

ROLE OF ANTI PROFITEERING CLAUSE IN GST AND POPULAR COURT CASES

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Abstract

To curb the unfair pricing strategies and ensure consumers get the products at the right prices in GST (Goods and Services Tax) Anti profiteering clause was inserted and NAA (National Anti-Profitteering Authority) was formed to check the unfair profiteering activities and within a short span of time there has been number of cases filed by the customers for the anti-profitteering. Some cases were of profiteering and others were not of profiteering. The research focuses on the some of the popular cases, their details and how decisions were delivered by the NAA. The purpose is to find the role of NAA and look into the cases in depth. How efficiently NAA takes decisions on the basis of available facts. The clause of Anti Profitteering further can be boon for the consumers.

Keywords: GST, Anti-Profitteering, NAA, Court Cases, Consumers.

INTRODUCTION

GST refers to Goods and Services Tax which is an indirect tax levied on goods and services. It was implemented on 1st July 2017 and replaced the whole indirect tax system. GST lead to the complexities as the rates of tax changed and some of the companies took the advantage of these complexities to earn unfair profit, this activity is known as profiteering and to save consumers from these unfair pricing strategies and keep watch on the companies Anti profiteering clause was added in the GST.

OBJECTIVE OF THE STUDY

- Identify the role of Anti Profitteering Mechanism in GST System.
- Evaluate the popular court cases of Anti Profitteering.
- Analyse the benefit of Anti Profitteering for the customers.

RESEARCH METHODOLOGY

The research has been done with the help of secondary data sources of the GST Anti Profitteering website and GST official website and actual court cases are taken as the base of the study to analyse.

ANTI-PROFITEERING CLAUSE

In GST System when GST is reduced on any product or service the benefit of price must be passed to the consumer. If benefit not passed then the case comes under the Anti-Profitteering. The aim of anti-profitteering is; the consumer get the benefit of reduced GST in form of reduction of price of goods and services.

When rate of GST on any product or service is reduced or ITC is given under GST then the benefit due to GST must be passed to the consumers in form of reduced pricing on goods and services but in some companies this benefit is pocketed by the businessmen. For e.g.

Cement was charged 30% before GST but after GST it was charged 28% GST. If a person buys one bag of cement the calculation is as under,

Particulars	Before GST	After GST
Base Price of 1 bag of Cement	400	400
+Tax before GST Excise+VAT 30%	120	-
+Tax after GST 28% GST	-	112
Amount paid by customer	520	512

This is the fair calculation but if cement dealer increases the base price and takes the price advantage the calculation is as under,

Particulars	Before GST	After GST
Base Price of 1 bag of Cement	400	407
+Tax before GST Excise+VAT 30%	120	-
+Tax after GST 28% GST	-	113.96
Amount paid by customer	520	520.96

This way instead of passing the advantage of GST to customer the base price was increased by the cement dealer and the customer had to pay the same price before and after GST. This is termed as profiteering in GST when the profit is earned at the cost of customer.

Another common practise seen in profiteering is when manufacturer or dealer gets ITC

ITC (INPUT TAX CREDIT)

Input Tax Credit is the claiming the credit of tax paid on the inputs for example A manufacturer has to pay tax Rs 660 on the final product but he has already paid tax on the raw materials 500 Rs. So he need not to pay 600 Rs again he has to claim input credit of Rs. 500 and has to pay only balance $660-500=160$ Rs. In this way tax to be paid is fair and there is no cascading effect of tax so manufacturers and dealers under GST have to pay less tax but they need to pass this benefit in form of reduced price to the customer.

Profiteering is done when the manufacturer produce goods at cheaper rate with the ITC but still sales at higher rate so it is said that benefit of ITC is not passed to the customers.

ROLE OF ANTI-PROFITEERING IN GST

Anti-Profiteering clause in GST was inserted with the objectives to check the unfair pricing techniques and businessmen, traders must not take the unfair advantage of GST and work for the benefit of the customers. It is a boon for the protection of consumer interest and very beneficial that customers must not be cheated by the business parties in terms of price.

STRUCTURE OF ANTI-PROFITEERING MECHANISM

1. State Level Screening Committees and standing Committee

In every state there is state level screening committees which works with the standing committee. It consist of one member from state one member from central government. The complaint filed by the customer first checked by them. They check whether the complaint is valid or false, for this they collect the evidences such as invoices and other documents which can prove that the complaint is genuine.

2. Authority Directorate General of Safeguards

If complaint is valid it is transferred to Authority Directorate General of Safeguards. The actual investigation is conducted by DG of Safeguards. It calls for required documents for clarifications and prepares all the reports and calculations.

