

Benefit to be passed at each stock-keeping unit level and not at entity or branch level: NAA

Issued on: 15 May 2020



Summary

The National Anti-profiteering Authority (NAA) has recently upheld profiteering against a consumer products retailer for not passing on the commensurate benefit by way of reduced prices of its products when corresponding Goods and Services Tax (GST) rates on the products were reduced. The NAA stated that the benefits are to be passed on to recipient at each stock-keeping unit (SKU) level and not at entity or branch level.

Facts of the case

- The applicant¹ filed an application alleging that the respondent² has not passed on benefit of reduction in the GST rates in respect of certain products,³ which were reduced from 28% to 18% from 15 November 2017.

Respondent's contention

- **No mechanism for computing profiteering:** There is no calculation mechanism given under the GST law to determine the amount of profiteering.
- **No time limit for passing on benefit:** The GST law also does not provide any time limit to pass on benefit of reduced rate, therefore reasonable time should be given to undertake price reduction.

- **Wrong methodology:** Computation of benefit using single average price across the country and across customers for a product is erroneous. This is because prices may vary for different depot/ customers according to their respective economic dynamics.
- **Inclusion of excess GST charged:** Excess price collected from customers also included the GST charged on the increased base price. Since this amount has already been paid to the government, it could not be held as profiteered amount.
- **Scope of investigation expanded:** While the complaint was initially filed only for one product, the Directorate General of Anti-Profiteering (DGAP) expanded the investigation to more than 250 products.

¹ M/s Local Circles India Pvt. Ltd.

² M/s McNROE Consumer Products Pvt. Ltd.

³ Wild Stone Deodorants

- **Violation of constitutional rights:** The DGAP has infringed the constitutional right to decide the selling price of the products by putting a cap on sale prices, which is a violation of the constitutional rights⁴.

DGAP's observation

- **No restriction on investigation:** The law does not stipulate restricting investigation to only the products against which the complaint is made.
- **Methodology to determine profiteering:** The GST law⁵ empowers the authority to determine the methodology and procedure for calculating the profiteered amount. Such methodology/ procedure could vary from case to case, depending upon facts and circumstances of the case as well as the nature of goods or services supplied.
- **Excess GST charged to be refunded:** If any supplier has charged more tax from the customers, such amount should either be refunded to eligible customers or deposited in Consumer Welfare Fund, regardless of whether such extra tax collected had been deposited in government account or not.

- **Freebies or discounts not considered:** Freebies and discounts provided to customer were not considered, as profiteering is calculated on the transaction value⁶ and all such discounts, which do not form part of such value, cannot be included in the price of the product.

NAA's observation and order

- **Benefits to be passed on to each recipient at SKU/Unit level:** The NAA stated that the benefits are to be passed on to each recipient at each SKU level and not at entity/organisation/branch level.
- **Computation methodology:** With regards to methodology for computation of profiteered amount, the NAA upheld DGAP's method of computing profiteered amount based on average pre-rate reduction base prices with actual post-rate reduction prices.
- **Profiteering upheld:** The NAA stated that as the respondent had increased the base prices after reduction in the GST rates, the anti-profiteering provisions⁷ have not been complied. Accordingly, the NAA upheld⁸ profiteering charge against the respondent

⁴ of Article 19(1)(g) of the Constitution.

⁵ Rule 126 of the Central Goods and Services Tax Rules, 2017

⁶ as per the provision of section 15 of the Central Goods and Services Tax Act, 2017

⁷ U/s 171(1) of the Central Goods and Services Tax Act, 2017

⁸ U/s Rule 133(1) of the Central Goods and Services Rules, 2017

- to extent of INR 21.85 crores (approx.).

Our comments

In most cases, the authorities generally compare pre-GST base price of a product with post-GST base price, in case there is a reduction in the tax rates. If the post-GST price is found higher, the same is construed as profiteering. However, there are various other aspects that impact pricing of a product such as festival offers, seasonal demands, increase in costs/overheads, freebies, etc. In the absence of a suitable methodology/mechanism under the GST law, the litigation relating to anti-profiteering may see an upward trend.

The prima facie reason to extend the tenure of the NAA by two years was long pendency of cases. Various writ petitions have already been filed in high courts against the orders pronounced by the NAA. Hence, it is imperative that due caution is adopted with strong documentation back up while computing the profiteering, as the authorities are given vast powers and complete autonomy to adopt computation methodology as they deem appropriate.

Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI National Office Outer Circle L 41 Connaught Circus, New Delhi 110 001 T +91 11 4278 7070	NEW DELHI 6th floor, Worldmark 2, Aerocity, New Delhi – 110 037 T +91 11 4952 7400	AHMEDABAD 7th Floor, Heritage Chambers, Nr. Azad Society, Nehru Nagar, Ahmedabad – 380 015	BENGALURU 5th Floor, 65/2, Block A, Bagmane Tridib, Bagmane Tech Park, C V Raman Nagar, Bengaluru – 560 093 T+91 80 4243 0700	CHANDIGARH B-406A, 4th Floor, L&T Elante office Building Industrial area, Phase-I, Chandigarh 160 002 T +91 172 4338 000
CHENNAI 7th Floor, Prestige Polygon 471, Anna Salai, Teynampet Chennai - 600 018 T +91 44 4294 0000	DEHRADUN Suite No 2211, 2nd Floor Building 2000 Michigan Avenue, Doon Express Business Park, Subhash Nagar, Dehradun 248 002 T +91 135 264 6500	GURGAON 21st Floor DLF Square Jacaranda Marg, DLF Phase II, Gurgaon 122 002 T +91 124 462 8000	HYDERABAD 7th Floor, Block III White House Kundan Bagh, Begumpet Hyderabad 500 016 T +91 40 6630 8200	KOCHI 7th Floor, Modayil Centre Point, Warriam Road Junction, MG Road, Kochi 682 016 T +91 484 406 4541
KOLKATA 10C Hungerford Street 5th Floor, Kolkata 700 017 T +91 33 4050 8000	MUMBAI 16th Floor, Tower II Indiabulls Finance Centre SB Marg, Prabhadevi (W) Mumbai 400 013 T +91 22 6626 2600	MUMBAI Kaledonia, 1st Floor, C Wing (Opposite J&J office) Sahar Road, Andheri East, Mumbai - 400 069 T +91 22 6176 7800	NOIDA Plot No. 19A, 7th Floor Sector – 16A, Noida 201 301 T +91 120 4855 900	PUNE 3rd Floor, Unit No 309 to 312, West Wing, Nyati Unitree Nagar Road, Yerwada Pune- 411 006 T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



Follow us @GrantThorntonIN



© 2020 Grant Thornton India LLP. All rights reserved.

"Grant Thornton in India" means Grant Thornton India LLP, a member firm within Grant Thornton International Ltd, and those legal entities which are its related parties as defined by the Companies Act, 2013.

Grant Thornton India LLP is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered