

GSTAT

Single Bench Court No. 1

NAPA/35/PB/2025

DGAP

.....Appellant

Versus

HOTEL BABYLON INN

.....Respondent

Counsel for Appellant

Counsel for Respondent

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

Counsel for Appellant

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. : ZA070925000003H

Date of order : 02/09/2025

1.	GSTIN/Temporary ID/UIN - 22AABCH4455L1ZM	
2.	Appeal Case Reference no. - NAPA/35/PB/2025	Date - 31/03/2021

3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Hotel Babylon Inn Pvt. Ltd , msrathore@hotelbabylon.com, 8518880882.	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 02/09/2025 12/08/2025 22/07/2025 01/07/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The Respondent is found to have profiteered by violating the Section 171 of the CGST Act. Hence it is directed to deposit the profiteered amount along with interest @ 18% per annum from the date of collection of higher amount i.e. 01.10.2019.	
Summary of Order		
9.	Type of order : Deposit in Consumer Welfare Fund/s	

Place :DELHI PB

Date : 02.09.2025

ORDER

**IN THE GOODS AND SERVICE TAX APPELLATE AUTHORITY (GSTAT),
PRINCIPAL BENCH, NEW DELHI,
ANTI-PROFITEERING DIVISION.**

NAPA/35/PB/2025

FINAL ORDER

Date of Institution	:	31.03.2021
Date of conclusion of Hearing	:	12.08.2025
Date of Order	:	02.09.2025

In the matter of:

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

Applicant

Versus

M/s Hotel Babylon Inn Pvt. Ltd., Jail Road, Raipur

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. M.N. Verma Consultant & Associate, for the Respondent.

2. Ms. Geetika Chib, Additional Assistant Director, Sh. Awanindra Kumar, 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: -

I. Whether the Respondent, i.e., M/s Hotel Babylon Inn Pvt. Ltd., a Hotel "Accommodation Service Provider" profited an amount of ₹31,28,631/- only, by not passing the benefit of reduction in the Rate of GST for the service provided, as per Notification No. 20/2019 (as tabulated below) dated 30.09.2019 with effect from 01.10.2019 for the period 01.10.2019 to 30.06.2020?

Table "A"

Room Tariff per Unit per day (Rs.)	Rate of GST	
	Upto 30.09.2019	From 01.10.2019
1000 and less	Nil	Nil
1001 to Rs. 2500	12%	12%
2501 to Rs. 7500	18%	
7501 and more	28%	18%

2. The CGST Act came into force on 01.07.2017 and as per the Provisions of the Act and Rules framed there under, the GST Rates up to 13.09.2019 for hotel rooms priced at 1000 or less was nil. For rooms priced from Rs. 1001 to Rs. 2500 and Rs. 2500 to Rs. 7500 the GST rates were of 12 % and 18 % respectively. Moreover, any hotel room priced Rs. 7501 or more per day upto 13.09.2019 was charged with GST at the Rate of 28 %. However, from by virtue of Notification 20/2019-

Central Tax dated 13.09.2019 on the recommendation of the GST Council, the Rate of GST was reduced as far as rooms price between Rs. 1001 to Rs. 7500 per day, are concerned @ 12 % of the value and any room priced at the rate higher then Rs. 7500 i.e. Rs. 7501 or more, with the GST @ 18% of the value. On 05.02.2020, an initial complaint was filed against M/s Babylon Inn Pvt. Ltd. by Principal Commissioner, Raipur. On 19.06.2020 in its 30th meeting, the standing committee on Anti-Profiteering took up the matter and decided to forward the complaint to the DGAP for investigation. A reference was received by the DGAP on 17.07.2020 and it took up the enquiry. In course of such enquiry, the DGAP issue notices to the Respondent for production of documents and also for written submission. Reasonable opportunity was also given to the Respondent to inspect the non confidential evidences / information which were availed on 07.09.2020. Later on further notices was given to the Respondent to inspect non-confidential document and submit the reply vide email dated 24.03.2021. However, the applicant did not avail the said opportunity. On 31.03.2021, the DGAP submitted its Report under Rule 129(6) of the CGST Rule and placed it before the erstwhile NAA. On 17.06.2021, notices were issued to the Respondent on the Report by the Authority as per the minutes of meeting dated 05.04.2021. The Respondent submitted written submissions on 13.08.2021. Clarification was submitted by the DGAP on 19.04.2022. Additional submissions were made on 04.06.2022, 27.07.2022. Thereafter, CCI took over the Anti-Profiteering responsibility which later on been vested

on Principal Bench, GSTAT. Thereafter matter was heard on different occasions and finally it was concluded on 12.08.2025.

