GSTAT

Division Bench Court No. Court I

NAPA/9/PB/2025

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

Versus

LIFESTYLE INTERNATIONAL PVT. LTD. **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President
Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

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. : ZA070010526000131H **Date of order :** 26/05/2026

1.	GSTIN/Temporary ID/UIN -	
2.	Appeal Case Reference no. - NAPA/9/PB/2025	Date - 24/11/2020
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	

4.	Name of the respondant - 1. Lifestyle International Pvt. Ltd. , sparsh.bhargava@sbchambers.com , 7899933169,	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 26/05/2026 06/05/2026 10/04/2026 17/03/2026 13/02/2026 04/02/2026 08/01/2026 04/12/2025 04/11/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - Respondent has profiteered an amount of Rs. 13,61,51,254/- only for the period of 15.11.2017 to 31.01.2018. Accordingly, the Respondent is directed to deposit a total amount of Rs. 13,61,51,254/-, i.e. Rs. 6,80,75,627/- in the Consumer Welfare Funds of the Central Government and Rs. 6,80,75,627/- in the State / UT Consumer Welfare Fund, of the respective States / UT, in proportion, as detailed in Table-B of Para 9 of this Order.	
	Summary of Order	
9.	Type of order : Deposit in Consumer Welfare Fund/s	

Place :DELHI PB

Date : 26.05.2026

GOODS & SERVICES TAX APPELLATE TRIBUNAL (GSTAT)
PRINCIPAL BENCH, NEW DELHI
ANTI-PROFITEERING DIVISION

Case No. NAPA/9/PB/2025

ORDER

Per, S. K. Mishra, President.

1. In this proceeding under Section 171 of the Central Goods & Services Tax Act, read with Rule 133 of Central Goods & Services Tax Rules, 2017, hereinafter referred as CGST Act / Rules, for brevity, the following mixed question arose for determination: -

i. Whether the Respondent i.e. M/s Lifestyle International Pvt. Ltd., Mahagun Metro Mall, Plot No. VC-3, Sector-3, Vaishali, Ghaziabad, Uttar Pradesh–201010, has profiteered an amount of Rs. 13,61,51,254/- by not passing the benefit of reduction of rate of GST on Fast moving consumer goods (FMCG) dealt by it from 28 % to 18 % with effect from 15.11.2017 to 31.01.2018?

2. The facts giving rise to the present proceedings are that a reference was received on 18.12.2017 from the Standing Committee on Anti-profiteering under Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as **"the Rules"**), to conduct a detailed investigation in respect of an application filed by Ms. Neeru Varshney, R/o Flat No. 312, Sector-17A, Vasundhara, Ghaziabad–201012, Uttar Pradesh (hereinafter referred to as "the Complainant"), alleging profiteering by M/s Lifestyle International Pvt. Ltd., Mahagun Metro Mall, Plot No. VC-3, Sector-3, Vaishali, Ghaziabad, Uttar Pradesh–201010 (hereinafter referred to as "the Respondent"). The

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Complainant submitted that she had purchased a product, namely "Maybelline Fit Me Foundation", from the Respondent and alleged that the Respondent had not passed on the benefit of a reduction in the rate of GST, despite the GST rate on the said product having been reduced from 28% to 18% with effect from 15.11.2017.

3. The reference was examined by the Directorate General of Anti-Profiteering (hereinafter referred to as "the DGAP") and Investigation Report dated 28.03.2018 under Rule 129(6) of the Central Goods and Services Tax Rules, 2017 was furnished to the erstwhile NAA. The Report concluded that the allegation of profiteering stood established against the Noticee for not passing on the benefit of reduction in GST rate from 28% to 18% w.e.f. 15.11.2017. It was found that the Respondent had realized an additional amount of Rs. 15,861/-, inclusive of GST, during the period from 15.11.2017 to 31.01.2018. Accordingly, vide Final Order No. 08/2018 dated 25.09.2018, the NAA directed refund of Rs. 41/- with interest to the Applicant and deposit of the balance profiteered amount of Rs. 15,820/- in the Consumer Welfare Funds. The Authority also directed further investigation into the Respondent's claim vide their submission dated 18.05.2018 before the Authority that *"an amount of Rs. 1,98,46,438/- may not have been passed on to the very customer who had purchased the goods, the amounts much more than the said amount have been passed on to the other customers after the price was reduced consequent to the rate change".*

4. *On receipt of the aforesaid order from the NAA, and examined the various submissions made by the Respondent vide Report dated 30.09.2019 the DGAP concluded that the Respondent has realized an additional amount or profiteered to the tune of Rs. 15,37,04,697/- from*

the recipients during the period from 15.11.2017 to 31.01.2018 which includes both the profiteered amount and GST on the said profiteered amount.

