

National Anti-Profiteering Authority holds a multiplex owner guilty of profiteering in view of the reduction in GST rate

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In brief

Recently, the National Anti-Profiteering Authority (NAA) held a multiplex owner guilty of profiteering under section 171 of the Central Goods and Service Tax Act, 2017 (CGST Act). The NAA has upheld the allegations of the Directorate General of Anti-profiteering (DGAP) that post reduction in the rate of GST from 28% to 18%, the taxpayer had increased the base price while maintaining the same selling price for the services rendered.¹

In detail

Facts

With respect to services by way of admission to exhibition of cinematograph films, where the price of an admission ticket was above INR 100 (the services), the GST rate was reduced from 28% to 18% with effect from 1 January 2019².

Taxpayer's contentions

1. In the pre-GST regime, the services were chargeable to entertainment tax at 17.30%, which was a part of the ticket cost. Despite the increase in rate of tax for the services under the GST regime to 28%, the selling price (inclusive of taxes) remained unchanged. Thus, the taxpayer has borne the loss because of the

transition to the GST regime.

2. Upon introduction of GST, the same selling price was maintained considering the prices were being fixed by the State Government.
3. When the GST rate was reduced from 28% to 18%, there was no change in the selling price post 1 January 2019. However, with effect from 8 February 2019, in line with the reduction of prices by other multiplexes, the selling price was proportionately reduced because of the reduction in the GST rate, and the burden of such reduction was borne by the taxpayer.

DGAP's contentions

1. The contention of the taxpayer that the prices of tickets were not increased

at the time of transition to GST (despite increase in GST rate to 28%), could not be accepted as a rationale for not passing on the benefit when the rates were reduced subsequently.

2. The selling price fixed by the State Government was only the maximum stipulated price, and the taxpayer was free to charge any rate up to the specified limit.
3. The taxpayer was required to pass on the benefit of the reduced GST rate by reducing the selling price. However, the taxpayer maintained the same ticket prices by increasing the base price, thereby, contravening the provisions of section 171 of the CGST Act. However, with effect

¹ TS-501-NAA-2020-NT

² Vide Notification No. 27/2018 - Central Tax (Rate) dated 31 December 2018

from 8 February 2019, the selling price was proportionately reduced.

NAA's ruling

While the NAA recognised that the increase in the GST rate by 10.70% over the earlier entertainment tax was borne by the taxpayer by adjusting the base price downwards to maintain the selling price of tickets at earlier rates, the NAA agreed with the contentions of the DGAP and made the following key observations:

- Entertainment tax was subsumed into GST from 1 July 2017, and hence, any order of the State Government on entertainment tax did not

apply to goods and services covered under GST.

- The fixation of maximum sale price by the State Government did not prohibit/ stop reduction in prices required to be affected in accordance with section 171 of the CGST Act.

The NAA held that the taxpayer had resorted to profiteering by increasing the base price of the services, while maintaining the same selling price or by not reducing the selling price of the service commensurately, despite a reduction in the GST rate.

The takeaways

Considering the multiple rate changes in case of services of

screening/ exhibition of cinematographic films since the pre-GST regime, it is important for the entertainment and media industry to assess the impact of this ruling on the question of profiteering in similar facts and circumstances. One important point of inference by the NAA is that the losses borne by taxpayers due to increase in tax rates at the time of introduction of GST cannot be presented as an argument for not passing on the benefit when a subsequent reduction in GST rates occurs.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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