

GSTAT
Single Bench Court No. 1

NAPA/19/PB/2025

DGAP

.....Appellant

Versus

RAJ & CO.

.....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. : ZA070825000035H

Date of order : 18/08/2025

1.	GSTIN/Temporary ID/UIN - 07AAGPM9486L1ZW	
2.	Appeal Case Reference no. - NAPA/19/PB/2025	Date - 31/03/2023
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - Raj & Co. , rajandcompany16@gmail.com , 8800308078	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 18/08/2025 29/07/2025 08/07/2025 01/07/2025	

7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - The Respondent is directed to deposit a sum of Rs. 3,31,879/- along with interest of 18% P.A from the date of collection of the higher amount 01.04.2018 to 31.12.2018 in CWF created by Centre and State u/s of CGST Act within a period of 3 months.
Summary of Order	
9.	Type of order : Deposit in Consumer Welfare Fund/s

Place :DELHI PB

Date : 18.08.2025

IN THE GOODS AND SERVICE TAX APPELLATE AUTHORITY (GSTAT),
PRINCIPAL BENCH, NEW DELHI,
ANTI-PROFITEERING DIVISION.
NAPA/19/PB/2025
FINAL ORDER

Date of Institution	:	29.03.2023
Date of conclusion of Hearing	:	29.07.2025
Date of Order	:	18.08.2025

1. **In the matter of:**

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

Applicant

Versus

M/s. Raj & Company, 16, DDA Market, NeetiBagh, New Delhi - 110049

Respondent

AND IN THE MATTER OF Proceedings under Section 171 of the Central Goods and Service Tax Act, 2017(Act 12 of 2017)

Coram:-

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

Present:-

1. Sh. Mukesh Malik, Proprietor, for the Respondent.
2. Sh. S.C Vaidyanathan and Sh. ShivamBatra, Advocate, for L'oreal India Pvt. Ltd.
3. Sh. Rahul RaoGautam, Additional Assistant Director, Sh. Diwakar Sharma, Inspector, for the Director General of Anti-Profiteering

Order

1. In this proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, hereinafter referred as CGST Act, for brevity, the following question arise for determination: -

"Whether the Respondent, i.e., M/s Raj & Company, a distributor of M/s. L'oreal India Pvt. Ltd profiteered an amount of ₹3,31,879/- only, by not passing the benefit of

reduction in the Rate of GST for the product sale, from 28% to 18% with effect from 15.11.2017,for the period 01.04.2018 TO 31.12.2018?”

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

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<u>S. No.</u>	<u>Date</u>	<u>Event</u>	<u>Remarks</u>
	01.07.2017	GST Act, come into force	Rate of GST for the Cosmetics Products was 28%
	14.11.2017 Effective date 15.11.2017	Rate of GST on Cosmetics Products was reduced from 28% to 18%	On the Recommendation of GST Council, Rate of GST on Cosmetics Products was reduced from 28% to 18% vide Notification No. 41/2017
	28.11.2017	National Anti-Profitteering was formed	Under section 171 of the 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.
	12.03.2028	Forwarding Complaint with respect to Anti-profitteering to the Standing Committee	By Secretary, National Anti-Profitteering Authority
	09.05.2019	Reference received from the Standing	

		Committee on Anti-profiteering to DGAP	
	08.08.2018 received on 13.08.2018	DGAP's first Report received in National Anti-Profiteering Authority	Under Rule 129(6) of CGST Rules, 2017
	16.08.2018	Notice Issued to Respondent on Report dated 08.08.2018 by Authority (NAA)	Under Rule 129(3) of CGST Rules, 2017
	18.09.2018, 21.09.2018 & 25.09.2018	Written submissions filed by the Respondent	
	01.10.2018	Supplementary Report was received on submission made by the Respondent from the DGAP	Under Rule 133(2A) of CGST Rules, 2017
	27.12.2018	Order No. 25/2018 passed by the erstwhile NAA	The Respondent was directed to deposit the profiteered amount ₹ 3,43,109/- along with interest @18% and further, DGAP was directed to further investigate the quantum of profiteering for further period.
	25.09.2020	Profiteering accepted by the Respondent and deposited the	