5. *The Respondent has filed Writ Petition Nos. 12647/2018 and 11253/2019 before the Hon'ble High Court of Delhi, on the issue that the Order passed by the NAA is barred by limitation, along with certain other issues.*

6. *The DGAP vide its Report dated 30.09.2019 concluded profiteering of Rs. 15,37,04,697/-. However,* the erstwhile National Anti-Profiteering Authority vide Interim Order (I.O.) No. 18/2020 dated 04.06.2020, referred the matter back to the Director General of Anti-Profiteering (DGAP) under Rule 133(4) of the Central Goods and Services Tax Rules, 2017 for re-investigation of the case on the basis of the Respondent's submissions dated 18.02.2020 and 24.02.2020.

7. After receipt of the I.O No. 18/2020 from the erstwhile NAA a letter dated 15.06.2020 was issued to the NAA seeking copies of the submissions dated 18.02.2020 and 24.02.2020 filed by the Respondent, as referred to in Para-26 of I.O No. 18/2020 dated 04.06.2020. However, vide e-mails dated 23.06.2020 and 26.06.2020, the Authority advised this office to obtain the requisite documents directly from the Respondent.

8. On the basis of pre and post-GST rate reduction data and the revised details of outward taxable supplies furnished by the Respondent for the period from 15.11.2017 to 31.01.2018, the profiteered amount has been re-computed in compliance with I.O dated 04.06.2020. It was observed that the Respondent had increased the base prices of impacted

goods despite reduction in GST rate from 28% to 18%, resulting in net higher realization amounting to Rs. 13,61,51,254/-. The computation was carried out category-wise and goods code-wise by comparing the average base price (after discount) prevailing during 01.11.2017 to 14.11.2017, or October 2017 where applicable, with the actual invoice-wise base prices charged during the post-rate reduction period. The profiteered amount includes excess GST collected on the increased base prices. However, the amount relating to "Maybelline FIT Me Foundation" was excluded, as it had already been covered in the earlier Investigation Report dated 28.03.2018. The average base price of the said item was compared with the actual invoice-wise selling price charged during the post-GST rate reduction period w.e.f. 15.11.2017, as illustrated in Table-'A' below:

Table-'A' (Amount in Rupees)

Sl. No.	Description	Factors	Pre Rate Reduction (01.11.2017 to 14.11.2017)	Post Rate Reduction (From 15.11.2017)
1.	Product Code	A	1000004952711	
2.	Product Description	B	SS17- S2 WHITE FILLERS 40X40CM	
3.	Product Category	C	HC-Household	
4.	Product MRP	D	349/-	349/-
5.	Total quantity of item sold	E	651	
6.	Total taxable value (after Discount)	F	1,77,392/-	
7.	Average base price (without GST)	G=(F/E)	272.49/-	

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8.	GST Rate	H	28%	18%
9.	Commensurate Selling price (post Rate reduction) (including GST)	I=118% of G		321.54/-
10.	Invoice No.(Sold in Delhi)	J		1020011596
11.	Invoice Date	K		29.12.2017
12.	Total quantity (as per invoice indicated in H)	L		5
13.	Total Invoice Value (including GST)	M		1,745/-
14.	Actual Selling price (post rate reduction) (including GST)	N=M/L		349/-
15.	Excess amount charged of Profiteering	O=N-I	27.46/-	
16.	Total Profiteering	P= L*O	**137.30/-**	

From Table- 'A' above, it is evident that the Respondent did not reduce the selling price of "SS17-S2 WHITE FILLERS 40X40CM" commensurately despite reduction in GST rate from 28% to 18% w.e.f. 15.11.2017, and thereby profiteered an amount of Rs. 137.30/- on the said invoice, in contravention of Section 171 of the Central Goods and Services Tax Act, 2017. On the basis of the above methodology, profiteering in respect of all impacted goods sold through approximately 25.97 lakh transactions was similarly computed.

