GSTAT

Single Bench Court No. Court IV

NAPA/36/PB/2025

DGAP, DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING **.....Appellant**

Versus

PRIMEBIZ HOSPITALITY LLP **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Sh. A. Venu Prasad, Member (Technical)

ORDER

1. The present proceedings arise from a reference made by the State Tax Officer, Pune- VAT- C- 0827, Pune (hereinafter referred to as "the Complainant") before the Maharashtra State Screening Committee on Anti- Profiteering under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules") alleging profiteering in respect of restaurant services supplied by M/s Primebiz Hospitality, LLP, Sacred World, South Block, 302, 3rd Floor, Wanawadi, Maharashtra- 411040 (Franchise of M/s Subway Systems India Pvt. Ltd.) (hereinafter referred to as "the Respondent") despite reduction in the rate pf GST from 18% to 5% w.e.f. 15.11.2017.

2. It was alleged that the Respondent increased the base prices of their products and did not pass on the benefit of reduction in the GST rate from 18% to 5% w.e.f. 15.11.2017, vide Notification No. 46/2017- Central Tax (Rate) dated 14.11.2017, by way of commensurate reduction in price, in terms of Section 171 of the Central

Goods and Services Tax Act, 2017 (hereinafter referred to as "the CGST Act, 2017").

3. The Standing Committee on Anti- Profiteering examined the reference on 10.01.2020 and it was decided to refer the matter to the Directorate General of Anti- Profiteering (hereinafter referred to as "the DGAP") to conduct a detailed investigation in respect of the application filed under Rule 129(1) of the CGST Rules, 2017.

4. The investigation was set into motion by the DGAP. A Notice dated 28.01.2020 was issued to the Respondent calling it to reply as to whether they admit that the benefit of reduction in GST rate w.e.f. 15.11.2017, has not been passed on to their recipients by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof.

5. Upon completion of the investigation the DGAP submitted its report under Rule 129(6) of the CGST Rules, 2017 dated 30.03.2021 before National Anti-Profiteering Agency (hereinafter referred to as "the NAA'), the erstwhile Authority.

6. The said report contained, inter alia, the following observations and conclusions:

6.1. The period covered by the investigation was 15.11.2017 to 31.12.2019. The DGAP examined whether the Respondent had passed on the benefit of reduction in the GST rate on restaurant services from 18% to 5% w.e.f. 15.11.2017 by way of commensurate reduction in prices.

6.2. On examination of the sales details and price lists submitted by the Respondent, the DGAP observed that the Respondent had increased the base prices of certain products after the reduction in the GST rate. Since the benefit of input tax credit on goods and services used for supplying restaurant services was no longer available w.e.f. 15.11.2017, the DGAP also considered the impact of such denial of input tax credit. On the basis of the ITC availed and the net taxable turnover during the period from July 2017 to October 2017, the ratio of ITC to net taxable turnover was worked out at 7.35%, as under:

Particulars	**Jul-17**	**Aug-17**	**Sep-17**	**Oct-17**	**Total**
ITC Availed as per GSTR-3B (A)	54,183	1,08,767	99,049	1,00,444	**3,62,443**
Total Outward Taxable Turnover as per GSTR-3B (B)	13,77,380	12,28,804	11,66,581	11,59,210	**49,31,976**
Ratio of ITC to Net Outward Taxable Turnover (A/B × 100)					**7.35%**

6.3. The DGAP then compared the pre-rate reduction and post-rate reduction prices of the products supplied by the Respondent. It was found that the base prices of 330 products had been increased after 15.11.2017. After allowing an increase of 7.35% on account of denial of input tax credit, it was found that the base prices of 204 products had been increased beyond the permissible extent. In respect of the

remaining products, no profiteering was found as there was either no increase in the base price, the increase was within 7.35%, or the products were newly launched after the rate reduction.

6.4. For quantification, the DGAP determined the average base price of each product during the pre-rate reduction period, primarily on the basis of sales during 01.11.2017 to 14.11.2017, and, where a product was not sold during that period, by considering the corresponding preceding-period sales data. The commensurate price was thereafter determined by allowing 7.35% towards denial of ITC and applying GST at 5%, and was compared with the actual selling price charged during the post-rate reduction period.

