

Director General of Anti-Profitteering v. Urban Essence (Subway Franchisee)

Case number: NAPA/31/PB/2025

Citation: No neutral or reporter citation printed for this judgment in the identified official PDF.

Decision date: 5 August 2025

Restaurant-rate reduction, proof of additional ITC and commercial costs, and multi-product inquiry with conflicting principal figures

Court: Goods and Services Tax Appellate Tribunal, Principal Bench, New Delhi, Anti-Profitteering Division

Bench: Justice (Retd.) Dr. Sanjaya Kumar Mishra, President, Single Bench, Court I

Decision stage: Final reasoned ex parte liability decision: finding Rs. 5,47,005 but operative Fund deposit Rs. 5,45,005, with stated 18% interest from 15 November 2017 and no retrospective Section 171(3A) penalty; material amount and period discrepancies remain unresolved.

01 Facts of case and issues

Urban Essence was a Pune Subway restaurant franchise. The source describes the combined restaurant GST reduction from 18% to 5%, without input credit, from 15 November 2017 under Notification 46/2017. The reference reached DGAP on 9 October 2019, and the investigation covered 15 November 2017–31 October 2019. DGAP examined 340 items and reported unchanged consumer prices despite reduced GST, with increased base prices said to exceed the allowance for lost input credit.

Table A records Rs. 1,43,873 of July–October 2017 ITC and Rs. 19,07,509 turnover, yielding the displayed 7.54% denial adjustment. Table B illustrates a 12-inch Aloo Patty Sub: seven units and taxable value Rs. 1,715 produce the Rs. 245 average base for 1–14 November 2017. Adding the displayed 7.54% gives Rs. 263.47, followed by Rs. 13.18 GST and a Rs. 276.65 commensurate gross price. Against the charged Rs. 295, the table reports Rs. 18.35 per unit. The DGAP aggregate allegation was Rs. 5,47,005. These are report figures; the underlying full sales ledger has not been independently audited.

The restaurant objected that labour, rent, royalties, delivery and input costs had increased; additional credit should be considered under an October 2018 release; only the single complained-of product should be investigated; GST already remitted should be excluded; and the investigation period was too long. It also said invoices had been furnished to State officials. DGAP's rejoinders disputed those positions and said its computation already allowed the lost-credit adjustment. Those competing assertions are distinguished from the Tribunal's later findings.

NAA interim order 32/2020 of 27 November 2020 directed reinvestigation of the claimed additional-credit evidence. The ensuing report dated 22 January 2021, received on 28 January, maintained the allegation. The source records the respondent's 10 January 2021 statement that there were no further relevant invoices or debit notes. Earlier written submissions were on record, but nobody appeared for the restaurant at the recorded later Tribunal opportunities. GSTAT therefore decided the substantive issues ex parte.

Pinpoint: Identity and dates: physical pp. 1–3. Investigation and tables: paragraph 4, pp. 7–11. Party and DGAP positions: paragraphs 5–8, pp. 11–17. NAA/reinvestigation history: paragraphs 9–16, pp. 17–21. Ex parte treatment: paragraphs 21–22, pp. 23–24.

02 Discussion by Hon'ble Tribunal

On additional credit, paragraphs 17–22 examine the prior opportunity and reinvestigation rather than presuming that nonappearance alone proves liability. GSTAT rejects the contention because no requisite July–October 2017 invoices or debit notes were produced during reinvestigation or before the adjudicating bodies. The source repeatedly describes a general 31 December 2018 ITC extension. The independently checked 18 October 2018 PIB release instead states an ordinary October deadline and a limited exception for specified recently migrated taxpayers. This note reports the evidential rejection without endorsing the source's broader eligibility recital or deciding whether this particular proprietor met that exceptional category. The present official compilation's Section 16(5) additionally addresses returns filed by 30 November 2021 for financial years 2017–18 through 2020–21. The judgment does not discuss that provision; this note does not infer a credit entitlement or re-adjudicate the missing-document finding.

Paragraphs 24–29 discuss Reckitt Benckiser's distinction between a real commercial price increase and a pretext for retaining tax benefit. The Tribunal expressly accepts that commercial factors can justify base-price changes and that the presumption of commensurate reduction is rebuttable on cogent evidence. Here it finds no supporting material to explain the unchanged consumer prices and rejects the defence. It does not establish that costs are always irrelevant, prohibit every post-rate-cut increase, or approve an automatic universal 7.54% allowance for restaurants.

