GSTAT

Single Bench Court No. 1

NAPA/31/PB/2025

DGAP **.....Appellant**

Versus

URBAN ESSENCE (SUBWAY FRANCHISEE) **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA070825000001H **Date of order :** 05/08/2025

1.	GSTIN/Temporary ID/UIN - 27ATVPN7431Q1ZK	
2.	Appeal Case Reference no. - NAPA/31/PB/2025	Date - 09/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - Urban Essence (Subway Franchisee) , subwaysinhagad@gmail.com , NA	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 05/08/2025 22/07/2025 01/07/2025	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The final order has been issued. The Respondent has been directed to return a sum of amount Rs, 5,45,005/- along with the interest of 18% from the date of collection of the higher amount i.e. 15.11.2017 to be deposited in Consumer Welfare Fund created by Centre and State of Maharashtra Under Section 57 of the CGST Act, 2017 within a period of 3 months.
	Summary of Order
9.	Type of order : Deposit in Consumer Welfare Fund/s

Place :DELHIPB Signature

Date : 07.08.2025 DELHIPB MANMOHAN SHARMA

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

IN THE GOODS AND SERVICE TAX APPELLATE AUTHORITY (GSTAT),

PRINCIPAL BENCH, NEW DELHI,

ANTI-PROFITEERING DIVISION.

NAPA/31/PB/2025

FINAL ORDER

Date of Institution	:	28.01.2021
Date of conclusion of Hearing	:	22.07.2025
Date of Order	:	05.08.2025

1. **In the matter of:**

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

Applicant

Versus

Urban Essence (prop. AniketNagnathNimbalkar), D-1, Shop No. 34, Ganga Bhagyodaya Commercial Complex, Singhad Road, Vadgaon B.K. Pune-411041

Respondent

AND IN THE MATTER OF

A Proceedings under Section 171 of Central Goods and Service Tax Act, 2017(Act 12 of 2017)

Coram:-

Dr. Sanjaya Kumar Mishra, President, Principal Bench, GSTAT-NAA

Present:-

1. None for the Respondent.

2. Sh. Suneel Kumar, Additional Assistant Director, Ms. Geetanjali Ahuja, Inspector, for the DGAP

Order

In this proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, hereinafter referred as CGST Act, for brevity, the following mixed questionsof law and fact arousefor determination:-

I. Whether the Respondent, i.e. M/s. Urban Essence, a franchisee of M/s. Subway Ltd profiteered an amount of ₹5,47,005/- only, by not passing the benefit of reduction of the Rate of GST, on Restaurant Services, from 18% to 5% with effect from 15.11.2017?

II. Whether the Respondent should have been granted credit against some Invoices/ debit notes that were allowed to be claimed 31.12.2018 in terms of the Press release of the CBIC, dated 18.10.2018, bearing No. 62/2018?

2. A chronological chart of events (or Date Chart) for better appreciation is placed below:

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S. No.	**Date**	**Event**	**Remarks**
1.	01.07.2017	GST Act, come into force	Rate of GST for the Restaurant Service (food) was 18%
2.	14.11.2017 Effective date 15.11.2017	Rate of GST on Restaurant Services was reduced from 18% to 5%	On Recommendation of GST Council, Rate of GST on Restaurant Services was reduced from 18% to 5% vide Notification No. 46/2017, with condition that the ITC on the Goods and Services used in supplying the service was not to be taken.
3.	28.11.2017	National Anti-Profiteering was formed	Under section 171 of CGST Act, 2017, to ensure that the benefits of reduction in GST rates or input tax credit are passed on to consumers by way of commensurate reduction in prices, and to prevent profiteering by businesses.
4.	23.07.2019	Forwarding Complaint with respect of Anti-profiteering to the Standing Committee	By Principal Commissioner & Member of Screening Committee.

5.	09.10.2019	Reference received from Standing Committee on Anti-profiteering to DGAP	
6.	23.03.2020 received on 16.04.2020	DGAP's first Report	Under Rule 129(6) of CGST Rules, 2017
7.	05.05.2020	Notice Issued to Respondent on Report dated 23.03.2020 by Authority	Under Rule 129(3) of CGST Rules, 2017
8.	19.06.2020	Written submissions filed by the Respondent	
9.	01.07.2020	Supplementary Report was received on submission made by the Respondent from the DGAP	Under Rule 133(2A) of CGST Rules, 2017
10.	22.07.2020& 06.10.2020	Respondent Written Submissions in respect of Supplementary Report received on	
11.	28.10.2020	Clarifications received from DGAP on written submissions	Under Rule 133(2A) of CGST Rules, 2017
12.	27.11.2020	Interim Order No. 32/2020 passed by the erstwhile NAA	Under Rule 133(4) of CGST Rules, 2017, the matter was remanded to the DGAP for reinvestigation.
13.	28.01.2021	DGAP's Report in	Under Rule 133(4) of CGST

