

GSTAT

Division Bench Court No. Court I

NAPA/12/PB/2025

DG ANTI PROFITEERING, DIRECTOR GENERAL OF
ANTI-PROFITEERING, DGAP

.....Appellant

Versus

MRF CORPORATION PVT. LTD

.....Respondent

Counsel for Appellant

Counsel for Respondent

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

Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

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 : Yes

Order reference no. : ZA070010526000012H Date of order : 06/05/2026

1.	GSTIN/Temporary ID/UIN - 32AAACM2185R1Z6	
2.	Appeal Case Reference no. - NAPA/12/PB/2025	Date - 11/11/2021
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. MRF Corporation Pvt. Ltd , sriprasad.k@mrfmail.com , 9941141656	

5.	Order appealed against -
	(5.1) Order Type -
	(5.2) Ref Number - Date -
6.	Personal Hearing - 06/05/2026 23/04/2026 16/04/2026 12/03/2026 05/02/2026 21/01/2026 29/10/2025 10/09/2025
7.	Order in brief - The matter is sent back to DGAP for re-investigation.
Summary of Order	
8.	If remanded with directions:
	a) Remanded to: DGAP
	b) Directions subject to which remanded, if any: The matter is sent back to DGAP for re-investigation.
9.	Type of order : Sent for re-investigation to DGAP

Place :DELHI PB

Date : 06.05.2026

The matter is taken up in hybrid today.

Shri Kundan Kumar Jha, Assistant Commissioner assisted by Smt. Nutan and Shri Ajay Kumar Tehlan, learned AAD's appear before us in-person on behalf of the DGAP.

Smt. Antara Balaji, learned Advocate appears before us virtually for the Respondent.

The matter was heard on 23.04.2026, Shri Harkesh Meena, Assistant Commissioner assisted by Rahul Rao Gautam, AAD argued the case on behalf of the Respondent.

Shri Karthik Sundaram, learned Advocate appeared in-person and argued the case on that day.

Orders have already been dictated by us on 23.04.2026, but the same has not been typed, corrected and uploaded in the portal within a reasonable time. Hence, the matter is listed today in the "To be mentioned" category. The order we have dictated on 23.04.2026 be uploaded in the portal today.

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 and Rules 129 and 130 of the CGST Rule, 2017, hereinafter, referred as CGST Rules, for brevity. Director General Anti-Profiteering (hereinafter referred to as "the DGAP") submitted its investigation report dated 27.02.2020, alleging profiteering against the Respondent Company M/s MRF Corporation Pvt. Ltd. The erstwhile National Anti-Profiteering Authority, vide Interim Order No. 37/2020 dated 11.12.2020, remanded the matter

back to the DGAP by invoking Rule 133 (4) of the CGST Rules, 2017 with directions to conduct further investigation on certain issues as enumerated herein as under: -

- i. The erstwhile NAA took note of the fact that as per the letter dated 27.07.2020, the DGAP admitted that the base price of Rs 214/- of the product “SP EP PRIMER GREY- 1 Liter” which was prevailing in the pre-rate reduction period has been kept as the same in the post rate reduction period. If it is taken to be correct, then there is no issue of not passing on the benefit of tax reduction by the Noticee as he has maintained the same base price in the post rate reduction period. Hence the claim of the DGAP made in its reports dated 27.02.2020, that the Noticee has not passed on the benefit of tax reduction by increasing base price of the said product in the post rate reduction period is contrary to the clarification given above. Therefore, the NAA considered it proper that the DGAP should explain the contradiction made in the reports dated 27.02.2020 and 27.07.2020.

- ii. The NAA also took note that the base price of “SP EP PRIMER GREY- 4 Liter” product was Rs. 797/-, prior to 18.06.2018; it was again Rs. 829/- during the period from 27.07.2018 to 31.10.2018; and was raised to Rs. 854/- w.e.f. 01.11.2018 and hence there was no increase in the

base price after the rate reduction. The NAA took into consideration the submissions made by the Respondent as per the invoices dated 21.07.2018 and 27.06.2018, the basic/base price of above product in respect of Batch No. 23871 w.e.f. 18.06.2018 to 26.06.2018, during the pre-rate reduction period, was Rs. 829/- and the base/basic price of the above product in respect of Batch No. 23894, w.e.f. 27.07.2018 to 31.10.2018 was Rs. 829/-. The NAA took into consideration the invoice dated 04.08.2018 produced by the Noticee/Respondent.

