

Operating Guidelines for Implementing Anti-profiteering Provisions Under GST

Statutory provisions

Section 171 of the Central Goods and Services Tax Act, 2017 (Act) and Chapter XV of the Central Goods and Services Tax Rules, 2017 (Rules) comprising Rules 122 to 137 detail the statutory provisions governing anti-profiteering under GST. These provisions require suppliers of goods and services to pass on the benefit of any reduction in the rate of tax on such supplies or the benefit of input tax credit to the recipient by way of commensurate reduction in prices. It is the responsibility of the National Anti-profiteering Authority (NAA) to determine whether the reduced rate of tax or the benefit of input tax credit has actually resulted in commensurate reduction in the prices of the goods or services and if not, then pass appropriate orders against the identified supplier who has not passed on such benefits to the recipient of such goods or services.

2. The institutional framework for ensuring compliance of the anti-profiteering provisions comprises the NAA at the apex, a Standing Committee on anti-profiteering, and a Screening Committee in each State (including Union territory with legislature). Whereas the Standing Committee on anti-profiteering and the State level Screening Committee are mandated to examine the applications received from consumers against alleged profiteering by suppliers of goods and services, the investigation to determine whether or not the alleged profiteering is a fact is entrusted to the Director General of Safeguards (DGS), CBEC.

Objective

3. The intent of the anti-profiteering law is to ensure that the benefits arising out of switch over to the GST regime are passed on to the consumers in terms of lower prices of goods and services. However, while implementing the anti-profiteering provisions, one has to adopt a judicious approach to strike a balance between the interest of the consumers and an overall conducive business environment. Therefore,

the anti-profiteering measures should ordinarily be applied in case of items of mass consumption which impact significantly large number of consumers, where there is clear evidence to show that the benefit of reduced tax rate or input tax credit has not been passed on to the consumers. Importantly, in order to ensure that the environment of ease of doing business is not upset, the anti-profiteering measures are to be applied maturely with a great deal of caution so that they do not lead to harassment of honest tax-payers.

Anti-profiteering Application

4. The anti-profiteering measures must be viewed as a reflection of Government's sincere intent to deliver to consumers the benefit of the GST, a path breaking reform, in terms of lower prices of goods and services. Therefore, it is the endeavour of the Government to facilitate every day consumers, the common man, in filing of anti-profiteering applications, so that the desired objectives are achieved as intended and do not get stuck in procedural complexities. It is also clear that other than the basic evidence in terms of purchase invoices, these consumers would not be in a position to give further evidence of profiteering against the suppliers. Hence, a simplified anti-profiteering application form has been devised (**Annexure I**).

5. If despite the simplicity of the anti-profiteering application form, an applicant encounters any difficulty, the State level Screening Committees, the Standing Committee or the jurisdictional Chief Commissioner of Central Tax are advised to pro-actively assist such applicants in completing and submitting the application. The assistance provided to consumers would be an important ingredient of Government's commitment to the smooth implementation of GST's anti-profiteering provisions as well as to reaching the resultant benefits of GST to the consumers.

6. An application seeking to invoke the profiteering measures can be filed by an 'interested party' or a Commissioner of State or Central GST administration or any other person. Interested party includes the suppliers and the recipients of goods or services under the proceedings. It also includes 'any other person, organization or entity'.

7. The anti-profiteering applications relating to supplies of goods or services of a local nature or which relate to a supplier located only within a particular State are to be filed before the State level Screening Committee in the specified form. The same form is to be used if the application is to be filed before the Standing Committee on anti-profiteering.

8. Applications relating to supplies of goods or services of mass consumption or supplies made by entities that have a pan India presence or presence in more than one State/Union Territory with legislature are to be filed before the Standing Committee. The applications involving local supplies in a Union Territory without legislature or which relate to a supplier located only within such Union Territory, are also to be made to and examined by the Standing Committee.

Procedural Guidelines and Timelines

9. (a) The applications shall ordinarily be received directly by the Standing Committee or the State Screening Committee from the applicants. The application may also be received by the DGS, CBEC on the e-mail id anti-profiteering@gov.in, in which case they shall be forwarded to the Standing Committee. Any application received by the NAA directly will be forwarded to the Standing/Screening Committee, as the case may be.

(b) If the initial application filed is not in the prescribed form, the applicant should be advised to file the same in the prescribed format. The Standing Committee, the State level Screening Committees or the jurisdictional Chief Commissioner of Central Tax shall, whenever needed, assist the applicant in filling up the application form.

