

# Anti-Profiteering

16

## **This Module Includes**

**16.1 Provisions**

**16.2 Key Rulings**

# Anti-Profiteering

## **SLOB Mapped against the Module**

1. To develop detail understanding of various provisions of Goods and Services Tax (GST) to facilitate valuation, computation of tax liability including management of input tax credit.
2. To obtain detail knowledge about the provisions under GST relating to accounts and record, annual returns and dispute resolution to ensure better compliance.
3. To facilitate strategic decision making by appropriate management of various indirect tax issues.

## **Module Learning Objectives**

**After studying this module, the students will be able to:**

- ⦿ Identify Profiteering and Anti-Profiteering.
- ⦿ Explain importance of Screening Committee and Standing Committee.
- ⦿ Understand role of National Anti-Profiteering Authority.

**A**ny reduction in GST rate or benefit of input tax credit should be passed on to the end consumer and not retained by the business. This is the basis of anti-profiteering provisions under GST. Under anti-profiteering provisions, it is illegal for a business to not pass on benefits of GST rate benefits to the end consumer and thereby indulging in illegal profiteering. The Anti-Profiteering Rules, 2017 lay down details about the selection of the members of the National Anti-Profiteering (NAA) and the other committees that will assist the NAA in investigating the complaints, the procedure to be followed in investigations and the powers given to the authority.

### **Tenure of Anti-Profiteering Authority extended to five years**

With effect from 30.11.2021, rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profiteering Authority from existing 4 years to 5 years. Thus, the Authority shall cease to exist after the expiry of five years from the date on which the Chairman enters upon his office unless the Council recommends otherwise [Notification No. 37/2021 CT dated 1.12.2021].

## Anti Profiteering [Section 171]

As per section 171(1),—

- ⦿ Any reduction in rate of tax on any supply of goods or services or
- ⦿ the benefit of input tax credit

shall be passed on to the recipient by way of commensurate reduction in prices.

### Detailed analysis of above provision is as follows

Any reduction in rate of tax on any supply of goods or services

For Example, Under the Service Tax regime, Tour operator services are charged at abated rate of 9% whereas in Goods & Services Tax Act, 2017 rate of tax fixed is 5% which resulted in reduction of tax from 9% to 5%. The tax rate reduction benefit to the extent of 4% to be passed on to recipient.

Particulars	Service tax regime	GST regime	Remarks
Taxable value	100	100	
ST/GST rate (%)	9%	5%	
ST/GST (₹)	9	5	
Total Invoice value	109	105	Reduction of ₹4 is benefit to be passed on to recipient

### The benefit of input tax credit

Any additional benefit by way of Input tax credit is arising to the supplier due to implementation of GST the same benefit to be passed on to recipient by way of reduction in prices which is explained as follows—

X Ltd being an Interior designing service provider while providing output service has availed Input services and material 'M' for which tax paid is as under

Particulars	Service tax regime	GST regime
Tax paid towards service tax on Input services availed	15	15
Tax paid towards VAT for Material 'M'	5	5

Output tax liability of X Ltd is ₹25 before deducting Input tax credit available.

In the given case benefit of input tax credit accruing to X Ltd due to implementation of GST is as follows—

Particulars	Service tax regime	GST regime	Remarks
Output tax liability	25	25	
<b>Input allowed -</b>			
Towards Input services	15	15	Service provider cannot avail VAT paid as Input tax credit in Service tax regime
Towards Material 'M'	NIL	5	
Total Input Tax credit eligible for set off	15	20	
Net tax payable	10	5	
Input tax benefit due to GST	-	5	Benefit of ₹5 to be passed to recipient by way reduction in prices

#### Anti-Profiteering committee [Section 171(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 input tax credits 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.

The National Anti-Profiteering Authority shall be a five member committee consisting of—

- ⊙ A Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- ⊙ Four Technical Members who are or have been Commissioners of State tax or central tax or have held an equivalent post under existing laws.
- ⊙ The Additional Director General of Safeguards under the CBIC (Board) shall be the Secretary to the Authority.

The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

#### Duties & Powers of Anti-profiteering committee-Section 171(3)

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

The Authority can determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

The Authority would have the following duties:

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (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 input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,—
  - ⊙ reduction in prices;
  - ⊙ return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
  - ⊙ imposition of penalty; and
  - ⊙ cancellation of registration.

### **w.e.f. 1-8-2019:**

as per section 171(3A) of the CGST Act, 2017 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 per cent 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 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 input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.’

