

## Chapter 30: Anti-Profitteering

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### 30.0 Anti Profitteering [Section 171]

As per section 171(1),—

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

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

#### Tenure of Anti-Profitteering Authority extended to five years:

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

### 30.1 Detailed analysis of above provision is as follows

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

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

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

#### 30.1.2 The benefit of input tax credit

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

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

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

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

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

Particulars	Service tax regime	GST regime	Remarks
Output tax liability	25	25	
<b>Input allowed-</b>			
Towards Input services	15	15	Service provider cannot avail VAT paid as Input tax credit in Service tax regime
Towards Material 'M'	NIL	5	
Total Input Tax credit eligible for set off	15	20	
Net tax payable	10	5	

Particulars	Service tax regime	GST regime	Remarks
Input tax benefit due to GST	-	5	Benefit of ₹5 to be passed to recipient by way of reduction in prices

### 30.2 Anti-Profiteering committee [Section 171(2)]

The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

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

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

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

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

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

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

The Authority would have the following duties:

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

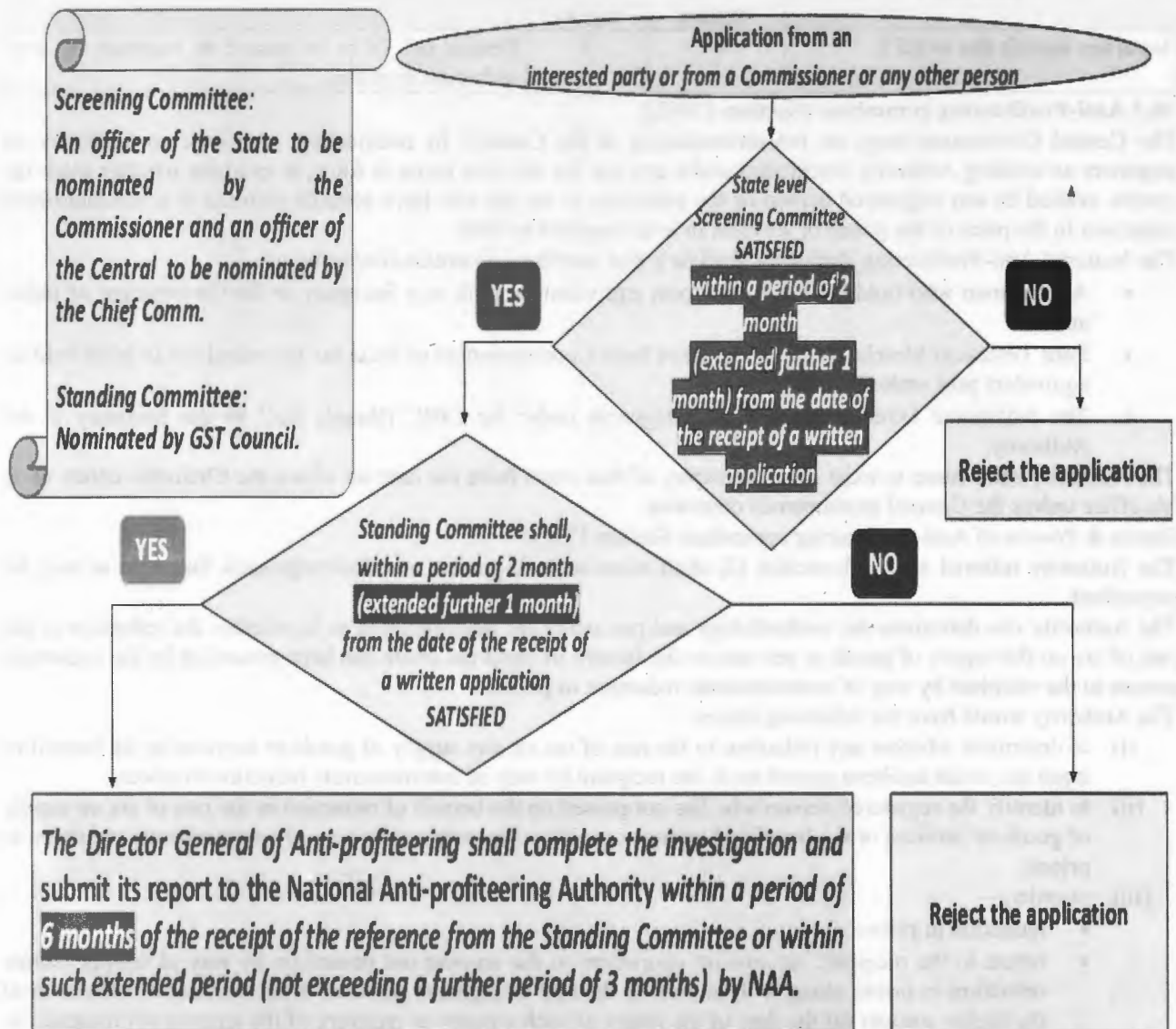
#### w.e.f. 1-8-2019:

as per section 171(3A) of the CGST Act, 2017 Where the Authority referred to in sub-section (2), after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to **ten per cent of the amount so profiteered:**

Provided that no penalty shall be leviable if the profiteered amount is deposited **within thirty days of the date of passing of the order by the Authority.**

**Explanation.**—For the purposes of this section, the expression “profiteered” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.’

