

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

I.O. No. 22/2020

Date of Institution 30.10.2019

Date of Order 07.10.2020

In the matter of:

1. Principal Commissioner, Central Tax & Central Excise
Hyderabad, GST Commissionerate, GST Bhavan, LB Stadium
Road, Basheerbagh, Hyderabad-500004.
2. Director-General of Anti-Profiteering, Indirect Taxes & Customs,
2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg,
Gole Market, New Delhi-110001.

Applicants

Versus

M/s Devi 70 MM, 1-1-170, Ground Floor, RTC X Roads,
Chikkadapally, Hyderabad-500020.

Respondent

Quorum:-

1. Dr. 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. Raj Tadla, Partner for the Respondent.

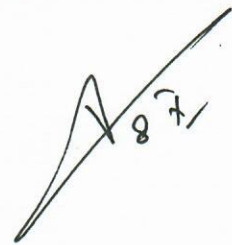
ORDER

1. The present Report dated 27.12.2019 has been received by this Authority from the Applicant No. 2, i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the DGAP had received a reference from the Standing Committee on Anti- Profiteering on 28.06.2019 in respect of an application filed by the Applicant No. 1, under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was one hundred rupees or less" despite the reduction in the rate of GST from 18% to 12% w.e.f. 01.01.2019. Along with the application, Applicant No. 1 had also submitted the APAF-1 Form, copies of cinema tickets issued in the pre and post rate reduction period, and the details of the GST paid.
2. Vide his above Report, the DGAP has reported that Applicant No. 1 had alleged that the Respondent has not passed on the benefit of reduction in the GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket was

one hundred rupees or less” from 18% to 12% which came into effect on 01.01.2019 vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 and that the Respondent had instead increased the base price of the tickets. Along with the application, the Standing Committee has also forwarded the Annexure to APAF-1 confirming the fact of an increase in the base prices of the tickets and letter dated 31.12.2018 and 13.02.2019 of the Respondent to the State Standing Committee on Anti-Profiteering.

3. The DGAP has stated that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 of the Rules was issued on 09.07.2019 calling upon the Respondent to respond as to whether he admitted that he had not passed on the benefit of reduction in GST rate w.e.f. 01.01.2019 to his recipients by way of commensurate reduction in prices and, if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice as well as to furnish all documents in support of his reply. The Respondent was also allowed to inspect the non-confidential evidence/information which formed the basis of the said notice, during the period from 17.07.2019 to 19.07.2019. However, the Respondent did not avail of the said opportunity. The DGAP has reported that the period covered by the current investigation was from 01.01.2019 to 30.06.2019.
4. DGAP has reported that in response to the notice dated 09.07.2019, the Respondent submitted his replies vide e-mails/letters dated 24.07.2019, 27.11.2019, 04.12.2019 and inter-alia stated that:-

- (a) He had collected Rs. 118/-, 80/- and 50/- for three categories of tickets namely Upper and Lower (Balcony), First Class and Second Class respectively up to 31.12.2018 which included GST of 18% and had paid GST of Rs. 18/- on the basic amount of Rs. 100/- and Rs. 12.20/- on the basic amount of Rs. 67.80/- and Rs. 7.63/- on the basic amount of Rs. 42.37/- respectively and after 01.01.2019, the collected ticket prices were Rs. 112/-, 80/- and 50/- which include GST of 12%, and GST paid was Rs. 12/- on the basic amount of Rs. 100/- and 8.57/- on the basic amount of Rs.80/- and 5.35/- on Rs. 44.65/- respectively.
- (b) He did not get any benefit on Input Tax Credit accrued during tax rate changes as the tickets were sold, without any stocking of goods, and therefore, there was no chance of ITC being accumulated at periods of tax rate changes.
- (c) He did not benefit from the reduction in the tax rate since his ticket prices, inclusive of GST, remained the same before and after 01.01.2019, and that he was duly collecting and paying GST as per applicable rates from time to time.
- (d) He had reduced the base price of his tickets to Rs 75/- and Rs 45/- for first class and second class tickets, respectively, with effect from 11.03.2019 until 8.05.2019 during the post GST rate reduction period in support of which he furnished certain data which was as per the Table below:-



