GSTAT

Single Bench Court No. 1

NAPA/1/PB/2025

DGAP **.....Appellant**

Versus

SHREE SAI KRIPA MARKETING **.....Respondent**

Counsel for Appellant

Counsel for Respondent
AAMNAYA JAGGANNATH MISHRA
VINEET BHATIA

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. : ZA070010126000143H **Date of order :** 27/01/2026

1.	GSTIN/Temporary ID/UIN - 07ARIPG2785P1Z5	
2.	Appeal Case Reference no. - NAPA/1/PB/2025	Date - 24/09/2019
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. Shree Sai Kripa Marketing & Ors. , sskmt07@gmail.com , 9999989828 2. JK Helene Curtis Ltd (Raymond)	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -

6.	Personal Hearing - 27/01/2026 06/01/2026 16/12/2025 04/11/2025 09/09/2025 19/08/2025 22/07/2025 08/07/2025 01/07/2025
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed
8.	Order in brief - Respondent no. 1 has profiteered an amount of Rs. 19,32,446/-
Summary of Order	
9.	Type of order: Deposit in Consumer Welfare Fund/s

Place: DELHI, PB

Date: 28.01.2026

GOODS & SERVICES TAX APPELLATE TRIBUNAL (GSTAT)

PRINCIPAL BENCH, NEW DELHI

ANTI-PROFITEERING DIVISION

NAPA/1/PB/2025

FINAL ORDER

Date of Institution	:	26.09.2019
Date of conclusion of Hearing	:	06.01.2026
Date of Order	:	27.01.2026

In the matter of:

1. Directorate 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 Represented by its Principal Director General.

Applicant

Versus

1. M/s Shree SaiKripa Marketing, B-141, Shakurpur, Samarat Cinema Road, Delhi – 110034.

Respondent

2. M/s J.K. Helene Curtis Ltd. C/o Raymond Consumer Care Ltd., 9th & 10th Floor, ATL Corporate Park, Saki Vihar Road, Chandivali, Povai, Mumbai Mumbai-400072.

Pro-Forma Respondent.

AND

Sh. Rahul Sharma (on behalf of M/s Local Circles India Pvt. Ltd.), 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.

Original Applicant

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

Quorum:-

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

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 mixed questions of fact & law arose for determination: -

   I. Whether the Section 171 of the CGST Act does contain any Machinery Provisions/ methodology for determining the profiteered amount?

II. Whether in the absence of any prescribed methodology for computation of profiteered amount, the provisions of Section of 171 of the CGST Act becomes unenforceable?

III. Whether the report submitted by the Standing Committee on the basis of which entire investigation carried out, was barred by limitation; and whether the authority has no power to condone the delay in filing the report by the Standing Committee?

IV. Whether the DGAP erred in facts and in law in comparing the weighted average base price with actual sale price?

V. Whether the Respondent No. 2 had profiteered an amount of ₹19,32,446/-, by not passing the benefit of reduction of the Rate of GST, on product After-Shave Lotion 'Park Avenue Good Morning 50ml', from 28% to 18% with effect from 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017?

2. It may be noted that there is no dispute with regard to the fact that the rate of GST on product After-Shave Lotion was reduced from 28% to 18% with effect from 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017; and that the unit sale prices of the said product of the Respondent No. 2 remained unchanged even after the said reduction of rate of GST.

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

a. A reference dated 27.03.2019, where a complaint dated 30.07.2018 was filed by Sh. Rahul Sharma, on behalf of M/s Local Circles India Pvt. Ltd., 4th Floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301 before Standing Committee on Anti-Profiteering alleging profiteering by Respondent No. 1 in respect of product After-Shave Lotion 'Park Avenue Good Morning 50ml' which had been supplied to Big Bazaar, Inderlok.

b. The complainant alleged that the price of impugned product was not reduced by the Respondent No. 1, from 28% to 18% granted vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 with effect from 15.11.2017. The Standing Committee vide the Minutes of Meeting dated 11.03.2019 requested the Director General of Anti-Profiteering, hereinafter referred to as 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 the DGAP vide his report dated 24.09.2019 submitted to erstwhile National Anti-Profiteering Authority, hereinafter referred to as NAA, stated that Respondent No. 1 had not passed on the benefit of the tax reduction from from 28% to 18% with effect from 15.11.2017, 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, 2017.

