

# *Legal Communiqué*

Information about important decisions



## **Department of Goods and Services Tax Government of Maharashtra**

**NOVEMBER-2025**

Presented by :  
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## Legal Communiqué Case No. 1

### Principal Commissioner, Hyderabad and other v/s M/s Asian GPR Multiplex, Hyderabad

WP (C) No. : 04/2024, Date of Order: 24.06.2024

Authority: Competition Commission of India  
(Authority under Section 171 of the Central Goods & Services Tax Act, 2017)  
(Allegation of profiteering with respect to the supply of  
(Services by way of admission to exhibition of cinematography films)

#### Facts of the Case:

The case pertains to a complaint received by the Directorate General of Anti-profiteering (DGAP), alleging that the respondent, a cinema owner, had not passed on the benefit of reduction in GST rate to the customers by not reducing the prices of admission tickets after the GST rate reduction on services by way of admission to exhibition of cinematograph films from 28% to 18% w.e.f. 01.01.2019. The respondent contested the allegation citing various reasons including the scope and ambit of Section 171 of the CGST Act, 2017, as well as the regulatory authority's control over ticket pricing. The designated Commission carefully reviewed all submissions and documents presented. It was determined that the respondent had indeed profited by not passing on the benefit of reduced GST rate to the customers, leading to a specific amount of profiteering. The respondent was directed to deposit the profited amount along with interest in the consumer welfare fund and adhere to other directives within a specified timeframe.

#### Applicants' (DGAP's) Submission:

- The DGAP's Report, dated 10.12.2019, concluded that the allegation of profiteering was correct.
- The DGAP found that the Respondent increased the base price of admission tickets for 'Premium Seats' from Rs. 136.72 to Rs. 148.31 and for 'Regular Seats' from Rs. 117.19 to Rs. 127.12.
- The DGAP asserted that the benefit of GST rate reduction from 28% to 18% was not passed on to the recipients, violating Section 171 of the CGST Act, 2017.
- The total profited amount covering the period from 01.01.2019 to 30.06.2019 was computed as Rs. 48,25,970/- (Rs. 3,63,299/- for Premium Seats and Rs. 44,62,671/- for Regular Seats).
- In a supplementary report, the DGAP clarified the following regarding the Respondent's submissions:
- Time-Barred Contention: The DGAP argued the proceedings were not time-barred, as the period between the complaint's receipt in DGAP (18.04.2019) and the Standing Committee's meeting (15.05.2019) was less than two months, and thus within the time limit.
- Pre-GST Rate Comparison: The DGAP contended that the investigation began because Section 171 was attracted by the post-GST rate reduction notification (w.e.f.

01.01.2019), and therefore, a comparison of pre and post-GST tax rates or taking into account the lack of base price change since GST introduction was irrelevant.

### **Respondent's Submission:**

The Respondent, M/s Asian GPR Multiplex, raised several contentions in their written submissions:

- **Time-Barred Proceeding:** The written application was made on 29.03.2019, but the Standing Committee referred the case to the DGAP on 02.07.2019, which was almost 3 months later, exceeding the two-month limit under Rule 128 of the CGST Rules, 2017.
- **Base Price Calculation/Loss Argument**
- **Incorrect Base Price:** The DGAP incorrectly based its calculation on the pre-rate reduction base prices of Rs. 117.19 (Regular) and Rs. 136.72 (Premium).
- **Suggested Base Price:** The calculation should have been based on a higher base price of Rs. 130.43 for Regular Seats and Rs. 152.17 for Premium Seats (taking into account the Pre-GST Entertainment Tax).
- **Suffered Loss:** Using the Respondent's suggested base prices, the tax element borne by the Respondent had actually increased from Pre-GST (Entertainment Tax) to Post-GST (18% GST). The Respondent claimed to have suffered a loss of Rs. 3.32 per unit for Regular Seats and Rs. 1.87 per unit for Premium Seats, demonstrating no violation of Section 171.