Class	Dt.01/12/2018 to 31/12/2018		Total Basic + Tax	Dt.01/01/2019 to 10/03/2019		Total Basic + Tax	Dt.11/03/2019 to 08/05/2019		Total Basic + Tax	Dt.09/05/2019 Onwards		Total Basic + Tax
	Tax	Basic		Tax	Basic		Tax	Basic		Tax	Basic	
	GST	Rate		GST	Rate		GST	Rate		GST	Rate	
	18%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.
Upper & Lower Balcony	18	100	118	12	100	112	12	100	112	12	100	112
First Class	12.20	67.80	80	8.57	71.43	80	8.03	66.97	75	8.57	71.43	80
Second Class	7.63	42.37	50	5.35	44.65	50	4.82	40.18	45	5.35	44.65	50

5. The Respondent, vide the afore-mentioned e-mails/letters, also furnished the following documents/information before the DGAP:-

- Invoice-wise details of all outward taxable supplies of the movie admission tickets impacted by GST rate reduction w.e.f. 01.01.2019, during the period 01.12.2018 to 30.06.2019.
- Price List of the aforesaid movie admission tickets, pre and post 01.01.2019.
- Sample copies of the invoice/tickets, pre GST rate reduction 01.01.2019.
- Copies of GSTR-3B Returns for the period from December 2018 to June 2019.

6. The DGAP also reported that he has examined the reference from the Standing Committee on Anti-profiteering, the various replies of the Respondent, and the documents/evidence on record. The main issues to be examined in the present matter were whether the GST rate on "Services by way of admission to the exhibition of cinematograph films where the price of admission ticket was less

than one hundred rupees” was indeed reduced from 18% to 12% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

7. The DGAP has further reported that the Applicant had alleged profiteering by the Respondent along with supporting evidence which showed that the Respondent had kept the final price of the movie tickets unchanged despite the reduction in the rate of tax, thereby profiteering since the base price of the movie tickets sold in respect of the first class and second class movie tickets had increased from Rs.67.80 to Rs. 71.73 /- for each Rs. 80/- ticket (first class) and from Rs. 42.37 /- to Rs. 44.65/- for each Rs. 50 ticket (second class).
8. The DGAP has further stated that the Central Government, on the recommendation of the GST Council, reduced the GST rate on “Services by way of admission to an exhibition of cinematograph films where the price of admission ticket was above one hundred rupees” from 28% to 18% w.e.f. 01.01.2019 and “Services by way of admission exhibition of cinematograph films where the price of admission ticket is one hundred rupees or less” from 18% to 12% w.e.f. 01.01.2019 vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018 and this matter of fact had not been contested by the Respondent.
9. The DGAP has also stated that as per the provisions of Section 171 of the CGST Act, 2017 the legal requirement was very clear that in

the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in prices of the goods or services. Such reduction could be only in terms of money, such that the final price payable by a consumer got reduced commensurate with the reduction in the tax rate. This was the legally prescribed mechanism for passing on the benefit of ITC or reduction in the rate of tax to the recipients under the GST regime and there was no other method to pass on such benefits. From 01.01.2019, the Respondent, in terms of Section 171 of the CGST Act, 2017, was bound to maintain the base prices of the tickets across all class of seats/slots and GST should have been charged on the pre rate reduction base prices.