c. The impugned goods were manufactured by Respondent No. 1

who further supplies them to the distributors. The distributors supplied the goods to retailers/mega stores such as Big Bazaar, Inderlok (as in the present case) who in turn sold the subject goods to the ultimate customers. Respondent No. 1, i.e., M/s Sai Kripa, is one of the distributors of the Pro-Forma Respondent No. 2. Therefore, the DGAP vide its notice date 04.06.2019 considered Respondent No. 2 as “notice” and Respondent No. 1 as “co-noticee”.

d. Period covered for investigation by the DGAP is from 15.11.2017 to 31.03.2019.

e. The Fast-Moving Consumer Goods in question, i.e., “PA Asl Good Morning Splash 50 ml”, MRP Rs. 115/- per unit of After Shave Lotion having item code “NPAASG050008”, sold through a particular channel i.e. the General Trade (GT), during the period from 01.11.2017 to 14.11.2017 (pre-GST rate reduction) was taken and an average base price (after discount) was obtained after dividing the total taxable value by the total quantity of this item sold during the period. The average base price of this item was compared with the actual selling price of this item sold through same channel during the post-GST rate reduction period i.e. on or after 15.11.2017 as has been illustrated in the Table ‘A’ below:-

Table ‘A’ (Amount in Rs.)

Sl. No.	Description	Factors	Pre rate reduction (01.11.2017 to 14.11.2017)	Post rate reduction (from 15.11.2017)
1	Product Description	A	PA Asl Good Morning Splash 50	

	(Item Code)		ml (MRP 115/- (NPAASG050008)	
2	Channel	B	General Trade (GT)	
3	Total quantity of item sold	C	2,220	
4	Total taxable value (after Discount)	D	1,58,322/-	
5	Average base price (without GST)	E=(D/C)	71.32/-	
6	GST Rate	F	28%	18%
7	Commensurate Selling Price (post rate reduction)(including GST)	G=118% of E		84.15/-
8	Invoice No.	H		GWTSSI180566
9	Invoice Date	I		21.11.2017
10	Total quantity (as per invoice indicated in H)	J		12
11	Total Invoice Value (including GST)	K		1,082/-
12	Actual Selling price (post rate reduction)(including GST)	L=K/J		90.19/-
13	Excess amount charged or Profiteering	M=L-G	6.04/-	
14	Total Profiteering	N=J*M	72.48/-	

Hence, the Respondent No. 1 profiteered an amount of Rs. 72.48/- on a particular invoice and thus the benefit of reduction in the 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. On the basis of above calculation as illustrated in the 'Table-A' given above, profiteering in case of all the impacted goods of the Respondent No. 1 had been computed by the DGAP in the similar manner. Therefore, the total profiteered in respect of all the invoices amounted to Rs. 18,48,34,084/- for the period 15.11.2017 to 31.03.2019.

f. DGAP has further contended that the perusal of the outward sales data made available by the Respondent No. 2 (Helen Cutis) indicated that he had profiteered an amount of Rs. 8,97,253/- from the Respondent No. 1 (Shree Sai Krupa) during the period from 15.11.2017 to 31.03.2019.

g. The DGAP has also stated that perusal of the outward sales data made available by the Respondent No. 2 indicated that the Respondent No. 1 had increased the base prices of the products when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017. On the basis of aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) for all the products impacted by reduction in the rate of GST from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017, during the period from 15.11.2017 to 31.03.2019, as furnished by the Respondent No. 2, the profiteered amount came to Rs. 38,64,891/-, and the said profiteered amount had been arrived at by comparing the average of the base prices (after discount) of the goods sold during the period from 01.11.2017 to 14.11.2017 with the actual invoice-wise base prices of such goods sold during the period from 15.11.2017 to 31.03.2019. The above report was carefully considered by NAA, and a Final Order No. 25/2020 dated 11.05.2020 was passed by the erstwhile NAA. We consider it apposite to quote the order of the NAA, it reads as follows:

"113. Accordingly, the amount of profiteering in respect of Respondent

No. 1 [Helen Cutia] *is determined as Rs. 18,48,34,084/- including the GST under the provisions of Rule 133 (1) of the CGST Rules, 2017."*

"114. The profiteered amount in respect of the Respondent No. 2 [Sai Kripa] *is determined as Rs. 38,64,891/- in terms of Rule 133(1) of the CGST Rules, 2017".*

"115. The Respondent No. 1 has also profiteered an amount of Rs. 8,97,253/- from the Respondent No. 2 as has been mentioned in the DGAP's Report dated 24.09.2019. Since, the above amount is required to be passed on to the ultimate buyers hence, the same shall be deposited in the CWFs of the Central and the State Governments as per the provisions of Rule 133 (3) (C) of the CGST Rules, 2017 along with the interest and shall not be passed on to the Respondent No.2 as he is not eligible to get the benefit of tax reduction at the expense of the common recipient".