(c) Anonymous, pseudonymous or unsubstantiated applications should not be entertained. Such applications should be rejected *ab initio*.

(d) The existence of the applicant should be confirmed by the Standing/Screening Committee before looking into the application. The accuracy and authenticity of the evidence furnished with the application should also be verified.

(e) The Standing/Screening Committee has to examine the accuracy and adequacy of the evidences submitted by the applicant and determine whether there is prima facie evidence to support the claim of profiteering. Therefore, the Standing/Screening Committee should base its prima facie findings on the documentary evidences furnished by the applicant without conducting a detailed investigation. In case of doubt, the Standing/Screening Committee may contact the supplier or the applicant only to ascertain the genuineness of the evidence (invoice, price list etc.) submitted with the application.

(f) The anti-profiteering provisions make it obligatory on the part of the supplier to pass on the benefit of reduction in tax rate or input tax credit to the recipient of goods or services by way of *commensurate* reduction in the prices. The Standing/Screening Committee shall view an alleged non-reduction of the price in the context of this stipulation.

(g) Where the Standing Committee decides not to refer an application to the DGS, CBEC for investigation, a polite advisory may be issued to the concerned supplier/registered person, requesting compliance of the statutory provisions relating to anti profiteering without imputing the existence of profiteering. A model advisory is attached herewith (**Annexure II**).

(h) The Standing/Screening Committee shall complete the assigned task as per the following timelines:

- (i) The Screening Committee shall, within a period of one month from the date of receipt of an application relating to supplies of goods or services of a local nature or which relate to a supplier located only within a particular State, forward such application with its recommendations to the Standing Committee if it is prima facie satisfied that Section 171 of the Act has been contravened.
- (ii) The Standing Committee shall, within a period of two months from the date of receipt of an application relating to supplies of goods or services of mass consumption or supplies made by entities that

have a pan India presence or presence in more than one State/Union Territory with legislature, examine the accuracy and adequacy of the evidence submitted with the application and if it is prima facie satisfied that Section 171 of the Act has been contravened forward the application to the DGS, CBEC with a suitable recommendation for causing investigation.

- (iii) In the event the Standing Committee directly receives applications which involve issues of local nature or which relate to a supplier located only within a particular State, it shall refer the same to the Screening Committee of the State concerned for examination and making a suitable recommendation. This shall ordinarily be done within 15 days of the receipt of such application.

Director General of Safeguards (DGS), CBEC

10. Upon receipt of an application from the Standing Committee for investigation, the DGS, CBEC shall complete the investigation within a period of three months or such extended period not exceeding a further period of three months as may be allowed by the NAA, and furnish a report of its findings along with the relevant records to the NAA. The said report should consist of the anti-profiteering application form, recommendation of the Standing/Screening Committees, the investigation report with documentary evidences and details of payments made, if any.

National Anti-profiteering Authority (NAA)

11. The NAA shall, within a period of three months from the date of receipt of the report from the DGS, CBEC determine whether there is profiteering and pass appropriate order after granting an opportunity of hearing to the interested parties. In terms of Rule 133 of the Rules, the NAA may order reduction in price and return of appropriate amount to the recipient along with interest or deposition of the amount in the Consumer Welfare Fund. In extreme cases, the NAA may impose penalty on the supplier or even order cancellation of his registration.

Administrative Guidelines

12. The following administrative guidelines shall be complied with by the Standing/Screening Committees:-

(a) Details of the Standing Committee as well as State Screening Committees are available on the websites of CBEC, GST Council Secretariat and DGS, CBEC. Details of the Screening Committee should also be available on the State Commercial Tax i.e. State Goods and Services Tax (SGST) website of the concerned State as well as on the website of jurisdictional Chief Commissioner of Central Tax. All the contact details should be regularly updated on the websites. Any change of details should be immediately brought to the knowledge of DGS, CBEC.

(b) Efforts should be made to provide for online filing of anti-profiteering application as early as possible. In the current scenario, an application form which is available in PDF format on the websites of CBEC; DGS, CBEC; and GST Council Secretariat has to be downloaded and the filled up form has to be physically sent to the Standing/Screening Committee, as the case may be. Online filing of the application form will not only save time but also make it more convenient to deal with. DGS, CBEC is initiating action for online filing of anti-profiteering application for the Standing Committee.