		response to the NAA's IO No. 32/2020 dt. 27.11.2020.	Rules, 2017.
14.	04.02.2021	Notice issued by the erstwhile NAA	As decided by the Authority in Minutes of Meeting 29.01.2021, under Rule 129(3)
15.	02.03.2021	Respondent's Submissions received on	No new plea was raised. Respondent reiterated the earlier stand.
16.	29.03.2022	Clarifications of the DGAP received on	Under Rule 133(2A) of CGST Rules, 2017
17.	05.05.2022 & 06.07.2022	Hearing Opportunity provided to the Respondent by the erstwhile Authority	No one appeared on behalf of the Respondent.
18.	01.12.2022	The Competition Commission of India (CCI) took over the Anti-profiteering Responsibilities under GST from the Anti-profiteering Authority on	Vide Notification No. 23/2022-Central Tax, dated 23.11.2022 vide s.o.No. 5450 (E) Central Government empowered CCI to examine Anti-profiteering Cases.
19.	30.09.2024	Principal Bench of GSTAT has been empowered to examine Anti-profiteering cases in terms of notification No. 18/2024-Central Tax dated	On the recommendation of the 53rdGST Council Meeting, the mandate for handling of Anti-profiteering cases was provided to Pr. Bench GSTAT, with effect from 01.10.2024.

		30.09.2024	
20.	12.06.2025	Methodology and Procedure Rules, 2025, were notified	
21.	01.07.2025 & 22.07.2025	Hearing Notices were issued to the Respondent by the Pr. Bench GSTAT to appear	No one appeared on behalf of the Respondent.
22.	22.07.2025	Hearing Concluded and matter reserved for judgment/order	

3. It may be noted here that there is no dispute with regard to the fact that the rate of GST on Restaurant Services was reduced from 18% to 5% with effect from 15.11.2017, vide notification 46/2017dated 14.11.2017; and that the unit sale prices of various products of the Respondent remained unchanged even after the said reduction of rate of GST.

4. The facts of the case, shorn of unnecessary details are as follows:-

   a. A reference was received from Standing Committee on Anti-profiteering, under Rule 128 of the Central Government Goods and Services Tax Rules, 2017, hereinafter referred to as the CGST Rules, for brevity, on 09.10.2019, to conduct a detailed investigation of the allegations that the Respondent (Franchisee of M/s Subway Systems India Pvt. Ltd.) had not passed on the benefits of reduction in the GST rate from 18% to 5% vide Notification, dated 46/2017-Central Tax (Rate) dated 14.11.2017 by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017 in respect of Restaurant Services.

b. The DGAP had examined the above reference from the Standing Committee on Anti-profiteering on 09.10.2019 and a Notice under Rule129(3) of the CGST Rules, 2017, was issued by the DGAP to the Respondent on 23.10.2019 to reply whether he admitted that the benefit of reduction in GST rate w.e.f. 15.11.2017, had not been passed on to the recipients by way of commensurate reduction in prices and if so, to *suomoto* determine the quantum thereof and indicate the same in reply to the Notice as well as furnish all supporting documents as evidence of the same. The rate of GST on services supplied by the Respondent was reduced from 18% to 5% and if so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

c. The period covered by the current investigation was from 15.11.2017 to 31.10.2019.

d. Further, the DGAP has reported that the Respondent was dealing with a total of 340 items while supplying restaurant services before 15.11.2017. Upon comparing the average selling prices as per details submitted by the Respondent for the period 01.07.2017 to 14.11.2017 and the actual selling prices post rate reduction, i.e. with effect from 15.11.2017, it was seen that the GST rate of 5% had been charged on the increased base price which established that though the tax amount was computed @ 18% before 15.11.2017 and @ 5% w.e.f. 15.11.2017, the fact was that because of the increase in base prices, the cum-tax price paid by the consumers was not reduced commensurately, despite the reduction in the GST rate. Therefore,

having established that the base prices were increased after 15.11.2017, the only remaining point for determination was whether the increase in base price was solely due to the denial of ITC. Despite several reminders, the Respondent failed to submit the sample copies of invoices pre- and post-reduction.