4. The Respondent No. 1 filed Writ Petition (C) No. 8161/2020 before the hon'ble Delhi High Court and challenged the Final order dated 11.05.2020 passed by erstwhile NAA. The Respondent No. 1 also contended before the court that the calculation done by the DGAP was factually incorrect as the DGAP had calculated the profiteered amount twice. Respondent No. 1 emphasised that each invoice had been taken twice while calculating the profiteered amount. The Respondent No. 2 also stated that the profiteered amount had been computed both in the hands of the principal company (Respondent No. 1) as well as in the hands of the Respondent No. 2.

5. Therefore, the Hon'ble High Court of Delhi set aside the Final order dated

11.05.2020 and remanded the matter back to NAA for fresh adjudication. Erstwhile NAA vide order sheet dated 09.11.2020 re-initiated the proceedings against the Respondent No. 1 i.e., M/s Shree Sai Kripa Marketing and directed to file Written submissions. NAA also directed the DGAP to intimate the reasons how the profiteering amount was calculated twice.

6. Respondent No. 1 filed his written submissions dated 02.12.2020 in response to erstwhile NAA order sheet dated 09.11.2020, shorn of unnecessary details, are as follows: -

a. Constitution of standing committee and screening committee was illegal and without authority of law.

b. Constitution of DGAP and actions of DGAP were unconstitutional and illegal.

c. In the absence of any rule prescribing methodology for computation of profiteering amount, the provision of Section 171 of the CGSTAct becomes unenforceable.

d. The impugned Section 171 of the CGST Act does not contain any machinery provisions for determining the profiteered amount. The Respondent No. 2 relied on various Judgments including of the Hon'ble Supreme Court in the cases of CIT vs. B.C. Srinivasa Setty (19.021981-S) MANU/SC/0285/1981 and CCE vs. Larsen & Toubro Ltd. and Ors. (20.08.2015-SC): MANU/SC/0887/2015.

e. The report submitted by the standing committee, on the basis of which entire investigation was carried out, was barred by limitation and the Authority had no power to condone the delay in filing of the report by the Standing Committee.

f. The DGAP erred in facts and in law in calculating the profiteered amount for a large period of almost one and half year.

g. DGAP erred in facts and in law in comparing the weighted average base price with actual sale price rather than comparing weighted average base price with weighted average sale price or ought to have compared actual base price – party wise with actual sales price - party wise.

h. Arithmetical and clerical errors which were apparent on the face of the record had been committed while computing the profiteered amount. Each transaction had been erroneously taken twice while computing the profiteered amount.

i. DGAP erred in facts and in law in including the additional tax in the profiteered amount, although the said amount was duly deposited by the Respondent No. 2 with the government.

j. Profiteered amount could not be calculated both in the hands of the principal company as well as in the hands of the Respondent No. 2 for the same transaction. Profiteering could not be computed at each stage of supply chain:-

The actual purchase price of the Respondent No. 1 from Respondent No. 1 for the period 01.11.2017 to 14.11.2017 (pre-reduction rate period) in respect of the product PAASLACE SPLASH 50ML and the actual profit in respect of this product for the pre-reduction period as well as the post-reduction period is explained hereunder:-

PRODUCT: PA ASL ACE SPLASH 50ML TO
PARTY NAME: FUTURE RETAIL LTD
Before Rate Change

