

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

Case No. 16/2019

Date of Institution 07.12.2018

Date of Order 07.03.2019

In the matter of:

1. Shri Rahul Sharma <rahuls@localcircles.com>
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 Cloudtail India Pvt. Ltd, 6th& 7th Floors, Wing B, Divyasree Chambers,
O' Shaughnessy Road, Akkithimanahalli, Bengaluru -560 025,
Karnataka

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Ms. R. Bhagyadevi, Technical Member
3. Mr. Amand Shah, Technical Member

Present:-

1. Mr. Rahul Sharma and Mr. Sachin Taparia for the Applicant No.1.
2. Ms. Gayatri Verma, Deputy Commissioner, DGAP for the Applicant No. 2.
3. Ms. Sheena Saveen Sr. Manager, Deloitte, Mr. Ankit Mundra Sr. Tax Manager, Cloudbail India Pvt. Ltd., Mr. Mahesh Jaisraj CA Partner, Deloitte, and Ms. Sangita Prakash CA Manager, Deloitte for the Respondent.

ORDER

1. The brief facts of the case are that under Rule 128 of the CGST Rules, 2017, a complaint dated 17.05.2018 was filed by the Applicant No. 1 against the Respondent before this Authority alleging that the Respondent had not passed on the benefit of reduction in the GST rate applicable to the printing cartridges (HSN 8443) from 28% to 18% w.e.f. 15.11.2017 and had increased their base price, therefore there was no reduction in the price (inclusive of GST @ 18%) charged from the recipients. In support of his allegation, the Applicant No.1 had submitted copies of the two sale invoices of "HP 678 L0S24AA Combo Pack Ink Advantage Cartridges (Black & Tri Color) B00UHG8BFI" (hereinafter referred to as the product) dated 04.10.2017 and 09.12.2017, issued by the Respondent. This complaint was forwarded to the Standing Committee for necessary action.

2. The complaint was examined by the Standing Committee on Anti-profiteering in its meeting held on 25.05.2018, wherein it was decided, as per the minutes of the meeting dated 08.06.2018, to refer the matter to the

Directorate General of Anti-Profiteering (DGAP) to initiate an investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on the said product had been passed on by the Respondent to his customers or not.

3. The DGAP after completing the investigation has submitted his report under Rule 129 (6) of the CGST Rules, 2017 on 19.09.2018. The Report states that a notice under Rule 129 of the CGST Rules, 2017 was issued on 10.07.2018, calling upon the Respondent to submit his reply as to whether he admitted that the benefit of reduction in the rate of tax had not been passed on to the recipients by way of commensurate reduction in the price. The Respondent was also asked to suo-moto determine the quantum of benefit not passed on, if any, and indicate the same in his reply to the notice. The DGAP sought extension to complete the investigation, which was extended upto 07.10.2018 by this Authority vide order dated 07.09.2018 in terms of Rule 129 (6) of the CGST Rules, 2017.

4. The DGAP has also stated that, in response to the notice the Respondent vide letter dated 06.08.2018 submitted that he was a retailer and sold the products manufactured by other vendors; that he had no control over the MRP affixed by the manufacturer/ importer; that the manufacturer/ brand-owner (HP) had changed the MRP during the period between July 2017 to December 2017, that HP had first increased the MRP on account of increase in the tax rate from 5% (VAT) to 28% (GST) and also on account of imposition of Customs duty @ 10% on cartridges w.e.f. 01.07 2017, that subsequently, HP had decreased the MRP to pass on the benefit of reduction in GST rate w.e.f. 15.11.2017 (the Respondent had enclosed a certificate issued by HP regarding change in MRP), that he had

not sold any product above the MRP fixed by the manufacturer/ importer, that probably the sale made on 04.10 2017 was from pre-GST stock and the sale made on 09.12.2017 was from the stock imported/ manufactured after 15.11.2017, that the invoice issued on 04.10.2017 had been raised during the "Great Indian Festival Sale", a promotional event run by Amazon, whereas the invoice dated 09.12.2017 was raised during the course of routine business, when there was no promotion and no exceptional discounts were offered, that the margin earned by him on the sale effected on 09.12.2017 was reasonable and within the entitled and negotiated margins agreed with HP, and that the Authority had observed in the case of M/s Flipkart, that the withdrawal of discount would not amount to profiteering.

5. The DGAP has also informed that the Respondent had submitted the following documents:

- List of all GST registrations.
- Details of invoice-wise outward taxable supplies of the said product (other than zero rated) from 01.11.2017 to 31.07.2018 along with certified summary of the same.
- Copies of GSTR-1 and GSTR- 3B for the period November, 2017 to July, 2018.
- Copies of two sample sale and purchase invoices of the goods under investigation for the period from July, 2017 to July, 2018. The Respondent also submitted that they had not purchased this product after December, 2017.

6. The DGAP in its report has further informed that during the period between 01.10.2017 to 31.12.2017, the Respondent had sold 16,248 units of the above product whereas the sales figure had dropped to only 251 units during the period from January, 2018 to July, 2018. An e-mail dated

06.09.2018 was sent to the Respondent by the DGAP to indicate the reasons behind such substantial reduction in the sales. The Respondent, vide his e-mail dated 07.09.2018, submitted that he had stopped dealing with certain products including printer cartridges, towards the end of 2017 and he had sold only the leftover stock during the subsequent months.

7. The DGAP has submitted that the Respondent was required to sell the said goods at the pre 15.11.2017 base price and charge lower GST @ 18% on such base price, to pass on the benefit of reduction in the rate of tax from 28% to 18% w.e.f. 15.11.2017. The DGAP has further submitted, as a supplier registered under the GST, it was the Respondent's own statutory responsibility and obligation to pass on the benefit of reduction in the GST rate to his customers. The DGAP has also stated that it was evident from the sales data submitted by the Respondent that he had raised the per unit base price of the product post GST rate reduction w.e.f. 15.11.2017, from Rs. 705.90 (average base price for the sales made during the period 01.10.2017 to 14.11.2017) to Rs. 887.90 (average base price for the sales made during the period 15.11.2017 to 31.07.2018). The Report has also noted that the two invoices referred above showed that the Respondent had offered similar discount of 5%, as earlier, on the increased base price after GST rate reduction w.e.f. 15.11.2017. Thus, by increasing the base price of the said goods and also by increasing the cum-tax price charged from the recipients post GST rate reduction, the benefit of GST rate reduction was not passed on by the Respondent to the recipients.

8. The DGAP's Report has also stated that the profiteered amount during the period w.e.f. 15.11.2017 to 31.07.2018 came to Rs. 10,79,813.28, the details of which are furnished in the table below:-

Product	Sales during 01.10.2017 to 14.11.2017 (GST@28%)		Sales during 15.11.2017 to 31.07.2018 (GST@18%)			Commensurate Price (Rs.)	Profiteering (Rs.)	Total Profiteering (Rs.)
	Avg. Base Price after Discount (Rs.)	Qty. Sold	Avg. Base Price after Discount (Rs.)	Qty. Sold	Actual selling Price per unit (Rs.)			
A	B	C	D	E	F=118% of D	G=118% of B	H=[F-G]	I=[H*E]
HP 678 L0S24AA Combo-Pack Ink Advantage Cartridges (Black and Tri-Color)	705.90	11471	887.90	5028	1047.72	832.96	214.76	10,79,813.28

9. The DGAP has further submitted that the total profiteered amount of Rs. 10,79,813.28 included an amount of Rs. 214.76 in respect of the supply of 1 unit of printer cartridge, covered by the invoice dated 09.12.2017 enclosed with the complaint. However, the beneficiary of this profiteered amount could not be identified as the invoice did not show the name and address of the buyer.

