

GSTAT

Single Bench Court No. 1

NAPA/13/PB/2025

DGAP

.....Appellant

Versus

PROCTOR & GAMBLE GROUP

.....Respondent

Counsel for Appellant

Counsel for Respondent

Hon'ble Justice (Retd.) Dr. Sanjaya Kumar Mishra, President

Counsel for Appellant

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. : ZA070925000010H

Date of order : 10/09/2025

1.	GSTIN/Temporary ID/UIN - 33AAACP6332M1ZE
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2.	Appeal Case Reference no. - NAPA/13/PB/2025	Date - 29/10/2021
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Proctor & Gamble Group , darshan.machar@lakshmisri.com , 8899624200	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 10/09/2025 19/08/2025 22/07/2025 01/07/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - The Respondent is found to have profiteered by violating the section 171 of the CGST Act. Hence, it is directed to deposit the profiteered amount in the Consumer Welfare Fund(s) as per Section 57 of CGST Act.	
Summary of Order		
9.	Type of order : Deposit in Consumer Welfare Fund/s	

Place :DELHIPB

Date : 10.09.2025

Final Order

1. This is a proceeding under Section 171 of the Central Goods and Services Tax Act 2017, hereinafter referred as the CGST Act, read with the rule 133 of Central Goods & Services Tax Rules, 2017, hereinafter referred as CGST Rules, wherein, we have been called upon to decide whether the Respondent i.e. M/s Procter and Gamble Group, have profited an amount of Rs. 6,88,770/- only for the period of 27.07.2018 to 31.10.2018. However, in course of hearing the Learned Counsel for the Respondent presented a written application duly verified by one of the officers of Respondent firm, which was duly authenticated / attested by Registered advocates to the fact that the Respondent intends to deposit the alleged profited amount as aforesaid with a condition that they will not be liable to pay any interest thereon. It was also contended by the Learned Counsel appearing for the Respondent that the Respondent is agreeing to deposit the money as required under law, however, they should not be prejudiced for the same and that they are not liable to pay interest on it regard being to the fact that the interest of 18 % was made applicable, or in other words, inserted in Clause (c) of Sub Rule 3 of Rule 133 of the CGST Rules by virtue of the Notification No. 31/2019 dated 28.06.2019 and it became effective from 01.04.2020 vide Notification No. 71/2019. It was also submitted by the Learned Counsel that this Provision is prospective in nature and it cannot be made applicable to any alleged profiteering that took place from July 2018 to October 2018, as in the present case. It is also

not disputed by both the parties that Provision for penalty is not applicable to this case.

2. The disputed issue, therefore, remains in a very narrow compass, and most of the facts are not disputed. We may succinctly state the facts as follows, which are not disputed in this case. By virtue of Enactment No. 12/2017 of the Parliament dated 12.04.2017, the CGST Act came into force w.e.f 01.07.2017. Various rates of GST were prescribed for various goods and services. As the matter originally stood the GST rate on sanitary napkins was 12%. However, on the recommendations of the GST Council, the GST rates on sanitary napkins was reduced to 'nil' from 12 % vide Notification No-19/2018-CT (R) on 26.07.2018 w.e.f 27.07.2018. On 28.11.2017, National Anti-Profiteering Authority was constituted. On 08.12.2018, a complaint dated 02.08.2018 in respect of anti-profiteering made against the Respondent was considered by the Standing Committee for anti-profiteering and it was referred for investigation to Directorate General of Anti-Profiteering, New Delhi, hereinafter, referred to as DGAP on 25.10.2018. The DGAP submitted its Report under Rule 129(6) of the CGST Rules, 2017 on 24.04.2019. Notices were issued to the Respondent. Written submissions were made by the Respondent and clarifications were also submitted.
3. By virtue of Interim Order No. 21/2019 dated 16.12.2019, passed by the erstwhile NAA, the matter was remanded to the DGAP for re-investigation. Originally it was reported by the DGAP, that there was a profiteering to the tune of Rs. 1,09,37,065/-. Thereafter upon re-investigation after remand, the DGAP found

that there has been a profiteering of Rs. 6,88,770/-. There is no dispute at this stage regarding the amount of profiteering, though in principle the Respondent, through their Counsel, did not admit that they have profited this amount. However, in course of hearing on the last date they submitted a written application stating that they are ready to deposit the alleged amount of Profiteering without Prejudice as we have mentioned in the preceding paragraph. So, now the question remains, whether the amount of allegedly profited by the Respondent should also be levied with an interest at the rate of 18% from the date of the charging of the higher price. For this purpose, we have to take into consideration the exact words that appeared before the amendment and after the amendment in the statute. For the purpose of clarification, we hereby quote here the relevant portion of Rule 133 which reads as follows:-

Rule-133,

(1)xxxx

(2)xxxx

(2A)xxxx

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty percent. of the amount determined under the above clause [along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of deposit of such amount] in the fund constituted under Section 57 and the remaining fifty percent. of the amount in the Fund constituted under Section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable.

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

Explanation: For the purposes of this sub-rule, the expression, “concerned State” means the

State [or Union Territory] in respect of which
the Authority passes an order.

