

# The Anti-Profiteering Conundrum

Dr. Sarajit Sardar

Assistant Professor, Department of Commerce, Vidyasagar Evening College, 39 Sankar Ghosh Lane, Kolkata-700006, West Bengal (India)

---

## ARTICLE DETAILS

### Article History

Published Online: 25 May 2019

### Keywords

Anti-profiteering, Consumerism, NAA.

### Corresponding Author

Email:sarajitsardar99@gmail.com

---

## ABSTRACT

*The historic indirect tax reform publicized as "One nation, one tax", that was finally implemented on 1st July 2017, after a decade of intense debate has a provision called 'Anti-profiteering clause' which is not only a deterrent to abnormal profit earning by a business entity but can also be a potential armament for consumerism. Section 171 of the CGST Act, 2017 says "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". To monitor the situation arising out of the newly implemented law a National Anti-Profiteering Authority (NAA) under the Goods & Services Tax has been formed by the Central Government to inquire into any alleged contravention of the provisions of section 171 of the Central Goods & Services Tax Act, 2017 on its own motion or on receipt of information from any interested party as defined in the Rule 137 (c), person, body, association or on a reference having been made to it by the Central Government or the State Government. The idea of anti-profiteering provision has perhaps been borrowed from Australia although an Anti-Profiteering Act was passed by the West Bengal Government in 1958. But global experience suggests that anti-profiteering provisions can be effective only if there is a significant effort towards educating consumers and businesses as to their respective rights and obligations. The paper is based on various articles, research papers, government reports, newspapers, magazines, and various websites.*

---

## 1. Introduction

The tax reforms (direct or indirect) in the current global environment have become centric to checking tax base erosion, procedural simplification, enhancing transparency in terms of exchange of information and removal of cascading effect. India's tax policy particularly the indirect one was in need of a thorough overhauling in response to the global developments and the policy of 'Make in India' of the current Government which necessitated transparent and competitive tax environment. Add to that the innovations in the field of information technology which have made the producers and consumers more demanding than ever in terms of tempo and transparency. The response was bold and historic. The Government of India on 1<sup>st</sup> July 2017 introduced Goods and Services Tax (GST) Act after a decade of intense debate and discussion, terming it as 'One Nation, One Tax'. The aim was to ensure that a right balance is struck between checking tax avoidance on one hand while increasing the tax base and tax compliance on the other.

The introduction and implementation of the indirect tax reform is not without international precedence. There are more than 160 countries around the world who have implemented GST / VAT in various forms. The VAT structures are either overly centralized where tax is levied and administered by the Central government (Germany, Switzerland, Austria), or dual GST structure wherein both Centre and States administer tax independently (Canada) or with some co-ordination between the national and sub-national entities (Brazil, Russia). The rate of GST also varies across countries. While Malaysia has a lower rate of 6% (Malaysia though scrapped GST in 2018 due to popular uproar against it), Hungary has one of the highest

rate of 27%. Australia's GST rate is 10% whereas Canada implements multiple rate slabs. In European Union countries VAT rate is around 19.5%.

The reform process was introduced in India by the late Prime Minister Shri Atal Bihari Vajpayee in the year 2000. And after much deliberation in the central and state level, finally the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014, was passed in Lok Sabha in May 2015 and in Rajya Sabha in August 2016. Further the bill was ratified by required number of States and received assent of the President on 8<sup>th</sup> September, 2016 and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. 16<sup>th</sup> September, 2016.

GST however with all its controversies regarding the way of its implementation and the high rates of tax is expected to have a multiplier effect on the economy with benefits accruing to various sectors

- (i) Benefits to exporters - It is expected that the competitiveness of Indian Goods and Services will increase internationally due to decrease in the cost of manufacture. The decrease will result due to subsuming of a number of central and state level taxes like:

Central Taxes subsumed:

- (a) Central Excise Duty
- (b) Additional Excise Duty
- (c) The Excise Duty levied by the Medicinal and Toiletries Preparation Act
- (d) Service Tax
- (e) Additional Customs Duty, known as Countervailing Duty (CVD)

- (f) Special Additional Duty of Customs-4% (SAD)
- (g) Cesses and surcharges in so far as they relate to supply of goods and services.