10. The DGAP has reported that after examination of the details of sales data, letter of the Applicant No. 1, and the replies submitted by the Respondent it was observed that there were three categories of tickets i.e. Upper and Lower Balcony- Rs. 118/-, First Class-Rs. 80/- and Second Class-Rs. 50/- sold by the Respondent during the pre-rate reduction period effective from 01.12.2018 to 31.12.2018. With effect from 01.01.2019, the price of the Upper and Lower Balcony tickets was reduced to Rs. 112/-, whereas the prices of the First Class and Second Class tickets were kept unchanged at Rs. 80/- and Rs. 50/- respectively.
11. The DGAP has further stated that as per the sales data made available by the Respondent, it was observed that the Respondent has increased the base prices of the admission tickets when the

GST rate was reduced from 18% to 12% w.e.f. 01.01.2019 and has furnished the details of the same in the below Table-A:-

Table-A										
S No	Admission ticket	01.12.2018 to 31.12.2018			01.01.2019 to 30.06.2019					
		Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Price of Ticket inclusive of tax (in Rs.)	GST Rate (%)	Amount Charged i.e Base Price (in Rs.)	Commensurate Base Price(in Rs.)	The amount which was to be Charged (in Rs.)	Increase in the base price of the ticket
A	B	C	D	E=[C/118%]	F	G	H	I	J=(I*112%)	K=H-I
1	Upper and Lower Balcony	118	18%	100.00	112	12%	100.00	100.00	112.00	0.00
2	First Class	80	18%	67.80	80	12%	71.43	67.80	75.93	3.63
4	Second Class	50	18%	42.37	50	12%	44.64	42.37	47.46	2.27

12. The DGAP has reported that from the above Table it was evident that the Respondent had increased the base prices of admission tickets of Rs. 80/- and 50/- and hence, the Respondent had not passed on the benefit of GST rate reduction from 18% to 12% in respect of "Services by way of admission to the exhibition of cinematography films to the recipients in terms of Section 171 of the CGST Act, 2017,

13. The DGAP has also reported that vide letter dated 24.07.2019, the Respondent has submitted that he had reduced the base price of the tickets to Rs 75/- from Rs. 80/- and to Rs 45/- from Rs. 50/- for the First class and Second class tickets, respectively, during the period from 11.03.2019 to 08.05.2019 during the post-tax rate reduction period. Upon analyzing the same it has come to light that for the period from 11.03.2019 to 08.05.2019 the Respondent had

reduced the base prices for First and Second Class tickets to lower than the pre-rate reduction prices while maintaining unchanged base prices for the upper and lower balcony tickets. And hence, the actual prices paid during the above mentioned period by the customers were less than the commensurate prices of the ticket in respect of the First and Second Class and hence, the period from 11.03.2019 to 08.05.2019 has been excluded from the final calculation of the amount of profiteering by the DGAP and details of the same has been furnished by the DGAP in the Table-B mentioned below:-

Table B

Class	Dt.01/12/2018 to 31/12/2018		Total Basic + Tax	Dt.01/01/2019 to 10/03/2019		Total Basic + Tax	Dt.11/03/2019 to 08/05/2019		Total Basic + Tax	Dt.09/05/2019 Onwards		Total Basic + Tax	Increase/decrease in the base price of the ticket*
	Tax	Basic		Tax	Basic		Tax	Basic		Tax	Basic		
	GST	Rate		GST	Rate		GST	Rate		GST	Rate		
	18%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.	
Upper & Lower Balcony	18	100	118	12	100	112	12	100	112	12	100	112	0
First Class	12.20	67.80	80	8.57	71.43	80	8.03	66.97	75	8.57	71.43	80	-0.83
Second Class	7.63	42.37	50	5.35	44.65	50	4.82	40.18	45	5.35	44.65	50	-2.19

14. The DGAP has claimed that as per the above Table, it could be concluded that there was no profiteering on the tickets of Rs. 75/- and Rs. 45/- during the period from 11.03.2019 to 08.05.2019 and hence, the same period has not been taken into account in respect

of the above-mentioned tickets while computing the profiteered amount.

