GSTAT

Principal Bench at Delhi

Special Bench Court No. Court II

NAPA/46/PB/2025

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

Versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED (IRCTC) **.....Respondent**

Quorum

Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)
Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

Counsel for Appellant **Counsel for Respondent**

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA070011026000109H **Date of order :** 14/10/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - NAPA/46/PB/2025	Date - 16/06/2021
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Indian Railway Catering and Tourism Corporation Limited (IRCTC) , gmrailneer@irctc.com , 011-2331126364	

5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 14/10/2026 17/09/2026 19/08/2026 15/07/2026 13/05/2026 29/04/2026 10/04/2026 23/03/2026 13/03/2026 03/02/2026 06/01/2026 15/12/2025 09/12/2025 14/11/2025 09/10/2025 09/09/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The DGAP report dated 11.06.2021 is hereby accepted.	
	Summary of Order	
9.	Type of order : Deposit in Consumer Welfare Fund/s	

Judgment Reserved on 17.09.2026
Judgment pronounced on 14.10.2026
REPORTABLE

Per:- Justice Mayank Kumar Jain, Judicial Member
Shri Anil Kumar Gupta, Technical Member

JUDGMENT

FACUTAL MATRIX

1. The M/s. Indian Railway Catering Tourism Corporation Limited (for short as "**IRCTC")** (hereinafter referred to as **"the Respondent")** is a "Mini Ratna" (Category-1) Sector Enterprise under the Ministry of Railways, Government of India. The IRCTC is an extended arm of the Indian railways to upgrade, professionalize and manage the catering

and hospitality services at stations, on trains and other locations and to promote domestic and international tourism through the development of budget hotels, special tour packages, information & commercial publicity and global reservation systems. The authorised and paid-up capital of the company is fully subscribed by the Ministry of Railways. The core activities of the company are the catering and hospitality, Internet Ticketing, Travel & tourism and Packaged Drinking Water *"Rail Neer"*. One of the mandates given by the Ministry of railways to the IRCTC is to supply Packaged Drinking Water to the Railway passengers in stations & trains.

2. The present proceedings arise from an application filed by Shri Neeraj Kansal, the then Commissioner of CGST & Central Excise, Office of the Commissioner of CGST & Central Excise, Audit Thane, 9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai 400012 (hereinafter referred to as "**the Applicant**") under Rule 128 of the Central Goods and Services Tax Rules, 2017 (for short, "**the CGST Rules, 2017**) before the Standing Committee on Anti-Profiteering against the Respondent registered and having its corporate office at 11th floor, Statesman House, B-148, Barakhamba Road, New Delhi-110001. The applicant has alleged that the Respondent was indulged in profiteering in contravention of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 (for short "**the CGST Act, 2017**) insofar as it failed to pass on the benefit of reduction in rate from pre-GST to post-GST in respect of supply of "*Rail Neer*" packaged drinking water manufactured and sold by the Respondent despite

reduction in rate of tax on implementation of the CGST Act, 2017 w.e.f. 01.07.2017.

3. The applicant had alleged that prior to the implementation of the GST, i.e. up to June 2017, the IRCTC was discharging a total duty of 25% (12.50% Central Excise + 12.50% VAT), but on implementation of GST w.e.f. 01.07.2017, the rate of tax was fixed at 18% for their packaged drinking water *"Rail Neer"*. The MRP of *"Rail Neer"* was fixed at Rs. 15/- vide Railway Board Commercial Circular No. 72/2012 dated 22.11.2012, and the same was not reduced subsequent to reduction in duty rate and accordingly the "IRCTC" has not passed on the benefit of reduction in rate of tax to the consumers by way of commensurate reduction in MRPs of the product manufactured and sold by them as stipulated in Section 171 of the CGST, Act,2017.

Investigation & Conclusion

4. The complaint was examined by the Standing Committee on Anti-Profiteering. Upon being *prima-facie* satisfied that the Respondent had not passed on the benefit of reduction in rate of tax, in respect of supply of *"Rail Neer"* packaged drinking water manufactured and sold by the Respondent, as mandated under Section 171 of the CGST Act, 2017, the Standing Committee referred the matter to the Directorate General Anti-Profiteering (hereinafter referred to as "**the DGAP**") under Rule 129 (1) of the CGST Rules, 2017 for detailed investigation.

5. The investigation was set into motion by the DGAP. The DGAP issued notice to the Respondent calling upon it to show cause as to whether the benefit of reduction in rate from pre-GST to post-GST in respect of

the supply of *"Rail Neer"* had been passed on to the recipient by way of commensurate reduction in prices and further directed the Respondent to *suo-moto* compute the quantum of such benefit, if any.

6. The Respondent submitted its detailed reply along with supporting documents and annexures, denying with the allegation of profiteering.

7. Upon completion of the investigation, the DGAP submitted its report dated 11.06.2021 under Rule 129(6) of the CGST Rules, 2017 before the National Anti-Profiteering Authority (hereinafter referred to as "the NAA"), the erstwhile authority.

8. The DGAP observed that the Central Government levied 18% GST on the HSN 2201 *"Water, including natural or artificial mineral waters and aerated water, not containing added sugar or other sweetening matter nor flavoured"*, vide Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

9. In its report, the DGAP has concluded that the Respondent had profiteered to the extent of an amount of Rs. 50,41,44,461/- during the period 01.07.2017 to 31.05.2020 by not passing on the benefit of commensurate reduction in rate from pre-GST to post-GST in respect of supply of *"Rail Neer"* packaged drinking water manufactured and sold by the Respondent despite reduction in rate from pre-GST to post-GST after implementation of CGST Act, 2017 w.e.f. 01.07.2017.

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

    (i) The IRCTC has informed that the MRP of *"Rail Neer"* packaged drinking water is decided by the Ministry of

Railways. The present MRP of *"Rail Neer"* packaged drinking water was fixed by the Railway Board. The IRCTC provides packaged drinking water *"Rail Neer"* to service providers at wholesale price who, in turn, sell packaged drinking water to the passengers at the price regulated by the Ministry of Railways. The MRP of Rail Neer was fixed at Rs. 15/- vide Railway Board Commercial Circular No. 72/2012 dated 22.11.2012, which was continued on introduction of GST and is prevailing as on date.