3. It may be noted here that there is no dispute with regard to the fact that the rate of GST on Hotel Accommodation Services was reduced vide Notification No. 20/2019-Central Tax (Rate) dated 30.09.2019 (effective from 01.10.2019) as details tabulated in preceding paragraph no. 1; and that the prices of “Hotel Accommodation Service” supplied by the Respondent remained unchanged even after the said reduction of the rate of GST.

The dispute is with respect to the plea raised by the Respondent that *the base price of different category of rooms were increased because of market forces and dynamics of hospitality industry.*

4. The reply of the Respondent *inter alia*, submitted as follows:-
 - i) The Respondent was engaged in the Hotel business in Raipur, Chhattisgarh. Room rents charged by hotels were highly susceptible to supply and demand. GST on room rent was charged separately as per the applicable rates. The Respondent had not changed its declared tariff either in the month of September, 2019 or October, 2019.
 - ii) The Respondent had a single GST Registration Number i.e. 22AABCH4455L1ZM.
 - iii) The details of various rooms plan were as mentioned below:
 - a) **European Plan:** Abbreviated as EP in hotel listings, indicates that the quoted rate was strictly for lodging and

did not include any meals. Any food provided by the hotel was billed separately.

- b) **Continental Plan:** Abbreviated as CP in hotel listings, means that breakfast is included along with the room.
 - c) **Modified American Plan:** Abbreviated as MAP in hotel listings, included room, breakfast, and supper or dinner, depending on which side of the pond you were on.
 - d) **American Plan:** Abbreviated as AP in hotel listings, means that the nightly rate quoted by a hotel or resort includes three meals a day, i.e., breakfast, lunch, and dinner. Meals at the buffet and main dining room were included in the price.
- iv) As per the details of outward taxable supplies during the period 01.10.2019 to 30.06.2020 submitted by the Respondent, the DGAP had noticed that each category of room has a different PAX / Plan associated with it, viz. American Plan (AP), European Plan (EP), Continental Plan (CP), and Modified American Plan (MAP). The Room Sale Price per night varied across the different plans and also varied for the same plan. For example, prior to the GST rate reduction w.e.f. 01.10.2019, the base price at which a Deluxe Room Single Occupancy (American Plan) was booked, ranged between Rs. 3,814 to Rs. 5,499. In order to arrive at the base price (during the pre-rate reduction period) of the hotel accommodation for each of different type of categories, the average base price of supplies

for each of the aforementioned four plans, according to the occupancy of the room, had been considered separately. For example, a Deluxe Room Single Occupancy (American Plan) and a Deluxe Room Single Occupancy (European Plan) had been considered as separate category. The details of different categories are mentioned in “Table B” below:

“Table-B”