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

Table–A

(Amount in ₹)

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

f. The Analysis of the details of item-wise outward taxable supplies during the period 15.11.2017 to 31.10.2019, reveals that the Respondent had increased the base prices of different items supplied as part of restaurant service to make up for the denial of ITC post-GST reduction. To ascertain the profiteering on the basis of the aforesaid pre-and the post-GST rates, the DGAP had explained the methodology with the help of one illustration viz., of a particular item "12" aloo patty Sub for which the average base price had been calculated during the per-GST reduction period of 1st November, 2017 to 14 November, 2017 and then profiteering had been calculated for post GST rate reduction invoice no. 1/A-24756 dated 15.11.2017 as tabulated below in "Table B":-

"Table- B"(Amount in ₹)

Name of the Product (A)	**"12" Aloo Patty Sub"**
Total Quantity sold from 01.11.2017 to 14.11.2017 (B)	7
Sum of Taxable Value of supplies during 01.11.2017 to 14.11.2017 (C)	1715
Average base price from 01.11.2017 to 14.011.2017 D=C/B	245
Base price with denial of ITC @ 7.54% (E=D+D*7.54%)	263.47
GST @ 5% (F=E*5%)	13.18
Total price to be charged (G=E+F)	276.65
Selling price per unit as per invoice no. 1/A-24756 dated 15.11.2017 (H)	295
Total Profiteering (I=H-G)	18.35

g. From the above table, it would emerge that the Respondent did not reduce the selling price commensurately of "12" Aloo Patty Sub" when the GST rate was reduced from 18% to 5% w.e.f 15.11.2017 and hence profiteered an amount of ₹18.35/- per unit, on a particular invoice and thus the benefit of reduction in GST rate was not passed

on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017.

h. On the basis of the above calculation as illustrated in table 'B' above, profiteering in the case of all impacted goods of the Respondent supplied had also arrived at ₹5,47,005/- in a similar way.

5. The Respondent, vide his written submissions dated 19.06.2020, has made the following pleas against the DGAP's report: -

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

(b) That in para 16 of the DGAP's report wherein ratio of ITC determined by the DGAP but it was very clear from the 'Table H' of the report that DGAP had calculated the ratio based on the period from July 2017 to October 2017 as after enactment of GST and as per C.B.I. & C. Press Release No. 62/2018, dated 18.10.2018, the last date to avail ITC in respect of invoices or debit notes relating to such invoices pertaining to period from July 2017 to March 2018 was extended up to 31st December 2018. Further, as already submitted that he was a smallrestaurant owner and did not have to follow the conditions for claiming ITC as mentioned in Rule 36 of CGST Rules, 2017. Therefore, the credit availed only during the period July 2017 to October 2017 considered for determination of ITC ratio was not proper. Even, due to the sudden change of rate, he was unable to take credit,

which was a loss for him and was liable for consideration for the cost of the product while calculating profit.

(c) The application filed by the Applicant was concerning only one product; hence, the investigation was limited to one product only.

(d) That he had to increase the price of the product in his restaurant services, without an increase in his profit due to various reasons, including the denial of ITC. Thus, the allegation that the price was enhanced to adjust the profit margin was not correct and proper.

6. A supplementary Report was sought from the DGAP in response to the above submissions of the Respondent. The DGAP vide its submissions dated 01.07.2020 had filed its clarifications (Rejoinder) under Rule 133(2) of the CGST Rules, 2017 as summarized below:

(a) That the increase or decrease in cost had nothing to do with the rate reduction in tax, and the availability of ITC and section 171 did not require the Respondent to seek approval to conduct his trade or fix the prices of the goods and services being supplied by him. It was limited only to the extent of finding whether the benefit of tax reduction had been passed on to the recipients or not. The objective of Section 171 of the CGST Act, 2017 was to ensure that the benefit of the reduction in the rate of tax and the benefit of ITC was passed on to the recipient and was not pocketed by the supplier. The objective of the statute was not to curtail the profit margin of any business. Every supplier of Goods and Services was free to increase the price of his supply depending upon the various components affecting his cost of supply, but under the provisions of Section 171 CGST Act, 2017 no supplier could increase the base

prices of the products overnight in such a manner that even with the reduction in the rate of tax, the selling price would remain unchanged. Hence, the averment of the Respondent was incorrect.

(b) That the contention of the Respondent that by virtue of the Press Release No. 62/2018 dated 18.10.2028, the last date to avail ITC in respect of invoices or debit notes issued before March, 2018 was extended up to December 2018. In this regard, it was submitted by the DGAP that the Respondent was free to place the details of said invoices for the period July 2017 to October 2017 before the DGAP, as the investigation Report of the DGAP was submitted to the erstwhile Authority in March 2020. The Respondent had enough time to place these facts with corroborating evidence before the DGAP.