15. The DGAP has stated that based on the aforesaid reduction in GST rate and the details of outward supplies for the period from 01.12.2018 to 30.06.2019 submitted by the Respondent, it was found that profiteering during the period from January 2019 to June 2019 from the sale of tickets in three categories amounted to Rs. 0/- for Upper and Lower Balcony (due to not increasing the base prices), Rs. 39,066.46/- for the First Class and Rs. 90,176.39/- for the Second Class. The total amount of net higher sales realization due to the increase in the base price of the movie tickets, despite the reduction in GST rate from 18% to 12% or in other words, the profiteered amount arrived at was Rs. 1,29,243/- (excluding the period from 11.03.2019 to 08.05.2019) The computation has been furnished by the DGAP in the Table "C" below:-

Table-C (Amount in Rs.)								
S No	Admission ticket	01.01.2019 to 10.03.2019 & 09.05.2019 to 30.06.2019						
		Base Price charged (Rs.)	Commensurate Base Price (Rs.)	The excess amount charged per ticket (Rs.)	Excess tax charged per ticket @ 12%	Total Profiteering per ticket (Rs.)	Qty. Sold	Total Profiteering (including tax @12%) (in Rs.)
A	B	C	D	E= (C-D)	F= E12%	G= (E+F)	H	I= (H*G)
1	Upper and Lower Balcony	100	100	0	0	0.00	85859	0
2	First Class	71.43	67.80	3.63	0.44	4.07	9604	39066.46
4	Second Class	44.64	42.37	2.27	0.27	2.54	35469	90176.39
							165145	129242.85

As per

16. The DGAP has finally reported that the allegation of profiteering by way of increasing the base prices of the tickets (Services) by way of not reducing the selling price of the tickets (Services) commensurately, despite the rate reduction in GST rate on *"Services by way of admission to exhibition of cinematography films where the price of admission ticket was one hundred rupees or less"* from 18% to 12% w.e.f. 01.01.2019, appeared to be correct. From the table above, it was quite clear that the base prices of the admission tickets had been indeed increased, as a result of which the benefit of reduction in GST rate from 18% to 12% (w.e.f. 01.01.2019), was not passed on to the recipients by way of commensurate reduction in prices charged (including lower GST @ 18% & 12%). Thus, the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017. The total amount of profiteering covering the period from 01.01.2019 to 30.06.2019, was Rs. 1,29,243/- (Rupees One Lakh, Twenty-Nine Thousand, Two Hundred and forty-three only). The DGAP has also stated that the recipients of the services were not identifiable as no such details of the consumers had been provided by the Respondent. Based on the details of outward supplies of the tickets (Services) submitted by the Respondent, it was observed that he had sold admission tickets in the State of Telangana only.

17. The investigation report was received by this Authority on 27.12.2019 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 20.01.2020. Notice dated 27.12.2019

01.01.2020 was also issued to the Respondent directing him to explain why the Report dated 27.12.2019 furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. Sh. Raj Tadla, Partner appeared in person and vide submissions dated 27.01.2020 has submitted:-

- a. That from the date when the tax rate was reduced, he had charged the reduced price to his customers.
- b. That since a movie ticket was a service and no stocking was required, he did not have any benefit of ITC due to tax rate changes and that he had forwarded the benefit of ITC accrued to his customers.
- c. That he has been provided with a range of ticket prices by the State Government, within which he has kept changing the prices of the tickets as per the below-mentioned factors:-
 - i. New/Old movie.
 - ii. Age of the movie.
 - iii. Performance of the movie.
 - iv. He had kept changing his ticket prices when a new movie was released apart from the other times like weekends, holidays, etc.
- d. That he procured the right to exhibit the movie from a producer/distributor and the price of the movie was decided by the producer/distributor based on the demand for his movie and the factors mentioned above.

