

CHAPTER XV
ANTI-PROFITEERING

122. Constitution of the Authority.-The Authority shall consist of,-

- (a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- (b) four Technical Members who are or have been Commissioners of State tax or central tax [for at least one year]²⁶ or have held an equivalent post under the existing law, to be nominated by the Council.

123. Constitution of the Standing Committee and Screening Committees.-(1)The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.

(2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-

- (a) one officer of the State Government, to be nominated by the Commissioner, and
- (b) one officer of the Central Government, to be nominated by the Chief Commissioner.

124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority:-(1) The Chairman and Members of the Authority shall be appointed by the Central Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

- (2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay:

Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.

- [(3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.]²⁷
- (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty- five years, whichever is earlier and shall be eligible for reappointment:

²⁶ Inserted vide Notification No. 34/2017 – Central Tax dated 15.09.2017

²⁷ Substituted vide Notification No. 34/2017 – Central Tax dated 15.09.2017

Provided that person shall not be selected as the Chairman, if he has attained the age of sixty-two years.

[Provided further that upon the recommendations of the Council and subject to an opportunity of being heard, the Central Government may terminate the appointment of the Chairman at any time.]²⁸

- (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

Provided that person shall not be selected as a Technical Member if he has attained the age of sixty-two years.

[Provided further that upon the recommendations of the Council and subject to an opportunity of being heard, the Central Government may terminate the appointment of a Technical Member at any time.]²⁹

125. Secretary to the Authority.-The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.

126. Power to determine the methodology and procedure.-The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

127. Duties of the Authority.- It shall be the duty of the Authority,-

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to 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 the higher amount till the date of the return of such amount or recovery of the amount 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;

²⁸ Inserted vide Notification No. 34/2017 – Central Tax dated 15.09.2017

²⁹ Inserted vide Notification No. 34/2017 – Central Tax dated 15.09.2017

- (c) imposition of penalty as specified in the Act; and
- (d) cancellation of registration under the Act.

[(iv) to furnish a performance report to the Council by the tenth of the close of each quarter.]³⁰

128. Examination of application by the Standing Committee and Screening Committee.

(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is *prima-facie* evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

(2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

129. Initiation and conduct of proceedings.

(1) Where the Standing Committee is satisfied that there is a *prima-facie* evidence to show that the supplier has not passed on the benefit of 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, it shall refer the matter to the Director General of Safeguards for a detailed investigation.

(2) The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.

(3) The Director General of Safeguards shall, before initiation of the investigation, issue a notice to the interested parties containing, *inter alia*, information on the following, namely:-

- (a) the description of the goods or services in respect of which the proceedings have been initiated;
- (b) summary of the statement of facts on which the allegations are based; and
- (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.

(4) The Director General of Safeguards may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.

(5) The Director General of Safeguards shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.

³⁰ Inserted vide Notification No. 34/2017 – Central Tax dated 15.09.2017

(6) The Director General of Safeguards shall complete the investigation within a period of three months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

130. Confidentiality of information.-(1)Notwithstanding anything contained in sub-rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

(2) The Director General of Safeguards may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of Safeguards a statement of reasons as to why summarisation is not possible.

131. Cooperation with other agencies or statutory authorities.-Where the Director General of Safeguards deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.

132. Power to summon persons to give evidence and produce documents.- (1)The Director General of Safeguards, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

133. Order of the Authority.-(1) The Authority shall, within a period of three months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has 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.

(2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

(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 the 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.

134. Decision to be taken by the majority.-If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.

135. Compliance by the registered person.-Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.

136. Monitoring of the order.-The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.

137. Tenure of Authority.-The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

Explanation.-For the purposes of this Chapter,

- (a) “Authority” means the National Anti-profiteering Authority constituted under rule 122;
- (b) “Committee” means the Standing Committee on Anti-profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;
- (c) “interested party” includes-
 - a. suppliers of goods or services under the proceedings; and
 - b. recipients of goods or services under the proceedings;
- (d) “Screening Committee” means the State level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.