3. National Anti-Profiteering (NAA)

The final decision is taken by the NAA on the basis of investigation done and considering facts. It consists of one chairmen and four technical members. NAA can make following orders on the basis of cases,

1. It can order the particular company to reduce the prices of the products.
2. It can order the particular company to return the extra amount charged to the customer with interest.
3. It can impose penalty maximum of Rs.25000
4. It has right to cancel the registration of the company.
5. It can order the company to deposit the profiteering amount to CWF (Consumer Welfare Fund)

PROCESS OF ANTI-PROFITEERING MECHANISM

1. Complaint filed by the customer or company when they feel they are charged more price.
2. Screening Committee and standing committee will examine the complaint first.
3. After finding complaint is valid the case is transferred to the Authority Directorate General of Safeguards.
4. The DG of safeguards will conduct main investigation and communication with the both parties.
5. National Anti-Profiteering Authority NAA delivers the decision on the basis of the investigation facts.

POPULAR COURT CASES OF ANTI-PROFITEERING

Jubilant Food works Pvt. Ltd. (Domino's Pizza)

Jubilant food works pvt. Ltd. is the company which operates dominos chain in India and runs 1128 outlets across 31 states and Union Territories. An applicant in the Bengaluru filled the complaint via email against Jubilant food works pvt. Ltd. (Dominos India) that it has charged the more amount. On 15 November 2017 there were rates reduction in the many products on restraunts it was 18% before 15 November 2017 but after 15 November 2017 it was reduced to 5% so the Customer complaint that this rate reduction is not passed to him. The customer has purchased one stuffed Garlic bread and one medium veg Extrava Pizza.

Price Calculations with 18% GST
(Before 14.11.2017)

Particulars	MVP	GB
Base Price	440	129
18% GST	79	23
Total Price to Pay	519	152

Price Calculations with 5% GST
(After 15.11.2017)

Particulars	MVP	GB
Base Price	440	129
5% GST	22	6.45
Total Price to Pay	462	135.45

Now Customer must have charged 462 and 135.42 Rupees but he had charged, 509 and 149 respectively, Base Prices were increased

Price Calculations

Particulars	MVP	GB
Base Price	485	139
5% GST	24	7
Total Price to Pay	509	149

So, this is a clear case of Anti Profiteering.

In the defence the company produced the following arguments in its favour.

- There has been increase in the average monthly expenses on the raw materials and other costs.
- The company claimed that there are number of factors which determine the price of the products like competition pricing, strategies for market penetration, profit margins for sustaining in market, economic and political condition, cost of procurement etc.
- Every year the company used to increase the base price due to inflation and produced the relevant proofs and documents for the same.
- The price rise was because of the non-availability of ITC. (On 18% ITC was allowed but on 5% ITC is not allowed) so, company claimed that because of denial of ITC the base price was increased.
- The another claim made by the company was; there had been rise in the expenses on employee benefits.

Investigation

Accounts, Statements and proofs to claim the above evidences DGAP called to fact check the claims made by the company.

- There has been reduction in the total variable cost of the company 50.16% so there was no inflation.
- There was no proof of that every year company used to increase the price and company failed to produce proof for this.

All the claims were found false when detail scrutinizing of the accounts so it was proved that the benefit of reduction of GST was not passed to the customers and base price was increased to take the advantage of GST and base price was increased to the more than what required and it was deliberately increased. From 15.11.2017 to 31.05.2018 the company continuously charged the increased base price and fake invoices were issued to the customers and profiteering amount illegally earned was Rs. 41,42,97,635 so the company was ordered to reduce the price and also directed to deposit this amount to CWFs in the ratio of 50:50 centre and states along with 18% GST and also ordered to company to return the excess amount charged to the customer who filed the complaint along with 18% GST and further notice sent to the company to explain that why should penalty of anti-profiteering not to be charged to the company.

Bajaj Electricals limited.

A consumer complained about one product named “Bajaj Majesty MX 20 steam iron” MRP has been increased by the company when rate was reduced from 28% to 18% on 27.07.18 by GST council. Customer complained that 1099 MRP Iron product was increased to 1405 and 1520 and customer submitted the screen shot of the price on “Amazon” and “shop.bajajelectricals.com” Investigation was done by DG and clarification was asked from the Bajaj Company and company produced all the relevant documents and in clarification the company gave the proof of 1099 Rs. MRP was changed from June, 2015 but there was some old stock which was of 1099 Rs. And this was unsold. New stock was of 1520 Rs. But websites had showed that old rate of 1099 Rs. Till July 2018 and this was because the website was not considered by purchasing by most of customers and purchase of the most of the products was done from the dealers in the market so website had some old stock of goods and in clarification company said it has not increased any prices after GST.