- iii. The NAA took consideration the clarification of the DGAP vide letter dated 27.7.2020 wherein they have stated that “the submission of the Noticee regarding the product “SP EP PRIMER GREY – 4 L” is of no relevance to the process of investigation as the product was not found to be sold in the period 01.07.2018 to 26.7.2018 and was also not in the list of the products sold prior to rate reduction i.e. before 26.07.2018 submitted by the Noticee vide e-mail dated 24.1.2020. As the product “SP EP PRIMER GREY – 4 L” with product code 500125 was found neither in outward invoice data from the period 01.7.2018 to 26.7.2018 nor the products list submitted by the Noticee, it was considered to be a new product which was launched post rate reduction and hence was completely kept out of the purview of calculation of profiteering and

accordingly, the calculation of the amount of profiteering for the said product is 'NIL'.

- iv. Further the Authority observed by taking into consideration the invoice dated 04.08.2018 issued in favour of M/s Rajesh Hardwares, Kanyakumari, attached with the Respondent submissions dated 19.06.2018, wherein the said product of "SP EP PRIMER GREY – 4 L" having product code V13160460 and the Respondent was not referring to the product having code 500125 while substantiating his claim. The DGAP vide Annexure-19 of the Report dated 27.02.2020 has also computed profiteering of Rs. 20/- in respect of the above product. Therefore, the erstwhile, NAA concluded that the DGAP has not examined the above claim of the Noticee carefully and the clarification given was wrong. Hence it is further observed that the DGAP is required to re-examine the above claim of the Noticee and submit fresh findings on the same.
- v. The DGAP, vide Para 15 of his report dated 27.02.2020, the erstwhile further noted that "as per the outward sales data submitted by the Noticee, it has been observed that approximately 90 products were not sold before 27.07.2018 and accordingly they are construed as new products launched by the Noticee post GST rate reduction and,

therefore, they have been kept out of the purview of anti-profiteering". Thus, in this connection perusal of the Report dated 27.02.2020 of the DGAP showed that it has not been mentioned in it whether any effort was made to examine the details of the outward taxable supplies of the Respondent made during the previous months of May, April and March 2018 and so on to confirm that the above 90 products have not been sold by the Respondent in the pre rate reduction period. These details were also not summoned by the DGAP vide NOI dated 25.06.2019. Therefore, the erstwhile NAA further concluded that the DGAP is required to conduct fresh investigation to ascertain that the above 90 products have been launched post 27.07.2018 and they have not been sold during the above said period. On the receipt of the aforesaid interim order dated 11.12.2020 from the NAA the DGAP reinvestigated the matter and after taking into consideration the observations made by the erstwhile NAA came to the conclusion that the base price of the subject goods was increased while there was a reduction in GST rates from 28 percent to 18 percent w.e.f. 27.07.2018 and it was also observed that the profit of such reduction in GST was not passed on to the recipient by way of commensurate reduction in prices from the details furnished in Annexure-12 to the Report the DGAP concluded

that the total amount of profiteering covering the period 27.07.2018 to 31.05.2019 is Rs.10,70,55,946/- (Ten crore seventy lakh fifty five thousand nine hundred forty six only) in respect of the product impacted vide notification dated 26.07.2018 it was also concluded by DGAP that the profited amount worked out in the initial report was Rs.10,52,07,669.50/- whereas open reinvestigation on the direction given by the erstwhile NAA in terms of aforesaid profiteering amount has been revised to Rs.10,70,55,946/- .

- vi. In the first written submission dated 04.02.2022, the Respondent at para-18 observed stating at page-18 of the said WS has taken a plea that the second DGAP report does not take into account the commercial realities of the business by the Noticee and the prerogative of the Noticee to exercise its commercial wisdom.
- a) It is clear that the 2nd DGAP Report does not take into account certain commercial realities and the commercial wisdom of the Noticee while comparing the prices of the products. Reliance in the regard is placed on the decision of the Hon'ble Supreme Court in CIT v. Walchand & Co. [1967 65 ITR 381]. It is submitted that it is common practice to increase prices of products in the normal course of

business in keeping with commensurate fluctuations in the market. For instance, in relation to the product 'Epoxy ZN PH Primer Grey 1 Ltr', the Noticee in accordance with common market practice and commercial prudence has increased its prices by 3.14% (approx.) almost 3 months after the reduction in the GST rates. With respect to the same product, the Noticee had previously increased its price about one and a half months prior to the GST rate reduction. Therefore, these price changes occurred in the normal course of business. In the immediate aftermath of the GST rate reduction w.e.f. 27.07.2018, there was no change in the Base price of the products sold by the Noticee, which fact has not been disputed.

