

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

I.O. No.	03/2022
Date of Institution	29.01.2021
Date of Order	10.05.2022

In the matter of:

1. M/s Indian Oil Corporation Ltd. (Pipelines Division), Western Region Pipelines, P. O. Bedipara, Morabi Road, Gauridad, Rajkot, Gujarat - 360003.
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

M/s Gopal Teknocon Private Limited, Unit No. B-2, Autonagar,
Vishakhapatnam - 530012.

Respondent

Quorum:-

1. Sh. Amand Shah, Chairman & Technical Member
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present:-

I. O. No. 03/2022
Indian Oil Corporation Ltd. vs M/s Gopal Teknocon Pvt. Ltd.

1. None for the Applicants.
2. None for the Respondent.

Brief facts of the case:

1. The present Report dated 29.01.2021 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that an Application was filed by the Applicant No. 1 under Rule 128 of the CGST Rules, 2017 before the State Screening Committee on Anti-Profiteering alleging profiteering by the Respondent, in respect of awarding of a contract for Maintenance and Inspection of Crude Oil Storage Tanks vide which the Applicant No. 1 was not satisfied with the amount of discount offered and had also alleged that the Respondent had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in price, in terms of Section 171 of the Central Goods & Services Tax Act, 2017. The Applicant No. 1 had also submitted the following documents along with his application:-
 - (a) Duly filled in Form APAF-1.
 - (b) Letter of Acceptance of Work Order No.- 25161693 dated 30.06.2017 with respect to Tender No.PWRJT16078.
 - (c) Letter of Acceptance of Work Order No.- 25444188 dated 28.03.2018 with respect to Tender No.PWRJT16078.
 - (d) Letter to Special Commissioner, SGST, Ahmedabad.
2. The State Screening Committee had initially examined the matter and upon being satisfied that the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017, forwarded the same with its recommendation, to the Standing Committee on Anti-Profiteering for further action, in terms of Rule 128 (2) of the CGST Rules, 2017. Further, the Standing Committee referred the same to the Directorate General of Anti-Profiteering (DGAP) on 07.08.2020 in

terms of Rule 129 (1) of the CGST Rules, 2017 to conduct a detailed investigation in the matter.

3. Accordingly, investigation was initiated by the DGAP to collect necessary evidence to determine whether the benefit of Input Tax Credit had been passed on by the Respondent to the Applicant No. 1 in respect of the service supplied by the Respondent. The DGAP had issued a notice dated 04.09.2020 under Rule 129 of the CGST Rules, 2017 calling upon the Respondent to submit his reply as to whether he admitted that the benefit of Input Tax Credit, had not been passed on to the Applicant No. 1 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 supporting documents. Vide the said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1. The Respondent availed of this opportunity on 19.01.2021. The DGAP has informed that the period covered in the current investigation was from 01.01.2019 to 31.07.2020.
4. The DGAP has further stated that the time limit to complete the investigation was till 06.02.2021. However, in terms of Notification No. 35/2020-Central Tax dated 03.04.2020, Notification No. 55/2020-Central Tax dated 27.06.2020, Notification No.65/2020- Central Tax dated 01.09.2020 and Notification No. 91/2020 dated 14.12.2020 where, any time limit for completion/furnishing of any report, has been specified in, or prescribed or notified under the Central Goods and Service Act, 2017 which fell during the period from the 20th day of March, 2020 to the 30th day of March, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action was extended upto 31.03.2021.
5. Further, the DGAP has claimed in his report that in response to the Notice dated 04.09.2020, the Respondent submitted his reply vide

letters and e-mails dated 11.09.2020, 07.10.2020 and 25.01.2021 to the DGAP. The detailed submissions of the Respondent vide letter dated 11.09.2020 are as follows:-

- a) The Respondent stated that the work executed by the Respondent for the Applicant No. 1 had commenced during the GST era i.e. after GST had come into effect.
- b) That the tender had been floated for Maintenance and Inspection of 2 number of 76 Diameter Crude Oil Storage Tanks vide tender number PWRJT16078 dated 31.12.2016 and the rate for tender no. PWRJT16078 dated 31.12.2016 for both the tanks was floated as a Single Tender on 28.01.2017.
- c) That the technical bid was opened by the Applicant No. 1 on 18.02.2017. The price bid was opened by the Applicant No. 1 on 06.04.2017. After opening of price bid they were declared the L1 party. The rate quoted by the Respondent for the said tender was Rs. 15,85,82,517.75/-, which was inclusive of VAT and exclusive of Service Tax.
- d) That the Applicant No. 1 had called for 1st round of price negotiations on 15.04.2017. As the Respondent was aware that the GST was coming into effect from 01.07.2017, he had given discounts during various stages of price negotiations. After the 3rd round of negotiations, the Applicant No. 1 had issued Purchase Order No. 25161693 dated 30.06.2017 for an amount of Rs 7,49,63,810.98/- for 1 Crude Tank MT-05 only.
- e) That, subsequently, the Applicant No. 1 had called for price negotiation on account of onset of GST on 05.08.2017. The Respondent offered an amount of Rs. 11,61,246.84/- as discount during these negotiations. After the GST Price Negotiation, the Applicant No. 1 had issued a Revision Work Order No. 25161693 dated 30.06.2017 without any change in the work order date 30.06.2017. The revision work order was sent to the Respondent through e-mail dated 06.11.2017, the value of revision purchase order was Rs. 7,38,03,474.90/-. Entire input procurement required

for subject work was made in GST regime and entire output supplies were also made in the GST regime.

