



# Lawgics

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## Section 171 of CGST Act, 2017

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### 171. Anti-profiteering measure.

(1) 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 recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profited under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profited:

Provided that no penalty shall be leviable if the profited amount is deposited within thirty days of the date of passing of the order by the Authority.

Explanation. — For the purposes of this section, the expression “profited” shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Rule	Heading
Rule 122	Constitution of the Authority
Rule 123	Constitution of the Standing Committee and Screening Committees
Rule 124	Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority
Rule 125	Secretary to the Authority
Rule 126	Power to determine the methodology and procedure
Rule 127	Duties of the Authority
Rule 128	Examination of application by the Standing Committee and Screening Committee
Rule 129	Initiation and conduct of proceedings
Rule 130	Confidentiality of information
Rule 131	Cooperation with other agencies or statutory authorities
Rule 132	Power to summon persons to give evidence and produce documents
Rule 133	Order of the Authority
Rule 134	Decision to be taken by the majority

Rule 135	Compliance by the registered person
Rule 136	Monitoring of the order
Rule 137	Tenure of Authority

## Our Interpretation

Section  
171

**Anti-Profiteering Provisions under GST**

The objective of this section is to ensure that with the introduction of GST, taxable persons are not getting excessive profits and shall pass on the reduction in price to the consumers. The benefits of GST are passed on to the end consumers. These provisions are aimed at preventing businesses from increasing their profit margins by not reducing prices after the implementation of GST. The main objective is to make sure that the prices of goods and services are not increased beyond what is necessary to offset the increased tax liability of businesses. To enforce these provisions, the government has appointed the Anti-Profiteering Authority under Section 171. This authority is responsible for investigating complaints of profiteering and determining whether businesses have passed on the benefits of GST to consumers.

The anti-profiteering provisions were introduced to ensure that businesses pass on the benefits of reduced tax rates and input tax credits to the consumers. The primary objective of anti-profiteering measures is to protect the interests of the consumers and to prevent businesses from taking undue advantage of the GST system. By mandating businesses to pass on the benefits of reduced tax rates and input tax credits to the consumers, the anti-profiteering provisions aim to ensure that the prices of goods and services are reduced, and consumers are able to enjoy the benefits of GST. Another objective of anti-profiteering measures is to promote a level playing field among businesses. The GST system is designed to eliminate the cascading effect of taxes and create a uniform tax structure across the country. Anti-profiteering measures ensure that businesses do not indulge in unfair trade practices and that they compete on the basis of quality, service and efficiency rather than on the basis of price. This promotes a healthy business environment and encourages businesses to focus on long-term growth and sustainability. In summary, the anti-profiteering provisions under GST are aimed at protecting the interests of consumers, promoting fair competition among businesses, and ensuring that the GST system is implemented in the right spirit.

The registered person is expected to reduce the price on account of avilment of input tax credit or reduction in tax rates. An authority notified for this purpose would exercise powers and discharge functions in a prescribed manner. The procedure for filing anti-profiteering complaints is outlined under Rule 128 of the CGST Rules, 2017. Any interested party, including consumers, can file a complaint with the Anti-Profiteering Authority if they believe that a business has not passed on the benefits of GST to them. The complaint must be supported by evidence and should clearly state the reasons for the belief that the business has engaged in profiteering. After receiving a complaint, the Anti-Profiteering Authority will initiate an investigation and issue a notice to the concerned business. The authority will then examine the books of accounts and other relevant documents of the business to determine whether they have engaged in profiteering. If the authority finds that the business has not passed on the benefits of GST to consumers, it will issue appropriate orders directing the business to pass on the benefits. The penalties for non-compliance with the anti-profiteering provisions can be severe. As per Section 122 of the CGST Act, businesses that fail to comply with the orders of the Anti-Profiteering Authority may be liable to pay a penalty of up to 10% of the amount of profiteering. In addition, the business may also be liable to pay interest and face other legal consequences. Thus, the anti-profiteering provisions under GST play an important role in ensuring that the benefits of GST are passed on to consumers. The appointment of the Anti-Profiteering Authority and the procedures for filing complaints and determining violations are essential tools to enforce these provisions. The penalties for non-compliance are designed to deter businesses from engaging in profiteering and to promote

compliance with the anti-profiteering provisions.

Anti-Profiteering Rules (Rule 122 to Rule 137) as per Chapter-XV of CGST Rules, 2017 were notified by Central Government vide Notification No. 10/2017-Central tax dated 28.06.2017 w.e.f. 01.07.2017 which provides for Powers and Duties of Anti-Profiteering Authority and Compliances of Orders Passed by the authority.

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 Directorate General of Anti-Profiteering, 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 boost the confidence of consumers to get the benefit of reduction in GST rates.

