

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

Case No. 37/2020
Date of Institution 30.10.2019
Date of Order 07.07.2020

In the matter of:

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

Applicants

Versus

M/s Prasad Media Corporation Pvt. Ltd., 6-1-38, Fourth Floor,
Prasad Imax, Opp. NTR Garden, Hyderabad-500063.

Respondent

Quorum:-

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



Present:-

1. None for the Applicants.
2. Sh. M.V.S. Sridhar, Advocate, and Sh. T. Subba Rao, Financial Advisor for the Respondent.

ORDER

1. The present Report dated 30.10.2019 has been received from the Applicant No. 2, i.e. the Director-General of Anti-Profiteering (DGAP) after a detailed investigation in line with Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Applicant No. 1 had filed an application dated 28.01.2019 under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of the supply of "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" despite the reduction in the rate of GST from 28% to 18% w.e.f. 01.01.2019. Along with the application, Applicant No. 1 had also submitted the APAF-1 Form, copies of cinema tickets issued in the pre and post rate reduction period and the details of the GST paid.
2. Vide his Report, the DGAP has reported that Applicant No. 1 had alleged that the base price of '2D Movie' tickets was increased by the Respondent from Rs. 117.18/- to Rs. 127.12/- and that of '3D Movie' tickets from Rs. 195.32/- to Rs. 211.86/- when the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019. The above Applicant

had also alleged that the Respondent has not passed on the benefit of reduction in the GST rate from 28% to 18% which came into effect on 01.01.2019 vide Notification No. 27/2018-Central Tax (Rate) dated 31.12.2018 and that the Respondent had instead increased the base price of the tickets. Along with his application, the Applicant had enclosed copies of tickets dated 31.12.2018 & 01.01.2019 along with his application in APAF-1 form. The aforesaid reference was examined by the Standing Committee on Anti-profiteering and it was decided to forward the same to the DGAP for a detailed investigation into the matter. On receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 28.06.2019, a notice under Rule 129 of the Rules was issued by the DGAP on 09.07.2019 calling upon the Respondent to respond as to whether he admitted that he had not passed on the benefit of reduction in GST rate w.e.f. 01.01.2019 to his recipients by way of commensurate reduction in prices and, if so, to suo moto determine the quantum thereof and indicate the same in his reply to the notice as well as to furnish all documents in support of his reply. The Respondent was also allowed to inspect the non-confidential evidence/information which formed the basis of the said notice, during the period from 17.07.2019 to 19.07.2019. However, the Respondent did not avail of the said opportunity. Applicant No. 1, vide e-mail dated 16.10.2019, was allowed to inspect the non-confidential documents/reply furnished by the Respondent on 22.10.2019 or 23.10.2019, which the Applicant

No. 1 did not avail. The DGAP has reported that the period covered by the current investigation was from 01.01.2019 to 30.06.2019.

3. DGAP has reported that in response to the notice dated 09.07.2019 and subsequent reminders, the Respondent submitted his replies vide e-mails/letters dated 12.07.2019, 04.08.2019, 24.08.2019, 03.09.2019, and 15.10.2019 and inter-alia stated that:-

(a) he was engaged in the business of running a multiplex in Hyderabad and he also provided other services, such as the sale of food & beverages, renting of immovable property, advertising services, etc.

(b) the mode of issue of invoices was not in vogue in the movie industry as he only issued tickets for the show and not invoices.

(c) before the introduction of GST w.e.f. 01-07-2017, the income arising out of the screening of cinematograph films in the multiplexes was subjected to entertainment tax @17.30% which was built in to the cost of admission tickets (Selling Price); however, on the introduction of GST w.e.f., 01.07.2017, entertainment tax was subsumed in GST and the rate of GST was fixed @ 28%; that he had not increased sale price of movie tickets in any manner despite the increase in the rate of tax from 17.30% to 28% as a result of coming into force of GST law; that he had continued with the existing prices as the movie ticket prices were fixed by the State Government; that he continued with the same ticket prices even after 01.01.2019 i.e.



after the reduction in GST rate from 28% to 18% and that there was no benefit to him.

(d) in line with the reduction of movie ticket prices by other competing multiplexes in the city of Hyderabad, he had reduced his movie ticket prices proportionately to the reduction in the rate of GST from 28% to 18% with effect from 08.02.2019; that he had then started to absorb the additional burden with effect from 08.02.2019.

(e) the rates of admission to his six-screen multiplex were fixed by the State Government at Rs. 150/- for screen nos. 1 to 5 and at Rs. 250/- for the screen no. 6 (IMAX screen); that these rates were inclusive of all taxes; that the rate of tax before the rollout of GST, i.e., 17.30% Entertainment Tax was also lesser than the reduced rate of GST at 18%, and hence there was no benefit to him that could have been passed on by him to his consumers and that he had not contravened the anti-profiteering provisions of the GST law.

