BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No.	:	10/2020
Date of Institution	:	26.09.2019
Date of Order	:	17.02.2020

In the matter of:

1. Sh. Rahul Sharma, M/s Local Circles India Pvt. Ltd., 4th floor, Tower-2, Express Trade Towers-2, Sector-132, Noida-201301.
2. Director 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.

Applicants

Versus

1. M/s J. K. Helene Curtis Ltd., New Hind House, Narottam Morarjee Marg, Ballard Estate, Mumbai-400001.
2. M/s Shree Sai Kripa Marketing, B-141, Shakurpur, Samarat Cinema Road, Delhi-110034.

Respondents

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicants.
2. Sh. Alpesh Dalal Director (Finance), Sh. Nirav Parekh (Employee), Sh. V. Lakshmikumaran, Sh. K. Srikanth, Sh. Gokul Kishore and Sh. Darshan Machchhar, Advocates for the Respondent No. 1.
3. Sh. Tushar Mittal Consultant, Sh. Vineet Bhathi Advocate and Smt. Shradha Agarwal CA for the Respondent No. 2.

ORDER

1. This Report dated 24.09.2019 has been received from the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Standing Committee on Anti-profiteering vide its communication dated 11.03.2019 had requested the DGAP to conduct a detailed investigation as per Rule 129 (1) of the above Rules on the allegation that M/s Raymond Ltd. had not passed on the benefit of tax reduction from 28% to 18% w.e.f. 15.11.2017 on "After-Shave Lotion Park Avenue Good Morning 50 ml" which was supplied to M/s Big Bazaar, Inderlok (M/s Future Retail Ltd.) on 08.11.2017 under Purchase Order No. 8114997697 with MRP of Rs. 115/-, on 19.12.2017 under Purchase Order No. 8115407972 with the same MRP of Rs. 115/- and on 12.06.2018 under Purchase Order No. 4518098598 again with the same MRP of Rs. 115/-.

2. The DGAP had issued Notice under Rule 129 (3) of the CGST Rules, 2017 on 09.04.2019 to M/s Raymond Ltd., to submit his reply as to whether he admitted that the benefit of reduction in the GST rate w.e.f. 15.11.2017, had not been passed on by him to his recipients by way of commensurate reduction in price and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all the documents in support of his reply. He was also afforded an opportunity to inspect the non-confidential evidences/information which formed the basis of the said Notice, during the period from 15.04.2019 to 17.04.2019 which M/s Raymond Ltd. had availed.

3. The DGAP has mentioned the time period of the present investigation w.e.f. 15.11.2017 to 31.03.2019 and he had also sought extension of the time limit to complete the investigation from this Authority under Rule 126 (6), which was granted to him.

4. The DGAP has stated that M/s Raymond Ltd. had replied to the above Notice vide his letters dated 26.04.2019, 03.05.2019, 15.05.2019 and 17.05.2019 and submitted that the impugned goods were manufactured by the Respondent No. 1, an associate company of M/s Raymond Ltd. which was also supplying them to the marketing companies which further supplied them to the distributors. The distributors were supplying the above goods to retailers/mega stores such as M/s Big Bazaar, Inderlok which in turn were supplying these goods to the ultimate consumers and in the instant case as well, M/s Big Bazaar being a mega store, ought to have received the goods from a distributor. He had also submitted that he was not distributor of the subject goods and that he had not supplied the same to the M/s Big Bazaar or any other

retailer/mega store. Thus, he had claimed that the allegation that the subject goods were supplied by him to M/s Big Bazaar, Inderlok was not correct. M/s Raymond Ltd. further submitted that the impugned Notice referred to three Purchase orders No. 8114997697, 8115407972 and 4518098598 which were issued by M/s Big Bazaar, Inderlok, New Delhi, a division of M/s Future Retail Ltd. on one of his distributors viz. "Shree Sai Kripa Marketing", the Respondent No. 2 herein. In light of the above, the transactions referred by the Applicant No. 1 were between the Respondent No. 2 and M/s Big Bazaar and he (M/s Raymond Ltd.) was not a party to the said transactions. It was also submitted by M/s Raymond Ltd. that on 15.11.2017, Respondent No. 1 herein had issued letters to all his distributors intimating the reduction in the rate of GST on the impugned goods to pass on the commensurate benefit by giving an additional primary discount of 7.81% on the invoices.

5. After considering the above submissions of M/s Raymond Ltd., the Notice dated 09.04.2019 issued to him was withdrawn by the DGAP and Notices for initiation of investigation under rule 129 (3) of the CGST Rules, 2017 were issued on 04.06.2019 to the Respondent No. 1 and the Respondent No. 2 seeking their reply as to whether they admitted that the benefit of GST rate reduction had not been passed on by them to the recipients by way of commensurate reduction in the prices of the goods supplied by them and if so, to suo moto determine and indicate the same in their replies to the Notices. They were also given an opportunity to inspect the non-confidential evidence/ information furnished by the Applicant No. 1 on 10.06.2019 or 12.06.2019 and the same was not availed by both the Respondents. In response to the above Notice and subsequent reminders/summons, the Respondent

No. 1 had submitted his replies in a piecemeal manner vide his e-mails/letters dated 18.06.2019, 24.06.2019, 05.07.2019, 05.08.2019, 16.08.2019, 24.08.2019, 28.08.2019, 05.09.2019, 09.09.2019, 10.09.2019, 11.09.2019 and 16.09.2019 which have been summed up by the DGAP as follows:-

(a) That the aforesaid three Purchase Orders were issued by M/s Big Bazaar to the Respondent No. 2 and the said transactions referred by the Applicant No. 1 were between the Respondent No. 2 and M/s Big Bazaar and he was not a party in the said transactions. Thus, the proceedings initiated against him were non-est and were liable to be dropped.

(b) That he had issued letter dated 15.11.2017 to his distributors, including the Respondent No. 2, apprising them of the reduction in the rate of applicable GST on the subject goods with effect from 15.11.2017. Vide the said letter he had advised them to pass on the excess input tax credit benefit to the consumers via MRP reduction as per the directive of the GST Council and also vide another letter dated 15.11.2017, he had informed them that as far as the subject goods lying in the stock as on 15.11.2017 were concerned i.e. the inventory in respect of which he was unable to modify the MRP affixed on such goods, the reduction in the total MRP/ selling price would be passed on by giving an additional primary discount of 7.81% on the face of the invoice.

(c) That the Hon'ble High Court of Delhi in the case of Reckitt Benckiser India (P) Ltd. v. Union of India in WP(C) 7743/2019, vide its order had directed that only the inquiry as far as the complained

product was concerned would continue till the final disposal of the petition and no inquiry would be held in respect of the other products being sold by the petitioner. Thus, he requested to conduct detailed investigation only in respect of the complained product i.e. "Park Avenue Good Morning 50 ml" After Shave Lotion.

(d) That the impugned goods were being supplied by him to various distributors or retailers for further sale to the end consumers. The selling price at which the goods were being sold to the distributors varied from case to case and depended upon various factors including the regional demand and the supply factors, market outreach of the distributor, yearly volume of sales, the length of relationship and market aging etc. Thus, for the purpose of determination of profiteering, a proper mechanism suitable to the facts in hand was required and simple comparison of the price charged to one distributor with the price charged to another distributor would not be appropriate.

(e) That the following transactions should be kept outside the investigation:-

i. Transactions in respect of which discount of 7.81% had been given. Even though there was increase in the gross sale price, the benefit of rate change from 28% to 18 % had been passed on by giving additional discount of 7.81% on the sale prices on the face of the invoices itself and the same was also evident from the fact that the rate of discount under Column No. 26 of the sales sheet was named as "discount on account of GST rate change".

ii. His Company Sale Price (CSP) per unit post 15.11.2017 was either less than or equal to the sale price per unit pre 15.11.2017.