6.5. The DGAP illustrated the above methodology by taking the example of "Veggie Delite 30cm", as under:

Name of the item (A)	**Veggie delite 30cm**
Total quantity sold during 01.11.2017 to 14.11.2017 (B)	77
Sum of taxable value during 01.11.2017 to 14.11.2017 (C)	15953.15
Average base price during 01.11.2017 to 14.11.2017 (D= C/B)	207.18
Base price with denial of input tax credit @ 7.35% (E= D* 1.0735)	222.41
GST @ 5% (F= E*5%)	11.12
Commensurate price to be charged w.e.f. 15.11.2017 (G= E+F)	233.53
Total quantity sold during 15.11..2017 to 30.11.2017 (H)	59

Sum of taxable value during 15.11.2017 to 30.11.2017 (I)	15151.28
Average selling price during 15.11.2017 to 30.11.2017 (J= I/H)	256.80
GST @ 5% (K= J*5%)	12.84
Average selling price inclusive of GST during 15.11.2017 to 30.11.2017 (L= J+K)	269.64
Total profiteering (M= L-G)	36.11

6.6. On the basis of the above methodology and the product-wise sales data for the period 15.11.2017 to 31.12.2019, the DGAP determined the total profiteered amount at Rs. 53,52,627/- (Rupees Fifty-Three Lakh Fifty-Two Thousand Six Hundred Twenty-Seven only), inclusive of GST on the profiteered amount. The DGAP also observed that the restaurant services under investigation had been supplied by the Respondent only in the State of Maharashtra.

6.7. Accordingly, the DGAP concluded that the Respondent had contravened Section 171(1) of the CGST Act, 2017, as the benefit of reduction in the GST rate from 18% to 5% w.e.f. 15.11.2017 had not been passed on to the recipients by way of commensurate reduction in prices. The report was furnished under Rule 129(6) of the CGST Rules, 2017, determining the profiteered amount at Rs. 53,52,627/-.

7. The Principal Bench of the Goods and Services Tax Appellate Tribunal (hereinafter referred to as "GSTAT") constituted under sub-section (3) of Section

109 of the CGST Act, 2017, was empowered to examine anti-profiteering matters w.e.f. 01.10.2024, vide Notification No. 18/2024-Central Tax dated 24.02.2024.

8. A notice was issued to the Respondent calling upon it to file its written submissions against the DGAP Report

9. The Respondent vide submissions dated 26.07.2021, 16.06.2022, 03.09.2025 and 03.07.2026 contended the following:

9.1. The increase in prices after reduction of the GST rate from 18% to 5% w.e.f. 15.11.2017 was not made with a view to retain any benefit of GST, but was necessitated by increase in the cost of business. The Respondent submitted that its gross profit ratio remained substantially consistent and that the mere existence of profit could not establish profiteering.

9.2. The Respondent was operating a franchise of Subway Systems India Pvt. Ltd. and was required to procure a major portion of its raw materials through the franchisor/authorised vendors. The Respondent submitted that the franchisor had assessed the impact of denial of ITC and, vide email dated 13.11.2017, had directed the franchisees to increase the base prices by 13%, which was uniformly implemented across the outlets. It was contended that the Respondent had no discretion in this regard. The Respondent also sought impleadment of Subway Systems India Pvt. Ltd., stating that the franchisor was the entity which had mandated the price increase, possessed the relevant ITC-loss working and earned 12.5% royalty on gross sales.

9.3. The DGAP had incorrectly adopted 7.35% as the ITC-to-taxable-turnover ratio on the basis of only four months 'data, i.e. July 2017 to October 2017, and applied the same throughout the investigation period. The Respondent contended that expenses such as annual capital expenditure, audit fees, accounting fees and franchise fees could result in ITC being reflected at different points of time and that the actual impact of denial of ITC could not have been accurately determined on 14.11.2017. It submitted that its subsequent computation based on actual financial records showed the ITC loss at 8.22%.

9.4. The DGAP had adopted an average discounted transaction value instead of the prevailing menu price as the basis for determining profiteering. The Respondent submitted that discounts, coupons and promotional schemes were temporary and variable and that the menu price prevailing immediately before 15.11.2017 was the appropriate benchmark. It further contended that the DGAP had not considered subsequent increases in expenses and had kept the base price constant for the entire investigation period despite such increases.

9.5. The commercial factors referred to by the Respondent were not being relied upon as a justification for retaining the GST benefit, but were placed on record to explain the circumstances in which the prices were revised. The Respondent submitted that the principal dispute was regarding the correct quantification of the benefit and the methodology

adopted by the DGAP, and not the statutory requirement under Section 171.

9.6. The methodology adopted by the DGAP was not settled or uniformly applicable. In this regard, the Respondent relied upon the case of NP Foods, another Subway franchisee, wherein, according to the Respondent, the prevailing menu prices before and after the rate reduction were compared. It was contended that adopting a different methodology in the present case, despite the same franchisor, products and business model, was arbitrary and lacked an objective basis.