		profiteered amount ₹3,43,109/- vide pay Order no. 004057	
	25.01.2021	DGAP's Report in response to the NAA's Order No. 25/2018 dated. 27.12.2018.	Under Rule 129(1) of CGST Rules, 2017.
	04.02.2021	Notice issued by the erstwhile NAA	As decided by the Authority in Minutes of Meeting dated 29.01.2021, under Rule 129(3)
	14.06.2022,	Respondent's Submissions received	No new plea was raised. Respondent reiterated the earlier stand.
	28.09.2022	Interim Order 20/2022 was passed by the erstwhile NAA	Under Rule 133(4) of CGST Rules, 2017
	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) The Central Government empowered CCI to examine Anti-profiteering Cases.
	31.03.2024	DGAP's Report received in response to the NAA's Interim Order No. 20/2022 dt.28.09.2022 .	
	04.08.2023	Notice was issued by	As decided by the Authority in

		CCI	Minutes of Meeting 27.07.2023 under Rule 129(3)
	24.08.2023	Respondent's Submissions received	
	26.09.2023	clarifications was received on submission made by the Respondent from the DGAP	Under Rule 133(2) of CGST Rules, 2017
	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 30.09.2024	On the recommendation of the 53 rd GST Council Meeting, the mandate for handling of Anti- profiteering cases was provided to Pr. Bench GSTAT, with effect from 01.10.2024.
	12.06.2025	Methodology and Procedure Rules, 2025, were notified	
	01.07.2025,	Hearing Notice was issued to the Respondent by the Pr. Bench GSTAT to appear	Sh. Mukesh Malik appeared on behalf of the Respondent.
	08.07.2025	Hearing Notices were issued to the Respondent and to the L'Oreal India Pvt. Ltd.	Ms. Mehak Mehra, Advocate, appears on behalf of L'Oreal India Pvt. Ltd
	29.07.2025	Hearing Concluded	

		and matter reserved for judgment/order	
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3. It may be noted here that there is no dispute with regard to the fact that the rate of GST on Beauty and make up preparation and preparation for the care of the skin (other than medicaments), including sunscreen or sun tan preparations, manicure or pedicure preparations (other than kajal, Kumkum, Bindi, Sindur, Alta) and preparations for use on the hair etc. was reduced from 28% to 18%, vide Notification No. 41/2017-Central Tax (Rate) dated with effect from 15.11.2017; 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 dated 27.02.2018, where a complaint was filed with the Secretary National Anti-Profiteering Authority (**hereinafter referred to as NAA**) alleging that certain major manufactures of Fast Moving Consumer Goods (**hereinafter referred to as FMCG**) including Garnier Laboratories Ltd, had not passed on the benefit of reduction in the rate of tax from 28% to 18% w.e.f 15.11.2017, was forwarded to DGAP for necessary action and the DGAP had forwarded it to the Standing Committee to *prima facie* verify the veracity of the complaint. The Standing Committee vide the Minutes of Meeting dated 13.04.2018 requested the DGAP to initiate investigation under Rule 129(1) of the Central Government Goods and Services Tax Rules, 2017, (**hereinafter referred to as the CGST Rules**) and vide his report dated 08.08.2018, stating that the Respondent had not passed on the benefit of the tax reduction from 28% to 18%

granted vide Notification NO. 41/2017-Central Tax (Rate) dated 14.11.2017 to the customers by way of commensurate reduction in the price of the product sold by him as per the provision of Section 171 (1) of CGST Act, instead he had increased the base price to keep the MRP of his product Garnier Nat Shade 3 to maintain the same price which he was charging before the rate of tax was reduced on 15.11.2017.

- b) After hearing both the parties erstwhile NAA vide his Order No. 25/2018 dated 27.12.2018 had determined the profiteered amount as ₹3,43,109/- as per the provisions of Section 171(2) of the CGST act read with Rule 133(1) of CGST Rules and it was also held that the Respondent had not passed on the benefit of rate reduction to the customers between the period 15.11.2017 to 31.03.2018 and directed the DGAP to further investigate the quantum of profiteering for the subsequent period to 31.03.2018.
- c) The Respondent accepted the Order of erstwhile NAA vide his letter dated 25.09.2020 and deposited the said amount ₹ 3,43,109/- in favour of PAO, CHQ,CBEC New Delhi vide challanbearing no. 004057.
- d) The period covered by the current investigation was from 01.04.2018 to 31.12.2018.
- e) Further, the DGAP has reported that a total of 396 products (8 Harmonised System of Nomenclature,hereinafterreferred to as HSN) were supplied by the Respondent during the relevant period, out of which 388 (6HSN) were impacted by rate reduction vide the notification 41/2017 dated 14.11.2017. 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 18% had been charged on the increased base price which established that though the tax amount was computed @ 28% before 15.11.2017 and @ 18% 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.

