

GSTAT
Single Bench Court No. 1

NAPA/17/PB/2025

DGAP

.....Appellant

Versus

THECO INDIA PVT LTD

.....Respondent

Counsel for Appellant

Counsel for Respondent
GK AMISH

Hon'ble Justice (Retd.) Dr. Sanjava 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. : ZA070925000047H

Date of order : 19/09/2025

1.	GSTIN/Temporary ID/UIN - 33AAFCT0949K1Z6	
2.	Appeal Case Reference no. - NAPA/17/PB/2025	Date - 08/02/2023
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Theco India Pvt. Ltd. , gkamish@thecoindia.com , 9844445050	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 19/09/2025 29/08/2025 30/07/2025 15/07/2025 01/07/2025	

7.	Status of Order under Appeal - Reject - Order under Appeal is annulled
8.	Order in brief - The Report of the DGAP alleging profiteering against the Respondent is not accepted and the proceeding is closed.
Summary of Order	
9.	Type of order : Dismissal of Report

Place :DELHI PB

Date : 19.09.2025

Final Order

1. This is a proceeding under Section 171 of the Central Goods and Services Tax Act, 2017, hereinafter referred as the CGST Act for brevity. The simple question that arose in this case is as follows:-

I. Whether the Respondent had profiteered an amount of ₹1,49,81,077/- by not passing the benefit of Input Tax Credit (ITC) to his recipients by way of commensurate reduction in the base sale price of the products after implementation of GST with effect from 01.07.2017 ?

2. The facts of this case are not disputed at this stage. Even before the passing of GST Act, the Respondent was in a business of supplying dental products to the different hospitals, clinics etc., as first

or second stage dealer. Before the GST regime, Respondent the Respondent would suffer Countervailing Duty (CVD) at the rate of 12.5% and Special Additional Duty (SAD) at the rate of 4% at the time of import. On 01.07.2017, GST came in into force, w.e.f aforesaid date; CVD and SAD were replaced by IGST. The integrated Goods and Services Tax were imposed at the rate 18% on Dental equipment & accessories with the benefit of availing ITC.

3. On 28.11.2017, in pursuance of the Section 171 of CGST Act, 2017, the National Anti-Profiteering Authority was formed. The complaint was received from M/s Crown Express Dental Lab, Ranchi regarding profiteering by the Respondent for two products i.e. “Lava CNC 240 Milling Machine along with accessories” and “Sintering Furnace D664” to the tune of Rs. 4,78,085/-. The complaint was examined by Standing Committee on 25.05.2018. It was referred to the Directorate General of Anti-Profiteering, hereinafter referred as DGAP. On 08.06.2018, the DGAP submitted its report, which was received by the NAA on 31.08.2018. The first Report was received on 31.08.2018. Notices were issued by the National Anti-Profiteering Authority, hereinafter referred as Erstwhile NAA on 12.09.2018 and final order was passed on 28.11.2018 under Rule 133(1) of the CGST Rules.

4. In the final order, the erstwhile NAA directed to pass on the profiteering amount of Rs. 4,78,085/- along with the interest at the 18% to Crown Express Dental Lab, Ranchi. It was further directed by erstwhile NAA that the DGAP shall conduct a fresh investigation

under Rule 133(5), (a) & (b) of the CGST Rules, 2017 covering all products supplied by the Respondent within Section 171 of the CGST Act. The DGAP reported on 12.04.2019 that it might not practically feasible and statutorily appropriate to expand the scope of investigation cover the all the suppliers of the Respondent.

5. By virtue of Interim Order dated 01.08.2019, the erstwhile NAA incorporating Rule 133(4) held that the power of expanding the scope of investigation has been duly incorporated in Rule 133(5) (a) (b) of the CGST Rules, 2017. Accordingly, the DGAP was directed to conduct the further investigation.