Factor	Description
Deluxe Rooms 1/AP	Deluxe Room (Single Occupancy) with American Plan
Deluxe Rooms 1/CP	Deluxe Room (Single Occupancy) with Continental Plan
Deluxe Rooms 1/EP	Deluxe Room (Single Occupancy) with European Plan
Deluxe Rooms 1/MAP	Deluxe Room (Single Occupancy) with Modified American Plan
Deluxe Rooms 2/AP	Deluxe Room (Double Occupancy) American Plan
Deluxe Rooms 2/CP	Deluxe Room (Double Occupancy) Continental Plan
Deluxe Rooms 2/EP	Deluxe Room (Double Occupancy) European Plan
Deluxe Rooms 2/MAP	Deluxe Room (Double Occupancy) Modified American Plan
Deluxe Rooms 3/CP	Deluxe Room (Triple Occupancy) with Continental Plan
Deluxe Rooms 3/EP	Deluxe Room (Triple Occupancy) with European Plan
Deluxe Rooms 3/MAP	Deluxe Room (Triple Occupancy) with Modified American Plan
Deluxe Rooms 4/CP	Deluxe Room (Quad Occupancy) Continental Plan
Executive Rooms 1/AP	Executive Room (Single Occupancy) with American Plan
Executive Rooms 1/CP	Executive Room (Single Occupancy) with Continental Plan
Executive Rooms 1/EP	Executive Room (Single Occupancy) with European Plan
Executive Rooms 1/MAP	Executive Room (Single Occupancy) with Modified American Plan
Executive Rooms 2/AP	Executive Room (Double Occupancy) American Plan
Executive Rooms 2/CP	Executive Room (Double Occupancy)

	Continental Plan
Executive Rooms 2/EP	Executive Room (Double Occupancy) European Plan
Executive Rooms 2/MAP	Executive Room (Double Occupancy) Modified American Plan
Executive Rooms 3/CP	Executive Room (Triple Occupancy) Continental Plan
Executive Rooms 3/EP	Executive Room (Triple Occupancy) European Plan
Executive Rooms 3/MAP	Executive Room (Triple Occupancy) Modified American Plan
Executive Rooms 4/CP	Executive Room (Quad Occupancy) Continental Plan
Presidential Suites 1/CP	Presidential Suites (Single Occupancy) with Continental Plan
Presidential Suites 1/EP	Presidential Suites (Single Occupancy) with European Plan
Presidential Suites 2/CP	Presidential Suites (Double Occupancy) Continental Plan
Presidential Suites 3/CP	Presidential Suites (Triple Occupancy) with Continental Plan
Royal Rooms 1/AP	Royal Room (Single Occupancy) with American Plan
Royal Rooms 1/CP	Royal Room (Single Occupancy) with Continental Plan
Royal Rooms 1/EP	Royal Room (Single Occupancy) with European Plan
Royal Rooms 1/MAP	Royal Room (Single Occupancy) with Modified American Plan
Royal Rooms 2/CP	Royal Rooms (Double Occupancy) Continental Plan
Royal Rooms 2/EP	Royal Rooms (Double Occupancy) European Plan
Royal Rooms 3/CP	Royal Room (Triple Occupancy) with Continental Plan
Royal Suites 1/CP	Royal Suites (Single Occupancy) with Continental Plan
Royal Suites 1/EP	Royal Suites (Single Occupancy) with European Plan
Royal Suites 1/MAP	Royal Suites (Single Occupancy) with Modified American Plan
Royal Suites 2/CP	Royal Suites (Double Occupancy) Continental Plan
Royal Suites 2/EP	Royal Suites (Double Occupancy) European Plan
Royal Suites 3/CP	Royal Suites (Triple Occupancy) Continental Plan

5. The DGAP has submitted that there were four bills which were incomparable or could not be considered as separate category. The Bill No. 3344 dated 12.07.2019 raised against “Deluxe Room (Double Occupancy)- European Plan” booked for “Marriage Group”. That instance appeared to be a specific instance which was not available for comparison in the subsequent period because the booking covers several rooms for marriage party and same type of instance was not available in post-rate reduction period. Thus, that bill had been excluded from the computation of profiteering. Similarly, in the post- rate reduction period, Bills No. 2 & 4 each dated 20.04.2020 raised against “Deluxe Room (Double Occupancy)- Modified American Plan” and Bill No. 164 dated 29.06.2020 raised against “Executive Room (Double Occupancy)- Continental Plan”. As that type of instance was not available in the pre-GST period for that specific category, these bills were also excluded from the computation of profiteering.
6. The DGAP submitted that on going through the sales data submitted by the Respondent, the Respondent had increased the base price. Thus, they have reduced the price by maintaining the same price commensurately. In order to compute the profiteering, the DGAP had considered the average base price for the period from 01.07.2019 to 30.09.2019 and compared the same with the actual base price for the post-GST rate reduction period. The Methodology adopted has been explained with the help of an illustration. In the case of a “Deluxe Room Single Occupancy (American Plan)”, booked during the period 01.07.2019 to 30.09.2019 (pre-rate reduction period), the average base