**Amendment of section 171(2):** the following proviso and Explanation shall be inserted [w.e.f. 27-9-2024, F.A.2024, dated 16-8-2024], namely: —

‘Provided that the Government may by notification, on the recommendations of the Council, specify the date from which the said Authority shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

Explanation 1.—For the purposes of this sub-section, “request for examination” shall mean the written application filed by an applicant requesting for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.’;

Explanation 2.—For the purposes of this section, the expression “Authority” shall include the “Appellate Tribunal”.

**NOTIFICATION No. 18/2024 – Central Tax:** The notification derives its authority from Section 171(2), Section 109(1), and the second proviso of Section 109(5) of the CGST Act, 2017. It empowers the Principal Bench of the Appellate Tribunal, which is constituted under Section 109(3) of the Act, to oversee compliance with anti-profiteering provisions. This notification will come into effect on October 1, 2024.

The Tribunal is tasked with examining whether:

- The input tax credits availed by registered persons (taxpayers) have been used to reduce the cost of goods or services provided.
- The benefits of any tax rate reduction have been passed on to consumers by lowering the prices of goods or services.

**Notification No. 19/2024 – Central Tax:** the Central Government, on the recommendations of the Goods and Services Tax Council, hereby appoints the 1st day of April, 2025 as the date from which the Authority referred to in the said section shall not accept any request for examination as to whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by that registered person.

#### **Application & process flow of Anti profiteering hierarchy mechanism:**

Empowering the Competition Commission of India to handle Anti-Profiteering cases under the CGST Act:

Central Government on the recommendations of GST Council has empowered the Competition Commission of India (CCI) established under section 7(1) of the Competition Act, 2002 to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

The above amendment shall become effective from 01.12.2022 (Notification No. 23/2022-CT dt. 23.11.2022). Resultantly, National Anti-Profiteering Authority (NAA) ceased to exist from 01.12.2022.

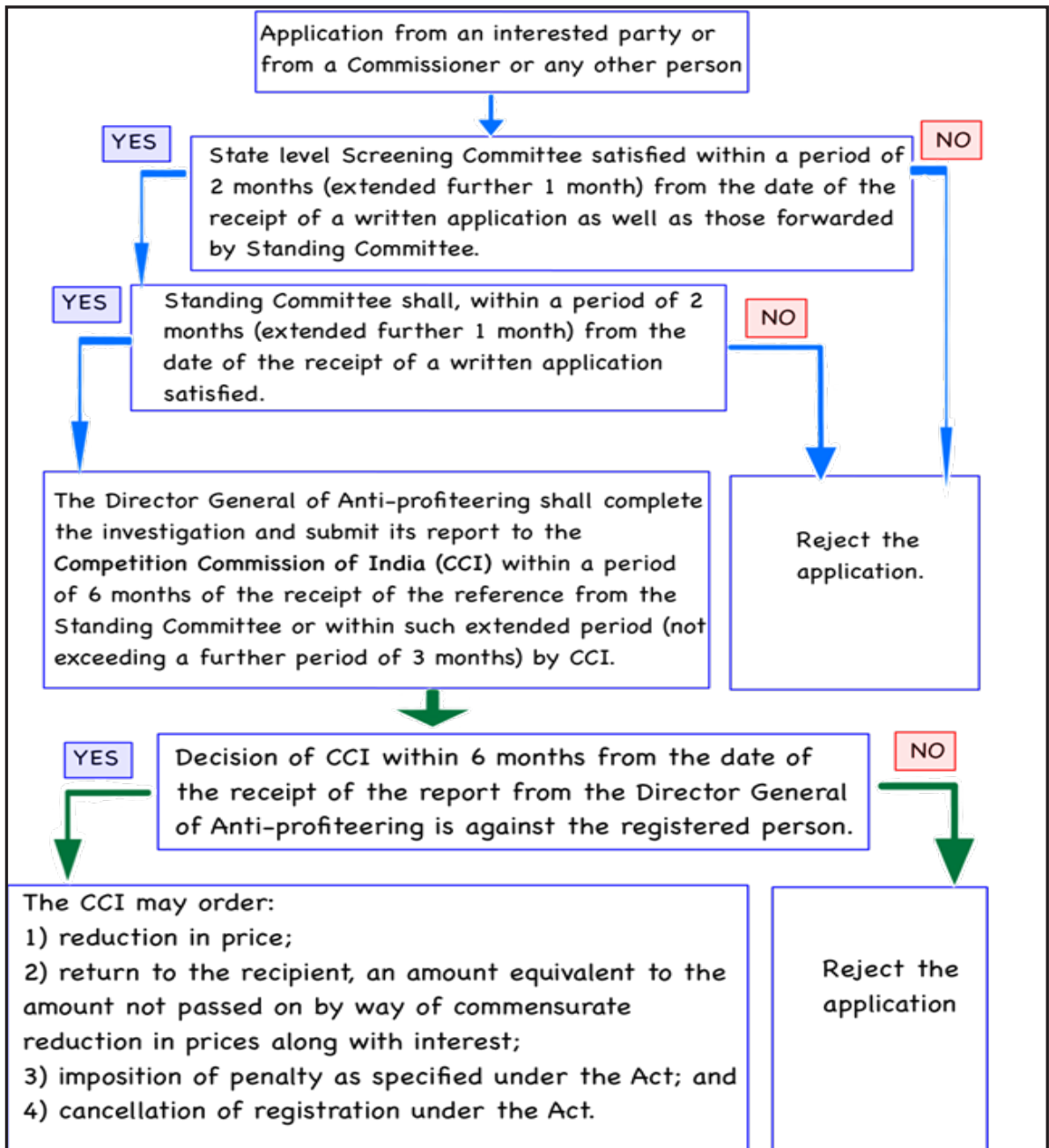
Further, rule 127 which provides for ‘Duties of the Authority’ has been amended to substitute the word ‘Duties’ with the word ‘Functions’.