- f) That, on 07.03.2018, the Applicant No. 1 had called for price negotiations on account of on-Set of GST for the 2nd Tank MT-03. The Respondent had again offered an amount of Rs. 11,61,246.84/- as discount during these negotiations. Further, the Applicant No. 1 had issued LOA/Work order No. 25444188 dated 27.03.2018 with a value of Rs. 7,38,03,474.90/-. Entire input procurement required for subject work was made in GST regime and entire output supplies were also made in GST regime.
- g) That the Respondent had passed benefit of Rs 1,09,77,393.68/- to the Applicant No. 1 as a result of ON-SET of GST by offering discounts on his quoted price/rate during various stages of price negotiations with the officers of IOCL at his Rajkot office.
- h) That, if the Applicant No. 1 had any grievance they should have abstained from giving consent to the offers made by them. Instead, the Applicant No. 1 had issued revised purchase order showing his consent for the final price which the Respondent clearly stated as price without taxes. After all negotiations, the Applicant No. 1 had also signed revised agreement with revised price plus GST.
6. The DGAP submitted that vide the aforementioned letters, the Respondent submitted the following documents/information:-
- (a) Copies of GSTR-1 returns for the period July, 2017 to July, 2020.
- (b) Copies of GSTR-3B returns for the period July, 2017 to July, 2020.
- (c) Invoice wise outward supplies from November, 2017 to July, 2020.
- (d) Sample copies of the invoices post 01.07.2017.
- (e) Electronic Credit Ledger for the period July, 2017 to July, 2020.
- (f) Brief Profile of the Respondent.

- (g) Copies of GSTR-9 returns for the period July, 2017 to March, 2018.
 - (h) Copies of Balance Sheets for the FY 2017-18 & 2018-19.
 - (i) Output GST and ITC of GST for the period July, 2017 to July, 2020.
 - (j) Correspondence letters with M/s IOCL, Gujarat with respect to Anti-profiteering measures in the post GST era.
7. The DGAP has claimed that the subject application, various replies of the Respondent and the documents/evidences on record had been examined and the main issues for determination by the DGAP were: -
- (i) Whether there was benefit of reduction in rate of tax or input tax credit on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
 - (ii) Whether the Respondent has passed on such benefit to the recipient by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
8. The DGAP has submitted that on perusal of Respondent's submissions, it was observed by him that the Respondent had refuted the claim of the Applicant No. 1 and submitted that entire input procurement required for subject work was made in the GST regime and entire output supplies were also made in GST regime. It was also submitted that if the Applicant No. 1 had any grievance he should have abstained from giving consent to the offers made by him. Instead, the Applicant No. 1 had issued revised purchase orders showing his consent for the final price which the Respondent clearly stated as price without taxes. After all negotiations, the Applicant No. 1 had also signed revised agreement with revised price plus GST.
9. The DGAP has further submitted that submissions of the Applicant No. 1 were scrutinised and from the perusal of the facts/documents and calculation chart showing minimum commensurate discount submitted by the Applicant No. 1, the DGAP observed that no concrete evidence was produced by him so as to arrive at actual

profiteering, if any. The calculation of profiteering submitted by the Applicant No. 1 was based on assumption that 40% of the material was excisable. It was also observed by the DGAP from the reply of the Respondent that he had not filed VAT Returns and ST-3 Returns as he had no business before 01.07.2017. Therefore, there was no pre-GST transaction. Thus, there was no pre-GST VAT/CENVAT credit available to the Respondent for comparison to arrive at additional benefit on account of GST. Hence, the profiteering could not be determined on assumptions or available documents. However, before coming to any conclusion, the DGAP found it necessary to procure all the documents and correspondences leading to determination of profiteering. Accordingly, vide letters dated 23.12.2020, copy of reply submitted by the Respondent was supplied to the Applicant No. 1 and the copy of complaint was given to the Respondent, in terms of Rule 129(4) of the Rules, and both the interested parties were requested to submit their comments with evidence.

10. It was further submitted by the DGAP that the Applicant No. 1 vide his letter/e-mail dated 08.01.2021 submitted the following: -

- (a) That he had issued work order No. 25161693 dated 30.06.2017 for M & I of Tank No. MT-05 at WRPL Mundra to the Respondent amounting to Rs. 7.49 Crore (without Service Tax) and Rs. 8.03 Crore (including Service Tax). This P.O. post price negotiation was amended for a total amount of Rs. 7.38 Crore (without GST) and Rs. 8.70 Crore (including GST). The subject work order was totally executed in the Post-GST period.
- (b) That he had issued another work order No. 25444188 dated 27.03.2018 for M & I of Tank No. MT-03 at WRPL Mundra Station for a total amount of Rs. 7.38 Crore (without GST) and Rs. 8.70 Crore (including GST).

The Work Order for Tank No. MT-05 was placed in the Pre-GST period which was subsequently amended after

conducting price negotiations with the Respondent. Whereas, the work order for tank No. MT-03 was placed in post-GST period after conducting price negotiation.