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

earmark a portion of the total ITC to a particular product SKU being supplied by him, as there were a lot of common input services for the products being supplied. Further, during the investigation of profiteering, it was observed that the Respondent did not pass on the benefit of rate reduction for the same product or other products sold to various other recipients. Once the above finding was observed, the same fact had to be mentioned in the Investigation Report.

(d) That the contention of the Respondent that they had to increase the price due to various reasons, including denial of ITC, was incorrect. The issue related to costing, inflation, and other factors affecting the price had been dealt with in para 4 (a). As regards the denial of ITC it had been clearly mentioned at Para 19 of the Investigation Report dated 23.03.2020 that the denial of ITC of 7.54% was added to the base price of each product sold on or after 15.11.2017 for calculating profiteering and it was observed that the Respondent did not reduce the prices commensurately in terms of Section 171 of CGST Act, 2017 even after the benefit of reduced input credit were allowed to them.

7. In response, the Respondent had submitted his counter-submissions dated 22.07.2020 and 06.10.2020. The submissions are summed up as follows:-

i) That in the DGAP's report dated 23.03.2020, in point no. 14, it had been mentioned that he had not submitted sample invoices pre and post rate reduction. The Respondent iterated that he had submitted sample invoices during the first visit of the Government of Maharashtra state tax inspector at the outlet on 28.12.2018. That he had again submitted more sample

invoices at the state tax office in the due course of investigation by the Department of Goods and Services Tax, Govt. of Maharashtra.

ii) That the calculation of the profiteering amount per item was done by the DGAP using the difference between the gross values of products. But whatever tax had been collected pre and post GST rate reduction had been submitted to the Government. Thus, the tax amount should not be considered as a profiteered amount. Hence, using gross values for calculating the profiteered amount was incorrect, and the GST amount should have been reduced from the amount calculated.

iii) The DGAP while calculating the profiteering amount, had considered the sales from November 2017 to October 2019 for a period of 2 years. The period of investigation should not have exceeded a certain logical period.

8. Further, the DGAP vide the erstwhile NAA order dated 08.10.2020 was directed to file his clarifications under Rule 133(2A) of the CGST Rules, 2017 against the Respondent's submissions dated 06.10.2020. The point-wise clarifications dated 28.10.2020 filed by the DGAP were as follows: -

i) that the Respondent had not only collected excess base price from his customers, which they were not required to pay due to the reduction in the rate of tax, but the Respondent had also compelled customers to pay additional GST on the excess base price. By doing so, the Respondent had defeated the objective of both the Central and the State Governments, which aimed to provide the benefit of rate reduction to the general public. The Respondent was legally not required to collect the excess GST and, therefore, he had not only violated provisions of the CGST Act. 2017, but had

also acted in contravention of the provisions of Section 171 (1) of the Act supra, as he had denied the benefit of tax reduction to his customers by charging excess GST. Had he not charged the excess GST, the customers would have paid less price while purchasing goods from the Respondent and hence,thegross amount had rightly been included in the profiteering amount. The Profiteering amount could also not be paid from the GST deposited in the account of the Central and state Governments by the Respondent, as the amount was required to be deposited in the CWFs as per the provisions of Rule 133 (3) (a) of the CGST Rules 2017. Depositing profiteered amount in the account of the Government as tax did not mean escaping from passing on the benefit of his recipient customers.

ii) That the contention of the Respondent made in para 2 of his reply dated 06.10.2020 was not correct and it was submitted that Section 171 (2) of the CGST Act, 2017 states that "The Central Government may, on recommendations of the Council, by notification, constitute an Authority. or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him". Therefore, the above Section has already given powers to this Authority to investigate all the supplies made by a registered person. This Section empowers this Authority to examine if the benefit of the ITC and reduced tax rates had been

passed on by the Respondent or not. Since the Section did not mention about any particular recipient, it implied that all the supplies made by the Respondent to all his recipients needed to be examined from the perspective of passing on the benefit to each buyer. Therefore, all the supplies were required to be investigated because there was a single GST return for all the supplies made by a particular registered person, and there was also a single credit entry in the ITC ledger of the registered person. It was not possible to earmark a portion of the total ITC to a particular product/SKU being supplied by a registered person, which could be done only after all the supplies had been investigated. That Rule 133 (5) of the CGST Rules, 2017, further clarified the scope of expanded investigation in order to remove any doubt. The above Rule was just a reiteration of the provisions of Section 171(2), which was in the statute since the inception of the CGST Act. 2017.