While arriving at these sale prices per unit, he had not considered seasonal discounts because they were temporary in nature and depended on a particular season or peculiar market requirements. The seasonal discounts were given only in respect of the period during which they were effective and for the remaining period, the base prices were charged without any seasonal discount. This seasonal discount was not available to the customers as a matter of right and entirely depended on the marketing campaign run by him during a particular season. The seasonal discount being exceptional in nature need not be adjusted in his sale price in both the periods mentioned above.

iii. In the absence of sales in the period prior to 15.11.2017 for a given customer for a given product, there could not arise any situation of profiteering in those cases.

iv. In respect of certain goods which were exempt from Excise Duty and VAT alone was leviable on them in the pre-GST regime, the aggregate tax incidence included in the MRP was less than 18% of the base price. However, after introduction of GST, these products attracted GST at the rate of 28% but he had not increased the MRPs as the goods were already manufactured and the MRPs were already affixed on the packages/containers. He had no option but to bear the temporary additional loss in case of such products. Before he could affect increase in the MRPs on these products, the applicable GST rate was reduced to 18% w.e.f. 15.11.2017. In view of the new GST rate of 18% which was slightly higher than the tax incidence taken in to account at the time of determination of the MRPs, he had not changed the MRPs and in

such cases, evidently, he had to bear the additional loss even when the GST rate was 18%. Thus, in these cases, there could not be any question of profiteering.

v. At the time of launching of his products, he had offered an extra 25% net weight in content as free so as to attract more customers. The said initial offer was later withdrawn. Post withdrawal of such offer, the net weight of the product was increased and his sale price per unit of weight of the product was reduced. Thus even, in these cases there was no profiteering.

vi. Some of the supplies made within a period of one month from the date of change in the rate of GST w.e.f. 15.11.2017, were covered by the Purchase Orders received prior to 15.11.2017. Thus, the CSP (inclusive of tax) in respect of such supplies had remained equal to his sale prices fixed prior to 15.11.2017. Even if there would have been increase in the GST rate, he would have adopted the same methodology. In respect of the Purchase Orders issued post 15.11.2017, the inclusive prices of the products were suitably changed. In view of this, he had passed on the benefit arising out of reduction in the GST rate.

vii. Given the rising competition in the FMCG sector, he had to time and again revisit the discounts offered and various seasonal discounts such as festival discounts, Independence Day discounts and introductory/new product launch offers etc. were also offered by him on periodical basis. Given the diverse product profile and continuous changes in the market place, he was unable to

determine the reasons for the difference between the net CSP adopted pre and post 15.11.2017.

viii. Comparison over a period of 21 months from 01.07.2017 to 31.03.2019 without any adjustment of inflation and other factors that might govern a price increase would be unreasonable and hence such comparison must be restricted to shorter period of three months. Whenever when the revenue authorities sought to compare the prices of identical products, regard must be had to the various factors including quantity, time gap, additional costs on logistics, market factors and transactional peculiarities etc.

6. The DGAP has also stated that the Respondent No. 1 has also submitted the following documents/information requesting not to disclose them to any other party:-

a. List of all GSTINs.

b. Copies of GSTR-1 & GSTR-3B Returns for the period from July, 2017 to March, 2019 for all the registrations held all over India.

c. Invoice-wise and SKU-wise details of the outward taxable supplies (other than zero rated, nil rated and exempted) for the period from July 2017 to March 2019 for all the GST registrations,

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d. Price Lists (pre and post 15th November, 2017) for all the products,

e. List containing customer codes and names of the customers of Canteen Stores Department (CS), Central Police Canteens (CPC) / BSF and Indian Naval Canteen Service (INCS), Mumbai,

f. Sample copies of invoices issued to his dealers, pre and post 15.11.2017.

7. The DGAP has further mentioned that the Respondent No. 2 has submitted the following documents:-

a. Copies of GSTR-1 & GSTR-3B Returns for the period from October, 2017 to March, 2019.

b. Details of invoice wise impacted outward taxable supplies during the period from July, 2017 to March, 2019.

c. Sample copies of invoices issued to his customers, pre and post 15.11.2017.

8. The DGAP has conveyed that the Central Government, on the recommendation of the GST Council, had reduced the GST rate on the goods supplied by the Respondents from 28% to 18% w.e.f. 15.11.2017, vide Notification No.41/2017-Central Tax (Rate) dated 14.11.2017.

9. The DGAP has also stated that M/s Raymond Ltd. had submitted that the impugned goods were manufactured and supplied by the Respondent No. 1 and thus, participation of Respondent No. 1 in the said transactions was undeniable. The Respondent No. 1's claim that he had asked his distributors to pass on the benefit of rate reduction vide letter dated 15.11.2017, by giving an additional primary discount of 7.81% on the face of the invoices could be taken as admission of his role in fixation of the prices of the goods. The DGAP has further stated that the Respondent No. 1 had not taken effective step to reduce the MRP of Rs. 115/- per unit until November, 2018 on the above product. With regard to the Respondent No. 1's reliance on the order of the Hon'ble High Court of Delhi in the case of M/s Reckitt Benckiser India (P) Ltd. v. Union of

India in WP (C) 7743/2019, the DGAP has claimed that the relief was granted only as far as the complained product was concerned till the final disposal of the petition and there was no stay/directions in respect of the present proceedings, which had also been communicated to the Respondent No. 1 vide his office letter dated 08.08.2019.

10. The DGAP has also mentioned that the Respondent No. 1 had claimed that he was supplying his products to the various distributors or retailers for further sale to the end consumers at the prices which varied from case to case and depended upon various factors including the regional demand and supply factors, market outreach of the distributor, yearly volume of sales, the length of relationship and market aging etc. The Respondent No. 1 has further mentioned that the goods were sold or distributed through channels of General Trade, Modern Trade, Institutional buyers, E-commerce and CSD etc. Each channel has different pricing pattern and margins. He has also contended that the DGAP has wrongly determined profiteering by comparing the customer type or channel wise average of the base prices of the impugned products sold during the period from 01.11.2017 to 14.11.2017 or the latest month, wherever goods were not sold during the period from 01.11.2017 to 14.11.2017, with the actual invoice-wise base prices of such products sold during the period from 15.11.2017 to 31.03.2019.

11. The DGAP has also submitted that in regard to the Respondent No. 1's contention of giving discount of 7.81% on account of GST rate change and for not considering the discount based on the season or on the peculiar market requirements for the purpose of comparison, the copies of the sample invoices submitted by the Respondent No. 1 showed that

there was no mention of the nature of the discount given on the Invoices i.e. whether it was on account of GST rate change or due to other reasons. It was just an inference that if discount was 7.81% or more then 7.81% represented discount on account of GST rate change and the excess towards other factors. The DGAP has also quoted Section 15 (1) of the Central Goods and Services Tax Act, 2017 which reads as under:-

"The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply."

He has also claimed that Section 15 (3) (a) of the above Act provided 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 and thus, the DGAP has stated that the GST was chargeable on the actual transaction value after excluding any discount (conditional as well as unconditional) and therefore, actual transaction value had been considered for computation of profiteering. He has further claimed that the reason cited by the Respondent No. 1 that there was no increase in the MRP at the time of implementation of GST as the goods were already manufactured and the MRP was already affixed and he had borne the temporary additional loss in case of such products, was also not consistent with the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 read with Chapter XV of the Rules framed under it.

12. The DGAP has also argued that the Respondent No. 1's decision not to increase the MRPs when the tax rate had increased at the time of implementation of the GST w.e.f. 01.07.2017, was his voluntary and conscious business decision which could not form the basis for not passing on the benefit of subsequent GST rate reduction w.e.f. 15.11.2017. He has further argued that the provisions contained in Section 171 of the Central Goods and Services Tax Act, 2017 did not provide for any other means of passing on the benefit of reduction in the rate of tax or benefit of input tax credit other than by way of commensurate reduction in prices and hence the claim of the Respondent No. 1 that he had passed on the benefit of GST rate reduction on certain newly launched products by removing the introductory offer of 25% extra content and increasing the quantity or grammage of the product, while maintaining the earlier pre-rate reduction MRPs of such products, was also not acceptable.

13. The DGAP has also mentioned that the Respondent No. 1 has also sought to exclude the outward sale of the following goods from the scope of the present investigation:-

(a) New Stock Keeping Units (SKUs) introduced after 14.11.2017.

(b) Life Style Stores (LFS) channel introduced in July 2018 i.e. post 15.11.2017, where pre-rate change comparison of prices was not available.

(c) Sales made through the CSD/CPC / BSF and INCS.

(d) No sales made from July 2017 to 14.11.2017 so no comparison was available.

14. On examination of the nature of the above sales and the copies of the Circulars issued by CSD, CPC and INCS to the Respondent No. 1, the DGAP has observed that the reduction in the rate of GST w.e.f. 15.11.2017 did not have any impact on the sales mentioned at points No. (a) to (c) above. However, for the items sold during 15.11.2017 to 31.03.2019 but not sold during the period from July 2017 to 14.11.2017, base prices of corresponding items were provided by the Respondent No. 1 which were used for determination of profiteering, if any. Section 171 of the Central Goods and Services Tax Act, 2017 did not provide for any scope for adjustment of increase in the cost against the benefit of reduced tax rate. The DGAP has also added that the increase in the cost of inputs/input services might be a factor for determination of price but this factor was independent of the output GST rate. It could not be argued that elements of cost were affected by the downward revision of the output GST rate. Therefore, the contention of the Respondent No. 1 that the various factors including quantity, time gap, additional cost such as on logistics, market factors and transactional peculiarities etc. should also be considered in the increase of base prices could not also be accepted. The DGAP has also averred that a particular item i.e. "PA Asl Good morning Splash 50 ml (MRP 115/-) (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 below:-

Table 1 **(Amount in Rupees)**

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

15. From the above Table, the DGAP has concluded that it was clear that the Respondent No. 1 did not reduce the selling price commensurately of the "PA Asl Good morning Splash 50ml (MRP 115/-) (NPAASG050008)", when the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017, vide Notification No. 41/2017 Central Tax (Rate) dated 14.11.2017 and hence he had 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 Central Goods and Services Tax Act, 2017. On the basis of above calculation as illustrated in the Table given above, profiteering in case of all the impacted goods of the Respondent No. 1 has also been computed by the DGAP in the similar manner. However, he has claimed that the average base prices for other channels would be different from the channel as shown in Table above and accordingly, profiteering had been calculated channel-wise.