Furthermore, in the Explanation provided after rule 137, the meaning of ‘Authority’ has been amended to mean the authority notified under sub-section (2) of section 171 of the Act.

The above amendments shall become effective from 01.12.2022 (Notification No. 24/2022-CT dt. 23.11.2022).

In rule 161, for the word, “order”, the words, “intimation or notice” shall be substituted (NT. No. 26/2022 CT dated 26.12.2022).

The procedure followed in decision making / investigation:



Amendments have been made in anti-profiteering provisions prescribed under rules 128, 129, 132, 133 & 137 of the CGST Rules as under: Notification No. 31/2019-CT, dated 28.06.2019

Rule 128 provides that on receipt of written application from an interested party or from a Commissioner or from any other person, the Standing Committee have to examine the accuracy and adequacy of the evidence provided in the application within a period of **2 months** from the date of the receipt of application and determine whether there is prima facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

The said period of 2 months can now be extended up to a further period of 1 month for reasons to be recorded in writing as may be allowed by the Authority.

Rule 128 has been amended to provide that all applications from interested parties on issue of local nature **as well as those forwarded by Standing Committee** shall first be examined by the State level Screening Committee and the Screening Committee shall, **within 2 months from the date of receipt of a written application (further extendable up to 1 month)**, 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.

Earlier, Screening Committee used to examine application on issues of local nature only and there was no time limit for forwarding the application to Standing Committee for further action.

Rule 129 provides that where Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit to the recipient, it shall refer the matter to the Director General of Anti-Profiteering [DGAP] for detailed investigation.

Earlier, DGAP had to complete the investigation within a period of **3 months** of the receipt of the reference from the Standing Committee. Now the said period of **3 months has been extended to 6 months**.

Therefore, now DGAP has to complete the investigation within a period of 6 months of the receipt of the reference from the Standing Committee which is further extendable up to 3 months.

In addition to DGAP and an officer authorized by him in this behalf, **the Authority has also been empowered to summon any person** whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 of the CGST Act and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 [Rule 132].

As per rule 133, the Authority had to determine as to whether the registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of ITC to the recipient by way of commensurate reduction in prices, within **3 months** from the date of receipt of investigation report from DGAP. The said period of **3 months has now been extended to 6 months**.

In terms of rule 133, the **Authority can now seek a clarification from DGAP on the Investigation report** submitted by it during the process of determining as to whether the benefit of reduction in rate of tax or benefit of ITC has been passed on to the recipient by way of commensurate reduction in prices.

### **The procedure followed in decision making/investigation (Notification No. 31/2019 CT dated 28.06.2019):**

As per rule 133, the Authority may, inter-alia, order to deposit an amount equivalent to 50% of the amount not passed on by way of commensurate reduction in prices, in the Consumer Welfare Fund of the Centre and remaining 50% in the Consumer Welfare Fund of the concerned State\* where the eligible person does not claim return of the amount or is not identifiable.

The rule has been amended to provide that the **said amount shall now be deposited along with interest @ 18% from the date of collection of the higher amount till the date of deposit of such amount**.

\*Here, the expression “concerned State” means the **State or Union Territory** in respect of which the Authority passes an order.

A new sub-rule (5) has been inserted in rule 133 to provide that where upon receipt of the report of the DGAP, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods and/or services other than those covered in the said report, it may, for reasons to be recorded in writing, within a period of six months, direct the DGAP to cause investigation or inquiry with regard to such other goods and/or services.

Such investigation or enquiry shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry

As per rule 137, the Authority ceases to exist after the expiry of 2 years from the date on which the Chairman enters upon his office unless the GST Council recommends otherwise. Rule 137 has been amended to increase the said period of 2 years to 4 years.

w.e.f. 12-7-2018 the Director General of safeguards replaced as the Director General of Anti-Profiteering.