6. The DGAP reinvestigated the matter as per aforesaid order and re-submitted its report dated 01.07.2020 to the erstwhile NAA. In the report the DGAP calculated the total profiteering to the tune of Rs. 1,29,39,594/- in respect of 85 products supplied by the Respondent during the period 01.07.2017 to 30.08.2019 as per the direction given by the erstwhile NAA. Such report is the subject matter of this case. The matter was considered by the erstwhile NAA. Erstwhile Authority, after making certain observations, passed an interim order on 05.08.2022. It is appropriate to quote the operative portion of the Interim order, which reads as follows:-

“11. In view of observation as mentioned in the earlier paragraphs, the Authority is of the view that correct amount of profiteering cannot be worked out until the information relating to the payment of various taxes by

the importer/supplier is collected and analyzed to work out the amount of credit, if any, which may be available to the respondent before the implementation of GST. It is necessary for the DGAP to work out the amount of additional ITC, which if at all would be available to the Respondent after implementation of GST. During this process, it may be possible to examine as to whether the supplier/importer is passing on the benefit of ITC to the Respondent, who in turn would pass on to its customers/buyers. Only in such cases, where any additional ITC has actually been made available to the Respondent in the GST regime as compared to the pre-GST regime, can any profiteering be alleged against the Respondent or any profiteering amount can be determined. Otherwise, the provisions of Section 171 of the CGST Act, 2017 cannot apply to the Respondent who is not an importer himself, but buys such goods from the importer. However, such facts are subject to ascertainment and verification by the DGAP”.

“12. For the reasons mentioned and discussed herein above and in the given circumstances, the Authority without going into the merits of the other submissions filed by the Applicant and the Respondent at this stage, find that this is a fit case for further investigation as per the provisions of Rule 133(4) of the CGST Rules,

2017 as per the findings and directions contained herein above. Accordingly, this Authority directs the DGAP to reinvestigate the matter on all the above issues and furnish his report under Rule 129(6) of the CGST Rules, 2017. The DGAP may also collect relevant documents/evidences from the supplier/importer and investigate them also under Rule 133(5). On his part, the Respondent is directed to fully co-operate with the DGAP in the process of reinvestigation which includes submission of the requisite documents / details / information pertaining to his supplies.”

7. On the basis of aforesaid order, the DGAP reinvestigated the matter for the period of 01.07.2017 to 30.08.2019 and submitted its Report 02.02.2023, *inter-alia*, stating that the Respondent was asked through an email dated 15.06.2020 to submit the details of tax structure of the purchases made by him in the Pre-GST period on which the input tax credit was not available, so that the DGAP could work out the exact quantum of the benefit of input tax credit that needed to be passed on by the Respondent to the recipients after implementation of GST w.e.f. 01.07.2017. The Respondent replied to the said email but did not submit the tax components like Central Excise Duty, CVD etc., on which the input tax credit was not available in the pre GST period. The DGAP further reported that Respondent has been based in Tamil Nadu and most of the purchases or the products, to which the profiteering was limited to, were 2%

CST. As per the provisions of the Section 19 of the Tamil Nadu VAT Act, 2006 lays down that dealer is eligible to take credit on purchases, tax paid on inputs in other states is not given as input tax credit and the same was reflected in the monthly VAT and CST returns of the Respondent. As per the VAT/CST return, the Respondent was not eligible to take credit on inter-state purchases on which CST was paid. Therefore, when input taxes applicable in pre-GST regime got subsumed in GST, the Respondent enjoyed the benefit of input tax credit on the same. In the absence of the said details, the methodology adopted by the DGAP was that the average base price of the purchase made by the Respondent in the post-GST period per unit of each product was calculated. Then the Average GST paid per unit product was found and it was deducted from pre-GST base price to arrive at the commensurate sale price in GST period. To arrive at the benefit of the input tax credit that needed to be passed on by the Respondent, the actual sale price of the 85 goods which were sold in post GST period was compared with the commensurate base sale price and the difference in both prices amounted to total amount of profiteering made by the Respondent on account of input tax credit available to the Respondent in post-GST period.

8. The DGAP further reported that the aforesaid methodology for the profiteering in the subject case was applied for the 85 products which were sold in both pre and post GST period and it was concluded that the Respondent indicated that he had not passed on the benefit of input tax credit by way of commensurate reduction in prices of the goods/products after implementation of GST w.e.f 01.07.2017.