### **Maintenance of Price and Precedent:**

- **Fixed Prices by State Govt.:** The State Government regulated ticket prices, and the Respondent's price increase from Rs. 125 to Rs. 150 (Regular) and Rs. 150 to Rs. 175 (Premium) was pursuant to a High Court Order quashing the earlier Government Order and was within the maximum rates fixed by subsequent Government Order miscellaneous (GOMS.)75 dated 23.06.2017.
- **Pre-GST Comparison:** Citing various NAA case laws, the Respondent argued that Section 171 would not apply when the GST rate was higher than the pre-GST tax rate (e.g., Entertainment Tax + VAT). The base prices were maintained to avoid shifting the burden of the increased tax rate onto the customer.

### **Court Observation:**

- **Rejected the Time Bar Contention:** The DGAP's clarification demonstrated that the period between the complaint's receipt (18.04.2019) and the Standing Committee's decision (15.05.2019) was less than two months, thus within the time limit.
- **Confirmed Profiteering:** The Authority maintained that the matter pertained solely to the reduction of the GST rate within the GST regime (28% to 18% w.e.f. 01.01.2019). The respondent was legally obligated under Section 171 of the CGST Act, 2017, to pass on this benefit via a commensurate reduction in price.
- **Discounted Pre-GST Comparison:** The Authority found the respondent's reliance on pre-GST tax rates irrelevant, as the anti-profiteering provision is triggered by a reduction in the rate of tax on supply of goods/services or increased Input Tax Credit

benefits after the introduction of GST.

- Upheld DGAP's Calculation: The Authority accepted the DGAP's calculation of the profiteered amount, concluding that the respondent failed to reduce the cum-tax price commensurately with the GST rate reduction, thus violating Section 171.

### **Court Decision:**

Despite the reduction of GST rate from 28% to 18%, respondent has not reduced selling price. On this account respondent has profiteered to the tune of Rs. 48,25,790/-. The ruling confirmed that allegation of profiteering was correct.

### **Way Forward:**

- The case reaffirms the strict application of Section 171 of the CGST Act, 2017, which mandates that any reduction in the rate of tax on supply of goods or services must be passed on to the recipient by way of a commensurate reduction in prices.
- The authority upheld the DGAP's methodology of comparing the base price immediately before the tax rate reduction (post-GST) with the base price immediately after the tax rate reduction.
- It highlights that in cases concerning a rate reduction within the GST regime (e.g., 28% to 18%), arguments related to the original pre-GST tax burden or increases in base price made at the time of GST introduction are considered irrelevant to the anti-profiteering investigation.
- By calculating the total profiteered amount as Rs. 48,25,970/-, the decision holds the Respondent accountable for increasing the base price to neutralize the benefit of the GST rate reduction, thereby maintaining the final selling price.



## Legal Communique Case No. 2

### M/s. Arena Superstructures Private Limited V/s. Union of India And 4 Others

HIGH COURT, ALLAHABAD WRIT TAX No. 1716 of 2025, 2025: AHC:58690-DB

(Once a Resolution Plan is approved by the NCLT, other creditors are barred from subsequently raising claims as this would disrupt the entire resolution process)

#### Introduction and Background:

This note summarizes the judgment in the case of M/S Arena Superstructures Private Limited vs. Union of India and 4 Others. The petitioner, M/S Arena Superstructures Private Limited, filed a writ petition under Article 226 of the Constitution of India. The petition sought to quash an assessment order dated February 4, 2025, and a related demand notice for the financial year 2017-2018, both issued under Section 74 of the CGST/UPGST Act, 2017.

The petitioner's company entered a Corporate Insolvency Resolution Process (CIRP) on October 10, 2020, with a Resolution Professional appointed on the same day. A specific notice about the CIRP was sent to the G.S.T. Department in Noida. The National Company Law Tribunal (NCLT) approved the Resolution Plan on July 19, 2022.

