

VOLUME VS. VALUE: MODALITIES TO PASS THE TAX RATE REDUCTION BENEFITS UNDER ANTI- PROFITEERING PROVISIONS

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ABSTRACT

Would you prefer lower prices after a reduction in Goods and Services Tax (GST) or a higher quantity for the same rate instead? Section 171 of the Central Goods and Service Tax Act, 2017 (CGST) and Rule 126 of the CGST Rules framed thereunder do not provide any guidelines or parameters as to how the benefit of GST tax rate reduction is to be passed on to the consumers. In the absence of procedure and/or methodology to determine commensurate reduction in prices, different practices appear to be in vogue for passing-on the benefit to the recipient such as; Increase in grammage/quantity, reduction in the prices of the impacted products, discounts offered on the product, increase in cost of inputs, supply of free Add-ons on the impacted products. Lately, many of the issues have not been appreciated in the decisions pronounced by the National Anti-Profiteering Authority (NAA), leading to a spike in the litigation emanating on such issues under the nascent law. The anti-profiteering norms are silent on grammage benefits besides; the courts have shown distinguished opinions on the acceptability of increased grammage benefit as a way for passing the GST rate reduction. In this paper, the authors have critically analysed various judicial pronouncements pertaining to the debate between Volume vs. Value: Modalities to Pass the Tax Rate Reduction Benefits under Anti Profiteering Provisions. Moreover, the authors have suggested valid practices and methodologies that could be used by the suppliers to transfer the benefits arising out of reduction in GST rates to consumers. This is to cope up with the existing challenges and

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lacunas under Anti Profiteering Provisions.

I. INTRODUCTION

In 2017, Anti-profiteering was tried out as a new concept and was introduced along with the Goods and Service Tax (hereinafter ‘GST’). The intention of the legislature was to make sure that the benefit on account of effective reduction of GST rates and benefit of increased availability of Input Tax Credit (hereinafter ‘ITC’) reaches the recipients and benefits are not pocketed by manufactures.¹ Consequently, the legal issues pertaining to Anti-Profiteering arise as to how this benefit can be passed on to the ultimate recipients? What does “commensurate reduction” mean? Notably, the word “profiteering” finds no place in the text of Section 171 of Central Goods and Service Tax Act, 2017 (hereinafter ‘CGST Act, 2017’)². However, under the Section 171, the mischief which is sought to be tackled is not profit but “profiteering”³ that is, making exorbitant, excessive, and unjustifiable profits.

The Authority for Advanced Ruling⁴ (hereinafter ‘AAR’) and Appellate Authority for Advanced Ruling⁵ (hereinafter ‘AAAR’) have been constituted to provide “Advanced Rulings”⁶ on exhaustive list of questions specified in the Section 97⁷ and Section 100⁸ of the CGST Act,

¹ Central Goods and Service Tax Act, 2017, No. 12, Acts of Parliament, 2017 (India), § 171 [hereinafter **CGST Act, 2017**].

² S Ganesh Aravindh & Shobhana Krishnan, *Anti-profiteering under GST: An interminable inquest?* 90 *Taxmann.com* 257 (2018).

³ *Profiteering*, BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ CGST Act, 2017, § 96.

⁵ *Id.*, § 99.

⁶ *Id.*, § 95.

⁷ *Id.*, § 97.

2017 respectively. In 2017, the constitutional validity of composition of the “advanced ruling bodies”, acting in judicial capacity, was challenged before the Hon’ble Gujarat High Court⁹ on the ground that the composition amounts to “Coram Non-Judice” due to absence of a judicial member in AAR and AAAR. Later in 2018, the petition was withdrawn.¹⁰

Neither CGST Act, 2017 nor the Central Goods and Service Tax Rules, 2017 (hereinafter ‘CGST Rules’) provides any guideline for determining the methodology and procedure for ascertaining the fact of profiteering by the supplier,¹¹ and same has been left to the discretion of the National Anti-Profiteering Authority (hereinafter ‘NAA Authority’). Moreover, in the CGST Act, there is no mechanism on the factoring of “commensurate reduction in the prices”. Further, the CGST Act does not provide any procedure for determining the meaning of the phrase “commensurate reduction in prices”.