16. The DGAP has also stated that from the invoices made available by the Respondent No. 1, it appeared that the Respondent No. 1 had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017 so that the commensurate benefit of GST rate reduction was not passed on to the recipients. The DGAP has also contended that on the basis of the aforesaid pre and post-reduction GST rates and the details of the outward taxable supplies (other than zero rated, nil rated and exempted supplies) of the impacted products supplied during the period from 15.11.2017 to 31.12.2018, as furnished by the Respondent No. 1, the amount of net higher sales realization due to increase in the base prices of the impacted goods, despite the reduction in the GST rate from 28% to 18% or in other words, the profiteered amount came to Rs. 18,48,34,084/- and the said profiteered amount has been arrived at by comparing the customer type or channel-wise average of the base prices of the goods sold

during the period from 01.11.2017 to 14.11.2017 (or the latest month i.e. October, 2017 and so on, in case those goods were not sold during 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 excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess prices collected from the recipients also included the GST charged on the increased base prices.

17. The DGAP has further contended that the perusal of the outward sales data made available by the Respondent No. 1 indicated that he had profiteered an amount of Rs. 8,97,253/- from the Respondent No. 2 during the period from 15.11.2017 to 31.03.2019. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 18,48,34,084/- is furnished in the Table given below:-

Table

Profiteering (Rs.)					
S. No.	Name of State	State Code	General Trade	Other than General Trade	Total Profiteering (Rs.)
1	Andaman & Nicobar Islands	35	2,89,408	-	2,89,408
2	Andhra Pradesh (New)	37	28,81,350	22,75,744	51,57,094

3	Arunachal Pradesh	12	34,078	-	34,078
4	Assam	18	24,31,584	5,41,810	29,73,394
5	Bihar	10	30,19,659	6,47,652	36,67,311
6	Chandigarh	4	3,05,386	19,166	3,24,552
7	Chattisgarh	22	19,11,865	3,50,075	22,61,939
8	Dadra and Nagar Haveli	26	11,657	-	11,657
9	Daman and Diu	25	-	38,376	38,376
10	Delhi	7	68,66,663	43,21,976	1,11,88,639
11	Goa	30	2,85,628	52,144	3,37,772
12	Gujarat	24	26,96,883	41,05,036	68,01,918
13	Haryana	6	14,01,212	50,76,462	64,77,674
14	Himachal Pradesh	2	2,52,766	24,617	2,77,384
15	Jammu and Kashmir	1	2,19,967	65,582	2,85,549
16	Jharkhand	20	13,68,148	4,66,696	18,34,843
17	Karnataka	29	56,54,964	94,82,431	1,51,37,395
18	Kerala	32	57,65,995	9,28,745	66,94,740
19	Madhya Pradesh	23	24,39,065	40,82,573	65,21,637

20	Maharashtra	27	1,59,36,419	2,91,66,764	4,51,03,183
21	Manipur	14	1,27,663	-	1,27,663
22	Meghlaya	17	2,16,513	-	2,16,513
23	Mizoram	15	5,059	-	5,059
24	Nagaland	13	57,540	-	57,540
25	Odisha	21	30,59,079	8,01,378	38,60,457
26	Puducherry	34	2,89,577	4,49,656	7,39,233
27	Punjab	3	13,83,199	10,95,085	24,78,285
28	Rajasthan	8	33,14,776	16,04,101	49,18,877
29	Sikkim	11	17,711	-	17,711
30	Tamil nadu	33	98,42,417	78,17,703	1,76,60,119
31	Telangana	36	34,05,733	68,94,992	1,03,00,726
32	Tripura	16	2,73,629	43,366	3,16,996
33	Uttar Pradesh	9	68,97,864	27,29,642	96,27,505
34	Uttarakhand	5	7,64,572	1,19,806	8,84,378
35	West bengal	19	1,09,99,476	72,05,003	1,82,04,479
	Grand Total		9,44,27,505	9,04,06,580	18,48,34,084

18. The DGAP has also stated that perusal of the outward sales data made available by the Respondent No. 2 indicated that the Respondent No. 2 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 rate 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 amount of net higher sales realization due to increase in the base prices of the products or in other words, 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 (or the latest month i.e. October, 2017 and so on, in case these goods were not sold during 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 excess GST so collected from the recipients, was also included in the aforesaid profiteered amount as the excess prices collected from the recipients also included the GST charged on the increased base prices. The place (State or Union Territory) of supply-wise break-up of the total profiteered amount of Rs. 38,64,891/- is furnished in Table below:-

Table

S.No.	Name of State	State Code	Profiteering (Rs.)
1	Haryana	06	52,916
2	Delhi	07	38,04,137
3	Uttar Pradesh	09	7,838
	Grand Total		38,64,891

19. After perusal of the DGAP's Report, this Authority in its meeting held on 01.10.2019 had decided to hear the Applicants and the Respondents on 24.10.2019 and accordingly notice was issued to all the interested parties. A Notice was also issued to the Respondents on 03.10.2019 asking them to reply why the Report dated 24.09.2019 furnished by the DGAP should not be accepted and their liability for profiteering under Section 171 of the CGST Act, 2017 should not be fixed. On the request of the Respondent No. 1 hearing was adjourned to 21.11.2019. Again, the above Respondent requested for adjournment twice and the hearings finally took place on 24.12.2019 and 08.01.2020. On behalf of the Applicants none appeared whereas the Respondent No. 1 was represented by Sh. Alpesh Dalal, Director (Finance), Sh. Nirav Parek (Employee), SH. V. Lakshmikumaran, Sh. K. Srikanth, Sh. Gokul Kishore and Sh. Darshan Machchhar Advocates and the Respondent No. 2 was represented by Sh. Tushar Mittal, Consultant, Sh. Vineet Bhathi, Advocate and Smt. Shradha Agarwal, CA. Further hearing took place on 27.01.2020.

20. The Respondent No. 2 vide his submissions dated 08.01.2020 has stated that the constitution of the Standing Committee as well as of the Screening Committees was illegal and without the authority of law. He

has also stated that the constitution of the above Committees has been done in accordance with Rule 123 of the CGST Rules, 2017 however, the CGST Act, 2017 nowhere envisaged constitution of any such Committee. He has further stated that Section 171 of the CGST Act only envisaged constitution of an 'Authority' and nowhere under the above Act, the constitution of a Standing Committee or Screening Committees had been envisioned. He has also submitted that Rule 122 of the CGST Rules, 2017 mentioned about the constitution of the Authority and also stipulated as to who all could be the members of the Authority and there was no mention of the above Committees in Section 171. He has further submitted that the constitution of the office of DGAP (earlier Director General of Safeguards) was purportedly done under Rule 129 of the CGST Rules, 2017. However, the said rule was ultra vires of the Act and thus was unconstitutional and illegal as the CGST Act nowhere envisaged constitution of any such body. Section 171 of the CGST Act only envisaged constitution of an 'Authority' and nowhere under the above Act, the creation of office of DGAP has been mentioned. He has also stated that perusal of Section 171 (2) revealed that whereas the Act postulated constitution of an 'Authority', the constitution of 'Director General of Anti-Profiteering' as per Rule 129 was nowhere mentioned in the Act. Thus, Rule 129 of the CGST Rules which postulated the conduct of proceedings by the DGAP was ultra vires of the CGST Act.

21. It is further submitted by the Respondent No. 2 that the rules were subordinate legislation and could not go beyond the ambit and scope of the main enactment. He has also cited the law settled in the case of **Addl. District Magistrate (Rev.) Delhi Admin. v. Siri Ram (2000) 5 SCC 451** in which the Hon'ble Supreme Court has held that:-

"It is a well recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P-5, the rule-making authority has exceeded the power conferred on it by the Land Reforms Act."

22. The above Respondent has also contended that the Hon'ble Supreme Court has held in the case of **State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) SCC 517** that any subordinate legislation or part thereof which did not conform to the object, scheme and provisions of the parent Act under which it was made, was invalid. In this case the court had elucidated the grounds on which subordinate legislation could be challenged. Failure to conform to the statute under which it was made or exceeding the limits of authority conferred by the enabling Act was stated as one of the grounds on which subordinate legislation could be challenged.

23. The Respondent No. 2 has also mentioned that he was one of the distributors of the Respondent No. 1, for supply of goods to the Modern Trade category i.e. supplies to the mega stores such as M/s Big Bazar and Godfrey Phillips India Ltd. etc. and all the supplies made by him were negotiated and finalized between the manufacturer i.e. the Respondent No. 1 and the Modern Trade Store such as M/s Big Bazar and he merely acted on the directions of the Respondent No. 1 and had no role to play in the fixation of the prices relating to the supplies of goods to his customers.