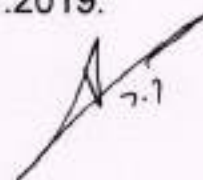
(f) he has also relied on the decision of this Authority given in the case of **State-level Screening Committee on Anti-Profiteering, Kerala and another vs. Zeba Distributors [2018] 100 taxmann.com 327 (NAA)** wherein it was held that when there was no reduction of tax rate w.e.f. 01.07.2017, it did not qualify to be a case of profiteering.

(g) he has also placed his reliance on the decision of this Authority given in the case of **State-level Screening Committee on**

Anti-Profiteering, Kerala and another vs. Ahuja Radios [2018] 100 taxmann.com 505 (NAA)" wherein this Authority has held that there was no increase in the base price of 'PA ceiling speaker' and 'Wall speakers' when GST rate was lowered and thus there was no profiteering; that in his case too, the movie ticket prices remained unchanged at the pre – 01.07.2017 level and that there has been no change in the ticket prices collected from the cinema viewing public; that hence, his case was not one of profiteering.

(h)that he has also relied on the decision of this Authority recorded in the case of **Mandalika Sakunthala and another Vs. Fab India Overseas (P) Ltd. (2019) 71GST243 = (2018) 99 Taxman.com (NAA)**, wherein it has been held that when the seller of goods has suffered loss on account of post GST tax liability, there was no contravention of Anti-profiteering provisions under Section 171 of the GST Act, 2017; that his case was similar to the above-cited case.

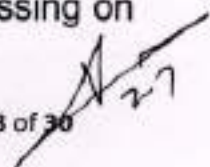
4. The Respondent, vide the afore-mentioned e-mails/letters, also furnished the following documents/information before the DGAP:-
- a. Copies of GSTR-3B Returns for the period from December 2018 to June 2019.
 - b. Copies of sample Movie tickets pre and post 01.01.2019.
 - c. Price Trend of tickets sold by him pre and post 01.01.2019.



- d. A summary of total revenue from all the screens and its reconciliation with GSTR- 3B for the period from December 2018 to June 2019.
 - e. A summary of the price list along with taxes collected and paid by the Respondent for the period 01.01.2019 to 07.02.2019.
 - f. Monthly Summary of tickets for the period from December 2018 to June 2019.
 - g. Copies of Rate Licenses issued by the State Department.
 - h. Computation of Weighted average rate of Entertainment Tax along with the impact of GST from the Entertainment Tax Regime to the GST regime.
- and
- i. a copy of the reply dated 04.02.2019 & 08.02.2019 submitted before the office of Principal Commissioner, Central GST, Hyderabad.
5. The DGAP has reported that vide his notice dated 09.07.2019, the Respondent was informed that if any information/documents provided were confidential then, in terms of Rule 130 of the CGST Rules 2017, he could furnish a non-confidential summary of such information/documents that he wished to remain confidential. However, the Respondent did not classify any of the information/documents submitted by him as confidential.
6. The DGAP also reported that the main issues to be examined in the present matter were whether the GST rate on "Services by way of admission to the exhibition of cinematograph films where the price of

admission ticket was above one hundred rupees" was indeed reduced from 28% to 18% w.e.f. 01.01.2019 and if so, whether the benefit of such reduction in the rate of GST had been passed on by the Respondent to his recipients, in terms of Section 171 of the CGST Act, 2017.

7. On the above issues, the DGAP reported that the Central Government, on the recommendation of the GST Council, had indeed reduced the GST rate on "Services by way of admission to an exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018; that the legal requirement under the GST law was abundantly clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in the prices of the goods or services and that such reduction could only be in money terms so that the final price payable by a consumer got reduced; and that Section 171 simply did not permit a supplier of goods or services, any other means of passing on the benefit of input tax credit or reduction in the rate of tax to his recipients/consumers.
8. The DGAP has further reported that the contention of the Respondent that at the time of roll-out of GST, he had not increased the price of movie tickets in respect of his six-screen multiplex in any manner, i.e. whether proportionate to the higher rate of GST of 28% or otherwise could not be accepted as a rationale for not passing on



the benefit consequent to the subsequent GST rate reduction w.e.f. 01.01.2019; that the facts of the cases of "State-level Screening Committee on Anti- Profiteering, Kerala vs. Zeba Distributors [2018] 100 taxmann.com 327 (NAA)", "State-level Screening Committee on Anti- Profiteering, Kerala vs. Ahuja Radios [2018] 100 taxmann.com 505 (NAA)" and "Smt. Mandalika Sakunthala Vs. Fab India Overseas (P) Ltd. (2019) 71GST243=(2018)99 Taxman.com (NAA)" which have been cited by the Respondent in his submissions, did not apply to the present case since the facts of those cases were entirely different from the facts of the present case; that the cases cited by the Respondent do not come to the rescue of the Respondent because:-

(a) In the case of Zeba Distributors, the impugned good "Eastern Meat Masala" was attracting Pre-GST tax (VAT) @ 5% and on the introduction of GST w.e.f. 01.07.2017, the rate of GST was fixed at the same rate of 5% and therefore, there was no reduction in the rate of tax. However, in the present case, the rate of tax was reduced on "Services by way of admission to the exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018.

