



## **Emerging Issues on Anti-Profiteering under India GST**

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# Foreword

“While a lot has been talked about on anti-profiteering, at the core it is a customer friendly concept and should accordingly be welcomed. Anti-profiteering is still in its initial phases, hence, there are confusions and legitimate questions around it. However, industry and stakeholders should welcome this and work towards adopting it in a constructive manner. This document is illustrating some of the issues that are open at present. Hopefully in future as the law evolves, all these issues would be sorted.”

**Rajeev Dimri**

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GST in India is a momentous step towards reducing the cascading impact of taxation across the supply chain. However, it's been observed in various parts of the world that when GST gets implemented, the change in tax structure sometimes increases prices for consumers making GST a disincentive rather than an incentive to the economy. To ensure that no supplier and any other link in the chain profits unjustifiably because of GST, the government has introduced an Anti-Profiteering legislation. It impacts every brand and every retailer in the system. It is an important law which would be pursued vigorously by the concerned authorities. However, there's not enough knowledge available in the market to ensure that everyone abides by the rules framed under this legislature. This report is a useful resource for retailers that will help them understand the implications of this law and to take steps proactively rather than react if pulled up with non-compliance.

**Retailers Association of India - Kumar Rajagopalan**

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# 1. Introduction under India GST

Specific provisions on anti-profiteering have been legislated in the Goods and Services Tax ('GST') law. Anti-profiteering as a concept is not new and there is substantial international precedence (most recently in Malaysia) as well as domestic precedence (by way of parallel concept of unjust enrichment) provided under erstwhile indirect taxation laws.

The anti-profiteering provisions are inherently designed to protect consumer by restricting the companies to benefit unjustly on account of any reduction in GST rates or enhancement in tax credit pool. To this extent, the provisions of anti-profiteering are well understood and are accordingly welcomed.



## 2. Key requirements in India

Effective from 1 July 2017, the Central GST Act, 2017 imposes obligation upon taxpayers to reduce the prices in following manner:

**General obligation:** Any benefit due to tax rate changes or enhanced input tax credit to be passed on to customers by reducing prices of products. The relevant provisions contained under Section 171 of Central GST Act reads as under:

### “Anti-profitteering measure.

171. (1) 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.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, 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.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.”



**Specific obligation:** If tax credits claimed on transition stock (deemed credit under 40/60% scheme), same should be passed on to customers. The relevant provisions contained under proviso to Section 140 (3) of Central GST Act reads as under:

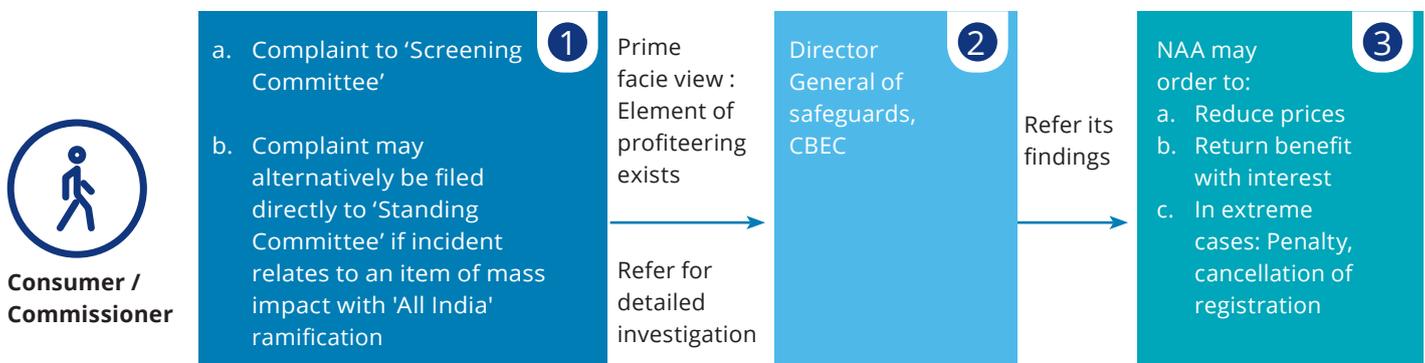
### “Transitional arrangements for input tax credit

#### 140(3).....

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.”

