application for further examination to the DGAP, the DGAP would be under obligation to take up the investigation as envisaged under the provisions of Rule 129 of the CGST Rules, 2017. Accordingly, DGAP has called for the requisite documents / information and on examination of the documents it was observed that prior to 01.07.2017 i.e. before GST was introduced, the Respondent was not eligible to avail CENVAT credit of VAT/CST/Purchase Tax/ Entry Tax etc; paid on the inputs or capital goods purchased indigenously and the credit of SAD paid on the inputs or capital goods imported as the Respondent was not engaged in the sale of goods. However, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and capital goods including the VAT/SAD/CST/Purchase Tax etc; which got subsumed in GST.

Accordingly, it had been observed that there was benefit of additional ITC in the post-GST period compared to pre-GST period and the profiteered amount due to the facility of seamless credit allowed in the post – GST period had been computed by comparing the ITC to turnover ratio in pre & post GST periods.

- e. For the contention raised by the Respondent regarding the Pricing Policy the DGAP has submitted that it was agreed that the pricing was dependent on market conditions and the Respondent was free to decide on the pricing. Sub-section 1 of Section 171 of the CGST Act, 2017 provides that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*. Accordingly, the

Respondent in the instant case had to pass on the benefit of the additional ITC accrued to him consequent to introduction of GST by way of commensurate reduction in prices to comply with the provisions of Section 171 of the CGST Act, 2017 which was a sacrifice made by the Government in the interest of the ultimate consumer.

- d. For the averment made by the Respondent regarding the *ad hoc* basis of computation adopted by the DGAP, it has been submitted by the DGAP that there was a reasonable correlation between the turnover and the CENVAT credit of Service Tax / ITC as the Respondent was discharging his Service Tax / GST output liability out of the CENVAT credit of Service Tax paid on input services / ITC available to him on the basis of the turnover i.e. the cost realized by him from his subscribers. Accordingly, the pre and post –GST turnover had been taken from the data submitted by the Respondent vide his email dated 17.04.2021 and compared with the ITC data submitted by the Respondent vide email dated 26.04.2021.

The contention of the Respondent that in the pre-GST regime Service Tax was discharged on the MRP value was not tenable. The Respondent vide his email dated 17.04.2021 claimed that the Broadcasting Revenue was MRP value as per serial No. 29(f) of the Notification No.25/2012-ST dated 20.06.2012. Whereas the said Notification was nothing but Mega Exemption Notification and was irrelevant to the present issue. Further, there was no such concept of MRP based assessment under Finance Act, 1994. MRP based assessment was prescribed under Section 4A of the Central Excise Act, 1944 for any goods, in relation to which it was required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any other law for the time being in force, to declare on the package

thereof the retail sale price of such goods, to which the provisions of sub-section (2) of Section 4A shall apply.

The DGAP in its Investigation Report dated 05.08.2021 considered the pre-GST period from April, 2016 to June, 2017 (15 months) to cover a reasonable period just before the GST as well as uniformity in the rate of tax on services / conditions for eligibility of availment of CENVAT credit of service tax paid.

The period during the GST period may be one month or one year, depending upon the period of investigation. It did not mean that if the period was larger than the availability of ITC would increase or decrease. It only gave a ratio of CENVAT credit *vis-à-vis* turnover for pre and post-GST periods of investigation.

5. Copy of the above clarifications/supplementary report of the DGAP dated 28.03.2022 was supplied to the Respondent to file his rejoinder/submissions. The Respondent had filed his rejoinder/submissions dated 27.07.2022 and 09.08.2022 wherein he has inter alia submitted that:-

a. No *Locus Standi* of Complainant hence complaint not maintainable:-

i. As per DGAP's Notice dated 15.06.2020, the Applicant No. 1 in respect of subscription id 1088222136 had filed an email complaint alleging profiteering by the Respondent vide email dated 22.12.2018. In this regard the Respondent had submitted that Applicant No. 1 was not his DTH subscriber, and the Respondent had not rendered any services to such customer. The current statement dated 01.06.2022 still shows Sumit Garg as subscriber and recipient of service as on date in the Respondent's records.

- ii. Section 171 of the CGST Act, 2017 provides that the reduction in the rate of tax should be passed on to the recipient by way of commensurate reduction in price. Therefore, the recipient being the affected party, for not receiving the commensurate reduction in price, is aggrieved and should file a written complaint before the Screening Committee. Relevant extract of Section 171 is reproduced below for ready reference:

"171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices..."

Thus, in the present case, the Applicant No. 1 is neither the subscriber of the Respondent nor the recipient of the services of the Respondent as per Section 2(93) of the CGST Act, 2017 which defines the term 'recipient', reproduced below:

"2(93) 'recipient' of supply of goods or services or both, means-

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered..."

- iii. Even otherwise Section 171 provides that the recipient is the only person who can file a written complaint against an assessee who has allegedly profited and not by any person. The Applicant No. 1 admittedly was not the subscriber of the Respondent and did not have any *locus*

standi to file the present written complaint against the Respondent as the services were provided by the Respondent to Mr. Sumit Garg who was his registered subscriber. Moreover, such third person i.e. Applicant No. 1 had not even submitted the complaint in prescribed form APAF-1 as per rule 128 of CGST Rules, 2017. In fact the Applicant No. 1 did not even attend hearing in the matter before this Authority and had not responded to any of the NAPA Notices or replies of the Respondent in the matter. Thus, the complaint being generic not being in a prescribed form should make the complaint void *ab initio* and the proceedings should be dropped. The Respondent relied upon the NAA's order No. 37/2019 of Shri Navneet Gupta and DGAP, CBIC Vs. M/s Bharti Telemedia Pvt. Ltd. vide which it had been held that applicant needed to submit cogent and reliable documentary evidence to substantiate the contravention of provisions of Section 171 of CGST Act, 2017.