II. ANTI-PROFITEERING NORMS

At the time of inception of the GST regime in India, there was a significant increase in the prices of the products and commodities because the suppliers were not passing the benefits to the recipients during the time when VAT was implemented in the country, thereby indulging in illegal profiteering.¹² Anti-Profiteering provisions were incorporated under the

⁸ *Id.*, § 100.

⁹ Nipun Kumar v. Union of India, Writ Petition (PIL) No. 2016 of 2017 (Guj. HC).

¹⁰ Nipun Kumar v. Union of India, R/Writ Petition (PIL) No. 239 of 2018.

¹¹ Central Goods and Service Tax Rules, 2017, Rule 126, Gazette of India, pt. II sec. 3 (Oct. 9, 2019) [hereinafter **CGST Rules, 2017**].

¹² Comptroller and Auditor General of India, *Implementation of Value Added Tax (VAT) in India-Lessons for Transition to GST: A Study Report* (Jun. 2010),

GST law to put a check on such illegal profiteering. Section 171 of the CGST Act provides for Anti-Profiteering measure which states that “any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.”¹³ In other words, the benefit of ITC or reduction in GST tax rate is required to be transferred to the recipients by reduction in the price of service provided or goods supplied.¹⁴

For this purpose, National Anti-Profiteering Authority was constituted¹⁵ which examines that “whether ITC availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods and/or services supplied by him”.¹⁶ NAA has to determine “whether the reduction in the rate of tax on any goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices or not.”¹⁷ Further, NAA has to identify the registered persons who have not transferred the GST rate reduction benefit¹⁸ and is empowered to pass an order¹⁹ in the form of; (i) penalty which is equivalent to *ten percent* of the amount so profiteered;²⁰ (ii) cancellation of the registration granted to a

https://cag.gov.in/sites/default/files/publication_files/SRA-value-added-tax.pdf.

¹³ CGST Act, 2017, § 171(1).

¹⁴ *The Anti-Profiteering Conundrum*, THE ECONOMIC LAW PRACTICE (Jul. 20, 2018), <https://elplaw.in/leadership/the-anti-profiteering-conundrum>.

¹⁵ Ministry of Finance, *Cabinet approves the establishment of the National Anti-profiteering Authority under GST*, PRESS INFORMATION BUREAU (Nov. 16, 2017), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=173564>.

¹⁶ CGST Act, 2017, § 171(2).

¹⁷ CGST Rules, 2017, Rule 127(1).

¹⁸ *Id.*, Rule 127(2).

¹⁹ *Id.*, Rule 133(3) and Rule 127(3).

²⁰ CGST Act, 2017, § 171(3A).

person;²¹ (iii) reduction in prices of impacted product; (iv) return an amount to the recipient, which is equivalent to the amount that is not transferred by the way of commensurate reduction in prices along with the interest at the rate of ‘eighteen percent’ from the date of collection till the date of the return of such higher amount; (v) in the case eligible recipient is not identifiable or does not claim return of the higher amount, then the money is credited to Consumer Welfare Fund (hereinafter ‘CWF’).²²

III. ‘VOLUME VS. VALUE’ DEBATE: DETERMINING MODALITIES TO PASS THE TAX RATE REDUCTION BENEFITS

Rule 126 of the CGST Rules states that “the NAA may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices”.²³ However, no parameters have been prescribed yet. Section 171 of CGST Act mandates a supplier to pass the benefit of GST tax reduction and ITC to the recipients.²⁴ The Section does not provide the supplier of goods and services any means of passing on the benefits of tax rates reduction or the benefit of ITC other than the absolute reduction in the prices of the goods or services.²⁵ The section enumerates a “commensurate reduction in prices

²¹ CGST Rules, 2017, Rule 21.