9. In the DGAP Report, the place (State or Union Territory) of supply- wise break-up of the total profiteered amount of **Rs. 13,61,51,254**/- was furnished as per table- 'B' below:

Table- 'B'

S. No.	Name of State	State Code	Total Profiteering (Rs.)
1	Andhra Pradesh	37	51,11,372
2	Assam	18	5,163
3	Bihar	10	5,084
4	Chandigarh	04	14,41,541
5	Chhattisgarh	22	2,743
6	Delhi	07	97,64,413
7	Gujarat	24	18,14,365
8	Haryana	06	88,61,768
9	Jammu and Kashmir	01	4,94,693
10	Jharkhand	20	12,526
11	Karnataka	29	2,12,92,107
12	Kerala	32	51,40,417
13	Madhya Pradesh	23	5,48,814
14	Maharashtra	27	2,78,14,595
15	Odisha	21	22,161
16	Puducherry	34	14,177
17	Punjab	03	39,82,733
18	Rajasthan	08	12,73,793
19	Tamil Nadu	33	2,15,13,949
20	Telangana	36	1,07,92,233

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21	Uttar Pradesh	09	1,11,67,671
22	Uttarakhand	05	7,65,060
23	West Bengal	19	43,09,876
Grand Total			**13,61,51,254**

10. The DGAP concluded that the Respondent profiteered by Rs. 13,61,51,254/- which was required to be passed on to the recipients by commensurate price reduction under Section 171. Since recipients were not identifiable, the amount was liable to be deposited in Consumer Welfare Funds. The report was considered by the erstwhile NAA and issued a notice dated 01.12.2020 to the Respondent to show cause why the findings should not be accepted.

11. The Respondent filed written submissions on 29.01.2021. In response thereto, the DGAP furnished its clarifications on 08.03.2021. Subsequently, the Respondent filed rejoinders dated 18.04.2021 and 17.09.2022 against the clarifications submitted by the DGAP. Thereafter, the DGAP filed its reply to the Respondent's rejoinders on 21.10.2022. Further, vide Office Memorandum dated 08.04.2024, the Respondent was directed to file written submissions/rejoinder to the clarifications furnished by the DGAP vide communication dated 21.10.2022 within a period of four weeks from the issuance of the said Office Memorandum.

12. Subsequently, with effect from 01.10.2024, the Central Government, on recommendation of the GST Council, has vested the Principal Bench of the GST Appellate Tribunal (GSTAT) with the jurisdiction to examine anti-profiteering matters, in terms of Notification No. 18/2024-Central Tax dated 30.09.2024.

13. Hearing in this matter was heard on 04.12.2025, in which Shri Sparsh Bhargava, learned advocate, appeared on behalf of the Respondent through virtual mode and sought adjournment and submitted that the vires of Section 171 of the CGST Act, as well as the merits of the present proceedings, have been challenged by the Respondent before the Hon'ble High Court of Delhi. However, no stay Order has been granted by the Hon'ble High Court of Delhi.

14. In course of hearing and through several written submissions filed on different dates, the learned senior counsel appearing for the Respondent have raised following legal issues: -

i. The respondent claimed that the present investigation into other products is wholly without jurisdiction since the directions were given prior to amendment of rules and in absence of any complaint or material which has been placed on record by NAA.

ii. The Respondent further claims that in view of omissions of Rules 122, 124, 125, 134 and 137 vide Notification No. 24/ 2022-CT dated 23.11.2022 without any savings, the present proceedings will not survive.

iii. The present proceedings are barred by limitation.

iv. No interest or penalty can be imposed on the Respondent.

15. In addition to the aforesaid legal issues, the respondent also raised the following factual aspects of the case: -

i. Retail Sale Price (RSP) is erroneously conflated with averaging of taxable value adopted by DGAP so as to justify the report, whereas the Hon'ble Delhi High Court in Reckitt Benckiser's case has not supported such an approach.

ii. The erstwhile NAA has affirmed to follow MRP based approach.

iii. Maximum Retail Price (MRP) was equal to RSP in the first report. Methodology has changed from MRP to averaging.

iv. Products which were bought and sold at the same GST rate (18%) did not undergo any rate change requiring any reduction in rate benefit to be passed on in terms of Section 171 of the CGST Act.

16. The Respondent has also raised the following issues: -

a) The amount of profiteering calculated in excess of the reduction in the rate of GST is arbitrary, incorrect and not justifiable.

b) Methodology of Discounted Average Sale Price for the period from 1st November 2017 to 14th November 2017 basis PAN India sales value, as adopted by the DGAP for calculating the amount of profiteering is grossly incorrect and suffers from subjectivity and multiple infirmities.