DGAP worked out a profiteered amount of Rs. 1,29,39,594/- (including GST). The said profiteered amount was arrived at by comparing the actual base sale price of the products sold during the period 01.07.2017 to 30.08.2019 i.e. in the post-GST period with the commensurate base sale price which was arrived by deducting the benefit of input tax credit availed on the average price of post GST purchased from the average base sale price in pre GST i.e. during the period 01.04.2016 to 30.06.2017. The excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the increased sale price. The Respondent vide letter dated 13.05.2022 submitted before the erstwhile NAA, the pre-GST tax structure as well as the post-GST tax structure. He further submitted that as per Rule 3 of CENVAT Credit Rules, 2004, only the manufacturer and service providers were eligible to take CENVAT credit. However, if the Respondent was registered as first stage dealer or second stage dealer as per Rule 9 of Central Excise Rules, 2002, he could take credit and pass on the credit to others by issuing invoices as required under Rule 11 of the Central Excise Rules, 2002. For this purpose, the Respondent could take credit only on the basis of an invoice issued by the importer/supplier as per Rule 9 of the CENVAT Credit Rules, 2004. In the instant case, the Respondent neither registered as a dealer nor they received the goods under the cover of specified invoices for taking credit from their suppliers. Therefore, Respondent was not eligible to take CENVAT credit during the pre-GST period. Further, most of his consumers were either service providers (clinical establishments providing health care services), who

were exempted from payment of service tax under Notification 25/2012 – ST (S. No. 2 (i)) or small scale manufacturers, who were enjoying the exemption under Notification 8/2003 – CE. By virtue of these exemptions, the consumers were also not entitled for CENVAT credit. Further, purchases were interstate at the rate of 2% Central Sales Tax and it was also not eligible for input tax credit. Under such circumstances, the Respondent added these duties in the cost of the products. At the time of transition into GST, closing credit as per the last VAT/Excise Returns could be carried forward and also the duties paid on the closing stock as on 30.06.2017 by virtue of Section 140 of the CGST Act, 2017 read with Rule 117 of the CGST Rules, 2017. However, the Respondent had not taken any such credit under this provision. Therefore, the question of passing the ITC benefit by way of reduced prices does not arise in terms of proviso to sub section 3 of Section 140 of the CGST Act, 2017.

9. The erstwhile NAA vide Interim Order dated 05.08.2022 had directed that the correct amount of profiteering could not be worked out until the information relating to the payment of various taxes by the importer/supplier was collected and analyzed to work out the amount of credit, if any, which may be available to the Respondent before implementation of GST. On the other hand the Respondent vide his letters dated 13.05.2022 & 07.06.2022 had categorically stated that during the pre-GST period he was not a registered person under the Central Excise Act and so not eligible to take CENVAT credit; that he was not eligible to take credit of CST; that they could avail ITC credit of ₹ 9,77,343/- under Rule 117(4) by filing Tran-I and

Tran-II, but no such credit was availed by him. This implied that during the pre-GST period, the Respondent did not avail any kind of credit on input goods or services. The erstwhile NAA had further directed that only in such case where any additional ITC had actually been made available to the Respondent in the GST regime as compared to pre-GST regime, could any profiteering be alleged against the Respondent, otherwise the provisions of Section 171 could not apply to the Respondent. Here, it was important to mention that during pre-GST period, the Respondent did not avail any credit on input goods or services but during the GST regime the Respondent had availed the following ITC credit as per their GSTR-2A mentioned in his reply dated 07.06.2022. The said profiteering amount is depicted in tabular form as follows:-

Table

Year	GSTR-2A (ITC on inward supplies of goods)
2017-18 (01.07.2017 to 31.03.2018)	59,99,776/-
2018-19 (01.04.2018 to 31.03.2019)	66,36,346/-
2019-20 (01.04.2019 to 31.08.2019)	23,44,955/-
Total	₹ 1,49,81,077/-

10. Therefore, the DGAP reported, it could be deduced that whatever ITC the Respondent had availed in the GST period should have been passed on to his recipients. Since, the credits available in the pre-GST period was zero, the entire benefit of ITC accrued to the Respondent on introduction of GST was to be treated as additional

benefit of ITC to the Respondent. As the Respondent was unregistered person under Central Excise, no amount of credit might have been available to him. Likewise credit of CST was also not available to him. In such a scenario, the pre-GST tax structure on supplies received by the Respondent also loses significance.

