



Government of India
Ministry of Finance: Department of Revenue
Office of The Commissioner
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Date: 15/11/2019

To,

4548
The Superintendent (systems),
Office of the Chief Commissioner,
Central Goods and Services Tax & Customs,
GST Bhawan, 5th Floor, Kedar Road
Guwahati-781001.

Sub: Public Notice No. 03/2019: FREQUENCY ASKED QUESTIONS ON ANTI-PROFITEERING-Forwarding.

You are requested to upload the copy of the Public Notice No. 03/2019: FREQUENCY ASKED QUESTIONS ON ANTI-PROFITEERING (Copy Enclosed) in the Zonal website www.cexcusner.gov.in

Encl: As above


15.11.19
(SASHI WAPANG LANU)
Joint Commissioner



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Date: 14th November 2019

Public Notice No 03/2019: FREQUENTLY ASKED QUESTIONS ON ANTI-PROFITEERING

Frequently Asked Questions on Anti-Profiteering is being issued in public interest by the Office of the Commissioner, Central GST, Dimapur. Please note that the subject guidance material is only intended to provide general understanding on the subject and it should not be treated as a legal advisory, opinion or authority. For more details, refer to the respective legal provisions of CGST Act 2017 / CGST Rules, 2017; Notifications issued there under and Circulars of the CBIC.

Q.1: What is ‘profiteering’?

Ans. 1: Profiteering means “to make or seek to make an excessive or unfair profit, especially illegally”. As per the Sec. 171 of CGSTA / SGSTA, 2017, the suppliers of Goods or Services should pass on the benefit of any reduction in the rate of GST on such supplies or the benefit of **Input Tax Credit (ITC)** to the recipient by way of commensurate reduction in prices. Any wilful action of not passing of such benefit to the recipient of supplies under GST law, amounts to “profiteering”.

Q.2: What are the legal provisions governing the Anti-profiteering?

Ans. 2: The Sec. 171 of CGST/SGST Act, 2017 and the Rule 122 to Rule 137 of the CGST/SGST Rules, 2017 envisages the relevant legal provisions, including the administrative and procedural aspects of the Anti-profiteering.

Q.3. What is the administrative structure for enforcing the provisions of Anti-Profiteering (AP)?

Ans. 3: CGST/SGST Act, 2017 mandates a 3-tier structure for the scrutiny, investigation and adjudication of the complaints regarding profiteering. They are:

- (1) The National Anti-profiteering Authority (NAA) – is the Apex body, at the National level – undertakes adjudication of the cases of AP;

- (2) The Directorate General of Anti-profiteering (DGAP), earlier known as DG-Safeguards, investigates the complaints referred to by the Standing Committee; and
- (3) The Standing Committee (SC) at the National level, supported by the State Screening Committees (SSC) constituted at each State – scrutinises the applications received.

Q.4: Who can file a complaint against profiteering?

Ans. 4: Any 'interested person' which includes a consumer or trader, supplier, recipient, any organisation or the Commissioner of GST, experiencing or noticing the non-reduction in the price of the Goods or Services, in commensurate with the reduction in the rate of GST or the benefit of ITC, can file the complaint under the anti-profiteering provisions, with proper evidence.

Q. 5: How to file a complaint against a taxpayer indulging in profiteering?

Ans. 5: A complaint has to be filed in the prescribed form viz: APAF-1 (Sample given). The said form can be downloaded from the website of the Central Board of Indirect Taxes & Customs (CBIC) viz: www.cbic.gov.in and submitted along with relevant information / details / data / supporting documents- to the Standing Committee at the following address:-

*Standing Committee,
2nd Floor, Bhai Vir Singh Sahitya Sadan,
Bhai Vir Singh Marg, Gole Market,
New Delhi-110 001.
Ph:011-23741537; Fax.:011-23741542.*

E-mail: "anti-profiteering@gov.in".

If the issue involved is of local nature, the complaint in the form APAF-1 can be lodged to the State Screening Committee on Anti profiteering, constituted for each state.

The State Screening Committee for the state of Nagaland consists of the following two members:

K. Ashi Khieya IRS,
Commissioner, Central GST Dimapur,
5th Floor Agarwal Tower, Circular Road, Dimapur Nagaland 797112.
Phone: 03862-224171/ 224871, Email:ashikhieya@gmail.com

Y. Mhathung Murry,
Additional Commissioner of State Taxes, Dimapur Nagaland 797112.
Phone: 03862-248543, Email:mhathung@gmail.com

Further, a complaint in form APAF-1 can also be lodged online on the website of National Anti- profiteering Authority at "www.naa.gov.in".

Q.6: How to seek guidance/clarifications regarding filing of complaints against profiteering?