price (after discount and before pre-rate reduction) was obtained on dividing the total taxable value (Excluding taxes) by the total no. of nights booked during this period. This average base price was then compared to the actual booking price of “Deluxe Room Single Occupancy (American Plan)” booked during post-GST period i.e. during 01.10.2019 to 30.06.2020, as illustrated in the Table-‘C’ below:-

Table-‘C’ (Amount in Rupees)

Sl. No.	Description	Factors	Pre-GST (01.07.2019 to 30.09.2019)	Post-GST (01.10.2019 to 30.06.2020)
1.	Room Description	A	Deluxe Room Single Occupancy (American Plan)	
2.	Total Amount received (Excluding Taxes)	B	97,024	
3.	Total No. of Nights	C	23	
4.	Average Base Price	D	4,218	
5	Rate of GST	E	18%	12%
6	Commensurate Selling price (post GST period) (excluding GST)	F	4,218	
7	Invoice No.	G		9068
8	Invoice Date	H		19.12.2019
9	No. of nights (as per invoice Indicated in G)	I		1
10	Amount received (excluding GST)	J		4,500
11	Actual Selling price per unit (post rate reduction) (excluding GST)	K=J/I		4,500
12	Excess amount charged or Profiteering	L=K-F		282
13	Total Profiteering (excluding GST)	M=L*I		282
14	Total Profiteering (including GST)	N=M*(1+E%)		316

The DGAP has submitted on the basis of Table “C” above, that the average base price for the “Deluxe Room Single Occupancy (American

Plan)” for the pre rate reduction period is Rs. 4218/-, however, for post rate reduction period, on comparison of average base price with the same category of rooms pertaining to an Invoice No. 9068 dated 19.12.2019 selected randomly, it was observed that an amount of Rs. 4500/- has been charged by the Respondent towards booking of “Deluxe Room Single Occupancy (American Plan)” for one night stay. Therefore, the Respondent had charged Rs 282/- (4500-4218) in excess of the average base price. The profiteering on the Invoice No. 9068 dated 19.12.2019 was Rs. 316/- (including 12% GST). The total profiteering amount on account of the reduction in the rate of tax for the period from 01.10.2019 to 30.06.2020 for different categories as mentioned in Table “C” above was computed on similar lines. The amount of profiteering computed in respect of 1890 invoices where the prices were more than the commensurate price, was Rs. 31,28,631/-.

7. The DGAP submitted that the allegation of profiteering against the Respondent that they had not passed on the benefit of reduction of rate of tax to the consumers by way of commensurate reduction in the prices of the Room Tariff charged by them appears to be correct as the Respondent had increased the base prices (excluding tax) of the rooms although there was a reduction in the rate of tax after 01.10.2019. The DGAP calculated the total amount of profiteering by the Respondent for the period 01.10.2019 to 30.06.2020, to be Rs. 31,28,631/-.
8. The Above report was carefully considered by the erstwhile Authority, and a copy of the investigation report dated 31.03.2021 was provided to the Respondent vide Notice dated 17.06.2021 as per the Minutes of the

Meeting of the erstwhile Authority held on 05.04.2021 to file his consolidated written submissions in respect of the above report of the DGAP.

9. The Respondent vide letter dated 30.08.2021 filed his written submissions as sum up under:-

- i) All the relevant information and documents were provided to the DGAP for the purpose of investigation into the matter. The Respondent also contended that since the room price had not been increased and the GST was charged separately in the tax invoices, the commensurate benefit of reduction in the rate of GST was passed on by the Respondent to the recipients. In Other words the recipients were charged lower invoice amount (i.e. Room rent plus GST). It was not necessary to decrease the base price of the room for passing on the commensurate benefit of the reduction in rate of GST, when the price was not inclusive of GST, and the same was charged separately in the Invoice. This is an unambiguous admission by the Respondent that the base price has not been reduced.
- ii) The methodology adopted by the DGAP for pointing out an increase in prices was faulty and not tenable. Various factors affecting the prices of accommodation services had been ignored by the DGAP.
- iii) The Respondent generally refuted various allegations levelled in the impugned report and impugned notice.