#### Petitioner's Argument:

The petitioner argued that once the NCLT approves a Resolution Plan, the GST Department cannot create new dues by passing orders. The petitioner cited several Hon'ble Supreme Court judgments to support this argument, including:

- Ghanshyam Mishra and Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.
- N.S. Papers Ltd. Vs. Union of India and Others
- Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another
- Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Others

#### Key Findings and Legal Principles:

The Hon'ble Allahabad High Court, referencing its own prior decision in M/S NS Papers Limited and Another Vs. Union of India Through Secretary and Others, reiterated that statutory dues if not a part of the Resolution plan, shall stand extinguished and no proceedings could be continued in respect of such dues for the period prior to the date of approval of Resolution Plan by Adjudicating Authority. The Court rejected the argument that an assessment pending from a prior period could be quantified after the Resolution Plan is approved. Such an action would be an "anathema" to the fundamental principles of the moratorium provided under the Insolvency and Bankruptcy Code (IBC) and would hinder the "fresh start" for the Resolution Applicant. The Court emphasized that any new liability imposed after the approval of the Resolution Plan is inherently and "palpably illegal".

The Court's view was further fortified by the Hon'ble Supreme Court's ruling in Vaibhav Goyal & Another Vs. Deputy Commissioner of Income Tax & Another.

The Supreme Court held that all statutory dues owed to the Central Government that are not part of the Resolution Plan "shall stand extinguished" after the adjudicating authority's approval under Section 31 of the IB Code. This prevents a successful resolution applicant from being burdened with "undecided" claims, which would create uncertainty and act as a roadblock to recommencing business on a "clean slate". The Hon'ble Supreme Court's judgment in Committee of Creditors of Essar Steel India Ltd. was also cited to support this principle.

### **Decision:**

Based on the established legal precedent, the Hon'ble High Court concluded that the principle is "crystal clear". Once a Resolution Plan is approved by the NCLT, other creditors are barred from subsequently raising claims as this would disrupt the entire resolution process. The court found no reason to keep the matter pending.

Accordingly, the Hon'ble Allahabad High Court quashed both the impugned Assessment Order and the Demand Notice against the petitioner for the financial year 2017-2018. The writ petition was allowed.

### **Way Forward:**

It is necessary to lodge claim before IRP/RP/Liquidator in time as per the relevant provisions of IBC prevalent at that time.



## Legal Communique Case No. 3

**G. KHANNA & COMPANY**

**Vs**

**The Union of India**

**BOMBAY HIGH COURT (WRIT PETITION NO. 208 OF 2025)**

(Giving of the Petitioner a reasonable opportunity if a shortfall existed, to make the required deposit)

### **Fact of the Case:**

M/s. G. Khanna & Company had filed a writ petition against the order dated 19/09/2024, by which the Appellate Authority dismissed Petitioner's Appeal on the ground of non-compliance with the mandatory condition of pre-deposit of 10% of the tax amount under the CGST Act. The Authority claimed that 10% pre-deposit amounted to approximately Rs. 12,76,000/- whereas the Petitioner had only deposited Rs. 8.62 lakhs.

### **Arguments by the Petitioner:**

- The Petitioner's counsel contended that there was no short deposit, but even if there was, the law required the Appellate Authority to give the Petitioner an opportunity to address and rectify the shortfall.
- It was argued that the dismissal was against the principles laid down by the Court in the JEM Exporter and D N Polymers cases, which held that procedural defects should be allowed to be cured by giving notice and opportunity.

### **Arguments by Department:**

- It was submitted that the Petitioner was heard by the Appellate Authority, as is evident from the impugned order dated 19 September 2024. It was further submitted that no such issue was ever raised on behalf of the Petitioner, and therefore, the contention regarding the denial of opportunity should not be entertained in the facts of this case.
- The Department asserted that the 10% pre-deposit rule was mandatory and the shortfall justified the rejection of the appeal.

### **Discussions and Decision:**

- The Court noted that while the Petitioner was heard on the merits, no prior notice or opportunity to cure the alleged shortfall in the pre-deposit was given.
- It referenced previous judgements (JEM Exporter, D N Polymers, Delphi World Money Ltd.) emphasizing the principle that procedural defects should not result in dismissal without providing a party an opportunity to rectify the defect, in line with principles of natural justice.

### **Court's Decision:**

- The impugned order rejecting the Appeal was set aside.
- The matter was remanded to the Appellate Authority, with directions to give the Petitioner an opportunity to demonstrate there was no shortfall or, if a shortfall existed, a reasonable opportunity (about 4 weeks) to make the required deposit.
- If the Petitioner fails to comply, the Appellate Authority may dismiss the appeal, but if the shortfall is addressed, the appeal should be decided on merits.
- The Court did not address the merits of the case and left them open for decision by the Appellate Authority.