- e. That the difference amount i.e. the amount that he was alleged to have profiteered, had accrued to the producer/distributor, and hence, his margins had remained unchanged.
- f. That he had submitted the invoices raised by the producer/distributor of the movie.
- g. That the computation of the DGAP to arrive at the profiteered amount was wrong and unsustainable; that period in which the movie ticket prices could not be increased following a tax rate reduction had not been prescribed.
- h. That he is being penalized under the pretext of profiteering, for having increased his movie ticket prices after several months had passed and even when he had started screening new movies.
- i. That there was no basis for the invocation of the anti-profiteering proceedings against him and hence the proceedings should be dropped, otherwise, profiteering should be recomputed.
- j. That were there any guidelines to follow on pricing changes during the tax rate changes.
- k. That he had not contravened the provisions of Section 171 of the CGST Act, 2017 and he had charged and collected the correct tax rate from his customers before and after the change in the tax rate.
- l. That he had bought the movie screening rights at a higher rate from the producer/distributor and hence he had not profiteered; that no benefit had accrued to him which ought to have been passed on by him to the customers.

m. That he had the right to change his ticket prices after the passage of several months from the date of the tax rate reduction that took effect on 1.01.2019.

18. Supplementary Report was also called from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the CGST Act, 2017. The DGAP vide his report dated 26.02.2020 has submitted his clarifications and has stated:-

a. That the legality of the investigation conducted by him was derived from Section 171(1) of the CGST Act, 2017 which governed anti-profiteering provisions under GST law. As per the provisions of Section 171 of the Act, the legal requirement was that in the event benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services. Such reduction could obviously be only in monetary terms so that the final price payable by a consumer got reduced commensurately with the reduction in the tax rate. Accordingly, the investigation carried out by DGAP had looked into the aspect of price reduction as per the Notification No. 21/2018-Central Tax Rate) dated 31.12.2018 by which the Central Government on the recommendation of the GST Council had reduced the GST rate on *"Services by way of admission to exhibition of cinematographic films where price of admission ticket is above one hundred rupees"* from 28% to 18% w.e.f. 01.01.2019 and *"Services by way of admission to exhibition*

of cinematograph films where price of admission ticket is one hundred rupees or less” from 18% to 12% w.e.f. 01.01.2019.

- b. That during the investigation, it was revealed that the base prices of admission tickets charged by the Respondent for the First Class & Second Class seats categories had increased with the reduction in the GST rate from 18% to 12% w.e.f. 01.01.2019 in as much as the final price of the movie tickets paid by the customers had remained unchanged. This had effectively nullified the impact of the tax rate reduction and hence the customers were denied the benefit arising out of the tax rate reduction. The DGAP has further reported that the Respondent had increased the base prices of the movie tickets during the period from 01.01.2019 to 10.03.2019 and again from 09.05.2019 to 30.06.2019, whereas for the period from 11.03.2019 to 08.05.2019, the Respondent had reduced the movie ticket prices commensurately and hence there was no profiteering even for the First and Second class tickets in respect of this period, i.e. from 11.03.2019 to 08.05.2019.
- c. That there was no question of stocking of the goods in this case as the investigation carried out by the DGAP pertains to the services offered by the Respondent by way of supply of admission to the exhibition of cinematography films and

the rate of tax applicable on admission tickets post rate reduction.

- d. That as per the data supplied by the Respondent during the investigation and scrutiny of the outward taxable supplies of the movie tickets during the period from 01.12.2018 to 30.06.2019 impacted by the GST rate reduction w.e.f. 01.01.2019, it has been observed that the prices of the movie tickets were not categorized/rated as per the factors mentioned such as new/old movie, age of the movie, performance of the movie, and show timings by the Respondent in his submission. On the contrary, it has been noticed that the prices of the movie tickets remained more or less uniform post-tax rate reduction and were not dynamically changed as stated by the Respondent. Also, any documentary evidence to establish the Respondent's contention has not been submitted by him so far.
- e. That the Respondent as per his submissions has informed that the theatre owner has no independent right to fix the prices of the admission tickets and that the State Government has provided them with a range of ticket prices within which the theatre owners could fix the prices based on certain factors/attributes of the movie. In the same written submission, the Respondent has mentioned that the ticket prices were controlled by the film owners/producers/distributors based on the demand for the