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

9. The erstwhile NAA, after considering the various submissions made by the Respondent & the DGAP report, vide its Interim Order No. 32/2020 dated 27.11.2020, referred the matter back to the DGAP to reinvestigate the matter as per provisions of Rule 133 (4) of the CGST Rules, 2017. We consider it apposite to quote the order of the NAA, it reads as follows:

(i) Para-25. (a) "The Respondent (Noticee) has contended that the ratio of ITC to the turnover during the pre-rate reduction period has been calculated by the DGAP considering the period from July, 2017 to October, 2017. As per CBIC

press release No. 62/2018 dated 18.10.2018, the last date to avail ITC in respect of invoices or debits notes relating to such invoices pertaining to the period from July, 2017 to March, 2018 was extended up to 31st December, 2018. Therefore, the credit availed during the period July, 2017 to October, 2017, considered for determination of ITC ratio was not proper."

(ii) (b) "The Director General of Anti-profiteering ***(DGAP)*** *has also reported that press release no. 62/2018 has in no way restricted the Noticee to place the details of the invoices or the debit notes for the period from July, 2017 to October, 2017 before him."*

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

10. Accordingly, the DGAP had carried out necessary re-investigation and on conclusion of the same, a report dated 22.01.2021 (received in the DGAP on

28.01.2021) was sent to the Authority under Rule 133 (4) of the CGST Rules, 2017 which inter alia stated: -

I. That after receiving reference from the Authority, the case was re-investigated as directed vide Interim Order No. 32/2020 dated 27.11.2020 on the counts mentioned in Para 25& 26 of the Interim Order.

II. For the contention raised by the Respondent regarding the credit availed during the period July, 2017 to October, 2017, considered for determination of ITC ratio was not proper it is submitted that pursuant to the submission of Investigation Report dated 23.03.2020, the Respondent was given the opportunity by the NAA to place their view on the DGAP Report. They claimed that they were unable to take credit against some invoices/debit notes that were allowed in terms of above mentioned press release of CBIC.

III. On verification, it was found that GSTR-3B & GSTR-1 Returns up to the period October, 2019 were already submitted with DGAP. All the Returns were once again scrutinized & it was found that the Respondent had not reflected any invoice/debit note claiming the ITC benefit for the period July, 2017 to October, 2017 in any of the Statutory Returns filed up to October, 2019.Moreover, vide notification No-46/2017 dated 14.11.2017 rate of GST was reduced from 18% to 5% without any benefit of ITC. The Respondent had opted for this notification, which is reflected in their statutory Returns. Hence, the Respondent was ineligible to avail ITC on invoices issued on or after 15.11.2017.

IV. Beside it, the Respondent was given an opportunity to clarify his stand. The Respondent vide his reply dated 10.01.2021 submitted that there were no further invoices or debit notes pertaining to the period July, 2017 to October, 2017. Hence, there was change in the ratio of Input Tax Credit to taxable turnover, which was reported vide DGAP's Report dated 23.03.2020.

V. For the contention raised by the Respondent regarding, press release no. 62/2018 has in no way restricted the Respondent to place the details of the invoices or the debit notes for the period from July 2017 to October 2017 before him. The DGAP replied that the Respondent had not submitted any invoice/debit note before, the DGAP despite being asked to do so.

11. Hence, the DGAP reported that there is no change in the amount of profiteering and is the same as was reported in DGAP's investigation report dated 23.03.2020. The final profiteering remains as Rs.5,47,005/- only.

12. The Above report was carefully considered by NAA, and a copy of the investigation report dated 22.01.2021 was provided to the Respondent vide Notice dated 04.02.2021 as per the Minutes of the meeting of the erstwhile Authority held on 29.01.2021 to file his consolidated written submissions in respect of the above report of the DGAP. The Respondent vide letter dated 02.03.2021 filed his written submissions.

13. A copy of the above submissions dated 02.03.2021 filed by the Respondent was supplied to the DGAP for the supplementary Report under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 29.03.2022 on the Respondent's submissions and, inter alia, clarified that all the

contentions raised by the Respondent in his submissions were already considered and no comments to offer.

14. Further, the Respondent was directed by the erstwhile Authority to appear before it on 06.07.2022 at 04:00 PM. In reply, the Respondent vide e-mail dated 02.07.2022 had submitted that he did not have additional information to submit.