Purchase Price without Tax	64.9	Tax @ 28%	18.17	Purchase Price including Tax	83.072
Sales Price without Tax	67.38	Tax @ 28%	18.86	Sale Price including Tax	86.25
Profit In Rs.	2.48 (67.38-64.9)				
Profit as % of Cost Price	3.82% (2.48/64.9*100)				
PRODUCT: PA ASL ACE SPLASH 50ML TO PARTY NAME: FUTURE RETAIL LTD **After Rate Change**					
Purchase Price without Tax	70.4	Tax @ 18%	12.67	Purchase Price including Tax	83.072
Sales Price without Tax	73.09	Tax @ 18%	13.15	Sale Price including Tax	86.25
Profit in Rs.	2.69 (73.09-70.4)				
Profit as % of Cost Price	3.82% (2.69/70.4*100)				
PRODUCT: PA ASL ACE SPLASH 50ML TO PARTY NAME: FUTURE RETAIL LTD					
After rate change Cost Price without tax	70.4	Tax @ 18%	12.67	Total Landing Cost in the Hands of Respondent	83.07
DGAP expected the Respondent to sell the product at Sale Price without tax	67.38	Tax @ 18%	12.12	DGAP expected the Respondent to sell at Sale Price including Tax	79.50

Loss in this case	3.02 (67.38-70.4)				
PRODUCT: PA ASL ACE SPLASH 50ML PARTY NAME: GODFREY PHILLIPS INDIA LTD **Before Rate Change**					
Purchase Price without Tax	64.9	Tax @ 28%	18.17	Purchase Price including Tax	83.072
Sales Price without Tax	70.08	Tax @ 28%	19.62	Sale Price including Tax	89.70
Profit In Rs.	5.18 (70.08-64.9)				
Profit as % of Cost Price	7.98% (5.18/64.9*100)				
PRODUCT: PA ASL ACE SPLASH 50ML PARTY NAME: GODFREY PHILLIPS INDIA LTD **After Rate Change**					
Purchase Price without Tax	70.4	Tax @ 18%	12.67	Purchase Price including Tax	83.072
Sales Price without Tax	76.02	Tax @ 18%	13.68	Sale Price including Tax	89.7
Profit in Rs.	5.62 (76.02-70.4)				
Profit as % of Cost Price	7.98% (5.62/70.4*100)				
PRODUCT: PA ASL ACE SPLASH 50ML PARTY NAME: GODFREY PHILLIPS INDIA LTD					
After rate change Cost Price without tax	70.4	Tax @ 18%	12.67	Total Landing Cost in the Hands of Respondent	83.07
DGAP expected the Respondent to sell the	67.38	Tax @ 18%	12.12	DGAP expected the Respondent to sell at Sale Price including	79.50

product at Sale Price without tax				Tax	
Loss in this case	3.02 (67.38-70.4)				

k. Discounts offered by the Respondent No. 1 to its customers were not considered by the DGAP while calculating profiteering amount.

l. That out of all the distributors of the company Respondent No. 1 had been singled out and tax had been levied only on the Respondent No. 1:-

The Respondent No. 1 to be correct and in case all the grounds raised by the Respondent No. 2were held to be liable to be rejected still the profiteered amount, if any worked out to Rs.16,43,797/- as follows:-

S.No.	Particulars	Amount
1.	Profiteered amount calculated by DGAP and as accepted by DGAP as per Annexure 34 of the report of the DGAP	38,64,891/-
2.	Profiteered amount after rectification of the clerical mistake i.e. after deleting the entries considered twice	19,38,579/-
Less:	Tax amount included in the profiteered amount which was paid to the Government. Calculation at Para 106 (Rs. 5,89,560/2).	(-) 2,94,780/-
	Total:	16,43,799/-

7. A copy of the above submissions dated 02.12.2020 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 17.12.2020 on the Respondent No. 2's submissions, shorn of unnecessary details, are as follows:

a. For the contention raised by the Respondent No. 2 that in the absence of any rule prescribing methodology for computation of profiteering amount, the provision of Section 171 of the CGSTAct becomes unenforceable, the DGAP clarified that these issues had been duly addressed by the Authority in Para-94 of its Final Order no. 25/2020 dated 11.05.2020.

b. For the contention of the Respondent No. 2 that the impugned Section 171 of the CGST Act does not contain any machinery provisions for determining the profiteered amount, the DGAP clarified that both the case laws quoted by the Respondent No. 2relate to cases of levy of taxes.The impugned provision does not levy any tax on the suppliers and hence the above cases do not support the case of the Petitioners.

c. For the contention raised by the Respondent No. 2 that the DGAP erred in facts and in law in calculating the profiteered amount for a large period of almost one and half year, the DGAP clarified that the above issue raised by the Respondent No. 2 in had been duly addressed by the erstwhile Authority in Para- 73 of its Final Order no. 25/2020 dated 11.05.2020.