The Respondent has also presented a comparison sheet on the above containing the above workings which were also presented during the personal hearing on 04 February 2026.

i. Whether the order passed by erstwhile NAA is wholly without jurisdiction?

17. Coming to the question of Jurisdiction prior to the amendment of rules and absence of any complaint or material before erstwhile NAA, it was urged before us that erstwhile NAA is a creature of the statutes and does not have any inherent powers. It is bound by the statutory Provisions and the Rules and cannot exercise any *Suo Moto* powers to expand the scope of its jurisdiction. The Respondent relies upon the

reported case of ***Gangaben v. Competent Authority & Dy. Collector, Surat 1999 SCC Online Guj 44 (Para 7).***

We have gone through the aforesaid case. The Gujarat High Court in Gangaben's case rejected the petitioner's argument that the Dy Collector has no power to initiate *Suo Moto* action to cancel the revenue entry. The Court held that the procedural rules for appeal / revisions do not divest the Dy. Collector of their *Suo Moto* powers. Procedural rules cannot override the provisions of the Act. The Court was deciding the case with reference to Rule 108 (6) of Gujarat Land Revenue Rules, 1972 which allows the Commissioner to examine the record *Suo Moto*. The Court clarified that such provision does not take away the Dy. Collector's parallel inherent powers which are derived from the Bombay Land Revenue Act, 1879. The facts of the case are different and ratio decided therein has no applicability to the present case.

18. The Respondent would further rely upon ***Gujarat Urja Vikas Nigam Limited vs Solar Semiconductor 2017 16 SCC 498 (para 36,39,56).*** In this reported case, the Supreme Court was considering the impact of regulation 82 of the Electricity Act, 2003. The Hon'ble Supreme Court held that in case a specific subject or exercise of power by the Commission on a specific issue is otherwise provided under the Act or Rules, the same has to be exercised by the Commissioner only taking recourse to that power and in no other manner. The Hon'ble Supreme Court further illustrated it and observed that there cannot be any exercise of the inherent power for dealing with any matter which is otherwise specifically provided under the Act. Hence, the Hon'ble Supreme Court held that the exercise of power for varying the tariff can only be done as per statutory provisions and not under the inherent power. This case is also distinguishable.

19. The Respondent also relies upon the reported case of ***All India Overseas Bank vs UOI (1996) 6 SCC 606 (para 10,11)***. The SC held that the SC ST Commission cannot issue order of injunction for grant of promotion, etc., with pending departmental enquiry.

20. The aforesaid judgements are distinguishable from present case in view of the facts and also law governing the proceedings under Section 171 of the CGST Act. For this purpose, we take note of Sub-rule (4) of Rule 133 of the CGST Rules, 2017, it is quoted below: -

> Rule 133 (4) If the report of the [Director General of Anti-profiteering] referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the [3][Director General of Anti-profiteering] to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.
>
> This Rule was inserted by GSR 266 (E) dated 23.3.2018 w.e.f 23.3.2018

21. Vide notification no. 31 / 2019- Central Tax, dated 28.06.2019 w.e.f 28.6.2019, Sub-Rule (5) was inserted, same is quoted below.

> (5)(a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority

has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall *mutatis mutandis* apply to such investigation or enquiry.

The plain reading of this provision reveals that it is *non-obstante* clause. And we are of the opinion the said provision is clarificatory one in the sense that sub-section (4) already confers the jurisdiction on the authority to direct further investigation or inquiry. There is no restriction on such direction, in other words there is no fetters on this power of the authority to direct further investigation.

22. In this case at the initial stage before passing Interim Order 08/2018 dated 25.09.2018, Respondent vide their submissions 18.05.2018 vide para 27 stated that *"an amount of Rs. 1,98,46,438/- may not have been passed on to the very customer who had purchased the goods, the amounts much more than the said amount have been passed on to the other customers after the price was reduced consequent to the rate change".*

23. On the basis of such submissions the erstwhile NAA vide Final Order No. 08/2018 dated 25.09.2018, directed refund of Rs. 41/- with

interest to the Applicant and deposit of the balance profiteered amount of Rs. 15,820/- in the Consumer Welfare Funds and also directed further investigation into the Respondent's claim vide their submission dated 18.05.2018 as stated above. Therefore, we come to the conclusion the erstwhile NAA has jurisdiction to direct further investigation, given the peculiar facts of the case.