In both the P.O.s there were 3 line items as under:-

- I. Supply Items
- II. Composite items
- III. Services

11. Further, the DGAP has claimed that the Applicant No. 1 had submitted that for the supply items, VAT @ 5% was applicable at the time of submission of Bid. As per his estimate, 40% of the supply items were excisable @ 12.5% therefore 5% Excise Duty was considered and calculated for total supply items. Therefore, the Respondent had availed the Input Tax Credit of GST paid by him while executing the contract whereas the Respondent had offered a discount of 3.21% only on the quoted rates.
12. The DGAP has also submitted in his report that the Applicant No. 1 had claimed that for the Composite items he had considered that 60% were supply items and 40% were services. Accordingly, VAT @ 5% was applicable on the supply part. Therefore, the Respondent had availed the Input Tax Credit both on supply and services during the execution of the contract whereas the Respondent had offered a discount of 0.76% on the quoted rates.
13. The Applicant No. 1 had thus submitted that for a single Tank it was estimated that the Respondent had not passed on discount of Rs. 36.13 Lakh as detailed below: -

The Applicant No. 1 had re-calculated the discount due on account of GST implementation based on the actual executed quantity against the subject work orders. Through his e-mail dated 08.01.2021 the Applicant No. 1 had forwarded the detailed calculation in excel file wherein as per the Applicant No. 1's estimate the total discount due to him was as under: -

Tank NO.	PO No.	Ordered Value (Rs.)	Executed Value (Rs.)	% Execution	Discount Calculated (Rs.)	Discount Offered (Rs.)	Discount short (Rs.)
MT-05	25161693	7,37,97,159.80	6,10,86,583.91	82.78%	39,20,931.33	9,77,350.84	29,43,580.49
MT-03	25444188	7,46,23,677.81	6,45,72,846.38	86.53%	40,16,035.12	9,86,487.66	30,29,547.46

The DGAP has also intimated that the Applicant No. 1 had stated that as explained at (a) and (b) above the work order for MT-05 was placed in pre-GST period. Subsequently in the Post-GST period negotiation was carried out and work order was amended as per the negotiated rates.

It was also submitted by the Applicant No. 1 to the DGAP that the work order for MT-03 was placed in the Post-GST period as per the negotiated rates.

The Applicant No. 1 had also submitted that after implementation of the GST he had called the Respondent for price negotiation first for Tank No. MT-05 and the Respondent vide his letter No. GTPL/IOCL/25161693/GST/ANX-2 dated 24.10.2017 had submitted his response to the price negotiations.

14. It is further submitted by the DGAP in his report that the Applicant No. 1 had submitted his response for Tank No. MT-03, vide his letter No. GTPL/IOCL/PWRJT16078/08 dated 21.03.2018 to the price negotiations.

The Applicant No. 1 had also stated to the DGAP that he had put forth his claim against inadequate discount offered by the Respondent for the job of M & I of Tank No. Mt-05 and MT-03 at WRPL Mundra against his Tender No. PWRJT16078. The DGAP has also claimed that the Applicant No. 1 vide his letter dated 29.03.2019 has calculated the Minimum Tax Benefit to be passed on to him by the Respondent in the following manner:-

[Handwritten signature]

CALCULATION FOR MIN. TAX BENEFIT TO BE PASSED


Ref: 1. Applicant No. 1's Ref. No. WRPL/GDD/GST/MT-03 dated 26.12.2018 for the Job of M & I of MT-03 at Mundra against W.O. No. 25444188.

2. Applicant No. 1's letter Ref No. WRPL/GDD/GST/MT-05 dated 26.12.2018 for the job of M & I of MT-05 at Mundra against W.O. No. 25161693.

S. No.	Particulars	Rs./Lakh*
1	Material Supply	257.24
2	Composite Works	440.24
3	Services	52.15
4	Total Contract value excluding taxes	749.63
5	WCT @ 2% on Composite Value (Discount: A)	8.80
6	Material Portion (considered 60% of Composite)	264.15
7	5% VAT included in Material Portion of Work Contract (Discount: B)	13.21
8	5% VAT + 5% Excise on Material Supply (Assuming 40% of material is Excisable) (Discount: C)	25.72
9	Total Discount(A+B+C)	47.73
10	Discount given by vendor (1.55% of contract value)	11.60
11	Short Discount	36.13

*above calculations are shown for an individual tank

15. The DGAP has also submitted that the Applicant No. 1 had claimed that for arriving at the minimum commensurate discount of Rs. 47.73 Lakh, following had been considered:

- 
- Output VAT liability on composite part had been considered only @ 2% and arrived discount of Rs. 8.80 Lakh.
 - VAT on input material used in execution of composite part had been considered on Excise Duty included in material cost of composite part.

- (c) VAT and Excise Duty were already included in pure material cost of Rs. 2.57 Crore. Thus, combined effect of the same has been considered at the lowest slab i.e. @ 10% (5% VAT + 5 % ED) which works out to be Rs. 25.7 Lakh.

It was further claimed by the Applicant No. 1 that total claim of discount not passed on by the Respondent was Rs. 72.26 Lakh against both the work orders.

