



## **Anti-Profiteering Provisions under GST: A move towards ensuring Consumer Welfare**

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### **ABSTRACT**

*One of the intended benefits of GST is to ensure reduced prices to consumers by eliminating tax cascading and ensuring availability of tax credit at various stages of production. However, this benefit may not be achieved if the suppliers do not pass on the benefits to the consumers and indulge in illegal profiteering. Therefore, the government has introduced anti-profiteering provisions in GST laws wherein suppliers of goods and services must pass on any reduction in the rate of tax or the benefit of input tax credit to consumers by way of commensurate reduction in prices. If this is not done, the consumer's interest is protected by the National Anti-profiteering Authority. While it is difficult to reach a definitive conclusion on what implies 'commensurate' in a complex production system with multiple stages, these provisions are likely to be a step forward in ensuring consumer welfare.*

**Keywords:** *Goods and services tax (GST); Anti-profiteering provisions; Consumer welfare; Tax credit.*

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### **1.0 Introduction**

It has been the experience of many countries that introduction of GST leads to marked increase in inflation, i.e. increase in prices across the board. This occurs in spite of the availability of the tax credit right from the production stage to the final consumption stage which should actually reduce the final prices. This happens because the suppliers do not pass on the benefits to the consumers and thereby indulge in illegal profiteering. Therefore, GST law requires that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should be passed on to the recipient by way of commensurate reduction in prices.

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## **2.0 Consumer Protection in India**

At the root of consumer protection is the recognition of an unequal relationship between consumers and producers. Protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services and establishing mechanisms to redress their grievances.

The consumer movement in India is as old as trade and commerce. In Kautilya's Arthashastra, there are references to the concept of consumer protection against exploitation by the trade and retailer with respect to quality, short weight, measurement and adulteration of goods.

Yet until the late 1970s, there was no systematic movement in the country for safeguarding the interest of consumers. However, now it is widely acknowledged that the level of consumer awareness and protection is a true indicator of development of the country and progressiveness of civil society.

The main reason for this is the rapidly increasing variety of goods and services which modern technology has made available. In addition, the growing size and complexity of production and distribution systems, the high level of sophistication in marketing and selling practices and in advertising and other forms of promotion, mass marketing methods and consumers' increased mobility resulting in reduction of personal interaction between buyers and sellers, have contributed to the increased need for consumer protection.

### **2.1 Consumer Protection Act, 1986**

This Act was enacted with the objective to provide better protection of the interests of the consumers. The Act provides for effective safeguards to consumers against various types of exploitations and unfair dealings, relying on mainly compensatory rather than punitive or preventive approach. The Act applies to all goods and services unless specifically exempted and covers private, public and co-operative sectors and provides for speedy and inexpensive adjudication. The consumer rights under the Act are the following:

- (i) Right to be protected against marketing of goods and services, which are hazardous to life and property.
- (ii) Right to be informed about quality, quantity, potency, purity, standard and price of goods and services, as the case may be, to protect consumer against unfair trade practices.
- (iii) Right to be assured of access to a variety of goods and services at competitive prices.
- (iv) Right to be heard and assured that consumer interest will receive due consideration

at appropriate fora.

(v) Right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers.

(vi) Right to consumer education.

### **2.3 Central Consumer Protection Council (CCPC)**

The objective of CCPC, established under the Consumer Protection Act, 1986, is to promote and protect consumer rights that include the right to be informed and the right to consumer education.

### **2.4 CGST Act, 2017 on Anti-profiteering**

Chapter XXI of CGST Act, 2017, deals with miscellaneous provisions. Anti-profiteering provision is an important item under these miscellaneous provisions.

As per Section 171 of the Act, 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.

Section 171 of the Act reads as follows, “(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.

(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.

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

## **3.0 Institutional Mechanism for Anti-profiteering**

### **3.1 State screening committee**

All applications (after confirming prima facie evidence of profiteering) from interested parties on issues of profiteering of local nature are first examined by the State-level Screening Committee constituted in each State by the State Governments consisting of an officer of the State Government, to be nominated by the Commissioner, and an officer of the Central Government, to be nominated by the Chief Commissioner.