24. He has also stated that it was apparent from the impugned Report of the DGAP dated 24.09.2019 that the present complaint was never looked in to by the Screening Committee, as mandated under rule 128 (2) of the CGST Rules, 2017. He has further stated that in exercise of the power conferred by Rule 123 (2) of the CGST Rules, 2017, the Lt. Governor of the NCT of Delhi had constituted a 'Delhi State level Screening Committee' on Anti-profiteering on 06.11.2017 vide Notification No. F3(36)/FIN (REV-I)/2017-18/DS-VI/702 and since the issue involved was of local nature, the application ought to have been examined by the State Level Screening Committee. However, in the present case the complaint was never looked into by the State level Screening Committee nor its satisfaction had been brought on record. He has also submitted that in case the matter was examined by the State level Screening Committee, its report should be made available to him. He has further submitted that even examination of the application by the Standing Committee was not in accordance with the law and as per rule 128 (1) of the CGST Rules, 2017 the Standing Committee was within a period of two months from the date of the receipt of a written application or within such extended period not exceeding a further period of one month, required to examine the accuracy and adequacy of the evidence provided in the application to determine whether there was prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit had not been passed on to the recipients by way of commensurate reduction in prices. He has also contended that in the present case, as per the Report of the DGAP, the application/ complaint was made on 30.07.2018 and it was examined by the Standing Committee in its meeting held on 11.03.2019

i.e. after 7 months of the receipt of the application. Thus, he has claimed that the belated examination of the application/ complaint by the Standing Committee was barred by limitation and violative of Rule 128 (1) of the CGST Rules, 2017. Such a report could not have been acted upon by the DGAP.

25. The Respondent No. 2 has also stated that as per rule 128 (1) of the CGST Rules, to determine whether there was prima-facie evidence to support the claim of the applicant, the Standing Committee was required to examine the accuracy and adequacy of the evidence provided in the application. However, in the present case no evidence was provided by the Applicant No. 1 in support of his application, except a bald allegation that there was no change in the MRP before and after the reduction in the GST rate and it was hard to fathom that in the absence of any evidence, how the Standing Committee satisfied itself that the supplier had not passed on the benefit of reduction in the rate of tax. He has further stated that from the non-reduction of the MRP no adverse conclusion could have been derived against the Respondent No. 1 / Respondent No. 2 in as much as the complaint nowhere referred to the actual selling price of the product by everybody in the chain to the end customers. If at all the Standing Committee had reported its satisfaction, the same was not based on the evidence supplied by the above Applicant and it had been arrived at on the basis of extraneous considerations. Thus the prima facie conclusion arrived at by the Standing Committee was erroneous.

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26. The Respondent No. 2 has also pleaded that even otherwise on merits, the calculations done by the DGAP were erroneous and faulty

and the profiteered amount worked out by the DGAP was excessive and illegal. The objective of the present Authority was to ensure that any reduction in the rate of tax was passed on to the recipients by way of reduction in prices which meant that the supplies should not result in illegal profiteering, by the suppliers. He has also claimed that in this regard the Government of India in its flyer had stated as follows:-

> *"This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering.*
>
> *National Anti-Profiteering Authority is a mechanism devised to ensure that prices remain under check and to ensure that businesses do not pocket all the gains from GST because profit is fine, but undue profiteering at the expense of the common man is not."*

He has further claimed that in the present case the DGAP had simply calculated base sale prices on the basis of supplies made during the period from October, 2017 to 14 November, 2017. The DGAP has calculated the alleged profiteered amount by comparing the aforesaid base prices with the actual sale prices of the supplies made during the period from 15th November, 2017 to 31st March, 2019. He has also contended that the DGAP has erred in facts and in law in adopting this methodology of calculating the profiteered amount in as much as the said methodology did not actually result in calculating the excess profits made by a supplier, especially in the context of Respondent No. 2 in the present case.

27. The Respondent No. 2 has also argued that in the present case, the DGAP had not looked into the following:-

- Additional taxes collected and deposited with the Government which had been included in the alleged profiteered amount.
- Increase in the purchase prices post 15th November, 2017.
- Post sale discounts offered by the Respondent No. 2 after affecting sales (impact of Debit / Credit Notes).

He has further argued that the DGAP had included the additional taxes collected and deposited with the Government in the profiteered amount which had been duly deposited with the Government and such additional taxes deposited by the Respondent No. 2 could not be attributed as profiteered amount. The calculation of the amount collected as taxes and deposited by the Respondent No. 2 with the Government is reproduced hereunder:-

S.No.	Particulars	Details (Rs.)	Amount (Rs.)
1	**Value as per company**		
(a)	- Taxable amount	4,42,97,386	
(b)	- Tax amount	79,73,530	
	Total		5,22,70,916
2	**Price as per DGAP**		
(a)	- Taxable amount	4,10,22,055	
(b)	- Tax amount	73,83,970	
	Total		4,84,06,024
3	**Profiteering amount**		**38,64,891**
4	Less: exclusion of GST component	**1b- 2b**	5,89,560
5	**Non-GST amount**		**32,75,332**

28. The Respondent No. 2 has also stated that even otherwise the DGAP has taken too long a period for computing the profiteered amount and has calculated the same from 15th November 2017 to 31st March, 2019. During such a long period the benefit of cost inflation index, increase in the labour cost and delivery cost etc. had not been accounted for and out of the total alleged profiteered amount the major portion pertained to the F.Y. 2018-19. Month wise details of the alleged profiteered amount computed by the Respondent No. 2 are given hereunder:-

Row Labels	Sum of diff in totals inclusive of GST	% age of total amount	Sum of diff in totals exclusive of GST	% age of total amount
Nov-2017	74,297.76	1.92	62,964.21	1.92
Dec-2017	1,69,488.72	4.39	1,43,634.51	4.39
Jan-2018	2,99,706.40	7.75	2,53,988.48	7.75
Feb-2018	2,41,015.06	6.24	2,04,250.05	6.24
Mar-2018	3,14,725.03	8.14	2,66,716.13	8.14
For 17-18	**10,99,232.99**	**28.44**	**9,31,553.38**	**28.44**
Apr-2018	2,01,580.40	5.22	1,70,830.85	5.22
May-2018	2,74,551.45	7.10	2,32,670.72	7.10
Jun-2018	2,76,109.35	7.14	2,33,990.97	7.14
Jul-2018	2,57,106.32	6.65	2,17,886.71	6.65
Aug-2018	2,24,863.35	5.82	1,90,562.16	5.82
Sep-2018	2,75,316.69	7.12	2,33,319.23	7.12
Oct-2018	3,34,369.46	8.65	2,83,363.95	8.65
Nov-2018	2,05,413.74	5.31	1,74,079.44	5.31
Dec-2018	1,72,287.62	4.46	1,46,006.46	4.46
Jan-2019	1,51,357.84	3.92	1,28,269.35	3.92
Feb-2019	1,85,386.30	4.80	1,57,107.03	4.80
Mar-2019	2,07,315.72	5.36	1,75,691.29	5.36
For 18-19	**27,65,658.24**	**71.56**	**23,43,778.17**	**71.56**
Gross Total	**38,64,891.23**	**100.00**	**32,75,331.55**	**100.00**

29. The respondent No. 2 has further stated that the alleged profiteered amount calculated for the F.Y. 2018-19 was absolutely incorrect as the cost prices of the Respondent No. 2 had increased from April, 2018 onwards and the said cost prices were even higher than the base sale prices adopted for computation of profiteering as on 14th Nov. 2017 and the Respondent No. 2 could not be expected to sell his products at the prices which were below the cost prices or at lesser profit margins. He has also claimed that the profiteered amount calculated by the DGAP was erroneous and incorrect in as much as the same has not taken into account the debit notes raised by the buyers, which had resulted in reduction in the sale prices of the Respondent No. 1. After the sales had taken place the buyers had issued debit notes in respect of tax difference but the same has not been considered by DGAP at all. He has further claimed that the debit notes on account of discount of 7.81% as had been claimed by the Respondent No. 1 (although disallowed by the DGAP in his Report), were issued to him only till March 31, 2018. Post that, the Respondent No. 2 had not received any discount and was naturally required to sell his products at higher base prices to offset the increase in the purchase prices and consequently, out of the total alleged profiteered amount of Rs. 38,64,891, the alleged profiteering of Rs. 27,65,658 which related to the F. Y. 2018-19 could not be held to be undue profiteering.

30. The Respondent No. 2 has also mentioned that the present Report was bad in law on account of mis-joinder and non-joinder of parties vis-à-vis him in as much as he was a middle man in the supply chain and had no control over the price fixation vis-à-vis the Modern Trade.

