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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23rd September, 2025

\+ **W.P.(C) 14422/2022 & CM APPL. 44020/2022**

TATA PLAY LTD. .....Petitioner

Through: Mr. Arvind P. Datar, Sr. Adv with Mr. Rohan Shah, Mr. Tushar Jarwal, Mr. Rahul Sateeja, Mr. Vikrant A. Maheshwari & Ms. Daliya Singh, Advs.

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS. .....Respondents

Through: Mr. Zoheb Hossain, Mr. Sanjeev Menon, Mr. Vivek Gumani, Mr. Satyam Prakash and Mr. Samit Siddhahta, Advs. for DGAP and NAPA.

Ms. Nidhi Raman with Mr. Arnav Mittal & Mr. Mayank, Advs for UOI.

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\+ **W.P.(C) 8705/2022 & CM APPL. 26239/2022**

M/S TATA PLAY LIMITED .....Petitioner

Through: Mr. Rohan Shah, Sr. Adv with Mr. Mohammed Anajwalla, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Abhishek Saket, SPCG with Mr. Manish Madhukar, Mr. Abhigyan, Ms. Amruta Padhi & Ms. Reya Paul, Advs. (M: 8376800073) for UOI.

Mr Zoheb Hossain, Mr Sanjeev Menon, Mr. Vivek Gurnani& Ms. Pranjal Tripathi, Advs. for NAA/CCI/DGPA.

CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE SHAIL JAIN

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CM APPL. 26240/2022 (for Exemption)

2. Allowed, subject to all just exceptions. Application stands disposed of.

W.P.(C) 8705/2022 & CM APPL. 26239/2022

3. The present petitions have been filed by the Petitioner challenging Section 171 of the Central Goods and Service Tax Act, 2017 *(hereinafter, 'the Act, 2017')* and the corresponding Rules 126, 127, 128, 129, 133 and 137 of the Central Goods and Service Tax Rules, 2017 *(hereinafter, 'the Rules, 2017')* as being unconstitutional, *ultra vires* of Article 14, 19(1)(g), 246A, 246, 265 & 300A of the Constitution of India.

4. In addition, the petitions challenge the SCN dated 10th May 2022 *(hereinafter, 'the impugned SCN')* and consequential order dated 29th August, 2022 *(hereinafter, 'the impugned order')* passed by the National Anti-Profiteering Authority *(hereinafter, 'NAPA').*

5. The impugned SCN as well as the impugned order, arise from the Investigation Report dated 6th August, 2021, furnished by the Director General of Anti-Profiteering *(hereinafter, `DGAP')* under Rule 129 (6) of the Rules, 2017.

6. The background of the case is that M/s Tata Play Ltd. is a company engaged in providing Direct-to-home *(hereinafter, 'DTH')* services to consumers. The allegation made against the Petitioner in the impugned SCN and order, was that it had indulged in profiteering by not passing on the benefit of Input Tax Credit to its consumers.

7. It is a matter of common knowledge that the GST Regime came into effect from 1st July, 2017. In respect of DTH Services, initially, the GST payable from 1st July, 2017 was 15%. The same was, however, increased to 18% with

effect from 15th November, 2017.

8. Parallelly, however, there were several goods and services for which the GST rates were, in fact, reduced from 28% to 18%. At the time when these reductions/modifications took place, Anti-Profiteering measures were introduced into the GST law, to ensure that the benefit of reduction in rates of GST or the benefit of input tax credit would be passed on to the consumer by way of commensurate reduction in the rate/price. The Anti-Profiteering measures were thus meant to be in public interest to avoid unjust enrichment of manufacturers, retailers and other goods and service providers.

9. The case of the Petitioner is that its services attracted higher taxation with effect from 15th November, 2017 *i.e.* the same increased from 15% to 18%. Thus, there was no occasion to pass on any benefit of input tax credit to the consumers.

10. However, the case of the Central Board of Indirect Taxes & Customs *(hereinafter, 'the Department')* is to the contrary. It is contended that there was a reduction in the GST rates of various inputs and the benefit of the said reductions, which were availed of in the form of input tax credit,ought to have been passed on by the Petitioner to its consumers.