- iv) Hotel room prices were ever fluctuating depending upon various factors and hence, the hotel room price for a particular period could not be ascertained, more so, for a long period of 3 months, i.e. 01.07.2019 to 30.09.2029 (prior to tax rate reduction) as done by the DGAP in the impugned report. Precisely for this reason, the average price could not be considered as it could not represent the actual price of a period.
 - v) Comparison of average price with actual price was "comparing the incomparable".
 - vi) Average price method for comparison of prices of rooms was erroneous and untenable and no profiteering, if the average room rent of all types of rooms be taken together for comparison
 - vii) Reduction in base price of room indicates that increase in base price of room is not intentional to nullify the effect of decrease in tax rate
 - viii) The hotel room price was transaction value, which varies from transaction to transaction; and, hence, it could not be alleged that the base price has been deliberately increased to nullify the effect of the reduction in GST rate.
 - ix) Anti - Profiteering provisions do not prescribe any time limit for examining profiteering
 - x) Variation in base prices is due to commercial considerations only and not to nullify the tax rate reduction
10. A copy of the above submissions dated 30.08.2021 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 19.04.2022 on the Respondent's submissions and, inter alia, clarified that:-

- i) In the matter of that room price had not been increased and the GST was charged separately in the tax invoices, it was clarified by the DGAP that the transaction price had been considered both for the determination of base price and calculation of profiteering. DGAP in its Investigation Report had considered the transaction price (as per Section 15 of the CGST Act, 2017). Section 171(1) of the CGST Act, 2017 is very clear which states that any reduction in the rate of tax or the benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in price.
- ii) In the matter of the methodology adopted by the DGAP for pointing out an increase in prices, the DGAP had clarified that the DGAP investigation had no mandate to examine the cost component included in the base price. Therefore, every supplier of goods and services was free to increase the price of their supply depending upon the various components affecting the cost of production/supply. But, Section 171 of the CGST Act, 2017, mandates that any benefit of reduction in the rate of tax must be passed on to the consumers as the concession given by the Government and the suppliers were not entitled to appropriate such benefit at the cost of the consumers. Such benefits must go to the

consumers. Accordingly, the DGAP had worked out the profiteered amount of Rs. 31,28,631/-.

- iii) On the contention of Respondent vehemently disagreement with the various allegations leveled in the impugned report and impugned notice the DGAP replied that the DGAP had done a thorough investigation based on the documents and information submitted by the Respondent, and its report clearly mentioned the procedure followed by the DGAP and the basis of computation made by the DGAP for determining the amount of profiteering.
- iv) On the contention raised by the Respondent that the hotel room prices fluctuate too frequently and too wide the DGAP had clarified that the average base price in the pre-rate reduction period has been calculated separately for each channel of supply of service on the basis of data supplied by the Petitioner. This base price was exclusive of taxes like GST, Central Excise duty, Service Tax etc. Normally, this average base price was calculated over a period of one month prior to the rate reduction. In case the base price of some products was not available, then the DGAP go to previous month for calculating the base price and so on up to three months. Thus, the DGAP get the base price for a particular product for a particular channel of supply of service, which was then compared with the transaction-wise base price for the period after rate reduction for the same channel of supply of service. The benefit of this is that it avoids fluctuations in pre-reduction base price, as the

same product could be sold at different rates depending on the factors affecting the business module.