16. Further, the DGAP has stated that the Respondent vide his letter dated 25.01.2021 submitted that the provisions of Anti-profiteering were not attracted in his case as there was no reduction in the rate of tax. There was also no benefit of input tax credit on account of introduction of GST as his contract was finalized in the GST era and the terms& conditions which were approved for one Tank in the pre-GST era were renegotiated in the GST era keeping in mind the Anti-profiteering clause and then final order was given for execution of work.
17. The Respondent had also stated that the second letter of Acceptance dated 27.03.2018 also was on the same prices and in this case also Anti-profiteering clause was discussed in detail with the Applicant No. 1 and the Applicant No. 1 had agreed to his prices and then ordered for execution of the work. It was further stated by the Respondent that in many Orders of the NAA where the contract was solely made in the GST era the provisions of Anti-profiteering had not been involved for the input tax credit benefit.
18. The Respondent also submitted to the DGAP that the tender had been floated by the Applicant No. 1 and price had also been finalized by him. From the correspondence it was clear that the Respondent was only putting forth his rates in the GST era. The decision to award the contract was in the hands of the Applicant No. 1 which was being decided by his team of experts on every count including the benefit of input tax credit.



19. Further, the Respondent had claimed before the DGAP that after awarding the contract the Applicant No. 1 was violating the provisions of Indian Contracts Act by misrepresenting Anti-profiteering provisions which were not applicable in his case. The Respondent has further submitted the chronology of events as is given below for Tank No. MT-05:-

- (a) Detailed notice inviting e-tender for both tanks MT-05 & MT-03 on 31.12.2016.
- (b) Price Bid opening date was 06.04.2017.
- (c) The Applicant No. 1 had called for 1st round Price negotiations on 15.04.2017. Discount offered by the Respondent after negotiation was Rs. 60,09,300.00 on 26.04.2017.
- (d) The Applicant No. 1 had called for 2nd round price negotiations on 04.05.2017 discount offered by the Respondent after negotiation was Rs. 21,40,000.00 on 16.05.2017.
- (e) The Applicant No. 1 had called for 3rd round price negotiations on 19.05.2017. Discount offered by the Respondent after the negotiation was Rs. 5,05,600.00 on 23.05.2017.
- (f) The Applicant No. 1 had released work order No. 25161693 dated 30.06.2017 for a value of Rs. 7,49,63,810.98 for MT-05 Crude Tank.
- (g) The Applicant No. 1 had called for 1st round GST negotiations on 05.08.2017. Benefit passed by the Respondent after the negotiation was Rs. 11,61,246.84 for Tank MT-05 on 25.10.2017.
- (h) The Applicant No. 1 had given site clearance for starting the work from 21.08.2017 vide his letter No. WRPL/MUN/TF/M&I/MT-05/02 dtd. 21.08.2017.
- (i) The Applicant No. 1 had issued Revision to work order No. 25161693 dated 30.06.2017 on 06.11.2017. The changes in the revision work order were incorporating GST Tax from earlier pre-GST. A copy of the revision work order was sent through mail dated 06.11.2017.

- (j) The Respondent had completed the work on 20.05.2018. He had enclosed the completion certificate issued by the Applicant.

The Respondent had also submitted the chronology of events as is given below for Tank No. MT-03:-

- (a) Detailed notice inviting e-tender for both Tanks MT-05 & MT-03 on 31.12.2016.
- (b) Price Bid opening date was 06.04.2017.
- (c) The Applicant No. 1 had called for telephonic price negotiations vide his letter No. PWRJT16078 Dated 07.03.2018.
- (d) The Applicant No. 1 had called for a single tender for both the Tanks MT-03 & MT-05 as the work was similar in nature. Prior to start of work of MT-03, GST input benefit was already worked out and established for Tank MT-05. Being the same tender for both the Tanks MT-03 & MT-05 with same rates, terms and conditions, the Respondent had passed on the same benefit for Tank MT-03 that he had passed in respect of Tank MT-05 work.
- (e) The Applicant No. 1 had issued work order No. 25444188 dated 27.03.2018 for an amount of Rs. 7,38,03,474.90/-.
- (f) The Applicant No. 1 had given site clearance for starting the work from 04.06.2018 vide his letter No. WRPL/MUM/TF/M&I/MT-03/02 dated 02.06.2018.
- (g) The Respondent had completed the work on 03.03.2019. He had enclosed the completion certificate issued by the Applicant No. 1.
20. Further, the Respondent had submitted to the DGAP that the negotiation for Tank No. MT-05 was finalized on 05.08.2017 and he was asked to start the work. The Respondent also submitted that negotiation for Tank No. MT-03 was finalized on 12.03.2018 and he was ordered to start the work. The Respondent also claimed that it was not a case where the work had started in pre-GST era or negotiation was finalized in pre-GST era. The contract was finalized in the GST era and the work was also started in GST era. It was further claimed by the Respondent that all purchases were made in the GST era. The contract was awarded by the Applicant No. 1 in

post GST era after going through his submissions. The Respondent further informed the DGAP that he had completed execution of the above work order in September 2018 and had raised the following invoices:-