(c) In respect of the applications involving local supplies in a Union Territory without legislature or which relate to a supplier located only within such Union Territory, the jurisdictional Chief Commissioner of Central Tax will function as the nodal officer for receiving and forwarding the applications to the Standing Committee with his prima facie view. This has been clarified to the concerned jurisdictional Chief Commissioners of Central Tax vide letter F.No.D-22011/AP/5/2017/1457-60 dated 08.11.2017 (**Annexure III**). This arrangement should be informed to the general public through a public notice as well as through the website of jurisdictional Chief Commissioners of Central Tax.

(d) A monthly report regarding the receipt and disposal of applications shall be sent by both the Standing Committee and the Screening Committees to the Additional Director General (Safeguards) by the 7th day of the following month. The formats of the reports have been prescribed and shared with the Standing/State level Screening Committees vide letter dated 13.11.2017 and are attached herewith (**Annexure IV & V**).

(e) Advertisements regarding the constitution of the Standing/Screening Committee with contact detail including e-mails should be published in leading newspapers at periodic intervals and a copy of the same sent to the DGS, CBEC.

13. The contact details of DGS, CBEC for the purpose of any correspondence or clarification are as follows: -

Directorate General of Safeguards,
Central Board of Excise and Customs,
2nd Floor, Bhai Veer Singh Sahitya Sadan,
Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
Tel No.: 011-2371537, Fax No.: 011-23741542,
E mail id- anti-profiteering@gov.in

[Guidelines Version 1.1 Dated: 21.3.2018]

Standing Committee on Anti-profiteering

To,

M/s -----

Subject: Allegation of Anti-profiteering.

Sir/Madam,

An application has been filed under Rule 128 of the CGST Rules, 2017, alleging that you have not passed on the benefit of reduced tax rate/input tax credit to your consumer by way of commensurate reduction in prices.

In this regard, your attention is invited to Section 171 of the CGST Act, 2017 and you are advised to fulfil your statutory obligation and, if not already done so, pass on the benefit of reduced tax rate/input tax credit in the form of reduced prices of the goods/services being supplied by you.

This letter is being sent as an advisory only.

Yours sincerely

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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					
A.1	Name				
A.2	Address				
A.3	Contact Number				
A.4*	E-mail ID				
A.5	Proof of identity (Please Tick-√)				
	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					
B.1	Name				
B.2	Address				
B.3*	Contact Number				
C. Particulars of Goods/Services					
C.1	Description				
C.2	Earlier Price/Value per unit				
C.3	Present Price/Value per unit				
C.4	Earlier MRP				
C.5	Present MRP				
D. Details of reduction in Tax Rate/ Benefit of Input Tax Credit (ITC) (Please Tick-√)					
D.1	Whether the benefit of reduction in tax rate has been passed on (Please enclose evidence like copies of Invoice, Price List etc.).	Yes	v	No	v
D.2*	Whether the benefit of ITC has been passed on (Please enclose evidence).	Yes	v	No	v
D.3*#	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:

Signature of the Applicant

Place:

Note 1 - Fill up the application form legibly in BLOCK LETTERS only.

Note 2 - Fields marked with asterisk (*) are optional.

#Note 3 - In case the applicant wants to keep his name and details confidential, please specify it.

Note 4 - 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.

Note 5 - Contact details of Standing Committee on Anti-profitteering :

2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110 001. Tel No. : 011-23741537

Fax. No. : 23741542, E-mail: anti-profitteering@gov.in

Contact details of State Screening Committee on Anti-profitteering:

Contact details of State Screening Committee on Anti-profitteering are available at URL: goo.gl/eYIXnK

Standing Committee on Anti-profiteering

To,

M/s -----

Subject: Allegation of Anti-profiteering.

Sir/Madam,

An application has been filed under Rule 128 of the CGST Rules, 2017, alleging that you have not passed on the benefit of reduced tax rate/input tax credit to your consumer by way of commensurate reduction in prices.

In this regard, your attention is invited to Section 171 of the CGST Act, 2017 and you are advised to fulfil your statutory obligation and, if not already done so, pass on the benefit of reduced tax rate/input tax credit in the form of reduced prices of the goods/services being supplied by you.

This letter is being sent as an advisory only.