11. The Respondent in his Reply dated 07.06.2022 pleaded that since he had excluded the ITC component while posting cost of goods in his profit and loss account, the amount of ITC was not embedded in the cost and hence it was established that the entire benefit of ITC was passed on to his recipients. The DGAP has further submitted that the Respondent had not produced any documents to correlate whether non-inclusion of ITC in cost had resulted in commensurate reduction of prices. Section 171 of CGST Act, 2017 laid down that the ITC must be passed on to the recipient by commensurate reduction in price. It has scrutinized 475 Stock Keeping Units (SKUs) of the Respondent sold in post-GST period. On a very thorough examination of pre and post GST prices of all these invoices of the Respondent. The DGAP concluded that in respect of 158 SKUs, the prices were increased in post-GST period as compared to pre-GST period and in respect of 316 SKUs, the prices were reduced and in respect of 01 SKU the price

remained the same. It was, therefore, submitted by the DGAP, that it could not be established whether the Respondent had actually reduced the prices of the SKUs commensurate with the benefit of ITC. Furthermore, the benefit of ITC claimed to have been passed on by the Respondent should have been specifically mentioned in his documents. The DGAP reported that the Respondent has not produced any such evidence indicating that wherever the prices have been reduced the reduction was on account of ITC benefit. In those cases where prices had been increased, all the arguments advanced by the Respondent were not accepted. Therefore, DGAP submitted that there has been a non-compliance of Section 171 of the CGST Act and as the entire ITC availed by him would be treated as benefit of ITC to the Respondent which had not been passed on to the ultimate consumer. This Report is revising the total profiteering made by the Respondent in violation of the Section 171 of the CGST Act was Rs. 01,49,81,077 instead of 01,29,39,594/- as per the Report dated 01.07.2020.

12. This Report was placed before the Competition Commission of India which was then entrusted to examine the cases of Profiteering made by different stakeholders. The Respondent submitted its written submissions raising various factual and legal issues. We have

enumerated the relevant submissions as follows:-

- i. Since no credit of tax of any kind was availed by the Respondent in the pre-GST period regime, the DGAP surmised that full quantum of ITC in post-GST period became benefit that needed to be passed on to the customers/recipients of goods.
- ii. The allegation of non-passing of ITC benefits and non-reduction of prices was not sustainable. This is the foundation, on which the other allegations like the quantification of profiteering were made. When the foundation was removed from consideration, the other structures built on such foundation would also collapse. The Respondent further relied upon the case of Afroz Mohammed Hasanfatta vs state of Gujarat 2017 (354) ELT 417(Guj) in this regard.
- iii. The DGAP in his report dated 02.02.2023 had claimed that, after GST, prices show an increase for 158 products, while prices show a reduction

for 316 products and there was no change for one. Further, the benefit of ITC claimed to have been passed on by the Respondent should have been specifically mentioned in the Respondent's documents. The DGAP contended that since documents were not produced to prove that non-inclusion of ITC in cost had commensurately reduced prices, the cost to customer had increased.

- iv. The working files submitted by the DGAP itself showed that for a single SKU there had been varying prices based on warranty, marketing support etc., with prices sometimes being as low as 50% of Pre-GST Prices.
- v. The invoice of the Respondent's supplier/importer of the product showed the average price reduction passed by the importer onto the Respondent during that period which was then duly passed on to the customer.