#### State taxes subsumed

- (a) VAT/Sales Tax
  - (b) Central Sales Tax (levied by the Centre and collected by the States)
  - (c) Entertainment Tax
  - (d) Octroi and Entry Tax (all forms)
  - (e) Purchase Tax
  - (f) Luxury Tax
  - (g) Taxes on lottery, betting and gambling
  - (h) State cesses and surcharges relating to supply of goods and services.
- (ii) Benefits to small traders and entrepreneurs – The Act allows single registration in one state for traders having turnover more than Rupees 20 Lakhs (Rupees 10 Lakhs in North Eastern States), unlike multiple registrations earlier. An additional benefit under Composite scheme has also been provided for businesses with aggregate annual turnover upto Rs 1 Cr.
- (iii) Benefits to agriculture and Industry – These two industries can expect future gains resulting from input tax set-off, service tax set-off, subsuming of taxes, phasing of CST which will result in widening of tax base and subsequent lowering of taxes.
- (iv) Promote “Make in India” – Uniform rate of tax (CGST, IGST and SGST) is expected to eliminate rate arbitrage between neighbouring states and between interstate and intrastate supplies. This in turn will reduce tax burden and ultimately drive down prices. The lowering of prices will boost the demand and increase the manufacturing activities and improve the growth of the industry.
- (v) Ease of Doing Business – Simplification of procedures for registration of taxpayers, refund of taxes, uniform formats of tax return, common tax base, and common system of classification of goods and services will lend greater credibility and certainty to the prevailing system of taxation. This will boost the confidence of manufacturers and investors. The result is being seen, as India has jumped 53 places in World Bank ease of doing business index.
- (vi) Benefits for common consumers – The removal of cascading effect will certainly result in lowering of taxes and ultimate reduction in prices for the consumers.

The consumers have further reasons to smile. The anti profiteering clause introduced in the new and comprehensive indirect tax act is expected to reduce the price of the goods and services when there is a reduction in the rate of tax or when input tax credit is received by the sellers.

Apparently it looks that the interests of the consumers are being protected by the act but a deeper look reveals many hindrances which may create confusion in the process.

## 2. Literature Review

The researcher in the process of delving deep into the subject had to go through a number of research article and journals. Some of them are illustrated below.

It was found out in a study by Ehtisham Ahmed and SatyaPoddar (2009) [3] titled “Goods and Service Tax Reforms and Intergovernmental Consideration in India” that there will be a considerable amount of transparency and simplification of tax procedure if GST is introduced. They also opined that India’s economic development will also receive a boost.

Dr. R. Vasanthagopal (2011) [2] found out that replacing the current complicated indirect tax system in India with GST will be a positive step in Indian economy. Success of GST will lead to its acceptance by many Asian countries.

GirishGarg, (2014) [4] in their study on “Basic Concepts and Features of Goods and Service Tax in India” found that GST is the most logical steps towards the comprehensive indirect tax reform in our country since independence. GST will help in creating a single, unified Indian market and it will make the economy stronger.

Nitin Kumar (2014) [7] was of the opinion that implementation of GST in India will help in removing economic hindrances caused by the current indirect tax system and an unbiased tax structure will emerge.

AgogoMawuli [1] (May 2014) is of the opinion that GST does not provide broad based growth to poor and low income countries. The researcher further suggested that the rate of GST should be less than 10% in these countries.

Neha and Manpreet Sharma (2014) [5] in their research paper titled “A study on Goods and Service Tax in India” found out the benefits of GST and current status of GST in India. According to them we are moving towards GST due to faults in our current indirect tax structure as it is unable to increase the competitiveness of industries.

Pinki, SupriyaKamma and RichaVerma (July 2014) [9] in their paper titled “Goods and Service Tax- Panacea For Indirect Tax System in India” concluded that the new government in India has a positive approach and attitude towards implementation of GST. It was further proposed that it is beneficial for central government, state government as well as for consumers in long run provided its implementation is backed by strong IT infrastructure.