²² CGST Act, 2017, § 57.

²³ CGST Rules, 2017, Rule 126.

²⁴ CGST Act, 2017, § 171.

²⁵ Sanjeev Agarwal, *Anti-Profiteering in GST: Assertions from Hindustan Unilever Case*, TAX MANAGEMENT INDIA (Apr. 13, 2019), https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=8462.

of goods or services” as a way to pass on the GST reduction & ITC benefits to recipients. Yet, no guidance has emerged from the government on the connotation of ‘commensurate reduction’ and its applicability in various scenarios. It is necessary to define the term “commensurate” mentioned in Section 171 of CGST Act and in this context the “commensurate” would mean “adequate”, “proportionate” or “appropriate”.²⁶

Under the Anti-Profitteering provisions, the flexibility of a *suo moto* decision concerning other modes of passing the benefits is not available to suppliers. However, several manufactures sought to adopt the method of grammage increase/ increase the quantity of product keeping the same price to pass on the GST rate reduction benefits to the ultimate recipients while others have sought to keep the price constant on certain pack size and reduce the prices in other pack sizes. Notably, such practices are adopted on account of the problems in changing the packaging and price of the products. As per the provisions of the Legal Metrology (Packaged Commodities) Rules 2011, the MRP should be re-fixed²⁷ and it is also mandatory to declare the reduced MRP by stamping or affixing additional sticker or online printing.²⁸ Fast-Moving Consumer Goods companies (hereinafter ‘FMCG’) have an enormous package sizes in variety in line with market demands and many of them had sought to increase the quantity of the products instead of reducing the prices, seeing

²⁶ Kiran Chimirala v. Jubilant Food Work Ltd., [2019] 102 Taxmann.com 87 (NAA).

²⁷ Legal Metrology (Packaged Commodities) Rules, 2011, Gazette of India, pt. II sec. 3(i) (Mar. 7, 2011).

²⁸ Labelling of MRP of pre-packaged commodities due to reduction in GST, WM-10(31)/2017 (Nov. 16, 2017).

it as more convenient, better, and financially viable way of passing on the GST cut.²⁹ However, there still exists confusion as to whether these practices meet the Anti-Profiteering norms as the Anti-Profiteering provisions are silent on the method of grammage increase.

A. Judicial Pronouncements

In *Pawan Sharma v. Sharma Trading Company*,³⁰ NAA did not consider the contention of the Respondent (intermediary) who contended the transfer of commensurate benefit to the recipient via increase in grammage of Vaseline to 400 ml from 300 ml. It found him liable for profiteering as the respondent was only an agent and was not in a position to increase the quantity of the product. Further, Respondent availed the ITC of 28% and was consequently duty-bound to transfer the benefits by reducing the base price of the product. Despite this, NAA in *Ankit Bajoria v. Hindustan Unilever Limited (HUL)*,³¹ allowed the transfer of benefit via increase grammage. It held that if the genuine interest of the businesses is to pass on such benefits to the ultimate consumers then the authority should also consider the practical options available to the businesses. Thus, extra quantity at the same price is definitely a benefit to the consumers, which is the intention of the anti-profiteering laws. Therefore, an increase in volume with the same prices would fulfil the spirit of the law. However, the Delhi High Court has put a stay on the order passed by NAA in the HUL case on the ground that the matter involves some important issues that require a detailed examination of contentions of both

²⁹ *GST – Analysis and Opinions*, CLEAR TAX (Nov. 02, 2019), <https://cleartax.in/s/gst-analysis-and-opinions>.

³⁰ *Pawan Sharma v. Sharma Trading Company*, [2018] 97 Taxmann.com 157 (NAA).