While section 171 of the CGST Act prescribes for certain anti-profiteering measures, it does not and cannot bar any price change/price increase in the ordinary course of business, more than 2-3 months after the GST rate reduction.

- b) Notwithstanding the above mut us stated that the price changes in the products of the Noticee were not made as an immediate consequence

of the reduction in rate of GST as is evidenced from Table Nos. 1-6 below.

- c) The Noticee also explained that as a general practice, the Noticee maintains separate product codes for every pack size of a particular product, hence for a single product- there would be multiple product codes depending on the pack size of the product and this practice had not changed from 2017-19. Vide letter dated 25.06.2021, the Noticee provided signed copies of sample invoices and further clarified that the reason for multiple codes for same pack size of “SP EP Primer Grey 1Lt” was because certain products are brought out (traded products) and certain products are manufacture products and that therefore, there arose a need for the Noticee to create a distinction in respect of this product. Despite the various communications issued by the Noticee explaining the reasons behind maintaining separate codes for a single product of the same pack size, the DGAP had summarily and without assigning any reasoning whatsoever stated that “the reasons provided for by the Noticee for maintaining different products codes for same description of products does not appear to be convincing.” It is submitted that there requires to be some reasonable basis in fact or in law for rejection of any

explanation offered by the Noticee. A finding to the effect that the reasons provided by the Noticee do not appear to be convincing, without specifying any reasons for the same, is bereft of any basis in fact or in law and requires to be rejected. With respect to the 90 products sold post the rate reduction period, the DGAP has computed profiteering afresh after taking into consideration the description of the products instead of the product code for arriving at average base price of the products sold during the period 01.07.2018 to the period 26.07.2018 and then comparing it to the actual base price charged during the period 27.07.2018 to 31.05.2019. This methodology as adopted by the DGAP is arbitrary unreasonable and without any basis in fact or law. Therefore, such commercial realities of the market were also not taken into account by the DGAP while arriving at its faulty conclusion and therefore, it is clear that the DGAP has mechanically and without application of mind chosen to maintain its earlier findings and has not adhered to the directions of the Hon'ble NAA.

- d) In fact, the DGAP has intentionally instead of following an actual-to-actual basis of comparison, which would clearly show that the base prices pre and post rate change remained the same and that there

was no profiteering, has wantonly adopted an average v. actual price basis and comparing disparate periods – 25 days (pre rate change) v 309 (post rate change). The exercise has not been done on an independent basis but in a pre-mediated manner. A perusal of Table Nos1-6 set out below, would clearly show that the base prices the products sold by the Noticee remained the same both prior to and post the GST rate reduction.

2. The Respondent has submitted that the DGAP in its Report has not properly considered the product “SP EP -1 Liter”. Further it is submitted that the DGAP has evaded the specific question raised by the erstwhile NAA in the aforesaid Interim Order.

3. In course of hearing, the Learned Counsel appearing for the Responded on 15.2.2026 raised certain issues regarding play of market forces and he reasons for increasing the MRP of the product. Accordingly, we granted liberty to the Respondent to file appropriate written submission along with the Affidavit detailing the process of the practice and the ordinary course of business adopted by the Company while changing prices along with contemporaries documents in pursuance of such liberty the Learned Counsel filed an additional written submission wherein at para 4,5,6 and 7 as specifically mentioned the reasons of increasing the base price of the products reconsider it appropriate to quote the specific paragraph wherein this

plea has been raised. This is the document dated 20.02.2026. Thereafter, DGAP was asked to give a reply to the same and respond to the same.

4. DGAP in their clarifications under Rule 133 (2A) of the CGST Rules, 2017 vide point 4 (a) to (d) of para 3 has stated as below: -

Point 4: (a) to (d): The Respondent has submitted that the Prices of Raw material increased drastically from May 2018 to November 2018 which leads to increase the base price in November 2018. The respondent has claimed that in May 2018 the COGS (Cost of Goods Sold) as percentage of net sales was 54.10% which reduced to 52.13% in June 2018 after the price increased. Further, COGS has been increased to 55.06% in October 2018 due to increase in Raw Material prices.