The prices in case of Modern Trade were negotiated exclusively by the Respondent No. 1 and the Mega Store buyers. He had no role to play in the price fixation and had to follow the dictates of the Respondent No.1 as he was duty bound to comply with the prices mentioned in the Purchase Orders issued by the buyers and had no discretion / power to alter or even reduce the prices as were mentioned in the Purchase Orders. He has further added that his profit margin was almost static and there was no extra profit earned by him on account of reduction in the rate of tax.

31. The Respondent No. 2 has also stated that even otherwise no profiteering could be attributed to him, since it has been alleged in the notice itself that the Respondent No. 1 had committed profiteering by selling the products at a higher price, hence further selling of the said products at a higher price could not be recomputed in the hands of the Respondent No. 2. This would result in double computing of the profiteered amount. He has further stated that if the Respondent No. 1 was alleged to have profiteered, then his selling price to him would be Rs. 108.4. Thus, to avoid profiteering (as alleged by the DGAP) his base selling price should have been retained at Rs. 105. Thus, far from profiteering, this would in fact result in the Respondent No. 2 incurring a loss of Rs. 3.47 i.e. Rs. 108.47 – Rs. 105.00 per unit and hence, profiteering could not have been alleged to have been indulged in both by the Respondent No. 1 as well as the Respondent No. 2, since it would lead to the absurd conclusion of the Respondent No. 2 having to sell at a loss. He has also added that basic premise of profiteering calculation was that the same product should have been sold to the same customer without any reduction in the price following a reduction

in the GST rate. However, there were at least three customers to whom no supplies were made prior to November 15, 2017 rendering the alleged profiteering premise inapplicable. However, the profiteering calculation sheet included the sales made to these three parties as under:-

Name	Sale Value (Rs.)
Airplaza Retail Holdings Pvt. Ltd.	14,81,372
GPA Retail Pvt. Ltd.	3,20,694
Max Hyper Markets India Pvt. Ltd.	4,86,577

32. The Respondent No. 1 vide his submissions dated 10.01.2020 has stated that he was a company incorporated in 1964 and a part of Raymond Group, dealing in personal grooming and toiletries such as deodorants, shampoos, fragrant soaps, shaving creams, perfumes and room fresheners etc. and was engaged, *inter alia*, in the sale of various products which were broadly grouped under the product categories After Shave Lotion, Body Deo, Deodorant Women, Dye Stick, Eau-De-Cologne, Eau-De-Perfume, Perfume, Perfumed Deodorant, Shampoo, Styling Gel, Grooming Kit, Soap and Talc etc.

33. The Respondent No. 1 has also stated that the application dated 30.07.2018 filed by the Applicant No. 1 stated that the sales made by M/s Raymonds Ltd. of "Park Avenue After Shave Lotion Good Morning 50 ml", mentioned the price/value per unit pre and post GST rate reduction as INR 115/- and also the MRP pre and post GST rate reduction as INR 115/-. The Standing Committee had examined the application in its meeting held on 11.03.2019 and referred the same to

the DGAP on 27.03.2019 to conduct a detailed investigation. In this regard, he has submitted at the outset that the examination by the Standing Committee was not within the time limit of 2 months provided in Rule 128 (1) of the CGST Rules and hence, the reference by the Standing Committee and consequential proceedings were liable to be set aside on this ground alone. Rule 128 and Rule 129 (1) of the CGST Rules are extracted below:-

"128. Examination of application by the Standing Committee and Screening Committee.- *(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application **[or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority,]** in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.*

*(2) All applications from interested parties on issues of local nature **[or those forwarded by the Standing Committee]** shall first be examined by the State level Screening Committee and the Screening Committee shall, **[within two months from the date of receipt of a written application, or within such extended period not exceeding a*

*further period of one month for reasons to be recorded in writing as may be allowed by the Authority,]** upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.*

129. Initiation and conduct of proceedings.-*(1)Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Anti-profiteering for a detailed investigation."*

34. The Respondent No. 1 has also contended that as could be seen from Rule 129 (1), a reference to the DGAP for conducting detailed investigation could be made by the Standing Committee only when it was satisfied that there was a prima facie evidence. The Standing Committee was required to determine whether there existed prima facie evidence or not by examining the accuracy and adequacy of evidence provided in the application, within 2 months from the date of receipt of written application, as per Rule 128 (1). Further, it was only by way of amendment to Rule 128 (1) on 28.06.2019 that a further time period of 1 month was made available to the Standing Committee that too based on the reasons to be recorded in writing and as allowed by this Authority. But in the present case, undisputedly, the application filed by the Applicant No. 1 was dated 30.07.2018 and the said application was examined by the Standing Committee in its meeting held on 11.03.2019,

the minutes of which were received by the DGAP on 27.03.2019, as stated by the DGAP in paragraph 2 of his Report dated 24.09.2019 and hence, there was a gap of almost 7.5 months between the date of application (complaint) and the date of examination by the Standing Committee. Therefore, it appeared that this examination of application by the Standing Committee was not made within the time period of 2 months as per the provisions of Rule 128 (1), as it existed prior to 28.06.2019.

35. The Respondent No. 1 has further contended that the time limit of 2 months within which the application needed to be examined was to be strictly adhered to and could not be condoned as the word used was "shall" before "within a period of two months". Further, it was clear from the amendment made on 28.06.2019 that adherence to this time limit has been reinforced, in as much as even this Authority has not been given power to condone a delay of a period beyond 1 month after the end of 2 months time period available to the Standing Committee. He has therefore, submitted that once the mandatory time limit provided in the CGST Rules was not adhered to, no further proceedings could have been initiated and the present proceedings launched in violation of the said mandatory time limit were not legal and therefore, liable to be set aside.

36. In this regard, the Respondent No. 1 has placed reliance on the judgment of Hon'ble Supreme Court passed in the case of ***Oil and Natural Gas Corporation Limited*** **v.** ***Gujarat Energy Transmission Corporation Limited and Others*** **(2017) 5 Supreme Court Cases 42** wherein it was held that prescription with regard to limitation has to have

binding effect and the same has to be followed regard being had to its mandatory nature. He has also stated that in fact, in the said case, the Supreme Court has held that recourse could not be had to Article 142 of the Constitution of India (which *inter alia* provides that the Supreme Court in exercise of its jurisdiction may pass such decree or order as is necessary for doing complete justice), to condone delay beyond period provided to the Court as per the statute. The relevant extract is as follows:-

"15. From the aforesaid decisions, it is clear as crystal that the Constitution Bench in Supreme Court Bar Assn. has ruled that there is no conflict of opinion in Antulay case or in Union Carbide Corpn. Case with the principle set down in Prem Chand Garg v. Excise Commr. Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been held in Union Carbide Corp. case. As the pronouncement in Chhattisgarh SEB lays down quite clearly that the policy behind the Act emphasizing on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. ***The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to***

the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the Statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation*. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."*

37. The Respondent No. 1 has also submitted that the legal position was well settled that once the statutory provisions prescribed a time-limit the same could not be extended, particularly when the statute provided for further time period upto which the delay could be condoned. In this regard, he has placed reliance on the judgment of the Hon'ble Supreme Court given in the case of ***Singh Enterprises*** **v.** ***CCE Jamshedpur*** **2008 (221) ELT 163 (SC)** wherein referring to the provisions of the Central Excise Act, 1944 it was held as is given below:-

"*The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by*

condoning delay only upto 30 days after the expiry of 60 days which is the normal period for preferring appeal."

38. The Respondent No. 1 has further relied on the judgment of larger Bench of the Hon'ble Supreme Court passed in the case of ***Commissioner of Customs & Central Excise* v. *Hongo India (P) Ltd*. 2009 (236) ELT 417 (SC).** In this case, the Hon'ble Apex Court upheld the order of the High Court dismissing reference application on the ground of limitation after holding that the High Court had no power to condone the delay in filing the reference application filed by the Commissioner under unamended Section 35H (1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days. He has also submitted that as per Section 143 (2) of the Income Tax Act, 1961, the notice seeking evidence before rejecting any claim made in the return of income shall be issued by the assessing officer within twelve months from the end of the month in which return is furnished. In the case of ***Commissioner of Income Tax* v. *Gitsons Engineering Co.* 2015 53 taxmann.com 108 (Madras)** such notice was not issued within the said time-limit. The Hon'ble Madras High Court had held that when notice issued on a subsequent date was beyond the period of limitation, further proceedings of Income Tax Department were non-est in law. The relevant portion of the judgment is given below:-

"Even though the department claims to have sent a notice under Section 143(2) of the Act on 17.9.2008, the Revenue failed to

produce any records to show that the said notice was dispatched and served on the assessee. However, it is stated that the department subsequently issued another notice under Section 143(2) of the Act on 27.8.2009, which, on the face of it, is beyond the period of limitation prescribed under Section 143(2) of the Act.