10. After perusal of the DGAP Report, the Authority in its meeting held on 03.10.2018 decided to hear the Applicant and the Respondent on 22.10.2018 and accordingly hearing notice was issued to all the interested parties. But the hearing was postponed to 29.10.2018 on the request of the Respondent received vide his mail dated 22.10.2018. On 29.10.2018 Mr. Rahul Sharma and Mr. Sachin Taparia appeared on behalf of the Applicant No.1 while the DGAP was represented by Ms. Gayatri Verma, Deputy Commissioner, and the Respondent was represented by Ms. Sheena

Saveen, Sr. Manager Deloitte, Mr. Ankit Mundra, Sr. Tax Manager Cloudbtail India Pvt. Ltd., Mr. Mahesh Jaisraj CA, Partner Deloitte and Ms. Sangita Prakash CA, Manager Deloitte. On the request of the Respondent, further hearings were granted on 26.11.2018 and 05.12.2018.

11. The Respondent has filed detailed written submissions on 22.11.2018 and 29.11.2018. In his submissions dated 22.11.2018, referring to the DGAP Report, the Respondent has submitted that he had already filed his reply vide his letter dated 06.08.2018 before the DGAP. In addition, he had made the following submissions with respect to the Report submitted by the DGAP. He has claimed that the DGAP has framed the Report on certain assumptions which were incorrect and several key aspects and facts having bearing on the investigation which was submitted in response to the notice of the DGAP had been completely ignored. He has also claimed that by not providing an analysis of how his submissions were incorrect or how they cannot be applied to his case, the DGAP has trivialized the significance and consequence of the proceedings carried out. Therefore the Respondent claimed that it appeared that the findings in the Report had been made with a pre-closed mind without proper appreciation of the underlying facts in their true spirit.

12. The Respondent has further submitted that the proceedings initiated should be deemed infructuous as the complaint under Section 171 of the CGST Act, 2017, has been filed with respect to the MRP affixed on the product by the brand owner, i.e. M/s HP India Sales Private Limited ("HP India"), which was evident from the face of the complaint itself, wherein the above Applicant had submitted that the HP India had increased the MRP post GST rate reduction. An extract of the application is given below:

B.3*	Contract Number			
C.	Particulars of Goods/Services	HP 678 L0S248A, Color-Page Ink Advantage Cartridges (Black and ...)		
C.1	Description	HP 678 L0S248A, Color-Page Ink Advantage Cartridges (Black and ...)		
C.2	Earlier Price/Value per unit	₹ 836.95		
C.3	Present Price/Value per unit	₹ 1,021.20		
C.4	Earlier MRP	₹ 1,024.00		
C.5	Present MRP	₹ 1,114.00 (After GST rates were reduced from 28% to 18% MRP by HP was increased)		
D.	Details of reduction in Tax Rate/ Benefit of Input Tax Credit (ITC) (Please Tick-✓)			
D.1	Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of invoice, Price List etc.)	Yes		
D.1*	Whether the benefit of ITC has been passed on (Please enclose evidence)	Yes		
D.3*	Additional information, if any. - Increased MRP post GST reduction (GST - 18%)			

13. The Respondent has also stated that in the Letter sent to the Members of the Standing Committee on Anti-Profiteering by the Secretary (NAA) vide his letter 22011/NAA/20/2018/122, dated May 18, 2018, this fact had been reconfirmed. The Respondent has also enclosed extract of the relevant portions of the letter which is reproduced below:-

"Sub - Information received by NAA regarding profiteering by HP Printer – reg.

Please find attached herewith a complaint against HP printers regarding increase in unit price of HP Printer cartridge (via Amazon) having the unit price as Rs. 688/- on 4.10.17 and after GST reduction from 28% to 18% unit price on 09.12.2017 was Rs. 911/-"

14. He has also claimed that in the Minutes of the Standing Committee Meeting held on May 25, 2018, the application filed against M/s HP Printers has been discussed and forwarded for further investigation although the above Applicant had not made any specific allegations against the Respondent. To substantiate this claim, the Respondent has relied on the email dated 08.10.2018 of the Applicant No.1, sent to the Secretary of the Authority wherein it was specifically stated that the Applicant No.1 never had the intention to initiate any proceedings against the Respondent and his concern was against HP India who was responsible for affixing MRP on the product.

Relevant portion of the email is extracted below:

"We observed that the complaint is against Cloudbtail India Pvt. Ltd. and not HP India Pvt. Ltd., the manufacturer of the product. Our understanding is that the manufacturer is responsible for publishing MRPs on boxes and we observe that despite change in GST rates the boxes didn't reflect the revised MRPs directly or via a price sticker."

Amount in Rs.

Particulars	Invoice dated	Invoice dated
	October 4, 2017 (during sale period)	December 9, 2017
MRP	1,076	1,158
Sale price*	688.28	911.86
Discount*	34.38	45.59
Net sale price*	653.87	866.27
Purchase price*	696.46	798.00
Actual price difference	(42.59)	68.27
Price difference % on sales price	(6.51%)	7.88%
Price difference % on MRP	(3.96%)	5.90%

*Exclusive of GST/ taxes

15. The Respondent referring to the two invoices (shown in the table given above) filed by the Applicant No.1 has also claimed that he had no control over the MRP affixed by the Brand owner i.e. HP India and he was just a retailer dealing with the products manufactured or imported by the brand owner. He has further claimed that the product in question had not been imported by him. Quoting the circulars of the Legal Metrology department, he has claimed that as per the provisions of the Legal Metrology Act, 2009, it was the duty of the manufacturer/ importer to determine the MRP and to affix MRP label on the products. He has further

submitted that the MRP of the product was changed by HP India the brand owner on two occasions. The MRP was Rs. 1076 upto 30th June 2017 (pre GST), from 01.07.2017 to 14.11.2017 the MRP was increased to Rs. 1239 and from 15.11.2017 to 31.12.2017 the MRP was reduced to Rs. 1158 (post GST rate reduction). He has further claimed that as shown in the table below, the increase in MRP from Rs 1,076 to Rs 1,239 appeared to have been on account of increase in the rate of Basic Customs Duty and increase in the rate under GST on ink cartridges with effect from July 1, 2017 and the decrease in MRP was to factor in the reduction in GST rate from 28% to 18%, effective from November 15, 2017, which was in compliance with the anti-profiteering provisions under the CGST Act. It has also been stated that a certificate issued by HP India, on the changes in MRPs made during the period from July 2017 to December 2017 at various points in time, was submitted vide his reply to the DGAP, and however, the DGAP in his Report had ignored these facts. Consequently, these changes in the MRPs had impacted the purchase/ procurement price of the Respondent and as a result impacted his margins as well. He has further claimed that the Applicant No.1 must have purchased the product only when the MRP of the product was Rs. 1,076 and subsequently when it was revised to Rs. 1,158 and there did not seem to be a purchase made by the Applicant when the MRP was increased to Rs. 1,239. Thus, the Applicant was unaware of the fact that there was an increase in the post-GST MRP and the sale price by HP India to Rs. 1,239 and this fact was ignored by the DGAP in his Report in spite of furnishing a certificate obtained from the brand owner about change in MRP. He has also furnished the details of pre and post GST MRPs as under:-