d. For the contention of the Respondent No. 2 that DGAP erred in facts and in law in comparing the weighted average base price with actual sale price rather than comparing weighted average base price with weighted average sale price, the DGAP clarified that the methodology adopted by the DGAP was correct and strictly as per law enshrined in Section 171 of the CGST Act. The methodology had been consistently adopted by the DGAP and upheld by the Authority in all similar cases. The DGAP further clarified that it has adopted Average-to-Actual Methodology.

e. The DGAP for the Respondent No. 2's contention that each transaction had been erroneously taken twice while computing the profiteered amount, the DGAP clarified that the erstwhile NAA has granted eight opportunities of personal Hearings on 24.10.2019, 21.11.2019, 06.12.2019, 24.12.2019, 08.01.2020, 27.01.2020, 17.02.2020 & 02.03.2020 to the Respondent, however they had never raised the above issue in any of the hearings held before the Authority and the above contention was raised for the first time before the Hon'ble High Court of Delhi and in the present submission dated 02.12.2020.The same was rectified and the revised net higher sales realization due to increase in base prices of the products or in other words, the Revised Profiteering amount came to ₹. 19, 32,446/-. The Place (State) wise breakup of this amount is furnished in the Table-'A' given below:-

S.No.	Name of State	State Code	Profiteering (Rs)
1	Delhi	07	19,02,069
2	Haryana	06	26,458
3	Uttar Pradesh	09	3,919
Grand Total			**19,32,446**

f. For the contention raised by the Respondent that the DGAP erred in including the additional tax in the profiteered amount, although the said amount was duly deposited by the Respondent No. 2 with the government, the DGAP clarified that the issue raised by the Respondent No. 2 had been duly addressed by the Authority in Para- 87 of its Final Order No. 25/2020 dated 11.05.2020, which reads as "*The Respondent No. 1 has also profiteered an amount of Rs. 8,97,253/- from the Respondent No. 2. Since, the above amount is required to be passed on to the ultimate buyers hence; the same shall be deposited in the CWFs of the Central and the State Governments as per the provisions of Rule 133(3) (c) of the CGST Rules, 2017".*

g. For the averment made by the Respondent No. 2 that the discounts offered by the Respondent No. 2 to its customers were not considered by the DGAP while calculating profiteering amount, the DGAP clarified that Section 15(3)(a) provides that the value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply.

h. For the contention raised by the Respondent that out of all

the distributors of the company Respondent No. 2 had been singled out and tax had been levied only on the Respondent No. 2, the DGAP clarified that the Respondent No. 2 being a registered person in the CGST Act, 2017 was duly bound to follow the provisions of the Act including Section 171 and the Rules made there under. The Respondent No. 2 could not choose to non-compliance by giving excuse that he was one of the distributors of Respondent No. 1.

8. The Respondent No. 1 vide its letter dated 22.01.2021 had filed rejoinder on the DGAP's clarifications dated 17.12.2020, wherein, the Respondent No. 2 reiterated and emphasized his earlier submissions dated 02.12.2020.

9. 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.

10. Therefore, in this case notice was issued, on 16.06.2025, to the Respondent appear either in person or through Authorized Representatives for hearing. Hearings in the matter were held different dates and finally concluded on 06.01.2026. The Departmental Representative on behalf of DGAP i.e., Ms. Geetika Chib, learned Additional Assistant Director-Authorised Representative of the DGAP was assisted by Sh. Praveen Kumar, Inspector appeared on

behalf of the DGAP. Sh. Vineet Bhatia, Adv. & Sh. Aamnaya Jagannath Mishra, Adv. and Sh. Himanshu Gupta, Representative of Respondent No. 2 and Sh. Tushar Gupta, Proprietor of the Respondent No. 2 appeared for hearing.

11. During the course of hearing dated 06.01.2026, the Respondent was directed to file his written arguments. The same has been filed by the Respondent vide email dated 17.01.2026. The additional issues raised by the Respondent no. 1 are as follows: -

I. The case of the respondent is distinguishable from the factual matrix in the matter of DGAP V.s Raj & Co.

II. the failure of the appellant to ascertain which products were procured by the respondent from M/s J.K. Helene Curtis Ltd. before the rate reduction and after the rate reduction cannot be a ground to recover the alleged profiteered amount from the respondent which has already been recovered from M/s J.K. Helene Curtis Ltd.

