

ANTI-PROFITEERING IN GST 2.0: FROM LAW TO PRACTICE

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The GST 2.0 has come into effect from 22nd September 2025 by reducing rate of tax on various goods and services. The intention behind GST 2.0 reforms is to make daily use and aspirational items cheaper thereby increasing the overall consumption. In this context, it is imperative for the Government to monitor whether the supplier of goods or services are actually passing on the benefit of reduction in rate of tax and increase in Input Tax Credit (ITC) is passed on to ultimate consumer i.e., the revenue forgone by the Government exchequer shall lead to the consumers but not to be pocketed by the businesses. In this context, the Ministry of Consumer Affairs, Food and Public Distribution has given below instructions:

Reference No.	Instructions
I-10/14/2020-W&M dated 09-09-2025	Permits to declare the revised MRP on unsold stock up to 31-12-2025 or till such date stock is exhausted, whichever is later, subject to below conditions a. Original MRP shall continue to be displayed, and the revised price shall not overwrite; and b. Businesses shall make at-least two advertisements in one or more newspapers and circulate notices to dealers and Director of Legal Metrologies.
I-10/14/2020-W&M dated 18-09-2025	No newspaper notice is needed for Revised MRP and Old Packaging use is permitted till March 2026 with corrected prices

Further, Ministry of Finance has issued instructions to All Commissioners of Central Tax to submit a monthly report of price change data of commodities pre and post rate rationalisation w.e.f 22nd September 2025.

In this context, the businesses are having a dilemma as to why the Ministry of Consumer affairs is issuing these instructions instead of issuing instructions under GST law. It is known fact that GST law also provides a mechanism to monitor whether the suppliers are passing on the benefit of reduction in rate of tax or increase in ITC to the ultimate consumer. Section 171(1) of CGST Act, 2017 requires that the supplier shall pass on to the recipient by way of commensurate reduction in prices:

- a. any reduction in rate of tax on any supply of goods or services or
- b. the benefit of ITC

Further, Section 171(2) requires the Government to constitute an authority to examine whether ITCs availed by any registered person or the reduction in the tax rate have

resulted in a commensurate reduction in the price of the goods or services or both supplied by him. Accordingly, the Government had constituted 'National Anti-profiteering Authority' with a sunset date of 31-03-2025 considering that the transitional issues are settled. The responsibility has been conferred on Competition Commission of India (CCI) to examine the applications filed before 31-03-2025 and later transferred the power to National Bench of Goods and Services Tax Appellate Tribunal (GSTAT). The notification of the sunset date for Section 171(3) may have been driven by the challenges associated with the administrative costs of NAPA. However, given the noble objective and continuing necessity of safeguarding consumer welfare, it would have been appropriate for the Hon'ble Government of India to simultaneously notify the GSTAT to accept further applications.

Now, the businesses are having doubt on how to pass on the reduction in rate of tax or benefit of ITC to the ultimate consumers. Whether the law provides any mechanism to be followed for complying to this provision? Is there any standard formula that needs to be followed to pass on the benefits for all industries? Let us understand the same under different headings.

A. What is the benefit of reduction in rate of tax and increase in ITC?

The fundamental principle we need to remember is that profit is different from profiteering. Profit is the reward for the risk undertaken by the entrepreneur, and it is legitimate but antiprofitteering is unjust enrichment of customers benefits. Profit is normally influenced by variety of factors like operational efficiency, demand-supply proposition, a new market advantage, Price penetration, seasonality of a product or services so on and so forth. In such a situation, if a businessman earns a slightly higher profit, it will not perhaps require under Anti-profiteering clause to pass on the benefit to his customer always. However, the businesses are not allowed to enrich by the reduced rate of tax or increase in ITC benefit. If they are enriching themselves without passing on the benefit to ultimate consumers, the same amounts to profiteering. Now the question that arises is how to compute the commensurate reduction in rate of tax.

B. How to measure 'commensurate reduction':

The term 'commensurate reduction' is neither defined in GST Law or Rules made thereunder nor guidance has emerged from the Government. Various Courts have held that whatever actual saving arises due to the reduction in rates of GST or the benefit of the ITC, must be reflected as equal or near about reduction in price. There is no fixed mathematical formula that can be laid down for determining the price as the facts of each case may be different. However, a cue from other countries can be taken as follows:

- ✚ **Net Profit Method (Malaysian model):** The net profit percentage is frozen pre-rollout of GST and the same is maintained post-rollout. This ensured that the ITC benefit is passed on to the end consumer.