Paragraphs 30–33 reject the contention that a complaint about one product necessarily restricts investigation to that item. GSTAT quotes Section 171(2) and Rule 129(2), considers the common GST return and ITC entry, and permits examination of the relevant wider supplies of this registered person. Rule 133(5) is discussed as part of DGAP's submission. The note does not turn that submission into authority to dispense with the rule's recorded-reasons and fresh-investigation requirements or extend this order to different taxpayers.

The Tribunal accepts the report's Rs. 5,47,005 liability finding in paragraph 35. However, that same paragraph's operative sentence and the form summary direct Rs. 5,45,005. No explanation for the Rs. 2,000 difference or separate verified correction is supplied. The source also gives 15 November 2017–31 October 2019 as the investigation period but 1 July 2017–31 March 2019 in the penalty passage. Both precede the penalty's commencement, but the periods are not silently harmonised.

Further drafting and calculation limits matter. Paragraph 28 calls 7.56% an actual reduction of taxes, whereas the table uses 7.54% as an ITC-denial allowance; these differently labelled figures are not substituted for one another. Paragraph 4(d) describes a July–14 November comparison, while the worked table uses 1–14 November. The phrase there was change in paragraph 10(IV) conflicts with the next paragraph's express unchanged allegation. The source contains a 2025 notice where the surrounding history says 2021, and several 2028/20218/20217 dates. DGAP's GST-inclusion and investigation-window arguments are recorded at length, but the own reasons do not supply a separate detailed resolution of each objection.

Pinpoint: Additional-credit decision: paragraphs 17–22, physical pp. 21–24. Genuine-cost reasoning: paragraphs 24–29, pp. 24–27. Scope: paragraphs 30–33, pp. 27–29. Amount/period conflict: paragraphs 35–36, pp. 29–30 and form p. 2. Other variants: paragraphs 4, 10–12, 17–21 and 28.

03 Judicial decision and operative relief

Paragraph 35 finds the DGAP allegation of Rs. 5,47,005 correct, but then directs the respondent to return/deposit Rs. 5,45,005 in Consumer Welfare Funds created by the Centre and State of Maharashtra under Section 57. The administrative summary repeats Rs. 5,45,005. Both amounts are preserved without deciding which was intended. The operative amount is accompanied by 18% interest from collection of the higher amount, expressed as 15 November 2017. The paragraph does not expressly specify an interest endpoint, annual rests or an equal 50:50 allocation; this note does not insert those as terms of the order.

The deposit is to be made within three months, failing which the concerned jurisdictional CGST/SGST Commissioner shall recover it. The operative wording does not expressly state the trigger for that three-month period. Paragraph 37 separately requires a compliance report to the Tribunal within four months of receipt of the order. Those two duties and triggers must not be conflated.

Paragraph 36 expressly refuses retrospective penalty under Section 171(3A), which commenced on 1 January 2020, and says no show-cause notice under that subsection read with Rule 133(3)(d) is required. Its stated violation period differs from the principal investigation period; both are recorded in this note. This is temporal penalty relief, not a thirty-day payment-condition exemption, and no quantified penalty is imposed.

Copies are to go to the respondent and concerned Commissioners, and the file is to be consigned after completion. The typed order date is 5 August 2025, distinct from the form-preparation and visible digital-signature date of 7 August 2025. No cryptographic validation, actual payment, later recovery or full compliance finding is supplied.

Pinpoint: Own monetary finding and operative direction: paragraph 35, physical p. 29; administrative summary p. 2. Penalty and compliance: paragraphs 36–38, pp. 29–30. Order and signature dates: pp. 1–2 and 30.

04 In favour of

Mixed. Revenue and the consumer Funds prevail on the substantive pass-through, evidence and investigation-scope issues; Urban Essence receives express protection against retrospective Section 171(3A) penalty. The unexplained Rs. 2,000 operative reduction is not labelled an adjudicated taxpayer concession. The exact interest direction and later differing coordinate treatment remain qualified.