(ii) The IRCTC was simply required to maintain the base price (excluding pre-GST taxes i.e. VAT/CST and Central Excise) and charge the revised rates of taxes i.e. 18% GST. The Respondents have fixed the transfer price/selling price (inclusive of taxes of *"Rail Neer"* (1.0 litre) as per the Table-A given below: -

S. No.	**Distance from Rail Neer Plant**	**Rate per bottle**	**Rate per Carton (12 no. of bottles)**
1.	0-75 m	Rs. 10/-	Rs. 120/-
2.	Above 75 km	Rs. 10.50/-	Rs. 126/-
3.	Ex. Rail Neer Plant	Rs. 09.33/-	Rs.112/-

(iii) There were three channels of selling prices for the sale of *"Rail Neer"*. After examination of the invoice-wise sales register, it was found that the Respondent has sold the *"Rail Neer"* in above three prices only. Therefore, the profiteering was computed for the period 01.04.2017 to 30.06.2017 based upon the average base price, considering the above three categories of prices.

(iv) In the states where surcharge was applicable, the overall incidence of rate of tax (Excise Duty + VAT + surcharge) in the pre-GST era, was reduced to 18% at the time of introduction of the CGST Act, 2017.

(v) On the basis of Pre-GST and Post-GST rates, after examining the details of outward taxable supplies of the *"Rail Neer"*, the profiteered amount is computed to Rs. 50,41,44,461/-. This calculation is based upon the comparison of the average base price of the *"Rail Neer"* during the period 01.04.2017 to 30.06.2017, and it was compared with the same during the post-GST period with the actual invoice of goods sold during the period 01.07.2017 to 31.05.2020. The calculation is made in following manner:

S.No.	Description	Factors	Pre-GST (01.04.2017 to 30.06.2017)	Post-GST (01.07.2017 onwards)
1.	Product Description	A	Rail Neer 1.0 Lt.	
2.	Selling Category	B	Category-1 (0-75 Km)	
3.	MRP per Carton of 12 Bottles	C=15*12	180	180
4.	Total quantity of item sold	D		
5.	Total taxable value for VAT/CST (after Discount)	E	18,21,223	19,23,43,123/-
6.	Average taxable price (including Excise Duty)	F=(E/D)	105.62/-	
7.	Excise Duty Rate (%)	G	12.5% on MRP (45% abatement)	
8.	Excise Duty per Unit (in Rs.)	H= C *12.5%55%	12.38/-	
9.	Average base price (excluding Excise Duty)	I=F-H	93.24/-	

10.	Rate of GST	J		18%
11.	Commensurate Selling price (including GST)	K=I*(1+J)		110.01/-
12.	Invoice No. & date	L		10668 dated 15.04.2018 (Maharashtra)
13.	Total quantity (as per invoice indicated in 'L') (in cartoons)	M		70
14.	Total Invoice Value (including GST)	N		8,400/-
15.	Actual Selling price (including GST)	O=N/M		120/-
16.	Excess amount charged or Profiteering	P=O-K		9.99/-
17.	Total Profiteering	Q= M*P		

(vi) The excess amount collected, including the tax component thereon, is included in the aforesaid profiteered amount. The profiteered amount of Rs. 50,41,44,461/- is calculated based on place (state-wise) of supply of *"Rail Neer"* as per the table given below;

S. No.	State/UT	State Code	Grand Total (Rs.)
1	Andhra Pradesh	37	1,83,02,944
2	Assam	10	12,45,657
3	Bihar	18	2,38,07,317
4	Chandigarh	4	1,47,388
5	Chhattisgarh	22	2,58,76,376
6	Delhi	7	5,79,15,625
7	Gujarat	24	1,94,74,135
8	Haryana	6	27,91,578
9	Jammu & Kashmir	1	3,93,243
10	Jharkhand	20	17,85,582
11	Karnataka	29	3,25,82,760

12	Kerala	32	3,34,84,442
13	Madhya Pradesh	23	1,12,73,156
14	Maharashtra	27	10,46,34,791
15	Orissa	21	1,51,120
16	Punjab	3	30,36,893
17	Rajasthan	8	74,18,128
18	Tamilnadu	33	5,65,05,078
19	Telangana	36	27,84,944
20	Uttar Pradesh	9	7,48,23,738
21	Uttrakhand	5	6,00,329
22	West Bengal	19	2,51,09,238
Grand Total			**50,41,44,461**

11. The Respondent submitted their written submissions that:

I. The IRCTC is a public sector undertaking that does not directly do retail sales. It supplies the product to the Railways or its licensees/sub-licensees. The Railway makes the final retail sale to the consumer through its licensees/sub-licensees/Contractors. The MRP at which the sale of *"Rail Neer"* is to be made is fixed by the Ministry of Railways, Government of India, by way of Notification/circulars. IRCTC is under the administrative control of the Ministry of Railways, Government of India.

II. A decision was taken by the Central Government to supply hygienic and purified drinking water to railway passengers at subsidised rates. This function was assigned to the respondent to build *"Rail Neer plants''*. The respondent started operating 5 plants for manufacturing and bottling of "Rail Neer" at Nangloi, Danapur, Palur, Ambernath and Bilaspur respectively.

III. In the year 2020, nine other plants at Amethi, Parasala, Nagpur, Alampur, Sanand, Mandideep, Jagi Road, Sankrail and Jabalpur were commissioned, which are operated by third parties under Public, Private and Partnership (hereinafter referred to as "***PPP***" model).

IV. According to the MOU dated 17.01.2007, entered into between the Respondent and the Ministry of Railways for *"Rail Neer"*, 15% of the profits is being shared with the Ministry of Railways. Thus, the Government of India is a partner and beneficiary in the supply of "Rail Neer."

V. The Respondent is not involved in the retail sale of *"Rail Neer"*. The supply by the Respondent is made in the following manner:

(a) Where Rail Neer is supplied on a complimentary basis to the passengers in Rajdhani trains, Shatabdi trains, Duranto and other premium trains, the Respondent supplies *"Rail Neer"* to the concerned Contractors/Licensees/Sub-licensees for providing profit on-board catering services. Where there is no separate contractors/licensees/Sub licensees, the Respondent itself provides services for the trains departmentally.