On the basis of facts and figures and examining the screenshots filled by the applicant. It was proved that it was the case of old stock and new stock and price changes has nothing to do with GST because price was changed in the year 2015 and company also confirmed and proved that once the old stock was liquidated of 1099 Rs, new stock was updated of Rs. 1520 and case was not of profiteering and the case was dismissed.

Saint Gobain India Pvt. Ltd.

The case was filed against Saint Gobain India Pvt. Ltd that the company has done profiteering and prices are increased after GST compare to the before GST. This is the case of pre GST and Post GST price increase in the product named Gypsum board. In investigation the invoices were compared of before and after GST and the calculations came out are as below,

Particulars	Pre GST	Post GST
Base Price	139.44	139.50
-Discount	-22.60	22.70
Actual Base Price after discount	116.84	116.84
+Excise duty 12.5%	+14.61	-
+Central Sales Tax 2% (CST)	+2.63	-
+GST 28%	-	+32.70
Actual Price paid by customers.	134.08	149.54

In the Pre GST scenario central sales tax and excise duty tax was total 14.5% and after GST scenario GST kept 28% which is clear rate of tax increased from 14.5% to 28% thus obvious price increase in the Gypsum board. In this case price increase is normal as GST was increased and there is nothing to do with company and case is not of profiteering involved so case was dismissed.

Glen mark Pharmaceuticals Pvt. Ltd.

On 27.07.2018 there was change in the rate of GST on sanitary napkins from 12% to nil and in 12% ITC was allowed which was the rate before 27.07.2018 amendment. Tax on the sanitary napkins become nil so that customers can get the benefit and in order to make sanitary napkins cheaper to the ladies but glen Mark Company was alleged that after this amendment also it was not passing the benefit of reduced price to the customers and increased the base price of the sanitary napkins. The case was examined by the standing committee firstly and then it was sent to the DGAP for the detail investigation and notice was sent to the company asking clarifications on this matter.

In the investigation it was confirmed that the base price was increased by 8.39% and GST rate reduction benefit was not passed to the customers and company was selling the sanitary napkins on the same price before and after the amendment here in this case exact amounts are not given as there are 13 products and out of these 13 products 12 products were sold at the same price. For e.g. if one packet was sold 40 Rs. With 12% GST then with nil GST it must be cheaper but the company was selling at same price i.e. 40 Rs.

In the defence following arguments were produced by the company:

- There has been loss of ITC and the cost has been increased to cover up losses.
- It was argued that there was short of time or very less time given to change the price and inform the dealers and because of this delay in the price change happened.
- On the other side company claimed that it has communicated the price change to all the parties of the distribution and directed them to sell at reduced price.

All the clarifications made by the company found baseless and irrelevant and can't deny the fact the profiteering was done by the company. In detail investigation profiteering amount found was Rs. 42,52,370/- in case of 12 products of sanitary napkins and company failed to pass the benefit of reduced price to the customers and thus it was ordered to deposit the profiteering amount in ratio of 50:50 in central and state CWFs along with 18% interest as the case was of Madhya Pradesh the company was advised to deposit 50% amount to MP CWFs and further clarification was asked from the company why penalty shouldn't be imposed on the company.

ADVANTAGE OF ANTI-PROFITEERING TO THE CUSTOMERS

NAA works for customers, it conducts seminars, workshops and outreach programs to educate and aware the customers about the profiteering activities, the rights of the consumer and motivates them to file the complaint if any customer feels that he has been charged the more price on the name of GST. A customer can easily file a complaint by online as well as offline. A customer can file online complaint using their site www.naa.gov.in he or she can also file complaint by email id or by post. In the above cases there were few cases which were not actually of profiteering but still consumers complained and there is no loss to the consumer in filing the complaint so if any customer feels that he has been charged more amount than what should be asked then he or she can file complaint the further truth and facts would be found by the NAA thus, this clause is actually a boon for the customers and ensures that customers must not be cheated anywhere in the prices of the products and services.

CONCLUSION

Anti-Profiteering clause in GST is very helpful for the protection of consumer interest and proves that customer is the king and king must not be cheated and if he is cheated then the result won't be good. NAA is an independent statutory body of the central government so it doesn't take favour of any one and delivers the justice as seen in the court cases where Bajaj Electricals and Saint Gobain were not involved in the profiteering so the cases were dismissed and there was misunderstanding of different issues so they were freed from the cases but in case of Dominos and Glen mark it was clear that both companies were found guilty so in a nutshell, NAA believes on facts and conducts the investigation in depth thoroughly and the fact comes out and customer can't do the detailed investigation, should file complaint if he or she finds that they are charged unfair prices.

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