- iv. The Applicant No. 1 had *post facto* changed the registered mobile number in May 2021 to hold herself out as eligible complainant to counter the Respondent's reply filed in June 2020 *prima facie* denying acceptance of such complainant as his registered subscriber. The complaint was not filed in December 2018 during which the Applicant No. 1 had connection in her name nor had her mobile number registered against the subscription ID. Thus, the change of mobile number in May 2021 was only an afterthought and with malafide intention only to counter the rightful claim made by the Respondent.
- v. The above fact had neither been considered by the DGAP in its investigation nor in its Letter dated 21 June 2022. The DGAP had ignored this fact that the Applicant No. 1

had filed the complaint with mala fide intentions wherein the complainant had no locus to file a complaint.

- vi. Further the DGAP *vide* its clarifications dated 21.06.2022 had submitted that post the introduction of Notification No. 14/ 2018-CT dated 23.03.2018, any other person could be considered as an interested party and file a complaint against an assessee under the National Anti-Profiteering Rules. Such submission of the DGAP was erroneous in as much as the same did not concur with the main provisions of the CGST Act.
 - vii. It was trite in law that the rules could not override the statutory provisions of the Act. The rules would always be in consonance with the main act and could not formulate new procedures or change the texture of the parent act. However, if the arguments of the DGAP were considered to be correct, it entirely violated Section 171 of the CGST Act and thus the rules travelled beyond the parent act.
- b. Non Adherence to the Prescribed Rule 128 of the CGST Rules, by the Applicant No. 1, Screening / Standing Committees while issuing observation report:-
- i. The Applicant No. 1 had merely made a generic email statement that as a service provider the Respondent was not eligible to ITC of VAT/Entry Tax/SAD/CST which was a cost in pre-GST and post-GST the Respondent would have availed input on all procurement of goods and service without any evidence /supporting on basis of her belief and assumption. The entire basis of the proceedings was an email letter. In this regard, the Applicant No. 1 had written a letter to the Screening Committee about the erroneous allegation of profiteering by making generic

statement applicable to a service industry without adducing any evidence thereof.

The Respondent submitted that the Standing Committee and the Screening Committee proceedings were in violation of both Rule 128(1) and 128(2) of the CGST Rules, 2017, hence void *ab initio*. For easy reference Rule 128 is reproduced hereunder:-

128. Examination of application by the Standing Committee and Screening Committee.-

(1) *"The Standing Committee shall, within a period of two months from the date of the receipt of a written application [or within such extended period Not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority.] in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has Not been passed on to the recipient by way of commensurate reduction in prices.*

(2) *All applications from interested parties on issues of local nature [or those forwarded by the Standing Committee] shall first be examined by the State level Screening Committee and the Screening Committee shall, [within two months from the date of receipt of a written application, or within such extended period Not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority.] upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action".*

ii. There were patent errors of exercise of jurisdiction at the level of the Standing Committee and Screening Committee as was evident from the table below:-

Sr. no.	Act of Proceeding	Actual date of proceedings	Prescribed date	Relevant GST Rule	Number of days delay	Remarks
1	Karnataka Screening Committee	13/12/2019	22/03/2019	128 (2)	266	Contravention of Rule 128 (2)
2	Karnataka Standing Committee	06/05/2020	12/03/2020	128 (1)	55	Contravention of Rule 128 (1)

All the relevant pandemic extensions were made applicable only from 23.03.2020. The Standing Committee is a creature of statute, which was strictly bound to act within the time frame set out in the statute. The Respondent relied upon *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd. and others reported in (2003) 2 SCC 111 and Om Prakash Versus Ashwini Kumar Bansi reported in 2010 (8) TMI 465 - SUPREME COURT*, wherein it was held that when a statutory functionary, like the Screening Committee, was required to act, it must act as per the strict dicta prescribed by the statute or not at all. In the present facts, it was undisputed that the Standing Committee had acted beyond the prescribed time limit. The Standing Committee was *functus officio* and no longer had any jurisdiction when it purported to act on 06.05.2020. The entire proceedings at the level of the Standing Committee, and beyond, were wholly without the authority of law and wholly without jurisdiction and therefore any proceedings thereafter were *void ab initio*.

- iii. Further, Under Rule 128(1) of the CGST Rules, the Standing Committee could only act after examining the accuracy and adequacy of the evidence provided in the application. The Application of the Applicant No. 1 dated 22.12.2018 admittedly had no evidence accompanying it. The Standing Committee could not have, therefore formed any prima facie view in absence of any evidence. The

Standing Committee has therefore acted arbitrarily, and in excess of jurisdiction, in referring the matter further to the DGAP.