(4)xxxx

(5)xxxx

Before this amendment vide Notification No. 26 / 2018 - CT dated
13.06.2018, the clause read as follows;

Rule-133,

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount Not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be, in case the eligible person does Not claim return of the amount or is Not identifiable, and

depositing the same in the Fund referred to in Section 57

(c) imposition of penalty as specified under the Act; and

(d) cancellation of registration under the Act.

4. Thus the important aspect to be considered in this case is whether this insertion of clause “along with interest at the rate of eighteen percent from the date of collection of the higher amount till the date of deposit of such amount” is enabling provision or is clarificatory provision.
5. It was contended by the Learned Counsel for the Respondent that such a provision wherein interest has been imposed upon the party who has not passed on the reduction of rate of GST would be prospective not retrospective. We considered this aspect and sought the response of the DGAP on this. The response was received by us on 27.08.2025. It is also a part of the record.
6. Pr. DG, DGAP has submitted that the Notice’s contention is not tenable as it is clear from the above discussion that the Provision for interest at the rate of 18% to be deposited in Consumer Welfare Fund was applicable during the period for 01.07.2017 till 12.06.2018 and from 28.06.2019 onward.
7. Even though DGAP has submitted, the profiteered amount pertains to the period 27.07.2018 to 31.10.2018 the provisions of law must be read in continuity and the law must be interpreted as a coherent whole rather than in isolation to ensure a cohesive legal framework which is essential for avoiding legal vacuums,

maintain stability, and ensuring consistency in judicial interpretations, especially when amendments are made.

8. Thus, the only issue that needs to be decided, in this case, is:-

“Is the Respondent liable to pay an interest @ 18% on profiteered amount?”

9. In order to effectively decide this issue which essentially a question of law involving interpretation of Statute, the Amending Rule (Fourth) brought by the Government of India, in Ministry of Finance (Department of Revenue) through the Central Board of Indirect Taxes and Customs (CBIC) through Notification No. 31/2019 on 28.06.2019 has to be considered. It aimed at amending various provisions of CGST Rules by exercising powers conferred upon the Government of India under Section 164 of the CGST Act. Sub-rule (1) of the Rule (1) of the said notification provided that rules may be called the Central Goods & Services Tax (Fourth Amendment) Rules, 2019. Sub-rule (2) of rule (1) is provided as follows;

“(2) save as otherwise provided in these rules, they shall come into force on date of their publication in the official Gazette.”

10. The relevant rule for the provision of Rule 133 (3) (c) which is being considered is Rule 17. It sought to amend Rule 133 of the CGST Rules. The relevant clause of Rule 17 of the Fourth Amendment Rules is clause (c) of Rule 17 which reads as follows;

“(c) in sub-rule (3), in clause (c), after the words “fifty percent. of the amount determined under the above clause”, the words “along with interest at the rate of eighteen percent. from the date of collection of higher amount till the date of deposit of such amount” shall inserted.”

11. The rest of the contents of the aforesaid rules are not relevant for our purpose for this case.

12. The Learned Counsel for the Respondent would submit that the amended provision of Clause (c), sub-rule (3) rule 133 of CGST Rules saddling on interest at the rate of 18 % per annum on Respondent came into force on 01.04.2020. We have considered his argument and also take note of the Notification cited by him which reads as follows;

“G.S.R.927.(E)- In exercise of the powers conferred by rule 5 of the Central Goods Services Tax(Fourth Amendment) Rule, 2019, made vide notification No.31/2019 – Central Tax, dated the 28th June, 2019, published in the Gazette of India, Extraordinary, part II, Section 3, Sub-section (i), vide number G.S.R 457(E), dated the 28th June, 2019, the Government on the recommendation of the Council , hereby appoints the 1st day of April 2020, as the date from which the provisions of the said rule, shall come into force.”

13. Dealing with a similar question the Constitution Bench of Supreme Court of India in **C.I.T. (C-1) New Delhi Vs. Vatika**

Township Pvt. Ltd, (2015) SSC-1, considered whether the amendment to the provisions of Section 113 of the Income Tax Act, inserted by the Finance Act, 2002 is to operate prospectively or it is a clarificatory and curative in nature, and, therefore, has retrospective operation. While considering this issue the Hon'ble Supreme Court has held that *a plain reading of the aforesaid statutory provision, it is clear that though the provision of surcharge under the Finance Act has been in existence since 1995, in so far as levy of surcharge on block assessment is concerned, it is introduced by insertion of the aforesaid provision of Section 113.*

14. *In this background, the question that arises, is whether the surcharge on block assessment has been levied for the first time by the aforesaid proviso coming into the effect from 01.06.2002, or it is only clarificatory in nature because of the reason that the provision of surcharge was made in finance Act in the year 1995 and the surcharge on block assessment as well. We have carefully examined the aforesaid judgment and propose to summarise the reasons resorted by the Hon'ble Supreme Court without quoting the same in the following paragraphs..*
15. *The Supreme Court held that a legislation, be it a statutory Act or Statutory Rule or a Statutory Notification, may physically consists of words printed on paper. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/ non-fiction or even in a judgment of a court of law. A*

legislation requires a technique and is guided by principles of legislation, whereas reading a legislation and interpreting it is another field which is known as interpretation of statute. One of the guiding principal is that the legislation has to be interpreted to mean that it does not have a retrospective operation unless otherwise provided in specific terms or by very strong and necessary implication.

