

Anti Profiteering – The next challenge for India Inc.

1. Introduction

India is a developing country and like any other developing country it faces a challenge of making available resources to its citizen. Being a socialist republic, government has to ensure that the resources of the Country are not limited to a certain set of persons. In line with the understanding, Government needs to ensure that post introduction of Goods and Services Tax ("GST"), the prices of goods and services are not left to the wishes of the businessman and he should not pocket the tax at the cost of consumer. Accordingly, Anti profiteering provisions are introduced in the GST statutes which shall keep a vigil and watch over the reasons for increase in prices post GST. This article examines the provisions and implementation of anti-profiteering provisions in GST.

2. What is Anti Profiteering provision?

Section 171 of the Central Goods and Services Tax Act, 2017 ("CGST Act") (provisions apply in same manner to other GST statutes) provides that a supplier of goods or services shall pass onto the recipient benefit of any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit by way of commensurate reduction in prices.

The provisions apply only to all classes of goods and services, which include food and beverages, industrial goods, household goods, all construction services by builders and developers etc.

3. How is compliance of Anti profiteering ensured by Government?

To affect the above provisions, it has been further provided that 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 Authority has been empowered to exercise such powers and discharge such functions as may be prescribed in the Rules.

Accordingly, the Rules provides for the following:

- Constitution of National Anti-profiteering Authority (“hereinafter referred to as “Authority”)
- Constitution of Authority, Standing Committee and Screening Committees
- Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority
- Power to determine the methodology and procedure
- Duties of the Authority
- Examination of application by the Standing Committee and Screening Committee
- Initiation and conduct of proceedings

The Authority shall consist of following officers:

- (a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- (b) four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under the existing law, to be nominated by the Council.

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.

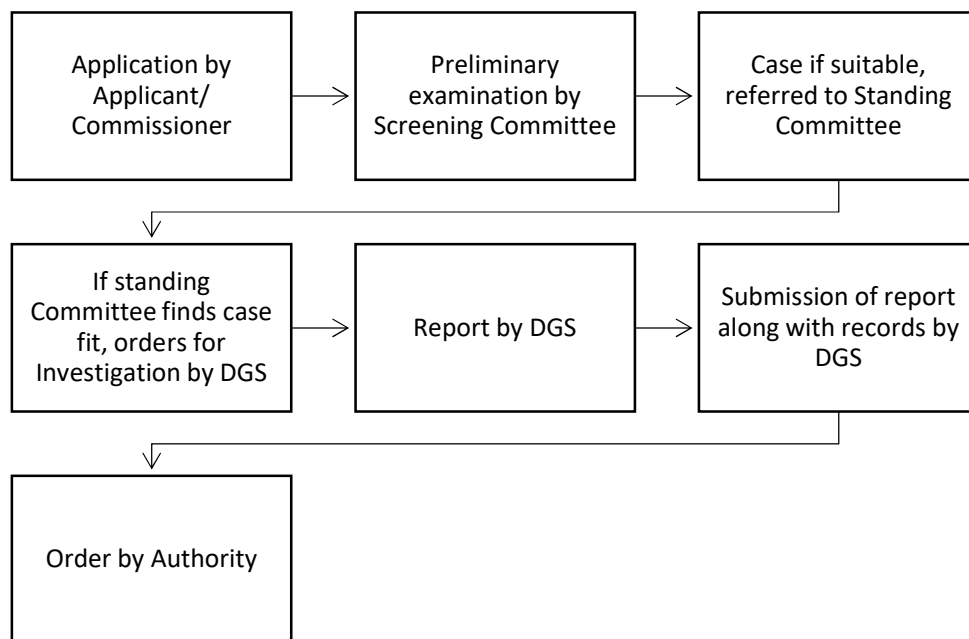
Further, the Authority has been entrusted with the following duties:

- to determine whether compliance of Section 171 requirement has been made by the supplier
- to identify the registered person who has not passed on the requisite benefits to the recipient by way of commensurate reduction in prices
- to order:
 - reduction in prices

- return of the amount equivalent to the benefit under Section 171 to the recipient along with an interest at the rate of 18% from the date of collection till the date of return, or
- recovery of the amount not returned and depositing the same in the Fund referred to in section 57
- imposition of penalty as prescribed under the Act;
- cancellation of registration under the Act

4. Process of Anti evasion proceedings

The following shall be the process of determination of anti profiteering proceedings:



5. Application for Anti evasion proceedings

The above actions can be taken on the basis of any complaint where the complainant feels that the benefit of tax cut has not been passed on to him or on the basis of an application filed by the Commissioner or any other person. All applications from interested parties on issues of

local nature shall first be examined by the State level Screening Committee. Such Committee shall be constituted by the respective State Governments and shall consist of:

- an officer of the State Government, to be nominated by the Commissioner,
- and

- an officer of the Central Government, to be nominated by the Chief Commissioner.

As of now, such Screening Committees have been constituted and details thereof are available on the government website.

If the Committee is convinced that the case is fit for Anti profiteering proceedings, it shall forward the application with its recommendations to the Standing Committee on Anti-profiteering. The Standing Committee shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.

6. Investigation by DGS

If the Standing Committee finds the matter suitable for the proceedings, it shall then refer the matter to Director General of Safeguards ("DGS") who shall undertake the enquiry. DGS shall issue a notice to the interested parties and other parties as required for the investigation and to gather the requisite information. DGS himself or under his authority, a subordinate can summon any person necessary either to give evidence or to produce a document or any other thing. DGS shall inform the interested parties of the following information:

- (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.

For the above purpose, "interested party" includes

- a. suppliers of goods or services under the proceedings; and
- b. recipients of goods or services under the proceedings;

Cross examination of details provided by one party may be made available to the other parties who are participating in the proceedings. As part of investigation, DGS can also seek opinion of any other agency or statutory authorities.

The above proceedings shall be completed within 3 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. On completion of enquiry, DGS shall present his report along with relevant records to the Standing Committee.

7. Orders of the Authority

The Authority shall issue an order within a period of three months from the date of the receipt of the report from the DGS. The order shall be passed after granting an opportunity of hearing to the interested parties. The Authority shall 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. However, in case of difference of opinion on a matter, the decision shall be taken as per the opinion of the majority.

Thus, in case the Authority finds that the registered person has passed the benefit to the buyer, an order providing said decision be communicated. However, where the Authority determines that a registered person fails the test of Anti profiteering, 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;

8. Time allowed for various process in Anti profiteering proceedings

S.No.	Proceeding	Time allowed
1.	Application to Screening Committee	Within a period of two months from the date of the receipt of a written application
2.	Decision by Screening Committee	
3.	Decision by Standing Committee	

4.	Investigation and report by DGS	Within 3 months from the date of reference by Standing Committtee or another three months when extended
5.	Decision by Authority	Within 3 months from the receipt of report

9. Conclusion:

To ensure compliance with the Anti Profiteering provisions, businesses should ensure and analyse any price increases made by them post July 1, 2017 by examining the increase in costs viz a viz benefits which have accrued on account of reduction in costs on count of increased ITC. Authority is a body which shall ensure that prices remain under check and that businesses do not gain from taxes at the cost of consumers. While the provision shall deter unfair pricing and pocketing of taxes by business houses. However, this may also become a medium for undue harassment, tool for troubling competitors etc if the mechanism is not effected in a fair manner.

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