(b) For other trains, the respondent supplies the "Rail Neer'' to the relevant licensees at "Transfer Prices''. Similarly, there are several stalls, shops, refreshment rooms, fast food units, etc. on Railway stations across India to sell *"Rail Neer"*. The said transfer price is the basic price including taxes. Such licensees sell the *"Rail Neer"* to the passengers at the MRP, determined by the Ministry of

Railways. This position applies to all transactions irrespective of whether the *"Rail Neer"* is made by the respondent plants or by the "PPP" plants.

(c) In the event of a product made by a "PPP" plant, the Respondent purchases the *"Rail Neer"* under invoice for onward supply. The "PPP", on the basis of the tender process, builds, operates and maintains the plant and supplies *"Rail Neer"* to the Respondent, at the price indicated in the tender process. The supply made by the third-party "PPP" is determined by them on the basis of a bid which is accepted by the Respondent. The Respondent does not have any role in the fixation of the price at which the "PPP" plant quotes/supplies *"Rail Neer''* to the Respondent.

(d) In 2003, the MRP of *"Rail Neer"* was fixed at Rs. 10/- per 1L bottle vide Circular No. 15 of 2003. In 2008, it was revised to Rs. 12 per 1L bottle vide Circular No. 49 of 2008. Thereafter, vide Circular No. 72/2012, the MRP of the "Rail Neer" was revised to Rs. 15 per 1L by the Central Government. Lastly, vide Circular No. 18 of 2025 dated 20.09.2025, the MRP of the *"Rail Neer"* was revised from Rs. 15/- to Rs. 14/- per 1 L, which is still prevailing.

(e) Till 2008, the "Transfer Price'' at which the Respondent was to supply *"Rail Neer"* to Railways or its licensees was fixed by the Central Government itself. From 2008, vide Circular No. 49 of 2008, the Central Government

empowered the IRCTC to determine its own "Transfer Price''. Such empowerment was carried forward in the year 2012 and as and when the MRP of *"Rail Neer"* was revised by the Ministry of Railways.

(f) The provision under Section 171 of the CGST Act, 2017 is only applicable in respect of changes in tax rate after implementation of the CGST Act, 2017. The exercise of essential Governmental functions or Sovereign functions was not intended to be regulated by Section 171 of the CGST Act, 2017, and the supply made by the Respondent falls under this category.

(g) The MRP of *"Rail Neer''* is determined by the Ministry of Railways and not by the Respondent. The Respondent was only empowered to fix the "transfer price'' for supply of *"Rail Neer"* to the Railways. A revision in the transfer price merely affects the revenue split between the IRCTC and the Railways and has zero impact on the MRP.

(h) The products or services being offered on a complimentary basis or at subsidised prices cannot be subject to anti-profiteering investigation. The *"Rail Neer"* is being supplied by Respondent at the mandate/instruction of the Central Government. Further, in the financial year 2018-19, the Ministry of Railways holds more than a 50% majority stake. The Respondent is bound by a profit sharing regime with the Ministry of Railways. The MRP of *"Rail Neer"* during the relevant period of investigation remained 25% less than the market

rate of other packaged drinking water such as Bisleri, Kinley and Aquafina.

(i) The approximate 6-7% tax impact in the post-GST period is less than the subsidisation of *''Rail Neer''* water. Since the product is being sold with a subsidy of 25% therefore, there is no question of alleged profiteering of a 6-7% tax rate difference.

(j) The provisions of Section 171 of the CGST Act, 2017 cannot be invoked in the present matter, as the Respondent has merely adjusted its base price to account for the change in the tax regime and has not profiteered. The question of Anti-profiteering does not arise since the Respondent has changed its base price to the Indian Railways pre-GST and post-GST, merely to account for the increase in costs.

(k) Anti-profiteering investigation cannot go beyond F.Y. 2017-18, the calculation of the alleged Anti-profiteering amount is incorrect.

(l) 7 out of 14 plants at Hapur, Sankaril, Jagiroad, Sanand, Mandideep, Nagpur and Maneri started operations in the post-GST regime. As this fact was admitted by the DGAP; therefore, the computation of the profiteered amount computed by the DGAP is erroneous and baseless.

12. The DGAP submitted its clarification against the written submissions made by the Respondent:

(i) Insofar as the supply of *"Rail Neer"* on a complimentary basis is concerned, the price of *"Rail Neer"* is included in the fare collected from the passengers of Rajdhani, Shatabdi, Duranto and other premium trains. Therefore, the supply of *"Rail Neer"* on a complimentary basis forms part of the profiteering calculations.

(ii) The provisions under Section 171 of the CGST Act, 2017 are applicable. The Respondent is required to comply with the aforesaid provisions. This provision imposes a legal requirement on the registered suppliers to pass-on benefit of reduction in rate of tax on any supply of goods and services or the benefit of Input Tax Credit (for short "**the ITC**") to the recipient by way of commensurate reduction in prices. There is no distinction between Private and Government organisations, or between Public Services and Commercial Services. The statute does not intend otherwise about subsidised supply.

(iii) The Respondent did not reduce the base price commensurately after 01.07.2017. The Respondent was required to reduce the transfer price commensurate with the reduction in the rate of tax and should have passed on the benefit to the recipients but, it has collected more than what was due.

(iv) The claim of the Respondent that 7 out of 14 plants have started operations in post-GST period, therefore, the quantum attributed to these plants must be excluded from the computation of profiteering is incorrect and cannot be accepted though these 7 plants operated in post-GST period, but the

Respondent had adopted the same price for the goods supplied from all plants.

Jurisdictional Changes

13. Tenure of the NAA ended on 30.11.2022. Thereafter, the Competition Commission of India (hereinafter referred as to "**the CCI**") was empowered to examine matters related to Anti-profiteering with effect from 01.12.2022 vide Notification No. 23/2022 - Central Tax dated 23.11.2022.

14. The Principal Bench of the GST Appellate Tribunal (for short **"the GSTAT"**), constituted under sub-section (3) of section 109 of the CGST Act, 2017, has been empowered to examine Anti-Profiteering cases w.e.f. 01.10.2024, vide Notification No. 18/2024-Central Tax dated 30.09.2024. Consequent upon the constitution of the GSTAT.

