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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23rd September, 2025

\+ **W.P.(C) 13194/2018**

SHARMA TRADING COMPANY .....Petitioner

Through: Mr. Vipul Agrawal, Nodal Counsel.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Kumar Visalaksh, Mr. Arihant Tater, Mr. Ajitesh Dayal Singh and Mr. Saurabh Dugar, Advs.
Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar and Mr. Amit Rana, Advs.
Mr. Ruchesh Sinha, SSC/ Nodal Counsel with Ms. Upasn Vashisth, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

2. The present petition has been filed by the Petitioner– M/s Sharma Trading Company, who is a distributor of M/s Hindustan Unilever Limited *(hereinafter, 'HUL')*. The petition challenges Section 171 of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the Act, 2017')* and the corresponding Rule 126 of the Central Goods and Service Tax Rules, 2017 *(hereinafter, 'the Rules, 2017')* on the ground of being unconstitutional, *ultra vires* of Article 14 and Article 19 of the Constitution of India.

3. In addition, the petition also challenges the order dated 7th September, 2018 *(hereinafter, 'the impugned order')* passed by the National Anti-Profiteering Authority *(hereinafter, 'NAPA')*, as also the Investigation Report

dated 16th March, 2018 furnished by the Director General of Anti-Profiteering under Rule 129 (6) of the Rules, 2017.

4. The Coordinate bench of this Court, *vide* judgment dated 29th January, 2024 in a batch of matters with the lead matter being ***W.P.(C)7743/2019*** titled ***Reckitt Benckiser India Pvt. Ltd. v. Union of India*** upheld the Constitutional validity of Section 171 of the Act, 2017 and Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. While deciding the said cases, the Court observed that the specific orders, which have been passed in each of the matters have to be adjudicated on merits. The relevant portions of the said judgment are set out below:

> ***"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'.***
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> *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.*
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> *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 Ltd. vs. 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. &Anr. vs. CCI & Ors., (2018) SCCOnline Del 11229, relying on the judgment of the Supreme Court in Excel Crop Care (supra) 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.

ACKNOWLEDGMENT

162. Before parting with the present batch of matters, this Court places on record its appreciation for the assistance rendered by all the learned counsel, who appeared, in particular, Mr. Amar Dave, learned Amicus Curiae, Mr. V. Lakshmikumaran and Mr. Zoheb Hossain, Advocates as they filed not only multiple written submissions but also ensured that hearing in the present batch of matters (exceeding 100 cases) was conducted in an orderly and proper manner.

TO SUM UP

163. Keeping in view the aforesaid conclusions, the constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017 is upheld. This Court clarifies that it is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism by enlarging the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations etc. However, the remedy for the same is to set aside such orders on merits. What will be struck down in such

cases will not be the provision itself which invests such power on the concerned authority but the erroneous application of the power."

5. Thus, insofar as the prayer for striking down the said provisions of the Act, 2017 and Rules, 2017 is concerned, the same would no longer survive before this Court.

6. On facts, however, the matters have to be examined separately. Before proceeding to do so, it would be relevant to note that NAPA, which was originally notified under the Act, 2017 was thereafter substituted by the Competition Commission of India *(hereinafter, 'CCI') vide* ***Notification No. 23/2022- Central Tax*** dated 23rd November, 2022. When this Notification was issued, the various provisions of the Rules, 2017 were omitted/amended.

7. Thereafter, *vide* ***Notification No. 18/2024*** dated 30th September, 2024, the Principa Bench of the GST Appellate Tribunal has now been empowered to discharge the functions which were earlier being discharged by NAPA. The said ***Notification No. 18/2024*** is as under:-

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 18/2024 – Central Tax | Dated: 30th September, 2024

S.O. 4268(E).—In exercise of the powers conferred by sub-section (2) of section 171 read with sub-section (1) and second proviso to sub-section (5) of section 109 of the **Central Goods and Services Tax Act, 2017** (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Goods and Services Tax Council, hereby empowers the Principal Bench of the Appellate Tribunal, constituted under sub-section (3) of section 109 of the said Act, 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 that registered person.