## 3. Objective

The design of this research is descriptive in nature. Necessary secondary data has been collected from various research papers, magazines, articles, news papers, websites etc. The objectives of the paper are:

1. To study the Anti-profiteering provisions in the Act.
2. To identify the inherent confusions in the provisions.

## 4. Methodology

The study has exhaustively used secondary data collected from government websites, various national and international journals and articles, newspapers, conference papers,

publications, government reports, magazines reporting on various aspects of tax structure and GST.

## 5. Analysis and findings

In order to discourage the unethical practice of profiteering the Government has introduced the following provisions in the CGST Act.

**Section 171** of the act states:

- (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."

The section aims at benefitting the consumers on two counts:

- (i) The passing of benefit due to reduction in rate in case of goods and services-

There are two aspects in this part.

- (a) The change in the price of goods and services which are sold at a rate exclusive of tax can be easily evidenced.  
 (b) But the price revision in case where goods and services are sold inclusive of rates will be a challenge to the authorities.

- (ii) The passing of benefit due to input tax credit (ITC)- Under the erstwhile indirect tax regime input tax credit were available with certain restrictions, some of which have been removed under the GST regime. It is expected as per the above provision that the benefit of the input tax credit received by the supplier be passed on to the consumer. Some examples that can be cited in this respect are:

- (a) CST paid under the earlier tax laws was not available for ITC. Whereas IGST paid under the GST laws is available for the same.  
 (b) A pure VAT dealer could not avail credit for excise duties and services tax before the introduction of GST act. But now the benefit of ITC is available for all the input taxes (goods and services) paid by the same person.

- (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."

The second part of the provision empowers the Government to constitute an authority which now consists of:

(vide Notification No. 60/2018-Central Tax, Dated 30th October, 2018 incorporated in CGST Rules 2017)

### Rule 122

(a) a Chairman who holds or has held a post equivalent in rank of a Secretary to the Government of India; and

(b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year] or have held an equivalent post under the existing law, to be nominated by the Council.

The following further rules are relevant for understanding the section 171

### Rule 126

Power to determine the methodology and procedure.-The Authority may 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.

### Rule 127

Duties of the Authority-

- (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.

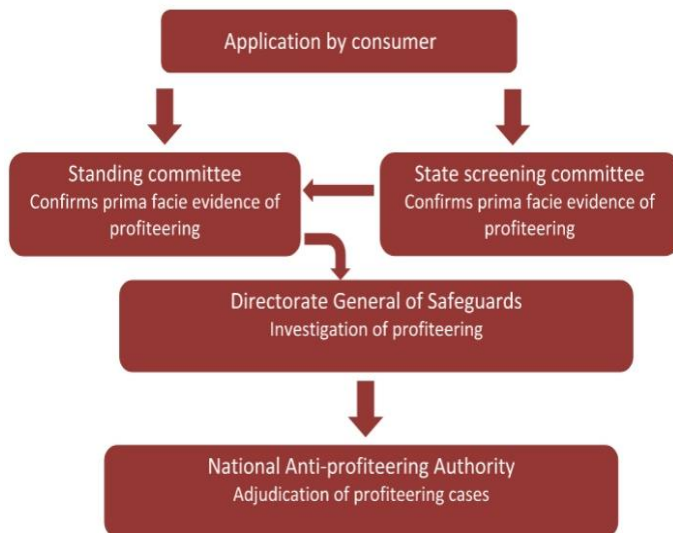
(iii) To order

- (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 percent 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  
 (c) Imposition of penalty as specified in the Act  
 (d) Cancellation of registration under the Act.

The authorities exercise their powers and duties when the consumers lodge complaints of profiteering against a supplier and seek redressal of their grievances. The process of grievance redressal is as follows.

- Applications are scrutinized at the local level by State Screening Committee and forwarded to Standing Committee on finding credible evidence of profiteering.
- The Standing Committee shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant. The committee, shall within a period of two months from the date of the receipt of a written application complete the process of investigation and forward it to the Director General of safeguards.
- The Director General Safeguards is under obligation to issue notice to interested parties to collect information and submit report to the standing committee within three months.
- The authority before pronouncing its judgment will go through the report and give the interested parties an opportunity of being heard.

A graphic presentation of the steps of redressal mechanism is shown below in fig 1.