³¹ *Ankit Bajoria v. Hindustan Unilever Limited (HUL)*, 2018 VIL 17 NAA.

the parties.³²

Further, in *DGAP v. Nestle India Ltd.*,³³ the DGAP in its report mentioned that the provisions of the Section 171 of CGST Act, 2017 require that benefit of GST tax reduction can be transferred only by commensurate reduction in the prices and by no other method. However, NAA with an intention to ensure that the benefit of tax reduction has been passed by the respondent and has not been pocketed by him, deviated from the report of the DGAP and had allowed the respondent to produce necessary evidences to support his claim of passing on the benefit via commensurate grammage increase or increase in the quantity. Similar position has been adopted by NAA in *DGAP v. L'Oréal India Pvt Ltd*,³⁴ wherein the respondent put forth different methodologies that it adopted to pass the benefits to the recipients as; (i) Post supply price reduction (Discount); (ii) Price reduction and MRP reduction on package; (iii) Higher grammage/ Quantity increase. NAA relied on the case of *Hindustan Unilever Limited*,³⁵ and was inclined to accept the contention of the respondent pertaining to the transfer of the GST benefit via grammage increase. However, the respondent did not furnish the relevant documents to establish the above claim and the authority has directed to produce the documents to the DGAP.

³² *Delhi HC stays demand made on HUL by the National Anti-profiteering Authority*, THE ECONOMIC TIMES (Jan. 16, 2019), <https://economictimes.indiatimes.com/industry/cons-products/fmcg/delhi-hc-stays-demand-made-on-hul-by-the-national-anti-profiteering-authority/articleshow/67560631.cms?from=mdr>.

³³ *DGAP v. Nestle India Ltd*, 2019 VIL 63 NAA.

³⁴ *DGAP v. L'Oréal India Pvt Ltd*, 5/2019, dated 03 January 2020.

³⁵ *Ankit Bajoria v. Hindustan Unilever Limited (HUL)*, 2018 VIL 17 NAA.

In *Crown Express Dental Lab v. Theco India Pvt. Ltd.*,³⁶ NAA provide that it would account for the supply of additional material as a valid mechanism to pass on GST benefit. However, in the absence of any proof to support Respondent's contention, its claim that additional material was indeed supplied to the customer was not entertained.

As far as offering discounts is concerned, NAA held that discounts are provided by suppliers out of their own resources and thus, the same cannot be said to be a part of the taxable value of the product.³⁷ It was held that such a reduction could not be attributed to their compliance with the anti-profiteering provision. In *Neeru Varshney v. Lifestyle International Pvt. Ltd.*,³⁸ NAA was of the view that discounts offered by the suppliers on the products are regular trade practices. Consequently, they cannot be considered to have been given in lieu of the tax rates reduction.

In the case of *Kumar Gandharva v. KRBL Ltd.*,³⁹ NAA accepted the argument concerning the increase in cost of inputs and abstained from prosecuting the taxpayer under the anti-profiteering. It was held that given the increase in the cost of inputs, an enhancement in the price of the output product was justified. This order by NAA brought a much-needed clarity that an increase in production costs due to market forces is a valid consideration while determining profiteering.

In light of the above judicial pronouncements, NAA has given a wider approach to the term "commensurate reduction" under Section 171 of CGST Act and is inclined to allow the grammage increase or increase

³⁶ *Crown Express Dental Lab v. M/s Theco India Pvt. Ltd.*, 15/2018 dated 28 November 2018.

³⁷ *Id.*

³⁸ *Neeru Varshney v. Lifestyle International Pvt. Ltd.*, 8/2018 dated 25 September 2018.

³⁹ *Kumar Gandharva v. KRBL Ltd.*, 3/2018 dated 4 May 2018.

in quantity of the impacted product as the methodology to transfer the benefits of GST rate reduction to the ultimate consumer under Rule 126 of CGST Rules, 2017.