8. ***The basic requirement of Section 143(2) of the Act having not been satisfied, the department's further proceedings, in our considered opinion, become non-est in law****."*

He has also contended that the above judgment was followed in the case of ***Krishna Kumar Saraf*** **v.** ***Commissioner of Income Tax*** **[2017] 83 taxmann.com 331 (Delhi - Trib.)** wherein it was held that when the notice under Section 143 (2) of Income Tax Act, 1961 was issued beyond the limitation period, the assessment order made subsequently was non-est in law and the Commissioner exercising power under Section 263 could not revise such an assessment order. The relevant portion of the order is reproduced below:-

"16. Admittedly the notice u/s 143(2) was issued beyond time and, therefore, the assessment order was bad in law.....

*.....U/****s 263 the ld. Commissioner cannot revise a non est order in the eye of law. Since the assessment order was passed in pursuance to the notice u/s 143(2), which was beyond time, therefore, the assessment order passed in pursuance to the barred notice had no legs to stand as the***

same was non est in the eyes of law. All proceedings subsequent to the said notice are of no consequence."

39. He has also submitted that it was settled legal proposition that if initial action was not in consonance with law, subsequent proceedings would not sanctify the same. The legal maxim *sublato fundamento cadit opus* was applicable in the present case, meaning thereby that in case the foundation was removed, the superstructure fell. The same was also observed by the Hon'ble Gujarat High Court in the case of ***Gujarat Paraffins Pvt. Ltd.* v. *Union of India* 2012 (282) ELT 33).** The relevant extract is as follows:-

"37. *It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim sublato fundamento cadit opus is applicable, meaning thereby, in case of foundation is removed, the superstructure falls. Similar principle of law, in our opinion, can be extended in the present case too.*"

40. From the above, the Respondent No. 1 has claimed that the basis of investigation and furnishing of Report by the DGAP was the reference made by the Standing Committee and once it was held that the reference itself was not in accordance with the law, the investigation conducted by the DGAP and subsequent Report dated 24.09.2019 furnished by him was liable to be set aside on this ground alone. Therefore, he has contended that the present proceedings initiated against him were liable to be dropped and the reference made by the Standing Committee vide Sl. No. 25 of Annexure 1-C of minutes of

the meeting held on 11.03.2019 and consequent Report submitted by the DGAP vide Reference F.No.22011/API/ 47/ 2019/ 1836 dated 24.09.2019 be quashed.

41. The DGAP vide his Report dated 23.01.2020 has replied to the Respondent No.1's submissions and stated that the Respondent No. 1 had raised objection on the time limit which barred reference from the Standing Committee on Anti-profiteering to the DGAP, however, his office had received the same on 27.03.2019 and his action was in consonance with the contents of the Rule 129 of the CGST Rules, 2017.

42. The DGAP vide his Report dated 23.01.2020 has also replied to the submissions of the Respondent No. 2 dated 08.01.2020 and stated the following:-

i. That he has received the complaint on 27.03.2019 from the Standing Committee along with its minutes of meeting dated 11.03.2019 with a remark that the complaint has been forwarded to the DGAP for investigation. So, the DGAP's action was totally in consonance with the contents of Rule 128 (1) of the CGST Rules, 2017.

ii. That Section 171 of the CGST Act, 2017 and Chapter XV of the CGST Rules, 2017, required the supplier of goods and services to pass on the benefit of tax rate reduction to the recipients by way of commensurate reduction in price and price included both the base price and the tax paid on it. If any supplier has charged more tax from the recipients, the aforesaid statutory provisions would require that such amount be refunded to the eligible recipients or alternatively deposited in the Consumer

Welfare Fund, regardless of the fact whether such extra tax collected from the recipients has been deposited in the Government account or not. Any extra tax returned to the recipients by the supplier by issuing credit notes could be declared in the return filed by such supplier and his tax liability would stand adjusted to that extent in terms of section 34 of the CGST Act, 2017. The option was always open to the Respondent No. 2 to return the tax amount to the recipients by issuing credit notes and adjusting his tax liability for the subsequent period to that extent.

iii. That the period of investigation has neither been prescribed in the CGST Act, 2017 nor in the corresponding Rules/Notifications. The period from 15.11.2017 upto the last month of receipt of reference i.e. 27.03.2019 was taken for investigation from 15.11.2017 to 31.03.2019.

iv. That the calculation of profiteered amount has nothing to do with the costing of the product and it was independent of the costing of the product.

v. That even if the Respondent No. 2 had no control on the prices at which sales were to be made to his recipients and he was duty bound to comply with the prices mentioned in the Purchase Order issued by the recipients, the Respondent No. 2 had directly collected the amount of Rs. 38,64,891/- and retained the same which he was legally bound to pass on to his recipients but he chose to increase the base prices.

vi. That the computation of gross profit ratio or gain/loss as per the financial statements could not be considered in the light of section 171 of the CGST Act, 2017.

43. On the above submissions of the Respondents record of the Standing committee was summoned and the above Committee vide its submissions dated 27.01.2020 has produced the relevant record and has also stated that the Committee had received a complaint from the Applicant No. 1 on 30.07.2018 against M/s Raymond Ltd., on its official email id which was duly considered by it in its meetings held on 07.08.2018 and 08.08.2018 and was returned to the Applicant No. 1 with the instructions to send the complaint again with proper invoices. It has also been intimated by the above Committee that the members of the Committee at that time were Sh. O. P. Dadhich, Sh. Himanshu Gupta, Smt. Ashima Barar and Sh. H. Rajesh Prasad. It has further been intimated that subsequently the Standing Committee had to be reconstituted due to the elevation of two of its Members from the Central tax vertical to the grade of Chief Commissioners. This reconstitution was ordered by the GST Council, as per Rule 123 (1) of the CGST Rules, 2017 vide its OM dated 21.02.2019 and three new members Sh. Sanjay Mangal, Sh. Pranesh Pathak and Sh. Amit Kr. Agarwal were appointed out of the total four members of the Committee. It has also been submitted that the Standing Committee had received a reminder from the Applicant No. 1 on 22.02.2019 through email, mentioning the above complaint once again and the newly constituted Standing Committee in its wisdom had decided to treat this reminder as a fresh complaint and to relook/re-examine all the complaints made by the above Applicant mentioned in the

reminder. The Committee, in its meeting held on 11.03 2019 had re-considered and re-examined all the cases and found that there was sufficient prima facie evidence to indicate profiteering by the supplier i.e. M/s Raymonds Ltd. Hence, it had decided to forward the above complaint to the DGAP for detailed investigation, as per Rule 128 (1) of the CGST Rules, 2017. Since, the above complaint was deemed to have been received afresh by the Committee on 22.02.2019 and was duly considered/re-examined in its meeting held on 11.03.2019, the statutorily prescribed time-limit under Rule 128 of the said Rules has been sacrosanctly followed and there has been no lapse at the end of the Standing Committee in this regard.

44. Both the Respondents have submitted that this Authority should first decide their preliminary objections before they make their final submissions on the Report dated 24.09.2019 submitted by the DGAP. Accordingly, through the present order the preliminary contentions made by the Respondents are being disposed off.

45. The first preliminary objection raised by the Respondent No. 2 vide his submissions dated 08.01.2020 claims that the constitution of the Standing Committee as well as the Screening Committees as per Rule 123 of the CGST Rules, 2017 was illegal and without the authority of law as the CGST Act. 2017 nowhere envisaged constitution of any such Committees. In this connection it would be relevant to refer to Section 171 of the CGST Act, 2017 and state that Sub-Section (1) of the above Act provides 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. Hence, it is clear that the object of the above provision is to pass on

both the above benefits to the general public as they have been given by sacrificing the tax revenue from the public exchequer. To ensure that the provisions of Section 171 (1) are carried out and the amount of benefits is not misappropriated by the suppliers, the Parliament has made the following provisions in the CGST Act, 2017 vide Section 164 to achieve the above objectives, which states as under:-

"(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the povisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees." (Emphasis supplied)

46. Perusal of the above Section shows that the Central Government can frame Rules on the recommendation of the GST Council for all or any of the matters which are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules. Therefore, the Central Government is legally empowered to frame Rules to carry out the provisions of Section 171 of the above Act.

