

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

Case No.	32/2019
Date of Institution	27.02.2019
Date of Order	23.05.2019

In the matter of:

1. Sh. Rahul Kumar Agrawal, S/o Sh. Pawan Kumar Agrawal, 404, Mahaveer Cottage, Off Harlur Road, Ambalipura, Bangalore-560103, Karnataka
2. Sh. Virander Singh Sirohi, G6, B-Block, Patel Residency, 4th Cross, Kempapura, Yemalpur, Bangalore, Karnataka-560037
3. Mr. Subrata Das, R/o G3, BSR Mantralaya Block 2, 19th Main HSR, Sector-2, Bangalore, Karnataka-560102
4. Sh. Chintan B Parekh, flat no. 041806, Shriram Chirping Woods, 12th Main Shubh Enclave, Harlur Road, Bangalore-560102.
5. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Shrivision Homes Pvt. Ltd., 40/43, 8th Main, 4th Cross, Sadashivnagar, Bangalore-560080.

Respondent

Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member
4. Sh. Amand Shah, Technical Member

Present:-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The present Report dated 23.02.2019, has been received from the Applicant No. 5 i.e. the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that the Karnataka State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 29.06.2018 had forwarded an application dated 18.06.2018 filed by the Applicant No. 1 to the Standing Committee on Anti-profiteering under Rule 128 of the CGST Rules, 2017. The Applicant No. 1 had stated that the Respondent had resorted to profiteering in respect of supply of construction service related to purchase of Apartment No. 041305, Tower-04, 13th Floor, in the project "Shriram Chirping Woods", Kasavanahalli Village, Varthur Hobli, Bangalore East Taluk, Bangalore. The Applicant No. 1 had also alleged

that the Respondent had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in the price of the apartment purchased by him, on implementation of GST w.e.f. 01.07.2017.

2. The Standing Committee on Anti-profiteering vide the minutes of its meeting held on 07.08.2018 & 08.08.2018 had referred the application to the DGAP for investigation under Rule 129 (1) of the CGST Rules, 2017 to determine whether the benefits of reduction in the rate of tax or ITC had been passed on by the Respondent to his recipients.

3. Meanwhile, the Karnataka State Screening Committee on Anti-profiteering received 3 more applications on 27.07.2018, 01.07.2018 and 05.10.2018 respectively. The Applicant No. 2 had purchased Flat No. 020904, Applicant No. 3 had purchased Flat No. 011503 and Applicant No. 4 had purchased Flat No. 041806 in the above project. They had alleged that the Respondent had not passed on the benefit of ITC to them. The Karnataka State Screening Committee on Anti-profiteering in its meeting held on 31.07.2018 had examined these 3 applications and forwarded the same to the Standing Committee.

4. The Standing Committee on Anti-profiteering vide the minutes of its meeting held on 06.09.2018 had forwarded the second and third applications to the DGAP for further investigation. Similarly vide the minutes of its meeting held on 13.12.2018 had forwarded the fourth application also to the DGAP for investigation as to whether the

Respondent had passed on the benefit of ITC by way of commensurate reduction in price, on implementation of GST w.e.f. 01.07.2017 or not?

5. The DGAP on receipt of the first application vide notice dated 07.09.2018 had called upon the Respondent under Rule 129 of the CGST Rules, 2017 to reply as to whether the benefit of ITC had been passed on by him to the recipients by way of commensurate reduction in prices and also asked him to *suo-moto* determine the quantum of benefit which was not passed on. The DGAP on receipt of the second, third and fourth application from the Standing Committee on Anti-profiteering had included these Applicants as interested parties in the ongoing proceedings and they were intimated accordingly. The DGAP had carried out investigation in this case from 01.07.2017 to 31.08.2018.

6. The Respondent had submitted replies vide letters/emails dated 28.09.2018, 09.10.2018, 22.10.2018, 31.10.2018, 19.11.2018, 22.01.2019 and 13.02.2019 stating that the above project consisted of 642 apartments to be built on an area of 8,73,030 sq. ft. and 136 Villas having an area of 4,03,360 sq. ft. The Respondent had also submitted that he had not opted for composition scheme under the VAT and the Service Tax era and was eligible to avail ITC of VAT and Services Tax in relation to the above project. He had further submitted copies of GSTR-1 returns for the period July, 2017 to August, 2018, copies of GSTR-3B returns for the period July, 2017 to August, 2018, copies of Tran-1 returns for transitional credit, copies of VAT & ST-3 returns for the period April, 2016 to June, 2017, copies of all demand letters, Sale Agreement/Contracts issued to the Applicants, tax rates - pre-GST and post-GST, copy of Balance Sheet

(including all annexures and profit/loss account) for the period 2016-17 & 2017-18, copy of Electronic Credit Ledger for the period July, 2017 to August, 2018, CENVAT/ITC register for the period April, 2016 to June, 2017, details of turnover, output tax liability, GST payable and ITC availed, copy of Project report submitted to RERA and the entire list of home buyers in the above said project. The Respondent had also submitted that except Financial Statements for the year 2016-17 & 2017-18, all other details/ information were to be treated as confidential in terms of Rule 130 of the CGST Rules, 2017.

7. The DGAP in his Report has stated that the Respondent vide letter dated 09.10.2018, had submitted a copy of the agreement to sell dated 16.03.2016, agreement to build and demand letters for the sale of Flat No. 041305, to the Applicant No. 1, measuring 1,634 square feet, at the basic sale price of Rs. 5,168/- per square feet. The details of amounts and taxes paid by the 1st Applicant to the Respondent are given in the Table A given below:-

Table-'A' (Amount in Rs.)