Ans.6: NAA, Delhi has established an Anti-profiteering Helpline: 011-21400643, which provides information relating to the guidelines for registering a complaint against profiteering or to resolve any queries regarding registration of complaints.

Q.7: How to know the status of the complaint against profiteering?

Ans. 7: The complainant can track the application filed online through the '*track complaint*' module available on the website www.naa.gov.in, if it was filed online. Otherwise the complainant can contact the DG- Anti-profiteering at: 011-23741544; 011-23741542; *e-mail: anti-profiteering@gov.in*, to seek the status.

Q.8: What actions can be taken by NAA against a person who had not passed on the benefit of reduction in the rate of GST or the benefit of ITC, by non-reduction of the price of the supplies?

Ans. 8: Where it is found that a registered person had not passed on the benefit of the reduction in the rate of tax on the supply of Goods or Services; or the benefit of ITC to the recipient by way of commensurate reduction in prices, NAA may order:

- (a) reduction in prices;
- (b) return to the recipient an amount equaling to the amount not so passed on , with interest @ 18%;
- (c) deposit of the illegal profit accrued to the Consumer welfare fund;
- (d) imposition of penalty; and
- (e) cancellation of registration of the supplier.

Q.9: Is the complainant eligible to recover the amount on account of his complaint against profiteering?

Ans. 9: The National Anti-profiteering Authority, in terms of the Rule 127 read with the Rule 133 of CGST/SGST Rules, 2017, can compel the defaulter to return to the recipient, an amount equivalent to the amount not so passed on, by way of commensurate reduction in prices along with interest @ 18% from the date of collection of higher amount till the date of return of such amount. In such case, only the recipient of Goods/Services is eligible to receive the amount.

Q.10: What happens to the amount returned by the defaulter when the eligible person does not claim such amount or the person who was eligible for the said amount is not identifiable?

Ans.10: A separate fund known as "Consumer Welfare Fund" (CWF) was created by the Central Government under the Sec. 57 of the CGST / SGST Act, 2017 which would be utilised for the welfare of the consumers in the country. When the recovery of the amount including interest cannot be returned for any reason like – the eligible person does not claim such amount or such person is not identifiable, the recovered amount shall be deposited in Central & State – CWF constituted, in equal proportions.

Q.11: What is the procedure to deposit the amount which could not be passed on to the beneficiary in the Consumer Welfare Fund?

Ans.11: Profiteered amount shall be paid by way of Cheque/ Demand Draft in favour of the PAO (Hq. CBIC) N.Delhi, which shall be forwarded to "The Pr. Chief Controller of Accounts, CBIC, 1st. Floor B-Wing, DGARC Building, I.P. Estate, N.Delhi-11 0002. {Tel.No: 011-23702310 /e-mail: gstcell-hq@gov.in}". In the covering letter forwarding such Cheque/ DD, there shall be a clear mention that the said amount shall be deposited under the Head of Account of Consumer Welfare Fund, under the accounting code: "Demand No. 900; Major Head : 0047 – Other Fiscal Services 00.800 – Other Receipts"

Q.12: As the profiteered amount contains both CGST and SGST, can it be deposited entirely in the Central Consumer Welfare Fund?

Ans.12: In case the profiteered amount pertains to inter-state supply the entire amount will have to be deposited in Central-CWF; and the SGST component of such amount would be passed on to the concerned State Consumer Welfare Fund (State-CWF) subsequently as per the mechanism prescribed. But, if the profiteered amount pertains to intra-state supply, 50% of the amount shall be deposited in the Central-CWF and the remaining 50% in the respective State-CWF account. However, if the Head of Account for State-CWF is not created or known, the entire amount can be sent to Pr. CCA, New Delhi as mentioned above (Ref. Ans. to Q. No: 11) for depositing the same in the Central-CWF with a mention that 50% of it pertains to the concerned State-CWF, so that the settlement of the amount to be deposited to the State-CWF can be considered as soon as the State CWF is created.

Q.13: What are the documents to be submitted along with the form (APAF-1) for complaining about profiteering?

Ans. 13: The provisions of GST law have not specified any documents for the said purpose. However, the documents such as the tax invoices/bills issued by the supplier prior to and subsequent to the

reduction of rate of tax reflecting the price, rate of tax and amount of tax; the documents indicating the description of the Goods/Services (in case the invoices do not reflect true description – like the contract/agreement/product brochure etc.); documents indicating non-factoring the benefit of ITC available in price; worksheet in support of the alleged non-passing of the benefit by commensurate reduction of the price etc.- are required to be submitted, along with the application (APAF-1).

Q.14: Is there any monitoring mechanism for implementation of the orders passed by the National Anti-Profiteering Authority (NAA)?