STATEMENT OF BILLS RAISED EXCLUDING GST

RAB No.	Supply	Composite	Services	Total
RA-1	-	2,97,720.00	14,77,281.20	17,75,001.20
RA-2	-	34,25,283.81	4,83,456.95	39,08,740.76
RA-3	82,94,653.38	17,56,040.00	10,29,420.00	1,10,80,113.38
RA-4	7,77,278.92	97,21,800.08	-	1,74,94,079.00
RA-5	59,57,313.64	1,12,72,043.64	5,30,000.00	1,77,59,357.28
RA-6	-	45,40,839.52	6,87,800.00	52,28,639.52
Final	5,41,953.14	22,72,435.64	10,26,228.80	38,40,617.58
	2,25,66,199.08	3,32,86,162.69	52,34,186.95	6,10,86,548.72

The Respondent has summarized the claim made by the Applicant No. 1 and his actual purchases as is given in the Table below:-

	As per PO	Actual PO Executed Value	Purchases Made		
			5% Rs. Lakh	14.50%	Total
Material Supply	257.24	225.66	194.26	-	194.26
Composite Works	440.24	332.86	14.56	148.76	163.32
Services	52.15	52.34	-	-	-
Total Contract Value	749.63	610.86	208.82	148.76	357.58

He has further enumerated the details of the claim made by the Applicant No. 1 against the actuals as under:-

Component	WCT (Output VAT Liability) @ 2%	5% VAT on assuming 60% of material portion	Assuming 5% VAT on material Supply	Assuming 5% Excise Duty on material supply	Total
Supply (Claimed by IOCL)	-	-	12.86 (5% of 257.24)	12.86 (5% of 257.24)	25.72
Actual arrived by us	-	-	1.57 Calculation	M/s IOCL has assumed that the	1.57

			arrived as per Note No.1	Respondent will be benefitting 5% ED towards supply. Respondent informed that since he was not manufacturing the goods he cannot avail the benefit of E/D.	
Composite works (Claimed by IOCL)	8.80	13.21	-	-	22.01
Actual Arrived by us	Not Applicable as he will be going for regular method since he has maintained books of accounts	5.08 Calculation Arrived as per Note No.2	-	-	5.08
Total Claimed by IOCL on both supply & composite works			Rs. 47.73 Lakh		
Actual Arrived by GTPL on basis of Computation of Accounts			Rs. 6.65 Lakh		

Note No. (A): -

- i. Against supply, VAT paid on purchase of material was approximately Rs. 9,71,283/- (on Rs. 1,94,25,650/-).
- ii. VAT Output to be paid @ 5% Rs. 11,28,310.00 on supply of material Rs. 2,25,66,199/-.
- iii. Net payable was Rs. 1,57,027/- after adjustment of VAT available (i.e. VAT payable Rs. 11,28,310/- VAT Available Rs. 9,71,283.00).

Note No. (B): - The exact amount of VAT/ED was not available to the Respondent and it could only be assumed as no purchase was made in pre-GST.

However, the Respondent claimed to have passed on benefit of Rs. 11,61,246.84/- for 1 work order and the total benefit passed on for 2 work orders was Rs. 23,22,493.68/-.

21. On examination of the submission of the Applicant No. 1 and the Respondent, the DGAP has made the following observation: -



- (a) A Tender for Maintenance and Inspection of 2 Crude Oil Storage Tanks at WRPL, Mundra, Gujarat was floated by the Applicant No. 1 vide Tender enquiry No. PWRTJT16078 dated 31.12.2016. The Respondent had offered his rates. The bid was opened on 30.09.2016.
- (b) The Respondent's bid was accepted and for further price negotiation several discussions with respect to discount on quoted price were held, from 30.12.2016 to 30.06.2017, between the Applicant No. 1 and the Respondent. On 30.06.2017 the bid of the Respondent was accepted and the Respondent was awarded the contract. Accordingly, the tender was bifurcated into two work orders and a "Letter of Acceptance" containing all the details of work, rate and price for each work against enquiry No. PWRTJT16078 dated 31.12.2016 was issued on 30.06.2017 for one Tank No. MT-05.
- (c) However, the Goods and Services Tax Act, 2017 was introduced by the Government with effect from 01.07.2017 and therefore work order and site clearance was not given by the above Applicant to the Respondent pending the price negotiations for the benefit accruing on account of introduction of GST. The Applicant No. 1 wrote a letter dated 05.08.2017 to the Respondent regarding the negotiation with reference to the "Anti profiteering measure" mentioned in Section 171. Price negotiations on account of GST benefit were held on 10.08.2017 & 15.09.2017 for Tank No. MT-05. The Respondent offered GST price discount with respect to the contract on 24.10.2017. The Applicant No. 1 had issued Revision to work order No. 25161693 dated 30.06.2017 on 06.11.2017. The change in the revision work order incorporated GST Tax from earlier pre-GST. A copy of the revision work order was sent through mail dated 06.11.2017 for Tank No. MT-05.
- (d) The negotiation with respect to offering discount on account of GST took place and the Respondent vide letter dated 21.03.2018

offered additional discount. On 27.03.2018 a fresh/amended "Letter of Acceptance" with respect to the same Tender enquiry No. PWRTJT16078 was issued by the Applicant no. 1 in favour of the Respondent for second Tank No. MT-03. In the first para at page no. 3 of the "Letter of Acceptance" dated 27.03.2018 the following was mentioned with respect to the Anti-profiteering clause and Goods and Service Tax Act, 2017:-

"It is to be noted that in line with anti-profiteering measure clause in CGST (Section 171) wherein it is stated that any reduction in rate of tax on any supply of goods and services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in price."