15. W.e.f 01.10.2024, the Central Government, on recommendations of the GST council, has empowered the Principal Bench of the GST Appellate Tribunal (GSTAT,PB) constituted under subsection (3) of section 109 of the CGST Act, 2017, to examine anti-profiteering cases in terms of **Notification No. 18/2024-Central Tax dated 30.09.2024.** Further, the Principal Bench, GSTAT (Anti-profiteering), Methodology and Procedure Rules, 2025 has been notified **w.e.f 12.06.2025.** Therefore, in this case notices were issued, on 16.06.2025, to the Respondent to appear either in person or through Authorised Representatives for hearing of the case. However, no one appeared on behalf of the Respondent.

16. Further, in compliance ofthe principles of natural justice, one more opportunity, dated 22.07.2025,was given to the Respondent to appear before the GSTAT; however, no one appeared on behalf of the Respondent. Sh. Suneel Kumar, Additional Assistant Director, Authorized Representative of DGAP, assisted by Ms. Geetanjali Ahuja were appeared on behalf of the DGAP and placed the case of the DGAP.

17. Taking the second question, as formulated by us in the paragraph 1, first we noticed that Erstwhile NAA in its Interim order 32/2020 dated 27.11.2020 took note of the submissions made by the Respondent that the ratio of ITC to the turnover during pre-rate reduction period has been calculated by the DGAP, considering the period July 2017 to October 2017. It has also taken into consideration that the CBIC press release no. 62/2018 dated 18.10.20218, which

provided that the last day to avail ITC in respect of invoices or debit notes relating to such invoices pertaining to the period July 2017 to March 2018 was extended upto 31.12.2018. Infact it is extension of the last date of submission of application of availing the ITC for the aforesaid period. It was, therefore, contended by the Respondent before the Erstwhile NAA that the credit availed during the period July 2017 to October 2017 consider the determination of ITC ratio was not proper.

18. Before the erstwhile NAA the DGAP has also reported that the press release no. 62/2018 has in no way restricted the Respondent to place the details of the invoices or the debit notes for the period from July, 2017 to October 2017 before them.

19. On the aforesaid discussion, the erstwhile NAA observed that as the CBIC Press Release no. 62/2018 dated 18.10.2028, the last date to avail ITC in respect of invoices or debit notes relating to such invoices pertaining to the period from July 2017 to March 2018 was extended up to 31.12.2018. However, erstwhile NAA further observed that the Respondent has not submitted the details of the same to the DGAP during the investigation. Therefore, erstwhile NAA, in the interest of the natural justice and keeping in view the COVID-19 pandemic held that the Respondent could have been prevented from making his submissions in a timely manner and, therefore, it was of the view that the matter needs to be reinvestigated by the DGAP under Rule 133(4) of the CGST Rules, 2017. Further, Respondent was directed to fully cooperate with the DGAP in the process of reinvestigation which includes submissions of the requisite invoices/debit notes pertaining to his supplies during the period July 2017 to October 2017, the ITC of which might have been claimed later till 31.12.2028.

20. Upon reinvestigation the DGAP called for documents from the respondent but it is submitted by the Departmental Representative of the DGAP that in spite of issuing notices time and again the Respondent failed to provide any invoices/debit notes pertaining to his supply during July 2017 to October 2017 claiming ITC on or before 31.12.2018. Thus the DGAP completed its reinvestigation and earlier report was reiterated. In this report, DGAP stated that the Respondent (Franchisee of M/s Subway Systems India Pvt. Ltd.) has incurred profiteering of Rs. 5,47,005/-.

21. Upon submissions of the report, erstwhile NAA issued notice to the Respondent on 04.02.2025, as per the Minutes of Meeting of the erstwhile NAA, held on 29.01.2021, to file his consolidated written submissions. The Respondent vide letter dated 02.03.2021 filed his written submissions. Copy of the above submissions dated 02.03.2021 was supplied to the DGAP for supplementary report under Rule 133(2A) of CGST Rules, 2017. The DGAP filed his clarification,*inter-alia,* clarified that all the contentions raised by the Respondent were already considered. The Respondent was also directed by erstwhile NAA to appear before it at 06.07.2022 at 04:00 PM. However, Respondent failed to appear before the NAA and did not submit any written submissions. After formation of this Tribunal,jurisdiction of the erstwhile NAA was conferred on the Principal Bench of this Tribunal again notice was issued to the Respondent for hearing on 01.07.2025. However, the Respondent this time also did not appear before this Tribunal and did not even submit his written submissions. The matter was again adjourned to 22.07.2025 to give a further opportunity to the Respondent for submitting his written submissions / argument, if any, before this Tribunal. Respondent did not appear on 22.07.2025 despite sufficient notice.