B. Rules of Statutory Interpretation

The phrase “commensurate reduction” needs to be reasonably interpreted as per the “rules of statutory interpretation” and in a manner that deals with the mischief of profiteering to tackle unreasonable exploitative profit. “If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, the court should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result.”⁴⁰

The mischief of the profiteering and exploitative profit can be tackled via two acceptable interpretations available for the term “commensurate reduction” i.e. volume and value. On the plain reading of the Section 171 of CGST Act, the strict interpretation of the term “commensurate reduction” is only limited to the value i.e. reduction of price of the impacted product. However, the wider interpretation of the phrase “commensurate reduction” includes both volume and value i.e. grammage increase in the impacted product and reduction of the price. The authorities should adopt the bolder interpretation of the term

⁴⁰ Mohan Singhania v. Union of India, AIR 1992 SC 1 (India); Nokes v. Doncaster Amalgamated Collieries Ltd., [1940] 3 All ER 549 (HL) (UK); Pye v. Minister for Lands for New South Wales, [1954] 3 All ER 514 (PC) (AU).

“commensurate reduction” to bring an effective result, keeping the interest of the suppliers and to promote the fair market economy for which the GST has been implemented.

C. ‘Commensurate Reduction’ should not be construed in Strict Sense

It is a general rule in jurisprudence that the word ‘shall’ is mandatory in nature and one has to look at the object of the provision, the purpose for which the provision has been made, its nature, and the intention of the Legislature to determine whether it is directory or mandatory.⁴¹ When the word ‘may’ has been used in a provision⁴² and/or there is no penalty for the non-fulfilment of such provision⁴³ and/or the provision is discretionary in nature,⁴⁴ such provision may be considered directory.

The legislative intent behind the enforcement of Section 171 of CGST Act, 2017 is to stop the illegal profiteering and to pass the benefits of the GST reduction or ITC to the recipients.⁴⁵ Section 171 of CGST Act, 2017 can be divided in two folds, first, “any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient”; second, “the way of commensurate reduction in prices” to transfer such benefits to the recipients.⁴⁶ The use of word “shall” in the first part pertaining to the transfer of the GST benefits can be

⁴¹ Sharif-ud Din v. Abdul Gani Lone, AIR 1980 SC 303.

⁴² Sidhu Ram v. Secretary Railway Board, AIR 1973 Punj 383.

⁴³ Aeron Steel Rolling Mills v. State of Punjab, AIR 1960 Punj 55.

⁴⁴ Kasi Bishwanath Dev v. Paramananda Routrai, AIR 1982 Ori 80; Shivjee Singh v. Nagendra Tiwary, AIR 2010 SC 2261.

⁴⁵ Diwakar Bansal v. Horizon Project Pvt. Ltd., Case No. 26/2019.

⁴⁶ Central Goods and Service Tax Act, 2017, No. 12, Acts of Parliament, 2017, § 171.

said to be mandatory, considering the legislative objective of the Section 171 of the CGST Act, 2017.

The second part pertaining to the way of doing such transfer of the benefits can be said to be directory in nature as the penalty is only for the non-fulfilment of the legislative intent and not for choosing the different mode to pass the GST reduction benefit. This is because, in such situations, the end recipient is ultimately getting benefitted. Further, under Rule 126 of CGST Act, 2017 the word ‘may’ have been used and NAA has discretion to decide any procedure and methodology for fulfilment of the legislative intent under Section 171 of the CGST Act, 2017. Thus, “commensurate reduction in prices” should not be construed in strict sense and other modalities to pass the benefit under Section 171 of CGST Act, 2017 can be accepted.

IV. INTERNATIONAL JURISPRUDENCE

The procedure followed in Malaysia and Australia with respect to passing of tax reduction benefits should be taken into consideration for the reasonable interpretation of ‘commensurate reduction’.