16. *The only other course to treat it as a curative and clarificatory piece of legislation, whereby the legislating body, in this case the Government of India as it is a piece of delegated legislation, had clearly intended it to be to have a retrospective application or that it was necessary make such amendments to clarify the existing legislation. The obvious basis of the principle against retrospectivity is a principles of fairness, which must be the basis of every legal rule. Thus legislation which modified accrued rights or which impose obligation or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supply an obvious omission in a former legislation or to explain a former legislation.*
17. *Though in some case and also in case of Vatika Township (Supra), it has been observed that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. However we are not concerned about any such doctrine retrospective conferring beneficial fruits of legislation rather than in this case we are confronted with the question of retrospectivity of a new liability.*

18. *On the contrary, it is a provision which onerous to the assessee. Therefore, in a case like this, the normal rule of presumption against retrospective operation is applicable. The Rule against retrospective operation is a fundamental rule of Law that no statute shall be constructed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.*
19. *Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors. The outgoing or rebutting factors may be found in the statute itself as mentioned by Justice G. P. Singh in his book on Interpretation of Statute, but it is not always the guiding factors. Sometimes the Act uses a words “declare” as well as the word “enacted”. The word used in statute itself sometimes is a good indicator of the retrospectivity provision.*
20. In this particular case, on a reference to the Notification No. 31/2019-Central Tax; G.S.R.457(E).- it is seen that the Government of India in exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, made the rules therein to “further” amend the Central Goods & Services Tax Rules. We lay emphasis on the word “further”. We also take note that grammatically and semantically, the word “further” does not imply the past. It usually means “in addition” or “to advance”. Hence, we are unable to agree to the submissions made by the Representatives of the DGAP that this Amending provision is Clarificatory and Curative having retrospective effect. We are also

unable to agree with the submissions that it is not an enabling provision requiring prospective operation.

21. As mentioned earlier sub rule (2) of Rule (1) specifically provided that they shall come into force on their date of publication, except as otherwise provided in these rules. A careful comparison of rule 17 with rule 5 of the said amending rules reveals that rule 5 aims at inserting a proviso to rule 46 of CGST Rules. It seeks to amend rule 46 by providing the following proviso namely;

“Provided that the government may by notification, on the recommendation of the council and subject to such conditions and restriction as mentioned therein, specify that tax invoice cell have a Quick Response (QR) code”.

22. And virtue of Notification No. 71/2019- Central Tax dated 13.12.2017, the Government appointed 01.04.2020 as the date from which such rule regarding provision of QR code would be effective. Thus it is clear that the Government of India in framing the delegated legislation was fully aware of the impact of the legislation and day on which it was to take effect. There is no provision for notifying a different date for coming into force of Rule 17, which seeks to amend rule 133 of the Fourth Amending Rules of the CGST Rules regarding Anti-Profiteering. However, it has clearly provided a different date i.e. 01.04.2022 for the implementation of the direction / requirement of providing a QR code.

23. In that view of the matter, we are of the opinion that, the argument advanced by the Learned Counsel of the Respondent is partially acceptable and partially non-acceptable. That is to say that we agree to the argument advanced by the Learned Counsel for the Respondent that the provision for imposition 18 percent interest on the profiteered amount shall come into force only to those cases which fall after the notification on the Amending (Fourth) Rule came into force, that is 28.06.2019 and not on 1st April, 2020, as argued by the Learned Counsel. However, in this case profiteering took place much prior to date of coming into force of such provision for levying interest and in view of the constitution Bench judgment of the Supreme Court in the case Vatika Township Pvt. Ltd. (Supra)., we are of the opinion this is not the fit case where Respondent should be directed to pay any interest on the profiteered amount.

24. Thus the Report submitted by the DGAP accepted to the extent that respondent has profiteered an amount of Rs. 6,88,770/- only for the period of 27.07.2018 to 31.10.2018. However, we are not imposing any interest or penalty on this amount. So the Respondent is directed to deposit the profiteered amount as aforesaid in Consumer Welfare fund created by Centre and States equally. The State Consumer Welfare fund account for some States and Union Territories i.e. for Arunachal Pradesh, Chattisgarh, Andaman & Nicobar Islands, UT of Lakshdweep, UT of Daman & Diu and Dadra Nagar Haveli are not yet created. Therefore, the share of profiteered amount which was supposed to be deposited in the State Consumer Welfare Fund of Chattisgarh

and Andaman & Nicobar Islands is to be deposited in the Central Consumer Welfare Fund for time being.

25. A report in compliance of this order shall be submitted to this Tribunal by the concerned Commissioner within a period of 4 months from the date of receipt of this order.

26. A copy each of this order be supplied to the respondent and to the concerned Commissioner CGST / SGST for necessary action.

Judgment pronounced in open court.

(Dr. Sanjaya Kumar Mishra)
President, Principal Bench,
GSTAT-NAA