22. Therefore, this Tribunal took the matter ex-parte. Even on that days the notice was sent along with the copy of the order passed by this tribunal to the respondent. Today also the Respondent did not appear for the Hearing.

From the above, it is clear that even though erstwhile NAA took into consideration the submissions made by the Respondent that the ITC that have been claimed for the July 2017 to October 2017 on or before 31.12.2018 were factually not correct. The Respondent has failed to produce any document like the invoices or debit notes for the period of July 2017 to October 2017 either during the reinvestigation or during the pendency of cases before the erstwhile NAA or before this Tribunal. As this contention raised by the Respondent in course of 1st round of litigation that is before the passing of Interim order no. 32/2020 does not appear to be tenable. Therefore, this Tribunal refuses to accept such contention.

23. The next issue that is to be decided has been formulated by us as question no-I in paragraph no. 1 of this order.

24. Hon'ble High Court of Delhi, in the case of Reckitt Benckiser Pvt. Ltd. Vs. Union of India and others, 2024 SSC Online Del 588, has considered the constitutional validity of Section 171 of the CGST Act and upheld its validity.The question of profiteering and its prevention arising out of reduction of tax or passing of the Input Tax Credit also arose. The Hon'ble High Court of Delhi in paragraph 117 of the Judgement held that the contention of the petitioners that the fundamental presumption under section 171 that every tax reduction must result in 'price reduction' is not correct. It was also contended by the Respondent there-in who are to be Real Estate Developers,(and it was a question of the passing of the Input tax credit of Residential buildings to the allottees) that the use of expression "shall" in Section 171 of the CGST Act, 2017 means that the

supplier is required to pass on the benefit of the reduced tax rate and the benefit of Input tax credit , and that such passing on is to be carried out only by way of commensurate reduction of price of the goods or services. Accordingly, costing and market-related factors are irrelevant for NAA, as it is only required to examine whether or not there is any reduction in tax rate or benefit of accruing input tax credits and if so whether the same has been passed on by way of commensurate reduction of prices. The Hon'ble High Court observed that NAA is not concerned with the price determined by a supplier, for the supply of particular goods or services, exclusive of the GST or Input Tax Credit component. The supplier is at the liberty to set his base prices and vary them in accordance laws. Consequently, NAA is mandated only to ensure that the benefit of reduced rates of taxes and Input Tax Credit is passed on. NAA cannot force the petitioners to sell their goods or services at reduced prices.

25. At para 118 of that Judgment the Delhi High Court observed that the manufacturer/ supplier despite reduction on the rate of tax or benefit of Input Tax Credits can raise the prices based on commercial factors, as long as the same is not a pretence. During the Hearing, the learned counsel appearing for the Union of India as well the DGAP conceded that in some cases, commercial factors might necessitate an increase in price despite reduction in rate of tax or increase in availability of benefit of Input Tax Credits.

26. In Paragraph 119, the High Court of Delhi express that in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for

offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under Section 171 of the Act.

27. Thus, it is clear as per the provision 171 if there is a reduction in the rate of tax as it is the case here it most be passed on end user or consumer by commensurate reduction in price. However, in cases where there has been any increase in the base price of the product or any other market forces have pushed up the price of the base product then that has to be considered. There is a presumption, though it is a rebuttable one, that once there is a reduction in rate of GST then it must passed on to the consumers but such presumption can be rebutted by cogent, clear and un-equivocal evidences or materials. In this case, the Respondent has not produced any documents or any evidence to rebut such a presumption, either before the investigating agency or before this Tribunal or the Erstwhile NAA. The Respondent did not produce any document to show that the price of the base price of the product had increased after 14.11.2017.So there is no rebuttal of the presumption that arises in favour of the DGAP's Report.

28. It may be noted here that there is no dispute that till 14.11.20217 the rate of GST for Restaurant Services was 18% as per notification dated 14.11.2017, it was reduced to 5% w.e.f 15.11.2017. It is also not disputed by the Respondent on 15.11.2017 and thereafter he continued the price of the product as it was prevailing prior to 15.11.2017 and as noted earlier, there is not an iota of evidence/materials that products suffered a increment prices because of any valid reason, which compel him to raise the price of the goods and thereby did not pass 7.56 % actual reduction of taxes to the Consumers.