(e) The Applicant No.1 vide his letter dated 08.01.2021 accepted that price negotiation on account of GST took place in post GST period for the Tank No. MT-05 and Letter of Acceptance as well as work order for the Tank No.MT-03 was issued in post GST period. The total amount of both the work orders was same. The Applicant No. 1 vide his letter also confirmed that in the post GST period negotiation was carried out with the Respondent and Work Order was amended accordingly.

(f) The Respondent emphasised that the provisions of Section 171 of the CGST Act, 2017 were not applicable in his case as there was no reduction in rate of tax and the contract was finalised in the GST period. The Respondent also stated that the work order for the second Tank (MT-03) was issued on 27.03.2018 and the price/amount of the work order was same as the earlier work order. The Respondent further stated that in the present case he was at receiving end as the Applicant No. 1 was the Principal and he was his subcontractor. The Tender as well as work order had been finalised by the Applicant No. 1 and the decision to award the contract in GST era was in his hands. The Respondent also informed that the Applicant No. 1 had violating the provisions of the Indian Contracts Act. Finally, the Respondent also informed

that though his case did not fall under the provisions of Anti profiteering measures the computation of profiteering done by the Applicant No. 1 was incorrect as the amount of work order on completion was Rs. 6.10 Crore for one Tank in place of Rs. 7.38 Crore claimed by the above Applicant. The Respondent also pointed out that if actuals re considered then the benefit would be Rs. 6.65 Lakh in place of Rs. 47.73 Lakh claimed by the above Applicant. Thus, the Respondent claimed that the GST discount of Rs. 11.6 Lakh given for one Tank was higher than what should have been passed on.

22. The DGAP has also stated that from the documents submitted he had concluded that: -

- (a) The Applicant No. 1, as a contractee (first party), was at liberty to award the contract or deny the same. The price negotiation was agreed upon by the Applicant and was legally binding upon both the parties. Despite being well aware of the profiteering and commensurate benefit to be accrued to Respondent, the Applicant No. 1 chose to accept the discount with respect to commensurate reduction of price and issued the "Letter of Acceptance" and subsequently signed the Agreement (Para 9). The "Letter of Acceptance" dated 30.06.2017 did not have any legal/formal locus standi after negotiation held in GST era and the signing of new agreement dated 27.03.2018 for second Tank at the same negotiated price of the first Tank.
- (c) The work of the contract started in post GST era only.
- (d) The Applicant No. 1 was always free to float a fresh Tender or raise the issue which was being raised after the completion/start of the work. The Applicant No. 1 had agreed that negotiation for GST benefit was made and agreed upon by both the parties.

(e) The Respondent did not make any purchase in pre-GST era. There is no availability of CENVAT/VAT.

23. The DGAP has also claimed that after going through the submissions of the Applicant No. 1 and from the facts submitted by the Respondent, it was clear that the Applicant No. 1 ought to have carried out the exercise of computation of benefit under Section 171 of the CGST Act, 2017, if any, before awarding the contract. It was well within his authority to cancel the work order but he chose to award the contract after negotiation on profiteering. The execution of the work and the signing of the contract took place in GST era. The Respondent was not availing any CENVAT credit in pre-GST era. There is no mechanism to find out the additional benefit of Input Tax Credit accrued to the Respondent. In absence of any parameter to find out the profiteering, final negotiations being held in GST era, negotiations being agreed upon by both the parties and both parties being aware of the provisions of Section 171 of the Act, the profiteering on account of additional benefit of Input Tax Credit cannot be held or proved.
24. The DGAP has further stated that Section 171 of the Central Goods and Services Tax Act, 2017 comes into play in the event where there was a reduction in the rate of tax or there is an increase in the benefit of input tax credit. In the present case, since the execution of the work, the final negotiation of the contract and amended Work Order took place after implementation of GST w.e.f. 01.07.2017. There was no pre-GST tax rate or input tax credit availability that could be compared with the post-GST tax rate or input tax credit, to determine whether there is any benefit that is required to be passed on by way of commensurate reduction in price.
25. Further, the DGAP has claimed that on the basis of the details of outward supply of Maintenance and Inspection services submitted by the Respondent, it was also observed that the service was supplied in the State of Gujarat only.
26. It was further stated by the DGAP in his report that in view of the aforementioned findings, Section 171(1) of the Central Goods and

Services Tax Act, 2017, requiring 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”, was not applicable in the present case.

27. The above Report was received by this Authority from the DGAP on 29.01.2021 and was considered in its sitting held on 29.01.2021. However, before any order could be passed, one of the Technical Members of the Authority who had considered the matter was transferred out and thereafter the Chairman of the Authority has also left the Authority. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.02.2022, an Order dated 25.03.2022 was issued to the Applicant No. 1 to file his written submissions. The Applicant had filed his written submissions dated 13.04.2022, wherein, he has submitted that:-

(a) Why IOCL chose to award contract after negotiation. IOCL was free to float a fresh Tender or raise the issue which is being raised after the completion/start of the work.