11. The Coordinate bench of this Court, *vide* judgment dated 29th January, 2024 in a batch of matters with the lead matter being ***W.P.(C)7743/2019*** titled ***Reckitt Benckiser India Pvt. Ltd. v. Union of India*** upheld the Constitutional validity of Section 171 of the Act, 2017 and Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017. While deciding the said cases, the Court observed that the challenge to the specific orders, which have been passed in each of the matters has to be adjudicated on merits. The relevant portions of the said judgment are set out below:

"159. Section 171 of the Act, 2017 is widely worded and does not limit the scope of examination to only goods and services in respect of which a complaint is received. The scope of powers of the DGAP is provided for in Rule 129 of the Rules, 2017. From a reading of the said Rule especially the expression 'any supply of goods or services' used in sub-rule (2) of Rule 129, it is apparent that the scope of the DGAP's powers is very wide and is not limited to the goods or services in relation to which a Complaint is received. The word 'any' includes within its scope 'some' as well as 'all'.

160. In any event, the ignorance of the consumer or lack of information or surrounding complexity in the supply chain cannot be permitted to defeat the objective of a consumer welfare regulatory measure and it is in this light that the subject provision is required to be construed.

161. In the context of similar powers of investigation exercised by the Director General under the Competition Act, 2002, the Supreme Court in Excel Crop Care Ltd. vs. Competition Commission of India, (2017) 8 SCC 47, has held that the Director General would be well within its powers to investigate and report on matters not covered by the complaint or the reference order of the Commission, and an interpretation to the contrary would render the entire purpose of investigation nugatory. The High Court of Delhi in Cadila Healthcare Ltd. &Anr. vs. CCI & Ors., (2018) SCCOnline Del 11229, relying on the judgment of the Supreme Court in Excel Crop Care (supra) has clarified in express terms that the scope of investigation by the Director General is not restricted to the matter stated in the Complaint and includes other allied as well as unenumerated matters. Consequently, the expansion of investigation or proceedings beyond the scope of the complaint is not ultra vires the statute.

ACKNOWLEDGMENT

162. Before parting with the present batch of matters, this Court places on record its appreciation for the

assistance rendered by all the learned counsel, who appeared, in particular, Mr. Amar Dave, learned Amicus Curiae, Mr. V. Lakshmikumaran and Mr. Zoheb Hossain, Advocates as they filed not only multiple written submissions but also ensured that hearing in the present batch of matters (exceeding 100 cases) was conducted in an orderly and proper manner.

TO SUM UP

163. Keeping in view the aforesaid conclusions, the constitutional validity of Section 171 of Act, 2017 as well as Rules 122, 124, 126, 127, 129, 133 and 134 of the Rules, 2017 is upheld. This Court clarifies that it is possible that there may be cases of arbitrary exercise of power under the anti-profiteering mechanism by enlarging the scope of the proceedings beyond the jurisdiction or on account of not considering the genuine basis of variations in other factors such as cost escalations on account of which the reduction stands offset, skewed input credit situations etc. However, the remedy for the same is to set aside such orders on merits. What will be struck down in such cases will not be the provision itself which invests such power on the concerned authority but the erroneous application of the power."

12. Thus, insofar as the prayer for striking down the said provisions of the Act, 2017 and Rules, 2017 is concerned, the same would no longer survive before this Court.

13. On facts, however, the matters have to be examined separately. Before proceeding to do so, it would be relevant to note that the NAPA, which was originally notified under the Act, 2017 was thereafter substituted by the Competition Commission of India (*hereinafter, 'CCI'*) *vide* ***Notification No. 23/2022- Central Tax*** dated 23rd November, 2022. When this Notification was issued, various provisions of the Rules, 2017 were omitted/amended.

14. Thereafter, *vide* ***Notification No. 18/2024*** dated 30th September, 2024, the Principal Bench of the GST Appellate Tribunal has now been empowered to discharge the functions which were earlier being discharged by NAPA. The said ***Notification No. 18/2024*** is as under:-

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MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

Notification No. 18/2024 – Central Tax | Dated: 30th September, 2024

S.O. 4268(E).—In exercise of the powers conferred by sub-section (2) of section 171 read with sub-section (1) and second proviso to sub-section (5) of section 109 of the **Central Goods and Services Tax Act, 2017** (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Goods and Services Tax Council, hereby empowers the Principal Bench of the Appellate Tribunal, constituted under sub-section (3) of section 109 of the said Act, 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 the goods or services or both supplied by that registered person.