III. The appellant has erred in facts and in law in calculating the profiteered amount for a large period of almost one and a half year. the period for which investigation was carried out and for which the alleged profiteered amount has been computed has been calculated in an arbitrary and whimsical manner without statutory backing and without the support of precedents.

IV. The appellant has erred in facts and in law in comparing the weighted average base price with actual sale price rather than comparing weighted average base price with weighted average sale price or ought to have compared actual base price – party wise with actual sales price - party wise

V. The appellant has erred in facts and in law in including the additional tax in the profiteered amount, although the said amount was duly deposited by the respondent with the government

VI. The respondent has cogent reasoning backed by commercial factors for not reducing its selling price after the reduction of rate of GST applicable on its supplies

VII. The constitutionality of section 171 of the CGST act and the rules issued thereunder is currently under challenge before the hon'ble Supreme Court of India.

11. As far as the question no. I and II formulated by us, in the opening of this final order, are concerned, it is no more *Res Integra*. The Hon'ble High Court of Delhi in the case of Reckitt Benckiser India Pvt. Ltd., Vs. Union of India, W.P (C) No. 7743 / 2019, dated 29.01.2024 has held that Section 171 lays out a clear a legislative policy, and does not delegate any essential legislative function. The Delhi High Court further held that the said provisions are not a price fixing mechanism. They do not violate either Article 19(1)(g) or Article 300 (A) of the Constitution. It is further held that the Section 171 of the Act lays down that supplier is required to pass on the benefit of the reduced tax rate and the benefit of ITC, and that such passing on is to be carried out only by way of commensurate reduction of price of the goods or services.

12. Further, in the said judgment the Delhi High Court held that as far as methodology adopted by the DGAP in calculating of profiteering in respect of the Real Estate Industry is incorrect. However, the Delhi High Court further held that there is *'no one size fits all'* formulae or method to be applied for every industry. Every Industry has to be taken in its own peculiarity and accordingly profiteering has to be calculated.

13. In that case, the question of absence of prescribed methodology was also considered and it was held that there is enough machinery in the relevant provision of the CGST Act and Rules for calculating the profiteered amount. In view of the above, we are of the considered opinion that the argument that in the absence of the prescribed

methodology for computation of the profiteering amount, the provision of the 171 Act and the CGST Rules, 2017 has become unenforceable, is not acceptable.

14. Coming to the question of limitation as mentioned in question III of this order, we see that there is no time limit fixed for the calculation of the profiteered amount. Furthermore, in paragraph 158 of the aforesaid Judgment of the Delhi High court in **Reckitt Benckiser India Pvt. Ltd., Vs. Union of India, W.P (C) No. 7743 / 2019, dated 29.01.2024**, it is held that the Rules though prescribe a timeline, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse. The National Anti-Profiteering provisions as the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favours the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in P.T. Rajan. T.P.M. Sahir and Ors. (2003) 8 SCC 498 has held that "It is well-settled principle of law that where statutory functionary is asked to perform a statutory duty within the time prescribed, therefore, the same would-be directory and not mandatory and that "a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently, the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.

15. Thus, it is clear, in this case the said principle is squarely applicable. The first report of the DGAP was submitted on 17.12.2019. Thereafter, final order was passed by Erstwhile NAA on 11.05.2020. The Respondent filed Writ Petition in the Hon’ble Delhi High Court bearing W.P. (C)8161/2020. The Delhi High Court set aside the order passed by the NAA on 22.10.2020 and remanded the matter back to the NAA for fresh adjudication.

16. The Delhi High Court in its judgment held that the contention raised by the Learned Counsel for the Respondent No. 1 that the calculation done by the DGAP is factually

incorrect as he has calculated the profiteered amount twice. Respondent no. 1 emphasises that each invoice has been taken twice while calculating the profiteered amount as is evident from the Annexure-34. He further stated that the profiteered amount has been computed both in the hands of the principal company as well as in the hand of the Petitioner.

17. Mr. Ravi Prakash appearing on behalf of the Erstwhile NAA appearing before the High Court, admitted that there are some factual mistakes in the impugned order and he has no objection if the impugned order dated 11.05.2020 is set aside and the matter is remanded back to NAPA for fresh adjudication.