- v) On the Contention raised by the Respondent that Comparison of average price with actual price was "comparing the incomparable" the DGAP had clarified that in the post rate reduction period, the transaction wise value had to be considered as the profiteering had to be calculated separately for each transaction and for each customer. Section 171(1) 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". The words used in the statute are "on any supply" and "to the recipients". Thus clearly indicated that the benefit of the reduction of tax had to be calculated on every supply that was transaction-wise, and the benefit had to be passed to each recipient individually. Thus, for the post-reduction period profiteering had to be calculated transaction-wise. Further, the profiteering in any one transaction/product or recipient could not be set off against any other transaction/product or recipient.
- vi) On the contentions raised by the Respondent that there been no profiteering, if the average room rent of all types of rooms be taken together for comparison, the DGAP replied that in cases where the prices of the supplies were reduced more than what was required to, there would be no profiteering. But this extra reduction of price cannot be appropriated with the other supplies where the reduction is less or not at par with the commensurate reduction. Every

recipient is eligible for his due benefit from the supplier. The benefit of one recipient could not be set off with the other recipient.

- vii) On the contentions raised by the Respondent that Reduction in base price of room indicates that increase in base price of room was not intentional to nullify the effect of decrease in tax rate the DGAP had submitted that during the investigation the DGAP had computed profiteering amount of Rs. 31,28,631/- in respect of 1890 invoices where the price was more than the commensurate price. Therefore, it was clear that such cases existed where the price was more than the commensurate price, and only these cases were considered for the calculation of profiteering.
- viii) On the contentions raised by the Respondent, the hotel room price was transaction value, which varies from transaction to transaction; and, hence, it could not be alleged that the base price had been deliberately increased to nullify the effect of the reduction in GST rate the DGAP had replied that it was already replied in the preceding paras that the profiteering was calculated based on the transaction value and the benefit of reduction of tax had to be calculated in the post rate reduction period on every supply that is transaction wise and benefit had to be passed to each recipient individually.
- ix) On the contentions raised by the Respondent that Anti - Profiteering provisions did not prescribe any time limit for examining profiteering, the DGAP had replied that the period of investigation was uniformly taken from the date when the benefit of

tax reduction became due to the recipients, to the preceding month of receipt of application/complaint by DGAP from the Standing Committee. As no period was prescribed under the law for the investigation period, this approach was consistently followed so that the benefit of tax reduction was extended to the maximum number of customers. This approach had been consistently adopted by the DGAP in all cases and upheld by the NAA.

11. Further, the Respondent was directed by the erstwhile Authority to file a rejoinder if any, against the DGAP clarifications dated 19.04.2022 and hearing in the matter was fixed on 10.05.2022, 26.05.2022 by the way of video conferencing. During the course of the hearing the Respondent had reiterated his submissions filed earlier before the Authority and requested to file additional written submissions regarding the details of booking of rooms before and after rate reduction along with invoices. The Request was allowed by the Authority to submit his additional submission by 06.06.2022. The Respondent has submitted his additional written submissions on 04.06.2022 (Received on 07.06.2022). In the additional submissions, the Respondent has reiterated his earlier submissions along with invoices before and after the rate reduction. The submissions were taken on record.

12. 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 vide letter dated 27.07.2025 requested to adjourn the matter for the next date.

13. The case was taken up for hearing on 22.07.2025 & 12.08.2025. Sh. M.N. Verma, Consultant & Associates, appeared on behalf of the Respondent. In due course of the hearing, the Consultant presented written submissions. The same has been taken on record. Further, the consultant requested the Tribunal to allow him to submit additional written submissions/documents in support of his arguments made during the hearing. The Tribunal allowed the request of the Respondent.
14. In Course of hearing the Learned Tax Professionals Mr. M. N. Verma would submit that the prices charged by the Respondent on various customers for occupying rooms in the hotels depends on various factors. In other words, he would submit that the pricing of hotel rooms depends upon various market dynamics and as such that there cannot be a fixed formulae or algorithm for defining or fixing prices throughout the year.
15. Moreover, it is submitted that the prices of hotel rooms depends on various factors like seasonal concessions, tourist seasons, festive seasons etc. However, we consider this aspect and take note of the fact that the period that covers the period of investigation by the DGAP is between 01.10.2019 to 13.06.2020. We also take notice of the judicial fact that from February 2020, most of the hospitality industry suffered because of the Covid-19 pandemic. During this period, there was shut down of all commercial activities which only prompts a conclusion that even if market dynamics are taken into consideration, the pricing of the

hospitality industry cannot be taken to be rising for the period falling after February 2020.