Proceedings before GSTAT

15. We have heard Sri Ajay Kumar Tehlan, Additional Assistant Director, Authorised Representative for the DGAP, Sri Adarsh Ramanujan, Learned Counsel, assisted by Sri Parth Singh, learned Advocate for the respondent.

16. During hearing the Learned Counsel for the Respondent through oral submissions reiterated the detailed written submissions already made in writing. He vehemently argued that the computation of the alleged profiteered amount was erroneous, as the same was principally founded upon the determination of the average base price of the product during the pre-GST period, whereas the notice served upon the Respondent had alleged that the Respondent did not reduce the Maximum Retail

Price (For short, the **"MRP"**) commensurately consequent upon the reduction of the rate of tax under GST. Thus, the Respondent had not been afforded an effective and meaningful opportunity to meet or rebut the allegation made in the notice.

17. The Learned Counsel for the Respondent sums-up his arguments with the words that in the present case the supplier is a public sector unit, the product *"Rail Neer"* is supplied pursuant to a Cabinet decision in discharge of the constitutional obligation under Article 21 of the Constitution, the MRP is fixed by the Ministry of Railways at a subsidised rate 25% below market price, the IRCTC has no pricing discretion over the MRP.

Discussion And Observations

18. Section 171 CGST Act, 2017 provides thus;

"Section 171 Anti-profiteering measure-

a. *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.*

b. *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.*

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

(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 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".

19. Before entering into the merits of the contentions, it is apposite to notice the object and purpose of Section 171 of the CGST Act, 2017. The Hon'ble High Court of Delhi in ***Reckitt Benckiser India (P.) Ltd. v. Union of India*, 2024 (82) G.S.T.L. 344 (Del.)**, while upholding the constitutional validity of Section 171, observed as under:

"96. An area of concern identified in the said reports was that though with the doing away of multiplicity and cascading of taxes, the prices of goods and services would come down, yet would this benefit, if any, be passed on to the consumer by the manufacturers and sellers. To ensure that the benefit is passed on, an anti-profiteering provision in the form of Section 171 of the Act, 2017, was introduced.

97. Section 171 of the Act, 2017 mandates that the suppliers shall pass on the benefit of reduction of the rate of Goods and Services Tax or Input Tax Credits by way of commensurate reduction in prices to the recipient. Section 171 deals with amounts that the Central and State Governments have foregone from the public exchequer in

favour of the consumers. This Court is of the view that the amounts foregone from the public exchequer in favour of the consumers cannot be appropriated by the manufacturers, traders, distributors etc. To allow them to do so would amount to unjust enrichment. Consequently, when the Goods and Services Tax rate gets reduced or the benefit of input tax credit, becomes available as a necessary consequence the final price paid by the recipient obviously requires to be reduced. In the absence of such anti-profiteering provisions, there would be no legal obligation to pass on the benefit of the Goods and Services Tax regime and, consequently, the intended objective of reducing overall tax rates and mitigating the cascading effect would not be achieved.

98…… XXX

99. ……XXX

100. Accordingly, Section 171 of the Act, 2017 has been enacted, in public interest, with the consumer welfare objective of ensuring that suppliers pass on the benefit of Input Tax Credits and reduction of rate of Goods and Services Tax to the consumers. The Section does this by firstly creating a substantive obligation under sub-section (1) requiring manufacturers / suppliers to pass on benefits of Input Tax Credits and/or reduction in rate of tax by way of commensurate reduction in prices to the recipients. The said Section further enables the establishment of an Authority to determine whether Suppliers have passed on

the benefits of Input Tax Credits and reduction of the tax rates, and to exercise such other powers and functions as may be prescribed.

101…….. XXX

102. To summarise, Section 171 of the Act, 2017 mandates that whatever is saved in tax must be reduced in price. Section 171 of the Act, 2017 incorporates the principle of unjust enrichment. Accordingly, it has a flavor of consumer welfare regulatory measure, as it seeks to achieve the primary objective behind the Goods and Services Tax regime i.e. to overcome the cascading effect of indirect taxes and to reduce the tax burden on the final consumer. Consequently, the judgments of Ahmedabad Urban Development Authority (supra), Indian Carbon Limited (supra), V.V.S. Sugars (supra) and Shree Bhagwati Steel Rolling Mills v. CCE (supra), relied on by the Petitioners, are not applicable as they deal with the validity of delegated authority imposing tax/fee or charging interest on delayed payment of tax in the absence of empowering provision in the statute.

103…….. XXX

104…….. XXX

105…….. XXX

106. Keeping in view the aforesaid, this Court is of the view that the anti-profiteering mechanism as incorporated in Section 171 of the Act, 2017 is in the exercise of the Parliament's power to legislate on ancillary and necessary

aspects/matters of Goods and Services Tax apart from being a social welfare measure as it amplifies and extends the earlier concept of barring persons to undertake exercise of collecting monies from the consumers by false representation."

(Emphasis added)

20. The Hon'ble High Court for the State of Telangana at Hyderabad *in* ***Sudarshan Theatre v. Union of India (2024) 20 Centax 303 (Telangana)*** observed about the spirit of the legislation behind the provision for Anti-Profiteering as provided under Section 171 of the CGST Act, 2017. It reads thus*:*

*" **17.** A plain reading of the said provision of law clearly indicates that the said provision has been introduced to ensure that the supplier of goods and services should not make profit from the reduction of the tax rate under the G.S.T. law. Rather the intention of the Government is that the moment the rate of tax under the G.S.T. is reduced, the benefit should immediately be passed on to the end-user by way of reduction in the prices commensurate with the reduction in the rate of tax. This, in other words, would mean that, the moment there is a cut in the rate of G.S.T., the price of the commodity or the services rendered has to be reduced automatically to the extent of the reduction in the rate of tax. If the supplier continues to sell the product at the same price particularly when the prices are inclusive of G.S.T., the respondent-Department or the beneficiary is not being benefitted by the Government's decision in*

lowering the rate of tax. A reading of Sections 171 & 172 of the G.S.T. Act does not show any exception carved out in the event non-reduction in the price of the tickets, nor is the authority empowered to relax the conditions so enumerated under Section 171 (1). This, in other words, also mean that the provision of Sections 171 (1) has to be strictly adhered to."