Ans. 14: An order passed by NAA shall be immediately complied with by the registered person against whom the order is passed, failing which, action shall be initiated to recover the amount in accordance with the provisions of the CGST/SGST/UTGST/IGST Act, 2017. (Rule. 135)

Further, NAA may require any authority of Central Tax, State Tax or Union Territory Tax to monitor the implementation of the order passed by it. (Rule. 136).

Q.15: Is there any time limit prescribed for filing application/complaint against profiteering; and for the disposal of such applications by the authorities?

Ans.15: There is no time limit prescribed for filing of the application/complaint in form APAF-1, against the suspected/alleged profiteering. But such applications need to be filed within a reasonable time from the time of such incidence, to enable the authorities to gather the relevant evidence on investigation and arrive at a judicious decision.

However, certain time limits have been prescribed for disposal of the applications/complaints at various stages, which are detailed hereunder :

Name of the Authority	Time limit prescribed	Relevant legal provision
Standing Committee (SC)	Two months from the date of the receipt of the complaint / application, SC shall examine the accuracy/adequacy of the evidence provided in the application to determine as to whether there is prima facie evidence to support the claim of the applicant that profiteering has taken place or not.	Rule 128(1)
State Screening	No time limit is expressly prescribed for scrutiny of the complaints/applications received by SSC for	Rule 128(1)

Committee
(SSC)

submission to the Standing Committee. But such time limit for scrutiny by SC can be made applicable to SSC, as well.

Further, NAA had prescribed ONE month as the time limit for submission of the report to SC, when a reference was received by SSC seeking a verification report in r/o of an application received by SC.

DG, Anti-Profiteering (DG, Anti-profiteering)	The DG, Anti-Profiteering should complete the investigation within a period of 3 (Three) months from the date of receipt of the reference from the Standing Committee which can be extended upto a further period of 3 (Three) months by NAA.	Rule 129(6)
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National Anti-profiteering Authority (NAA)	NAA shall pass order within 3 (Three) months from the date of receipt of report from DG, Anti-Profiteering.	Rule 133(1)
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Q.16: How to find whether the benefit of the reduction in the rate of GST has been passed on to the customer?

Ans.16: The Customer or any 'interested person' has to examine as to whether there was a reduction in the price consequent to the reduction in the rate of GST. In fact, such reduction in price ought to be in commensurate with the reduction of the Rate of GST. In case there was no reduction in the price of Goods/ Service whose rate of Tax was reduced or the reduction is not in commensurate with the reduction in rate of tax, it is a violation of the Sec 171 of CGSTA/SGSTA, 2017. In such cases, the customer or the interested person may file APAF-1 with supporting documents as mentioned in Ans. 13 above.

The amount of profiteering in a case where the rate of GST was reduced, can be calculated as illustrated in the following example:-

Before revision of Rate of
GST

After revision of Rate of GST

Sl. No.	Details	Amount (in Rs.)	Sl. No.	Details	Amount (in Rs.)
1.	Base Price	100	1.	Base Price	108.48
2.	(inclusive of margin)	28	2.	(inclusive of margin)	19.52
3.	GST @ 28%	128	3.	GST @ 18%	128
	Total Selling Price		4.	Total Selling Price Total Amount of Profiteering	8.48

In case of non-passing of the benefit of ITC, the profiteered amount could be quantified basing on the cost data analysis of the product which requires scrutiny of financial records.

Anti-Profitteering Application Form (APAF – 1)

**[To be filed before Standing
Committee/State level Screening
Committee in terms of Rule 128 of
CGST Rules, 2017]**

A. General information about the Applicant

A1. Name

A2. Address

A3. Contact Number

A4. E-mail ID

A5. Proof of identity (Please Tick-4)

Aadhaar Card

Voter ID

Permanent Account
Number (PAN) Card

Driving Licence

Passport

Ration Card having
photograph

of the applicant

Any other proof of
Identity (Specify)

B. General information about the Supplier who has not passed on the benefit

B1. Name

B2. Address

B3. Contact Number

C. Particulars of Goods/Services

C1. Description

C2. Earlier Price/ Value per unit

C3. Present Price/ Value per unit

C4. Earlier MRP

C5. Present MRP

D. Details of reduction in Tax Rate / Benefit of
Input Tax Credit (ITC) (Please Tick-√)

√

√

D1. Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of Invoice, Price List etc.

Yes

No

D0. Whether the benefit of ITC has been passed on (Please enclose evidence)

Yes

No

D1. Additional information, if any.

Declaration:

I hereby declare that the information furnished above is true to the best of my knowledge and that I have exercised due diligence in submitting such information. I understand that providing incomplete or incorrect information will make the application invalid.

Date :

Place :

(Signature of Applicant)

NOTE: Filled up application form is to be sent to the State level Screening Committee in case issue is of local nature and in other cases to the Standing Committee at national level.

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