29. It is also contended by the Authorized Representative of the DGAP that in any case price of the product will not increase overnight. Such a contention, in the absolute absence of any contrary material, also appears to be correct to this Tribunal.

30. An important but mixed question of non-fact also arose, which is evident from thewritten submissions of the Respondent placed before the erstwhile NAA in the initial stage. It was submitted by the Respondent that the original Applicant made a complaintonly against one product, and, therefore, the DGAP committed an error on record by directing itsinvestigation to all the products of the Respondent. The DGAP, however, submitted that this scope of section 171(2) of the CGST Act, read with their Rule 133(5) of the CGST Rule, has conferred wide powers of investigation. Moreover, there is only one single GST return for all the supplies made by the Respondent and only one single credit entry in the ITC register of the registered person. Hence, it was not possible to earmark in portion of the total ITC to aparticular product or Stock Keeping Unit (SKU) being supplied by the registered person.

31. (Sub-Section(2)) of Section 171 of the CGST Act, is relevant for us, It reads as follows:-

> 171(1) [****]
>
> (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
>
> Rule 129(2) of CGST Rules, which is relevant for us, read as follows:-

**129(2) The Director General of Anti-profiteering shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services orthe benefitof inputtax credit has been passed on to the recipient by way of commensurate reduction in prices.

32. Thus, it is clear that the Central Government on the recommendations of the Council by notification has constituted the Authority and empowered it to examine whether the input tax credit availed by any registered person or reduction in tax rate has actually resulted in a commensurate reduction in price of the goods and services or both supplied by him. The provisions, therefore, has conferred power to the DGAP to investigate all suppliers made by the registered person. A plain reading of these provisions leaves no doubt in the minds of this Tribunal that the provisions did not confine the power of the investigating agency, i.e. the DGAP or the adjudicating Authority, i.e. the erstwhile NAA and later on the Principal Bench, GSTAT, only to a particular product for which an objection or complaint has been raised. If a complaint has been raised by a person regarding a particular product which is a part of an array of products or services or both rendered by the registered person then it is appropriate on the part of the investigating agency i.e. the DGAP or the adjudicating Authority i.e. the erstwhile NAA to examine whether the reduction in the rates of the GST has been passed on by the registered person in all such products sell by him to the end consumers or the recipients. Moreover, it is also seen that in this case the respondent does not specify that for different product he has submitted different GST return. He has submitted single GST return for a particular period, which includes all his products. Moreover, while availing the credit entry in ITC register, there is only one entry. So, it was proper on the part of the DGAP to examine whether the

reduction of the GST rates has been passed on to the consumer for all the products dealt by the registered person i.e. the Respondent and this Tribunal is of the view that such an objection holds no water and cannot accepted as a tenable contention.

33. Section 171 of the CGST Act, though contains penal consequences, it is, in essence a benevolent provision. The Indian Parliament, in its wisdom, though it proper to make a provision to ensure that benefit of reduction of GST rates oravailment of input tax credit is passed on to the consumers, who actually bear the burden of the tax. It also provided a mechanism to enforce the passing of the benefit. Therefore, we are of this view that a restrictive and parochial interpretation is not called for, rather an open, broad and pragmatic approach is needed.

34. In that view of the matter, this tribunal is of the view that the submissions made by the Respondent that there was increase in the price does not appears to be sustainable.

35. Thus the report submitted by the DGAP that the Respondent has been profiteered a some of Rs. 5,47,005/- by not passing on a commensurate reduction of the prices of food products is correct. Hence, it is hereby directed that Respondent shall return a sum of Rs. 5,45,005/- along with the interest of 18% from the date of collection of the higher amount i.e. 15.11.2017 to be deposited in consumer welfare fund created by Centre and State of Maharashtra under section 57 of the CGST Act within a period of 3 months failing which, it shall be recovered by the Concerned Jurisdictional CGST / SGST Commissioner.

36. It is evident from the above narration of facts that Respondent No. 1 has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed

an violation of 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 31.03.2019, hence the penalty prescribed under the above Section cannot be imposed on Respondent No. 1, retrospectively. Accordingly, Show Cause Notice directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him is not required to be issued.

37. A report in compliance of this order shall be submitted to this Tribunal by the concerned Commissioner within a period of 4 months from the date of receipt of this order.

38. A copy each of this order be supplied to the Respondent and to the concerned Commissioners CGST /SGST for necessary action. File be consigned after completion.

Date-5th August 2025

(Dr. Sanjaya Kumar Mishra)
President, Principal Bench,
GST Appellate Tribunal, New Delhi.

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