



Anti Profiteering – Unwrapping the Gift to Consumers



S KHAITAN & ASSOCIATES

SHUBHAM KHAITAN

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Much has been spoken about the controversial anti-profiteering measure adopted by the Government during the advent of GST. There have been nationwide disputes whether anti profiteering can be considered as a successful and a just measure by the Government. For this, it is imperative, the meaning and the provisions of the law relating to anti profiteering be examined.

Section 171 of the CGST Act depicts the provisions relating to anti profiteering. As per the said provision, 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 benefit by way of commensurate reduction in prices. For this, it empowers the forming of an Authority which can examine whether input tax credits availed by any registered person or the reduction in rates of taxes have actually resulted in commensurate reduction in the price of the goods or services or both.

For the purpose given above, Anti profiteering rules have been prescribed which elucidates the constitution of the authority and committees under the authority, powers and duties of such authority and the detailed process for the conducting the entire proceedings relating to this anti profiteering measure. Recently on 16th November,2017, the Union Cabinet has approved the establishment of the National Anti-Profiteering Authority. This is against the backdrop of reduction in GST rates for various goods and services effective from 15th November,2017 after the 23rd GST Council Meeting on 6th November,2017.

The newly established mechanism empowers the affected consumers to apply for relief to the Screening Committee in their state citing that the reduction in rates or increase of input tax credit has not resulted in a commensurate reduction in prices. Upon examination by the State Level Screening Committee, the Screening Committee will forward the application along with its recommendations to the Standing Committee. In case, the incident of profiteering relates to an item of mass impact with 'All India Ramification', the application can directly be made to the Standing Committee. After forming a prima facie view that there is an element of profiteering, the Standing Committee will refer the matter for detailed investigation to the Director General of Safeguards, CBEC which will report the finding to the National Anti

Profiteering Authority. If the authority confirms the necessity to apply the anti profiteering measure, it can order the business to reduce its prices or return the undue benefit along with interest to the recipient of goods or services. If the benefit cannot be passed on to the recipient, it can be ordered to be deposited with the Consumer Welfare Fund. In certain extreme cases, a penalty on the defaulting business entity and even an order for cancellation of GST registration may be issued. Its constitution aims to bolster the confidence of consumers to get the benefit of reduction in GST rates.

It may be noted that a detailed procedure of the anti profiteering mechanism has been given in detail by the Government through the rules prescribed by it. However, some important questions remain unanswered. The foremost question is the methodology to be adopted while calculation of amount of profit being earned because of GST.

For instance in the real estate sector, it has been prescribed that the overflow of Input tax credit will not be allowed as a refund. Also, the credit which remains after the flat are unsold needs to be reversed. In that situation, can it be really stated that the additional tax input tax credit is accruing to the real estate company because it gets to utilize this? Also, looking at the industry norms, one particular entity is engaged in the carrying out of one project only. So, the unutilized credit may not accrue as a benefit to the real estate company.

To complicate matters, there may be reversal of input tax credit which may be due to outward exempt supplies or inward supplies which are for non-business purposes. To put in the aspect of non profiteering for the purpose of calculation may result in complex calculations which are susceptible to difference of opinion.

Also, it may be argued that a number of companies were paying under composition scheme in VAT ranging between 1% to 4% and were having a service tax rate of 4.5% after abatement. Under GST, this rate has been increased to 18% after deducting 1/3rd value for the land. It may not be practically feasible to calculate the change in input tax credit and the rate structure. In these kind of situations, the methodology adopted by any company may not be acceptable to the Government. For this reason, a standard mechanism for calculation should be prescribed.

If there is no standard methodology prescribed, then it will result in unnecessary wastage of resources of the Department and Judiciary. It will result in a plethora of cases getting registered with the Committees and Authorities causing hasty disposal

of cases. This may result in unnecessary harassment for the taxable persons who may have kept the prices of goods / services fixed as per their calculation.

Another interesting situation created throughout the country is in the field of restaurants, food joints etc. The Government has reduced the rate of food and beverages served at these places to 5% if they are not served in hotels, inns etc. where declared tariff is greater than Rs. 7,500 per day. In spite of the reduction in rate, the final prices inclusive of GST at most of the restaurants have remained the same. This has created a furore throughout the country and allegations of profiteering have been raised them. However, it may be noted that here that reduction to 5% is with a clause of denial of Input Tax Credit. This may be a very significant cost to some of these eateries and may even result in losses for the ones which have higher overhead costs. So, jumping to conclusions of profiteering against any entity may not be justifiable considering that the detailed workings of the costing and profit structure may be available only to that entity.

While the intent of the legislature may be in the right place to prevent inflation due to GST, the execution requires a clear and transparent mechanism. Otherwise a few market players having the dominant position in the market may drive the prices and little may be left in the hands of the other businesses. Also, if a retailer is caught in the fiasco wherein the customer alleges profiteering, the retailer may be left with no alternative. This is because he may simply be part of a much larger chain. He may have retained the same margin but the non reduction of prices may be attributable to the fault of the principal manufacturer or the wholesaler involved in between. This will result in a fresh institution of a case against that person. All and all it may be a lengthy and cumbersome process.

It may easily be argued that the market forces drive the prices of any industry and a lot may not be left in the hands of an individual taxable person. So, penalising an individual without realising the ultimate price mover may result in a gross injustice and dismissal of such cases in front of the judiciaries on merit.

Anti profiteering is not a first time made in India concept. It was made applicable in Australia and Malaysia during the introduction of GST there. The proportion of cases wherein anti profiteering was proven was very low compared to the number of complaints received. It did more harm than good from the perspective of promotion of businesses. Taking a cue from that and the fact that India is a federal country with

a much larger market and factors driving that market, it may turn out to be disastrous if not handled carefully.

In a competitive market like India, prices get self adjusted. Also, since there are various market players making the market very competitive, it will be very difficult to prove that the price change has been attributable to GST only. Various other factors contributing to the changes in prices need to be taken into account. These factors may have a separate outlook from the perspective of the industry and the customer expecting the price reduction. So, settlement and decision of pricing mechanism in large number of cases may not do a world of good to the trust reposed in the businesses by the Government.

To summarize, it is high time that a measure brought with the intent of the common good should be given shape. Also, confidence should be reposed in the businesses so that they know the correct direction which will save them from unnecessary direction. These actions need to be taken sooner rather than later because at the moment it seems to be a ship without a rudder!!

Shubham Khaitan

B.Com(Hons), ACA, ACS, CFA(US), DISA(ICAI)

Partner, Tax & Regulatory

S. Khaitan & Associates | Chartered Accountants

T: +91 33 4068 7062 | M: +91 9831912725

E: shubham@cakhaitan.com

A: Mookerjee House, 2nd Floor

17, Brabourne Road, Kolkata 700 001

W: www.cakhaitan.com



REGD OFFICE : 24/25, RUPCHAND ROY STREET,
3RD FLOOR,
KOLKATA – 700007

ADMIN OFFICE : MOOKERJEE HOUSE,
17, BRABOURNE ROAD, 2ND FLOOR,
KOLKATA - 700001

PHONE NO : 03340687062, +919831912725

EMAIL ID : info@cakhaitan.com
shubham@cakhaitan.com

WEBSITE : www.cakhaitan.com