Particulars	Pre-GST	Post-GST (w.e.f. 01.07.2017)	Post-GST (w.e.f. 15.11.2017)
Basic Customs Duty	-	5%	5%
Countervailing duty ("CVD")	10%*	-	
VAT	5%	-	
GST	-	28%	18%
Effective pre-GST incidence of taxes	15.5%	-	
Effective post-GST incidence of taxes	-	34.4	23.9
Change in effective rate		18.9%	(10.5%)
MRP of product**	1,076	1,239	1,158

16. The Respondent has also stated that he had clearly demonstrated that the margin earned in respect of the invoice dated 09.12.2017 was only 5.9% of the MRP as against the entitled margin of 15.83% of MRP. He has also further stated that it was common in the retail business (including e-commerce) to offer discretionary discounts to customers during the "festival sales period" and these discounts were largely guided by market practices but were also discretionary. Depending upon the sale period, inventory position, competitor strategy, market penetration, customer loyalty or other similar factors, retailers like him chose to provide voluntary discounts/benefits to their customers. These benefits were discretionary and the sellers were under no statutory obligation to provide them or to withdraw them. The Respondent has also claimed that he was fully entitled to sell the product at the MRP printed on the package but had chosen to provide certain discretionary, non-statutory benefits to his customers.

17. The Respondent has also submitted that in compliance with the anti-profiteering regulations, the brand owner, HP India had reduced the MRP of the product from Rs. 1,239 to Rs. 1,158, post the reduction in the rate of tax in November 2017. He has also emphasised that at no given point of time the Respondent had sold the above product at a price more than the reduced MRP of Rs 1,158 after 14.11.2017. He has also further claimed that because of voluntary, non-binding discounts to the customers for various business reasons, the Respondent had continued to sell his product to his customers at a price lower than the reduced MRP. Based on the above facts the Respondent has claimed that he had not profiteered since the actual price of the product was well below the entitled margin. He has further claimed that discounts was his prerogative as had been decided by the Authority in the case of Flipkart (Case no 5/ 2018 dated July 18, 2018) wherein it had been recorded that withdrawal of discounts was the prerogative of the supplier and did not amount to profiteering.

18. The Respondent has also stated that while the first invoice was raised on the Applicant No.1 during the "festive promotion sale", the other has been raised during the period where he was operating at "business as usual" and therefore the circumstances covered in the invoices were incomparable and this fact had been completely ignored by the DGAP in his Report. He also stated that the DGAP was duty bound to consider all his submissions made and record his conclusions arrived on each of his submissions which he had not done. Therefore, he has claimed that the Report of the DGAP was without proper appreciation of the facts and submissions made by him and hence, the same needs to be set aside. He has further submitted that the sale made to the above Applicant vide the first invoice dated 04.10.2017 pertained to the pre-GST imported stock. It has been further submitted that at the time of

transition into GST, the Respondent had a stock of 1,067 units of the product as of July 1, 2017 and similarly HP India as well as the distributors i.e. M/s. Savex Technologies Private Ltd. and M/s. Compuage Infocom Limited would have had stock bearing pre-GST MRP of Rs. 1,076. Though the MRP was increased by the HP India from Rs. 1,076 to Rs. 1,239 on the implementation of GST on July 1, 2017, it normally took about 3-4 months for the product imported to move from HP India to the Distributors and then to the retailers to be sold finally to the end customer through the supply chain. Further, the Respondent had submitted that he had purchased 23,307 units in the month of July 2017 and August 2017 from Savex Technologies Private Ltd. and Compuage Infocom Limited at Rs. 696.78 and there was no purchase post August 14, 2017 and before the date of sale, ie, October 4, 2017. The above two companies had stocks of the products as of July 1, 2017 which were sold to the Respondent in July 2017 and August 2017 which were further resold by him to the various customers including the above Applicant in the months of July 2017, August 2017, September 2017 and October 2017. The said goods sold by him might have contained pre-GST MRP or post-GST MRP. Specifically, the product sold to the above Applicant, the same pertained to the pre-GST stock as the same had MRP of Rs. 1,076 which was applicable till June 30, 2017 as was evident in the complaint filed by the above Applicant. He has also claimed that since the MRP affixed on the stock purchased by the above Applicant on October 4, 2017 was Rs. 1,076, it could be deduced that the product is pre-GST stock and therefore it was clear that the MRP of the product was not increased from Rs. 1,076 to Rs. 1,158 after rate reduction in November 2017 and the said product was never sold above the reduced MRP by the Respondent. He has also claimed that though the MRP was increased from Rs. 1,076 to Rs. 1,239 effective July 1, 2017, the

Respondent had continued to receive the pre-GST imported stock for a period of another 45 days and he had taken another 3 to 4 months to liquidate the opening stock as well as the purchases of pre-GST and post GST imported stock. He has further justified the fact that the Respondent had sufficient pre-GST MRP stock when the supply was made to the above Applicant by providing the stocks available with him at different points of time as is given below in the table:-

Particulars	Quantity
Opening stock as on July 1, 2017	1,067
Quantity purchased between July 1, 2017 to August 14, 2017 at Rs 696.98 (combination of pre-GST MRP and post-GST MRP stock)	27,625
Quantity sold upto September 30, 2017 (net of sales returns)	(17,064)
Stock as on September 30, 2017	11,628
Supplies made between October 1, 2017 to October 4, 2017 including supplies to the Applicant	1,166

19. He has also claimed that the above Applicant was unaware that the product sold to him during August 2017 and October 2017 was from pre-GST imported stock and, hence, assumed that there was an increase in the MRP of the product post reduction in the applicable GST rate. It is also submitted that the above Applicant had based his application on the premise that MRP of the product was increased from Rs. 1076, when he had purchased the product on October 4, 2017 to Rs. 1,158 on December 9, 2017, despite reduction in the rate of GST from 28% to 18% effective November 14, 2017. He has also submitted that the said product was purchased by the Respondent at Rs. 696 per unit. Further it has been claimed that from the complaint, it was evident that the second sale was made to the above

Applicant in the month of December on revised MRP post-rate change of Rs. 1,158, which can be clearly seen from the table given below:-

Particulars	Quantity
Opening stock as on November 1, 2017 purchased at an MRP of Rs.696 per unit	5,499
Quantity purchased in November 2017 at Rs 798	2,013
Sales made in November 2017 (net of sales returns)	(4,613)
Stock as on November 30, 2017	2,899
Supplies made from December 1, 2017 to December 9, 2017 including supplies to the Applicant	753

Thus, it has been contended that because the Applicant No.1 did not make any purchase of product with MRP of Rs. 1,239, it appeared to him that there had been an increase in the MRP. However, the fact was that the MRP had been reduced from Rs. 1,239 to Rs. 1,158. He has also produced the details of purchases as given below to substantiate his claim which is authenticated with the CA certificate.

Amount in Rs.

Period	Total purchase cost (excluding taxes)	Qty purchased	Purchase price per unit*
(A)	(B)	(C)	D = (B)/(C)
July 1, 2017 to August 14, 2017	1,92,39,708	27,625	696.46
October 31, 2017*	6,96,460	1,000	696.46
October 25, 2017 to December 14, 2017	25,59,186	3,207	798.00
	2,24,95,354	31,832	

*Purchase on October 31, 2017 is pertaining to a one-off single invoice for purchases made from the Distributor.