The new tax system however suffers from certain inherent conundrum/confusions which act as disincentives for the traders as well as consumers.

- **NO PROPER DEFINITION OF PROFITEERING**-The act is silent regarding the definition of the term profiteering. Profiteering is loosely defined by the National Anti-Profiteering Authority in 'Frequently asked questions' as any willful action on the part of the seller of not passing on the benefit, resulting from, reduction in the rate of GST on supplies of goods and services, or, of the input tax credit received by the seller to the purchaser, by way of commensurate reduction in prices which is far from enough. On the contrary The West Bengal Anti-Profiteering Act 1958 defined the word 'profiteering' in Sec 2(d) as "profiteering, with its grammatical variations and cognate expressions, means the sale by a dealer of any scheduled article at a price or rate higher than that fixed under section 3". In absence of proper definition there is bound to be confusions among the traders which can act as a deterrent to the cause of introduction of the act.
- **NO CLEAR GUIDELINE FOR MEASURING AMOUNT OF PROFITEERING**-In addition to the above the law is also silent regarding the procedure to measure the amount of profiteering. The traders are confused as to what constitutes profit and what is meant by profiteering.
- **NO CLEAR GUIDELINE ABOUT 'PASSING ON THE BENEFIT'**- The law outlines that the any benefit received by the traders on account of reduction in rate of tax on any supply of goods or services or of input tax credit shall be passed on to the customers by way of commensurate reduction in prices. But it can be argued that the benefit can be passed on to the consumers not only by reduction in prices but also by increase in quantity of the product and selling it at the same price (pre and post reduction in rate of tax) which is yet to be recognized legally.
- **NO CLARIFICATION ABOUT 'COMMENSURATE REDUCTION IN PRICE'**- The law have also not spelt out the meaning of the term 'commensurate reduction in price'. There have been instances where the traders have claimed

that they have reduced their 'base price' to make the pre-reduction sale price as inclusive of tax.

In respect of all the above three shortcomings the Government have stated in Rule 126 of the CGST Act 2017 that the Authority may determine the methodology and procedure for settling the dispute, 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, in a way making the authority as the most decisive and powerful. It is further feared that anti profiteering rules will betaking us back to an era of socialism where unwarranted controls and harassment were a reality.

The following further points are considered relevant in this context.

- **DEFINITION OF 'PRICE'**- The Government has not made it clear enough whether the word price in the provision is 'Sale price' or 'Base price'. The traders often adjust the latter to leave the former unchanged and yet cum-tax.
- **DOCUMENTARY HASSLE**- The law doesn't spell out the documents/record to be kept to prove that the traders are not involved in profiteering. The absence of such guidelines may take us back to the days of inspector raj.
- **JUSTICE DELAYED IS JUSTICE DENIED**- The law has also not outlined any time-bound manner to dispose the cases against the firms allegedly involved in profiteering. Hence the industry apprehension is that witch-hunting will increase ultimately harming the interests of the traders.

## 6. International instances

In regard to anti profiteering laws two international instances are worth mentioning

- (i) The Malaysian Government issued Price Control and Anti-Profiteering (Mechanism to Determine Unreasonably High Profit) Regulations 2018 (2018 Regulations) on 5<sup>th</sup> June 2018. The determination of "unreasonably high profits" is made by examining the mark-up percentage mechanism or the margin percentage mechanism using the prescribed formulas. The mark-up percentage is calculated by deducting the cost price from sale price and dividing the result by the cost price using a percentage basis. While the margin percentage is calculated by taking into account the value of sale price less the cost price, divided by the sale price using a percentage basis.
- (ii) Australian Consumer and Competition Commission (ACCC) introduced the following measures to stop profiteering
  - (a) Definition of price exploitation-The ACCC clearly defines a business will be considered to be engaged in price exploitation in the process of GST implementation if
    - (i) it regulates the supply;
    - (ii) it increases net profit margin by not reducing its prices adequately or by increasing prices by more than the quantum of rise in taxes; and
    - (iii) it charges unreasonably high prices even after taking into account supplier costs, supply and demand conditions, and exceptional circumstances like long-term non-reviewable price contracts entered into by