18. Consequently, with the consent of the parties, Delhi High Court set aside the impugned order of NAA and remanded it to the NAPA for fresh adjudication according to the Law.

19. After receipt of aforesaid order, the Erstwhile NAA as per the daily orders dated 09.11.2022 / 03.12.2022 directed the DGAP to file clarifications. DGAP after verification of records submitted another report dated 17.12.2020, wherein, DGAP calculated the profiteering amount to Rs. 19,32,446/- instead of Rs. 38,64,891/-.

20. Thereafter, the Notices was issued to the Respondent to file their written submissions. The Learned Counsel for the Respondent would submit that the order passed by the NAA for re-investigation is barred by limitation however, we are of the opinion that as the remand was an open remand without any specific restriction on the NAA or NAPA or the authority exercising Anti-Profiteering Jurisdiction. Quasi-Judicial Order passed by the preceding Authority to the DGAP for clarification will not attract limitation and it cannot said that the proceedings are barred by the limitation.

21. As far as question no. IV is concerned, the Learned counsel for the Respondent no. 1 submitted that the comparison of the weight average base price with actual sale price is incorrect. We may note here that respondent in the written arguments submitted after the closing of the argument at paragraph B5 at page eleven admitted that total profiteering amount of Rs.18.48 Cr. has been confirmed against M/s J.K. Helene Curtis Ltd. by the Ld. National Anti-Profiteering Authority vide Order No.25/2020 dated

11.05.2020. The Respondent was also a party to the proceedings, and the Appellant had submitted therein that an amount of Rs.8,97,253/- was profiteered by M/s J.K. Helene Curtis Ltd. from the Respondent.

22. Thus, it can be inferred by the Tribunal at this stage that the method of calculation of profiteering by the DGAP is faulty. It is also contended by the Learned counsel appearing for the Respondent no. 1 i.e., M/s Sai Krupa that the Principal that is M/s Helen Cutis has profiteered an amount of Rs. 8,97,253/- only. It is immaterial while determining the amount profiteered by the Respondent no. 1. We are concerned only with the profiteering made by the Respondent no. 1 by not passing on the benefit of reduction of rates. We are not concerned about any profiteering made his Principal by not passing on the rate reduction to it. It is a matter to be decided in the proceeding against his Principal. The fact that his Principal has not passed on certain rate reduction to the Respondent no. 1 will not resolve him from its duty to pass on the benefit to its customers.

23. In the written argument, The Respondent has also submitted some additional points for consideration of this Tribunal in this case. The first is that fact of this present case is distinguishable from the factual matrix of DGAP Vs. Raj & Co. The aforesaid final order of this court was referred in different context. The question in Raj & Co. was whether the retailer has any discretion to reduce the price of the product. In other words, the retailer has any discretion in reducing the MRP by allowing any kind of reduction of the price to the customer. It was argued in that case before us that the price was fixed by the original producer that is the principal and, therefore, the retailer has no discretion to reduce the price. In that case, the Principal has produced a document to show that the Respondent Raj and Company had the discretion to reduce the price.

24. It is argued by the Learned Counsel appearing for the Respondent no. 1 in this case, that similar documents have not been produced in this case pertaining to retail contract or document through which the retail business is carried out to show that such discretion has been conferred upon them. It is settling principle of marketing that

retailer has certain discretion in giving a part of his profit as a discount to the ultimate consumer.

25. Therefore, the contention that the factual matrix of the case i.e. DGAP Vs. Raj & Co. is distinguishable is of no help to the Respondent.

26. The Respondent No. 1 further submitted that DGAP should have ascertained which products were procured by the Respondent from M/s J.K. Helen Curtis Ltd., before the rate reduction and after the rate reduction cannot be a ground to recover the alleged profiteered amount from the Respondent which has already been recovered from M/s J. K. Helene Curtis. Ltd.

27. This issue has already been discussed by us earlier. After remand DGAP has taken into account duplication of invoices calculating the profiteering amount by the principal and retailer. In that view of the matter, DGAP reduced the profiteered amount 38,64,891/-. to 19,32,446/-. Thus, it cannot be said that the methodology adopted by DGAP is wrong in any way.