(Emphasis added)

21. Primarily, the Learned Counsel for the Respondent argued that the computation of the alleged profiteered amount against the Respondent was erroneous, as the same was founded upon the determination of the average base price of product during the pre-GST period, whereas in the notice served upon the Respondent it is alleged that the Respondent did not reduce the MRP commensurately consequent upon the reduction of the rate of tax under GST. Resultantly, the Respondent had not been afforded an opportunity to meet or rebut the allegation contained in the notice.

22. Per contra, the Learned Representative of the DGAP submitted that the notice dated 26.06.2020 was issued to the Respondent on the basis of the complaint made by the Applicant. The allegations made by the complainant were incorporated in the notice. The said complaint was examined by the Standing Committee on Anti-Profiteering and, upon being prima facie satisfied, the same was forwarded to the DGAP to conduct a detailed investigation after collecting the evidence.

23. To appreciate the aforesaid contentions, we feel that it would be proper to reproduce the notice dated 26.06.2020 issued by the DGAP to the Respondent:-

> ***"NOTICE FOR INITIATION OF INVESTIGATION UNDER RULE 129 OF THE CENTRAL GOODS AND SERVICES TAX RULES, 2017***
>
> ***Sub: Notice for seeking information/documents relating to application for contravention of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017****.*
>
> *1. A reference has been received from the Standing Committee on Anti-profiteering on 03.06.2020, to conduct a detailed investigation in respect of an application filed by Shri Neeraj Kansal, Commissioner of CGST & C.Ex., office of the Commissioner of CGST & C.Ex. Audit Thane, 9th floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai - 400 012* ***(hereinafter referred to as "the Applicant")*** *under Rule 128 of the Central Goods and Services Tax Rules, 2017, alleging profiteering in respect of products supplied by M/s Indian Railway Catering and Tourism Corporation (IRCTC), GIP Dam, Near Additional MIDC, Post-Anand Nagar, Ambarnath, Distt.- Thane (M.H.)- 421 506* ***(hereinafter referred to as "the Noticee")****.*
>
> *2. The Applicant has submitted that during the course of audit conducted at Noticee's premise, it was noticed that Noticee had not passed on the benefit of reduction in rate of*

tax on supply of "Railneer" brand mineral water to the customers by way of commensurate reduction in prices as required under Section 171 of the Central Goods and Services Tax Act, 2017.

3. Applicant further submitted that prior to implementation of GST i.e. upto June, 2017, Noticee were discharging total duty of 25% (12.5% Central Excise + 12.50% VAT) in the state of Maharashtra) but on implementation of GST w.e.f. 01.07.2017, the GST was fixed at 18% for their packaged drinking water "Railneer". The MRP of "Railneer" was fixed at Rs. 15/- vide Railway Board Commercial Circular No. 72/2012 dated 22.11.2012 and the same was not reduced subsequent to reduction in duty rate. Accordingly, it has been decided to initiate an investigation and collect evidence necessary to determine whether the commensurate benefit of input tax credit has been passed on by the Noticee to the Applicant in respect of the construction service supplied by the Noticee.

4. The Noticee are hereby directed to furnish their reply to this Notice on or before 17.07.2020 stating whether they admit that the benefit of reduction in rate of tax has not been passed on to their customers by way of commensurate reduction in prices. The Noticee may also suo moto determine the quantum of benefit not passed on, if any and indicate the same in their reply to this Notice.

5 to 12……"

24. The perusal of the aforesaid notice indicates that the Respondent was informed about the reference received from the Standing Committee on Anti-Profiteering. The allegations made in the application by the Applicant were elaborately mentioned in the said notice. In paragraph 3 of the notice, the words "accordingly it has been decided to initiate an investigation and collect evidence……supplied by the Noticee" (Respondent) means that the DGAP shall conduct an investigation in the matter. Based on the Principle of Natural Justice under Rule 129 of CGST Rules, 2017 an opportunity of hearing and participation in the investigation was afforded to the Respondent.

25. The perusal of the said notice also reflects that the DGAP did not serve it with the allegations that MRP was not reduced by the Respondent. In its report dated 11.06.20, the DGAP considered this fact that the MRP of *"Rail Neer"* is fixed by the Railway Board. Therefore, the contentions of the Learned Counsel for the Respondent cannot be accepted that the notice dated 26.06.2020 was served to the Respondent with the allegations that he did not reduce the MRP of *"Rail Neer"*.

26. Further, the perusal of the DGAP report dated 11.06.2020 also reveals that during investigation the Respondent has submitted that "the MRP" of Rs. 15/- per bottle was determined by the Railway Board vide Commercial Circular No. 72 of 2012 dated 22.11.2012, which is prevailing as on date. The DGAP, on the basis of the following instructions noted in the said Circular, made computation on the base price of the product. The instruction reads as under: -

"IRCTC will fix the transfer price of "Rail Neer" for supply to departmental/licensee operated units".

27. On the basis of such reference, as mentioned hereinabove, the DGAP conducted the investigation on the basis of the transfer price of packaged drinking water *"Rail Neer"* for its supply to licensees/ sub-licensees railway operated units. Suffice to say that the entire exercise of computation of profiteering amount is taken up by the DGAP is based upon the transfer price/base price of the product. It shall not be out of place to mention here that the respondent has admitted during investigation that "Transfer Price" is the "*Base Price plus Taxes*". The Respondent produced relevant documents such as invoice-wise details of outward taxable supplies/sales register from the period 01.04.2017 to 31.05.2020, sample copies of invoices issued during the period, copies of GSTR-1, GSTR-3B, GSTR-9, GSTR-9C, copies of VAT and Central Excise returns for the period April, 2016 to June, 2017 before the DGAP during the investigation. The DGAP, after examining these documents, computed the profiteered amount against the Respondent based upon transfer/selling price. We find that the DGAP, in its report dated 11.06.2020, did not mention that the entire investigation and computation of the profiteered amount is based on the MRP of the product. The DGAP did not base its computation on the MRP but it based it on the transfer price.