- iv. Under Rule 128(2) of the CGST Rules, the Screening Committee is required to examine the complaint within a maximum period of three (3) months. As evident from the table above the statutory period prescribed for the Screening Committee to act had been transgressed. The Screening Committee should, at the latest, have acted by 22.03.2019. The Screening Committee had instead acted only on 13.12.2019. It was well settled that when a statutory functionary, like the Screening Committee, was required to act, it must act as per the strict dicta prescribed by the statute or not at all. In the present case, the Screening Committee had acted beyond the statutory time-limit. The entire proceedings were therefore vitiated and rendered unsustainable at the stage of Screening Committee and beyond.
- v. The Screening Committee was required under Rule 128(2) of the CGST Rules to satisfy itself that the supplier had contravened the provisions of Section 171 of the CGST Act. It was admittedly stated that no evidence was available before the Screening Committee. The necessary ingredients for the Screening Committee to satisfy itself therefore were not available. The so-called satisfaction of Screening Committee was therefore formed on an un-evidenced and arbitrary basis. On this ground also, the proceedings were not maintainable as it did not adhere in terms of Rule 128(2) of the CGST Rules.
- vi. Such actions of the Screening Committee and Standing Committee were in total violation of Rule 128 of the

CGST Rules. Rule 128 of the CGST Rules provides that the Standing Committee should examine the accuracy and adequacy of the evidence provided in the application to determine whether there is a *prima facie* case against an assessee. However, in the present case there was no documentary evidence or proof to examine the accuracy and adequacy of the complaint, regardless of the same the Standing Committee without following the proper procedure envisaged under Rule 128, forwarded the case to the DGAP for further investigation. The actions of the Standing Committee were in total violation of the CGST Rules in as much as the Standing Committee had bypassed and circumvented the procedure to examine and analyse the evidence.

vii. The National Anti-Profiteering Authority had dismissed several applications on the ground of lack of evidence to support the allegations of profiteering. Reliance in this regard was placed on the NAA's case No. 11/2018 dated 29.10.2018 in the matter of *Raman Khaira & Another Vs. M/s Yum Restaurants Pvt. Ltd.*, vide which the application was dismissed for Applicant's failure to furnish requisite evidence of profiteering to initiate the investigation. Also, in the NAA's case No. 12/2018 dated 29.10.2018 in the matter of *M/s Amway India Enterprises Pvt. Ltd.*, the Authority had dropped the proceedings due to the Applicant's failure to furnish any evidence in support of his/her allegation of profiteering, in the form of invoices of pre-GST and post-GST periods.

c. The proceedings had transgressed the ambit of the Complaint:-

i. The complaint of the Applicant No. 1 was in respect of a single transaction undertaken by her, where she paid an

annual subscription charge of Rs. 3290/-. The subscription ID given by the Applicant No. 1 was ID 1088222136. From the record, it was clear that there was uncertainty that the subscription ID was even the subscription of the Applicant No. 1. Her explanation in this regard was weak and unsupported by any evidence.

- ii. Under the anti-profiteering provisions, any proceeding should be restricted only to the services rendered to the Applicant No. 1. It was impermissible under the provisions to expand the scope of investigation to cover all services rendered by the Respondent in the period July 2017 to January 2019. The Respondent submitted that it offered different service packages, viz. quarterly, half-yearly, or yearly. It was also clearly understood that services of the Respondent were rendered to retail level customers through distributors and dealers. In a situation where the investigation extended beyond the particular service offering availed by a complainant, the proceedings were unsustainable and bad in law, as they had transgressed the ambit of the complaint. In respect of the supply of goods and in respect of supply of the services, this very Authority had held that the proceedings must only be confined to the product or services complained of and could not be extended to other products or other service offerings. The Respondent relied upon judgments passed by this Authority in the Case No. 4/2018 (Abel Space Solutions LLP) and Case No. 7/2018 (M/s Pyramid Infratech Limited). The Respondent submitted that therefore the aforementioned proceedings needed to be dropped as they had transgressed the ambit of the complaint.

d. Pricing to Subscriber Completely Ignored by the DGAP:-

i. The DGAP *vide* Letter dated 21.06.2022 submitted that the Respondent had to pass on the benefit of additional ITC accrued to him consequent to the introduction of GST. The Respondent in this regard submitted that the DGAP had neither considered the submissions of the Respondent nor the peculiar facts of the case but had blindly followed the provisions of the CGST Act and Rules.

ii. The MRP collected for its DTH services provided to the customers was unchanged in both the pre-GST and post-GST regime. Thus, it implied that even though the GST tax rate on DTH services increased to 18% from 15%, the Respondent did not increase his DTH service MRP by additional 3% in view of market forces-based pricing. Accordingly with no change in MRP and increased tax costs the Respondent had suffered net loss in revenue which was evident from the Subscriber DTH service package pre-GST and post-GST comparative pricing as mentioned in table below.

Pack price is kept same for Complainant	Pre-GST pack value @15%ST	Actual Packed Value @18%	Difference
MRP	3,290.00	3,290.00	
Tax	429.13	501.86	
Net realization	2,860.87	2,788.14	-72.73

Thus, as per the above table the Respondent has not passed on the burden of increase in the tax cost to the subscriber.

iii. The term "Price" had not been defined under the CGST Act, 2017. It was contended that the price/pack charges

collected from the Customer had to be treated as inclusive of tax. Reliance in this regard was placed on the Apex Court's judgment in Central Wines, Hyderabad Etc. Vs. Special Commercial Tax Officer Etc. reported in 1987 AIR 611.

e. The adhoc basis of computation adopted by the DGAP was irrelevant as actual values were available:-

i. The above adhoc ITC computation to arrive at the amount profiteered of Rs. 450 Crores, the Respondent submitted details of actual ITC comprising of VAT, CST, Entry Tax and SAD forgone by the Respondent during April 2016 to June 2017 amounting to Rs. 75 Crores as tabulated below:-