Accordingly, it has framed Rule 123 of the CGST Rules, 2017 which provides for Constitution of the Standing and State Screening Committees. This Rule has further been framed on the recommendation of the GST Council which is a constitutional body established under 101st Amendment of the Constitution and has representation of all the States and Union Territories of the country. The above Rule has also been incorporated in the Rules framed by all the States as well as Union Territories under their respective Acts. Hence, the above Rule has sanction of the Parliament, the State Legislatures, the GST Council, the Central and the State/UT Governments. Therefore, it is apparent that the above Rule has been framed after careful consideration at several levels of scrutiny the major aim of which is to ensure that there is no influx of numerous complaints and only those complaints are investigated in which there is prima facie accurate and adequate evidence of not passing on the benefit of tax reduction or ITC. It has been observed over a period of time that a major chunk of the complaints made does not pertain to the violation of Section 171 of the above Act and hence both the above Committees have been found to have been very useful in screening the irrelevant complaints. Perusal of the minutes of the proceedings of the Standing Committee held on 07.08.2018 and 08.08.2018 which have been placed on record shows that only 40 complaints were found fit for further investigation by the DGAP whereas 117 complaints pertained to the evasion of GST or any other law but were not related to the passing on of the above benefits. It can also be observed that both the above Committees are also assisting in avoiding unnecessary harassment of the suppliers as well saving precious time of the

investigating agency as well as of this Authority. Therefore, the Respondent No. 2 has no ground to challenge the constitution of both the above Committees and Rule 123 of the above Rule which has been correctly framed by the Central Government to carry out the objectives of Section 171 of the above Act as they pose no threat to him unless he violates the provisions of the above Section. Accordingly, the objection raised by the Respondent No. 2 on the above ground in untenable and hence the same cannot be accepted.

47. The Respondent No. 2 has also raised objection against the constitution of the office of DGAP under Rule 129 of the CGST Rules, 2017 claiming that it was ultra vires of the Act and thus unconstitutional and illegal as the CGST Act nowhere envisaged constitution of any such body. In this connection it would be appropriate to refer to the provisions of Section 171 (2) of the CGST Act, 2017 which provide that the Central Government may on the recommendations of the Council constitute an Authority to **examine** 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 prices of the goods or services or both supplied by him. Accordingly, the issue of whether both the above benefits have been passed on is required to be examined by this Authority which can be done only after a detailed investigation is conducted by an agency which is well conversant with the provisions of the GST laws. Therefore, to achieve the above objective office of the DGAP has been created under Rule 129 of the CGST Rules, 2017. Similar investigation agencies have been provided to all the judicial, quasi-judicial and statutory bodies to investigate the cases which fall under their jurisdiction, therefore, no special provision

has been made in the CGST Rules in this regard. As already mentioned in para supra the above Rule has again been framed under Section 164 of the above Act on the recommendation of the GST Council which has legislative sanction of the Parliament, all the State legislatures, GST Council as well as the Central Government and the State Governments. Therefore, the office of DGAP has been rightly crated under the above Rule and hence the objection raised by the above Respondent in this regard is not tenable.

48. It would also be pertinent to mention here that the Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs vide its Office Order No. 05/Ad.IV/2018 dated 12.06.2018 in pursuance of the Government of India (Allocation of Business) 34th Amendment Rules, 2018 has assigned the following duties to the DGAP:-

a) Conduct of investigation to collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

b) Responsibility for coordinating anti-profiteering work with the National Anti-profiteering Authority, the Standing Committee and the State level Screening Committees."

Therefore, it is clear that the office of the DGAP has been charged with the responsibility of conducting investigation to collect evidence

necessary to determine whether both the above benefits have been passed on or not in terms of the provisions of Section 171 of the CGST Act, 2017 with the sanction of the competent Authority.

49. Therefore, there is no doubt that the office of DGAP has legal sanction and hence the objection raised by the Respondent in this regard cannot be accepted.

50. The Respondent has also placed reliance on the judgements passed in the cases of **Addl. District Magistrate (Rev.) Delhi Admin. v. Siri ram (2000) 5 SCC 451** and **State of Tamil Nadu & Anr. v. P. Krishnamurthy & Ors. (2006) SCC 517** and claimed that Rule 128 and 129 have been framed in violation of the provisions of the CGST Act, 2017. However, as has been mentioned above the above Rules have been framed to carry out the provisions of Section 171 of the above Act under the rule making power granted to the Central Government as per the provisions of Section 164 of the CGST Act, 2017 which has legislative sanction of the Parliament as well as all the State legislatures. Therefore, it is respectfully submitted that the law settled in both the above cases in not being followed.

51. The Respondent No 2 has further contended that it was apparent from the impugned Report of the DGAP dated 24.09.2019 that the present complaint was never looked in to by the Screening Committee as was mandated under rule 128 (2) of the CGST Rules, 2017 since the issue involved was of local nature. However, perusal of para 34 of the Report dated 24.09.2019 shows that the above Respondent had made supplies in the States of Haryana, Delhi and Uttar Pradesh and hence the issue involved was not of local nature pertaining to the State of Delhi only. Therefore, the complaint was not required to be

examined by the Delhi State Screening Committee as per Rule 128 (2) of the CGST Rules, 2017. Accordingly, the above contention of the Respondent is not maintainable and hence the same cannot be accepted.

52. Both the Respondents have vehemently contended that in the present case, as per the Report of the DGAP the application/ complaint was made on 30.07.2018 and it was examined by the Standing Committee in its meeting held on 11.03.2019 i.e. after a lapse of a period of more than 7 months from the date of receipt of the application. They have further contended that the time limit of 2 months within which the application was required to be examined was to be strictly adhered to and the same could not be condoned as the word used was "shall" before the words "within a period of two months". Thus, they have claimed that the belated examination of the application/ complaint by the Standing Committee was barred by limitation of 2 months prescribed under Rule 128 (1) of the CGST Rules, 2017 and hence, such a reference having been received by the DGAP from the Standing Committee could not have been acted upon by him under Rule 129 (1) of the above Rules and consequential proceedings/investigation conducted by the DGAP were liable to be set aside on this ground alone. In this connection perusal of the record submitted by the Standing Committee shows that the complaint regarding not passing on the benefit of rate reduction from 28% to 18% w.e.f. 15.11.2017 was emailed by the Applicant No. 1 to the Standing Committee on 30.07.2018 by stating that "Attached please find GST profiteering complaint from the Anti-profiteering Circle against Raymond Ltd." This complaint was filed in the Form prescribed for

filing such complaints in which address, mobile number, email id and details of the Voter Identity Card of the Applicant No. 1 and name of the supplier M/s Raymond Ltd. was duly mentioned. The goods against which the complaint was filed was mentioned as "Park Avenue After Shave Lotion Good Morning 50 ml". It was also stated in the application that the Earlier Price/ Value per unit of the above product was Rs. 115.00, Present Price/ Value per unit was Rs. 115.00, Earlier MRP was Rs. 115.00 and Present MRP was 115.00 . It was further stated that "After GST rates were reduced from 28% to 18% the MRP of this product remained same". It was also mentioned that the benefit of tax reduction had not been passed on. Additional information was also provided in the Form by stating that "The supplier Raymond Ltd. seems to have kept the same MRP of the product despite reduction in GST from 28% to 18%. The above complaint is received from a member of Local Circles. Local Circles is India's leading Community Social Media Platform". A copy of the complaint received from Sh. Anil Mehta a member of the Local Circles mentioned above was also attached with the email which stated as under:-

"Complaint against Deodorant manufacturers

I have received information from a friend at Big Bazaar that suggests that Deodrant manufacturers (Vini Cosmetics - maker of FOGG, Raymonds - maker of Park Avenue and Mcnroe maker of Wild Stone) have engaged in profiteering by not reducing MRPs.

Here is the evidence:

Vini Cosmetics shipped Fogg Deo Fougere BX 150 ml to Big Bazaar Inderlok on 9/11/17 under PO number 8114996814 with MRP 299,

after GST rate reduction on Nov 15, 17 Vini Cosmetics shipped the same deo to Big Bazaar Inderlok under PO No. 8115259654 on 8/12/17 with MRP 299. Again on May 8, 2018 Vini Cosmetics shipped the same product to Big Bazaar Inderlok under PO Number 4517361778 with MRP 299, so basically Vini Cosmetics did not change the MRP despite GST rate reducing from 28 to 18% on Nov 15, 17.

Mcnroe shipped Wild Stone Deo Chrome BX 120 ml on 28/9/17 under PO number 8114615731 to Big Bazaar Inderlok with MRP 250, same product on 4/12/17 under PO number 8115262327 with MRP 250 and on 16/6/18 under PO number 4518224285 for MRP 250. Again, Monroe did not pass the benefit of GST rate reduction from 28% to 18% to the customer and kept MRP same.

Similarly, Raymond shipped Park Avenue After Shave Lotion Good Morning 50 ml on 8/11/17 to Big Bazaar Inderlok under PO 8114997697 with MRP 115, on 19/12/17 under PO 8115407972 with same MRP 115 and on 12/6/18 under PO 4518098598 with MRP 115. I am sharing this in public interest to everyone knows why prices are not reducing after GST. None of these companies passed on the benefit of lower tax to consumer.

Anti Profiteering authority must please book them. Big Bazaar Inderlok may be contacted for more details."

53. It is evident from the minutes of the meetings of the Standing Committee held on 07.08.2018 and 08.08.2018 that the above complaint was discussed in detail by the members of the Standing Committee comprising of Sh. O. P. Dadhich, Principal Commissioner, Customs (Preventive) Delhi, Sh. Himanshu Gupta Principal

Commissioner SGST Delhi North and Sh. H. Rajesh Prasad Commissioner, SGST Delhi and the following remarks were recorded in the above proceedings at Sr. No. 21 of Annexure 3 in respect of the above application:-

"Return to the complainant for re-submitting with Pre & Post 15.11.2017 invoices showing the price".