(b) In the case of Ahuja Radios, the GST rate was reduced from 28% to 18% w.e.f. 15.11.2017 vide N/N 41/2017 (Central Tax-Rate) dated 14.11.2017 on the impugned goods "PA Ceiling

Speaker" and "PA Wall Speaker". In that case, Ahuja Radios had maintained the same base prices (excluding GST) and charged a reduced rate of GST over the same base price resulting in a reduction in cum tax selling prices to be paid by his recipients. However, in the present case, the Respondent had increased the base price from Rs. 117.18/- to Rs. 127.12 per ticket for '2D Movies' and from Rs. 195.32/- to Rs. 211.86/- per tickets for '3D Movies'.

(c) In the case of Fab India Overseas (P) Ltd., the matter to be decided was concerning a change in tax rates on the introduction of GST i.e. on 01.07.2017. However, the present case does not pertain to a change in the rate of tax from 01.07.2017 but w.e.f. 01.01.2019 and hence, the plea of the Respondent that the pre-GST roll-out prices ought to be compared with prices changed by him after 01.01.2019 was at complete variance with facts of the above-cited case.

9. The DGAP has also reported that the Respondent's contention that the prices of movie tickets were fixed by the appropriate authority in the State Department and that he had no power to reduce the same was flawed and unacceptable, since as per para-4 of the G.O.Ms. No. 199, Home (General A) Department dated 31.07.2017 cited by the Respondent, it did not fix the actual prices of movie tickets to be changed but only stipulated the maximum rate of admission; and that the Respondent had requested the state government authorities to enhance the rates of admission to his movie

theatre/multiplex from Rs. 100/- to Rs. 150/- for 2D movies and from Rs. 200/- to Rs. 300/- for 3D movies, which was allowed by the relevant State Government Authority partially in as much as enhancement of the rate of admissions for 2D Movies was permitted from Rs. 100/- to Rs. 150/-. The DGAP has added that this Order of the relevant Authority of the State Government holds no relevance to the issue of determination of profiteering in the present case.

10. The DGAP has also reiterated that the movie ticket prices prescribed by the State Government were the maximum admission rates and the Respondent was free to charge any rate up to maximum rates allowed by the Government and hence was at liberty to reduce the movie ticket prices. The DGAP has also reported that Respondent, being registered under CGST Act, 2017, was duly under statutory obligation to comply with the provisions of Section 171 of the CGST Act, 2017 and had to necessarily pass on the benefit of reduction in the rate of tax by way of commensurately reducing the admission rate (movie ticket prices) to his recipients; that by not doing so and by increasing the base price of the movie tickets to maintain the same final selling prices, the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017.
11. For the computation of the amount of profiteering, the DGAP has elaborated that there were basically two classes of tickets in Respondent's Multiplex, namely, one price for Screens 1-5 (2D

Movies) and another price for Screen 6 (3D Movies). The pricing of tickets varied according to the Screen. For determination of profiteering, the aggregate number of movie tickets sold during the period 01.12.2018 to 31.12.2018 (pre-GST rate reduction) and the total taxable value thereof were taken and an average base price (after discount) of the tickets sold in that period was obtained by dividing the total taxable value by the aggregate number of tickets sold during that period i.e. pre-rate reduction. The said average base price of the movie ticket in the pre rate reduction period was then compared with the actual selling price of the tickets sold during post-GST rate reduction i.e. on or after 01.01.2019, as has been illustrated in Table-'A' below:-