Head wise Actual ITC Cost for 15 months period April 2016 to June 2017	Rs. (in Crores)
VAT	4.08
CST	5.22
Entry Tax	14.26
SAD	51.1
Total Cost (subsumed in GST)	75

ii. The Respondent's Additional Tax cost borne (Due to 3% increase in GST rate) completely ignored in the DGAP's computation:- the above actual ITC of Rs. 75 Crores as subsumed, the same was lesser than the tax cost borne by the Respondent (of approx. INR 245 Crores) due to increase in the tax rates from 15% to 18% on the DTH service revenue (with no change in MRP). The Respondent submitted a CA certificate in this regard with the above submissions.

iii. The Respondent had not profiteered any amount post the

introduction of GST but on contrary had suffered net losses of approx. Rs. 150 Crores for the period July 2017 to Jan 2019 as tabulated below.

Description	Rs (in Crores)
Additional Tax Cost Borne by Company due to increase in tax rates from 15% to 18% without change in MRP package value (for 19 months)	(245)
Less: Actual ITC Value Subsumed / Forgone (75 Cr extrapolated for 19 months)	95
Net Tax Cost Borne by Company (Loss not Profit) by Tata Play due to same MRP value of Pack despite increase in tax rate	(150)

Therefore, in the pre-GST regime the Respondent never passed on the burden of tax to the subscribers as a part of its MRP market forces-based pricing. These submissions were not considered by the DGAP in its Report and had issued the Investigation Report without appreciating all the facts of the case.

f. Fundamental constitutional challenges on Section 171 of the CGST Act and the anti- profiteering provisions under Rules 122-137 of the CGST Rules:-

- i. Anti-profiteering provisions are ultra vires and beyond the scope of the provisions of the Constitution of India.
- ii. Section 171 is open-ended, arbitrary and ultra vires the provisions of the Articles 14 and 19(1)(g) of the Constitution of India.
- iii. The term "commensurate" is undefined.
- iv. The word "profiteering" does not occur in section 171(1) of the CGST Act, 2017. Provision of imposition of penalty has been introduced by way of an amendment on 01.01.2020.
- v. Anti-Profiteering provisions suffered from the vice of excessive delegation.

vi. Abdication of duty by NAA to prescribe Methodology.

vii. Arbitrariness in the approach of NAA.

6. Hearing in the matter was held on 27.07.2022 through video conferencing. It was attended by Shri Bharat Raichandani, Advocate and Shri Swaminathan Konar, Tax Manager for the Respondent. During the personal hearing, the Respondent was heard. The Respondent has re-iterated his arguments based on his written submissions dated 12.06.2022, 11.07.2022 and 27.07.2022. None appeared on the behalf of the Applicant No. 1.
7. The Respondent vide his email dated 09.08.2022 filed his consolidated written submissions wherein he has re-iterated and relied upon his earlier written submissions dated 12.06.2022, 11.07.2022 and 27.07.2022.
8. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent during the hearing. It is clear from the plain reading of Section 171(1) that it deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. It is observed from the report that on the basis of the bifurcated information of turn over submitted by the Respondent vide email dated 20.04.2021 for the period April, 2016 to January, 2019 and details of ITC submitted by the Respondent vide email dated 26.04.2021 for the period April, 2016 to January, 2019 specific to the supply of DTH (Broadcasting) services and the details of the credit of VAT/SAD foregone, ITC

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availed by him pre GST, the percentage of benefit and thereby the amount of benefit consequent to the introduction of GST, during the post-GST (June, 2017 to January, 2019) period was calculated and has been furnished in Table- 'A' of the Report and amounted to Rs. 4,50,18,07,258/- and the state-wise bifurcation of the profiteered amount has been furnished in the DGAP's Report in Table - 'B'.

9. The Respondent has raised several contentions in the matter and the findings of the Authority are as under:-

- a. One of the contentions raised by the Respondent is that the Applicant No. 1 is not an affected party nor she has submitted any evidence of profiteering and hence the Notice issued by this Authority is void *ab initio*. In this regard, the Authority finds that the Karnataka State Screening Committee had observed that *"Prima facie that the benefit of higher input tax credits available subsequent to levy of GST has to be passed on by the service provider in the form of reduced subscription charges"* and therefore decided to forward the complaint/Application of the Applicant No. 1. Further, the Standing Committee had considered the aforesaid reference received from the Karnataka State Screening Committee and found *Prima facie* evidence in the allegation and forwarded the complaint/ Application to the DGAP for further detailed investigation.

The Applicant No. 1 (Subscription ID-1088222136), vide her emails dated 27.07.2021 and 22.07.2021 submitted that Connection was in the name of Mr. Sumit Garg but this connection had been used by her for the past 5-6 years. Before, 2015, her husband and Mr. Sumit Garg were sharing the flat and the connection was jointly used by them. Post 2015, the Applicant No. 1 and her husband had been using the said connection. The registered email ID for the said account was

casagarwal21@gmail.com which belonged to the Applicant No. 1 and current registered mobile number was 9538172000 / 9538174000. Both these numbers belong to the Applicant No. 1 and her husband Mr. Nikhil Gupta. It was enough to prove that connection was being used by the Applicant No. 1 though she could not get the name transferred as the Applicant No. 1 and her husband were no longer in touch with Mr. Sumit Garg.