- vi. The provisions of Section 171 clearly states that the benefit of input tax may be passed on to the recipient. It does not state that there will be profiteering if the benefit of input tax is passed on. In the present case, the fact that the ITC benefit had been passed on to its customers by the Respondent was reflected in the invoices itself.
- vii. The DGAP had also categorically admitted that no credit was availed in the pre GST regime. Thus clearly no additional benefit accrued to the Respondent Company as no credit was made available in the pre-GST regime. In terms of the erstwhile NAA Order, therefore, there was no profiteering in the present case.
- viii. The DGAP had confused the matter by considering the normal ITC availed in post GST regime as the additional benefit. The fact is that the normal ITC stands passed on to the buyers when the Respondent did not include the tax amount in the basic price and showed tax paid

separately which was claimable as ITC by the buyer.

ix. The DGAP had rejected the Respondent's contention that the entire ITC had been passed on the ground that the Respondent Company had not produced documents to correlate whether the non-inclusion of ITC in cost had resulted in commensurate reduction of prices. This was indeed convoluted reasoning.

x. The Respondent also submitted that when any one of primary assumptions breaks down, the ultimate conclusion had to be rejected as incorrect. Respondent relied upon the judgment of Hon'ble Supreme Court in the case of Oudh Sugar Mills Ltd. Vs. UOI – 1978 (2) ELT (J172) SC.

13. The clarifications were sought by the CCI from DGAP on the above submissions under Rule 133 (2A) of the CGST Rules, which are as follows:-

- i. The claim of the Respondent that they had excluded the ITC component for the cost of goods was not supported with any evidence. Further from comparing the pre and post GST prices of the 475 SKUs of the Respondent sold in the post GST period were scrutinized and it was observed that price of 158 SKUs were increased in post GST and price of 316 SKUs were reduced. Therefore, it could not be established whether the Respondent had actually reduced the price commensurately. Neither the Respondent's business pattern nor any supporting evidence could prove that the price reduction was due to ITC benefit. Further, in those cases where price had been increased, all the arguments of the Respondent fall flat. Therefore, it could be inferred that the Respondent had not complied with the provisions of the Section 171 of the CGST Act, 2017.

- ii. For the contention raised by the Respondent regarding the non-inclusion of input tax credit in the cost of the product and that the provisions of Section 171 would not apply, the DGAP clarified that it is a consumer welfare initiative and Section 171 of the CGST Act, 2017 ensures that the benefit (which is a sacrifice of the precious revenue from the kitty of Central & State Government in a welfare state) of the reduction of tax or additional benefit of ITC is passed on to the recipient.
- iii. For the contentions raised by the Respondent regarding passing of Input Tax Credit to his buyers/clients, the DGAP clarified that Section 171 of the CGST Act, 2017 has only one mode to pass on the ITC benefit and that is by way of commensurate reduction in the price. Table - 1 of the Respondent's submissions dated 25.07.2023 "Normal Trade practice in GST regime" has no commensurate reduction in the price to the

recipient. The DGAP's practice is to compare pre and post GST ITC benefit to arrive at any additional benefit accrued to the Respondent. Section 171 does not stipulate that non-inclusion of the ITC in the cost of product is reduction in price. It should be commensurate for each product and should clearly mention that rate reduction is in terms of the provisions of Section 171 of the CGST Act, 2017. Any other discounts or reductions fall under normal trade practices to promote the sale of the product and the Respondent was free to do so. The Respondent had not produced documents to correlate whether non-inclusion of ITC in cost has resulted in commensurate reduction of prices). Also, the case of Afroz Mohammed HasanfattaVs state of Gujarat 2017 (354) ELT 417 (Guj) is not relevant here.

- iv. For the contentions raised by the Respondent that profiteering allegation is not sustainable

in the 475 SKUs since the variations in price could be due to various factors like increase in overheads, volume of purchase, credit period, the DGAP clarified that there should be reduction in the base price of all SKUs as per Section 171 of the CGST Act, 2017 where additional ITC was available.