A. Malaysia

On 10 May 2018, new Malaysian Government scrapped the GST Act, which has been decided to be replaced by “*Sales and Service Tax*”⁴⁷. However, the laws in relation to the “anti-profiteering” are not mentioned in the GST Act. The Malaysian lawmakers introduced “the Price Control

⁴⁷ Dale John Wong, *3 Common Misconceptions about GST & SST, and Why they're Wrong*, VULCAN POST (May 18, 2018), <https://vulcanpost.com/639950/gst-sst-misconceptions-malaysia>.

and Anti Profiteering Act, 2011” to control the charges for the services and prices of goods and to prohibit unreasonable and high profiteering by the suppliers.⁴⁸ During its GST tax transition period in 2015, Malaysia enacted a similar provision to control price inflation through the “Price Control and Anti-Profiteering Regulation 2014” (hereinafter ‘PCAPR’). The mandate of the PCAPR is to ascertain a reasonable “Net Profit Margin” (hereinafter ‘NPM’) for each and every product.

During the given time frame, any profit which is charged above the determined NPM shall be considered as “Unreasonably High Profit” and liable to be penalized according to the law. The prescribed formula for determination of net profit margin took into account factors such as impact of taxes on pricing, supply and demand conditions, circumstances of the geographical & product market, supplier costs etc. In other words, existence of ‘profiteering’ is determined by considering the overall economic and commercial scenarios and not merely on the availability of tax credits or on the basis of tax rates.⁴⁹

B. Australia

The Anti-Profiteering Measures in Australia aimed to stop “price exploitation” based on the “Net Dollar Margin Rule”.⁵⁰ In essence, the

⁴⁸ Pulkit Verma & Mehak Sachdeva, *Desisting the unjust-Anti profiteering*, [2019] 106 Taxmann.com 338 (Article).

⁴⁹ Brijesh Kothary, *Anti-Profiteering Measure and Price Control Mechanism under GST*, LAKSHMIKUMARAN & SRIDHARAN ATTORNEYS (Dec. 2016), <https://www.lakshmisri.com/insights/articles/anti-profiteering-measure-and-price-control-mechanism-under-gst>.

⁵⁰ Allan Fels, *The ACCC’s role in preventing price exploitation in relation to New Tax System changes*, AUSTRALIAN COMPETITION AND CONSUMER COMMISSION (Sept. 20, 1999), <https://www.accc.gov.au/speech/the-acccs-role-in-preventing-price-exploitation-in-relation-to-the-new-tax-system-changes>.

principle states that if the GST caused taxes and costs to fall by \$1, then prices should also fall by \$1. At the same time, if the cost of the business rose by \$1, then prices may rise by not more than \$1.⁵¹ The rule defined that:

A business is considered to be engaged in price exploitation in the process of GST implementation if; (i) it increases net profit margin by increasing prices by more than the quantum of rise in taxes or by not reducing its prices adequately; (ii) it regulates the supply; and (iii) it charges unreasonably high prices even after taking into account supply and demand conditions, supplier costs and exceptional circumstances like long-term non-reviewable price contracts entered into by businesses and the price regulation prevalent in an industry commercial realities factored.⁵²

Similar context has been dealt by NAA in the case of *Ankur Jain v. Kunj Lub Marketing Pvt Ltd.*,⁵³ wherein the respondent contended that, it is inconvenient to pass on the benefit of GST rate reduction to the consumer due to the issue pertaining to the legal tender as ultimate reduction in the price of the product would have been 25 paise. However, NAA rejected the contention on the basis of the reasoning that respondent had no mandate to deny the benefit of reduction of tax rate due to the problem of legal tender as he had no legal authority to fix MRP and it was for the customer to furnish the required legal tenders. Instead, the authors suggest that the authority should have accepted the contention of the

⁵¹ Nitin Bansal, *Anti Profiteering under GST – Challenges and Issues*, [2018] 100 Taxmann.com 368 (Article).

⁵² Sthanu R Nair & Leena Mary Eapen, *Price Monitoring and Control under GST Lessons from Australia*, 52 E.P.W. 25, 26 (2017).