20. The Respondent has claimed that the DGAP's Report notes that the average per unit base price was increased from Rs. 705.90 (which is the average base price for sales made during the period from October 1, 2017 to November 14, 2017) to Rs. 887.90 (which is the average base price for the sales made during the period from November 15, 2017 to July 31, 2018) as is given in the Table B of the DGAP Report. This approach according to him was grossly incorrect as it completely ignores the fact that the key yardstick for determining the profit for a retailer was the actual margin earned. He has also stated that the DGAP had ignored the purchase related information submitted to him and had not arrived at the actual profit made to conclude if there was really any profiteering on the part of the Respondent. Further it is stated that the purchase price of the said product was increased from Rs. 696.46 to Rs. 798 post August 2017 and this increase was on account of increase in BCD and transition stock credit benefit of CVD being passed on as per Section 140 (3) of the CGST Act, 2017. It is normal for large organization to revise their selling price to reflect such changes only on fresh stock imported/ manufactured post the rate changes and not in respect of the stock existing in the supply chain and that was probably why the purchase price was increased post mid-August 2017 as opposed to July 1, 2017 itself.

21. The Respondent has further submitted that depending upon various factors like festival sales, inventory position, competitor strategy, market penetration, customer loyalty or other similar business reasons, he had decided not to sell the product on its MRP and provided voluntary discounts/benefits to his customers for a particular duration of time. These benefits were discretionary and he was not under any statutory obligation to provide them or to withdraw them. He had analysed the price difference of the product sold to the above Applicant in the table given below to claim that the

product was sold well within the price fixed by HP India and the margin was well within the entitlement fixed by HP India. He has further claimed that the Applicant has not only received a product with the reduced MRP but has also received additional voluntary discount from the Respondent. They further claimed that on applying the above revised procurement price post rate change to the average base prices per unit computed in the DGAP Report, it could be seen that the actual price difference earned by him was much below the entitled margin as has been computed in the table below:-

Amount in Rs.

Particulars	Invoice dated	Invoice dated
	October 4, 2017 (Note 1)	December 9, 2017 (Note 2)
MRP	1,076	1,158
Sale price**	688.28	911.86
Discount**	34.38	45.59
Net sale price**	653.87	866.27
Purchase price**	696.46	798.00
Actual price difference*	<u>(42.59)</u>	<u>68.27</u>
Actual price difference % on sales price	(6.51%)	7.88%
Actual price difference % on MRP	(3.96%)	5.90%
Entitled margin	144	183
Entitled margin % on MRP	13.40%	15.83%

*Price difference is solely the difference in the sale price and purchase price.

This is before factoring other direct and indirect expenses.

***Exclusive of GST/ taxes

Note 1 – Invoice issued against order dated September 23, 2017 – During the “Great Indian Festival sale” – wherein the company gives additional discounts

Note 2 – Invoice issued against order dated December 6, 2017 – During “normal sales” wherein discounts are offered at lower levels

Actual average price difference on sales post November 15, 2017

Amount in Rupees

Particulars	Amount
Average selling price including taxes post-rate change (as arrived in the report based on sales made for the period November 15, 2017 to July 31, 2018)	1,047.72
Less: Taxes (GST @ 18%)	159.82
Average selling price excluding taxes	887.90
Purchase price	798.00
Price difference	89.90
Price difference % of selling price	10.3%

22. The Respondent has also stated that in the retail industry, margins were negotiated with the distributors/manufacturers using MRP of the products as the base. The manufacturer/importer decided the MRP of the product and the difference between the procurement price and the MRP becomes the “entitled margin” of the retailer. The retailer is then entitled to sell the product at the MRP or at any price lower than the MRP at his discretion. The difference between the procurement price and the MRP of the product is the entitled margin of the retailer. He has further provided the details given below and submitted that the DGAP's Report had nowhere considered this aspect of increase in the purchase price and consequent impact on the margin earned

by him. A comparison of the margin as made by him *vis-à-vis* the entitled margin revealed that he had sold at lesser margin and well within the entitled margin agreed with HP India/ their distributors. Mere comparison of selling price without factoring the purchase price/ margin earned for computation of profiteering would be grossly incorrect.

Entitled Margin

Amounts in Rs.

Particulars	Post GST (July 1, 2017)	Post rate change (November 15, 2017)
MRP	1,239.00	1,158.00
Price without tax	967.97	981.36
Procurement price	798.00	798.00
Entitled margin	169.97	183.36
Entitled margin % of MRP	14%	15.83%
Entitled margin % on selling price	17.56%	18.68%

23. The Respondent has also re-iterated that the invoices under consideration in the notice had been raised under two different circumstances. While the first invoice dated 04.10.2017 reproduced below was raised during the festive promotion sale, the other has been raised during a period where he was operating at "business as usual". The invoice under question pertained to the sale made by him during a promotional event run by Amazon, which was conducted between September 21, 2017 and September 24, 2017. The invoice provided by the above Applicant had clearly captured the order date as September 23, 2017, which fell within the duration of the Great Indian Festival sale.

Order Date: 23/03/2017

Invoice Date: 04/10/2017

Sl. No.	Description	Unit Price	Discount/Quantity	Net Amount	Tax Rate	Tax Type	Tax Amount	Total Amount
1	078 LG100003 Combi-Parking Advantage Car2Way Drive and ... (HSN:8443)	1000.00	-11.11%	705.90	18%	CGST	127.08	832.98
TOTAL:							127.08	832.98
Amount in Words:								
Eight Hundred And Thirty-six Point Nine Five only								
For Cloudtail India Private Limited								
Authorized Signatory								

MCP Invoice - 1070
2017 10/04

24. The Invoice dated December 9, 2017 pertained to a sale which was made during the business as usual, when there was no promotion on Amazon and no exceptional discounts were being provided. Therefore, the Respondent has claimed that they were not comparable invoices. He has further claimed that the discounts offered during the Great Indian Festival were non-binding, without any statutory obligation and after exercising the discretion available to him and withdrawal of these discounts would not amount to profiteering as the products had been sold at a price much lower than the price reduced on account of GST rate reduction. The Respondent has also argued that there was no prescribed mechanism either under the CGST Act or the CGST Rules for the procedure to be followed for determining the amount of profiteering. The methodology was determined on a case-to-case basis as might be deemed fit by the Authority and therefore in the case of the Respondent the Authority should consider the fact that on an online marketplace where it was common practice to issue discounts, the fact that the product was a discounted one should not be ignored.

25. It is also submitted that the procurement price had increased from Rs. 696 to Rs. 798 in the month of October 2017, and if the Respondent had continued to sell at the average base price of Rs. 705.90, as envisaged by the

DGAP, he would have incurred a loss. For the 5,028 units sold by him during the period November 15, 2017 to July 31, 2018, they would have incurred a loss of Rs. 4,62,576 as could be seen from the table below:-

Amount In Rs.

Particulars	Amount
Average base price pre-rate change (as arrived in the report based on sales made for the October 1, 2017 to November 14, 2017)	705.90
Purchase price	798.00
Margin	(92.00)

26. He has also submitted that the DGAP had ignored the fact that the copy of the application filed along with the copies of the invoices, made available to him, did not have critical details like Order number, Invoice number, and Customer name without which he could not ascertain various details in respect of that sale transaction. He has raised approximately 2 lakh invoices per day towards sale of all kinds of goods and on that particular date October 4, 2017 itself, which was one of the dates on which sale of the product in question was undertaken, he had raised around 500 invoices for the sale of the product covered in the notice. Rule 128 of CGST Rules, 2017 provided that an application was to be filed in the manner and the form prescribed. The said Rule also provided that the Standing Committee was 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 and for a *prima facie* case to be established, it was pertinent that the details furnished along with the application needed to be accurate, comprehensive and adequate evidence was to be provided to pursue the application further.