- businesses and the price regulation prevalent in an industry
- (b) Commitments from corporate- To check price exploitation, large corporates with turnovers exceeding \$100 million were invited to offer a Public Compliance Commitment (PCC) to the ACCC on a voluntary basis. The PCC required the chief executive officer of a company to submit a signed commitment/statement indicating to the public that the company is committed to complying with the ACCC's price exploitation guidelines. In doing so, the company is required to provide appropriate information to the ACCC in support of its commitment.
- (c) Retail price surveys- The ACCC collected prices from retail outlets and supermarkets for a range of goods and services, both before and after the introduction of GST, by way of specially commissioned monthly and quarterly surveys of retail prices. The main purpose of this exercise was to collect information on price changes and thereby identify areas of potential price exploitation, including the possible increase in prices of goods and services in anticipation of the introduction of GST.
- (d) Ban on misleading pricing claims- To protect the consumers against unethical business practices, under the Trade Practices Act, 1974, businesses were prohibited from influencing consumer demand by making deceptive pricing claims. For instance, there were provisions in the act to take corrective action if a firm attempts to encourage consumers to make buying decisions before the implementation of GST by way of misleading

- advertisements claiming that the price would increase as a result of GST, though in reality it might come down.
- (e) Price and profit margin rules- The ACCC devised a price rule as per which the prices charged by the businesses in response to the tax changes should not rise by more than 10% in any event due to two reasons. First, the net cost of inputs/raw materials used by the businesses was not expected to increase beyond 10%. Second, businesses were entitled to claim an input tax credit for the GST paid.

## 7. Conclusions and recommendations

In view of the above discussion the following conclusions and recommendations can be made

- (i) A proper definition of profiteering needs to be framed.
- (ii) An appropriate guideline regarding the phrase 'commensurate reduction in price' needs to be spelt out.
- (iii) A suitable definition regarding the term 'price' needs to be issued.
- (iv) The traders need to be guided about the documents to be kept for defending themselves against the allegation of profiteering.
- (v) There needs to be a fixed time frame within which the dispute regarding the allegation of profiteering has to be resolved.
- (vi) The corporates are to be taken into confidence so that they don't get involved in misleading price claims.
- (vii) Retail price surveys on regular basis should be undertaken by the National Anti Profiteering Authority as a part of monitoring process.

## References

1. AgogoMawuli (2014): "Goods and Service Tax- An Appraisal" Paper presented at the PNG Taxation Research and Review Symposium, Holiday Inn, Port Moresby, P 29-30.
2. Dr. R. Vasanthagopal (2011). "GST in India: A Big Leap in the Indirect Taxation System", International Journal of Trade, Economics and Finance, Vol. 2, No. 2, April 2011.
3. EhtishamAhmad and SatyaPoddar(2009), "Goods and Service Tax Reforms and Intergovernmental Consideration in India", "Asia Research Center", LSE, 2009.
4. Garg, G. 2014. Basic Concepts and Features of Good and Services Tax in India. International Journal of scientific research and Management. 2(2):542-549.
5. Neha& Sharma, M. 2014. A study on Goods and Service Tax in India. The International Journal's Research Journal of Social Science and Management. 3(10):119-123.
6. Khan, M., &Shadab, N., Goods and Services Tax (GST) in India: prospect for states. Budgetary Research Review, 4(1), 38-64.n.d
7. Nitin Kumar (2014), "Goods and Service Tax in India-A Way Forward", "Global Journal of Multidisciplinary Studies", Vol 3, Issue6, May 2014.
8. Nakhchian, A., Gorji, N., Shayesteh, T., &Sheibany, E., Value Added Tax and Its Relationship With Management Information Technology. Interdisciplinary Journal of Contemporary Research in Business, 4(9), 402-410, 2013.
9. Pinki, SupriyaKamna, RichaVerma(2014). "Good and Service Tax – Panacea For Indirect Tax System In India", "Tactful Management Research Journal", Vol2, Issue 10, July2014
10. [www.epw.in](http://www.epw.in)
11. [www.Economicstimes.indiatimes.com](http://www.Economicstimes.indiatimes.com)
12. [www.gstcouncil](http://www.gstcouncil)
13. [www.naa.gov.in](http://www.naa.gov.in)