Table-'A' (Amount in Rupees)

| Sl. No. | Description | Factors | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (From 01.01.2019) | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (From 01.01.2019) |
|---------|--|--------------|---|---------------------------------------|---|---------------------------------------|
| 1. | Multiplex Screens No.'s | A | Screen 1 | | Screen 6 | |
| 2. | Screen Category | B | 2D | | 3D | |
| 3. | Ticket MRP | C | 150/- | 150/- | 250/- | 250/- |
| 4. | Total No. of tickets sold | D | 35,618 | | 60,167 | |
| 5. | Total taxable value (after Discount) | E | 41,73,717/- | | 1,17,51,818/- | |
| 6. | Average base price (without GST) | F=(E/D) | 117.18/- | | 195.32/- | |
| 7. | GST Rate | G | 28% | 18% | 28% | 18% |
| 8. | Actual Selling price (post rate reduction) (including GST) | H=1 28% of F | 150/- | | 250/- | |
| 9. | Commensurate Selling price (post Rate reduction) (including GST) | I=11 8% of F | | 138.27/- | | 230.48/- |
| 10. | Post Reduction Month | J | | Jan-2019 | | Jan-2019 |
| 11. | Total No. of Tickets sold during Jan-19 | K | | 35,924 | | 43,848 |

| | | | | | | |
|-----|--|--------|--|------------|--|---------------|
| 12. | Total Tickets Value (including GST) | L | | 53,88,600 | | 1,09,62,000/- |
| 13. | Actual Selling price (post rate reduction) (including GST) | M=L /K | | 150/- | | 250/- |
| 14. | The excess amount charged of Profiteering | N= M-I | | 11.73/- | | 19.52/- |
| 15. | Total Profiteering | O= K*N | | 4,21,389/- | | 8,55,912/- |

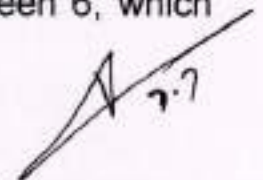
12. The DGAP has reported that from the above Table it was evident that the selling price of the "Movies Tickets" has not been reduced commensurately by the Respondent in the post-rate-reduction period after the GST rate was reduced from 28% to 18% w.e.f. 01.01.2019 vide Notification No.27/2018 Central Tax (Rate) dated 31.12.2018. Hence the Respondent has profiteered by Rs.11.73/- per ticket for Multi-Screen- 1 to 5 (2D Movies) and by an amount of Rs. 19.52/- per ticket for Screen-6 (3D Movies). Thus it was clear that the Respondent has contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the commensurate benefit to his recipients/customers. Based on above per ticket calculation, the overall profiteering by the Respondent has been computer for all the tickets sold for Screen 1 to 6, which is given in Table-B below:-

Table-'B' (Amount in Rupees)

| Sl. No. | Description | Factors | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (01.01.2019 to 07.02.2019) | Post Rate Reduction (08.02.2019 to 30.06.2019) | Pre Rate Reduction (01.12.2018 to 31.12.2018) | Post Rate Reduction (01.01.2019 to 07.02.2019) | Post Rate Reduction (08.02.2019 to 30.06.2019) |
|---------|-----------------------------------|---------|---|--|--|---|--|--|
| 1. | Multiplex Screens No.'s& Category | A | Screen 1 to 5 (2D) | | | Screen 6 (IMAX) | | |
| 2. | Ticket MRP | B | 150/- | 150/- | 138/- | 250/- | 250/- | 230/- |
| 3. | Total No. of | C | 1,52,726 | 1,72,424 | 4,76,042 | 60,167 | 50,759 | 1,53,801 |

| | tickets sold | | | | | | | |
|-----|--|--------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 4. | Total taxable value (after Discount) | D | 1,78,96,433 | 2,19,18,539 | 5,56,68,352 | 1,17,51,818 | 1,07,53,802 | 3,58,26,491 |
| 5. | Average base price (without GST) | E=D/C | 117.18/- | 127.12/- | 116.94/- | 195.32/- | 211.86/- | 194.92/- |
| 6. | GST Rate | F | 28% | 18% | 18% | 28% | 18% | 18% |
| 7. | Actual Selling price (post rate reduction) (including GST) | $G=E*(1+F)$ | 150/- | 150/- | 138/- | 250/- | 250/- | 230/- |
| 8. | Commensurate Selling price (post Rate reduction) (including GST) | H=118 % of E | | 138.2724/- | 138.2724/- | | 230.4776/- | 230.4776/- |
| 9. | The excess amount charged or Profiteering per Ticket | I=G-H | | 11.7276/- | - | | 19.5224 | - |
| 10. | Total Profiteering | J=C*I | | 20,22,120 | - | | 9,90,938 | - |
| 11. | Total Profiteering (All Screens) (K) | | | | 30,13,058/- | | | |

13. The DGAP has also reported that the Respondent had increased the base prices of the movie tickets sold by him during the period from 01.01.2019 to 07.02.2019 to maintain the same selling prices (or MRP), thus making his customers/recipients pay the same total prices for the tickets, which they were paying before the reduction in the rate of tax and has thus denied the benefit of reduction in the rate of tax to his recipients. However, w.e.f. 08.02.2019, Respondent had revised his per ticket selling price from Rs. 150/- to Rs. 138/- for Screen 1 to 5 and from Rs. 250/- to Rs. 230/- for Screen 6, which



was commensurate to the extent of reduction in the rate of tax from 28% to 18%.