Further, after amendment in Rule 137, clause (c) of explanation reads as: - "*c. any other person alleging, under sub-rule (1) of rule 128, that a registered person had not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices.*". As per the Notification No.14/2018-CT dated 23.03.2018 accordingly any other person can be considered as an "Interested party". Once the Standing Committee had forwarded the Application to the DGAP for further investigation, the DGAP was under legal obligation to investigate the complaint of the Applicant No. 1 under the provisions Rule 129 of the CGST Rules, 2017,

- b. The Respondent also contended that the Applicant No. 1 has no *locus standi* and hence the complaint was not maintainable. Further, the Respondent has also contended that there was no supporting evidence provided by the Applicant No. 1 and that the proceedings have transgressed the ambit of the complaint made by the Applicant No. 1. It has been admitted by the Respondent in their detailed reply dated 12.06.2022 that the Applicant No. 1 has post facto changed her mobile number in May, 2021 to hold herself as eligible complainant to counter the Respondent's reply filed in June, 2020. The Authority finds that the contention of the Respondent that the Applicant No. 1 has changed her mobile number, itself will prove that the Applicant No. 1 was using the said subscription ID, else the Applicant No.

I would not have changed the mobile number and hence the Applicant No. 1, notwithstanding the other findings of amendment in Rule 137, has *locus standi* in the case. It may also be noted that the complaint was received using email id casagarwal21@gmail.com, which belong to the Applicant No. 1.

Further, in this regard, on the basis of available records the Authority finds that, the Applicant No. 1 has been using the said DTH connection since 2015 and as already mentioned in para 9(a) *supra*, initially the connection belonged to Sh. Sumit Garg who was a flat mate of the Applicant No. 1's husband Sh. Nikhil Gupta. Post 2015, the Applicant No. 1 and her husband has been using the connection. Further, vide her complaint email dated 26.12.2018, the Applicant No. 1 has also stated that in the month of Jan, 2018 she has paid annual subscription charge of Rs. 3,290/-. In this regard, it is pertinent to mention that the Applicant No. 1 has stepped into the shoes of the Sh. Sumit Garg for using the DTH connection and at no stage the Respondent has refused the consideration received from the Applicant No. 1 for providing DTH service and has accepted the subscription from her. The Respondent had even allowed the Applicant No. 1 to change her email id and mobile number. Therefore, the Authority finds that the Applicant no. 1 is an interested party (as explained in para 9(a) *supra*) and her complaint regarding non passing on of benefit of ITC (which was not available to the Respondent in pre-GST and available to him on implementation of GST) in relation to her DTH subscription is maintainable. This Authority holds that, the said Applicant No. 1 has *locus standi* in view of the above facts and hence, the State Screening Committee and Standing Committee have rightly taken due cognizance of the matter and the DGAP has correctly investigated the case and submitted its Report in terms of the mandate of Section 171 of the CGST Act, 2017.

Further, the State Screening Committee in its report C. No. IV/06/28/2019 (AP) dated 16.12.2019, mentioned that the Applicant No. 1 has alleged that the higher benefit of ITC available to the Respondent post GST has not been passed to the subscribers/customers in as much as the Respondent has not reduced the subscription charges for the DTH services after introduction of GST. Therefore, the benefit of higher ITC available subsequent to levy of GST has to be passed on by the Respondent to the Applicant No. 1 and other subscribers/customers in the form of reduced subscription charges and hence forwarded the complaint received from Applicant No. 1 to the Standing Committee and also the copy of the Minutes of the Meeting of the Standing Committee on Anti-profiteering held on 20.03.2020 to the DGAP for investigation. On examination of the documents by the DGAP it was observed that prior to 01.07.2017 i.e. before GST was introduced, the Respondent was not eligible to avail CENVAT credit of VAT/CST/Purchase Tax/ Entry Tax etc; paid on the inputs or capital goods purchased indigenously and the credit of SAD paid on the inputs or capital goods imported as the Respondent was not engaged in the sale of goods. However, post-GST, the Respondent could avail the ITC of GST paid on all the inputs and capital goods including the VAT/SAD/CST/Purchase Tax etc; which got subsumed in GST.

Accordingly, it had been observed that there was benefit of additional ITC in the post-GST period compared to pre-GST period and the profiteered amount due to the facility of seamless credit allowed in the post – GST period had been computed by comparing the ITC to turnover ratio in pre & post GST periods. Therefore, the contentions raised by the Respondent are not tenable and hence rejected.

- c. Another contention raised by the Respondent is that the pricing adopted by him is generally set based on the perceived service value of his products and as charged by market forces such as cable and other operators. In this regard, the Authority finds that although the pricing was dependent on market conditions and the Respondent was free to decide on the pricing of subscription packages, but Sub-section 1 of Section 171 of the CGST Act, 2017 provides that *"Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*, accordingly, the Respondent in the instant case had to pass on the benefit of the additional ITC accrued to him consequent to introduction of GST by way of commensurate reduction in prices of the subscription packages monthly/quarterly/annually to comply with the provisions of Section 171 of the CGST Act, 2017. Therefore, the averment raised by the Respondent is not correct.
- d. The Respondent has also contested the method of computation adopted by the DGAP for determining the profiteering amount. In this regard, the Authority finds that there is a correlation between the turnover and the CENVAT credit of Service Tax / ITC as the Respondent was discharging his Service Tax / GST output liability out of the CENVAT credit of Service Tax paid on input services / ITC available to him on the basis of the turnover i.e. the cost realized by him from his subscribers. Accordingly, the pre and post-GST turnover had been taken from the data submitted by the Respondent vide his email dated 17.04.2021 and compared with the ITC data submitted by the Respondent vide email dated 26.04.2021.
- e. The contention of the Respondent that in the pre-GST regime Service Tax was discharged on the MRP value is not tenable. In this regard, the Authority finds that the Respondent vide his