This submission made by him to the reply to the notice issued by the DGAP had been ignored in the Report.

27. He has further submitted that the Report has erred in the methodology adopted for computation of the profiteering amount. He has further submitted that the average base price per unit for the period prior to the rate change had been computed based on the sale data for 1.5 months alone. The amount has been arrived at based on sales details for the period October 1, 2017 to November 14, 2017 alone, as could be seen from the table given below. Instead the average base price per unit for the period prior to the rate change should have been calculated on all the sales made from July 1, 2017 to November 14, 2017. The average base price per unit in respect of sale of the product from July 1, 2017 to November 14, 2017 was Rs. 710.78 and not 705.90, as has been stated in the DGAP Report and out of the 5,028 units sold between November 15, 2017 to July 31, 2018, 584 units sold between November 14, 2017 to December 22, 2017 had been sold at a price of Rs. 786.44 or lesser.

Sales during 1.10.17 to 14.11.17 (GST @28%)		Sales during 15.11.17 to 31.07.18 (GST @18%)			Commensurate price	Profiteering
Average base price after discount	Qty. Sold	Average base price after discount	Qty. Sold	Actual selling price		
B	C	D	E	F=118% of D	G=118% of B	H=[F-G]
705.90	11,471	887.90	5028	1047.72	832.96	214.76

He has also stated that the amount profiteered per unit, as computed in the report is also incorrect. At the time of calculation of the profiteered

amount, the DGAP has arrived at commensurate price (*determined in column G of table given below*) vis-à-vis actual sales price per unit for sales made during the period November 15, 2017 to July 31, 2018 (*determined in column F of table given below*). Both of these prices are cum-tax prices.

Sales during 1.10.17 to 14.11.17 (GST @28%)		Sales during 15.11.17 to 31.07.18 (GST @18%)			Commensurate price	Profiteering
Average base price after discount	Qty. Sold	Average base price after discount	Qty. Sold	Actual selling price		
B	C	D	E	F=118% of D	G=118% of B	H=[F-G]
705.90	11471	887.90	5028	1047.72	832.96	214.76

28. The Respondent has contended that the profiteered amount should be calculated on the basis of the difference between the commensurate base price and the average base price after discount without considering the tax element as the differential tax element has anyway been deposited by him with the Government on a monthly basis as had been declared in the GST returns. Instead the formula in Column H should have been "H=D-B" instead of "H=F-G". Further, it has been submitted that the Report had not considered the sales returns. If all these submissions were considered, he has claimed that the amount profiteered, if any, should be restricted to **Rs. 7,82,425.60**. The revised amount as given in Table B with the exact amount of profiteering is shown below:-

1. Reduction in amount profiteered on comparison of base prices instead of selling price which is cum-tax

Amount in Rs.

Particulars	Amount as per report	Amount as per revised calculation
Average base price per unit after discount* (A)	-	887.90
Average base price per unit after discount** (A)		705.90
Actual selling price after rate change (C)	1,047.72	-
Commensurate selling price (B X 118%)	832.96	-
Alleged profiteering per unit	214.76	182.00
Quantity sold	5,028	5,028
Total amount profiteered	10,79,813.28	9,15,096.00

*Based on sales made between November 15, 2017 to July 31, 2018

**Based on sales made between October 1, 2017 to November 14, 2018

2. Reduction in amount profiteered based revised average base price for sales made during the period July 1, 2017 to November 14, 2017

Amount in Rs.

Particulars	Amount	Amount
Average base price per unit after discount*(A)	887.90	887.90
Average base price per unit after discount**/*** (B)	705.90	710.78
Profiteering per unit	181.00	177.26
Quantity sold	5,028	5,028
Total amount profiteered	9,15,096.00	8,91,263.28

*Based on sales made between November 15, 2017 to July 31, 2018

**Based on sales made between October 1, 2017 to November 14, 2018

***Based on sales made between July 1, 2017 to November 14, 2018

3. Reduction in amount profiteered after considering sales returns

Amount in Rs.

Particulars	Amount	Amount
Average base price per unit after discount* (A)	887.90	887.90
Average base price per unit after discount** (B)	710.78	710.78
Profiteering per unit	177.26	177.26
Quantity sold	5,028	4,414
Total amount profiteered	8,91,263.28	7,82,425.60

*Based on sales made between November 15, 2017 to July 31, 2018

**Based on sales made between July 1, 2017 to November 14, 2018

Rectified table as provided by the Respondent

Product	Sales during 1.10.17 to 14.11.17 (GST @28%)		Sales during 15.11.17 to 31.07.18 (GST @18%)			Commensurate price	Profiteering	Total profiteering (Rs.)
	Average base price after discount	Qty. Sold	Average base price after discount	Qty. Sold	Actual selling price			
A	B	C	D	E	F=118% of D	G=118% of B	H=[D-B]	I=[H*E]
HP 678 L0S24AA Combo-Pack Ink Advantage cartridges (Black and Tri-Colour)	710.78	11471	887.90	4414	1047.72	832.96	177.26	7,82,425.60

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29. On 29.11.2018 the Respondent further filed additional submissions stating that the application filed by the Applicant No.1 was incomplete, inadequate and not accurate. He has also stated that a key fact that had

emerged during the hearing was that the above Applicant was not the actual purchaser of the product which was admitted by the Applicant himself during the proceedings on November 26, 2018. Reiterating his earlier submissions he has stated that the present application was incomplete given the above reasons and the proceedings should be set aside on this ground alone. The submissions made above clearly indicated that the application was not filed in a proper manner and therefore the Application stood invalidated. He has also stated that the Applicant No.1 had not provided any proof regarding the MRP of the product in the complaint while the MRP had been manually mentioned, after confirming that the Applicant was not a purchaser of the goods. He once again emphasised that Section 128 required every Application filed must be complete in all respects. An application filed without sufficient proof or purchase could not be considered a valid application. In the current proceedings, the Application filed was with respect to an alleged increase in MRP of the product. He has also submitted that the above Applicant neither in the complaint nor during the hearing has provided any proof regarding the MRP which he had disputed. The Applicant had merely manually mentioned the MRP after confirming that he had not even purchased the goods. The Respondent has also reproduced the extract of the sale details (reproduced below) where manual MRP has been mentioned and stated that the details of the order placed, pack shot etc. were key factors to determine the facts of the case.

A.3	Customer Name	Shri. Rahul Sharma
A.4	Product Code	10000000000000000000
A.5	Proof of Identity (Form T-1)	Date: 05/05/2018 Name: Shri. Rahul Sharma Address: 100, Sector 14, Gurgaon, Haryana Contact No: 9876543210 Email: rahul.sharma@gmail.com Signature: _____ Date: 05/05/2018
B	Business Information (Form T-2)	Name: Cloudtail India Pvt. Ltd. Address: 100, Sector 14, Gurgaon, Haryana Contact No: 9876543210 Email: info@cloudtail.com
C	Particulars of Goods/Services	S.No. Description MRP GST Rate Net Price 1 10000000000000000000 10000000000000000000 18% 8467239016949152533
D	Details of reduction in Tax Rate	D1: Whether the benefit of reduced tax rate has been passed on. (Please attach evidence) Yes No D2: Whether the benefit of ITC has been passed on. (Please attach evidence) Yes No
D3	Additional Information, (e.g., - Integrated MRP paid GST reduction (GST - IMSG))	

I hereby declare that the information furnished above is true to the best of my knowledge and that I have assumed the obligation of providing such information. I understand that providing false information may result in prosecution under the law.