2. This notification shall come into force with effect from the 1st day of October, 2024.

[F. No. CBIC-20016/25/2024-GST]
RAGHAVENDRA PAL SINGH, Director

8. The Court is now informed that the Anti Profiteering Wing of the Principal Bench of GST Appellate Tribunal has now been constituted and is looking into anti profiteering matters.

9. It is also brought to the notice of this Court that *vide* another ***Notification No. 19/2024– Central Tax*** issued on 30th September, 2024, the cut-off date has been fixed as 1st April, 2025, as the date from which the Authority referred to in Section 171 of the Act, 2017, is not to accept any request for examination of anti-profiteering. Thus, it is only complaints prior to 1st April, 2025 that can be considered by the Principal Bench of GST Appellate Tribunal, insofar as anti-profiteering complaints are concerned.

10. Coming to the facts of the present case, the background of the case is that the Petitioner is a partnership firm and is engaged in the business of sale of goods as a distributor. It is a stockist of HUL and deals with various products, one of which is Vaseline VTM 400 ML *(hereinafter, 'the subject product').*

11. It is a matter of common knowledge that the GST Regime came into effect from 01st July, 2017. In respect of the subject product, initially, the GST payable from 01st July, 2017 was 28%. Thereafter, ***Notification No. 41/2017-Central Tax (Rate)*** was issued on 14th November, 2017, amending the rate of GST from 28% to 18%.

12. At the time when these reductions took place, anti-profiteering measures were introduced to ensure that the benefit of reduction in rates of GST or the benefit of input tax credit would be passed on to the consumer by way of commensurate reduction in the rate/price. The anti-profiteering measures were thus meant to be in public interest to avoid unjust enrichment by manufacturers,

retailers and other goods and service providers.

13. A complaint was filed against the Petitioner in respect of the subject product, stating that the Petitioner continued to charge the same amount, despite the reduction in rate of GST. This complaint was considered by the NAPA, which was the competent authority at the relevant point of time to deal with such complaints. Thereafter, the Investigation Report dated 16th March, 2018 was furnished by the Director General of Anti-Profiteering under Rule 129 (6) of the Rules, 2017.

14. *Vide* the impugned order, NAPA held that the Petitioner had profiteered by not passing on the benefit availed by the reduction in GST rates to the consumers. NAPA came to such a conclusion after analysing the factual position in the case. The same is evident from a perusal of the impugned order, which reads as under:

> *"16. We have carefully considered the submissions made by both the parties as well the material placed on the record and it is revealed that the Respondent has himself admitted through the Table submitted by him vide his submissions dated 23.4.2018 that prior to the reduction in the GST on the product from 28% to 18% w.e.f. 15.11.2017 it was being purchased by the Respondent at the base price of Rs. 158.66/- per unit with GST of Rs. 44.42/- @ 28% and the total purchase price was Rs. 203.08/ per unit and it was being sold by him on the price of Rs. 213.63/- per unit after adding his margin @ 4.06% of Rs. 10.55/-. He had 1288 units of the product in stock on 14.11.2017. He has also admitted that after 15.11.2017 he had sold the product at the base price of Rs. 172.77/- after levying GST of Rs. 31.10/- @ 18% and charging margin of Rs. 9.77/- per unit and the product was sold by him at the price of Rs. 213.64/-.* ***Therefore, it is clear that there was no reduction in the sale price charged by him although the rate of GST was cut by 10%, rather the base price was increased by Rs. 14.11/- per unit by the***