Final substantive ex parte adjudication after recorded opportunities, with a liability finding, operative Fund deposit, interest and express temporal penalty relief. Final does not mean the source's amount discrepancy has been corrected or every appeal, payment and enforcement question has ended.

Pinpoint: Paragraphs 17–38, physical pp. 21–30, particularly 22, 27, 32 and 35–37.

05 AKHB REVIEW POINT

AKHB analysis: For a rate reduction accompanied by withdrawal of ITC, reconcile actual credit, taxable turnover, relevant invoice dates and any adjustment to comparable base prices. Produce the underlying documents and contemporaneous cost evidence; an assertion that credit might have been claimed later or that expenses generally increased is not a substitute. Check the actual notification and the eligibility limits of any press release.

05 AKHB REVIEW POINT

Separate a single-item complaint from the permissible statutory scope of inquiry, while still checking the procedural authority for expansion. Distinguish DGAP's explanation of GST-inclusive recovery from the Tribunal's own reasoning and exact monetary direction.

Before compliance or recovery, resolve the Rs. 5,47,005 finding versus Rs. 5,45,005 operative amount through an authoritative route. Verify the precise interest provision, applicable temporal law and current treatment instead of importing a later case's dates, a standard equal Fund split or an invented endpoint into this order.

Pinpoint: AKHB commentary based on paragraphs 4–38, physical pp. 7–30, targeted primary checks and later A J treatment; not additional directions.

Sources and limitations

Relevant provisions

CGST Act 2017: Section 171 and Section 171(1), operative restaurant-rate benefit pass-through; CGST Act 2017: Section 171(2), express authority and multi-product inquiry reasoning; CGST Act 2017: Section 57, operative Consumer Welfare Fund reference; CGST Act 2017: Section 109(3), Principal Bench constitution context; CGST Act 2017: Section 171(3A), express non-retrospective penalty ruling; CGST Rules 2017: Rule 36, respondent's ITC-documentation submission; CGST Rules 2017: Rule 128, referral history; CGST Rules 2017: Rules 129(2), 129(3) and 129(6), inquiry power, notices and reports; CGST Rules 2017: Rule 133(2) and Rule 133(2A), differently printed clarification references; CGST Rules 2017: Rule 133(4), prior NAA reinvestigation; CGST Rules 2017: Rule 133(5), DGAP's expanded-investigation argument, not removal of procedural safeguards; CGST Rules 2017: Rule 133(3)(a), mislabelled by DGAP as a Fund-deposit clause; CGST Rules 2017: Rule 133(3)(d), penalty-notice discussion; CGST Rules 2017: Rules 113(1) and 115, administrative Form GST APL-04A heading only; Central Tax (Rate) Notification 46/2017 dated 14 November 2017, restaurant-rate change without ITC from 15 November 2017; Central Tax Notification 23/2022 dated 23 November 2022, CCI empowerment from 1 December 2022; Central Tax Notification 18/2024 dated 30 September 2024, Principal Bench empowerment from 1 October 2024; Principal Bench GSTAT Anti-profiteering Methodology and Procedure Rules 2025, source procedural recital dated 12 June 2025; CBIC Press Release 62/2018 dated 18 October 2018, disputed ITC-deadline history with limited migrated-taxpayer exception independently qualified.

Statutory note

Section 171 governs pass-through and the Tribunal expressly reasons from Section 171(2) and Rule 129(2) on the multi-product inquiry. Rule 133(5) appears in the DGAP scope argument; its 2019 insertion and procedural safeguards are not replaced by the submission that it merely restated inception law. Section 57 is expressly named in the Fund direction. DGAP's historical reference to Rule 133(3)(a) as a Fund-deposit clause is mislabelled: that clause concerns price reduction, while the Fund route is clause (c). Section 171(3A) and Rule 133(3)(d) are expressly addressed in refusing retrospective penalty. The official 18 October 2018 PIB release limits the claimed 31 December ITC exception to specified recently migrated taxpayers; the source's broad recital does not establish universal eligibility. Current India Code Section 16(5) separately permits the specified financial-year credits in Section 39 returns filed up to 30 November 2021; the official compilation records retrospective effect from 1 July 2017. Urban does not address that provision or prove qualifying invoices, so its evidential rejection is not a general historical time-bar holding. Sections 109 and 171 and historical rules/notifications were also targeted; the current India Code check used official web text, not a newly hash-verified PDF or full statutory audit. The historical Central restaurant-rate component is 2.5%; the combined 5% is source-reported, with no separate Maharashtra counterpart review.