# 3. Compliances

For administration of compliance with the anti-profiteering provisions, a framework of bodies has been constituted. A National Anti-Profiteering Authority and State level screening committees have been appointed to review complaints of anti-profiteering, with the Director General of Safeguards being made responsible for detailed investigation of cases. A broad framework and timetable for the investigation process has also been set out (see diagram below).



Non-compliance with anti-profiteering measures may entail severe penal consequences under the GST law. The authorities may order the defaulter to reduce the prices of supplies to ensure that the benefit of tax rate cuts or enhanced credits is passed on to the customer. While the penalties can also be levied as provided under the law, the taxpayer may be ordered to return the amount of unpassed benefit to the customer along with applicable interest. In the extreme

cases, the registration of the taxpayer may also be cancelled, thereby impacting business continuity. Failure to address anti-profiteering related requirements in any manner may effect consumer confidence as well as may have a reputational impact.

It is therefore critical that businesses understand the requirements and actions that need to be taken.



## 4. What else do we know?

While the guidelines around anti-profiteering are yet to be formed, certain questions can be answered by reading the specific language provided in law. These are as under:

01

Anti-profiteering applies to both goods and services

02

Both MRP and non-MRP based product lines are within ambit

03

All channel partners are impacted (brand owners, distributors, exclusive retailers etc)

04

Anti-profiteering is not a one-time activity since the law, rates keep changing



# 5. Open issues

Anti-profiteering brings in a dynamic situation for businesses where, every time there occurs a reduction in GST rates or enhancement in credit pool, the benefit needs to be passed on to consumers. Therefore, every change in prices is expected to be backed by data, documentation providing the formulas, workings, backups etc. explaining the rationale of such price increase.

Towards this, the companies should gear up their systems and processes to deal with the requirements of anti-profiteering on a go forward basis.

Having said this, anti-profiteering should not be viewed as a price regulation imposed on companies preventing them from usual price increases which may be on account of past trends, increase in costs, enhanced margins etc.

There is limited guidance available on the methodology to be applied to compute the “commensurate benefit” to be passed to the customers. Unlike other countries, the anti-profiteering authority has not mandated a specific calculation or methodology.

It is only fair to say that every company while determining its pricing strategy is determined by competitive forces. The pricing decisions differ amongst sectors, product lines, SKUs, business segments etc.

At the least, keeping in mind that pricing is never a straight forward decision, below are some points worth considering in looking at the application of anti-profiteering provisions:

- 01 At what profit indicator level should the anti-profiteering computation be made – at product/segment/business vertical/ company. It should be considered that within different product lines, there are certain SKUs which exist. Also, while there may be profits in one product line, there may be losses in others. Further, same product may be marketed differently to different class of people
- 02 While the brands in most cases set the prices, the sale is made through independent distributors, wholesalers, retailers, stockists etc. Therefore, what is the beginning and end of the responsibility of the company
- 03 The law is unclear as to the duration within which the benefit arising out of reduction in GST rates or enhancement in credit pool is to be passed on to the customers. It would however be unfair to expect the pricing changes to be effected immediately after a legislative change for the reason described that pricing strategy has an interplay of multiple things. Companies should be allowed a fair duration over which the benefit has to be passed on rather than a specific date
- 04 Many companies in commodities and trade have market forces based pricing model, therefore, it is not clear how anti-profiteering is going to impact the prices in these cases
- 05 There may be external cases determining the price, for instance for drugs, medicines where other acts/ regulations have a significant interplay in the pricing of the products. Therefore, the impact of anti-profiteering has to be seen specific to these cases as well
- 06 While significant costs have been incurred on GST implementation, would the same be considered in arriving at anti-profiteering related decisions

# 6. Retail specific remarks

In addition to the above generality, certain retail specific issues arise:

 Retail typically has a long supply chain. There is usually one to two months of inventory in the pipeline. Hence, it would only be prudent to have time duration specified under law/guidelines, to take corrective actions on account of changes in rates

 For retail sector, it would be of particular relevance to identify rate change requirements, specifically in cases where strategic pricing is adopted (for instance, INR 5, INR 99.99 etc). In cases of strategic pricing, any change in rates may result in absurd pricing, which may not be trade friendly (ie INR 4.90/ INR 9.55 etc.) interrupting the transaction.