Respondent. The same price was charged by him on all the transactions made by him between 15.11.2017 to 7.12.2017. The base price was reduced by Rs. 2/- w.e.f. 8.12.2018 by the HUL after which sale price of Rs. 211.82/- was charged by the Respondent whereby there was excess realisation of Rs. 12.11/- per unit*. The Respondent has further admitted that he had sold 10 units of the product to the Applicant No. 1 vide invoice No. GSA25066 dated 26.9.2017 on which the base price was charged as Rs. 166.90/- and the sale price including the GST @ 28% was realised as Rs. 213.63/-. It is also acknowledged by the Respondent that he had sold 20 units of the product to the above Applicant vide invoice No. GSA37782 dated 15.11.2017 in which the base price was shown as Rs. 181.05/- and the selling price was Rs. 213.63/- and hence the base price was enhanced by Rs. 14.15/- per unit by the Respondent. It has further been acknowledged by the Respondent that the above Applicant had purchased 11 units of the product from the Respondent vide invoice No. GSA42046 dated 28.11.2017 in which again an amount of Rs. 14.15/- per unit was over charged from him. The Respondent was also aware that the rate of tax had been reduced from 28% to 18% w.e.f. 15.11.2017 on the above product which has been correctly charged by him in the above 3 tax invoices issued by him to the above Applicant.* ***Therefore, it is established from the record as well as the admission of the Respondent himself that he had resorted to profiteering by increasing the base price in violation of the provisions of Section 171 of the above Act and had thus not passed on the benefit of reduction in the rate of tax by commensurately reducing the price of his product rather the base price was increased by him exactly by the same amount by which the tax had been reduced.*** *The Respondent has claimed that the HUL had changed the base price in its software and hence he was bound to charge the increased base price at the time of issuing invoices. However, the Respondent being a registered dealer having GSTIN 08AAEFS7072E1Z4 under the CGST/SGST Acts 2017 was fully aware of the reduction in the rate of tax of the product issued vide Notification No.*

41/2017- Central Tax (Rate) dated 14.11.2017, with effect from 15.11.2017 and Section 171 of the above Act and hence he was legally bound not to charge the enhanced base price resulting in negation of the effect of reduction in the rate of tax and thus he cannot escape his accountability of passing on the benefit of the reduction in the rate of tax to his customers. The Respondent has also not produced any evidence to show that he had objected to the increase made by the HUL in the base price or under what provisions of the above Acts he was bound to follow the instructions given to him by the HUL vide it's letter dated 21.11.2017, vide which the excess amount of ITC was credited by him to the HUL in respect of the above product, in contravention of the provisions of Section 171 of the Act and also charge the increased base price. ***Thus it is established that he had profiteered to the extent of Rs. 5,50,370/- on account of the increased base price charged by him including GST from 15.11.2017 to 31.1.2018 as has been mentioned in the table shown in para 6 supra. It has also been proved that the Respondent had profiteered an amount of Rs. 184/- @ Rs 16.69/- per unit including GST @ 18% by supplying 11 units of the product to the Applicant No. 1 on 28.11.2017, therefore, he has violated the provisions of Section 171 of the above Act."***

15. The findings in the impugned order, as can be seen above is that the Maximum Retail Price *(hereinafter, 'MRP')* of the subject product continued to remain the same, i.e., Rs. 213/- prior to and after the reduction of GST rates on 14th November, 2017. A perusal of the figures stated in the impugned order would show that the base price which was earlier Rs.158.66 per unit was increased to Rs.172.77 per unit after the reduction in GST. Thus, the benefit availed due to the reduction in rate of GST by 10% was not passed on to the consumers and the base price was in fact increased by Rs. 14.11/-.

16. This was thus held by NAPA to be contrary to Section 171 of the Act,

2017 and hence, NAPA came to the conclusion that penalty would be liable to be levied upon the Petitioner.

17. Accordingly, in the impugned order, the profiteered amount has been determined as Rs.5,50,186/- which has been directed to be deposited to the consumer funds, along with interest at 18%. The relevant portion of the impugned order is further extracted herein below:

> *"23. Since the price of the product and the GST charged by him from the above Applicant in respect of the tax invoice issued on 15.11.2017 has been returned by him to the Applicant No. 1 the amount of profiteering is not being determined however, in respect of the tax invoice issued by him to the above Applicant on 28.11.2017 the amount of profiteering is determined as Rs, 184/- as has been mentioned in para 16 supra which shall be returned by him to the Applicant No. 1 with interest @ 18% w.e.f. 28.11.2017 till the same is paid.* ***Based on the details of the supplies made by the Respondent to the other recipients who are not identifiable the amount of profiteering is determined as Rs. 5,50,186/- excluding the amount of Rs. 184/-, which shall be deposited by him along with interest @ 18% to be calculated from the first of the subsequent month in which the profiteering was done as per the amount which has been mentioned in the Table shown in para 6 above, till it is paid.*** *The DGAP shall ensure that in case the above amount pertaining to the Respondent in respect of the above product has been deposited by the HUL in the CWF, the balance amount due as interest is calculated and got deposited from the above Respondent. In case the above amount has not been deposited or short deposited, the same shall be got deposited from the Respondent by the DGAP alongwith the interest. The above amount shall be further got deposited in the respective CWF of the Central or the State Government as per the provisions of Rule 133 (c) of the CGST Rules, 2017 by the DGAP as per the ratio prescribed under the above Rule."*