- v. The DGAP worked out profiteering for all SKUs by adopting method approved by the Authority. The methodology and formula upheld by the erstwhile NAA in all the similar cases. The contention of the Respondent that in a single SKU there had been various prices based on warranty, marketing support etc. which were trade practices was irrelevant. The mandate of Section 171 of the CGST Act, 2017 is limited to additional benefit of ITC only in this case. The above Section mentioned "any supply" i.e. each taxable supply made to each recipient thereby clearly indicating that netting off of the benefit of ITC benefit by the

Respondent was not allowed. The Respondent could not claim that he had passed on more benefit to one customer therefore he could pass less benefit to another customer. Each customer was entitled to receive the benefit of ITC benefit on each product purchased. The word "commensurate" mentioned in the above Section gives the extent of benefit to be passed on by way of reduction in the prices, which had to be calculated in respect of each product based on the tax reduction as well as the existing base price of the product.

It was further reiterated that Section 171 of the CGST Act, 2017 has nothing to do with the trade/market practices of the Respondent e.g. marketing & breaking support or with his profit margins. He was free to do so. It only deals with that portion of precious revenue which is sacrificed by the central and state Govt. from its precious kitty for welfare of the consumers.

- vi. The Respondent's claim appeared to be selective and not correct with regard to all the SKUs for determining exact benefit of ITC.
- vii. For the Respondent's contention that even in SKUs where the report of the DGAP claimed a price increase, more than 80% of them are in the range of 1-2% where the report overlooks, the DGAP clarified that the Respondent's claim appeared to be not correct as there must be reduction in prices as soon as ITC benefit is availed.
- viii. The report of the DGAP is based on facts; the case of Oudh Super mills Ltd. Vs UOI-1978 (2) ELT (J172) SC is not relevant here.

14. On 01.10.2024, Principal Bench, GST Appellate Tribunal, was entrusted with the power to examine the cases of Anti-Profitteering and pass the appropriate order. The Rules were notified on 12.06.2025. The matter was placed for hearings before the single Bench on 01.07.2025, 15.07.2025, 30.07.2025 and 29.08.2025. On 01.07.2025, after hearing the Learned AAD, DGAP as well as Directors of the Respondent Company, the Tribunal observed that in

course of consideration of the matter and the submissions made by the Learned Counsel / Directors of the Respondent's Company, it appears that the Anti-Profiteering amount has been arrived basing on 475 invoices. It was submitted by the Representatives of the DGAP that in 316 such invoices there has been reduction of prices but in 158 invoices there have been increased in prices. In 01 invoice the invoice the price has been kept same as the purchased. Keeping in view this fact this case was remanded to the DGAP vide order dated 05.08.2025 with the directions, as quoted by us in preceding paragraph no. 6. Therefore, further enquiries / investigation were undertaken by the DGAP and another Report dated 02.02.2023 was submitted by the DGAP. In course of hearing, Departmental Representatives of the DGAP on 01.07.2025 submitted that the case was assigned the day before, during lunch time and has no opportunity and sufficient time to go through the records and it is also submitted that the officer who has submitted the report has been transferred in the meantime. Therefore, she has requested to grant her some more time to go through the records to effectively place the matter before this Tribunal.

15. Then, the matter was again taken up for hearing on 15.07.2025, Ms. Geetanjali Ahuja, Inspector appeared on behalf of the DGAP. Respondents were physically present through their Director Shri George Abraham. Mr P. S. Pruthi, Consultant for M/s Theco India Pvt. Ltd., also appeared. A written submission was placed before the Tribunal which was taken on record. A copy of written submissions was also served to the Departmental Representatives of the DGAP.