28. On the basis of the foregoing discussions, we are of the considered opinion that the arguments advanced by the Learned Counsel for the Respondent that the notice dated 26.06.2020 was served to the Respondent with the allegation that it stood failed to reduce MRP and the Respondent was not afforded meaningfully and an effective

opportunity to meet or rebut the allegation made in the notice are not sustainable.

29. The Learned Counsel for the Respondent vehemently argued that the IRCTC is not involved in the retail sale of *"Rail Neer"*. It supplies the product to the Railways of its licensees/sub-licensees/contractors. The retail sale is finally made to the consumers by the Railways through its licensee/sub-licensee /contractors. The MRP is determined by the Ministry of Railways, Government of India, by way of Notification/circular. The MRP is revised by the competent Authority from time to time. Therefore, the Respondent could not reduce the price of the product in the event of reduction in rate from pre-GST to post-GST.

30. We have already referred to the stipulation incorporated in Circular No. 49 of 2008 issued by the Railway Board. For the cost of repetition, the said stipulation is again reproduced here:-

> ***"IRCTC will fix the transfer price of "Rail Neer" for supply to departmental/licensee operated units"***.

31. A perusal of the aforesaid stipulation makes it clear that the competent authority granted IRCTC the discretion to fix the transfer price for supplies made to departmental and licensee-operated units. In exercising this discretion, IRCTC was required to reduce the transfer price, not the MRP, of the product on the reduction in the tax rate from the pre-GST regime to the post-GST regime.

32. The transfer price comprises the basic price and applicable taxes. This position applies to all transactions, irrespective of whether *"Rail Neer"* is manufactured at the Respondent's own plants or at plants operated

under the PPP model. In our view, this constitutes an admission by the Respondent that the transfer price comprises the basic price and applicable taxes and that *"Rail Neer"* was supplied to licensees and contractors at such transfer price.

33. During the hearing, Learned Counsel for the Respondent submitted some copies of sample invoices. A perusal of these invoices indicates that they were issued by the Respondent to licensees and sub-licensees on the basis of the transfer price or basic price. The Respondent was not required to reduce the MRP of the product, as it had no authority to do so. However, it had the liberty to revise the transfer price. In these circumstances, the argument advanced by Learned Counsel for the Respondent that IRCTC could not reduce the price of *"Rail Neer"* on the reduction in the tax rate from the pre-GST regime to the post-GST regime cannot be accepted.

34. The Learned Counsel for the Respondent has submitted that the "Rail Neer" is supplied on a complimentary basis to the passenger in Rajdhani, Duranto, Shatabdi and other premium trains. These supplies are made by the contractors/licensees/sub-licensees, and where there is no separate contractor or licensee the Respondent itself supplies services for trains departmentally.

35. Insofar as the arguments of Learned Counsel for the Respondent that the Respondent supplied *"Rail Neer"* on a complimentary basis to the passenger in Rajdhani, Duranto, Shatabdi and other premium trains, therefore, the prices of *"Rail Neer"* on a complimentary basis could not be considered for the computation of profiteering amount is concerned, we are of the considered opinion that the price of "Rail

Neer" is included in the fare collected from the passengers of Rajdhani, Duranto, Shatabdi and other premium trains.

36. The Learned Counsel for the Respondent vehemently argued that the IRCTC is a public sector enterprise fulfilling a sovereign mandate and discharging a constitutional obligation under Article 21 of the Constitution to provide safe drinking water to citizens of India pursuant to a Cabinet decision taken in the year 2002-2003 by the Central Government under Article 73 and 77 of the Constitution of India. The product "Rail Neer" is supplied pursuant to the aforesaid Cabinet decision. The exercise of essential governmental or Sovereign function is not intended to be regulated by Section 171 of the CGST Act, 2017. The supply of Rail Neer by the respondent for the passengers at Indian Railways Stations and trains falls under this category.

37. We have considered the aforesaid arguments. Section 171 of the CGST Act, 2017 mandates that any reduction in rate of tax or benefit of additional input tax credit should be passed on to the recipient by way of commensurate reduction in prices. This provision does not distinguish about any complementary or subsidised supply. Furthermore, it does not distinguish among private or government organisations. Admittedly, the IRCTC is a registered dealer manufacturing and selling packaged drinking water "Rail Neer". In our view, the provision of Section 171 of the CGST Act, 2017 does not provide any exclusion to any registered dealer irrespective of its category. The decision of the Central Government to provide safe drinking water to its citizens is based on the policy of good health and welfare of its citizens. It is also an admitted fact that the Respondent is a Registered dealer, regularly filing returns to the Revenue and

collecting applicable taxes through their invoices. Therefore, the provisions of the CGST Act, 2017 are binding upon the Respondent. In view of the foregoing discussions, we are of the opinion that the contentions of the Learned Counsel for the Respondent cannot be accepted.

38. The Learned Counsel for the Respondent has further argued that the Respondent purchased the "Rail Neer" under invoice for onward supply. The "PPP" plants, on the basis of the tender process, builds, operates and maintains the plant and supplies "Rail Neer" to the Respondent, at the price indicated in the tender process. The supply made by the third-party "PPP" is made to the Respondent by them on the basis of a bid which is accepted by the Respondent. The Respondent does not have any role in the fixation of the price at which the "PPP" plant quotes/ supplies "Rail Neer" to the Respondent. It is also submitted that 7 out of 14 plants have started operations in the post-GST period; therefore, the quantum attributed to these plants must be excluded from the computation of profiteering.

39. It is an undisputed fact that initially the Respondent started operating 5 plants for manufacturing of "Rail Neer" at Nangloi, Danapur, Palur, Ambernath and Bilaspur respectively. In the year 2020, nine other plants at Amethi, Parasala, Nagpur, Alampur, Sanand, Mandideep, Jagi Road, Sankrail and Jabalpur were commissioned, which are operated by third parties under Public, Private and Partnership (hereinafter referred to as "***PPP***" model).

40. Plants at Hapur, Sankaril, Jagiroad, Sanand, Mandideep, Nagpur and Maneri started operations on a PPP model basis. The Respondent has admitted that the prices quoted by these PPP models through the

bidding process are accepted by it. Further, as a common trade practice, the IRCTC would never accept a bid of the third-party player (PPP) if the rates quoted by them were higher than IRCTC's own rates. It is also worthy to be taken into consideration that it was the IRCTC who ultimately sold "Rail Neer" to the licences/sub-licences/contractors. Therefore, the conclusion drawn by the DGAP that the Respondent adopted the same price for the goods supplied from all plants deserves to be accepted.