Treatment note

Positive later coordinate-Tribunal treatment: A J Enterprises, 20 February 2026, NAPA/2/PB/2025, paragraph 48 quotes Urban Essence's paragraphs 26–27 on rebuttal by cogent commercial evidence. That is issue-specific reliance, not appellate affirmance. A J separately confines Fund interest to 28 June 2019 onward and contains its own endpoint inconsistency; it does not expressly correct Urban's 15 November 2017 direction. Bounded indexed name, docket, proprietor and amount searches through 14 October 2026 found no authenticated case-specific reversal, stay or corrigendum. Search absence is not a complete docket, no-appeal/no-stay, enforceability or compliance certificate.

Scope of source review

One final reasoned Principal Bench anti-profiteering judgment, decided ex parte after recorded opportunities. Paragraphs 17–35 determine disputed additional-ITC evidence, commercial-price justification and the scope of investigation, followed by monetary and compliance directions. The source accepts Rs. 5,47,005 in its finding but orders Rs. 5,45,005 in its operative sentence and administrative summary. That unresolved Rs. 2,000 difference is preserved; the note neither selects an intended corrected award nor treats the final as a mere default or procedural disposal.

Identity note

NAPA/31/PB/2025; reference ZA070825000001H; Urban Essence (Subway Franchisee), proprietor Aniket Nagnath Nimbalkar; President Sanjaya Kumar Mishra, Court I. Order date 5 August 2025, distinct from form/signature date 7 August. Finding Rs. 5,47,005 versus operative and summary Rs. 5,45,005 remains unexplained. 18% interest expressed from 15 November 2017, with no express endpoint or equal Fund split. Three-month deposit and four-month Commissioner report from receipt differ. Investigation and penalty periods, 7.54%/7.56% descriptions and source-date errors remain qualified.

Primary source

Source description: Complete 30-page official PDF; all text pages read by the author and independent reviewer, with complete independent original-page visual review.

Official source: [Open source document](#)

Source pages: 30

Outcome type: mixed

Additional source

PIB/Ministry of Finance ITC deadline clarification, 18 October 2018

Source document: [Open source document](#)

Pinpoint: Complete official release text: ordinary October deadline and limited recently migrated-taxpayer 31 December exception. Not a universal extension.

CGST Act, India Code compilation as on 11 June 2026

Source document: [Open source document](#)

Pinpoint: Targeted Section 16(5), physical p. 31, and Sections 109/171: current textual context; no new PDF hash or full-Act review claimed.

Central Tax (Rate) Notification 46/2017, 14 November 2017

Source document: [Open source document](#)

Pinpoint: Complete three-page Central instrument: restaurant amendment, no-ITC condition and 15 November 2017 commencement; separate State counterpart not reviewed.

Central Tax Notification 01/2020, 1 January 2020

Source document: [Open source document](#)

Pinpoint: Complete one-page instrument bringing Finance (No. 2) Act 2019 Section 112 into force, inserting Section 171(3A).

Central Tax Notification 31/2019, 28 June 2019

Source document: [Open source document](#)

Pinpoint: Targeted clause 17(c)/(e), physical pp. 5–6: Fund-interest amendment and expanded-inquiry rule safeguards; not an editorial change to Urban's directions.

Reckitt Benckiser, Delhi High Court, 29 January 2024

Source document: [Open source document](#)

Pinpoint: Targeted paragraphs 117–119 and 159–160, physical pp. 120–121 and 140: commercial justification and inquiry scope, not full authority/current-appeal audit.

A J Enterprises, GSTAT, 20 February 2026

Source document: [Open source document](#)

Pinpoint: All 23 text pages and targeted images reviewed independently; paragraph 48 follows Urban's evidence principle. Paragraphs 54–55 and 58 have distinct interest wording and an unresolved endpoint conflict; no correction of Urban inferred.

Central Tax Notification 18/2024, 30 September 2024

Source document: [Open source document](#)

Pinpoint: Complete one-page Principal Bench empowerment instrument effective 1 October 2024; institutional context.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the identified sources. No human legal review is claimed.

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Source checked: 14 October 2026