18. In addition, NAPA has also proposed to impose penalty upon the Petitioner for the profiteering. The operative portion on this issue is as under:

> ***"25. Accordingly, it is proposed to impose penalty on the Respondent under Section 122 of the CGST Act, 2017 read with Rule 133 (d) of the CGST Rules, 2017. However, before the penalty is imposed the Respondent is hereby given notice as to why such penalty should not be imposed on him.***
> *26. Any amount ordered to be paid or deposited by the Respondent under this order shall be paid or deposited by him within a period of 3 months from the date of receipt of this order and in case the same is not paid or deposited by him within the prescribed time the same shall be recovered by the DGAP as per the provisions of the CGST Act, 2017 and paid to the entitled person or deposited in the concerned head of account of the Central or the State Government."*

19. Challenging the finding in impugned order, ld. Counsel for the Petitioner has argued that the grammage/quantity of the subject product was increased by 100 ml after the change in GST Rates on 14th November, 2017 and therefore, the amount charged by the Petitioner would be justified, in as much as if the quantity of the subject product increases, the price can also be increased.

20. The Court has considered this submission and is of the opinion that the same would not be a valid stand. In ***Reckitt Benckiser (supra)*** is concerned, it has been categorically observed that increase in volume or weight or supply of additional free material by any schemes would not be sufficient to satisfy the requirement of passing on the benefit availed to the consumers. The relevant observations are as under:

"108. This Court is of the view that Section 171 of the Act 2017 is a complete code in itself and it does not suffer from any ambiguity or arbitrariness. Section 171 of the Act 2017 sets out the function, duty, responsibility and power of NAA with exactitude. It stipulates that the pre-conditions for applicability of the provision are either the event of reduction in rate of tax or the availability of benefit of input tax credit (resulting in such reduction). Once the said pre-requisites/conditions exist, the direct consequence contemplated i.e. reduction of the price must follow. Therefore, if before such reduction of rate of taxes or benefit of Input Tax Credit, the price paid by the recipient inclusive of the applicable tax at the relevant time was a particular amount, then on account of the reduction of the tax rate or the benefit of the Input Tax Credit, there has to be reduction in the subject price. Further, the reduction in the tax rate or the benefit of Input Tax Credit which is mandated to be passed on to the recipient is a matter of right for the recipient and consequentially, the price reduction must be commensurate to such benefit. ***For instance, when the Goods and Services Tax rate on a service of Rs.100 is 28%, the MRP of the service at which it is sold to the consumer is Rs.128. When the Goods and Services Tax rate is reduced by the Government from 28% to 18%, the provision requires that this reduction in Goods and Services Tax rate should be reflected in the price of the service and the benefit from such reduction of tax rate should be passed on to the consumers by way of commensurate reduction in the price. As a result, the new MRP of the service should be Rs.118.***

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IT IS THE PREROGATIVE OF THE LEGISLATURE TO DECIDE HOW THE BENEFIT IS TO BE PASSED ON TO THE CONSUMERS

130. It is settled law that it is the prerogative of the Legislature to decide the manner as to how the reduction in rate of tax or the benefit of Input Tax Credit is to be passed

on to the consumer. In ***Dr.Ashwani Kumar vs. Union of India, (2020) 13 SCC 585,*** *the Supreme court has held as under:-*

> *"11.* ***The legislature as an elected and representative body enacts laws to give effect to and fulfil democratic aspirations of the people. The procedures applied are designed to give careful thought and consideration to wide and divergent interests, voices and all shades of opinion from different social and political groups. Legislature functions as a deliberative and representative body. It is directly accountable and answerable to the electorate and citizens of this country. This representativeness and principle of accountability is what gives legitimacy to the legislations and laws made by Parliament or the State Legislatures.*** *Article 245 of the Constitution empowers Parliament and the State Legislatures to enact laws for the whole or a part of the territory of India, and for the whole or a part of the State respectively, after due debate and discussion in Parliament/the State Assembly."*
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> *(emphasis supplied)*

131. In the present instance, the legislative mandate is that reduction of the tax rate or the benefit of Input Tax Credit must not only be reflected in reduction of prices but it must also reach the recipient of the goods or services. Such a mandate cannot be tampered with by the supplier by substituting the benefit in the form of reduction of actual price with any other form such as increase in volume or weight or by supply of additional or free material or festival discount like 'Diwali Dhamaka' or cross-subsidisation.