24. Sub Rule (5) is clarification and it does not confer the additional jurisdiction upon the NAA. Moreover, it is the respondent who has claim that other customer may not have been passed on to the other customers. So, they have invited the order from the NAA indirectly for further investigation. Now, that the further investigation is taken up, they cannot claim the NAA has no jurisdiction to direct investigation into the other products of the Respondent. Thus, 1st contention of the Respondent is answered.

25. It is further submitted that no statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and inherent powers are available only to Courts/Tribunals or judicial bodies. The Respondent relied upon the following decisions:

a) ***Manohar Lal Chopra vs Rai Bahadur Rao 1962 AIR SC 527 (para 23)***
b) ***Union of India v. Paras Laminates AIR 1991 SC 696 (para 8)***
c) ***Smt. Shrisht Dhawan v. Shaw Brothers (1992) 1 SCC 534 (para 19)***
d) ***Prayag Upnivesh vs Allahabad Vikas, 2003 5 SCC 561 (para 7)***

All these cases cited above speak of the inherent jurisdiction of Court and Tribunals and lack of it as far as authorities are concerned. The case in hand is distinguishable, as it would be apparent from our discussions. From the above discussion, we are of the opinion that the erstwhile NAA has exercised the power under sub-rule (4) of Rule 133 of the CGST Rules, 2017, which noticed earlier speaks of further investigation without giving limitations to such order and we have already held that Sub Rule (5) of Rule 133 of the CGST Rules, 2017 is clarificatory and does not confer some powers which is absent from the jurisdiction of the NAA.

26. Looking this issue in a slightly different angle, we take note of the Sub Rule (2) of the Rule 129 of the CGST Rules, 2017, which provides that DGAP shall conduct the investigation and gather all necessary evidence necessary to determine whether the benefit of a reduction in the tax rate on supply of any goods and services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reductions in prices. In interpreting this provision, Hon'ble High Court of Delhi in the case of Reckitt Benckiser at para 159 has held that such power is very wide. We consider it apposite to quote relevant paras i.e. 159, 160 and 161: -

> *Expansion of investigation beyond the scope of the complaint is not ultra vires the statute*
>
> **159.** Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only goods and services in respect of which a complaint is received. The scope of powers of the DGAP is provided for in rule 129 of the Rules, 2017. From a reading of the said rule especially the expression "any supply

of goods or services" used in sub-rule (2) of rule 129, it is apparent that the scope of the DGAP's powers is very wide and is not limited to the goods or services in relation to which a Complaint is received. The word "any" includes within its scope "some" as well as "all". (underlined to lay emphasis)

160. In any event, the ignorance of the consumer or lack of information or surrounding complexity in the supply chain cannot be permitted to defeat the objective of a consumer welfare regulatory measure and it is in this light that the subject provision is required to be construed.

161. In the context of similar powers of investigation exercised by the Director General under the Competition Act, 2002, the Supreme Court in *Excel Crop Care Limited* v. *Competition Commission of India* [(2017) 8 SCC 47.] , has held that the Director General would be well within its powers to investigate and report on matters not covered by the complaint or the reference order of the Commission, and an interpretation to the contrary would render the entire purpose of investigation nugatory. The High Court of Delhi in *Cadila Healthcare Ltd.* v. *CCI* [*Cadila Healthcare Ltd.* v. *Competition Commission of India*, 2018 SCC OnLine Del 11229.] , relying on the judgment of the Supreme Court in *Excel Crop Care* [(2017) 8 SCC 47.] has clarified in express terms that the scope of investigation by the Director General is not restricted to the matter stated in the Complaint and includes other allied as well as unenumerated matters. Consequently, the expansion of

investigation or proceedings beyond the scope of the complaint is not ultra vires the statute.

27. Thus, if the powers of the investigating authority is so wide as held by the Delhi High Court in the aforesaid case, a natural corollary to such observations would be similar wide powers are with the authority who is vested with the Jurisdiction to examine whether the report of the DGAP is correct or incorrect and whether registered person has profiteered by not passing on the benefit of the reduction of the rate of tax or availment of the ITC.

ii. Whether the omission of Rules, regarding the creation of NAA makes the whole process non-est?