41. The learned Counsel has contended that the provisions of Section 171 of the CGST Act, 2017 cannot be invoked in the present matter, as the Respondent maintained its transfer price to the Indian Railway pre-GST and post-GST merely to account for increase in costs in a proportion less than the actual increase in cost.

42. The Hon'ble High Court of Delhi in **Reckitt Benckiser India *(Supra)***, while upholding the constitutional validity of Section 171 of the CGST Act, 2017, clarified the scope of the anti-profiteering enquiry and the manner in which commercial and cost-related factors are to be treated. It was observed as under:-

> ***"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."

(Emphasis added)

43. We have considered the aforesaid contentions made on behalf of the Respondent in view of the aforementioned observations made by the Hon'ble High Court of Delhi. We are required to examine the matter under section 171 of the CGST Act, 2017 only to the extent of whether or not there is any reduction in tax rate or benefit of accruing ITC and, if so, whether the same has been passed on by way of commensurate reduction of prices. Admittedly, the transfer price of "Rail Neer" which, according to the Respondent, is the base price plus taxes, is fixed by them. During investigation it was found on the basis of documents submitted by the IRCTC, that it had never reduced its basic prices commensurately after 01.07.2017. This act of the Respondent clearly falls under the ambit of Section 171 of the CGST Act, 2017. Therefore, the contentions of Learned Counsel for the Respondent cannot be accepted.

44. It is also submitted on behalf of the Respondent that, without prejudice Anti-Profiteering investigation cannot be for a period beyond one Year, i.e., not beyond Financial Year 2017-2018. The entire calculation of the alleged Anti-Profiteering amount is incorrect. A "reasonable period" is

implied in the law. Where no period of limitation is prescribed, a "reasonable period" will be determined in the facts and circumstances of the case. As a result of serious volatility in the costs, which continued from 2016-2017 to 2018-2019, it is unreasonable for the DGAP to extend the investigation period beyond to one year.

45. We have carefully examined this issue raised by Learned Counsel for the Respondent, who fairly conceded that Section 171 of the CGST Act, 2017 does not prescribe any period of investigation. The determination of a "reasonable period" for investigation rests on the facts and circumstances of each case. Before the implementation of the GST i.e. up to June 2017, the IRCTC was discharging a total duty of 25% (12.50% Central Excise+12.50% VAT), but on implementation of GST w.e.f. 01.07.2017, the rate of tax was fixed at 18% for their packaged drinking water "Rail Neer". In our opinion, the DGAP has correctly taken the period of investigation from the date when the GST was implemented, i.e. 01.07.2017. it is the relevant date when benefit of tax reduction becomes due to the recipients. The Standing Committee on Anti profiteering made reference to the DGAP on 03.06.2020. The period of investigation is determined by the DGAP so that the benefit of tax reduction is extended to maximum number of recipients. Therefore, in our opinion a "reasonable period" is rightly determined by the DGAP for investigation.

46. Lastly, it is vehemently argued by the learned Counsel for the Respondent that the methodology adopted for computation of the alleged profiteering amount is erroneous, as the entire computation was based upon a comparison of the pre-GST base price, excluding the pre-GST taxes, with the actual post-GST selling price, whereas no such

specific basis or methodology had been communicated to the Respondent at the stage of issuance of the Notice.

47. Per contra, the DGAP has submitted that the prior to implementation of GST the overall incidence of rate of tax on "Rail Neer" was around 28.75% which was reduced at the time of introduction of GST w.e.f. 01.07.2017 to 18%. The DGAP on the basis of particular category I "0-75 Kms" during the period 01.04.2017 to 30.06.2017 compared the average base price and divided it by the total taxable value (excluding VAT, Central Excise) and further divided it by the total quantity of "Rail Neer" sold during the period. The average base price of the product was compared with the actual selling price of the product sold in the same category during pre and post GST period. It is also submitted that the DGAP is not obliged to inform the methodology adopted by them for investigation since it is following the methodology in accordance with the observations made by Hon'ble Delhi High Court in **Reckitt Benckiser India *(Supra)*.**

48. We have given our thoughtful consideration to the aforesaid arguments raised by the Learned Counsel for the Respondent. We do not find any substance in the contentions raised by Learned Counsel for the Respondent, as the Respondent has actively participated in the investigation. The DGAP has followed the provisions of the CGST Act, 2017 and relevant Rules as envisaged in the CGST Rules, 2017 to conduct the investigation. The DGAP had issued the notice on the basis of the facts and the allegations made by the applicant in his application. The DGAP is not required to communicate with the opposite party about the methodology adopted by it to conduct its investigation. While dealing with several matters relating to Anti

profiteering for adjudication, we never found that the DGAP had mentioned the methodology to be adopted by it for investigation in any matter in the noticewhich was communicated to the opposite party.

49. We take strength with the observations of Hon'ble Delhi High Court in the Judgment of **Reckitt Benckiser India *(Supra)***, where the mode of the methodology has to be adopted by the Authority under Rule 126 of the CGST Rules, 2017, in the absence of any prescribed formula or uniform methodology has observed:-

> *"**124.** This Court is of the view that no fixed/uniform method or mathematical formula can be laid down for determining profiteering as the facts of each case and each industry may be different. The determination of the profiteered amount has to be computed by taking into account the relevant and peculiar facts of each case. There is 'no one size that fits all 'formula or method that can be prescribed in the present batch of matters. Consequently, NAA has to determine the appropriate methodology on a case to case basis keeping in view the peculiar facts and circumstances of each case.*
>
> ***125.** It is also well-established that where a power exists to prescribe a procedure and such power has not been exercised, the implementing authorities are at liberty to determine and adopt such procedure as they may deem fit subject to the same being fair and reasonable. In Dhanjibhai Ramjibhai v. State of Gujarat (1985) 2 SCC 5/[1985] (22) E.L.T. 640, the Supreme Court has held,*

"...Merely because procedural rules have not been framed does not imply a negation of the power. In the absence of such rules, it is sufficient that the power is exercised fairly and reasonably, having regard to the context in which the power has been granted". In Chairman & MD, BPL Ltd.v. S.P. Gururaja, (2003) 8 SCC 567, the Supreme Court has held, "....Under the Act or the Regulations framed thereunder, no procedure for holding such consultations had been laid down. In that situation it was open to the competent authorities to evolve their own procedure. Such a procedure of taking a decision upon deliberations does not fall foul of Article 14 of the Constitution of India."