10. The DGAP vide clarifications dated 11.04.2022 and 18.06.2026 averred that:

10.1. The Respondent's contention that the increase in prices was made to recover losses incurred in earlier financial years was not acceptable, as the denial of ITC had already been taken into account by the DGAP while determining the profiteering. The Respondent was free to revise its prices on account of increase in costs and other business factors; however, it could not increase the base prices in such a manner that, even after reduction in the GST rate, the cum-tax price remained the same or increased. Further, the existence of profit or loss of the Respondent was not relevant for determining profiteering under Section 171, as the statutory obligation to pass on the benefit of tax reduction applied irrespective of the financial position of the supplier.

10.2. The Respondent's reliance on periodic price revisions by the franchisor and increase in raw-material and other business costs was also not acceptable. The scope of Section 171 was confined to examining whether the benefit arising from reduction in tax rate had been passed on to the recipients. During the entire investigation period from 15.11.2017 to 31.12.2019, the Respondent had neither established that the price increases were commensurate with the reduction in tax rate nor reduced the prices at any point of time to demonstrate that the benefit had been passed on.

11. The ratio of ITC to taxable turnover of 7.35% adopted by the DGAP was justified, as the GST law came into force w.e.f. 01.07.2017 and ITC was available to the Respondent only from that date until 14.11.2017. The period from 01.07.2017 to 31.10.2017 was considered a reasonable period for determining the ITC ratio. Since ITC and taxable turnover were inter-related, the ratio was not expected to change materially merely on account of selection of a longer period.

12. The other commercial factors relied upon by the Respondent, including marketing strategies and promotional schemes, were not relevant for determining the benefit arising from the GST rate reduction. The Respondent was free to reduce its prices to any extent and bear any resultant loss, but such loss could not be adjusted against the benefit legally required to be passed on to the recipients under Section 171. The DGAP further submitted that ITC on inward supplies and taxable outward turnover were correlated.

13. The Respondent's reliance on the franchisor's email directing an increase of approximately 13% on account of ITC loss was not supported by any underlying calculation or verifiable documentary evidence. A mere communication from the franchisor could not establish the actual ITC loss suffered by the Respondent. The DGAP also disputed the Respondent's revised ITC-loss figure of 8.22%, stating that the DGAP's figure of 7.35% was based on the Respondent's own GSTR-3B returns and actual ITC availed vis-a-vis taxable turnover during the relevant pre-rate-reduction period.

14. Hearings in the matter were held on 15.03.2021, 30.03.2021, 15.05.2025, 15.07.2025, 13.08.2025, 20.08.2025, 17.04.2026, 10.06.2026, 03.07.2026 22.07.2026 and 31.08.2026. Ms Nutan, learned AAD, appeared on behalf of the DGAP. Shri Sani Tatiya, Chartered Accountant, appeared on behalf of the Respondent.

Observations

15. We have carefully considered the Investigation Report, the submissions made by the Respondent, the clarifications furnished by the DGAP and the documents placed on record. The principal issue for consideration is whether the methodology adopted by the DGAP for determining the profiteered amount adequately takes into account the relevant facts and circumstances placed on record by the Respondent.

16. At the outset, it is relevant to refer to the observations of the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India, W.P.(C) No. 7743/2019*** and connected matters, decided on 29.01.2024. The Hon'ble Court observed as under:

116. Section 171 of the Act, 2017 does not violate Article 19(1)(g) of the Constitution of India, as it is not a price-fixing mechanism. As rightly pointed out by the learned counsel for the Respondents, Section 171 of the Act, 2017 only relates to the indirect-tax component of the price of goods and services and does not impinge upon the freedom of suppliers to fix their own prices keeping in view relevant commercial and economic factors. This Court is in agreement with the learned Amicus Curiae that Section 171 of the Act, 2017 is solely focused on ensuring that the consequential benefit of reduction of the rate of tax by the Government reaches the recipient.

117. The contention of the petitioners that the fundamental presumption under section 171 that every tax reduction must result in 'price reduction 'is not correct. The use of the expression 'shall 'in Section 171 of the Act, 2017 means that the supplier is required to pass on the benefit of the reduced tax rate and the benefit of Input Tax Credit, and that such passing on is to be carried out only by way of commensurate reduction of price of the goods or services. Accordingly, costing and market- related factors are irrelevant for NAA, as it is only required to examine whether or not there is any reduction in tax rate or benefit of accruing Input Tax Credits and if so whether the same has been passed on by way of commensurate reduction of prices. The NAA is not concerned with the price determined by a supplier, for the supply of particular goods or services, exclusive of the GST or Input Tax Credit component. The supplier is at liberty to set his base prices and vary them in accordance with the relevant commercial and economic factors or any applicable laws. Consequently, NAA is only

mandated to ensure that the benefit of reduced rates of taxes and Input Tax Credit is passed on. NAA cannot force the petitioners to sell their goods or services at reduced prices.