Yours sincerely

(-----)

रक्षोपाय महानिदेशालय
(केन्द्रीय उत्पाद एवं सीमा शुल्क बोर्ड)
द्वितीय तल, भाई वीर सिंह साहित्य सदन
भाई वीर सिंह मार्ग, गोल मार्केट
नई दिल्ली- 110001



Directorate General of Safeguards
(Central Board of Excise and Customs)
Second Floor, Bhai Vir Singh Sahitya Sadan
Bhai Vir Singh Marg, Gole Market
New Delhi-110001

-011-23741537-38

F.No.-D-22011/AP/5/2017/1457-60

-dgsafeguards@nic.in



-011-23741542

Date: 08/11/2017

To,

The Chief Commissioners of GST and Central Excise,
Chandigarh/Thiruvananthapuram/Kolkata/Vadodara,

Sir/Madam,

Subject: Constitution of State level Screening Committee on anti-profiteering
under GST-reg.

Please refer to this office letter of even no dated 17/08/2017, vide which the Zonal Chief Commissioners were requested to convey the name of the officer nominated by the CBEC, to the Chief Secretary of the concerned State, with a request to nominate an officer of equivalent rank and constitute the State level Screening Committee. References have been received from certain Zones, seeking clarification regarding constitution of Screening Committee for the Union territories which do not have a legislature.

2. The matter has been examined. As per Section 2 (103) of the CGST Act, 2017, "State" includes a Union territory with legislature. "Union territory" has been defined under Section 2 (114) of the CGST Act, 2017. As the Union territories of Delhi and Puducherry have legislatures, they fall within the definition of "State". But since the Union territories of Andaman & Nicobar Islands; Chandigarh; Dadra & Nagar Haveli; Daman & Diu and Lakshadweep do not have legislatures, they do not fall within the above definition of "State" and hence, Screening Committees for these Union territories cannot be constituted under Rule 123 (2) of the CGST Rules, 2017. However, as these


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territories are administered by the Central Government, anti-profiteering applications from these Union territories, involving even issues of local nature, can be directly examined by the Standing Committee on anti-

In view of the above, it is clarified that in the Union territories other than Delhi and Puducherry, anti-profiteering applications involving issues of local nature, can be filed before the Standing Committee. In such cases, the jurisdictional Chief Commissioner of GST shall act as the Nodal Officer who will receive such applications and forward them to the Standing Committee with his prima facie views/comments.

4. This may be brought to the notice of the general public by issue of appropriate Trade/Public notice by the jurisdictional Chief Commissioners of GST.

Yours faithfully,


6.XI.2017
(Samanajasa Das)

Additional Director General

FORMAT OF MONTHLY REPORT TO BE SUBMITTED BY SCREENING COMMITTEE

STATE: _____

Month: _____

S.No.	Application received from		Date of receipt of application	Name of the supplier against whom application is filed	Description of Goods/ Services	Allegation or complaint in brief	Mode of disposal of application		Date of disposal of application	Remarks,
	Name and address of the applicant	Received from Standing Committee					Referred to Standing Committee	Rejected		
(1)	2(a)	2(b)	(3)	(4)	(5)	(6)	7(a)	7(b)	(8)	(9)

Note:-State Screening Committee is to deal with applications involving issues of local nature.

Monthly abstract of applications

S.No.	Particulars	No.
1.	Opening balance	
2.	Receipt	
3.	Disposal	
4.	Closing balance	

To,

The Additional Director General,
Directorate General of Safeguards,
Bhai Veer Singh Sahitya Sadan,
Gole Market,
New Delhi.

FORMAT OF MONTHLY REPORT TO BE SUBMITTED BY STANDING COMMITTEE

Month : _____

S.No.	Application received from		Date of receipt of application	Name of the supplier against whom application is filed	Description of Goods/ Services	Allegation or complaint in brief	Mode of disposal of application			Date of disposal of application	Remarks
	Name and address of the applicant	State Screening Committee (Name of State)					Referred to DG Safeguards for investigation	Referred to State Screening Committee (State name)*	Rejected		
(1)	2(a)	2(b)	(3)	(4)	(5)	(6)	7(a)	7(b)	7(c)	(8)	(9)

*Applications involving issues of local nature are to be referred to the concerned State Screening Committee.

Monthly abstract of applications

S.No.	Particulars	No.
1.	Opening balance	
2.	Receipt	
3.	Disposal	
4.	Closing balance	

To,
 The Additional Director General,
 Directorate General of Safeguards,
 Bhai Veer Singh Sahitya Sadan,
 Gole Market,
 New Delhi.