Date: 05/05/2018

Signature of the Applicant: _____

30. He has further stated that the intention of the provision was to safeguard the interest of the customers and to deter any excess profiteering on account of GST. However, by not providing/ withholding several key details relevant to the case, the above Applicant and the DGAP had disregarded the spirit and purpose of the anti-profiteering provisions under the CGST Act, 2017.

31. The DGAP, in response to the written submissions of the Respondent, filed a rejoinder on 03.12.2018 and 06.12.2018, making the following observations:-

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a. With regard to the issue raised by the respondent that the complaint filed by the Applicant was incomplete, inadequate and not accurate, the DGAP quoting Rule 128(1) of the CGST Rules, 2017, has stated that the present application was examined by the Standing Committee in its meeting held on 25.05.2018, and it was decided to forward it to the Directorate General of Anti-profiteering for investigation after satisfying that prima facie case about anti-profiteering was made out.

b. With regard to the Repondents submission that the applicant had not provided any proof regarding the MRP of the product disputed in the complaint and that MRP had been manually mentioned, even after

confirming that the applicant isn't a purchaser of the goods, the DGAP quoting Rule 129 (1) of the CGST Rules, 2017, has stated that the present complaint was examined by the Standing Committee in its meeting held on 25.05.2018, wherein the complaint was found fit for investigation and it was decided to forward the same to the DGAP for investigation.

c. The complainant had enclosed copies of invoices issued by the Respondent since the transaction invoice was issued by M/s Cloudtail India Pvt. Ltd., the investigation was carried out against the Respondent. With regard to the issues that MRP was decided by the brand owner and there had been change in MRP post GST implementation, the DGAP submitted that the profiteering has been calculated on the transaction value (after discount) provided by the Respondent. The DGAP has further stated that since MRP was inclusive of all taxes and profit margin, the same had not been considered as the base price for calculation purpose. With regard to entitled margins the DGAP has stated that this had been already taken note of at para 13 of his Report which is reproduced below.

"the noticee were required to sell the said goods at the pre 15.11.2017 base price and charge lower GST @ 18% on such base price, to pass on the benefit of reduction in the rate of tax from 28% to 18% w.e.f. 15.11.2017. As a supplier registered under GST, it was the noticee's own statutory responsibility and obligation to pass on the benefit of reduction in the GST rate to their customers."

d. To the issue regarding profiteering and its calculation raised by the Respondent the DGAP has stated that the calculation of profiteering had been done on the basis of increase in base price of the product post GST rate reduction w.e.f. 15.11.2017, from Rs. 705.90 (average base price for the sales made during the period 01.10.2017 to 14.11.2017) to Rs. 887.90 (average base price for the sales made during the period 15.11.2017 to 31.07.2018). He has also stated that it was the Respondent's own statutory responsibility and obligation to pass on the benefit of reduction in the GST rate to his customers and the Respondent was required to sell the said goods at the pre 15.11.2017 base price and charge lower GST @ 18% on such base price. He has also mentioned that the issue of change in MRP was not taken into consideration for profiteering calculation.

e. With regard to the issue that the average base price per unit for the period prior to rate change should have been considered based on sales data for the period 01.07.2017 to 14.11.2017, the DGAP has submitted that Section 171 (1) of the Central Goods and Service Tax Act, 2017 required that *"a 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."* Therefore, as the complaint related to the allegation of the benefit of reduction in tax rate from 28% to 18% w.e.f. 15.11.2017 not having been passed on, the nearest available pre rate reduction prices have been compared and the profiteering amount has been computed accordingly, in the investigation report dated 19.09.2018.

f. With regard to amounts to be compared should have been excluding the taxes, the DGAP has stated that the price paid by the recipient included both the base price and also the tax charged on it. Therefore, any excess base price or tax collected from the recipients must be returned to the recipients and where the recipients were not identifiable, the same was required to be deposited in the Consumer Welfare Fund. With regard to the sale returns not considered, the DGAP has submitted that at time of the report the time of supply of such quantity (whether pre or post GST rate revision) could not be determined.

32. We have considered the Report of the DGAP and the submissions made by the Respondent and other materials placed on record. The mandate of the Authority as per Section 171 of the CGST Act, 2017 read with Rule 127 of the CGST Rules, 2017 is to examine and determine as to whether-

- i) any reduction in rate of tax on any supply of goods or services or the benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices,
- ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices.

33. The Respondent has raised the following objections on the complaint itself which are being dealt in the following paras:-

(i) Firstly, the Respondent, as discussed in para 12 to 14 above, has submitted that the proceedings initiated should be deemed infructuous as the complaint under Section 171 of the CGST Act, 2017, was not against him but against HP India who was the brand owner and who controlled the MRP and he being a retailer had no say in fixing the MRP. Though the complaint is against HP, the fact remains that the invoice quoted by the above Applicant, was issued by the Respondent on the e-commerce platform. Since, the product was sold by the Respondent and he being registered under GST, his obligation to pass on the benefit of rate reduction still remained and holds good. Section 127 (ii) of the CGST Rules, 2017, clearly states the Authority has to identify the registered person who has not passed on the benefit to the recipient and in this case, the Respondent was clearly that registered person. Therefore, the contention that the complaint is infructuous on this ground is untenable.

(ii) Secondly, the Respondent has further stated that the complaint filed by the Applicant was incomplete, inadequate and was not accurate and admittedly, he was not the actual purchaser and the claim of the Applicant stands invalidated as crucial details were missing and the MRP was also written manually. Rule 128 (2) of the CGST Rules, 2017, reads "All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, 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". Further Rule 137 (c) of the CGST Rules reads that "interested party" includes-

- a. suppliers of goods or services under the proceedings; and
- b. recipients of goods or services under the proceedings;
- c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of

tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

34. As seen from the relevant rules above, it is clear that anyone alleging profiteering can file a complaint. So it is not necessary that the complainant has to purchase the products. Moreover, all the details, such as manufacturer, seller, invoice, price and the product name are available so the question of not considering the complaint does not arise at all. Even the MRP that is written manually happens to be the correct MRP, as has been admitted by the Respondent. Therefore, the Standing Committee has rightly forwarded the same to the DGAP and the DGAP has accordingly completed its investigation and filed his Report.

35. Now coming to the issue on merits, the Respondent, referring to the invoices filed by the Applicant No.1, has claimed that he had nothing to do with the MRP as it had been fixed by HP India, the brand owner. This argument of the Respondent is vitiated by the fact that the GST envisages that every supplier is to be registered and every registered Supplier is bound by Section 171 of the CGST Act, 2017, to pass on the benefit of reduction in tax. In the present case, we are concerned with the supplier and the supplier here is the Respondent who has increased the price even after reduction in the GST rate of tax. The passing of the benefit by the distributor or retailer does not rest on the fact that the manufacturer or his supplier should have passed on the same benefit to him first.