email dated 17.04.2021 claimed that the Broadcasting Revenue was MRP value as per serial No. 29(f) of the Notification No. 25/2012-ST dated 20.06.2012, whereas the said Notification was nothing but Mega Exemption Notification and was irrelevant to the present issue. Further, there was no such concept of MRP based assessment under Finance Act, 1994. MRP based assessment was prescribed under Section 4A of the Central Excise Act, 1944 for any goods, in relation to which it was required, under the provisions of the Standards of Weights and Measures Act, 1976 (60 of 1976) or the rules made there under or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods, to which the provisions of sub-section (2) of Section 4A shall apply.

- f. The Respondent has also made a contention that the Anti-profiteering provisions are ultra vires and beyond the scope of provision of the constitution of India. In this regard, the Authority finds that the provisions of Section 171 of CGST Act, 2017 relating to anti- profiteering have been passed by Parliament and all the State and Union Territory Legislatures. They have delegated the task of prescribing the powers and function of this Authority to the Central Government on the recommendation of GST Council, which is Constitutional body created under 101st Amendment the Constitution. Accordingly, Central Government has formulated and notified CGST Rules, 2017. Therefore, Rules 126 to 133, which prescribe the functions and powers of this Authority and DGAP under Section 164 of CGST Act, 2017 have sanction of the Parliament and all the State Legislatures. Hence, any notice or report issued under these Rules is legally valid and constitutional and by no stretch of imagination it can be held to be *ultra vires*.
- g. The Respondent has also contended that Section 171 is open-ended, arbitrary and ultra vires the provisions of the Articles 14

and 19(1)(g) of the Constitution of India. In this regard, the Authority finds that, neither this Authority nor the DGAP have acted in any way as price controller or regulator as they do not have the mandate to regulate the same. The Respondent is absolutely free to exercise his right to practice any profession, or to carry on any occupation, trade or business, as per the provisions of Article 19 (1) (g) of the Constitution. The Respondent can also fix his prices and profit margins in respect of the supplies made by him. Under Section 171 of the CGST Act, 2017, this Authority has only been mandated to ensure that both the benefits of tax reduction and ITC which are the sacrifice of precious indirect tax revenue made from the kitty of the Central and the State Governments are passed on to the end consumers who bear the burden of indirect tax. The intent of this provision is the welfare of the consumers who are voiceless, unorganized and vulnerable. This Authority is charged with the responsibility of ensuring that both of the above benefits are passed on to the general public as per the provisions of Section 171 of the CGST Act, 2017 read with Rule 127 and Rule 133 of the CGST Rules, 2017. 8

- h. The Respondent has contended that the definition of "profiteering" does not occur in section 171(1). In this regard, the Authority finds that the contention of the Respondent is incorrect as the term "profiteering" has been clearly defined under explanation to Section 171 (3A) of the CGST Act, 2017 which states that the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both. The above definition which was inserted vide the Finance

Act, 2019 (No.2) effective from 01.01.2020 is very clear for implementation by the Supplier.

- N
- i. Further, the Respondent also contended that Anti-Profiteering provisions suffer from the vice of Excessive Delegation and that there is abdication of duty by this Authority to prescribe Methodology and there is arbitrariness in the approach of this Authority. The Respondent has also contended that the term "Commensurate" is undefined or not statutorily defined. In this regard, the Authority finds that, 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 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 Section 171 (1) of the CGST Act, 2017 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 profited amount. One formula which fits all cannot be set while determining such a "Methodology and Procedure" as the facts of each case are different. 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). Hence, the Authority finds that, the above contentions of the Respondent are not sustainable.

10. For the reasons mentioned herein above, the Authority finds no reason to differ from the above-detailed computation of profited amount in the DGAP's Report or the

methodology adopted. The Authority finds that the Respondent has profiteered by an amount of Rs. 4,50,18,07,258/- during the period of investigation i.e. 01.07.2017 to 31.01.2019 from his subscribers/customers including the subscription accorded to Shri Sumit Garg and/or Applicant No. 1.

11. The Authority is in agreement with the assertion of the DGAP that, in the instant case on the basis of the submissions made by the Applicant No.1, as per the provisions of law relating to anti profiteering under the CGST Act, 2017 and Rules made thereunder and the responsibilities cast on this Authority by the said statutory provisions, that the Applicant No. 1 is an interested party in this case for the purposes of alleging profiteering by the Respondent as a supplier, however, as in this case the Applicant no.1 is not a direct subscriber of the Respondent and is representative of interests of one Shri Sumit Garg, therefore, the Authority finds it in consonance with the law to order the deposit of the profiteered amount in respect of the said Applicant also along with all other subscribers in the Consumer Welfare Funds as envisaged in Rule of 133(3)(c) of CGST Rules, 2017 for the benefit of all consumers.
12. The Authority under Rule 133(1) of the CGST Rules, 2017 determines the amount profiteered by the Respondent as Rs. 4,50,18,07,258/- (including GST) and directs that such amount shall be deposited in the Central and State Consumer Welfare Funds (CWF) in the ratio of 50-50 along with the interest to be calculated @ 18% from the date the said amounts were profiteered until the date the said profiteered amounts are deposited in the particular Consumer Welfare Fund as prescribed and in accordance with the provisions of Rule 133 (3) (b) of the GCST Rules 2017. Therefore, the Respondent is directed to deposit the profiteered amount in respect of all the subscribers in the Consumer Welfare Fund (CWF) as