film. However, the Respondent has not submitted any document to prove that rates were controlled by either. The Respondent has neither submitted the order showing fixation/capping of prices by the State Government nor any agreement showing price negotiations made by the film owners/producers/distributors. It was also important to mention that irrespective of who decided the prices of admission tickets, the main issue was that the benefit of reduction in the rate of tax has to be passed on to the buyers by reducing the final prices commensurately. The quantum of the amount of profiteering calculated was based on prices of the admission tickets pre and post rate reduction taken from the outward sales details provided by the Respondent during the course of the investigation.

- f. That the entire investigation was conducted under the provisions of Section 171 of the CGST Act, 2017 read with Rule 129 of the CGST Rules 2017, as per the directions of the Standing Committee on Anti-profiteering, and the investigation report was submitted to this Authority under Rule 129 (6) of CGST Rules, 2017. Therefore, Section 171 of the CGST Act, 2017 did not interfere with the right to trade as Section 171 of the CGST Act, 2017 nowhere sought to fix the prices at which the goods and services ought to have been supplied. The said Section 171 only required the supplier to pass on the benefit of reduction in

the rate of tax or the benefit of ITC to the recipients by reducing the price commensurately and did not require him to seek any approval to conduct his trade or in fixing of prices of the products supplied by him.

- g. That the mandate of the office of the DGAP is not to act as a price controlling authority and the Respondent is free to fix the prices of the goods/services offered as long as it was done fairly and transparently. Any Investigation of anti-profiteering was initiated, only when a prima facie evidence has been found that the consumers were denied the benefit of ITC or reduction in the rate of tax. It was a fact that the pricing was dependent on certain commercial factors but the contention of the Respondent could not be accepted as such increase affected by various commercial factors could not have happened overnight to coincide with the tax rate reduction.

19. In response to the above submissions of the DGAP dated 26.02.2020, the Respondent vide e-mail dated 18.06.2020 has stated that:-

- a. In a cinema hall, if two movies got exhibited, both were different products. They had different star cast, different teams, different producers, and therefore were priced differently. Therefore, the anti-profiteering proceedings under Section 171 of the CGST Act, 2017 should be restricted to the old movie. In the present case, the

profiteering has been calculated until June 2019, which was wholly unsustainable.

b. The change in the rate of tax was done on 01.01.2019 and during this time, he was exhibiting the movie "Anthariksham". However, on 11.01.2019, a new movie "Vinaya Vidhaya Rama" was exhibited. Hence, the new movie was a whole new product and the pricing of this movie was his prerogative. The new movie was a new product and hence the movie tickets for the same could not be forced to be sold at older prices.

c. That any anti-profiteering measures should be enforced only till 10.01.2019

20. We have carefully perused the submissions of the Applicants and the Respondent as also the case record placed before us and it has been revealed that the Central and the State Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.



21. On examining the various submissions placed on record, we need to find whether there was any reduction in the GST rate and whether the benefit of reduction in the rate of tax was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017, which provides as under:-

“(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.”

(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITCs availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the Order by the Authority.

Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."