- f) Further, the DGAP has illustrated the calculation in respect of a specific item i.e. LP HEX 6 OIL Shampoo 360 ML. The average base price of this item was then compared with the actual selling price of the same item sold post-GST rate reduction i.e, on or after 01.04.2018, as given in Table “A”

Table “A”

Sl. No.	Descriptions	Factors	Pre Rate Reduction (From 01.11.2017 to 14.11.2017 onwards)	Pre Rate Reduction (From 15.11.2017 onwards)
1	Product Description	A	LP HEX 6 OIL SHAMPOO 360 ML	
2	Notification No	B	41/2017-Central Tax (Rate) dated 14.11.2017	
3	Total quantity of item sold	C	35	
4	Total Taxable value	D	6260.85	
5	Average base price (Without GST)	E=D/C	178.88	
6	GST Rate	F	28%	18%

7	Average selling price (pre rate reduction with GST)	$G=E*1.28$	228.97	
8	Commensurate Selling price (post Rate reduction-with GST)	$G=E*1.18$	228.97	211.08
9	Invoice No.	I		LCBL039761807494
10	Invoice Date	J		24.12.2018
11	Total Billed quantity (above invoice)	K		4
12	Transaction Value in the invoice	L		946.43
13	Actual Selling price per unit (post rate reduction with GST)	$M=L/K$		236.61
14	Excess amount charged or profiteering	$N=M-H$	25.53	
15	Total profiteering	$O=N*K$	102.12	

- g) From the above table, it was emerged that the Respondent did not reduce the selling price of the "LP HEX 6 OIL SHAMPOO 360 ML", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 and hence profiteered an amount of Rs.102.12/- on the Invoice No. LCBL039761807494 dated 24.12.2018, 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. The profiteering of the remaining transactions had been carried out in the same manner. From the sales

details submitted by the Respondent, 201 products were sold in the period from 01.07.2017 to 14.11.2017. The total amount of profiteering with respect to these 201 products for the period 01.04.2018 to 31.12.2018, comes to Rs.3,31,879/-

- h) The erstwhile NAA carefully considered the Report furnished by the DGAP, the clarifications filed by the DGAP and the records of the case. There was no dispute with regard to the reduction of the rate of GST with respect to products mentioned above, supplied by the Respondent with effect from 15-11-2017. The Government by Notification No 41/2017-CT (Rate) dated 14-11-2017 has reduced rates on subject products. However, M/s Raj & Company was a distributor of M/s L'Oreal India Pvt. Ltd. and NAA vide Order No. 26/2022 dated 23.06.2022 had also confirmed profiteering to the tune of Rs. 186,39,57,058/- against L'oreal India Pvt. Ltd. for the period from 15.11.2017 to 31.12.2018.

5. In view of the above, erstwhile NAA vide its Interim Order No. 20/2022 dated 28.09.2022, 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 4. We have carefully considered the Report furnished by the DGAP, the clarifications filed by and the records of the case. There is no dispute with regard to the reduction of the tax in respect of subject products supplied by the Respondent with effect from 15-11-2017. The Government by Notification No 41/2017-CT (Rate) dated 14-11-2017 has reduced rates on subject products. In view of the above said facts and the records, the Authority has observed that the Respondent, M/s Raj & Company was a distributor of M/s L'oreal India Pvt. Ltd. The Authority finds that M/s*

L'oreal India Pvt. Ltd. was investigated by the DGAP for allegations of profiteering and not passed on the benefit of reduction of GST rate after the said Notification dated 14.11.2017 and the Authority has found them violating the provisions of Section 171 of the CGST Act, 2017 for the products sold by them for the period from 01.04.2018 to 31.12.2018 and this Authority vide Order No. 26/2022 dated 23.06.2022, has also confirmed profiteering to the tune of Rs. 186,39,57,058/- against M/s L'oreal India Pvt. Ltd. for the period from 15.11.2017 to 31.12.2018.