On account of implementation of GST w.e.f. 1<sup>st</sup> July, 2017, there may be instances where the retail sale price of a pre-packaged commodity is required to be changed. In this context, Ministry for Consumer Affairs, Food & Public Distribution has vide Circular No. WM-10(31)/2017 dated 04.07.2017 allowed the manufacturers or packers or importers of pre-packaged commodities to declare the change retail sale price (MRP) on the unsold stock manufactured/ packed/ imported prior to 1st July, 2017 after inclusion of the increased amount of tax due to GST if any, in addition to the existing retail sale price (MRP), for three months w.e.f. 1<sup>st</sup> July 2017 to 30<sup>th</sup> September, 2017. Declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing.

It was also clarified that 'for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, on the label of the package'.

Use of unexhausted packaging material/wrapper was allowed upto 30<sup>th</sup> September, 2017 after making the necessary corrections.

The phrase "the increased amount of tax due to GST, if any" means "the effective increase in the tax liability calculated after taking into consideration extra availability of input tax credit under GST (including deemed credit available to the traders under CGST)".

Thus, the declaration of new MRP on unsold stock manufactured/packed/ imported prior to 1<sup>st</sup> July 2017 should not be done mechanically but after factoring in and taking into consideration extra availability of input tax credit under GST (including deemed credit available to traders under proviso to subsection (3) of section 140 of the CGST Act,2017).

The impact of anti-profiteering measures on profit margins of businesses has been mixed. While some businesses have been able to maintain their profit margins by increasing their sales volumes, others have faced a decline in their profits due to the pressure to reduce prices. The impact of the measures on businesses also depends on the industry they operate in, as some industries are more price-sensitive than others. Furthermore, the appointment of the Anti-Profiteering Authority has also created a fear among businesses of penalties for non-compliance. The authority has the power to impose penalties on

businesses found guilty of not passing on the benefits of reduced tax rates and input tax credit to their customers. The penalties can range from a mere warning to cancellation of registration under GST, which can have severe consequences for the business. Therefore, while the anti-profiteering measures under GST aim to protect consumers from the negative impact of GST implementation, they have created challenges for businesses in complying with the provisions. Businesses need to ensure compliance with the anti-profiteering provisions while maintaining their profit margins, which has increased their cost of compliance and administrative burden.

The implementation of anti-profiteering measures has had a significant impact on businesses operating in India. The aim of these measures is to ensure that businesses pass on the benefits of reduced tax rates and input tax credit to their customers by reducing their prices. However, businesses have faced several challenges in complying with these measures. One of the biggest challenges faced by businesses is the lack of clarity and guidance on the anti-profiteering provisions. The rules and regulations are complex, and businesses need to interpret them correctly to ensure compliance. This has resulted in increased cost of compliance, as businesses have to spend more on hiring experts to interpret the provisions and comply with them. The anti-profiteering provisions also require businesses to maintain detailed records of their input and output costs, pricing decisions, and tax calculations. This has resulted in increased administrative burden, which has also increased the cost of compliance for businesses.

The implementation of anti-profiteering measures under GST has a direct impact on consumers. The primary objective of these measures is to ensure that the benefits of reduced tax rates and input tax credit are passed on to the end consumers, leading to reduced prices of goods and services. The anti-profiteering provisions also aim to promote fair competition among businesses by preventing any undue advantage to certain businesses that do not pass on the benefits of GST to consumers. One of the major benefits of anti-profiteering measures for consumers is increased transparency in pricing. As per Section 171 of the CGST Act, 2017, businesses are required to clearly indicate the amount of GST charged on the invoice, thereby providing transparency to consumers. This not only promotes trust among consumers but also makes it easier for them to make informed purchasing decisions. Another important impact of anti-profiteering measures on consumers is the prevention of price hikes due to the implementation of GST. Businesses are required to pass on the benefits of reduced tax rates and input tax credit to consumers, which leads to reduced prices of goods and services. This ensures that consumers do not bear the burden of increased taxes due to GST implementation. Furthermore, anti-profiteering measures also improve the purchasing power of consumers. The reduced prices of goods and services due to anti-profiteering measures translate to more disposable income for consumers, which can be used to purchase additional goods and services. This can have a positive impact on the overall economy as increased consumer spending can lead to increased demand for goods and services, leading to economic growth.

By preventing businesses from profiteering, the measures have helped to maintain the credibility of the GST system and protect the interests of consumers.

In conclusion, the anti-profiteering measures under GST were introduced to ensure that businesses pass on the benefits of reduced tax rates to consumers. These measures have led to increased transparency in pricing and prevention of arbitrary price hikes by businesses. The Anti-Profiteering Authority has been active in investigating complaints and enforcing compliance. This has led to increased accountability and deterrence of non-compliance by businesses. Additionally, businesses must prioritize compliance with the anti-profiteering measures and take steps to streamline their processes to reduce compliance costs. Overall, the anti-profiteering measures under GST have had a significant impact on businesses and consumers alike.

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