### **Way Forward:**

- Appellate authority should give an opportunity to appellant to rectify the shortfall in deposit if shortfall existed instead of rejecting the appeal forthwith.



## Legal Communique Case No. 4

**M/s. Sharma Trading Company**  
**V/s.**  
**Union of India &Ors.**

**DELHI HIGH COURT (WRIT PETITION NO. 13194/2018)**

(Constitutional validity and application of Section 171  
of the CGST Act, 2017 and Rule 126 of the CGST Rules, 2017)

### Introduction:

The Hon'ble Delhi High Court, in *Sharma Trading Company v. Union of India &Ors.*, examined the constitutional validity and application of Section 171 of the CGST Act, 2017 and Rule 126 of the CGST Rules, 2017, which deal with the anti-profiteering provisions under GST. The Court upheld the impugned order of the National Anti-Profiteering Authority (NAPA) that had found the petitioner guilty of profiteering by not passing on the benefit of GST rate reduction to consumers.

### Facts of the Case:

- The petitioner, M/s Sharma Trading Company, was a distributor of Hindustan Unilever Ltd. (HUL) dealing in products including Vaseline VTM 400 ml.
- The GST rate on the product was reduced from 28% to 18% by Notification No. 41/2017-CT (Rate) dated 14-11-2017, effective from 15-11-2017.
- Despite the rate reduction, the sale price remained unchanged at 213.63, though the base price increased from 158.66 to 172.77.
- NAPA held that the petitioner had profiteered 5,50,186/- by failing to pass on the GST reduction benefit and ordered deposit of this amount, along with 18% interest, into the Consumer Welfare Fund.

### Key Legal Provisions:

1. Section 171 of the CGST Act, 2017 - Anti-Profiteering Measure
  - Mandates that the benefit of tax rate reduction or input tax credit must be passed on to the consumer by way of commensurate reduction in prices.
  - The Court reaffirmed that non-reduction of price despite a lower GST rate constitutes profiteering under Section 171.
2. Rule 129 & Rule 133 of the CGST Rules, 2017 - Investigation and Orders by NAPA
  - Rule 129 authorizes the Director General of Anti-Profiteering (DGAP) to investigate complaints.
  - Rule 133 empowers NAPA (and now the Principal Bench of the GST Appellate Tribunal) to direct deposit of profiteered amounts with interest @18% and, where necessary, to impose a penalty.

### Court's Analysis and Findings:

#### 1. Constitutional Validity:

- Relying on its earlier judgment in *Reckitt Benckiser India Pvt. Ltd. v. UOI* (29-01-2024), the Court reaffirmed the constitutional validity of Section 171 and the anti-profiteering rules.

## 2. **Profiteering Established:**

- The Court observed that although the GST rate decreased by 10%, the base price was simultaneously increased by 14.11, resulting in no reduction in consumer price (MRP 213.63).
- Thus, the benefit of GST reduction was not passed on, violating Section 171.

## 3. **Rejection of Petitioner's Defence:**

- The petitioner claimed that quantity of the product increased and therefore no profiteering occurred.
- The Court rejected this, holding that increase in quantity or freebies cannot substitute for price reduction mandated under Section 171.
- It emphasized that the benefit must be passed in monetary terms through reduction in price, not by indirect means such as additional quantity or promotional schemes.

## 4. **Purpose of Anti-Profiteering Law:**

- The Court reiterated that anti-profiteering provisions are intended to ensure that tax reductions benefit consumers, and business entities must recalibrate their prices immediately upon any tax rate change.
- Failure to do so defeats the objective of the GST rate reduction.

## 5. **Penalty Proceedings:**

- The Court noted that, in line with Reckitt Benckiser (supra), penalty proceedings under Section 171(3A) were withdrawn or rendered infructuous in pre-2020 cases. Hence, no penalty was imposed.

