

**GSTAT**

**Single Bench Court No. 3**

**NAPA/99/PB/2025**

DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-  
PROFITEERING, DGAP

.....**Appellant**

**Versus**

C.G. FOODS

.....**Respondent**

**Counsel for Appellant**

**Counsel for Respondent**

**Hon'ble Sh. Anil Kumar Gupta, Member (Technical)**

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

**whether remand order : No**

**Order reference no. : ZA070010226000005H**

**Date of order : 03/02/2026**

1.	GSTIN/Temporary ID/UIN - 18AAGFC0273R1Z1	
2.	Appeal Case Reference no. - NAPA/99/PB/2025	Date - 09/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. C.G. Foods , santu.mukherjee@cgcorpglobal.com, , 361-2200087	
5.	Order appealed against -	

	<b>(5.1) Order Type -</b>	
	<b>(5.2) Ref Number -</b>	Date -
6.	Personal Hearing - 03/02/2026 08/01/2026 08/12/2025 17/10/2025 18/07/2025 11/07/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The Report submitted by the DGAP is accepted to the extent that respondent has profiteered an amount of Rs. 90,90,310/- only for the period of 15.11.2017 to 31.12.2018. The Respondent is directed to deposit the profiteered amount as aforesaid in Consumer Welfare fund created by Centre and States equally. The case is Disposed of.	
<b>Summary of Order</b>		
9.	Type of order : Closure Report	

Place : DELHI PB

Signature

Date : 03.02.2026

DELHI PB Sudesh Kumar

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

## **ORDER**

### **Order CG Foods**

1. The proceeding in the present case arises out of the investigation report dated 01.09.2025 (hereinafter referred to as the "DGAP Report") submitted by the Director General of Anti-Profiteering (hereinafter referred to as the "DGAP"), under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act"), read with Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "CGST Rules"). The investigation was initiated pursuant to a complaint referred by the Standing Committee on Anti-Profiteering on an application filed by Shri Prabal Pijush Bharali, Assistant Commissioner (State Tax), Economic Intelligence Unit, Kar Bhawan, Dispur -781006, Assam (hereinafter referred to as the "Applicant"), alleging profiteering

in respect of supply of instant noodles falling under HSN 1902 (hereinafter referred to as the "subject Goods") by M/s C.G. Foods (hereinafter referred to as the "Respondent"), by way of not passing on the benefit of reduction in the rate of tax from 18% to 12% vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017 w.e.f. 15.11.2017, in alleged contravention of Section 171 of the CGST Act, 2017.

2. The DGAP, on receipt of the reference from the Standing Committee on Anti-Profiteering dated 23.08.2024, issued a Notice of Investigation dated 03.09.2024 under Rule 129 of the CGST Rules to the Respondent, calling upon them to reply as to whether they admitted that the benefit of GST rate reduction had not been passed on to the recipients by way of commensurate reduction in price, and if so, to suo moto determine and indicate the same in their reply to the Notice, along with furnishing all supporting documents. The Respondent was also provided an opportunity to inspect the non-confidential evidence and information furnished by the Applicant on 19.09.2024 or 20.09.2024, though such an opportunity was not availed by the Respondent.
3. The investigation was carried out over an extended period with multiple reminders and follow-up letters issued by the DGAP. The time limit to complete the investigation was originally 22.02.2025. However, due to non-submission of complete requisite information and documents, an extension of time was sought and granted for another 03 months, bringing the revised timeline to 22.05.2025. The DGAP Report has been issued on 01.09.2025, following the principles laid down by the Honourable Delhi High Court Order dated 29.01.2024 in W.P.(C) No. 7743/2019, wherein the Hon'ble Court held that the time limit for furnishing of report by DGAP is directory and not mandatory, as such provisions promote consumer welfare and beneficial legislation must receive liberal construction.
4. The Respondent in response to the notice dated 03.09.2024 issued by the DGAP had submitted: -

**4.1** That it is a leading manufacturer of instant noodles in India with a wide distribution network. As per its internal pricing policy, which has been consistently followed since inception, price revisions are ordinarily undertaken twice a year, i.e., on 1st January and 1st July, with a view to ensuring market stability, pricing transparency, and predictability for distributors, retailers, and consumers. Such revisions are stated to be based on macro-economic factors, input costs, transportation expenses, and other commercial considerations.