16. Moreover, we have given enough opportunities to Mr. Verma, the Learned Tax Professionals appearing for the Respondent to place before us, if there was any type of conscious activity on the part of the management of the Respondent to establish before us that they have made a conscious decision depending upon various factors and market dynamics or market forces and fixed the rates / prices of hotel rooms. The Respondent failed to produce any such materials before us. So, on this score we are not inclined to accept the arguments advanced by the Learned Tax professional appearing on behalf of the Respondent. The other important point raised in this case is that the method adopted by the DGAP in taking average of 3 months prices with actual for the rest of the period under investigation. It is submitted by the Learned Tax Professional appearing for the Respondent that this is a fallacious method. However from the argument placed and the calculations submitted by the DGAP, we are of the opinion that this is only a method of preparing the calculation sheet so as to compare whether there has been any profiteering by the Respondent. No final report has been submitted by the Respondent in this case. Profiteering is a concept aimed at covering the gaining of financial benefit by a goods or services provider by not passing the benefit of reduction GST rate and or ITC benefits to the ultimate consumer. It has nothing to do with the price charged. The Delhi High Court in the case of Reckitt Benckiser Pvt. Ltd. Vs. union of India and others, 2024 SSC Online Del 588, held that there

is initial but rebuttable presumption that whenever there is a reduction in rate of GST, there should be a commensurate reduction of prices in the products i.e. goods or services, and if there is no reduction in price, there has been a profiteering by the Respondent. As stated earlier, it is definitely rebuttable presumption but at the same time the supplier cannot use the expression of market dynamics or market forces as mere device to circumvent the statutory obligation of reducing pricing in a commensurate manner. In order to rebutt the presumption, it must establish by cogent basis, that is, by clear and unambiguous materials / evidences / documents that because of market forces the prices were increased. In this case we find no such cogent materials / evidences / documents to rebutt the presumption that is arising against the Respondent.

17. The Learned Tax Professional appearing virtually appearing on behalf of the Respondent raised the issue that during covid-19 the rate of room rents were increased because of additional cost incurred by them for the requirement of additional cleanliness to combat the threat of corona virus. Such additional costs were included in the room rent. They incurred additional cost in the shape of purchasing equipments, sanitary products and human resources to carry out further cleanliness to combat the spread of the corona virus. However, the Respondent has not taken such a plea in his initial written submissions. Mr. Verma would submit that after the last date hearing i.e. on 12.08.2025, an additional written argument was submitted as permitted by the Tribunal. In such submissions Mr. Verma would further submit, a specific plea has been

raised by the Respondent through its professional regarding increase the price during the covid period because extra requirement of cleanliness and, therefore, prices were increased. We have carefully gone through the additional written submissions sent to us through speed post, which is a part of the record. We find that and there is no such plea or submission made therein. It appears to us that the submissions made by the Respondent on this count for rising in prices because of the covid pandemic and to combat it, is rather a castle of air than a real substance. Moreover, it is a clear after thought and not supported by an iota of materials.

18. May it be stated here that we have already held in several cases that Section 171 of the CGST Act 2017 is in fact a benevolent provision though it may have some penal consequences. The Indian parliament in its wisdom thought it proper to ensure that any reduction in rates of GST and / on the benefit of the ITC should always be given to the ultimate consumer and for that a provision has been made for enforcing this benevolent principal of law. In that view of the matter, we are of the opinion that no restrictive and parochial interpretation is admissible in such cases. We hold that the Respondent has profiteered an amount of Rs. 31,28,631/- only and same is to be paid by the Respondent along with the interest at the rate of 18 % per annum from the date of collection of higher amount i.e. 01.10.2019 till realisation of the amount to be deposited in Consumer welfare fund created by Centre and States equally. Ordered accordingly.

19. 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.
20. A copy each of this order be supplied to the Respondent and to the concerned Commissioners CGST / SGST for necessary action.
21. Judgment pronounced in open court.

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

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