- (ii) *Para 5. In view of the above facts, this Authority is of the opinion that the amount of profiteering calculated against the Respondent might have been already calculated and confirmed against M/s L'oreal India Pvt. Ltd. as the period of investigation in the present case is already covered in the period of investigation in case of M/s L'oreal India Pvt. Ltd. and the products on which profiteering has been calculated in the present case, have been included in the case of M/s L'oreal India Pvt. Ltd.*
- (iii) *Para 6. Hence, considering the above facts on record and to avoid the duplication and doubling of confirming of profiteered amount, this Authority directs the DGAP to re-investigate/re-examine the matter and make sure whether the amount of profiteering calculated in the present case has already been considered in the case of M/s L'oreal India Pvt. Ltd."*

6. Accordingly, the DGAP had carried out a necessary re-investigation. Meanwhile vide Notification No. 23/2022-Central Tax, dated 23.11.2022 vide s.o.No. 5450 (E) Central Government empowered the Competition Commission of India (**hereinafter referred as the CCI**) to examine Anti-profiteering Cases. A report dated 29.03.2023 (received on 31.03.2023) was sent to the CCI under Rule 133 (4) of the CGST Rules, 2017, which inter alia stated: -

- I. In Para 5 of I.O. No. 20/2022 dated 28.09.2022, the NAA had opined that the amount of profiteering calculated against the Respondent might have been already calculated and confirmed in case of M/s L'Oreal India Pvt. Ltd. as the period of investigation in the present case was covered in the period of investigation in case of M/sL'Oreal IndiaPvt. Ltd. and the products on which profiteering had been calculated in the present case, had been included in the case of M/sL'Oreal IndiaPvt. Ltd. The period of investigation in respect of the Respondent was 01.04.2018 to 31.12.2018 and the period of investigation in respect of M/sL'Oreal IndiaPvt. Ltd. was 15.11.2017 to 31.12.2018. In this regard, the DGAP has observed that in the case of M/s. L'oreal India Pvt. Ltd. profiteered amount 6,95,433/- was apportioned to the Respondent for the period April, 2018 to December, 2018.
- II. Nevertheless, in the supply chain, M/s Raj & Co., the Respondent (GSTIN:07AAGPM9486L1ZW), who are separately registered under the GST Act, becomes an independent supplier of goods. On receipt of a complaint of profiteering through the Standing Committee, the case of the Respondent was independently investigated. In order to investigate the case of the Respondent, all data/information in respect of the Respondent were taken. For the pre-rate reduction period, the average base price of all the goods supplied by the Respondent was worked out. This average base price was then compared with the actual base sale price of the same goods during the post-rate reduction period. It was observed that the prices of the goods were not reduced commensurate with the reduction in the tax rate.
- III. It is pertinent to mention here that profiteering is worked out on the goods supplied by the supplier and not on the goods purchased by the supplier. It

is not known whether the goods supplied by the Respondent during the period of investigation were those which were purchased in the pre-rate reduction period or in the post-rate reduction period. Therefore, it is not possible to establish one-to-one correlation between the goods purchased by the Respondent from M/sL'OrealIndiaPvt. Ltd. and the goods supplied by the Respondent to their recipient to work out profiteering. In the initial Report dated 08.08.2018, the profiteering in respect of the Respondent was worked out on the same premise taking into account the average base price of the goods sold in the pre-rate reduction period and comparing the same with the actual base sale price of the same goods in the post-rate reduction period. The NAA vide Order No. 25/2018 dated 27.12.2018 had also upheld the same view.