**4.2** That due to extraordinary escalation in input costs, an off-cycle price revision was undertaken on 15.11.2017, outside the regular bi-annual schedule, and the revised prices were made effective from 16.11.2017. The Respondent stated that the said price revision was duly communicated to its trade partners through formal circulars.

**4.3** The Respondent has furnished details and documentary evidence in support of its claim of increase in input costs. It is observed that between June–July 2017 and October–November 2017, there was a significant increase in the prices of key raw materials such as wheat flour, palm oil, and seasoning base. The Respondent also submitted that the cost of packaging materials, including laminated films and corrugated cartons, increased

substantially during the same period. Copies of purchase invoices were submitted in support of the above claims.

**4.4** That diesel prices increased from ₹58.60 in July 2017 to ₹64.20 in November 2017, resulting in an increase of approximately 10–12% in freight and transportation costs.

**4.5** That prior to the implementation of GST, the applicable tax rate on noodles was 12–15%, which increased to 18% w.e.f. 01.07.2017. However, despite the increase in the tax rate, the MRP of the products was not increased and was maintained at pre-GST levels due to intense competition in the market.

**4.6** That there was a continuous increase in the prices of major ingredients such as flour, palm oil, and spices, which exerted sustained pressure on selling prices and adversely affected profitability. The Respondent further submitted that the subsequent reduction in GST rate provided only marginal relief, which was insufficient to offset the substantial increase in input and operational costs.

5. The DGAP examined the Respondent's submissions in light of the rebuttable presumption principle laid down by the Honourable Delhi High Court in its Order dated 29.01.2024, wherein the Court held that any finding of profiteering operates as a rebuttable presumption, and such presumption may be rebutted by demonstrating genuine increases in cost of production with contemporaneous evidence of cost escalation placed on record.
6. However, upon scrutiny of the invoices, and the documents submitted by the Respondent DGAP found that:

6.1 The per unit price of "Wai Wai 123 Chicken Noodles Mimi 35gm" charged by the Respondent was increased in invoices issued post GST rate reduction period (i.e., after 14.11.2017) as compared to the per unit price charged in the pre-GST rate reduction period;

6.2 The SKU-wise price list showed that the MRPs were not decreased after the GST rate revision w.e.f. 15.11.2017;

6.3 The Respondent increased the base prices of the subject goods despite the GST rate reduction from 18% to 12% w.e.f. 15.11.2017, thereby not passing on the benefit of rate reduction to recipients through commensurate price reduction as mandated by Section 171 of the CGST Act 2017.

7. The DGAP determined profiteering by comparing the average base prices of the impacted goods sold during the period 01.11.2017 to 14.11.2017 with the actual invoice-wise base prices of such products sold during the period 15.11.2017 to 31.12.2018. Where the sale of any particular product/item was not found during this period, the base price was arrived at by taking sales of that product during previous months sequentially, beginning from October 2017, September 2017, August 2017, and so on up to July 2017 and then compared with the actual invoice-wise base prices of such products sold during the period 15.11.2017 to 31.12.2018. Accordingly, DGAP had taken illustration of one items namely WAI WAI CHICKEN NOODLES MIMI 35G in table "A"

Table-A

(Amount in Rupees)

