

FAQ on Anti-profiteering provisions

Q 1. What is profiteering?

Ans. In terms of Section 171 of the CGST Act, 2017, the suppliers of goods and services should pass on the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices. The wilful action of not passing on the above benefits to the recipients in the manner prescribed is known as "profiteering".

Q 2. What is the background to providing statutory provisions on anti-profiteering in GST law?

Ans. The Study Report titled 'Implementation of Value Added Tax (VAT) in India-Lessons for transition to GST' released by the Comptroller & Auditor General (C&AG) of India in June, 2010 mentioned about several cases of profiteering by dealers by not passing on the benefit of tax rate reduction to the consumers in the wake of implementation of VAT in the country. The above C&AG report, after checking the records of 13 manufacturers in a State in three initial months of implementation of VAT, found that the manufacturers did not reduce the MRP of the goods despite sharp fall in the tax rate post-VAT implementation. As a learning from the VAT experience, legal teeth was sought to be provided in GST law by incorporating anti-profiteering provisions to check profiteering by businesses when GST was being rolled out in the country.

Q 3. What are the statutory provisions of anti-profiteering in GST law?

Ans. Section 171 of CGST Act, 2017, provides that 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.

Chapter XV of the CGST Rules, 2017 comprising of 16 Rules (Rule 122 to Rule 137), contains the detailed mechanism and procedure.

Q 4. Is there a sunset clause for Anti-Profiteering law'?

Ans. Yes. In terms of Rule 137 of the CGST Rules, 2017, the Anti-profiteering Authority shall cease to exist after the expiry of two years from the date on which the Chairman of the Authority enters upon his office unless the GST Council recommends otherwise.

Q 5. What are some of the instances in which the statutory provisions of anti-profiteering will kick in?

Ans. The different situations in which Section 171 of CGST Act, 2017 & the identical provision in State/ UT GST Act will get attracted include:

- i. reduction in tax rate;*
- ii. benefit of Input Tax Credit (ITC) available to the registered person/ supplier.*

Q 6. What is the function of National Anti-Profiteering Authority (NAA)?

Ans. The National Anti-Profiteering Authority (NAA) is required to determine whether the benefit of input tax credit or reduction in the tax rate has actually resulted in a commensurate reduction in the price of the goods or services or both.

The NAA has the power to identify the registered person who has not passed on the benefit of reduction in tax rate or input tax credit by way of commensurate reduction in prices and it may 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; cancellation of registration of the supplier and imposition of penalty. In case the eligible recipient is not identifiable or does not claim return of the amount, the NAA may order the supplier to deposit the amount in the Consumer Welfare Fund.

Q 7. Should a customer pay extra GST on Maximum Retail Price (MRP) affixed on goods?

Ans. No. MRP is inclusive of GST and is the maximum retail price that can be charged from the consumers.

Q 8. In cases of over-charging in the name of GST, where can a consumer register his complaint for redressal?

Ans. Charging more than MRP attracts the provisions of Legal Metrology Act. In case of over-charging over MRP, a complaint can be lodged on toll-free number 1800-11-4000/14404.

There are multiple ways through which aggrieved consumers or suppliers of goods and services can register their complaints against profiteering:

a. Online complaint facility:

*Complainant can register an online complaint at <http://www.naa.gov.in/complaint.php>
Link to see the guidelines to register online complaint:
<http://www.naa.gov.in/page.php?id=guidelines-for-consumers>*

b. Via Mail:

User can mail the complaint at:

Agencies	Mail-Id	Nature of the complaint
Standing Committee	sc.antiprofitteering@gov.in anti-profitteering@gov.in	Complaints involving issues of all-India nature.
State-Screening Committees	For State-wise E-mail Addresses please refer to: http://www.naa.gov.in/docs/screening%20committees%202020-08-18.xlsx	Complaints involving issues of local nature.

c. By Post:

Agencies	Postal Addresses
National Anti-profiteering Authority	National Anti-profiteering Authority Dept. of Revenue, Ministry of Finance 6th Floor, Tower One Jeevan Bharati Building Connaught Place New Delhi-110 001.
Directorate General of Anti-Profiteering & Standing Committee	Directorate General of Anti-profiteering, Dept. of Revenue, Ministry of Finance, 2nd Floor, & Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi -110 001.

Q 9. In cases of profiteering in the name of GST, what is the complaint redressal mechanism available to the consumer?

Ans. The CGST Act, SGST Acts & the CGST/SGST Rules framed thereunder provide for the following complaint redressal mechanism.