- ✚ **Unit Price Method (Australian model):** The unit profit per unit is pre-determined and the same is maintained post-rollout. Also, there was a mechanism to show the MRP of the product Per GST rollout and post GST rollout. This helped the price control very effectively.
- ✚ **10% escalation for other factors:** The above models assume that the prices will remain constant but in the real world, it is driven by demand and supply along with other factors which are beyond the control of trade and industry. To address this, provision was there in the Australia where prices can be escalated by 10% to factor such cases.

Let's understand the anti-profiteering law with an example: Suppose the cost of a product after adding a profit of Rs.5/- is Rs.100/- and the rate of tax is at 18%. The supplier would charge Rs.118/- in total (i.e. Rs.100/-+18% GST). Assuming, the rate of tax on such product has been reduced to 5%. Now, the law requires the supplier to sell the phone at Rs.105/- i.e. (Rs.100/-+5% GST), therefore leading to a benefit of Rs.13/- being passed on by the supplier to the recipient.

Similarly, if there is a benefit of ITC on account of rate change or increase in benefit of ITC, the same needs to be passed on to the customer. The "*benefit of ITC*" effectively implies, decrease in the cost of procurements to the taxpayer on account of higher eligibility of ITC. Further, this decrease has to be seen both based on the comparative tax rates prevailing before and after transition date. This is for the reason that there is no benefit of additional ITC that would arise if the tax on the procurements has increased. Thereby, additional outflow of tax on procurements leading to additional credit cannot be equated to increased ITC availability.

Though it is a beneficial concept but the premises on which it stands is shaky as the taxes are not the only criteria on which the prices are decided. Had it been so reduction in indirect taxes would have lowered the inflation level, but it has never been the case. Secondly the provision contemplates that the only way benefit to be transferred is reduction in prices which may disrupt the fund planning of businesses.

C. Fundamental issues with Anti-Profiteering Law

- ✚ **Lack of methodology:** Rises to practical issues such as circumstances under which benefit shall be passed on, circumstances under which a mere tax rate reduction or availability of ITC may not necessarily constitute a benefit to be passed on, quantum of benefit, and mechanism to arrive at the quantum of benefit to be passed on etc.
- ✚ **Losses in business / Increased cost:** Various expenses incurred by the businesses if not considered earlier before change in rate of tax, may be disputed for profiteering, if the consideration of the same leads to increase on price of products/service after change in rate of tax.

- ✚ **Is tax the only driving force to determine cost?** The provision directs a supplier to reduce the price on account of reduction in rate of tax or increase in ITC benefit, however, it does not take into consideration other factors that influence cost of supply viz. cost of raw material, cost of labour, transportation cost, currency fluctuation in case of imports etc.
- ✚ **No specific time frame for maintaining the reduced prices:** The reduced price shall be applied so long as the direct relation b/w the reduction of the tax rate or the benefit of ITC exists, if no other factor is affecting the same.

Despite of above issues, many complaints were filed with National Anti-Profiteering Authority (NAPA) alleging that the businesses have not passed on the benefit of decrease in rate of tax and increase in ITC. The NAPA has adjudicated these cases and issued directions to businesses. **The NAPA has agreed that ‘One size fits all approach’ formula cannot be prescribed as each industry is different and also the ‘netting off methodology’ as applied in Anti-dumping matters and approved by the WTO cannot be applied in Anti-profiteering matters.** The various other underlying principles in these decisions are explained in below headings:

i. When anti-profiteering is not applicable

- ✚ For the supplies made before the change in rate of tax.
- ✚ On franchisor who has no control over the product's price.
- ✚ When there is no change in base price before and after the change in GST rate, there is no violation of Anti-Profiteering provisions.
- ✚ If there is no benefit of additional ITC availed by the businesses i.e., in cases where the businesses had opted new rate of tax without ITC¹, there is no question of passing on the benefit.
- ✚ The increase in price due to the non-availability of ITC will not be construed as a violation of Section 171 though there is a reduction in GST Rate².
- ✚ Reversal of ITC voluntarily has no bearing on the computation of profiteering³.

ii. When it can be said that benefit is passed on

- ✚ The benefit can be said to be passed on once the lower new rate of tax is charged instead of the old higher rate of tax.
- ✚ The benefit can be said to be passed on if the same MRP was charged by reducing the Base price of the product⁴ in case of increase in the rate of tax.