Application& process flow of Anti profiteering hierarchy mechanism:

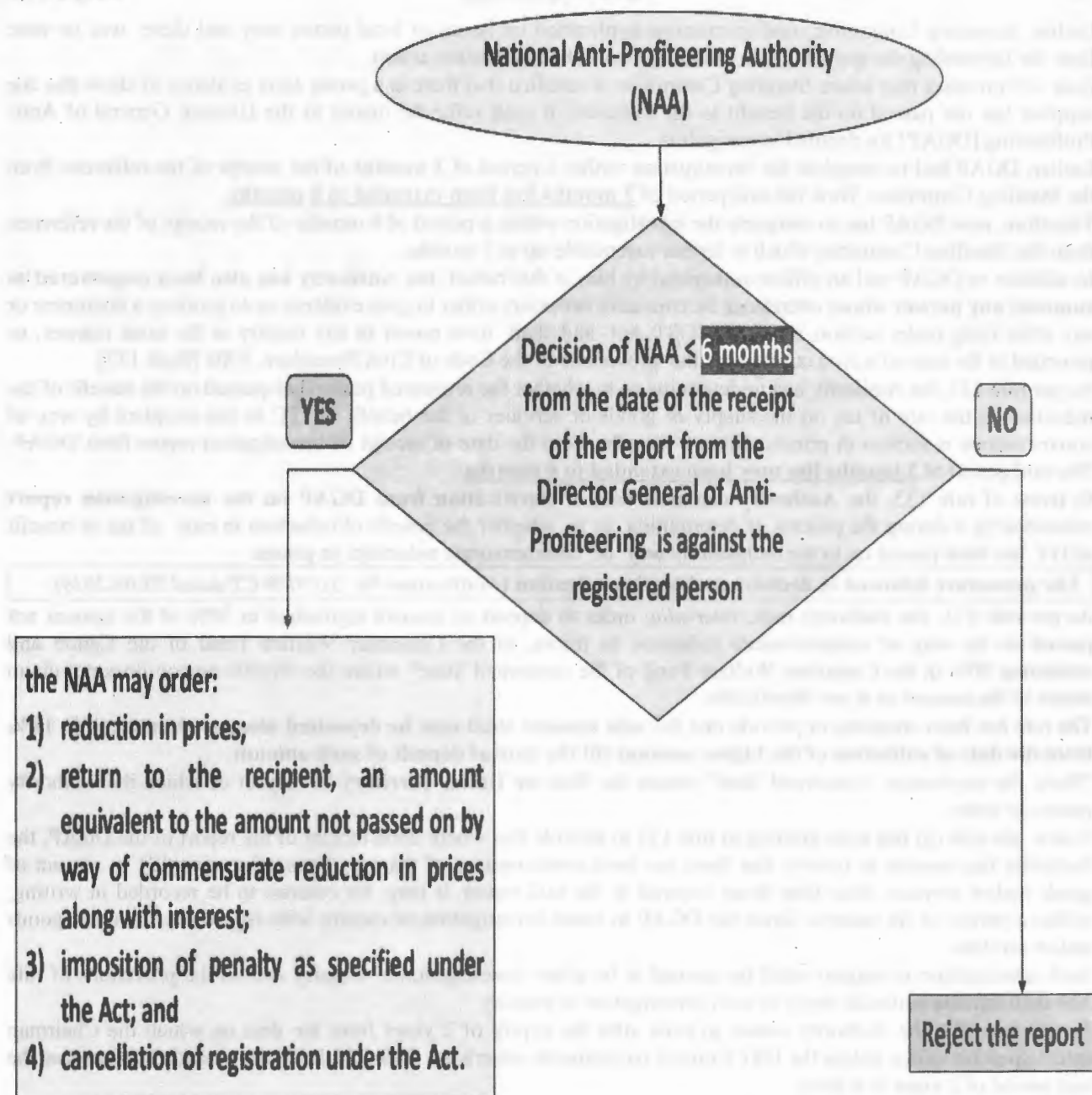


*Anti-profiteering measure – Due date of compliance which falls during the period from 20-3-2020 to 29-11-2020 extended upto 30-11-2020:*

*(vide Notification No. 65/2020-Central Tax, dated 01-09-2020) & (NT No. 91/2020-CT, dated 14-12-2020)*

*“Provided that where, any time limit for completion or compliance of any action, by any authority, has been specified in, or prescribed or notified under section 171 of the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020 (further extended to 30th day of March, 2021), and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action, shall be extended up to the 30th day of November, 2020 (further extended to 31st March, 2021).”*

With insertion of above proviso said Authority get further breather of three months to complete any action or comply with any action as now any such action falls during the period from the 20th day of March, 2020 to the 29th day of November, 2020 (further extended to 30th day of March, 2021), can be completed by the anti profiteering authority by 30-11-2020 (further extended to 31st March, 2021).



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

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

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

Rule 128 has been amended to provide that all applications from interested parties on issue of local nature as well as those forwarded by Standing Committee shall first be examined by the State level Screening Committee and the Screening Committee shall, within 2 months from the date of receipt of a written application (further extendable up to 1 month), upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Note 1:*

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

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

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

The Director General of Safeguards can seek opinion of any other agency or statutory authorities in the discharge of his duties. The Director General of Safeguards, or an officer authorised by him will have the power to summon



any person necessary either to give evidence or to produce a document or any other thing. He will also have same powers as that of a civil court and every such inquiry will be deemed to be a judicial proceeding.

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

*Note 2*

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

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

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