1. *The aggrieved persons may file an application, in the prescribed format, before the Standing Committee on Anti-profiteering or before the State Level Screening Committee. (If the issue involved is of local nature).*
2. *The State Level Screening Committee constituted in every State/UT with legislature examines it & forwards it to the Standing Committee constituted at the national level, if a prima facie case of profiteering is made out against the registered person.*
3. *Thereafter, the Standing Committee shall refer the matter to the Director General of Anti-Profiteering (erstwhile DG, Safeguards) for a detailed investigation, if prima facie evidence of profiteering exists.*
4. *The DG, Anti-Profiteering shall conduct the investigation and submit its report to the National Anti-Profiteering Authority (NAA) constituted by the Central Government under section 171 (2) of the CGST Act, 2017 for taking appropriate action, as mentioned in the Answer to Q 6. above.*

Q 10. How can one file complaint against profiteering?

Ans. An online complaint can be filed at <http://www.naa.gov.in/complaint.php> . Complaints of the nature of national-level can be filed by e-mail at

sc.antiprofitteering@gov.in . Complaints of local nature can be sent by mail to the respective State Screening Committee.

Q 11. Whether one form is sufficient for multiple goods or services?

Ans. No, the prescribed application form APAF-01 is with reference to a single Good/Service. In case of application for multiple Goods/Services, separate application for each Good/Service is required to be filed.

Q 12. What is the methodology to identify cases of profiteering?

Ans. Rule 126 of the CGST Rules, 2017 vests the power to determine the methodology & procedure with the National Anti-Profiteering Authority constituted by the Central Government under Section 171 (2) of the CGST Act, 2017. The guiding principle mentioned in the said Rule states that the reduction in tax rate on supply of goods or services or benefit of input tax credit has to be passed on to the recipient by way of commensurate reduction in prices. The methodology and procedure adopted to identify cases of profiteering may vary from case to case, depending upon the facts of the case and the nature of goods or services supplied.

Q 13. What are some of the measures taken by the Consumer Affairs Ministry in the Government of India to check cases of profiteering post implementation of GST?

Ans. The Consumer Affairs Ministry in the Government of India, vide its letter no. WM-10(31)/2017, dated 04.07.2017, permitted the manufacturers or packers or importers of pre-packaged commodities to affix new MRP labels (after incorporating tax changes due to GST) in addition to existing MRP for three months from 1st Jul to 30th Sept 2017. Similar action was taken after the GST rate reduction in November, 2017 and July, 2018.

Q 14. What can buyers do if shopping malls and retail stores are still selling goods at pre-GST affixed labels?

Ans. As per the Government's directive, shopping malls and retail stores are required to affix two MRP labels reflecting both pre-GST & post-GST prices. Despite this, if consumers find that retailers are selling goods at pre-GST affixed labels, they can report to National Consumer Helpline. Also, the administrative machinery of the Controller of Legal Metrology can be effectively used by States/UTs to monitor & resolve such cases.

Q 15. How can buyers of under-construction flats benefit from the anti-profiteering provisions?

Ans. Section 171 of the CGST Act, 2017 can be invoked when the builder increases the instalment amount to be paid in case of an under construction flat, complex etc, on the pretext of leviability of 12% GST as against the apparently lower tax rates in the earlier indirect tax regime. In pre-GST era, Central Excise duty was payable on most construction material at 12.5%. In addition, VAT was payable on construction material at 12.5% to 14.5% in most of the States & the construction material also suffered entry tax. The input tax credit of the above taxes was inadmissible for meeting Service Tax liability of the builder, thus leading to cascading of input taxes on constructed flats & a higher effective

tax incidence. But GST regime allows full input tax credit for offsetting the headline rate of 12%, thereby reducing the effective tax incidence.

Q 16. Can action be taken under the anti-profiteering provisions in case benefit of transitional credit availed is not passed to the consumers?

Ans. The benefit of transitional input tax credit allowed under Section 140 (3) of the CGST Act, 2017, is required to be passed on to the recipient by way of reduced prices.

Q 17. What is the time-frame for deciding cases of anti-profiteering provisions?

Ans. The maximum time envisaged for resolution of cases is 9 months excluding the time taken by the State-level screening committee and the Standing Committee (maximum 2 months) for processing the complaints.

Q 18. What should a complainant ensure while submitting complaint to Screening Committee/ Standing Committee?

Ans. The complainant should submit a duly filled in application form APAF-01 along with his identification document and evidence of profiteering. The instructions for filling the said form are contained in form APAF-01.

Q 19. A company in order to justify the prices being charged by it may have to submit information which could be confidential and may impact its business interest?

Ans. The provisions of section 11 of the Right to Information Act, 2005, shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.

The DG, Anti-Profiteering may require the parties providing information on confidential basis to furnish a non-confidential summary thereof. If, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit a statement of reasons as to why summarisation is not possible.

Q 20. Where can one access the orders passed by NAA?

Ans. All the orders passed by NAA are available on their website <http://www.naa.gov.in/news.php?cat=2>.