That he was working in hydrocarbon industry and timely maintenance of storage tanks is his topmost priority to keep his operation running safely and smoothly. As these tanks contain hazardous petroleum products, he also has to follow strict statutory time schedule for the maintenance of the storage tanks. Any accident or leakage in these tanks on account of delayed maintenance can not only lead to financial loss to IOCL as well as it is detrimental to human lives and can become an environmental hazard. Therefore, cancelling the tender and doing a fresh tender for such type of critical job was not possible. Keeping in view of the safety of the installation and the ecosystem around it, the work order for the job of M&I of Tank Number MT-05 and MT-03 at WRPL Mundra was awarded to M/s GTPL and it was decided by the Applicant No. 1 that necessary follow-ups for obtaining discount under section 171 from M/s GTPL

will continue. The party, M/s GTPL, also in his letters had confirmed that he shall pass on any further benefit arises in the future on above account. When after several follow-ups, party did not pass on the actual benefits; he had lodged complaint to Anti-Profiteering authority and requested Anti-Profiteering authority to take necessary actions.

(b)M/s GTPL did not make any purchase in pre-GST era. There is no availability of CENVAT/VAT.

That he was also accepting the fact that M/s GTPL did not make any purchase in pre-GST era. It means that M/s GTPL had quoted the price during pre-GST era keeping in mind that they will not be getting credit of excise duty and VAT as M/s GTPL themselves declared that they are traders and not manufacturers. The Applicant No. 1 also claimed that the fact cannot be denied that M/s GTPL must have loaded the non-creditable tax amount in his quote as tax credit towards excise duty and VAT etc. was not available to him. However, during GST era, the tax credit is now available to him and benefit of entire tax liability should be passed on to IOCL by M/s GTPL. The Applicant No. 1 requested the Authority to get the invoices of supplied material from M/s GTPL and get it verified for purchase date and tax liability and entire tax liability for which initially the credit was not available to M/s GTPL during pre-GST era should be passed on to IOCL.

(c)The Respondent was not availing any CENVAT credit in pre-GST era. There is no mechanism to find out the additional benefit of Input Tax Credit accrued to the Respondent. In absence of any parameter to find out the profiteering, final negotiations being held in GST era, negotiations being agreed upon by both the parties and both parties being aware of the provisions of Section 171 of the Act, the profiteering on account of additional benefit of Input Tax Credit cannot be held or proved.

That he was in the opinion that the calculation made by him to arrive at short discount on account of GST implementation is justified. The calculation method is shown below:

S.No.	Particular	Rs./Lakh*
1	Material Supply	257.24
2	Composite Works	440.24
3	Services	52.15
4	Total Contract value excluding taxes	749.63
5	WCT @ 2% on Composite Value (Discount: A)	8.80
6	Material Portion (considered 60% of composite)	264.15
7	5% VAT included in Material Portion of Work Contract (Discount : B)	13.21
8	5%VAT + 5% Excise on Material Supply (Assuming 40% of material is Excisable) (Discount: C)	25.72
9	Total Discount (A+B+C)	47.73
10	Discount given by vendor (1.55% of contract value)	11.60
11	Short Discount for one Tank	36.13
12	Short Discount for two Tanks	72.26

The above discount was calculated based on ordered quantities. Based on actual executed quantities against subject works, the short discount as calculated is given below:

Tank	PO No.	Ordered Value (Rs.)	Executed Value (Rs.)	% Execution	Discount Calculated (Rs.)	Discount Offered (Rs.)	Discount short (Rs.)
MT-	2516169	7,37,97,159.	6,10,86,583.	82.78	39,20,931.	9,77,350.	29,43,580.
	3	80	91		33	84	49
MT-	2544418	7,46,23,677.	6,45,72,846.	86.53	40,16,035.	9,86,487.	30,29,547.
	8	81	38		12	66	46
All values excluding GST							

The Applicant No. 1 claimed that the above mentioned discount should be passed on to him by M/s. GTPL, i.e. the Respondent.

The Applicant No. 1 also requested the Authority to get the calculations verified by summoning the invoices of supplied materials from M/s GTPL and get it verified for purchase date and tax liability and entire tax liability for which initially the credit was not available to M/s GTPL during pre-GST era should be passed on to IOCL as the credit for the same is now available to M/s GTPL during post GST era. The argument that there is no mechanism to find out the additional benefit of Input Tax Credit accrued to the Respondent is not reasonable as he approached to the Authority for the same i.e. to get the amount of short discount verified through M/s GTPL as the Applicant No. 1 cannot get it done through invoices from M/s GTPL and verify his claim. The Authority has the power to do so.

The Applicant No. 1 further claimed that he was able to put forward his case for the inadequate discount offered by M/s GTPL for the job of M & 1 of Tank No. MT-05 and MT-03 at WRPL Mundra against his Tender No. PWRJT16078.