132. Further, the requirement that the benefit of the rate reduction and Input Tax Credit reach the final consumer by way of 'cash in hand' through commensurate reduction in prices, cannot be said to be manifestly arbitrary. No fundamental or other rights of any of the petitioners are being affected in any manner by requiring that the benefit in reduction of tax rate or Input Tax Credits, be passed on

to the recipients by way of commensurate reduction in prices.

133. This Court is in agreement with the submission of Mr. Zoheb Hossain, learned counsel for the Respondents, that the benefit of tax reduction has to be passed on at the level of each supply of SKU to each buyer and in case it is not passed on, the profiteered amount has to be calculated on each SKU.

134. The contention of the learned counsel for the Petitioners that it is legally impossible to pass on the benefits by reducing the price of goods in cases of low priced products is untenable in law. As pointed out by Mr.Zoheb Hossain, learned counsel for the Respondents, the provisions of the Legal Metrology (Packaged Commodities) Rules, 2011 are applicable. In cases for period prior to 31st December, 2017, the erstwhile Rule 2(m) of the Legal Metrology (Packaged Commodities) Rules, 2011 which provided detailed instructions for rounding off of the MRP would be applicable. Similarly, Rule 6(1)(e) of the above Rules as amended in 2017 with effect from 01st January, 2018 to 31st March, 2022 provides that the retail price of the package shall clearly indicate that it is the MRP inclusive of all taxes and the price in rupees and paise be rounded off to the nearest rupee or 50 paise would be applicable. Consequently, there would be no legal impossibility in reducing the MRP even in such cases. There is nothing inconsistent in Section 171 with such rounding off."

21. While commercial realities have to be taken into consideration in such matters, the benefits extended to the consumer are also of utmost importance. The purpose of reduction in GST is to make products and services more cost effective for the consumers. The said purpose would be defeated if the price is kept the same and some unknown quantity is increased in the product, even without the consumer requesting for the increased quantity product.

22. In this case, the stock which was lying with the Petitioner of 1288 units

was the oldest stock, prior to the notification of 14th November, 2017. Some explanation is sought to be given by the Petitioner for not reducing the price, by relying upon some scheme that had been launched by them, wherein the subject product was given with a Dove soap bar as a free product. The said scheme has been illustrated by the Petitioner in the petition in following manner:

Year	Month	ML	MRP	MRP Per ML	Promotional Scheme
2016	September	300	215	0.62	2 Dove soap bars free along with Vaseline 400 ML. (Price excluding the benefit is 0.62 per ML)
2016	November	300	215	0.72	The temporary Dove bar offer was withdrawn by the Company during the course of November
2017	July	300	230	0.77	
2017	September	400	235	0.59	Product quantity increased from 300 ML to 400 ML. Price per ML was reduced to 0.59 per ML.
2017	November	400	235	0.59	
2018	January	400	233	0.58	Instead of withdrawing the CP, additional quantity of 100 ML continues to be passed on to consumer as GST benefit

23. In the opinion of this Court, the rationale behind reduction in GST rates is to ensure that the consumer gets the benefit of the said reduction. A deadline, once fixed by way of notifications, cannot be sought to be violated merely on the ground that some special scheme is being launched or the product is being sought to be given free with some other product or the grammage or the quantity of the product is being increased.