¹ Director General of Anti Profiteering, C.B.I. & C., New Delhi vs Ireo Waterfront Pvt. Ltd. [2024 (23) Centax 123 (CCI)]

² Jijrushu N. Bhattacharya Vs N.P. Foods [2018 (17) G.S.T.L. 627 (N.A.P.A.)]

³ Sushil Kumar Jain and DGAP, New Delhi v. Sarvpriya Securities Pvt. Ltd., Gurugram [2019 (12) TMI 1264 – NAPA]

⁴ Mandalika Sakunthala Vs Fabindia Overseas Pvt. Ltd. [2018 (19) G.S.T.L. 533 (N.A.P.A.)]

- ✚ The increase in base price due to reduction in discount does not amount to profiteering since the discount was offered from supplier's profit margin and doesn't form part of the base price⁵.
- ✚ The basic price before discount could not be considered and the Basic Price after discount (excluding duties) should be taken into consideration.

iii. When it can be said that benefit is not passed on

- ✚ The benefit in the form of reduction in price to customer cannot be substituted by additional or free supply or other discounts.
- ✚ The increase in the base price of the product to compensate for the decrease in GST Rate amounts to Anti-profiteering, even though the new rate of tax has been charged⁶. It cannot not be argued that the elements of cost were affected by the downward revision of the output GST rate⁷.
- ✚ Extending discounts to distributors on some other product cannot be considered as the passing of the benefit of GST rate reductions to each buyer by way of commensurate reduction in the prices when the assessee being a manufacturer had not re-fixed/reprinted the MRPs after reductions in GST rates and had simply transferred his legal obligation to his distributors.
- ✚ Reduction in prices cannot be compensated by increasing the quantity of a product through the value of the product is low. Also, computation of entity wise profit amount is not acceptable since the benefit should be passed on to each customer and for each product⁸.
- ✚ The amount incurred on unusable packaging materials, development of new cylinders for new packaging, and advertisements due to GST rate reductions cannot be adjusted against the amount of benefit to buyers on account of such reduction in GST rates.

iv. How to pass on the benefit

- ✚ The compliance of Section 171 of the Act is qua transaction not qua seller or buyer.
- ✚ GST benefit irrespective of the amount must be passed on to the buyer.
- ✚ In case of identifiable customers, amount is to be refunded with interest.
- ✚ In case of unidentifiable customers, amount should be deposited with Consumer Welfare Fund of Union / respective State.

⁵ Kerala State Screening Committee On Anti-Profiteering Vs Asian Paints Ltd. [NAA order 18/2019 Dt:13.03.2019] and Rishi Gupta vs Flipkart Internet Pvt. Ltd. [2018 (17) G.S.T.L. 623 (N.A.P.A.)]

⁶ Director General of Anti-Profiteering, Central Board Of Indirect Taxes & Customs, New Delhi Vs J.P. And Sons, Pushpak Chauhan Vs Harish Bakers & Confectioners Pvt. Ltd. [2019 (22) G.S.T.L. 463 (N.A.P.A.)], Principal Commissioner Medchal commissionerate Vs Shiva Parvathi Theatre [2020-TIOL-61-NAA-GST], Principal Commissioner, Basheer Bagh Vs M/s. Inox Leisure Ltd [2020-TIOL-60-NAA-GST]

⁷ Director General of Anti-Profiteering, Central Board Of Indirect Taxes & Customs, Vs M/S. Litecon Industries Pvt. Ltd. [2020 (5) TMI 285 - NAPA]; SH. Mool Chand Mittal, Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, Vs M/s. Elan Ltd. [2020 (12) TMI 936 - NAPA]

⁸ Ankit Kumar Bajoria v. Hindustan Unilever Limited - 2019 (21) G.S.T.L. J74 (N.A.P.A.)]