The Learned Representative of the Respondent is also directed to submit the soft copy of the written submission to the Tribunal as well as to the Departmental Representative of the DGAP. In view of the order passed earlier by the NAA on 05.08.2022 the Tribunal directed that the respondent should furnish the details of the companies / firms who have purchased goods from them along with the Email IDs and Mobile Numbers within a period of one week. It was also brought to the notice of the Tribunal that the relevant information was submitted to Departmental Representative of the DGAP on 07.07.2025 and they have also send emails to all these purchasers of goods from the Respondent on 08.07.2025 and reminders were issued on 10.07.2025. However, out of 58 such persons / firms / companies, 21 (twenty-one) firms have responded. It is also submitted that from the said information it was clear that the Input Tax Credit has been passed on to them by the Respondent. However, remaining 37 have not responded to the emails send by the Departmental Representatives appearing in this case. It was also brought to the notice of the Tribunal that the total profiteering as per the original report was Rs. 1.49 Crores and till date verification shows that Rs. 97.68 Lakhs, approximately, of ITC has been passed on to the consumers. Hence, it was argued on behalf of the Respondent company that a major portion of the amount allegedly profiteered has been shown to be incorrect and the matter may be closed. However, taking into consideration the time constraint explained by the DGAP, this Tribunal was inclined to grant a further 2 (two) weeks time to the Departmental Representatives to re-assess the entire matter and take responses from the Remaining 37 firms / companies. It was also informed by Shri George Abraham, Director of

the M/s Theco India Pvt. Ltd. that in some cases the Recipient of the goods may not be alive and may not respond. This aspect was also directed to be taken into consideration, by the DGAP, while enquiring / investigating. In the mean time, DGAP was to submit written submissions exactly in line of the requirement formulated by this tribunal on 01.07.2025 and 15.07.2025.

16. Then, the matter was listed for hearing on 30.07.2025, on that day Tribunal took note that, in compliance of the order passed by this Tribunal on 15.07.2025, the Departmental Representative of the DGAP has submitted its written submissions to this Tribunal. It is stated that in compliance of the order passed this Tribunal dated 01.07.2025 & 15.07.2025, E-mails were sent to the buyers of the Noticee to verify whether the benefit of the Input Tax Credit has been received by them or not. In compliance of such notices, as on 29.07.2025, office of the DGAP has received emails from the 37 buyers out of 58 buyers wherein all 37 buyers have confirmed that they have received the benefit of Input Tax Credit from the Respondent.

17. The Tribunal further observed that on 30.07.2025 that 21 such buyers of the Respondent were yet to respond to the email sent by the DGAP. It was brought to our notice by Shri George Abraham, Director of the M/s Theco India Pvt. Ltd. that in the meantime he verified from the different sources and confirmed that in 08 such cases either the company has been liquidated or the sole proprietor / managing director have died. Further, Shri George Abraham was

ready to provide the information to the DGAP of such 08 no. of purchasers. Out of total 58 buyers, 21 are to be verified including the 08 buyers that are liquidated / dead. The Tribunal considered it appropriate to give one last opportunity to the DGAP and the Respondent to put forth its written submissions to the DGAP and Respondent. In order to facilitate the enquiry in an effective manner, this tribunal directed the DGAP that the detailed information may be provided to the Respondent of the 21 buyers/ companies/ firms who have not responded to DGAP's notices within 03 working days, so that Respondent can also assist the DGAP in providing their whereabouts/ addresses/ emails/ phone numbers for proper investigation. The Respondent was directed to provide the aforesaid information to the DGAP within 10 working days. The Tribunal further granted last opportunity of hearing to the parties on 29.08.2025.

18. The matter was finally listed on 29.08.2025 for hearing. On that day, Pr. DG, DGAP, intimated that out 58 buyers, Noticee has provided the email id of 2 buyers whose details have not found in Annexure-4. Hence, the said 2 buyers were kept out of consideration. Thus, we left with the 56 buyers as at annexure-A of the compliance submitted by the Pr. DG, DGAP vide letter dated 28.08.2025. Out of 56 suppliers, 49 suppliers have already responded that they have received ITC benefit. Out of the remaining 07, 05 businesses units are closed either because of liquidation or death of sole proprietor. That leaves 02 suppliers. The Registry was intimated by M/s Shah Dental Pvt. Ltd. that they have not received the benefit of the ITC, because of

the fact that at the relevant time, they were not having the GST registration, therefore, they were not able to avail the benefit of ITC. As far as M/s South Man Dental Lab, Hyderabad is concerned, this office in receipt of email dated 29.08.2025 intimating that they have received benefit of the ITC from the Respondent Company.