36. The Respondent has further alleged that when the two invoices filed by the Applicant were compared, it appeared that the Applicant must have purchased the product only when the MRP of the product was Rs. 1,076 and subsequently, when it was revised to Rs. 1,158 and it seemed that there was no purchase made by the Applicant when the MRP was

increased to Rs. 1,239. Thus, the Applicant was unaware of the fact that there was an increased post-GST MRP and sale price by HP India to Rs. 1,239 and this fact was ignored by the DGAP in his Report. Therefore, the entire case which is on this premise is not sustainable. The Respondent has further submitted that invoice during October 2017 was of a discounted invoice of sales made during the 'Great Indian Festival Sale' hence the price could not be the comparable price. The Respondent has also claimed that the purchase price was increased from Rs. 696.46 to Rs. 798 post August 2017 on account of introduction of GST w.e.f from July 2017, with the rate of tax of 28%. He has further stated that the price without tax, after considering his entitled margin of 14% was Rs. 967.97, when the MRP was Rs. 1,239. Further, it has been submitted that on reduction of GST rate of tax from 28% to 18%, the purchase price remained at Rs. 798 while price before tax with entitled margin of 15.83% increased to Rs. 981.36, when the MRP was reduced from Rs. 1,239 to Rs. 1,158. Thus, overall his entitled margin percentage on selling price had increased from 17.56% to 18.68%. This statistics itself clearly shows that when the MRP reduced from Rs.1,239 to Rs.1,158, the procurement price remaining the same and with GST rate of tax being reduced from 28% to 18%, the Respondent had increased his selling price by Rs. 13.39 per unit and on this increased price GST of 18% has also been collected. As claimed by the Respondent he could not take advantage of the reduction in the rate of tax to increase his profit margins. The benefit of reduction in rate of tax has to be necessarily passed on to the recipients. Moreover, the DGAP has rightly taken the transaction value of the supplier which was the price that was charged by the Respondent from his recipients which excluded the impact of discounts.

37. The Respondent has further submitted that there had been an increase in the procurement price after introduction of GST with rate of tax being 28% on the products in question. The rate of change of tax from 28% to 18% had been w.e.f. 15.11.2017. Therefore, the DGAP should have considered all the sales made between 01.07.2017 to 14.11.2017, instead of taking the details for the period w.e.f. 01.10.2017 to 14.11.2017 alone. He has claimed that if the data from 01.07.2017 to 14.11.2017 was considered the average base price per unit would be Rs. 710.78 and not Rs. 705.90 and based on this he had arrived at total profiteered amount of Rs. 7,82,425.60 taking into account the sale returns of 614 units. The Respondent has not disputed the base price arrived at by the DGAP for the period 15.11.2017 to 31.07.2018 which is Rs. 887.90. His only objection is that the comparable period should also be from 01.07.2017 to 14.11.2017 since many of the old MRP products were also being sold during this period. Perusal of Annexure-13 of the Report of the DGAP shows that he has rightly calculated the base price of the product based upon the average sale price charged by the Respondent between the period from 01.10.2017 to 14.11.2017 and hence the contention of the Respondent made in this behalf cannot be accepted. With regard to the sale returns of 614 units the Respondent has not filed any documentary proof to show that these units were supplied and returned during the period in question. Hence, the benefit of these units cannot be extended.

38. The contention of the Respondent that the DGAP has arrived at the profiteered amount by taking into account the cum tax prices and he should have taken the average base price without tax since the tax amount had already been paid to the Government, does not hold good as already discussed, the Respondent has not only increased his base price but has

also collected GST on the increased base price. The recipient has to be given the benefit of the increased base price and the increased tax collected from him. Therefore, the profiteered amount is arrived at as shown in the table below.

Product	Sales during 01.07.2017 to 14.11.2017 (GST@28%)		Sales during 15.11.2017 to 31.07.2018 (GST@18%)			Commensurate Price (Rs.)	Profiteering (Rs.)	Total Profiteering (Rs.)
	Avg. Base Price after Discount (Rs.)	Qty. Sold	Avg. Base Price after Discount (Rs.)	Qty. Sold	Actual selling Price per unit (Rs.)			
A	B	C	D	E	F= 118% of D	G=118% of B	H=[F-G]	I=[H*E]
HP 678 LOS24AA Combo-Pack Ink Advantage Cartridges (Black and Tri-Color)	705.90	11471	887.90	5028	1047.72	838.96	214.76	10,79,813.28

39. Accordingly the Respondent is directed to reduce the price of the above product as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017 by making commensurate reduction in the prices, keeping in view the reduction in the rate of tax. The Respondent is also directed to deposit the profiteered amount along with interest at 18% when the above amount was collected by him from his recipients till the date of deposit. The Applicant No.1 has admitted that the product was not purchased by him hence the question of refund does not arise. Hence the Respondent is directed to deposit the entire amount of Rs. 10,79,813.28 in the Consumer Welfare Fund of the Centre and the respective States as per the provisions of Rule 133 (3) (c) of CGST Rules, 2017. Further the Respondent is directed to deposit the above amount as per the provisions of Rule 133 (3) (c) in the ratio of 50:50 in the Central and the State Consumer Welfare Funds.

Accordingly the Respondent is directed to deposit an amount of Rs.

5,39,906.64 in the Central CWF and the balance in the State CWFs as given below. The above amount shall be deposited within a period of 3 months from the date of receipt of this order.

S. No	State	Qty (Nos.)	Profiteering per Unit (Rs.)	Profiteering by the states (Rs.)
1	Andaman & Nicobar	3	214.76	322.14
2	Andhra Pradesh	75	214.76	8053.50
3	Arunachal Pradesh	3	214.76	322.14
4	Assam	16	214.76	1718.08
5	Bihar	27	214.76	2899.26
6	Chandigarh	18	214.76	1932.84
7	Chattisgarh	15	214.76	1610.70
8	Goa	41	214.76	4402.58
9	Gujarat	165	214.76	17717.70
10	Haryana	283	214.76	30388.54
11	Himachal Pradesh	15	214.76	1610.70
12	Jammu & Kashmir	8	214.76	859.04
13	Jharkhand	20	214.76	2147.60
14	Karnataka	918	214.76	98574.84
15	Kerala	117	214.76	12563.46
16	Madhya Pradesh	57	214.76	6120.66
17	Maharashtra	981	214.76	105339.78
18	Manipur	1	214.76	107.38
19	Mizoram	2	214.76	214.76
20	Nagaland	1	214.76	107.38
21	New Delhi	561	214.76	60240.18
22	Odisha	34	214.76	3650.92
23	Puducherry	14	214.76	1503.32
24	Punjab	112	214.76	12026.56
25	Rajasthan	88	214.76	9449.44
26	Tamil Nadu	479	214.76	51435.02
27	Telangana	379	214.76	40697.02
28	Tripura	3	214.76	322.14
29	Uttar Pradesh	313	214.76	33609.94
30	Uttarakhand	16	214.76	1718.08
31	West Bengal	263	214.76	28240.94
Grand Total		5,028		5,39,906.64

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40. From the above discussions it has been established that the Respondent has profited by increasing his base price. Hence he is liable for penalty under Section 122(1)(i) of the CGST Act, 2017, for issuing incorrect invoices. In the interest of natural justice before imposition of penalty a notice for hearing need to be issued.

41. A copy of this order be sent to the Applicants and the Respondent and to the respective Commissioners of CGST/SGST free of cost. File of the case be consigned after completion.