28. The Respondent claims that in view of the omission of Rules 122, 124, 125, 134 and 137 vide Notification No. 24/2022–CT dated 23.11.2022 without any saving clause, the present proceeding does not survive. The Respondent relied upon two judgments i.e. Shree Bhagwati Steel Rolling Mills v. CCE and the Constitution Bench in Kolhapur Canesugar Works v. Union of India, wherein it is submitted that;

> *"The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed… Thus, the operation of repeal or deletion as to the future and the past largely depends on the savings applicable."*

29. Further, it is submitted that Section 6 of the General Clauses Act will also does not apply to a rule. The relevant extract is as under: -

> *"When the legislature by clear and unambiguous language has extended the provision of section 6 to cases of repeal of a 'Central Act' or 'Regulation', it is not possible to apply the provision to a case of repeal of a 'Rule'. The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a 'rule' and takes its colour from the definition of the term in the Act (General Clauses Act)."*

30. In light of the aforesaid submissions, we have examined the deleted provision. Rule 122 provides Constitution of the NAA, Rule 124 provides Appointments, Salary, Allowances, etc., of the Authority, and Rule 125 provides Secretary to the Authority, Rule 134 provides for the quorum and decision to be taken by the majority and Rule 137 provides for the tenure of the Authority. It is also not disputed that Rules were omitted with effect from 23.11.2022 and there appears to be no savings clause for the same.

31. By virtue of the aforesaid Notification 24/2022-Central Tax dated 23.12.2022, the Rules stated above were omitted, there was also amendment to Rule 127 and 137, in 127 in the marginal heading for the word 'duties', the word 'functions' shall be substituted. Thus, Rule 127 which provided "duties for the authority" were made to provide "functions of the Authority". In case of "it shall be duty of the Authority," the words "the authority shall discharge the following functions namely": - was substituted. After the Rule 137, an explanation was added which reads as follows:

"[authority means authority notified under sub-section 2 of Section 171 of the act]".

Thus, it is clear, on the recommendation of GST Council, the Government of India has taken away the authority from the erstwhile NAA and also made amendment to the rule to define the rule of authority which is to be notified under sub-section 2 of the Section 171 of the Act.

32. Competition Commission of India, (hereinafter referred as CCI for brevity) was conferred with the powers to look into the matters of Anti-Profiteering which was earlier being entrusted with the NAA Notification 24/2022-Central Tax dated 23.12.2022. Thus, it is clear that there has been a change in the authority only. The Government decision to address illegal profiteering aspect was to continue. Further, with effect from 01.10.2024, the Central Government, on recommendation of the GST Council, has vested the Principal Bench of the GST Appellate Tribunal (GSTAT) with the jurisdiction to examine anti-profiteering matters, in terms of Notification No. 18/2024-Central Tax dated 30.09.2024. Therefore, in this case principles of succession will apply and the orders passed by the NAA before such omission of rules will not be treated as *non-est,* it cannot simply vanish from the record. It is not that no authority was given responsibility to discharge the function, hence we are of the view the omission of the rules will not result in disappearance of this order and proceedings.

iii. Are the proceedings barred by limitation?

33. The Respondent claimed that proceedings are barred by limitation. Here, we note that sub rule (1) of Rule 133 of the CGST Rules 2017 provides that Authority shall within a period of 6 months from the date of receipt of the report from DGAP determined by the registered

person has passed on the benefit etc., in other words, it provides a timeline of 6 months to the authority to decide a matter. This question of limitation was considered by Hon'ble High Court of Delhi in the case Reckitt Benckiser India Pvt. Ltd, and vide para 158 of the said judgement dated 29.01.2024, the Delhi High Court took note of time limit for furnishing of report by the DGAP to the erstwhile NAA and held that it is discretionary. The relevant para 158 is quoted below: -

> **158.** In some cases, the petitioners have pointed out that the timelines as provided in the Rules, 2017 have not been followed. They further contended that as a result, the proceedings are vitiated. However, it is important to note that the Rules, 2017 do not provide any consequences in case the time limits provided thereunder lapse. As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The courts have consistently held that beneficial legislation must receive liberal construction that favours the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that the proceedings as a whole abate on lapse of time limit of furnishing of report by DGAP. The Supreme Court in *P.T. Rajan* v. *T.P.M. Sahir* [(2003) 8 SCC 498.] has held that "It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefore, the same would be directory and not mandatory." and that "a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused." Consequently,

the time limit provided for furnishing of report by DGAP is directory in nature and not mandatory.