28. This Authority has carefully considered the DGAP's report, the Applicant no. 1's submissions and all the other material placed on record. The Applicant No. 1 is a public sector unit and are engaged in strategic field of providing petroleum products in the country. The work undertaken by them are of great importance and where timing of uninterrupted supply of goods and services is in the national interest. A responsibility is cast upon them to supply goods and services in a continuous manner under safe and secure environment. It is obvious that any lapse on account of any delay or otherwise may have far-reaching consequences and may seriously disrupt the supply chain, which would not be in the interest of the Public Safety and also in the overall growth of the economy. It is noted that the Applicant No. 1, vide his complaint and submissions dated 13.04.2022, has alleged that the Respondent has not passed on the benefit of ITC by way of commensurate reduction in prices in respect of the Maintenance and

Inspection Services supplied by the Respondent. It is claimed in the same letter dated 13.04.2022 that the work order for the job of M&I of Tank Number MT-05 and MT-03 at WRPL Mundra was awarded to M/s GTPL and it was decided by the Applicant No. 1 that necessary follow-ups for obtaining discount under section 171 from M/s GTPL will continue. The party, M/s GTPL, also in his letters had confirmed that he shall pass on any further benefit arises in the future on above account. When after several follow-ups, party did not pass on the actual benefits; he had lodged complaint to Anti-Profiteering authority and requested Anti-Profiteering authority to take necessary actions. As mentioned in the earlier paragraphs, the issue was investigated by DGAP and in it's Report dated 29.01.2021. Vide Para 18 (a) and (d), it has concluded that:-

"The Applicant No. 1, as a contractee (first party), was at liberty to award the contract or deny the same. The price negotiation was agreed upon by the Applicant and was legally binding upon both the parties. Despite being well aware of the profiteering and commensurate benefit to be accrued to Respondent, the Applicant No. 1 chose to accept the discount with respect to commensurate reduction of price and issued the "Letter of Acceptance" and subsequently signed the Agreement (Para 9). The "Letter of Acceptance" dated 30.06.2017 did not have any legal/formal locus standi after negotiation held in GST era and the signing of new agreement dated 27.03.2018 for second Tank at the same negotiated price of the first Tank."

"The Applicant No. 1 was always free to float a fresh Tender or raise the issue which was being raised after the completion/start of the work. The Applicant No. 1 had agreed that negotiation for GST benefit was made and agreed upon by both the parties."

While the above said findings may be acceptable in a normal course of business conducted amongst the contracting parties, but the fact in the instant case need to be viewed in the background of the operation undertaken by the public sector unit dealing in strategic and important

commodity like petroleum. It is accepted fact that petroleum products play a very important role in day-to-day life of an individual and also fuel the economy. It is also well-known fact that refining and further processing and delivery of the petroleum product is a continuous process and any delay on account of any activity/construction/service may have a far reaching consequences, which would not only disrupt the supply chain but also pose safety hazards to the people and may also cause environmental concerns. The Applicant No. 1 i.e. IOCL in it's letter dated 13.04.2022 has highlighted the need for placing the order of supply on the Respondent and have contended that they had no option of inviting fresh tenders but to go along with tender which was floated, before the implementation of GST. The IOCL i.e. Applicant No. 1 in their letter dated 13.04.2022 have worked out the amount of discount which should have been provided to them by the Respondent.

The benefits of tax reduction and ITC under the provisions of Section 171 (1) of the CGST Act, 2017 are being granted by the Central and the State Governments out of the public exchequer and not from the accounts of the suppliers and hence they are to be passed on as per the mandate of the above provisions by commensurate reduction in the prices. Although the supplier and the recipient can negotiate the prices to be charged at the time of the supply of goods and services, however, the terms and conditions of negotiation would be dependent upon facts/factors prevailing at the relevant time and also prevailing circumstances. The Applicant No. 1 i.e. IOCL has brought before the Authority vide letter dated 13.4.2022 various facts and the situation under which, the negotiation was carried out and the need to continue with the instant tender, it would be prudent that the various points/facts brought out in the said letter dated 13.4.2022 are examined.

29. The DGAP vide Para 18 (e) of his Report has also stated that the Respondent had not made any purchases in the pre GST era and hence there was no availability of CENVAT/VAT which could be compared with the ITC of post GST era. In this regard it would be

appropriate to mention that the Respondent has himself claimed to have passed on benefit of ITC to the Applicant No. 1 amounting to Rs. 23,22,493.68/- in respect of both the Contracts. It is quite apparent from the submissions of the Respondent relied upon by the DGAP in his Report that he has computed the above amount by comparing the tax rates prevalent during the pre GST period and the ITC available on VAT. Therefore, it was incumbent upon the DGAP to investigate whether the methodology and the computations of the benefit of GST so made by the Respondent were correct or not and submit his findings to this Authority.

30. Therefore, this Authority hereby directs the DGAP to re-investigate the matter under Rule 133 (4) of the CGST Rules, 2017 on the following issues:-

- i. Whether the Applicant No. 1 is entitled to and the Respondent is liable to pass on the benefit of ITC when the prices quoted by Respondent were based on the prices and rates of tax leviable on the goods and services during the pre-GST period when full benefit of GST was not available and when additional ITC benefit was available to the Respondent after coming in to force of the GST at the time of supply of the service?
- ii. Whether the discounts in prices offered by the Respondent during the negotiations held on 15.04.2017 amounting to Rs. 60,09,300/-, 04.05.2017 amounting to Rs. 21,40,000/- and 19.05.2017 amounting to Rs. 5,05,600/- in respect of the Tank No. MT-03 were on account of benefit of ITC?
- iii. Whether claim of the Applicant No. 1 made in the letter dated 13.04.2022 regarding further follow up of obtaining discounts is supported by any fact or evidence?
- iv. Whether the methodology employed by the Respondent to pass on the benefit of ITC was correct? If not so what methodology should be employed to compute it?