14. The DGAP has further stated that the Respondent has submitted that he had sold 51,794 (2D Movie tickets) at a selling price of Rs. 200/- per ticket and 630 (3D movie tickets) at a selling price of Rs. 300/- per tickets during 2 weeks in the month of May 2019 for the movie "Maharshi" due to high demand as per Hon'ble Telangana State High Court Order; that since those tickets were sold for a specific movie and then Movies ticket prices were reduced thereafter, these tickets were excluded from the computation of profiteering given in Table-'B' above; that based on the details of outward supplies of services, it was clear that the said service has been supplied by the Respondent in the State of Telangana only.
15. The DGAP has finally reported that the allegation of profiteering by the Respondent by way of increasing the base prices of the movie tickets and by not reducing the price of movie tickets commensurately, despite a reduction in the GST rate thereon has been established as the Respondent has profited by an aggregate amount of Rs. 30,13,058/- inclusive of GST.
16. The investigation report was received by this Authority on 30.10.2019 and it was decided to accord an opportunity of hearing to the Applicants and the Respondent on 20.11.2019. Notice dated 01.11.2019 was also issued to the Respondent directing him to explain why the Report dated 25.10.2019 furnished by the DGAP should not be accepted and his liability for violation of the provisions

of Section 171 of the CGST Act, 2017 should not be fixed. Three hearings dates were specified on 20.11.2019, 06.12.2019, and 19.12.2019 to the interested parties. Only the Respondent attended the hearing on 19.12.2019.

17. The Respondent vide his submissions dated 30.11.2019 has contended:

a. That during the pre-GST regime the rates of admission per ticket were fixed by the State Government of Telangana at Rs.150/- for Screens 1 to 5 and Rs. 250/- for Screen 6 i.e. the large format screen including 17.30% Entertainment Tax; that the rate of admission has been revised by the State Government at periodical intervals considering the cost factors affecting the commercial activities; that on the introduction of GST, the rate of GST on the exhibition of films was fixed at 28% and thus there was an increase of 10.70% over the existing Entertainment Tax element which was leviable @17.30%; that G.O. Ms No. 75 Home (General) Department, dated 23-06-2017 was issued by the State Government revising the maximum rates of admission into multiplexes to Rs. 200/- and Rs. 300/- (for 3-D theatres) inclusive of taxes, from the existing rates of Rs. 150/- and Rs. 250/- respectively to match the increase in the tax structure; that however the above G.O. was not implemented but was kept in abeyance until further Orders by the Government vide Memo No. 659 (P)/General/A1/2017 dated 30-06-2019.



- b. That the increase in GST over the Entertainment Tax had to be borne by him by adjusting the base prices downwards to maintain the selling prices of the ticket at the earlier rates of Rs. 150/- and Rs. 250/- respectively; that representations apprising the Government of India of the above facts had resulted in the subsequent reduction of the rate of GST from 28% to 18% with effect from 01-01-2019; that even the reduced rate of GST was higher than the Entertainment Tax of 17.30% leviable during the pre GST period; that hence he did not reduce the selling prices of his movie tickets as no benefit had accrued to him.
- c. That the report of DGAP did not contain findings on the above aspect, which had led to a distorted conclusion that benefit had accrued to him on account of GST rate reduction that should have been passed on by him to his consumers. That he wanted to rely on the decision of this Authority given in the case of Jirushu N Bhattacharya Vs. NP Foods case No. 9/2018, dated 27-09-2018 and contended that in that case the rate of GST was reduced from 18% to 5% (without ITC) following which the base price was increased from Rs.130/- to Rs.145/- by the Respondent to compensate for the loss of ITC and this Authority had finally held that there was no profiteering in that case; that the ratio of the said decision was squarely applicable to his case since in his case, even the reduced rate of GST @ 18% was more than the pre-GST Entertainment Tax leviable @17.30%; that



consequently, it could be said that no benefit had accrued to him on account of reduction of the GST rate.

d. That the term 'profiteering' as per Black's Law Dictionary Connoted "taking advantage of the unusual or exceptional circumstances to make excess profit". Law Lexicon, Short Oxford Dictionary, and Chambers 20th Century Dictionary also have given similar definitions to the expression 'profiteering'. The Taxmann's Dictionary for Corporate Laws defined profiteering to mean 'a motive that is aimed at making excessive profit at the cost of public'.

e. That he has also relied on the judgment of the Hon'ble Bombay High Court, in the case of M/s Hardcastle Restaurant Pvt Ltd. Vs. Union of India and others, especially on Para 31.0 of the judgment, which is extracted below for ready reference:-