## **Key Judgments Referred:**

- Reckitt Benckiser India Pvt. Ltd. v. Union of India (2024) - Upheld Section 171 and anti-profiteering framework.
- Dr. Ashwani Kumar v. Union of India (2020) 13 SCC 585 - Legislature's prerogative to determine how tax benefits reach consumers.
- Excel Crop Care Ltd. v. CCI (2017) 8 SCC 47 - Scope of DG's investigation under competition law, applied analogously.

## **Way Forward:**

The Hon'ble Delhi High Court upheld the NAPA's order confirming profiteering by the petitioner and directed that the amount of 5,55,126/-, already deposited with DGAP, be transferred to the Consumer Welfare Fund. The Hon'ble Court reiterated that anti-profiteering laws protect consumer interest and ensure that tax rate reductions are transparently reflected in prices. Increasing the base price while keeping the MRP constant constitutes profiteering, and businesses must strictly adhere to Section 171 of the CGST Act.

In light of the **recent reduction in GST tax rates**, this judgment assumes greater relevance, as it provides authoritative judicial guidance for the **interpretation and enforcement of anti-profiteering provisions**. It will serve as a valuable reference for both **policy formulation and litigation** in similar cases.



## Legal Communiqué Case No. 5

Treco Wire India Pvt. Ltd.

V/s.

Commissioner of Central Goods & Service Tax & Ors.

DELHI HIGH COURT (W.P.(C) 14428/2025))

(Taxpayers should pursue statutory appeals rather than expect quashing the order in writ jurisdiction.)

### Issue:

Whether the departmental Order-in-Original confirming demand for alleged fraudulent availment of Input Tax Credit (ITC) - and consequential measures including blocking/appropriation of ledger balances and imposition of penalty - is amenable to writ relief where the taxpayer was held to be a beneficiary of invoices issued by a non-existent/bogus supplier.

### Facts of the case:

- The tax department (DGGI) had paid investigation visit at POB of M/s Treco Wire India Pvt. Ltd. after paying visit at one of the supplier of petitioner i.e. M/s Balaji Sales Corporation who was found to be bogus supplier. It was found that petitioner took Input Tax Credit (ITC) on purchases from M/s Balaji Sales Corporation, which did not actually exist.
- Based on this, the department passed an Order-in-Original (O-O) demanding tax, interest, and penalty, and blocked the company's GST credit ledger.
- The company filed a writ petition in the Delhi High Court asking to cancel this order and to unblock its ledger.

### Arguments:

#### Petitioner (Treco Wire):

- The company argued that the tax officer had **no proper authority (jurisdiction)** to pass the order.
- It claimed that there were **mistakes in the procedure** followed by the department.
- Treco Wire submitted that its **purchases were genuine**, and it had **all documents** to prove the goods were received.
- The company argued that **blocking its GST credit (ITC)** and **imposing penalty** was **too harsh and unfair**.
- It requested the court to **cancel (quash)** the demand and to **remove the restriction** placed on its electronic credit ledger.

#### Revenue (Department):

- The department submitted that its investigation clearly proved that Treco Wire's supplier i.e. M/s Balaji Sales Corporation did not exist.
- It alleged that Treco Wire was involved in a fake invoice racket to wrongly claim ITC.

- Therefore, the tax demand, interest, penalty, and blocking of credit were fully justified to protect government revenue.
- The department also said that the company had a legal right to file an appeal, so the High Court should not interfere directly by using its writ powers

### **Decision of the Court:**

- The Hon'ble Delhi High Court refused to interfere with the department's Order-in-Original.
- The court noticed that the department had enough evidence showing that Treco Wire's supplier was not genuine.
- The company should file an appeal before the proper authority instead of using the writ route.
- Hence, the petition was dismissed.

### **Way Forward:**

- The judgment reinforces that courts will decline writ relief where departmental findings of nexus with bogus suppliers are supported by investigation material - taxpayers should pursue statutory appeals rather than expect quashing the order in writ jurisdiction.
- Administrative safeguards such as blocking/appropriation of electronic credit/ cash ledger in suspected fraud cases are likely to be sustained where the record shows involvement with non-existent suppliers.
- Businesses should institute stronger supplier due-diligence to avoid being tagged as beneficiaries of bogus-invoice networks.

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Referred judgements can be accessed through the QR Code Provided on the note

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