

Anti-Profiteering In Goods and Service Tax In Context to India

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INTRODUCTION

Profit is fine, profiteering is not. So, don't let someone profiteer at your own expense. The GST law contains a unique provision on anti-profiteering measure as a deterrent for trade and industry to enjoy unjust enrichment in terms of profit arising out of implementation of Goods and Services Tax in India. That is the anti-profiteering measure would obligate businesses to pass on the cost benefit arising out of GST implementation to their customers.

Meaning of Anti-Profiteering

Anti-Profiteering is a new concept being tried out for the first time. The intention is to make sure that whatever tax benefits are allowed, the benefit of that should reach the ultimate customers and is not pocketed by business man. that experience suggests that GST may bring the general inflation in the introductory phase. The Government wants that GST should not lead to general inflation and for this; it becomes necessary to ensure that benefits arising out of GST implementation must be transferred to customers so that it may not lead to inflation. So, anti-profiteering measures are taken to check the price rise and also put a legal obligation on businesses to pass on the benefit. This will also help in instilling confidence in citizens.

As per Section 171 of the CGST/SGST Act, any reduction in tax rate on any supply of goods or services, or any benefit of 'input tax credit', must be passed on to the recipient (for example, customer) by the registered person (e.g., trader) through a commensurate reduction in prices. Thus, if a trader is paying, Rs 100 less in the new tax rate on a certain item, he has to compulsorily sell that item for Rs 100 cheaper, so the customer benefits proportionally. Failure to do so would mean the trader is indulging in 'profiteering'. However, if GST has a negative impact on the cost, then prices can be increased. For example: If the output supply was zero-rated in previous regime and also remains zero-rated in GST regime, the business will not get any input tax credit.

For Example:-domestic LPG was exempt from tax under earlier regime. Now they fall under 5% GST. This will result in an increase in the prices of cooking gas.

However it has been the experience of many countries that when GST was introduced there has been a marked increase in the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually reduced the final prices. This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering. **So, Central Government constitute National Anti-Profitteering Authority** to examine that whether input tax credits 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 or services or both supplied by him.

Meaning of anti-profitteering under GST

Any reduction in GST rate or benefit of input tax credit should be passed on to the end consumer and not retained by the business. This is the basis of anti-profitteering provisions under GST. Under anti-profitteering provisions, its illegal for a business to not pass on benefits of GST rate benefits to the end consumer and thereby indulging in illegal profiteering.

Regulation of National Anti-Profitteering under GST

The Government has created the National Anti-Profitteering Authority to find and take action against taxable registered persons indulging in illegal profiteering. The National Anti-Profitteering Authority has the powers to determine the methodology and procedure for determining as to whether a taxable person is indulging in illegal profiteering.

Constitution of National Anti-Profitteering Authority

- 1) There shall be 5 member Committee including a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India
- 2) 4 Technical members who have been commissioners of state tax or central tax or have held an equivalent post under Existing laws.
- 3) Additional Director General of CBEC shall be Secretary to the Authority.
- 4) Maximum time for which authority will work is 2 years from the date when chairman hold his office until any further notification will be recommended by Council.

Reporting to National Anti-Profitteering Authority

Now, consumers who believe that the benefit of reduction in prices is not being passed on when they purchase any goods or services “may apply for relief to the Screening Committee” in the state where the issue has been faced. In case the issue relates to an item of mass impact with ‘All India’ ramification, “the application may be directly made to the Standing Committee. After forming a prima facie view that there is an element of profiteering, the Standing Committee shall refer the matter for detailed investigation to the Director General of Safeguards, CBEC, which shall report its findings to the NAA,”

The GST Anti-profitteering body has the authority to act and tell the concerned business or supplier to reduce prices or undue benefit availed by it along with interest to the recipient of the goods or services. “If the undue benefit cannot be passed on to the recipient, it can be ordered to be deposited in the Consumer Welfare Fund. In extreme cases, the NAA can

impose a penalty on the defaulting business entity and even order the cancellation of its registration under GST,”