"The issues that come up before the Anti-Profiteering Authority are complex. The Act & Rules provide no appeal. Authority can impose a penalty and can cancel the registration. The term profiteering under the Act and Rules is used in a pejorative sense. Such a finding can severely dent the business reputation".

f. That the DGAP in his Report has stated that the case law relied upon by the Respondent, i.e. State Level Screening Committee on Anti-Profiteering Kerala Vs. Zeba Distributors; Smt. Mandalika Shakuntala Vs. Fabindia Overseas Pvt. Ltd.; and State Level Screening Committee on Anti-Profiteering, Kerala Vs. Ahuja Radios do not apply to the present case on the ground that the

facts of these cases were different. It was submitted that though the facts were different, the rationale of these decisions of this Authority ought to have been applied to his case since in his case also there was no profit arising out of the reduction in the rate of GST which could have been passed on to the consumers of service.

- g. That no profit had arisen out of the reduction of the GST rate from 28% to 18% from 01-01-2019; that there were arithmetical mistakes in the calculation of profiteering by the DGAP since the correct amount of profiteering would have worked out to Rs. 25,53,454/- only as per the details given below:-

| S.No | Particulars | Screen 1 to 5 | Screen 6 | Total (Amount in Rs.) |
|------|---|---------------------------------------|--|--------------------------|
| 1 | Number of tickets sold during the period 01.01.2019 to 07.02.2019 | 172424 | 50759 | |
| 2 | Profiteering as computed by DGAP per ticket | Rs. 11.7276 | Rs. 19.5224 | |
| 3 | Profiteering as computed by the DGAP | Rs. 20,22,120/- | Rs. 9,90,938/- | 30,13,058/- |
| 4 | As PMCPL has paid GST @ 18% on the entire ticket price of Rs. 150/- for screen 1 to 5 and on Rs. 250/- for screen 6, the amount of GST included in the profiteering amount per ticket computed by the DGAP needed to be reduced. Which worked out to be:- | $11.7276 * 18 / 118 =$ Rs. 1.7889 | $19.5224 * 18 / 118 =$ Rs. 2.9779 | |
| 5 | The amount to be reduced on the total number of tickets sold during the said period. | $1.7889 * 172424 =$ Rs. 3,08,449/- | Rs. $2.9779 * 50759$ tickets = Rs. 1,15,155/- | 4,59,604/- |
| 6 | The profiteering amount, if at all there is any, would be (3-4) | | | 25,53,454/- |

18. We have carefully heard the Respondent and the submissions of the Applicants and the Respondent as also the case record placed before us and it has been revealed that the Central and the State

Governments had reduced the rates of GST on "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was above one hundred rupees" from 28% to 18% and "Services by way of admission to exhibition of cinematograph films where the price of admission ticket was one hundred rupees or less" from 18% to 12% w.e.f. 01.01.2019, vide Notification No. 27/2018- Central Tax (Rate) dated 31.12.2018, the benefit of which was required to be passed on to the recipients by the Respondent as per the provisions of Section 171 of the above Act.

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

20. Section 171 of the CGST Act provides as under:-

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

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

commensurate reduction in the price of the goods or services or both supplied by him.

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

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

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

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

21. The Respondent vide his submissions has contended that in the pre-GST era, Entertainment Tax @ 17.30% was included in the selling prices of the tickets and on the introduction of GST Act, the rate of GST on exhibition of films was fixed at 28% and hence, there was an increase of 10.70% over the existing Entertainment Tax. The State Government vide G.O.M. No. 100, Home (General)

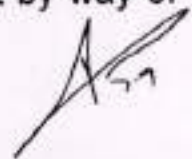
A) Department, dated 23.06.2017 had revised the rates of admission into multiplexes to Rs. 200/- and Rs. 300/- respectively inclusive of the tax rate from the existing rates of Rs. 150/- and Rs. 250/- respectively to match the increase in the tax structure. However, the above mentioned G.O. was not implemented and kept in abeyance until further Orders by the Government on 30.06.2017, i.e. before the GST rates were made effective from 01.07.2017. Therefore, the increase in GST over the Entertainment Tax was borne by the Respondent adjusting the base prices downwards to maintain the selling price of the tickets at the earlier rates. The contention raised by the Respondent is not correct. In July 2017, Entertainment Tax was subsumed into GST and hence, any Order of State Government on Entertainment Tax did not apply to the goods and services that had been covered by the GST. Further, the Order of the State Government Authorities only specified the maximum sale price of the movie tickets and did not stop/prohibit the reduction in the prices that was required to be affected by the Respondent in terms of Section 171 of the CGST Act, 2017. Hence, the contention of the Respondent is not correct and hence denied.