 This is especially relevant for retail sector, which is also required to comply with Legal Metrology Act and Rules made thereunder, where the standard sizes for certain identified FMCG products is provided under law itself. This may possibly disrupt the requirement to pass on benefit by way of increase in quantity

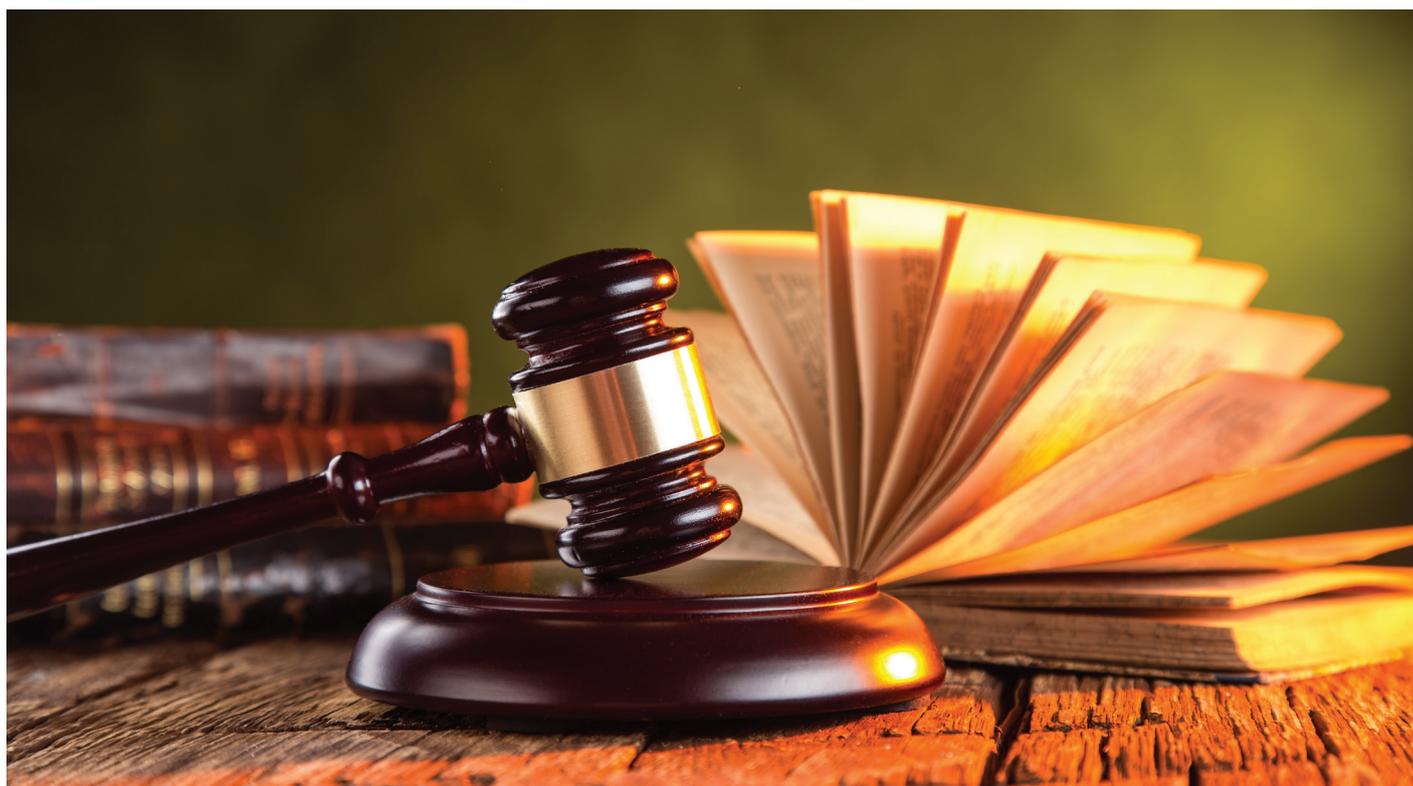
 It would be useful to consider making applications through industry bodies to the extent possible, so that specific guidelines may be issued dealing with industry specific concerns. Industry based forums should be approached to resolve issues unique to each industry.



## 7. What next?

Anti-profiteering is likely to be an area where policy and practice will continue to develop but in the interim it important to develop and implement a plan to comply with the law. As some of these clarifications may emerge in due course, industry may also think of taking advance ruling on critical issues.

In the meanwhile, following may be done:



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