19. Anti-Profiteering proceedings before the Principal Bench, GSTAT, are not, strictly, adversarial in nature. This is so because the Provisions contained in the Act as well in the Rule provides for the Authority's jurisdiction and powers for monitoring of investigation and expanding the scope of investigation or enquiry by the DGAP, as has been held by the Delhi High Court in different cases. Even though the enquiry before the PB, GSTAT is more of inquisitorial in nature, the initial onus is definitely on the DGAP to show that the Respondent has profited from the act for not passing the ITC to the recipients. This rule more relevant in cases disputes regarding factual aspects remain to be decided. Moreover, in this case as per the Report, after remand, of the DGAP on 02.04.2023 at page 09/10 as a part of paragraph 10.3 have indirectly admitted that they could not fix the amount of profiteering. We consider it appropriate to quote the exact words used by the DGAP in its Report.

“10.3. The Noticee have in their reply dated 07.06.2022 pleaded that since they have excluded the ITC component while posting cost of goods in their profit and loss account, the amount of ITC was not embedded in the cost and hence it is

established that the entire benefit of ITC was passed on to their recipient. This argument of the Notice is not acceptable because the Notice have not produced documents to correlate whether non-inclusion of ITC in cost has resulted in commensurate reduction of prices. Section 171 of the CGST Act, 2017 envisages that the benefit of ITC must be passed on to the recipient by the commensurate reduction in price. The invoices of all 475 SKUs of the Noticee sold in post- GST period were scrutinised. On critical examination of pre and post GST prices of all these invoices of the Noticee, it has been observed that in respect of 158 SKUs the prices were increased in post GST period as compared to pre- GST period and in respect of 316 SKUs the prices were reduced and in respect of 01 SKU the price remained the same (Annex-3). Therefore, it cannot be established whether the Noticee have actually reduced the prices of the SKUs commensurate with the benefit of ITC. Furthermore, the benefit of ITC claimed to have been passed on by the Noticee should have been specifically mentioned in their documents. The Noticee has not produced any such evidence indicating that where the prices have been reduced the reduction was on account of ITC benefit. In those cases where prices have been

increased, all the arguments advanced by the Noticee fall flat as instead of reduction, there is increase in prices. Therefore, it can be inferred that the Noticee have not complied with the provisions of the Section 171 of the CGST Act, 2017 and the entire ITC availed by them would be treated as benefit of ITC to the Noticee which has not been passed on, in absence of documents/ evidence indicating the passing on of benefit.”
(underlined to supply emphasis.)

20. This portion of the report clearly shows that the DGAP didn't have any document to show that actually the Respondent profiteered from his activity of non-passing on the benefit of the ITC to the end users. Rather than they have taken note that prices in respect of 158 SKUs have been increased, whereas, the same has been reduced in respect of 316 SKUs and with respect of 01 SKUs, the price remained the same. Thus, it should have been proper on the part of the DGAP to actually find out whether this total increase and decrease in prices of SKUs was in effect resulting any profit for the Respondent in contravention of Section 171 of the CGST Act. There has been no such evidence at this stage, hence, we cannot fast any liability on the Respondent.

21. Moreover, as we have indicated in the preceding paragraphs that the proceedings before the GSTAT Tribunal in exercising powers of an Authority as envisaged under the Sub-Section (2) of the Section

171 of the CGST Act, is proceeding akin to inquisitorial method of adjudication which prompted us to take steps get clarifications from known/registered recipients of the goods from the Respondent regarding the passing of the ITC from them. Out of 56 suppliers, 05 businesses are closed, so no information is available. 50 suppliers have received the benefit of the ITC from the Respondent. Only 01 Respondent has stated that he has not received the benefit of ITC as he has not been registered. 05 Businesses are stated to be closed because of the liquidation or death of the sole proprietor.

22. In that view of the matter, we come to the conclusion that there is no material worth the name to hold that Respondent has profiteered a sum of Rs. 1,49,81,077/- by not passing the benefit of ITC to the end users of the products. In that view of the matter, The Report of the DGAP is not accepted. The proceeding be closed.

Judgment pronounced in the open Court.

M.S

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