22. The Respondent has also relied upon the Order passed in the case of Jirushu N Bhattacharya Vs. NP Foods. Upon perusal of the above Order No. 9/2018 dated 27.09.2018 it is revealed that in that case the rates fixed after rate reduction were commensurate with the denial of ITC. However, in the instant case, no such

benefit of ITC has been denied to the above Respondent nor the rate of tax has been increased rather the rate has been reduced and hence, the Respondent was liable to reduce his price commensurately as per the provisions of Section 171(1) of the CGST Act, 2017. Therefore, the facts of the above case referred by the Respondent are different from his case and are of no help to him. Therefore, the contention of the Respondent is not tenable and hence denied.

23. The Respondent has also cited the definition of term profiteering given in Black's Law Dictionary as "taking advantage of the unusual or exceptional circumstances to make excess profit". He has further stated that the Shorter Oxford English Dictionary, Law Lexicon, and Chambers 20th Century Dictionary also gave similar definition of profiteering. The Taxmann's Dictionary for Corporate Laws also define the term profiteering as "a motive that is aimed at making excessive profit at the cost of public". In this connection, it would be appropriate to refer to the definition of the profiteered amount given in the Explanation attached to Section 171 which states as under:-

"Explanation : For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of ITC to the recipient by way of



commensurate reduction in the price of the goods or services or both."

24. The Respondent has relied upon the judgement of the Hon'ble Bombay High Court passed in the case of M/s Hardcastle Restaurant Pvt. Ltd. vide which the Hon'ble High Court has held that *"The issues that come up before the Anti-Profiteering Authority are complex. The Act & Rules provide no appeal. Authority can impose a penalty and can cancel the registration. The term profiteering under the Act and Rules is used in a pejorative sense. Such a finding can severely dent the business reputation."* In this regard, it would be relevant to mention that provisions of Section 171 of the CGST Act, 2017, and the Rules 122-137 of the CGST Rules, 2017 which deal with profiteering, are very clear in their intent. The Parliament, the State Legislatures, the Central and the State Governments as well as the GST Council which is a federal, constitutional body in their wisdom have not thought it appropriate to provide for an appellate mechanism against the Orders passed by this Authority in the CGST Act, 2017. Further, it is pertinent that the term "profiteered" has been defined in the Explanation attached to Section 171 of the CGST Act, 2017 and the same has been applied accordingly, while determining profiteering in the present case.
25. The Respondent has also argued that the DGAP in his Report has stated that the case law relied upon by him, i.e. State Level Screening Committee on Anti-Profiteering Kerala Vs. Zeba

Distributors; Smt. Mandalika Shakuntala Vs. Fabindia Overseas Pvt. Ltd.; and State Level Screening Committee on Anti-Profiteering, Kerala Vs. Ahuja Radios did not apply to his case on the ground that the facts of the cases were different. However, the decision of this Authority in the above-mentioned cases ought to have been applied to his case also since there was no profit arising out of the reduction in the rates of GST which could have been passed on to the consumers of service in his case. The above contention of the Respondent is not correct In the case of the State Level Screening Committee on Anti-Profiteering Kerala vs. Zeba Distributors in which this Authority has held that *"there was no reduction in the rate of tax on the subject product and hence anti-profiteering provisions contained in Section 171(1) of the CGST Act, 2017 are not attracted"*. Further, in the case of Smt. Mandalika Shakuntala Vs. Fabindia Overseas Pvt. Ltd., this Authority has held that *"It is further revealed that the base price of these products had been reduced by the Respondent to maintain the same MRP (Pre GST MRP) inspite of the increase in the tax rate of both the above products."* Therefore, the anti-profiteering provisions contained in Section 171(1) of the CGST Act, 2017 were found to have not been contravened in the above mentioned case. Also in the case of State Level Screening Committee on Anti-Profiteering, Kerala Vs. Ahuja Radios, the Authority held that *"It is apparent from the perusal of the facts of the cases that while there was reduction in the rate of tax on the above products from*

28% to 18% w.e.f. 15.11.2017, vide Notification no. 41/2017-Central Tax (Rate) dated 14.11.2017, but the base prices (excluding tax) of both the above products had remained the same and hence the allegation of profiteering is not established". However, in the present case, it has been revealed from the DGAP's Report that the Respondent has not reduced his base prices and has not passed on the benefit of rate reduction to his customers/recipients and thus, has contravened the provisions of Section 171 of the CGST Act, 2017. The facts of the cases relied upon by the Respondent are different from his case and therefore, the same are of no help to him.