22. One of the contentions of the Respondent is that from the date when the tax rate was reduced, he had charged the reduced rate of tax from his customers. In this regard, it is pertinent to mention that as per the investigation carried out by the DGAP, while this contention of the Respondent was found correct, it has also been found that the Respondent has charged the reduced rate of tax on the increased base price in respect of the First Class and Second Class movie tickets. Hence the effective final prices of the tickets required to be paid by the customers had remained unchanged despite the tax rate reduction, thus nullifying the impact of tax rate reduction for the customers. Therefore, the benefit of tax rate reduction to be passed on to the customers/recipients was not passed on as per the provisions of Section 171 of the CGST Act, 2017 by the Respondent.
23. The Respondent has further contended that he was providing the services in respect of admission to the exhibition of cinematography films and no stocking was possible and hence, he did not have any benefit of ITC due to tax rate changes. In this connection, it would be relevant to mention that the DGAP has carried out the

investigation in respect of the services provided by the Respondent and looked into the aspect of price reduction as per the Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018. Therefore, the question of stocking of the goods does not arise in the present case and the same does not have any impact on the amount of profiteering. Hence, the above contention made by the Respondent is not correct.

24. The Respondent has argued that the State Government has provided him with a range of ticket prices within which he kept changing the prices of the tickets based on various factors like new/old movie, age & performance of the movie. In this connection, it has been observed that as per the data made available by the Respondent to the DGAP during the investigation, he had not categorized/rated the movie ticket prices as per the above-mentioned factors, and the DGAP after scrutinizing the above data, has found that the prices of the admission tickets remained more or less uniform post-tax rate reduction and were not changed dynamically. Further, the Respondent had not submitted any documentary evidence to sustain his claim. Therefore, in the absence of any documentary evidence, the said claim of the Respondent cannot be accepted.
25. The Respondent has also averred that he had procured the cinema license at the higher rate from the market and that he had procured the right to exhibit the movie from a producer/distributor, who decide the price for the movie based on the demand of the movie.

Hence, the amount which he is alleged to have profiteered had been paid to the producer/distributor and hence he has not benefited at his end. We find that this contention made by the Respondent is not correct. As per the provisions of Section 171 of the CGST Act, 2017, the Respondent being a registered person under GST has to pass on the benefit of reduction in the rate of tax to his customers. The Respondent in his submissions mentioned in Para 17(c) above has stated that the appropriate State Government has provided him with a range of ticket prices within which he could fix the prices based on certain factors of the movie. Further, the Respondent has neither submitted the order showing fixation of prices by the State Government nor submitted any agreement to evidence that the price of the movie tickets was fixed by the film producers/distributors. Hence, the above two statements made by the Respondent are not correct. Therefore, the said contention made by the Respondent cannot be accepted.

26. The Respondent has also contended that two different movies exhibited in the cinema hall should be considered as two different products as they have different star cast, different teams, different producers, etc. and therefore, he had the right to price them differently. A new movie was a whole new product and the same could not be forced to be sold at the older rates of earlier movies. In this connection, we opine that notwithstanding this contention of the Respondent, since the nature of service supplied by the Respondent is the same, different movies can't be treated as

different products as long as the cinema hall is the same and the impact of rate reductions would be applicable on the services being supplied irrespective of the film being screened. Therefore, the above contention of the Respondent cannot be accepted.

27. We find that among the other contentions, the Respondent vide his submissions dated 27.01.2020 has stated that he had reduced the prices of his movie tickets commensurately with the reduction in the rate of tax w.e.f. 11.03.2019 and that he had subsequently increased the prices of the movie tickets w.e.f. 09.05.2019. We also find that this contention of the Respondent has also been incorporated by the DGAP in Para 16 of his report dated 27.12.2019, which reads as under:-

"However, the Noticee vide letter dated 24.07.2019 submitted that they had reduced the base price of the tickets to Rs 75/- and Rs 45/- (for the first class and second class tickets) for certain period i.e., w.e.f. 11.03.2019 to 08.05.2019 post GST period: Upon analyzing the same it has come to light that for the period as mentioned below i.e. 11.03.2019 to 08.05.2019 the Noticee had reduced the base prices for First and Second Class tickets to lower than the pre-rate reduction prices while maintaining the same base price for upper and lower balcony tickets. The same has been illustrated for easy reference as Table B below. As a result of this, the actual prices paid in this period by the end-users had been less than the commensurate prices of the ticket. Hence,

the relevant period has been excluded from the final calculation of amount of profiteering.”