- IV. As one-to-one correlation between the goods purchased and sold by the Respondent was not possible, no data/information in respect of M/sL'Oreal IndiaPvt. Ltd. was relied upon while working out profiteering in respect of the Respondent. During the course of investigation, it was found that the Respondent had increased the base price of the goods after the reduction in tax rate. Accordingly, profiteering on their part was independently worked out to Rs. 3,31,879/-. It is pertinent to mention here that the profited amount of M/sL'Oreal IndiaPvt. Ltd. ought to have been passed on to the Respondent was Rs. 6,95,433/-, whereas the Respondent were found to have profited themselves by Rs. 3,31,879/-. This difference in the amounts of profiteering is because profiteering of Respondent was worked out in respect of only those goods which were sold during the investigation period by the Respondent, whereas profiteering apportioned to the

Respondent in the investigation of M/sL'OrealIndiaPvt. Ltd. covered those goods which were purchased by the Respondent during the investigation period. Further, duplication of profiteering is not possible to work out on account of the following reasons: -

- (a) It is not known which goods were sold by the Respondent during the investigation period, pre-rate reduction purchase or post-rate reduction purchase.
- (b) M/s Loreal Pvt. Ltd. in their invoices mention specific and detailed description of the products, whereas the Respondent mention only a general description of the products supplied by them.
- (c) Accordingly, it is concluded that the investigation against the Respondent was correctly done under Section 171 of the CGST Act, 2017 and they are obliged to further pass on the said benefit.

In view of the above, it is not possible to work out duplication and doubling of the profiteered amount, if any, at the end of the Respondent.

- V. During this investigation, reliance has been placed on the Order No. 25/2018 dated 27.12.2018 issued by the NAA wherein vide para no. 17 the profiteering amount has been determined in respect of the Respondent (M/s Raj & Co.) for the period 15.11.2017 to 31.03.2018 as Rs. 3,43,109/- and the Respondent was directed to deposit anti-profiteering amount along with the interest @ 18%. The above Order was issued by the NAA in an identical case in respect of the Respondent, though for a prior period. As the NAA has confirmed the profiteered amount for the Respondent for the earlier

period (15.11.2017 to 31.03.2018). The present period covered now is in no way different from the earlier one.

7. 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 25.01.2021. The final profiteering remains as Rs.3,31,879/- only.
8. The Above report was carefully considered by Competition Commission of India, and a copy of the investigation report dated 29.03.2023 was provided to the Respondent vide Notice dated 04.08.2023 as per the Minutes of the meeting of the CCI held on 27.07.2023 to file his consolidated written submissions in respect of the above report of the DGAP.
9. The Respondent vide letter dated 24.08.2023 filed his written submissions as sum up under:-
 - i) That all sales were made through L'Oreal software called Suvidha with no scope of manipulation by the Respondent, therefore, L'Oreal is wholly responsible for anything that relates to the price of tax component of any product and that could be verified with all other L'Oreal distributors.
 - ii) When L'Oreal has already been penalised by the Hon'ble High Court of Delhi, then why is the Respondent being penalised for something that any other distributor is not at fault for.
10. A copy of the above submissions dated 24.08.2023 filed by the Respondent was supplied to the DGAP for the clarifications under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications dated 26.09.2023 on the Respondent's submissions and, inter alia, stated that:-

- i) The use of software by the Respondent is his personal choice, and it was not the deciding factor in the issuance of bills, since the Respondent is independent in doing the billing, and no one can force him to use a special software for billing. Further, if proprietary software is not allowing the change in rate while selling the goods to customer, then the Respondent has always other options available to him e.g, manual bill generation, e-billing, use of other software etc. So the contention of the Respondent that the software of the M/sL'Oreal IndiaPvt. Ltd. "Suvidha" has fixed rates which could not be changed or the software did not allow to do the same is not tenable as such reasons do not allow him to let go of his obligation of passing on of benefit of rate reduction towards customers.
- ii) The penalization of M/sL'Oreal IndiaPvt. Ltd. is being done on the basis of profiteering made by him from his customers, as the benefit was needed to be passed on by him to his customers, which he hasn't done. Further, Section 171(1) of the CGST Act, 2017 itself states that "*Any reduction in rate of tax on any supply of Goods and Services or the benefit of Input Tax Credit shall be passed on to the recipient by way of commensurate reduction in prices*". Here recipient is the one which should be benefitted irrespective of whether the supplier is being benefitted or not by his supplier, So the contention of the Respondent that he as a distributor, has no role to play with GST and he couldn't pass on GST benefit as he hadn't received nor he had a clue about is completely wrong, since he was free to raise a complaint against his supplier who hadn't passed on the benefit of tax rate reduction to his customers. He is not relieved from the duty as a supplier of goods to pass on the benefit further.