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envisaged in Rule 133(3)(c) of the CGST Rules, 2017 from the date the said amounts were profiteered upto the date the said profiteered amounts are deposited in the particular Consumer Welfare Fund as prescribed. Therefore, the Respondent is directed to deposit the amount profiteered in two equal parts, of Rs. 225,09,03,629/- in the Central Consumer Welfare Fund (CWF) and Rs. 225,09,03,629/- in the particular/tabulated State Consumer Welfare Funds as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with interest @18% from the date the said amounts were profiteered upto the date the said profiteered amounts are deposited in the particular Consumer Welfare Fund as prescribed, as per the table given below:-

State/UT Name	Amount to be deposited in the State CWF (in Rs.)
ANDHRA PRADESH	30788077.68
ARUNACHAL PRADESH	7237790.393
ASSAM	65836792.92
BIHAR	26046638.2
CHANDIGARH	9344639.673
CHATTISGARH	28760799.99
DADRA & NAGAR HAVELI	385208.9328
DAMAN & DIU	240445.9142
DELHI	97378083.54
GOA	13704438.1
GUJARAT	72964256.26
HARYANA	58917196.89
HIMACHAL PRADESH	11543471.37
JAMMU & KASHMIR	9662347.787
JHARKHAND	22246583.18
KARNATAKA	152738586.8
KERALA	19733545.1
MADHYA PRADESH	36552302.66
MAHARASHTRA	978314713.3
MANIPUR	5950344.129
MEGHALAYA	8445425.561
MIZORAM	512919.9136
NAGALAND	8487763.47
ORISSA	41987907.94
PUDUCHERRY	932016.1079
PUNJAB	35016468.5
RAJASTHAN	64126353.62

SIKKIM	3906427.865
TAMIL NADU	107886226.7
TELANGANA	65802439.75
TRIPURA	2885194.819
UTTAR PRADESH	178243333.1
UTTARKHAND	13263848.29
WEST BENGAL	71061041.12
Grand Total	225,09,03,629

13. The above profiteered amount shall be deposited along with the interest @ 18% from the date the said amounts were profiteered until the date the said profiteered amounts are deposited in the particular Consumer Welfare Fund as prescribed, within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the jurisdictional Commissioners CGST/SGST as per the provisions of the CGST/SGST Act, 2017.
14. It is evident from the above narration of facts that Respondent has denied the benefit of ITC to the customers/home/shop buyers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section.

However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020, whereas, the period during which violation has occurred is w.e.f. 01.07.2017 to 31.01.2019, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively.

15. The concerned jurisdictional CGST/SGST Commissioners are also directed to ensure compliance of this Order. It may be ensured that the Profiteered amount is deposited in the concerned Central/State Consumer Welfare Fund (CWF) as per this Order along with interest @18% from the date the said

amounts were profiteered upto the date the said profiteered amounts are deposited in the particular Consumer Welfare Fund as prescribed. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this Order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.

16. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner.
17. 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 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.

Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that:-

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

18. A copy of this order be sent to the Applicant No. 1, the Respondent, Commissioners CGST/SGST free of cost for necessary action.

S/d
(Amand Shah)
Technical Member &
Chairman



(Hitesh Shah)
Technical Member

S/d
(Pramod Kumar Singh)
Technical Member

Certified copy


(Dinesh Meena)
NAA, Secretary

File No. 22011/NAA/102/Tata Sky/2022

Date:-31.08.2022

Copy To:-

1. M/s Tata Sky Limited, Unit 301 to 305, 3rd Floor, Windsor Off.,
C.S.T. Road, Kalina, Santacruz (East), Mumbai-400098.

2. Ms. Sweety Agarwal, 16 Kodihalli Main Road, Indiranagar, Bangalore, Karnataka.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner of Commercial Taxes, Office of the Chief Commissioner of State Tax, Eedupugallu, Krishna District, Andhra Pradesh.
5. Commissioner of Commercial Taxes, Department of Tax & Excise, Kar Bhawan, Itanagar, Arunachal Pradesh - 791 111
6. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.
7. Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna – 800 001
8. Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001
9. Commissioner of Commercial Taxes, Office of Commissioner of Commercial Tax, Vikrikar Bhavan, Old High Court Building, Panji, Goa- 403 001
10. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Near Times of India, Ashram Road, Ahmedabad.
11. Commissioner of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula. PIN - 134 151.
12. Commissioner of Commercial Taxes, Excise & Taxation Commissioner, Government of Himachal Pradesh, B-30, SDA Complex, Kasumpti, Shimla.
13. Commissioner of Commercial Taxes, Excise & Taxation Complex, Rail Head Jammu.
14. Commissioner of Commercial Taxes, Commercial Taxes Department, Project Bhawan, Dhurva, Ranchi- 834 004.
15. Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009.