24. This Court is of the opinion that all schemes which may have been in operation, ought to have been recalibrated with the reduction in GST rates. There may be some transitional problems, however, the purpose of the reduction in GST rates cannot be defeated. Such problems are nothing but those for which the manufacturers and retailers ought to be prepared for. For eg., upon immediate reduction of GST rates, the product MRP may be the same, but the GST component has to be reduced, even if it means that the product is being sold for less than the MRP. The term MRP means `Maximum Retail Price' and thus sale below the said price is permissible. It is only sale above the said price which is impermissible. But to ensure that the GST benefit is not passed on, increasing the quantity of the product unknowingly and charging the same MRP is nothing but deception. The consumer's choice is being curtailed. The non-reduction of price cannot be sought to be justified on the ground that the quantity has been increased or that there was some scheme which justifies the increase in price. In the opinion of this Court, such an approach would defeat the entire purpose of reduction of GST rates and the same cannot be permitted.

25. Further, while the constitutional validity of the provisions of the 2017, Act, as also the concurrent Rules, 2017, including Section 171 has already

been upheld by the judgment of ***Reckitt Benckiser (supra),*** this Court wishes to further press upon the legislative intent and rationale behind the said provision, as also the anti-profiteering regime.

26. Section 171 of the Act, 2017, read with Chapter XV of the Rules, 2017, both titled as *'Anti-Profiteering Measure'*, stipulate the structural mechanism and functions of the three-tier Anti-Profiteering Authorities. Section 171(2) provides for the constitution of 'National Anti-Profiteering Authority'. In consonance with the Act, 2017, the Rules specify provisions regarding the composition of the authority *inter alia*, other functions imperative for its functioning.

27. The anti-profiteering measures enshrined in the GST law provide an institutional mechanism to ensure that the full benefits of input tax credits and reduced GST rates on supply of goods or services flow to the consumers. This institutional framework comprises of the 'authority' under Section 171.

28. Hence, in the event the 'authority' confirms there is a necessity to apply anti profiteering measures, it has the power to order the supplier / business concerned to reduce its prices or return the undue benefit availed by it along with interest to the recipient of the goods or services. If the undue benefit cannot be passed on to the recipient, it can be ordered to be deposited in the Consumer Welfare Fund. In extreme cases, the 'authority' can impose a penalty on the defaulting business entity and even order the cancellation of its registration under GST.

29. Thus, it is clear that the purpose of the 'anti-profiteering mechanism' is to safeguard consumers' interests and guarantee that businesses would transfer the benefits of lower tax rates and input tax credits to the final consumers.

30. In light of the above discussion both on facts as also on law, this Court

is of the opinion that the impugned order deserves to be upheld. Accordingly the amount of Rs. 5,55,126/- shall be transferred to the Consumer Welfare Fund.

31. At this stage, it is submitted on behalf of the Petitioner that the said amount was already deposited in the account of Directorate General of Anti Profiteering, New Delhi, and the same was converted into FDR in terms of the order dated 6th December, 2018, passed by this Court. The proof of deposit has also been furnished by the Petitioner. Let the same be taken on record.

32. In view thereof, let the amount realized from the FDR be transferred to the Consumer Welfare Fund. The details of the account are set out below:

- ***Account Name – Central Bank of India***
- ***Account Number – 3000058471***
- ***IFSC – CBIN0282169***

33. Insofar as the imposition of penalty is concerned, the penalty proceedings would not be applicable in view of the observation of the Court in ***Reckitt Benckiser India (P) Ltd. (supra)*** which is as under:

> *154. Section 164 of the Act, 2017 gives power to the Government to make rules for carrying out provisions of the Act and in particular to provide for penalty. Section 164 of the Act, 2017 is reproduced hereinbelow:-*
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> > *"164. Power of Government to make rules (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act. (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or*

> *in respect of which provisions are to be or may be made by rules. (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force. (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees."*
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> *155. Accordingly, Rule 133(3)(b)&(d) of the Rules, 2017 which empower the authority to levy interest @ 18% from the date of collection of the higher amount till the date of the return of such amount as well as imposition of penalty are intra vires and within the Rule making power of the Central Government.*
> *156. Moreover, as pointed out by Mr. Zoheb Hossain, the show cause notices initiating penalty proceedings in relation to violation of Section 171(1) prior to the coming into force of Section 171(3A), have been withdrawn by NAA and penalty proceedings in all such cases are not being pressed. Consequently, this issue has become infructuous.*

34. Accordingly, the petition is disposed of in these terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 23, 2025*/kp/ss*
(corrected and released on 26th September, 2025)