54. It is also apparent from the record that the Applicant No. 1 vide his email dated 22.02.2019 addressed to the Standing Committee had stated that "Attached, please find 57 complaints that have been shared with you. Kindly advise status of these complaints as so far we have only received further information on one complaint in this list". The complaint made against Raymonds Ltd. was mentioned at Sr. No. 2 of the attached Annexure. Meanwhile the Standing Committee had been reconstituted by the GST Council vide its OM dated 21.02.2019 under Rule 123 (1) of the CGST Rules, 2017. The above communication made by the Applicant No. 1 was discussed in detail by the Standing Committee comprising of S/Sh. H. Rajesh Prasad Commissioner, Department of Trade & Taxes, Govt. of NCT of Delhi, Amit Kumar Aggarwal, Excise & Taxation Commissioner, Govt. of Haryana, Sanjay Mangal, Commissioner Central Tax (Audit) and Pranesh Pathak, Commissioner Central Tax in its meeting held on 11.03.2019 and vide Sr. No. 25 of minutes of the meeting recorded in respect of the above complaint which was mentioned in Annexure-1C it was decided to forward the same to the DGAP for investigation. It is also apparent from the perusal of the minutes that

the above complaint was treated to have been received in the month of February, 2019.

55. From the perusal of the above sequence of the events it is clear that the complaint made by the Applicant No. 1 vide his email dated 30.07.2018 had been returned by the Standing Committee to the Applicant No. 1 as per the minutes of the meetings of the Committee held on 07.08.2018 and 08.08.2018 and hence, the proceedings in respect of the above complaint had terminated w.e.f. 08.08.2019. It is further clear from the record that the above Applicant had made a fresh complaint to the Standing Committee vide his email dated 21.02.2019 which was considered by the above Committee in its meeting held on 11.03.2019 i.e. after a lapse of a period of 17 days which is well within the period of limitation of 2 months prescribed under Rule 128 (1) of the CGST Rules, 2017. Therefore, the allegation of the Respondents that the above complaint was not recommended by the Standing Committee within the prescribed period of limitation is not correct and hence the same cannot be accepted.

56. The Respondents have further contended that under Rule 129 (1), a reference to the DGAP for conducting detailed investigation could be made by the Standing Committee only when it was satisfied that there was prima facie evidence. However, perusal of the complaint made by Sh. Alok Mehta shows that he had specifically mentioned that "**Raymond shipped Park Avenue After Shave Lotion Good Morning 50 ml on 8/11/17 to Big Bazaar Inderlok under PO 8114997697 with MRP 115, on 19/12/17 under PO 8115407972 with same MRP 115 and on 12/6/18 under PO 4518098598 with**

MRP 115, I am sharing this in public interest to everyone knows why prices are not reducing after GST. None of these companies passed on the benefit of lower tax to consumer.' The Committee was also well aware that vide Notification No. 41/2017-Central tax (Rate) dated 14.11.2017 the rate of tax on the above product had been reduced from 28% to 18% by the Central and the State Governments. Hence, there was prima facie accurate and adequate evidence available to the Standing Committee to recommend investigation against M/s Reymonds Ltd. as sh. Mehta had relied on specific documents. Further, Sh. Mehta had also mentioned in his complaint that the "Big Bazar Inderlok may be contacted for more details" therefore, there was no ground for the Standing Committee to return the complaint and compel the Applicant No. 1 to produce the pre and post reduction invoices when the complaint had been made on the basis of the Purchase Orders and the DGAP was only the agency authorized to collect necessary evidence as per the provisions of Rule 129. The Standing Committee was only required to examine whether there was prima-facie accurate and adequate evidence to come to the conclusion that the M/s Reymonds Ltd. had not passed on the benefit of tax reduction which was available to it as specific documents had been relied upon to file the complaint. It is also on record that the new Standing Committee after examining the record had found prima facie evidence to refer the complaint to the DGAP for detailed investigation as per Rule 129 (1) of the above Rules. There appears to be no reasonable ground to doubt the recommendation of the Standing Committee made vide its proceedings dated 11.03.2017 keeping in view the fact that after

detailed investigation it has been apparently found by the DGAP that both the Respondents have not passed on the benefit of rate reduction and have violated the provisions of Section 171 (1) of the above Act, although the final verdict on the culpability of the Respondents is required to be determined after they have been heard in detail on all the issues involved in the present proceedings. Therefore, it is apparent that the Standing Committee prima facie had accurate and adequate evidence available before it to refer the complaint to the DGAP for detailed investigation as per the provisions of Rule 129 (1) and it has rightly referred the above complaint to the DGAP for investigation. Hence, the contention of the Respondents made on this ground is not correct and therefore, the same cannot be accepted. Accordingly, it is held that the reference made by the Standing Committee to the DGAP under Rule 129 (1) was legally correct and the investigation conducted by the DGAP on such reference is well within the ambit of Rule 129 of the above Rules.

57. In this regard, the Respondent No. 1 has placed reliance on the judgment of the Hon'ble Supreme Court passed in the case of ***Oil and Natural Gas Corporation Limited*** **v.** ***Gujarat Energy Transmission Corporation Limited and Others*** **(2017) 5 Supreme Court Cases 42** supra. However, as has been mentioned above the Standing Committee has disposed of the application filed by the Applicant No. 1 within the prescribed period of 2 months as has been provided under Rule 128 (1) of the above Rules and hence, it is respectfully submitted that the above judgement is not applicable.

58. The Respondent No. 1 has also cited the law settled by the Hon'ble Supreme Court in the case of ***Singh Enterprises*** **v.** ***CCE***

***Jamshedpur* 2008 (221) ELT 163 (SC)** mentioned above. However, since there has been no violation of the period of limitation in the present case the above case does not help the above Respondent.

59. The Respondent No. 1 has further relied on the judgment of larger Bench of the Hon'ble Supreme Court passed in the case of ***Commissioner of Customs & Central Excise* v. *Hongo India (P) Ltd.* 2009 (236) ELT 417 (SC)** supra**.** Since, the Standing Committee has disposed off the application within a period of 2 months as provided under Rule 128 (1) of the CGST Rules, 2017 the above case cannot be relied upon.

60. The law pronounced in the cases of ***Commissioner of Income Tax* v. *Gitsons Engineering Co.* 2015 (53) taxmann.com 108 (Madras)** and ***Krishna Kumar Saraf* v. *Commissioner of Income Tax* [2017] 83 taxmann.com 331 (Delhi - Trib.)** quoted above, is also of no assistance to the above Respondent as the Standing Committee has not acted beyond the provisions of Rule 128 (1). Moreover, no notice has been issued by it to the above Respondent.

61. The Respondent has also referred to the judgement passed by the Hon'ble Gujarat High Court in the case of ***Gujarat Paraffins Pvt. Ltd.* v. *Union of India* 2012 (282) ELT 33)** in his support and claimed that the legal maxim *sublato fundamento cadit opus* was applicable in the present case which implied that in case the foundation was removed, the superstructure fell. However, as has been held above the Standing Committee has rightly referred the above complaint of the Applicant No. 1 to the DGAP after prima facie having satisfied itself that there was accurate and adequate evidence to refer the allegation of not passing on the benefit of tax reduction by the Respondents within the

prescribed period of limitation of 2 months as per the provisions of Rule 128 (1) of the CGST Rules, 2017, therefore, the present investigation and the Report dated 24.09.2019 furnished by the DGAP cannot be held to be illegal and hence the law settled in the above case cannot be relied upon.

62. Based on the above findings all the preliminary objections raised by the Respondents have been found to be frivolous and hence the same cannot be accepted. However, these findings shall have no bearing on the other merits of the case which have not been dealt with in this order. The final order in the present proceedings shall be passed separately after hearing the Respondents in detail.

63. A copy of this order be supplied to the Applicants and the Respondents free of cost.

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Member(Technical)

Sd/-
(Amand Shah)
Member(Technical)

Certified Copy

17/2/2020

Dev Kumar Rajwani
(Secretary, NAA)

F. No. 22011/NAA/93/JK/2019/783-87 Date: 17.02.2020

Copy To:-

1. M/s J K Helene Curtis Ltd. c/o Raymond Consumer Care Ltd., 9th Floor and 10th floor, ATL Corporate Park, Saki Vihar Road, Chandivali, Powai, Mumbai- 400072.
2. M/s Shree Sai Kripa Marketing, B-141 Shakurpur, Samrat Cinema Road, Delhi- 110034.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Sh. Sanjay Mangal, Commissioner, CGST (Audit), Gurugram, Member of Standing Committee On Anti-Profiteering, GST Bhavan, Plot N0. 36-37, Sector-32, Gurugram, Haryana-122001.
5. Guard File.