Sl. No.	Description	Factors	Pre-Rate Reduction (From 01.11.2017 to 14.11.2017)	Post Rate Reduction (From 15.11.2017 onwards)
1.	Product Description	A	WAI WAI CHICKEN NOODLES MIMI 35G	
2.	Notification No.	B	41/2017-Central Tax (Rate) dated 14.11.2017	
4.	Total quantity of item sold	C	64008 (Cartons)	
5.	Total taxable value	D	12953956.11	
6.	Average base price (without GST)	E=D/C	202.38	
7.	GST Rate	F	18%	12%
8.	Commensurate Selling price (post Rate reduction-with GST)	G=E*1.12		226.66
7.	Invoice No.	H		CGF/GST/01521
8.	Invoice Date	I		15.11.2017
9.	Total Billed quantity (above invoice)	J		600 (Cartons)
10.	Actual Base Price Charged in Invoice (per unit)	K		212.12
11.	Actual Selling price per unit (post rate reduction with GST)	L=K*1.12		237.57
12.	Excess amount charged or profiteering	M=L-G	10.91	
13	Total Profiteering	N= M*J	6545	

8. Based on the detailed calculations as set forth in Annex-11 of the DGAP Report, the DGAP determined that the total amount of profiteering on all goods impacted by the GST rate reduction from 18% to 12% w.e.f. 15.11.2017, supplied by the Respondent during the period 15.11.2017 to 31.12.2018, comes to Rs. 90,90,310/- (Rupees Ninety Lakh Ninety Thousand Three Hundred and Ten Only).

9. The state-wise or union territory-wise break-up of the profiteered amount was as follows:

**State-wise Break-up of Profiteered Amount**

**Table-B**

<b>S. No.</b>	<b>State Code</b>	<b>State</b>	<b>Profiteered Amount (in Rs.)</b>
1	10	BIHAR	1063.80
2	11	SIKKIM	186.76
3	12	ARUNACHAL PRADESH	8,49,948.72
4	13	NAGALAND	12,48,748.36
5	14	MANIPUR	2,40,282.10
6	15	MIZORAM	2,27,527.15
7	16	TRIPURA	33,495.92
8	17	MEGHALAYA	4,69,367.34
9	18	ASSAM	55,39,781.79
10	19	WEST BENGAL	4,79,908.17
<b>Grand Total</b>			<b>90,90,310</b>

10. The above report was considered by the Tribunal and a notice was issued to the Respondent to explain in writing why the above report of DGAP should not be accepted. In Reply the Respondent filed a written submission before this Tribunal dated 06.11.2025 and subsequently appeared for a hearing on 08.12.2025. The Respondent sought sympathetic consideration of various facts, including:

- 10.1 The fact that there was no MRP change throughout the period.
- 10.2 Continuous increase in prices of ingredients, namely flour, palm oil, and spices;
- 10.3 The stiff competition from peer companies is preventing price increases.
- 10.4 The minimal relief of 6% from the GST rate reduction compared to 40-50% increase in ingredient costs.

- 11. The DGAP, vide its clarification dated 29.12.2025, submitted that all aspects contended by the Respondent in its reply dated 06.11.2025 have been incorporated in the DGAP Report. The DGAP specifically noted at Paragraphs 10-11 of its Report that it had already considered the fact of no MRP change and the continuous increase in ingredient prices.
- 12. The DGAP reaffirmed its findings and stood by the investigation report dated 01.09.2025, noting that the profiteering calculation has been done based on invoice-wise base price comparisons between the pre-rate reduction period and the post-rate reduction period. The DGAP submitted that the matter may be decided by the Tribunal as deemed fit and proper.

13. The Respondent subsequently filed a submission dated 05.01.2026 indicating that they have received the DGAP's clarifications and, having already made detailed submissions, they have nothing more to submit or to file as a rejoinder.
14. This Tribunal has carefully considered the Reports of the DGAP, submissions made by the Respondent, the case record and the principles of law laid down by the Hon'ble Delhi High Court in the case of *RECKITT BENCKSIER INDIA PRIVATE LIMITED vs UOI in the W.P. (C) 7743/2019*. It is on record that Assistant Commissioner, State Tax, Economic Intelligence Unit, Kar Bhawan had filed a complaint alleging that the Respondent had not passed on the benefit of GST rate reduction from 18% to 12% vide notification No. 41/2017 -Central Tax (Rate) dated 14.11.2017 w.e.f. 15.11.2017.
15. Section 171 of the CGST Act provides as under: -

*“Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.”*

It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations, one relating to the passing on the benefit of a reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. In the above case, it is apparently clear from the DGAP's report that it is a case of a reduction in the rate of tax from 18% to 12% as per the notification no. 41/2017-Central Tax(rate) dated 14.11.2017 w.e.f 15.11.2017.