26. The Respondent has further contended that there were arithmetical mistakes in the calculation of the profiteering amount computed by the DGAP and has submitted his own calculations. On-going through the calculations submitted by the Respondent, it is observed that the Respondent has reduced the amount of GST charged from his customers amounting to Rs. 4,59,604/- on account of the GST amount paid in respect of the supplied made during the period of investigation from the total profited amount of Rs. 30,13,058/- and hence, arrived at profiteering of Rs. 25,53,454/-. In this connection, it would be appropriate to mention that the Respondent has not only collected excess base prices from the customers which he has not required to charge due to the reduction in the rate of tax but he has also compelled them to charge additional GST on these excess base prices which they

should not have paid. By doing so the Respondent has defeated the very objective of both the Central as well as the State Governments which aimed to provide the benefit of rate reduction to the general public. The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the CGST Act, 2017 but has also acted in contravention of the provisions of Section 171 (1) of the above Act as he has denied the benefit of tax reduction to his customers by charging excess GST. Had he not charged the excess GST the customers would have paid less price while purchasing goods from the Respondent and hence the above amount has rightly been included in the profiteered amount as it denotes the amount of benefit denied by the Respondent. Therefore, the above contention of the Respondent is untenable and hence it cannot be accepted. Accordingly, an amount of Rs. 4,59,604/- cannot be subtracted from the profiteered amount.

27. This Authority based on the facts discussed above has found that the Respondent has resorted to profiteering by way of either increasing the base prices of the service while maintaining the same selling prices or by way of not reducing the selling prices of the service commensurately, despite a reduction in GST rate on "Services by way of admission to exhibition of cinematograph films where price of admission ticket is above one hundred rupees" from 28% to 18% w.e.f. 01.01.2019 to 30.06.2019. On this account, the Respondent has realized an additional amount to the

tune of Rs. 30,13,058/- from the recipients which included both the profiteered amount and GST on the said profiteered amount. Thus the profiteering is determined as Rs. 30,13,058/- as per the provisions of Rule 133 (1) of the CGST Rules, 2017. The Respondent is therefore directed to reduce the prices of his tickets as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, keeping in view the reduction in the rate of tax so that the benefit is passed on to the recipients. The Respondent is also directed to deposit the profiteered amount of Rs. 30,13,058/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount is deposited. Since the recipients, in this case, are not identifiable, the Respondent is directed to deposit the amount of profiteering of Rs. 15,06,529/- in the Central Consumer Welfare Fund (CWF) and Rs. 15,06,529/- in the Telangana State CWF as per the provisions of Rule 133 (3) (c) of the CGST Rules, 2017, along with 18% interest. The above amount shall be deposited within a period of 3 months from the date of receipt of this Order failing which the same shall be recovered by the Commissioner SGST as per the provisions of the SGST Act, 2017.

28. It has also been found that the Respondent has denied the benefit of rate reduction to his customers/recipients in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and resorted to profiteering and hence, committed an offence under section 171 (3A) of the CGST Act, 2017. Therefore, he is liable for

the imposition of penalty under the provisions of the above Section. Accordingly, a notice be issued to him directing him to explain why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him

29. Further, the Authority as per Rule 136 of the CGST Rules 2017 directs the jurisdictional Commissioners of CGST/SGST Telangana to monitor this Order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as Ordered by the Authority is deposited in the respective CWFs. A report in compliance of this Order shall be submitted to this Authority by the DGAP within a period of 3 months from the date of receipt of this Order.
30. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this Order was required to be passed within a period of 6 months from the date of receipt of the Report furnished by the DGAP under Rule 129 (6) of the above Rules. Since the present Report has been received by this Authority on 30.10.2019, this Order was to be passed by 29.04.2020. However, due to the prevalent pandemic of COVID-19 in the country, this Order could not be passed before the above date due to *force majeure*. Accordingly, this Order is being passed today in terms of the Notification No. 55/2020- Central Tax dated 27.06.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central

Board of Indirect Taxes and Customs under Section 168 A of the CGST Act, 2017.

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

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



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

Sd/-
(Amand Shah)
Technical Member

Certified Copy

o/c

(A.K. Goel)
NAA, Secretary

File No. 22011/NAA/96/PMC/2019 3577-76 Date:- 07.07.2020

Copy To:-

1. M/s Prasad Media Corporation Pvt. Ltd., 6-1-38, 4th Floor, Prasad Imax, Opp. NTR Garden, Hyderabad-500063.
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-110001.
3. Pr. Commissioner, Central Tax & Central Ex., Hyderabad GST Commissionerate, GST Bhavan, LB Stadium, Basheerbagh, Hyderabad-500004.
4. Commissioner of State Taxes, CT Complex, Nampally Station Road, Hyderabad-500001 (cst@tgct.gov.in).
5. Guard File.


A. K. GOEL
SECRETARY, NAA