Table-B

Class	Dt.01/12/2018 to 31/12/2018		Total Basic + Tax	Dt.01/01/2019 to 10/03/2019		Total Basic + Tax	Dt.11/03/2019 to 08/05/2019		Total Basic + Tax	Dt.09/05/2019 Onwards		Total Basic + Tax	Increase/decrease in the base price of the ticket*
	Tax	Basic		Tax	Basic		Tax	Basic		Tax	Basic		
	GST	Rate		GST	Rate		GST	Rate		GST	Rate		
	18%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.	12%	Rs.	Rs.	
Upper & Lower Balcony	18	100	118	12	100	112	12	100	112	12	100	112	0
First Class	12.20	67.80	80	8.57	71.43	80	8.03	66.97	75	8.57	71.43	80	-0.83
Second Class	7.63	42.37	50	5.35	44.65	50	4.82	40.18	45	5.35	44.65	50	-2.19

From the above Table, it appears that there is no profiteering on the tickets of Rs 75/- and Rs 45/- during the period 11.03-2019 to 08.05.2019, and the same has not been taken into account.”

28. The data/input contained in the above para has been verified by the DGAP. It is a fact that the price of two categories i.e. the First and the Second class movie tickets has been reduced commensurately by the Respondent w.e.f. 11.03.2019. Since he has complied with the provisions of Section 171 of the CGST Act, 2017, the period from 11.03.2019 has no relevance from the perspective of Section 171 of the CGST Act, 2017, and hence, no profiteering can be established for the period after 11.03.2019. While taking this view, we take into cognizance of the fact that this Authority is not a price regulator. Thus, in this case, since the Respondent has increased the price of the movie tickets of the First and the Second class ✓

categories only in the month of May 2019, this price increase cannot be correlated to provisions of Section 171 of the CGST Act, 2017. It is also a fact that the DGAP has reported that in the post-tax-rate reduction period, the Respondent has maintained the same base prices in respect of the Upper and Lower Balcony categories of movie tickets and hence, we observe that there is no profiteering in the above category of these movie tickets. Therefore, though profiteering has been established against the Respondent in the categories of First class and Second class movie tickets, the computation of profiteering merits to be limited only up to 10.03.2019 as the Respondent had reduced the base prices commensurately for the First class and Second class movie tickets after 11.03.2019. No profiteering can thus arise for the period after 11.03.2019. Therefore, given the above, we find this case to be a fit case for recomputation of the amount of profiteering in line with the above observations.

29. Therefore, under the provisions of Rule 133(4) of the CGST Rules 2017, this Authority directs the DGAP to recompute the amount of profiteering in line with the observations made in the preceding paragraph. The DGAP is further directed to furnish his Report under Rule 129 (6) of the CGST Rules, 2017.
30. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by

this Authority on 30.10.2019 the order was to be passed on or before 29.04.2020. However, due to the prevalent pandemic of COVID-19 in the Country, this order could not be passed on or before the above date due to force majeure. Accordingly, this order is being passed today in terms of the Notification No. 65/2020-Central Tax dated 01.09.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

31. A copy each of this Order be supplied to the Applicants, the Respondent for necessary action. File be consigned after completion.




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

Sd/-
(Amand Shah)
Technical Member

Sd/-
(Dr. B. N. Sharma)
Chairman

Certified Copy

o/c 
(A.K Goel)
NAA, Secretary

File No. 22011/NAA/120/Devi/2020 | 5317 - 5380 Date:- 08.10.2020

Copy To:-

1. M/s Devi 70 MM, 1-1-170, Ground Floor, RTC X Roads, Chikkadapally, Hyderabad-500020.
2. Pr. Commissioner, Central Tax & Central Excise, Hyderabad GST Commissionerate, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad-500004.
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. Guard File.