16. It is undisputed that the GST rate on instant noodles falling under HSN 1902 was reduced from 18% to 12% with effect from 15.11.2017 vide Notification No. 41/2017-Central Tax (Rate) dated 14.11.2017. The Respondent revised its prices with effect from 16.11.2017. However, the DGAP's invoice-wise analysis reveals that the Respondent increased the base prices of several affected SKUs in the post-rate-reduction period as compared to the pre-rate-reduction period of 01.11.2017 to 14.11.2017.

16.1 Though the Respondent produced documents evidencing increase in costs of raw materials, packaging, fuel and freight, such increases pertain largely to periods prior to the rate reduction and do not justify non-passing of the statutory benefit of reduction in GST rates with effect from 15.11.2017. The Respondent has failed to establish that the benefit of the 6% GST reduction was fully absorbed by contemporaneous cost increases during the investigation period. *In Reckitt Benckiser India Private Limited v. Union of India [WP.(C) 7743/2019]*, it has been held that the NAA is not concerned with the determination of base prices by a supplier, as suppliers are free to fix or revise base prices based on commercial or economic considerations. However, the Hon'ble Court has also clarified that any increase in base prices offsetting a tax reduction must be justified on a cogent basis. The presumption of price reduction under Section 171 of the CGST Act, 2017 is rebuttable only upon such justification. In the present case, the Respondent has failed to establish any cogent basis for increasing the base prices of the subject goods despite the reduction of GST rate from 18% to 12%.

16.2 The documentary evidence, including the price-revision circular dated 15.11.2017, shows that the Respondent revised base prices contemporaneously with the tax reduction. Accordingly, the presumption of profiteering under Section 171 of the CGST Act, 2017 remains unrebutted. The

profiteering amount of ₹90,90,310/- for the period 15.11.2017 to 31.12.2018, as computed by the DGAP, is confirmed.

17. Further as per Rule 133 (3) (c) of the CGST Rules, the provision for imposition of interest at the rate of 18% on the profiteered amount became operative only upon the coming into force of the CGST (Amendment) (Fourth) Rules, 2019, i.e., with effect from 28.06.2019. In the present case, the alleged profiteering occurred much prior to the said date. In view of the settled legal position laid down by the Constitution Bench of the Hon'ble Supreme Court in M/s. Vatika Township Pvt. Ltd. which categorically holds that fiscal provisions imposing additional liability cannot be applied retrospectively unless expressly provided, we are of the considered opinion that this is not a fit case for directing the Respondent to pay any interest on the profiteered amount.
18. It is evident from the above narration of facts that Respondent has denied the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020 whereas the period during which violation has occurred is w.e.f. 15.11.2017 to 31.12.2018, hence the penalty prescribed under the above Section cannot be imposed on Respondent retrospectively.
19. In view of the above findings, the Report submitted by the DGAP is accepted to the extent that respondent has profiteered an amount of Rs. 90,90,310/- only for the period of 15.11.2017 to 31.12.2018. However, I am refraining from imposing any interest or penalty on this amount as explained above in Para 17 & 18. Further, the Respondent is directed to deposit the profiteered amount as aforesaid in Consumer Welfare fund created by Centre and States equally as per the table 'B' supra. Accordingly, the case is Disposed of.
20. A report in compliance of this order shall be submitted to DGAP and the concerned CGST/SGST Commissioner/s within a period of 4 months from the date of receipt of this order.
21. A copy of this order shall be forwarded to all concerned parties including the Respondent, Director General of Anti-Profiteering and jurisdictional GST Commissioner(s) for necessary action and record.
22. The Order is pronounced in Open Court.

Sd/-  
(Sh. Anil Kumar Gupta)

**Dated: 03.02.2026**