Investigation by Director General of Safeguards

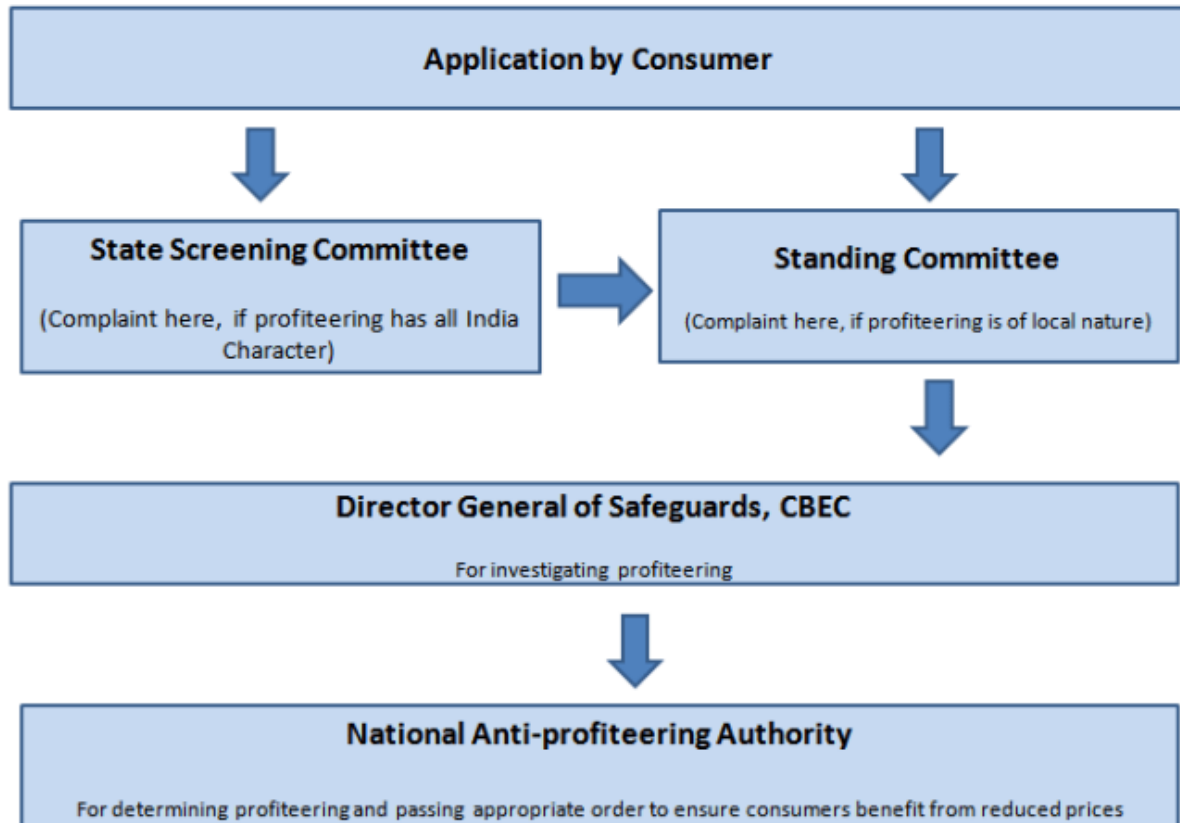
All matters referred by the Standing Committee will be investigated by the Director General of Safeguards. The Director General of Safeguards will collect evidence, conduct investigation and issue notices to the interested parties. Anti-profiteering notice must contain the following details which are as follows:

1. The description of the goods or services in respect of which the proceedings have been initiated.
2. Summary of the statement of facts on which the allegations are based.
3. The time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

Once all the information and hearings are complete, the Director General of Safeguards will provide a report of findings. Report of findings must be submitted by the Director General of Safeguards normally within 3 months or within 6 months if an extension is provided.

Working of Anti Profiteering GST Mechanism

1. If the benefit is not passed on to consumers, the affected consumers are required to file an application in prescribed format either before the Standing Committee (if the profiteering relates to all-India level) or before State Screening Committee (if the profiteering relates to local or state level).
2. These committees will first confirm whether prima facie evidence of profiteering exists or not.
3. If prima facie evidence of profiteering exists it will be sent to Director General of Safeguards, CBEC for further investigating the case of profiteering.
4. Then National Anti-profiteering Authority will determine the profiteering and pass an appropriate order to ensure consumers benefit by way of
 - i. Return of the amount not passed on with interest @ 18% to the recipient;
 - ii. Imposition of penalty; and
 - iii. Cancellation of registration of the supplier
 - iv. Reduction in Price.



GST Anti-Profiteering body help consumers

The GST anti-profiteering body would ensure that the consumer remains the king. Any benefit of lower rates that the government intends to pass on will find its way to the consumer,” Restaurants are hiking base prices, implying that the benefit of reduction in tax rate from 18% to 5% is not being passed on. While restaurants are justifying it by saying that they now face a loss of input tax credit, an anti-profiteering body will be able to check such claims. Consumers can now file complaints and they will be acted upon,” he says. “More importantly, the very presence of the anti-profiteering body will act as a deterrent for the industry to not indulge in malpractices,”

While restaurants are just an example of the function of the GST anti-profiteering body, various industries that come under GST will have to keep in mind the presence of the authority when deciding on prices and the extent to which benefits of tax rate reduction can be passed on to the consumers.

Problems in Anti-Profiteering Measures

- 1) No way is defined as how one will pass-on benefit to ultimate consumer. The word “Commensurate Reduction” is used but meaning and how such reduction will be done

is not defined under Anti-Profiteering Rules. So it is a subjective matter and depends on person to person

- 2) How will businesses compute the benefit resulting from increased credits and reduction in rates? Will it be calculated at a company level or product level?
- 3) Can the business man add additional expenses which he incurred due to GST while computing the cost and then arrive at the benefit
- 4) For Example there is a company called Hindustan Supplies (fictitious name) which has its roots in all products of FMCG and is also into Beverage and Health Drinks involving Aerated Water. Now post GST, Hindustan Supplies. Will have a much lower burden on Toothpastes by 8-9% however on its Coconut flavoured low-fat Aerated Water Drink, the effective tax on this Drink has increased much higher than before. So now should the Company pass on the benefit on a Product to Product level and pass on the 8-9% of value of Toothpaste and bear the losses on the Healthy Drink business. Or it should see at its Income statement and if everything remains constant then only it should pass the benefit to the Consumer.
- 5) How many layers of Price Reduction do we need to monitor and then to be passed whether Input supplier will also pass on benefit to output supplier or only output supplier is liable to pass on benefit to ultimate consumer.

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Conclusion

If a super-market you frequent is selling you grocery at a higher price stating that it is due to GST, you can file a complaint to the anti-profiteering authority. Similarly if you are aware that the cost of your toothpaste has moved lower, but your grocery-wala tries to pull a fast one on you by selling it to you at the old price, you know whom to complain to.

This is a tool that the Centre needs to wield effectively to keep prices under check and ensure that businesses do not pocket all the gains.

Profit is fine, profiteering is not. So, don't let someone profiteer at your own expense.



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