126. *Consequently, Rule 126 of the Rules, 2017 to the extent it grants flexibility to NAA to determine the methodology and procedure to decide whether reduction in rate of tax or benefit of Input Tax Credit has been passed on or not to the recipient is reasonable and legal. Moreover, as per Rule 126 NAA 'may determine' the methodology and not 'prescribe' it. The substantive provision i.e. Section 171 of the Act, 2017 itself provides sufficient guidance to NAA to determine the methodology on a case by case basis depending upon peculiar facts of each case and the nature of the industry and its peculiarities. Consequently, so long as the methodology determined by NAA is fair and reasonable, the petitioners*

cannot raise the objection that the specifics of the methodology adopted are not prescribed."

(Emphasis Added)

50. The Hon'ble High Court of Delhi in aforesaid observations hold that no straight jacket formula can be adopted to investigate the matter where profiteering is alleged against any registered dealer. The Authority is given a liberty to adopt its own methodology to arrive at the rightful conclusion on the basis of facts and circumstances in each and every case based upon the documents submitted by the party. It is an undisputed fact that prior to implementation of GST the overall incident of rate of tax (Excise Duty +VAT + surcharge) was around 28.75% which was reduced to 18% on the implementation of GST. Therefore, this data is relevant for the comparison to draw the actual status of profiteering, if committed by the Respondent. in our view, the DGAP has adopted correct methodology to arrive at the conclusion of profiteering committed by the Respondent.

51. Thus, it is clear that the Respondent has failed to pass on the benefit accruing to it on account of the introduction of GST. Accordingly, we conclude that a net benefit accrued to the Respondent post-GST on account of the subsummation of various taxes and the availability of increased ITC. However, the benefit arising from the introduction of GST was not passed on to the consumers by the Respondents. Accordingly, profiteering amounting to **Rs. 50,41,44,461/-** stands established against the Respondent. Therefore, we conclude that the Respondent has contravened Section 171 of the CGST Act, 2017.

52. The interest provision was inserted vide Notification No. 31/2019-Central Tax dated 28.06.2019, with effect from 28.06.2019.

Accordingly, the interest can be imposed only for the period commencing from 28.06.2019 and not for any period prior thereto. The same has also been held by the coordinate Bench of this Tribunal in *DGAP v. Procter & Gamble Group*. The relevant observation are reproduced hereinbelow:

> *" We agree to the argument advanced by the Learned Counsel for the Respondent that the provision of imposition of 18% interest on the profiteered amount shall come into force only to those cases which call after the notification on the amending (Fourth) Rule came into force, i.e. 28.06.2019 and not on 01.04.2020, as argued by the Learned Counsel, However, in this case profiteering took place much prior to date coming into force of such provision for levying interest in view of the Constitution Bench Judgment of the Supreme Court in the case of Vatika Township Pvt. Ltd. (Supra), we are of the opinion that this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount (C.I.T (C-I) New Delhi vs. Vatika Township Pvt. Ltd (2015) SSC 1."*

53. Further, this Tribunal has also upheld the same view in *DGAP v. A.J. Enterprises(Citation)*. The relevant paragraph of the Tribunal's order is reproduced below:

> *"55. In the instant case, since the period of violation is 5.11.2017 to 30.09.2019, the Respondent shall be liable to pay interest under Rule 133(3) (c) of the CGST Rules from*

28.06.2019 till the date the profiteered amount as calculated by the DGAP is deposited."

(Emphasis Added)

54. Insofar as imposition of penalty is concerned, Section 171(3A) of the CGST Act, 2017 provides for the imposition of penalty. The said provision came into force w.e.f. 01.01.2020. Since the period of contravention in the present case extends from 01.07.2017 to 31.05.2020, including the period subsequent to its coming into force of the said provision, therefore, the provisions of penalty under Section 171(3A) of the CGST Act, 2017 are attracted. The relevant provision reads as under:

"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".

55. Hence, A penalty of 10% of the profiteered amount shall be leviable upon the Respondent under Section 171(3A) of the CGST Act, 2017. However, in the event, the Respondent deposit the profiteered amount in Consumer Welfare fund within thirty days from the date of passing of this Order, penalty leviable under Section 171(3A) of the CGST Act, 2017 shall stand waived.

56. In view of the above, the report of the DGAP dated 11.06.2021 deserves to be accepted.

ORDER

57. The DGAP report dated 11.06.2021 is hereby accepted.

58. The Respondent (IRCTC) is directed to deposit the profiteered amount of Rs. 50,41,44,461/- in the Central Consumer Welfare Fund as well as in the State Consumer Welfare Funds in the ratio of 50:50 equally, in accordance with the state-wise bifurcation of the profiteering amount shown by the DGAP in its report within one month from today.

59. The Respondent is liable to pay the interest @ 18% as per Rule 133(3)(c) of the CGST Rules, 2017 w.e.f. 28.06.2019 till the date the profiteering amount as calculated by the DGAP is deposited. For some states and Union Territories where the State Consumer Welfare Funds are not created, their share of the entire profiteered amount with interest shall be deposited in the Central Consumer Welfare Fund.

60. The Respondent is liable to pay penalty @ 10% on profiteering amount. In the event, if the Respondent deposit the entire amount of profiteering along with interest within thirty days from today, he shall not be liable to pay penalty as per proviso 171(3A) of the CGST Act, 2017.

61. A copy of this order be supplied to the Applicant, Respondent and to the concerned Commissioners CGST / SGST for necessary action.

62. The Judgment is pronounced in open court in the presence of Shri Ajay Kumar Tehlan, Additional Assistant Director, Authorised Representative for the DGAP, Shri Adarsh Ramanujan, Learned Counsel for the respondent.

(Justice Mayank Kumar Jain)

(Sh. Anil Kumar Gupta)

Dated: 14.10.2026