- ✦ The benefit of a rate reduction shall be passed on every SKU level so that benefit could reach every buyer of that SKU instead of passing at the aggregate level of SKU or the product level.
- ✦ The reduction in rate should be passed on to each recipient independently and the same cannot be selectively granted or denied. Also, benefit accruing to one customer cannot be given or denied to another nor can benefit given to one set of customers arbitrarily enhanced and set off against another⁹.

Though NAPA order has considered the above principle while issuing the orders, the same cannot be considered as conclusive principles to determine whether the benefit of change in rate of tax and benefit of ITC is passed on to ultimate consumer. Each business needs to evaluate the benefits as per the specific aspects relevant to their business and ensure that the benefits are passed on to consumers.

In this regard, considering the principles laid down in NAPA's orders, the following examples explain the scenarios where benefit needs to be passed on:

SI.No	Scenario	How benefit to be passed on?
1	Applicable rate of tax before 22-09-2025 is 18% with no ITC benefit. After 22-09-2025, rate of tax remains at 18%, but ITC benefit is available	ITC available on procurements need to be calculated and to be passed on though there is no change in rate of tax
2	The taxpayer is receiving certain inputs and inputs services before the change in rate of tax but ITC on the same are restricted under Section 17(5) of CGST Act, 2017. Consequently, the same is used to be included in cost of product or service. However, such inputs or input services became exempted due to change in rate of tax.	Since procurements are exempted from GST after 22-09-2025, there is a reduction in cost of product. These aspects need to be considered while arriving the amount of benefit that is required to be passed on
3	Rate of tax on certain inward supplies got reduced after 22-09-2025	To the extent of rate of tax reduction, cost of procurements also gets reduced, hence the same shall be considered while passing on the benefit
4	Exempt supplies became taxable w.e.f 22-09-2025	The benefit of ITC available on account of outward supplies became taxable needs to be passed on

⁹ Ankur Jain Vs Kunj Lub Marketing Pvt. Ltd. [2018 (19) G.S.T.L. 84 (N.A.P.A.)]

5	Taxable supplies became exempt w.e.f 22-09-2025	ITC required to be reversed on stock as on 22-09-2025 can be considered in pricing of the product
6	Applicable rate of tax before 22-09-2025 is 18% with ITC benefit. After 22-09-2025, rate of tax is 5% with no ITC benefit	If there is additional benefit available due to both reduction in rate of tax and non-availability of ITC needs to be computed and accordingly benefit is to be passed on
7	Business ventured into new class of goods/services after 22-09-2025	Section 171 compliance is not applicable
8	Reduction in rate of tax with equivalent increase in ITC benefit	Section 171 compliance is not applicable
9	Increase in ITC benefit with equivalent increase in rate of tax	Section 171 compliance is not applicable
10	Where supplier sells composite or mixed supplies, how to pass on the benefit.	Business may consider the rational allocation of the tax benefit across the bundle. Arbitrary allocation may dilute consumer benefit

D. Steps to be taken by the Businesses

- ✚ Pass on the benefit of the tax rate or ITC, wherever applicable, and the MRP should be reduced accordingly.
- ✚ Re-negotiations with suppliers for the price reduction on procurements.
- ✚ Prices of major raw materials, inputs pre and post reduction of prices must be recorded properly to substantiate their effects in fixing prices of goods.
- ✚ Keep necessary back up documentation and workings handy as to the computation of cost pre-reduction and post-reduction of GST rates.
- ✚ Issue Credit Notes to distributors for supplies made post-rate reduction at the old prices.

Concluding remarks: GST 2.0's structural tax changes create both opportunity and exposure. Passing on the benefit is not only a legal obligation under Section 171 but a reputational and market necessity. The intention behind the anti-profiteering law may be good, but neither the industry nor the laws can rely on intentions for the economy to run in a stable manner. Effective laws with effective mechanism for its implementation are what will make the purpose of the law achievable. Considering the noble intention, the entire industry has come forward to reduce the prices and pass on the benefit to ultimate consumers.

The views expressed are strictly personal and based on position of law prevailing as on date. This cannot be regarded as an opinion. For any queries or feedback please write to laxman@hnaindia.com or ashalatha@hnaindia.com.