16. Commissioner of Commercial Taxes, Government Secretariat, Thiruvananthapuram-695001.
17. Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore.
18. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010.
19. Commissioner of Commercial Taxes, Department of Taxes, Old Guwahati High Court Complex, North AOC, Imphal West, Manipur - 795 001.
20. Commissioner of Commercial Taxes, Office of the Commissioner, GST&CX Commissionerate, Morellow Compound, M.G.Road, Shillong- 793001.
21. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, New Secretariat Complex, Aizawl - 796005.
22. Commissioner of Commercial Taxes, Office of the Commissioner of State Taxes, Dimapur, Nagaland - 797112.
23. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, Banijyakar Bhawan, Old Secretariat Compound, Cuttack - 753 001.
24. Commissioner of Commercial Taxes, Office of Excise and Taxation Commissioner, Bhupindra Road, Patiala- 147 001.
25. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.
26. Commissioner of Commercial Taxes, SITCO Building, Block-D, above A.G. Office, Gangtok, East, Sikkim - 737 101.
27. Commissioner of Commercial Taxes, PAPJM Building, Greaves Road, Chennai - 600 006.
28. Commissioner of Commercial Taxes, O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001.
29. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes & Excise, Head of the Department, Revisional Authority, P.N. Complex, Gurkhabasti, Agartala - 799 006.

30. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P).
31. Commissioner of Commercial Taxes, State Tax Department, Head Office Uttarakhand, Ring Road, Near Pulia No. 6, Natthanpur, Dehradun.
32. Commissioner of Commercial Taxes, 14, Beliaghata Road, Kolkata - 700 015.
33. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin: 110 002.
34. Commissioner of Commercial Taxes, First Floor, 100 feet Road, Ellapillaichavady, Pondicherry - 605 005.
35. Commissioner, Excise, Excise Department, Daman, Moti Daman- 396220.
36. Commissioner, Excise, Forest office Compound, Opp. Gujarat Industrial Bank, Dadra and Nagar Haveli, Silvassa.
37. Commissioner of taxation, Additional Townhall Building, Sector 17-C U.T, 235, Jan Marg, Bridge Market, 17C, Chandigarh, 160017.
38. Chief Commissioner of Central Goods & Services Tax, Ahmedabad Zone, GST Bhavan, Revenue Marg Ambawadi, Ahmedabad-380015.
39. Pr. Chief Commissioner of Central Goods & Services Tax, Bengaluru Zone, C.R. Building, Queen's Road, Shivaji Nagar, Bengaluru, Karnataka-560001.
40. Chief Commissioner of Central Goods & Services Tax, Bhopal Zone, 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal M.P. 462 011.
41. Chief Commissioner of Central Goods & Services Tax, C.R. Building Rajaswa Vihar, Bhubaneswar 751007.
42. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone C.R. Building, Plot No.19A, Sector 17C, Chandigarh 160017.

- 43.Pr. Chief Commissioner of Central Goods & Services Tax,
Chennai Zone, 26/1, Mahatma Gandhi Road, Nungambakkam,
Chennai – 600034.
- 44.Chief Commissioner of Central Goods & Services Tax, Cochin
Zone, C.R.Building, I.S.Press Road, Ernakulam Cochin 682018.
- 45.Chief Commissioner of Central Goods & Services Tax, Delhi Zone
C.R. Building, I.P. Estate, New Delhi 110 109.
- 46.Chief Commissioner of Central Goods & Services Tax,
Hyderabad Zone GST Bhavan, L.B.Stadium Road, Basheer Bagh,
Hyderabad 500 004.
- 47.Chief Commissioner of Central Goods & Services Tax, Jaipur
Zone, New Central Revenue Building, Statue Circle, Cscheme
Jaipur-302 005.
- 48.Chief Commissioner of Central Goods & Services Tax, Kolkata
Zone, 2nd Floor, GST Bhavan, 180 Shanti Pally, R.B. Connector,
Kolkata – 700107.
- 49.Chief Commissioner of Central Goods & Services Tax, Lucknow
Zone, 7-A, Ashok Marg, Lucknow – 226001.
- 50.Chief Commissioner of Central Goods & Services Tax, Meerut
Zone Opp. CCS University, Mangal Pandey Nagar, Meerut
250004.
- 51.Chief Commissioner of Central Goods & Services Tax, Mumbai
Zone GST Building ,115 M.K. Road, Opp. Churchgate Station,
Mumbai 400020.
- 52.Chief Commissioner of Central Goods & Services Tax.,
Telangkhedi Road, Civil Lines, Nagpur 440001.
- 53.Chief Commissioner of Central Goods & Services Tax, Panchkula
SCO 407408, Sector 8 Panchkula.
- 54.Chief Commissioner of Central Goods & Services Tax, Pune Zone
GST Bhawan Ice House, 41A, Sasoon Road, Opp. Wadia College,
Pune 411001.

55. Chief Commissioner of Central Goods & Services Tax, (Ranchi Zone) 1st Floor, C.R. Building, (ANNEX) Veerchand Patel Path Patna, 800001.
56. Chief Commissioner of Central Goods & Services Tax, Shillong Zone North Eastern, 3rd Floor, Crescens Building, M.G. Road, Shillong 793 001.
57. Chief Commissioner of Central Goods & Services Tax, Vadodara Zone 2nd Floor, Central Excise Building, Race Course Circle, Vadodara 390 007.
58. Chief Commissioner of Central Goods & Services Tax, Vishakhapatnam Zone GST Bhavan, Port Area Vishakhapatnam 530 035.
59. NAA Website.
60. Guard File.