34. From the above and by applying the said principles, we come to the conclusion that sub-rule (1) of Rule 133 of the CGST Rules 2017 provides for a time limit for deciding a case without providing the consequences for non-compliance is a directory provision and not mandatory provision. Moreover, we have consistently held that Section 171 is benevolent legislation and should receive liberal and pragmatic construction and avoid restrictive, parochial and pedantic approach. A liberal construction that serves the consumer and promotes the intent of the Act should be resorted to. Thus, we come to the conclusion that proceedings are not barred by the limitation.

iv. No interest or penalty should be imposed on the Respondent?

35. As far as, third legal contention is concerned that Respondent is not liable to pay any interest or penal liabilities, the Respondent has relied upon decision of the GSTAT in ***DGAP v. Proctor & Gamble Group (2025) 35 Centax 77 (Tri-GST – Delhi)***. The provision for imposition of penalty i.e. Section 171 (3A) has been introduced with effect from 01.01.2020. The provision to impose interest as per clause (c) of Sub Rule (3) of Rule 133 was inserted on 28.06.2019. The investigation of the alleged profiteering made between 15.11.217 to 31.01.2018. Hence, aforesaid ratio decided in ***DGAP v. Proctor & Gamble Group*** case is applicable in this case and, therefore, Respondent is not liable to pay any interest or penalty on profiteered amount.

Conclusions.

36. It is not disputed in this proceeding that with effect from 15.11.2017, the rate of GST on the Fast-moving consumer goods

(FMCG) for the products dealt by the M/s lifestyle International Pvt. Ltd., was reduced from 28 % to 18%. It is also not disputed and had never been highlighted by the learned Sr. Counsel for the Respondent that after such reduction of 10 % of rate of GST, the Respondent, to the contrary, did not reduce the MRP on FMCG products so as to pass on the benefit to the consumers. This issue was considered by the Hon'ble Delhi High Court in the Reckitt Benckiser India Pvt. Ltd., vide Para 117. At Para 117 of the Hon'ble High Court has held 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 Delhi further held that 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.

37. Again, in the aforesaid case of Reckitt Benckiser, the Delhi High Court in para 119 accepted 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. The Court further held 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.

38. Thus, it is apparent as there is no dispute regarding reduction of rate of tax, no dispute regarding that there has been no change in MRP of the SKUs. It is the duty of the Respondent to show that it has not profiteered from the reduction in the rate the GST. The Respondent has not made any such attempt in this case, rather it is pointed out that methodology adopted by DGAP is incorrect. We take it as an admission of profiteering. Our view is further fortified by para 27 of the written statements submitted by the Respondent on 18.05.2018, wherein Respondent has mentioned that *"an amount of Rs. 1,98,46,438/- may not have been passed on to the very customer who had purchased the goods, the amounts much more than the said amount have been passed on to the other customers after the price was reduced consequent to the rate change".* The Respondent further submits that subsequently Rs. 10,06,42,391/- was passed on to the consumers / customers by reducing the price.

39. Thus, we re-iterate our observation to the effect that there is no dispute regarding reduction of rate of GST, no issue was raised by the Respondent that actually the rates were decreased after the change of the Rates of GST. The Respondent questions the methodology adopted

for calculation of the profiteered amount and vide 27 para of the written submissions of 18.05.2018 by the Respondent and has admitted that he "*may not have been passed on to the very customer who have purchased the goods*".

40. In course of hearing, learned counsel appearing for the Respondent would submit that they have passed on more benefit to other customers. However, a plain reading of the Section 171 of the Act leads us to the conclusion that it is the duty of the registered person to pass on the benefit of reduction of rate of tax to the recipient by way of commensurate reduction in price. Thus, if a registered person sells a product to one person without reduction of prices thereby denying the benefit of reduction of prices to the customers and at the same time, he reduces the price exceeding the rate of reduction to another customer for another product or the same product, then also he cannot claim he has not committed profiteering. Section 171 is benevolent provision and each and every customer is entitled to receive the benefit of reduction of rate of tax or availing of the ITC.

41. The learned Counsel of the Respondent would also submit that the imposition of GST on the alleged profiteered is illegal, as the Respondent has already paid the GST to the Government and if the Tribunal come to the conclusion that reduction of GST has not been passed on to the customers by the Respondent, then it should direct the government to refund the GST to the Respondent. We are of the of opinion such submission is fallacious on the face of it as it is not the duty of the GSTAT, in its Anti-Profiteering Division, to pass a money decree in favor of the Respondent. Infact the Union of India is not a party. We are not here to see whether Respondent paid any additional tax to the Revenue. If it is the case of the Respondent that it has paid more tax than he is

liable to pay, then Respondent to take appropriate remedies under the Act. The Anti-Profiteering division is not a proper forum to address this issue.