118. This Court is of the view that the manufacturer/supplier despite reduction on rate of tax or benefit of Input Tax Credits can raise the prices based on commercial factors, as long as the same is not a pretense. During the hearing, Mr. Zoheb Hossain, learned counsel, conceded (as recorded earlier) that in some cases, commercial factors might necessitate an increase in price despite reduction in rate of tax or increase in availability of benefit of Input Tax Credits.

119. This Court is in agreement with the submission of learned Amicus Curiae that if there is any variation on account of other factors, such as any costs necessitating the setting off of such reduction of price, the same needs to be justified by the supplier. The inherent presumption that these must necessarily be a reduction in prices of the goods and services is a rebuttable presumption. It is clarified that if the supplier is to assert reasons for offsetting the reduction, it must establish the same on cogent basis and must not use it merely as a device to circumvent the statutory obligation of reducing the prices in a commensurate manner contemplated under section 171 of the Act, 2017.

17. Thus, the aforesaid judgment makes it clear that while the benefit arising from reduction in the rate of tax is required to be passed on to the recipients, the supplier is not precluded from increasing its base prices on account of genuine commercial and economic factors. Where such factors are relied upon to explain the increase

in prices, the same are required to be examined on the basis of the evidence placed on record and the supplier is required to establish the same on a cogent basis.

18. In the present case, the Respondent has placed on record certain documents which, in our considered view, require examination in the context of the above principles. In particular, the Respondent has placed on record a communication from the franchisor, wherein, while discussing the revised GST rates and pricing strategy, it was stated that input tax credit varied by city and, on an average, an ITC impact of 11% had been considered. The communication thereafter recommended an increase in the current base price by 13%, inter alia, to account for the loss of input tax credit and other stated factors. The communication also directed implementation of the revised menu prices with effect from 15.11.2017. This material is relevant to the Respondent's contention that the increase in base prices was not independently conceived by it but was pursuant to the pricing strategy communicated by the franchisor.

19. The Respondent has also placed on record its rent statements showing a substantial increase in its rent during the investigation period. The monthly rent, which was Rs. 75,555/- during substantial portions of FY 2018-19, increased to Rs. 1,40,000/- per month from July 2019 onwards. The said increase falls within the investigation period and represents a material increase in one of the operating costs of the Respondent.

20. Another material aspect requiring examination relates to the pre-rate-reduction benchmark adopted by the DGAP. The DGAP has computed the average base price by taking the sales during the period from 01.11.2017 to 14.11.2017. The

Respondent, however, has contended that the declared menu price immediately preceding the rate reduction was Rs. 225/- and that the average figure adopted by the DGAP was affected by discounts, promotional schemes, coupon redemptions and other commercial circumstances. The Respondent has specifically contended that the period from 01.11.2017 to 14.11.2017 also included World Sandwich Day, on which the Respondent was offering one sandwich free with the purchase of one sandwich, which may have materially affected the sales pattern, discounts and transaction values during the period selected for determining the benchmark.

21. We further note that the Respondent has disputed the adoption of 7.35% as the ITC ratio and has placed on record a revised computation based on an ITC loss claimed by the Respondent at 8.22%. The Respondent has contended that complete statutory and financial records are available, including books of account, purchase registers, GSTR-3B returns, GSTR-2A data, invoice-wise details, actual turnover and actual ITC, and that the actual financial impact of withdrawal of ITC can therefore be determined with greater accuracy.

22. In view of the aforesaid, we are of the considered view that the documents and contentions placed on record by the Respondent require fresh examination by the DGAP. Accordingly, the matter is remanded to the DGAP for re-investigation and submission of a supplementary report, wherein the DGAP shall

    (i) verify the communication of the franchisor regarding the 13% price increase and its bearing on the price revision;

    (ii) examine the evidence regarding the substantial increase in rent and other relevant costs and their impact, if any, on the prices;

(iii) re-examine the pre-rate-reduction benchmark, including the effect of World Sandwich Day, discounts, promotional schemes and coupon redemptions during 01.11.2017 to 14.11.2017;

(iv) examine the Respondent's claim of 8.22% ITC loss on the basis of the supporting statutory and financial records; and

(v) thereafter re-determine the profiteered amount, if any, in accordance with Section 171 of the CGST Act, 2017, keeping in view the principles laid down by the Hon'ble Delhi High Court in ***Reckitt Benckiser India Pvt. Ltd. (supra)***.

23. The supplementary report shall be furnished on or before 06.10.2026, with an advance copy to the Respondent.

24. List the matter on **13.10.2026** for hearing.

25. Order passed in open court today.

(Sh. A. Venu Prasad)

Dated: 31.08.2026