11. Further, the Respondent was directed by the CCI to file a rejoinder if any, against the DGAP clarifications dated 26.09.2023. However, no rejoinder was filed by the Respondent.
12. 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**.
13. Therefore, in this case notice was issued, on 16.06.2025, to the Respondent to appear either in person or through Authorised Representatives for the hearing of the case on 01.07.2025. The Respondent reiterated its earlier submissions that were taken on record. Further, the Tribunal opined that in the interest of expeditious disposal of the matter, the Company M/s. L'Oreal India Pvt. Ltd. should also be heard in this case. Hence, M/s. L'Oréal India Pvt. Ltd was directed to depute a representative to be present before the Tribunal.
14. Hearing in this case was held on 08.07.2025, however, the Respondent did not appear in the hearing and Ms. Mehak Mehta, advocate, appeared on behalf of the L'Oreal India Pvt. Ltd. Further, the final hearing in the case was held on 29.07.2025, Sh. Mukesh Malik, Respondent was appeared in person for the hearing reiterated his earlier submission that all sales were made through L'Oreal software called "Suvidha" with no scope of manipulation by the Respondent, therefore, L'Oreal is wholly responsible for anything that relates to the price of tax component of any product and that could be verified with all other L'Oreal

distributors and when L'Oreal has already been penalised by the Hon'ble High Court of Delhi, then why the Respondent is being penalised for something that any other distributor is not at fault for.

15. In reply, the L'Oreal had submitted its written submissions during the hearing, stating that L'Oreal and Raj & Co. was separate legal entities and the responsibility of transferring the benefit of rate reduction to its customers was on Raj & Co. itself. Accordingly, Raj & Co. was entitled to give discounts and sell at lower prices. Further, there was no means to find out the duplication of the profiteered amount in the case Raj & Co., if any, and also could not be verified at the end of L'Oreal. Further, the claimed made by Raj & Co. that L'Oreal through its software-“Suvidha” controls the pricing of products sold by the distributors was completely false and baseless. In this regard, it was submitted that the distributors were free to sell the finished goods at a price less than the recommended price to their customers. The same was substantiated from the Distribution Agreement, relevant extracts of which are reproduced as follows:

"7.1 Products delivered by Company shall be invoiced in accordance with the price list containing the 'maximum retail price' for each product (to be applied on each Product as per prevailing Indian aw) communicated to Distributor and the commercial terms as mentioned in Schedule-1. The Distributor shall be entitled to sell the Products at a price determined by it, subject to the maximum retail price and as per commercial terms specified in Schedule 1. The prices of the Products are exclusive from VAT or any other applicable tax. The Company shall be entitled to vary the price list of Products at any time without prior notice when deemed necessary to take into account the evolution of the economic circumstances and

such change shall be intimated to the Distributor as and when such new price list is implemented.

7.6 Distributor may, from time to time, at its sole discretion, offer discounts to its clientele /customers, and sell the Products at a price lower than the maximum resale price set by the Company. Such discounts shall not be recoverable by the Distributor from the Company. Such discounts shall not be recoverable by the Distributor from the Company. In addition to such discounts, the Company may, from time to time, run sales promotion schemes offering trade discounts/quantity-based schemes/price rebates in cash or kind in order to maximise the off-take and sales of Products by Distributor and boost the overall sales in the markets. It is hereby agreed that whenever such a scheme of trade discount, quantity based scheme or price rebate is run by Company, it shall be obligatory on the part of Distributor to satisfy and fulfil all the terms and conditions of the respective scheme, particularly in relation to the condition requiring Distributor to pass over the benefit of the trade discount/price rebates schemes to the retailer or ultimate consumers for whom the benefit is really intended...."(underlined to supply emphasis)

16. The Hon'ble High Court of Delhi, in the case of Reckitt Benckiser India Pvt. Ltd Vs. Union of India and other, 2024 SSC Online Del 588, has considered the constitutional validity of 171 of the CGST Act also considered the scope of such provision. It has held that the argument advance by the petitioners therein that the fundamental presumption under Section 171 that every tax rate reduction must reserved "price reduction" is not correct.