⁵³ *Ankur Jain v. Kunj Lub Marketing Pvt. Ltd.*, [2018] 98 Taxmann.com 166 (NAA).

respondent on the basis of method of “substantial reduction” in MRP on reasonable margin variation similar to the “Net Dollar Margin Rule” prevalent in Australia.

V. SUGGESTIONS

Certain suggested practices can help mitigate potential risk due to the lack of certainty on the exact methodology for determining “commensurate reduction in prices” for passing the GST Tax Reduction Benefits to consumers:

1. The passing of GST rate reduction benefit to recipients by way of grammage benefit or increase in weight of impacted product should be allowed as a methodology and procedure under Rule 126 of CGST Rules, 2017.
2. The relevant authorities should be tasked to frame guidelines for what constituted commensurate reduction, conducting surveys analysing the effects on prices, and consulting businesses about understanding price changes.
3. The overall commercial, economic scenario, circumstances of the geographical and product market should be considered while determining the profiteering in line with NPM prevalent in Malaysia.
4. A “reasonable margin variation” or “substantial reduction” method should be allowed in line with “Net Dollar Marginal Rule” prevalent in Australia. Detailed rules regarding computation of margins should be framed so that no discretionary power is left with any authority. If the variation in margin is within such allowable range, no registered person should face the penal consequences u/s 171 of the Central

Goods and Services Act.

5. The benefits of ITC or reduction in rate of tax should be closely computed and monitored, to ensure “commensurate reduction in prices”.
6. Section 171 of CGST Act needs to be purposively construed and due regard should also be given to the prevalent trade practices. The practical options available to the suppliers of that particular trade should also be taken into consideration.
7. The suppliers can do re-stickering of MRP instead of incurring additional cost on new packaging material.
8. Benefit of commensurate reduction in price is required to be passed on to the next receiver in the supply chain/service network and the next receiver in chain should be *adequately updated* of the passing-on of this benefit down the supply chain/ service network to the end customer/ end service receiver.
9. The CGST Act does not provide any time frame within which such “commensurate reduction in prices” is to take place and in the absence of any such time frame, a “reasonable time period” should be given to a supplier to bring about the necessary reduction in prices in view of the GST rates reduction.

VI. CONCLUSION

Any GST rate reduction by the Government should always be seen as a sacrifice made by the Government from its own kitty of revenue, in the interest of the consumers in particular and society at large. The emphasis should be laid on non-retention of benefit of reduction of tax

rates by the suppliers and its due passage to the recipient in compliance with the Section 171 of CGST Act, 2017. The Rule 126 of CGST Rules, 2017 uses the words “the Authority may determine the methodology and procedure...” unless NAA prescribes any such methodology or procedure, in future NAA may have to deal with various interpretations that will come before it during the investigation on the meaning of the phrase “commensurate reduction in prices”. Since the law is silent on the exact definition of the phrase “commensurate reduction in prices”, one could easily argue that there are two views possible on the issue at hand i.e. “Volume and/or Value”.

Further, to prevent unnecessary litigation, NAA should publish detailed guidelines defining “profiteering”, exemptions to this definition and “commensurate benefit”. NAA should also establish specific procedures to ascertain the amount of profiteering and the commensurate benefit that is to be passed on to the ultimate recipient. Besides, the methods adopted for such calculations ought to be re-formulated incorporating market conditions and other relevant factors. A smooth transition into strict but fair anti-profiteering regimes is achieved by several countries like Malaysia and Australia and it is high time that an effective and smooth transition should be achieved by India too. The Act in itself should bring certainty with regard to Section 171 of CGST Act and should prescribe the substantial mechanism / do’s and don’ts with reference to “commensurate reduction in prices”. This would provide clarity and certainty to the suppliers of goods or services while dealing with any reduction in rate of tax or benefit of input tax credit.