28. The next argument that the DGAP erred in facts and in law in calculating the profiteered amount for a last period of almost one and a half year, and that it compared the weighted average base price with actual sale price rather than comparing the weighted average base price has already been decided by us in the different cases. We find that this method of calculating the profiteered amount cannot be found a faulty one, resulting in a miscalculation of profit.

29. The Respondent has further stated that DGAP has erred in facts and in law in including the additional tax in the profiteered amount, although the said amount was duly deposited by the Respondent with the Government. The DGAP vide its Report, initially calculated the profiteered amount to be Rs. 38, 64, 891/-. Later on, the same was reduced to an amount of approx. Rs. 19,32,446/-. Once, it is held that there is a profiteering by the traders of goods and services and consumer has paid a higher price because of the fact of non-passing of the benefit of reduction of the tax, in the ultimate analyses the faceless consumer has definitely paid GST on the differential amount (higher) which have been collected by the Respondent and deposited in the

Exchequer. However, this amount has to be returned to the consumer, if identified, or, in the case of unidentifiable consumer, the same needs to be deposited in Consumer Welfare fund(s). Deposit of the GST collected by the retailer (paid by the consumer) is immaterial as the benefit is not passed on to the Consumer and he paid a higher price.

30. In that view of the matter, we find no illegality in the fact that the profiteered amount should be charged with a applicable rate of GST and same should be borne by the Respondent concerned.

31. The Respondent has submitted that because of commercial factors it did not reduce the sale price after reduction of the rate of GST. This issue has also been dealt with earlier by hon'ble Delhi High Court in the case of **Reckitt Benckiser India Pvt. Ltd., Vs. Union of India, W.P (C) No. 7743 / 2019, dated 29.01.2024.**

32. The Hon'ble High Court of Delhi, in the case of Reckitt Benckiser India (P.) Ltd. v. UOI [2024] 158 taxmann.com 675/102 GST 495/82 GSTL 344 (Delhi)/2024 SSC Online Del 588. The High Court has considered the constitutional validity of Section 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 reserve "price reduction" is not correct.

33. 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 pretence. 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.

34. 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.

35. 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. In fact, the provision contains a penal consequence for violation of it. In the aforesaid judgment of Reckitt Benckiser India (P.) 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 of Taxes by not reducing the MRP, it must establish it on cogent basis and it should not be used as a device merely to circumvent a statutory obligation of reduction of prices in a commensurate manner as contemplated under Section 171 Act, 2017.

36. It is settled principal of law that initial presumption, as arising in this case is rebuttable presumption but such presumption can be rebutted only by cogent, unambiguous and

clear materials or evidences to show that after reduction of the rate of GST from 28% to 18%, there was some cogent reasons to show that there was play of market forces which led the Respondent no. 1 to keep the MRP unchanged. So, this contention raised by the Respondent is of no substance.

37. The last contention raised by the Respondent no. 1 is that the constitutional validity of Section 171 of the CGST Act and the Rules issued thereunder is currently under challenge before the Hon'ble Supreme Court of India, hence, this matter is not maintainable.

38. The pendency of the case challenging the constitutional validity of Section 171 before the Supreme Court by itself will not in the absence of the order of Stay would anyway affect the jurisdiction of the Tribunal to decide the case of alleged profiteering. Moreover, the Hon'ble High Court of Delhi has upheld the validity of the relevant provisions.

39. In result, we come to the conclusion the DGAP has established by preponderance of probability and evidences that Respondent no. 1 has profiteered an amount of Rs. 19,32,446/- which needs be recovered from the Respondent No. 1. Since, in this case the applicant is faceless, the said profiteering amount shall be deposited in the Consumer Welfare Fund(s).

40. As per our earlier judgment because of the date of amendment regarding imposition of interest and penalty are after the period of alleged profiteering by the Respondent No. 1.

41. In that view of the matter, we are not inclined to impose any interest or penalty on the profiteered amount as calculated by the DGAP against Respondent no. 1.

42. So, the Respondent is directed to deposit the profiteered amount of Rs. 19,32,446/- equally in the ratio of 50:50 as aforesaid in Central Consumer Welfare fund and in State Consumer Welfare funds of Haryana, Delhi and Uttar Pradesh.

43. 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.

44. A copy each of this order be supplied to the respondent and to the concerned Commissioner CGST / SGST for necessary action.

Judgment pronounced in open court.

S. K. Mishra,
President, GSTAT, PB.