

National Anti-Profiteering Authority in GST

Introduction

Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit should have been passed on to the recipient by way of commensurate reduction in prices. However it has been the experience of many countries that when GST was introduced there has been a marked increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually reduced the final prices. This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering. National Anti-profiteering Authority is therefore being constituted by the central Government 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, this is to ensure that the consumer is protected from arbitrary price increase in the name of GST.

Constitution of the Authority:

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 CBEC (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

Power to determine the methodology and procedure:

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.

Duties of the Authority:

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,
 - (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 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

Directorate of Commercial Taxes, West Bengal

Note: Reference to WBGST Act, 2017 includes reference to CGST Act, 2017 also.

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- return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
- (c) imposition of penalty; and
 - (d) cancellation of registration.

Application to the Authority:

All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee constituted in each State by the State Governments consisting 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.

The Screening Committee on being satisfied that the supplier has not passed on the reduction in rate of tax on any supply of goods or services or the benefit of input tax credit on to the recipient by way of commensurate reduction in prices, will forward the application with its recommendations to the Standing Committee on Anti-profiteering, which shall consist of such officers of the State Government and Central Government as may be nominated by the GST council, for further action.

If the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of 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, it shall refer the matter to the Director General of Safeguards for a detailed investigation.

Investigation:

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

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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.

Order of the Authority:

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.

Conclusion:

National Anti-Profiteering Authority is a mechanism devised to ensure that prices remain under check and to ensure that businesses do not pocket all the gains from GST because profit is fine, but undue profiteering at the expense of the common man is not.

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