2. This notification shall come into force with effect from the 1st day of October, 2024.

[F. No. CBIC-20016/25/2024-GST]
RAGHAVENDRA PAL SINGH, Director

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15. The Court is now informed that the Anti Profiteering Wing of the Principal Bench of GST Appellate Tribunal has now been constituted and is looking into Anti Profiteering matters.

16. It is also brought to the notice of this Court that *vide* another ***Notification No. 19/2024– Central Tax*** issued on 30th September, 2024, the cut off date has been fixed as 01st April, 2025, as the date from which the Authority referred to in Section 171 of the Act, 2017, is not to accept any request for examination of anti-profiteering. Thus, it is only complaints prior to 01st April, 2025 that can be considered by the Principal Bench of the GST Appellate Tribunal, insofar as

anti-profiteering complaints are concerned.

17. Coming back to the facts of the present petitions, it has been pointed out by the ld. Sr. Counsels for the Petitioners, Mr. Arvind P. Datar, and Mr. Shah, that the facts in these matters would show that the Petitioner did not increase the price of its services despite the increase in GST rates. The following two charts are relied upon by the Petitioner to argue that the input tax credit in fact got subsumed within the additional tax cost.

Description	**Rs (in Crores)**
Additional Tax Cost Borne by Company due to increase in tax rates from 15% to 18% without change in MRP package value (for 19 months)	(245)
Less: Actual ITC Value Subsumed/Forgone (75Cr extrapolated for 19 months)	95
Net Tax Cost Borne by Company (Loss not Profit) by Tata Play due to same MRP value of Pack despite increase in tax rate	(150)

18. In addition, it is also sought to be demonstrated that the MRP having been maintained as a constant, the question of profiteering would not arise, which is illustratively visible in the following table:

Pack price is kept same for Complainant	**Pre-GST pack value @15%ST**	**Actual Packed Value @18%**	**Difference**
MRP	3,290.00	3,290.00	
Tax	429.13	501.86	
Net realization	2,860.87	2,788.14	-72.73

19. A perusal of the impugned order would, however, show that the finding of NAPA is that the Petitioner has profiteered by an amount of more than Rs 450 crores. This is based on the Investigation Report dated 6th August, 2021 submitted by the DGAP, which had calculated the entire amount on the basis of a complaint which was submitted by one Mr. Sumit Garg.

20. This Court is of the opinion that the GST Appellate Tribunal, having now been vested with the function of NAPA, and the fact that GST rates had in fact increased in the case of the Petitioner, the question of profiteering deserves to be re-looked at, to examine the factual matrix as to whether there was any actual profiteering at all or whether the Investigation Report dated 6th August, 2021 submitted by the Directorate General of Anti Profiteering was based merely on conjecture or surmise.

21. In view of the above, this Court of the opinion that the matter deserves to be remanded to the Principal Bench of GST Appellate Tribunal. The impugned order dated 29th August, 2022 is accordingly set aside and the matter is remanded for a fresh hearing.

22. Let the matter be now listed before the said Principal Bench of GST Appellate Tribunal on 14th October, 2025. Needless to add, if the Petitioner herein wishes to file any additional documents or submissions, it shall be permitted to do so. It is also clarified that this Court has not made any observations on the merits of the matter, as the same would require factual determination which is beyond the scope of writ jurisdiction.

23. In so far as the impugned SCN is concerned, since the consequential order has already been passed, ***W.P. (C) No. 8705 of 2022*** challenging the impugned SCN is now infructuous and is accordingly disposed of.

24. Let a copy of this order be communicated to the Registrar, Principal Bench, GST Appellate Tribunal for their information and necessary action.

PRATHIBA M. SINGH
JUDGE

SHAIL JAIN
JUDGE

SEPTEMBER 23, 2025
sk/ss