Sd/-
(B. N. Sharma)
Chairman



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

Certified Copy

B. Batar
7/3/19

(B. Batar)
Assistant Commissioner

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/86/Cloudtail/2018 | 2122

Date: 07.03.2019

Copy To:-

1. Shri Rahul Sharma <rahuls@localcircles.com>
2. 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-11000.
3. M/s Cloudtail India Pvt. Ltd, 6th& 7th Floors, Wing B, Divyasree Chambers, O' Shaughnessy Road, Akkithimanahalli, Bengaluru -560 025, Karnataka.
4. Commissioner of Commercial Taxes, Office of the Chief Commissioner of State Tax, Eedupugallu, Krishna District, Andhra Pradesh.
5. Commissioner of Commercial Taxes, Department of Tax & Excise. Kar Bhawan, Itanagar, Arunachal Pradesh - 791 111
6. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes, Government of Assam, Kar Bhawan, Ganeshpuri, Dispur, Guwahati - 781 006.
7. Commissioner of Commercial Taxes, Additional Commissioner (GST), Commercial Tax Department, Ground Floor, Vikas Bhawan, Baily Road, Patna – 800 001
8. Commissioner of Commercial Taxes, Commercial Tax, SGST Department, Behind Raj Bhawan, Civil Lines, Raipur - 492 001
9. Commissioner of Commercial Taxes, Office of Commissioner of Commercial Tax, Vikrikar Bhavan, Old High Court Building, Panji, Goa- 403 001
10. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhawan, Near Times of India, Ashram Road, Ahmedabad.

11. Commissioner of Commercial Taxes, Vanijya Bhavan, Plot No. 1-3, Sector-5, Panchkula. PIN - 134 151.
12. Commissioner of Commercial Taxes, Excise & Taxation Commissioner, Government of Himachal Pradesh, B-30, SDA Complex, Kasumpti, Shimla.
13. Commissioner of Commercial Taxes, Excise & Taxation Complex, Rail Head Jammu.
14. Commissioner of Commercial Taxes, Commercial Taxes Department, Project Bhawan, Dhurva, Ranchi- 834 004.
15. Commissioner of Commercial Taxes, Vanijya Therige Karyalaya, 1st Main Road, Gandhinagar, Bangalore- 560 009
16. Commissioner of Commercial Taxes, Government Secretariat, Thiruvananthapuram -695001.
17. Commissioner of Commercial Taxes, Moti Bangla Compound, M.G. Road, Indore
18. Commissioner of Commercial Taxes, GST Bhavan, Mazgaon, Mumbai- 400 010
19. Commissioner of Commercial Taxes, Department of Taxes, Old Guwahati High Court Complex, North AOC, Imphal West, Manipur - 795 001.
20. Commissioner of Commercial Taxes, Office of the Commissioner, GST&CX Commissionerate, Morellow Compound, M.G.Road, Shillong- 793001.
21. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, New Secretariat Complex, Aizawl – 796005.
22. Commissioner of Commercial Taxes, Office of the Commissioner of State Taxes, Dimapur, Nagaland - 797112.
23. Commissioner of Commercial Taxes, Office of the Commissioner of State Tax, Banijyakar Bhawan, Old Secretariat Compound, Cuttack - 753 001.
24. Commissioner of Commercial Taxes, Office of Excise and Taxation Commissioner, Bhupindra Road, Patiala- 147 001
25. Commissioner of Commercial Taxes, Kar Bhavan, Ambedkar Circle, Jaipur, Rajasthan - 302 005.
26. Commissioner of Commercial Taxes, SITCO Building, Block-D, above A.G. Office, Gangtok, East, Sikkim - 737 101.
27. Commissioner of Commercial Taxes, PAPJM Building, Greams Road, Chennai – 600 006.
28. Commissioner of Commercial Taxes, O/o the Commissioner of State Tax, CT Complex, Nampally Station Road, Hyderabad - 500 001.
29. Commissioner of Commercial Taxes, Office of the Commissioner of Taxes & Excise, Head of the Department, Revisional Authority, P.N. Complex, Gurkhabasti, Agartala - 799 006.
30. Commissioner of Commercial Taxes, Office of the Commissioner, Commercial Tax, U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar, Lucknow (U.P)

31. Commissioner of Commercial Taxes, State Tax Department, Head Office Uttarakhand, Ring Road, Near Pulia No. 6, Natthanpur, Dehradun
32. Commissioner of Commercial Taxes, 14, Beliaghata Road, Kolkata - 700 015.
33. Commissioner of Commercial Taxes, Deptt of Trade & Taxes, Vyapar Bhavan, IP Estate, New Delhi-2 Pin: 110 002
34. Commissioner of Commercial Taxes, First Floor, 100 feet Road, Ellapillaichavady, Pondicherry - 605 005.
35. Commissioner, Excise, Excise Department, Daman, Moti Daman-396220.
36. Commissioner, Excise, Forest office Compound, Opp. Gujarat Industrial Bank, Dadra and Nagar Haveli, Silvassa.
37. Commissioner of taxation, Additional Townhall Building, Sector 17-C U.T., 235, Jan Marg, Bridge Market, 17C, Chandigarh, 160017
38. Chief Commissioner of Central Goods & Services Tax, Bhopal Zone 48, Administrative Area, Arera Hills, Hoshangabad Road, Bhopal M.P. 462 011.
39. Chief Commissioner of Central Goods & Services Tax, C.R. Building Rajaswa Vihar, Bhubaneshwar 751007.
40. Chief Commissioner of Central Goods & Services Tax, Chandigarh Zone C.R. Building, Plot No.19A, Sector 17C, Chandigarh 160017.
41. Chief Commissioner of Central Goods & Services Tax, Cochin Zone, C.R. Building, I.S. Press Road, Ernakulam Cochn 682018
42. Chief Commissioner of Central Goods & Services Tax, Delhi Zone C.R. Building, I.P. Estate, New Delhi 110 109
43. Chief Commissioner of Central Goods & Services Tax, Hyderabad Zone GST Bhavan, L.B. Stadium Road, Basheer Bagh, Hyderabad 500 004
44. Chief Commissioner of Central Goods & Services Tax, Jaipur Zone, New Central Revenue Building, Statue Circle, Cscheme Jaipur 302 005
45. Chief Commissioner of Central Goods & Services Tax, Meerut Zone Opp. CCS University, Mangal Pandey Nagar, Meerut 250004
46. Chief Commissioner of Central Goods & Services Tax, Mumbai Zone GST Building ,115 M.K. Road, Opp. Churchgate Station, Mumbai 400020
47. Chief Commissioner of Central Goods & Services Tax., Telangkhedi Road, Civil Lines, Nagpur 440001
48. Chief Commissioner of Central Goods & Services Tax, Panchkula SCO 407408, Sector 8 Panchkula
49. Chief Commissioner of Central Goods & Services Tax, Pune Zone GST Bhawan Ice House, 41A, Sasoon Road, Opp. Wadia College, Pune 411001
50. Chief Commissioner of Central Goods & Services Tax, (Ranchi Zone) 1st Floor, C.R. Building, (ANNEX) Veerchand Patel Path Patna, 800001
51. Chief Commissioner of Central Goods & Services Tax, Shillong Zone North Eastern, 3rd Floor, Crescens Building, M.G. Road, Shillong 793 001
52. Chief Commissioner of Central Goods & Services Tax, Vadodara Zone 2nd Floor, Central Excise Building, Race Course Circle, Vadodara 390 007

53. Chief Commissioner of Central Goods & Services Tax, Vishakhapatnam Zone
GST Bhavan, Port Area, Vishakhapatnam 530 035.

54. NAA Website / Guard File.