#### **Note 1:**

The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine undue profiteering and before initiation of the investigation, issue a notice to the interested parties (and to such other persons as deemed fit for a fair enquiry into the matter) containing, inter alia, information on the following, namely:—

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and

- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

The evidence or information presented to the Director General of Safeguards by one interested party can be made available to the other interested parties, participating in the proceedings. The evidence provided will be kept confidential and the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

The Director General of Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, or an officer authorised by him will have the power to summon any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

The Director General of Safeguards will complete the investigation within a period of three months or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

#### **Note 2**

The Authority shall (after granting an opportunity of hearing to the interested parties if so requested) within a period of three months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority. Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order:

- (a) reduction in prices;
- (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest;
- (c) imposition of penalty as specified under the Act; and
- (d) cancellation of registration under the Act.

Any order passed by the Authority shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be. The Authority can direct any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

## Exercise

## A. Theoretical Questions

## ⊙ Multiple Choice Questions

1. Does the Adjudicating Authority include the Anti-profiteering authority?
  - (a) Yes
  - (b) No
  - (c) Sometimes
  - (d) upon the direction of the CBIC
2. What action should be taken by an assessee to satisfy with anti-profiteering provision?
  - (a) Reduce rate of tax on any supply of goods or services, if such assessee has got the benefit of such reduced rate
  - (b) Pass on the benefit of input tax credit, if such assessee has got such input tax credit
  - (c) Both (a) and (b)
  - (d) none of the above
3. Who constitutes National Anti-profiteering Authority u/s 171(2)?
  - (a) State Government
  - (b) Central Government
  - (c) Deputy Commissioner of Income Tax
  - (d) All of the above
4. The Authority shall consist of-
  - (a) 1 Chairman & 1 Technical member
  - (b) 1 Chairman & 2 Technical members
  - (c) 1 Chairman & 3 Technical members
  - (d) 1 Chairman & 4 Technical members
5. The chairman must be a person who holds or has held a post equivalent in rank to:
  - (a) A Central Tax Officer
  - (b) A Secretary to the Government of India
  - (c) A State Tax Officer
  - (d) An Income Tax Officer

6. Technical Member must be a person who is or has been for at least 1 year:
- (a) Commissioner of State tax
  - (b) Commissioner of Central tax
  - (c) (a) or (b)
  - (d) (a) and (b) both
7. It is the responsibility of the authority to examine whether—
- (a) ITC availed by a taxable person or the reduction in price on account of reduction in tax rate have resulted in commensurate reduction in price of goods/services;
  - (b) ITC availed by a taxable person or the reduction in price on account of reduction in tax rate has actually resulted in an increase in price of goods/services.
  - (c) Payment of tax on profit is made by the registered persons on time.
  - (d) (a) and (b) both
8. Who constitutes a Standing Committee?
- (a) Central Government
  - (b) State Government
  - (c) GST Council
  - (d) Any of the above
9. A person shall not be selected as the Chairman/Technical member, if he has attained the age of .....
- (a) 60 years
  - (b) 61 years
  - (c) 62 years
  - (d) 65 years
10. If the Show Cause Notice mentions the tax as ₹1,11,156.30 and penalty as ₹572.6, then what is the amount payable as per section 170 of the CGST Act?
- (a) ₹1,1800
  - (b)  $₹1,11,156.30 + 572.6 = 111728.9$
  - (c) ₹1,1700
  - (d) ₹1,11,729

11. What does the Anti-Profiteering Measure provision seek to do?
- (a) Anti-Profiteering measure seeks to pass on:
1. Reduction in rate of tax on any supply of goods or service
  2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.
- (b) Anti-Profiteering measure seeks to pass on:
1. Reduction in rate of tax on any supply of goods or service
  2. Profit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.
- (c) Anti-Profiteering measure seeks to pass on:
1. Benefit of Depreciation under section 32 of the Income Tax Act, 1961
  2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.
- (d) Anti-Profiteering measure not seeks to pass on:
1. Reduction in rate of tax on any supply of goods or service
  2. Benefit of input tax credit received by supplier to the recipient by way of commensurate reduction in prices of goods or services.
12. What action should be taken by an assessee to satisfy with anti-profiteering provision?
- (a) Reduce rate of tax on any supply of goods or service, if such assessee has got the benefit of such reduced rate
- (b) Pass on the benefit of input tax credit, if such assessee has got such input tax credit
- (c) Both (a) and (b)
- (d) none of the above

**Answer:**

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.
b	c	b	d	b	c	a	c	c	d	a	c