The Screening Committee on being satisfied that the supplier has not passed on the reduction in rate of tax on any supply of goods or services or the benefit of input tax

credit on to the recipient by way of commensurate reduction in prices, will forward the application with its recommendations to the Standing Committee on Anti-profiteering, which consists of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.

### **3.2 Standing committee**

If the Standing Committee is satisfied that there is a prima facie evidence to show that the supplier has not passed on the benefit of 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, it shall refer the matter to the Director General of Safeguards, Central Board of Indirect Taxes and Customs (CBIC) for a detailed investigation.

It is noteworthy that if the profiteering has all-India character, the affected consumers may file an application in the prescribed format directly before the Standing Committee on Anti-profiteering, after confirming prima facie evidence of profiteering,

### **3.3 Director general of safeguards**

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:

- (i) Description of the goods or services in respect of which the proceedings have been initiated.
- (ii) Summary of the statement of facts on which the allegations are based.
- (iii) 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 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. He, 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 3 months or within such extended period not exceeding a further period of 3 months for reasons to be recorded in writing, as allowed by the Standing Committee and, upon completion of the investigation, furnish to the National Anti-profiteering Authority, a report of its findings along with the relevant records.

### **3.4 National anti-profiteering authority**

The Authority shall (after granting an opportunity of hearing to the interested parties if so requested) within a period of 3 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.

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.

National Anti-Profiteering Authority is a mechanism devised to ensure that prices remain under check and to ensure that businesses do not pocket all the gains from GST because profit is fine, but undue profiteering at the expense of the common man is not.

#### **3.4.1 Composition of the authority**

The Authority was constituted by the Central Government 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? This is to ensure that the consumer is protected from arbitrary

price increase in the name of GST.

The 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 CBEC 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 GST Council recommends otherwise.

If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.

#### **3.4.2 Powers to determine methodology and procedures**

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.

#### **3.4.3 Duties of the authority**

The Authority would have the following duties:

- a) 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.
- b) 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.
- c) 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 18 percent 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.<sup>1</sup>
  - Imposition of penalty.
  - Cancellation of registration.

To sum up, Government is committed to ensure all consumers enjoy the benefits

of lower prices of goods and services under GST. Under GST, suppliers of goods and services must pass on any reduction in the rate of tax or the benefit of input tax credit to consumers by way of commensurate reduction in prices. If this is not done, the consumer's interest is protected by the National Anti-profiteering Authority. Government has warned the industry time and again that it should pass on the benefit of lower taxes to consumers or face anti-profiteering action provided under the GST law.

The problem of *unjust profiteering* is akin to the problem of *unjust enrichment* under the erstwhile excise duty system.<sup>2</sup>

However, industry circles maintain that rules in this regard are vaguely worded, which makes them prone to misuse. In a complex production system where a variety of inputs go into manufacturing of a product, reaching a definitive conclusion on *commensurate* is difficult. The best way to check profiteering, and hence protect consumer welfare, is to ensure competition.

### Endnotes

1. Section 57 of the CGST Act, 2017, refers to the constitution of Consumer Welfare Fund.
2. The term *unjust enrichment* was used to describe a situation when a person undeservedly got enriched. In the context of refund of Union excise duty, the principle of unjust enrichment was the first and foremost principle which was kept in mind by the sanctioning authorities. If the manufacturer had charged excise duty to his buyer, it was clear that he had passed on the burden to the buyer and had already recovered duty from his customer. In such cases, refund of excess duty paid to the manufacturer would amount to excess and undeserved profit to him. It would not be equitable to refund the duty to him as he would get double benefit—first from the customer and again from the Excise Department. This is called unjust enrichment. Refund of duty should, ideally, be paid to the customer who had borne the burden of duty. Since it is practically not feasible to identify such customers on individual basis, the amount of refund was credited to Consumer Welfare Fund in accordance with section 12C of the Central Excise Act, 1944. The principle of unjust enrichment was held valid and constitutional by the Supreme Court in the famous case of Mafatlal Industries Ltd. (1997).