The Delhi High Court further had that the use of expression "shall" in Section 171 of the Act, 2017 means that the supplier is required to pass on the benefit of the reduced tax rate and 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 the way of commensurate reduction of prices. The NAA is not concerned with the price determined by the supplier, for the supply of particular goods or services, exclusive of the GST or Input Tax Credit component. The Supplier is at liberty to set his base prices and vary them in accordance with the relevant commercial and economic factors or any applicable 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.

The Delhi High Court is further of the view that the manufacturer/supplier despite reduction on 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 pretense. The Court took note of the concession made by the Counsel appearing for the Revenue 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 Credit.

The Court was further in agreement with the 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 there 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, 2017.

17. The Indian Parliament, in its wisdom, thought it proper to include Section 171 of the CGST Act, to incorporate provisions for creating a framework that ensures that the benefits viz., reduction in rates of GST or Input Tax Credit should be passed on to the ultimate consumer. Infact the provision contents a penal consequence for violation of it. In the aforesaid judgement of M/s Reckitt Benkiser India Pvt. Ltd.,(Supra), the Delhi High Court is of the view, that in cases where the Respondent claims that a there is certain reasons for offsetting the reduction it must establish on cogent basis and it should not be used as device merely to circumvent a statutory obligation of reduction of prices in a commensurate manner as contemplated under Section 171 Act, 2017.

18. It is set principal of law that inherent presumption, as arising in this case is rebuttable presumption but such presumption can rebutted only by cogent, unambiguous and clear materials or evidences. In this case we find no such materials on record or submitted by the Respondent. Infact in the earlier case the Erstwhile NAA as per the order dated 27.12.2018 in the matter DGAP Vs. Raj & Co., i.e., present Respondent have already held that for the period of 15.11.2017 to 13.03.2028 the Respondent has violated section 171 of the CGST Act and,

therefore, direction was given to the Respondent shall deposit a sum of Rs. 3,43,109/- along with the interest to be calculated at the rate of 18 % from the date when aforesaid amount was collect by him from his customers till the amount his deposited.

19. A careful perusal of the aforesaid order, which is also part of this record, shows that the Erstwhile NAA has already rejected the contention of the present Respondent that he has no control on the fixing of base prices as well as the MRPs as both of them were fixed by the manufacturer M/s L'Oreal India Pvt. Ltd., through its software. Neither such argument was accepted by the Erstwhile NAA nor did the Respondent challenge the same in any higher forum.

20. In other words, once he has accepted the findings recorded by the Erstwhile NAA, and stated to have deposited this amount, we see no cogent reason to take different view which is already been taken by the Erstwhile NAA. On top of it, that the Learned counsel appearing for Manufacturer has taken us to the paragraphs to the 7.1 and 7.6 to the distribution agreement which is quoted and underline in paragraph 15 of this order. It which shows that the distributor shall be entitled to sell the products as price determined by, subject to the maximum retail price and as per commercial terms specified in the agreement. It is also noticed that distributor from time to time, at his sole discretion offers discount to its customers and sell the products at a price lowered than the maximum retails price set by the company. Thus, it clears from the aforesaid provisions that the present Respondent has had ample discretion to offer discount or reduce the base/MRP of the products so he cannot put the blame on the manufacturer of the Goods. In that view of the matter we are of the opinion that since there is no dispute regarding the fact that there had been a reduction of the rate of the GST on Beauty and make up preparation etc.,

and that there was no commensurate reduction of price by the Present Respondent, a initial presumption rises in favour of the Investigating Agency and against the Respondent.

21. In that view of the matter as there is no contrary material, there is no reason to hold that the presumption is rebutted effectively. Thus it is held that the Respondent is guilty of not passing of the benefit of reduction of GST rates to ultimate consumers/users. Hence, it is directed that the sole proprietor shall deposit a sum of Rs. 3,31,879/- along with interest of 18 % p.a. from the date of collection of the higher amount i.e., from 01.04.2018 to 31.12.2018 in consumer welfare fund created by Centre and State under Section 57 of the CGST Act within a period of 3 months failing which it shall be recovered by the Jurisdictional CGST / SGST Commissioner from the Respondent.

22. 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.

Dr. Sanjaya Kumar Mishra

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