Further, the Respondent has submitted the documents viz. Annexure-1 containing the prices of primary raw materials used for manufacturing of the finished product for the month of June and October 2018. Annexure-3 contains the percentage increase of raw material cost for the above said months.

Furthermore, the Respondent has submitted that the Paint industry uses crude oil-derived raw materials and petroleum-based products.

During the time period under investigation drastic increase in crude oil price also accompanied by the depreciation in the value of the Rupee with respect to Dollar increased the prices of Raw material for the Paint industry which led to the hike in base prices.

Hence, the claim of the Respondent they have increased the base price in June-2018 i.e. pre-rate reduction due to hike in price of raw material and COGS in their net sales (monthly) however, at this point of time it can't be incorporated in the report submitted by the DGAP.

5. On the basis of the aforesaid submissions, the DGAP stated that the Respondent has claimed that they were forced to increase the base price in June 2018 and Nov 2018 the document evidences for the same in the form of Annexure I to IV supported by Annexure D to E.

6. The learned Assistant Commissioner, DGAP further stated in his clarification dated 15.04.2026 that the Respondent has submitted month-wise price of raw material use for manufacturing with quantity utilized during the year which has been translated into percentage based on average consumption value. The Assistant Commissioner further stated that the comparison should be based on monthly basis because of the raw material used and COGS in the MIS system is on monthly basis. The comparison should be on monthly basis in other words it is stated that figures arrived at as an average for a month should not compared to an average arrived at

consumption on yearly basis. Therefore, they have re-iterated their investigation report dated 11.01.2021 and submit that Tribunal may pass any order it deemed fit or proper.

7. Shri Karthik Sundaram, learned Assistant Commissioner in advancing the case of the Respondent submitted that once the DGAP has admitted that the documents have been filed they cannot state that at a later stage or at later point of time it cannot be incorporate in the Report submitted by the DGAP. He further stated that the Report of the DGAP appears to be incorrect on the face of it and it should be set aside and a matter should be closed. Alternatively, it is argued that if the Tribunal comes to the conclusion that this matter should be re-investigated on the basis of fresh documents filed, then it should consider whether this aspect should be re-investigated by the DGAP.

The Assistant Commissioner and learned AAD appearing for the DGAP could not put forth a plausible reason for not reconsidering the matter in the light of documents filed. The Hon'ble high Court of Delhi in the case of Reckitt Benckiser India Pvt. Ltd., has observed that Section 171 of the CGST Act, 2017, mandates that reduction in rates of the GST or availability of the Input Tax Credit should be passed on to the ultimate consumer by reduction of price. However, it is also clearly observed by the Hon'ble High Court of Delhi that such presumption is rebuttable one and can be shown to be wrong. Prices of the product can increase depending upon play of

market forces, however it is further observed that it cannot be used as mere pretense rather clear evidence and documents to be shown to that effect.

8. The Hon'ble High Court of Delhi also accepted the plea that the fixation of prices even in cases of reduction the rate of GST depends largely upon the play of market forces and that has to be considered. Thus, in ultimate analyses when we accept that the DGAP should have considered the play of the market forces and increase in the prices of raw material in course of investigation, at this stage it cannot take a stand that such document cannot be made the basis for further investigation.

9. We are of the opinion that the report of the DGAP cannot be accepted. However, keeping in view the larger scope of the Section 171 of the CGST Act and the intention of the Indian Parliament to ensure passing of the benefit of reduction of rates of GST or availment of the ITC, we are of the considered opinion that the matter should be reinvestigated from the beginning and, therefore, we set aside the order of the DGAP and remand the matter back to the investigating agency for fresh investigation under Rule 133(4) of the CGST Rules, 2017. We are not putting any restriction on the scope of the investigation and the DGAP as well as the Respondent are at liberty to produce further documents and come to a final conclusion within a period of three months. The Respondent undertakes to cooperate with the investigation to be made by the DGAP and to produce relevant records as desired during investigation by DGAP and this Tribunal.

10. Pronounced in open Court

Dr. S. K. Mishra,

Shri Anil Kumar Gupta,

Date- 06.05.2026