42. The Respondent has claimed that DGAP has not followed the same methodology in both of their reports. The methodology resorted to by taking Selling price by the Life style for calculating the profit. In the first report, the DGAP alleges that that MRP of the product was Rs. 550, while the retail sale price (RSP) was Rs. 525. In other words, DGAP submits that they have not adopted MRP based approach in its first report. It is contended by the learned counsel that the DGAP has not adopted proper methodology in its reports, therefore, report under consideration is vulnerable and liable to be set aside. However, we have seen the para 26 to 28 of order of the NAA passed on 04.06.2020 and we are of the view that the erstwhile NAA has remanded the matter for further investigation without going into the merits of the case and without considering the contentions and submissions of the Respondent at that stage. Erstwhile NAA found it imperative that there is need for revisiting the investigation and computation of the profiteering amount, thus, it is not correct to submit that the NAA has found fault in methodology adopted by the DGAP in calculating the profiteering in the first report, and therefore, this argument should also be rejected.

43. The learned counsel for the Respondent would submit that DGAP committed error by adopting the method of comparing the average prices of pre-GST period with the actual prices of the post-GST period. This issue has somehow been decided in a different context in Reckitt Benckiser India case. The Court has approved of averaging of benefit to be passed on to its buyer in case of real estate project. We consider it

apt to quote relevant para of 129 of the Judgment passed by Delhi High Court in the case of Reckitt Benckiser India Pvt. Ltd.: -

> **129.** However, this court finds that the methodology adopted by NAA and DGAP to arrive at the profiteering amount of the real estate industry was generally based on the difference between the ratio of input-tax credit to turnover under the pre-goods and services and tax and post-goods and services and tax period. This court is in agreement with the contention of the learned counsel for the petitioners representing the real estate companies that the methodology adopted by NAA is flawed as in the real estate sector, there is no direct correlation between the turnover and the input-tax credit availed for a particular period. The expenses in a real estate project are not uniform throughout the life cycle of the project and the eligibility of credit depends on the nature of the construction activity undertaken during the particular period. As it is an admitted position that neither the advances received nor the construction activity is uniform throughout the life cycle of the project, the accrual of input-tax credit is not related to the amount collected from the buyers. This court is in agreement with learned counsel of the petitioners that one needs to calculate the total savings on account of introduction of goods and services tax for each project and then divide the same by total area to arrive at the per square feet benefit to be passed on to each flat buyer. This would ensure that flat-buyers with equal square feet area received equal benefit. The court, while hearing the present batch of matters on merits, shall take the aforesaid direction/interpretation into account.

> It is the prerogative of the legislature to decide how the benefit is to be passed on to the consumers. (underlined to lay emphasis)

Hence, we find no error in taking average prices of the pre-GST period.

44. We have carefully considered the DGAP's Report dated 23.11.2020, the submissions made by the Respondent and all the materials placed on record. It is revealed that the Respondent has failed to pass on the benefit of GST rate reduction to customers who have purchased various items during the period from 15.11.2017 to 31.01.2018, thereby violating the provisions of Section 171(1) of the CGST Act, 2017. Thus, the Report submitted by the DGAP is accepted to the extent that Respondent has profiteered an amount of Rs. 13,61,51,254/- only for the period of 15.11.2017 to 31.01.2018. Accordingly, the Respondent is directed to deposit a total amount of Rs. 13,61,51,254/-, i.e. Rs. 6,80,75,627/- in the Consumer Welfare Funds of the Central Government and Rs. 6,80,75,627/- in the State / UT Consumer Welfare Fund, of the respective States / UT, in proportion, as detailed in Table-B of Para 9 of this Order, since the recipients are not identifiable. In case, the State Consumer Welfare fund account for some States and Union Territories are not yet created, the share of profiteered amount of that State / UT to be deposited in the Central Consumer Welfare Fund for time being.

45. A report in compliance of this order shall be submitted to the DGAP by the concerned Commissioner within a period of 4 months from the date of receipt of this order.

46. Copy each of this order be supplied to the respondent and to the concerned Commissioner CGST / SGST for necessary action.

47. Judgment pronounced in open court.

Dr. S. K. Mishra.

Shri Anil Kumar Gupta.

Date- 26.05.2026.