S. No.	Payment Stages	Due Date	Basic Selling Price		Other Charges	6% Service Tax on Construction	10.15% VAT on Construction	GST	Total	Effective tax on total BSP
			Land	Construction						
1	On or before Execution Agreement of	7.6.2017	4,29,342	4,23,800	-	25,428	43,015	-	9,21,585	8.02%
1b	On or before Execution Agreement of	7.6.2017	4,29,342	4,23,800	-	25,428	43,015	-	9,21,585	8.02%
2	On Commencement of Foundation	1.1.2018	4,29,342	4,23,800	-	-	-	1,02,377	9,55,519	12 %
3	On Commencement of Basement/Stilt	1.1.2018	4,29,342	4,23,800	-	-	-	1,02,377	9,55,519	12 %
4	On Commencement of 3 rd Floor Slab	1.1.2018	2,57,605	2,54,280	-	-	-	61,426	5,73,311	12 %
5	On Commencement of 6 th Floor Slab	1.1.2018	2,57,605	2,54,280	-	-	-	61,426	5,73,311	12 %
6	On Commencement of 9 th Floor	1.1.2018	2,57,605	2,54,280	-	-	-	61,426	5,73,311	12 %
7	On Commencement	1.1.2018	2,57,605	2,54,280	-	-	-	61,426	5,73,311	12 %

A 30

	of 12 th Floor									
8	On Commencement of 15 th Floor	1.1.2018	2,57,605	2,54,280	-	-	-	61,426	5,73,311	12 %
9	On Commencement of 18 th Floor	1.1.2018	3,00,539	2,96,660	-	-	-	71,664	6,68,863	12 %
10	On Completion of Tiling	1.1.2018	4,93,744	4,87,370	-	-	-	1,17,734	10,98,848	12 %
11	On Completion of Painting	Not yet due as on	2,79,072	2,75,470	-	-	-	66,545	6,21,087	12 %
12	On or before Registration/Possession	31.08.2018	2,14,672	2,11,900	4,98,180	-	-	1,40,861	10,65,613	12 % & 18%
Total			42,93,420	42,38,000	4,98,180	50,856	86,030	9,08,688	1,00,75,174	

8. The DGAP has also stated that para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, Sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". Based on this the report stated that the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which may be required to be reversed by the Respondent if such units remain unsold at the time of issue of completion certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

9. The DGAP in his Report has intimated that ITC pertaining to the unsold units was outside the scope of the investigation and the Respondent was required to recalibrate the selling price of units to be sold to the prospective buyers by considering the net benefit of additional ITC available to them post-GST. The DGAP has further intimated that prior to 01.07.2017, i.e., before the introduction of GST, the Respondent was eligible to avail Cenvat credit of Service Tax paid on input services and the credit of VAT paid on the purchase of inputs and work contractors. However, Cenvat Credit of Central Excise Duty paid on inputs was not admissible as per the Cenvat credit Rules, 2004, in force at that time. After the implementation of GST, the Respondent was eligible to avail ITC in respect of GST paid on all the inputs and input services including the GST paid by the sub-contractors. The DGAP has also claimed that based on the information and documents submitted by the Respondent for the period July, 2017 to August, 2018, the details of ITC availed by him and his turnover from the above project during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to August, 2018) periods, were reconciled with his ST-3, VAT and GSTR-3B returns and credit registers. Accordingly, the ratio of ITC benefit to the taxable turnover has been furnished in the Table B given below:-



Table-'B' (Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to August, 2018	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services (A)	2,74,30,983	1,99,27,458	4,73,58,441	-	-	-
2	Credit of VAT Paid on Purchase of Inputs (B)	4,98,64,063	2,91,67,912	7,90,31,975	-	-	-
3	Input Tax Credit of GST Availed (C)	-	-	-	11,44,22,972	6,65,40,920	18,09,63,892
4	Total CENVAT/VAT/Input Tax Credit Available (D)= (A+B) or (C)	7,72,95,046	4,90,95,370	12,63,90,416	11,44,22,972	6,65,40,920	18,09,63,892
5	Total Turnover (E)	51,09,09,211	37,62,13,648	88,71,22,859			1,82,80,89,854
6	Total Saleable Area (in sq. ft.) (F)			12,76,390			12,76,390
7	Saleable Area relevant to turnover (in sq. ft.) (G)			6,77,325			9,13,885
8	Relevant CENVAT/INPUT TAX CREDIT (H)= (D*G/F)			6,70,69,930			12,95,68,695
9	Ratio of Input Tax Credit Post-GST [(I)=(H)/(E)]			7.56%			7.09%

10. The DGAP has also claimed that from the Table-'B' above, the ITC as a percentage of the turnover available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 7.56% and during the post-GST period (July, 2017 to August, 2018), it was 7.09%, which showed that the Respondent had not benefited from any additional ITC. The Report further claimed that the Respondent post introduction of GST had availed lesser ITC to the extent of 0.47% [7.56% (-) 7.09%] of the turnover, as compared to the pre-GST period.

11. The DGAP has also claimed that the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate 12% in view of 1/3rd abatement on value of land) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 (Annex-24). The Report has stated that the allegation of profiteering was not established against the Respondent from the rate of tax angle, by

comparing the applicable tax rates in the pre-GST and post-GST periods. In the pre-GST period (April, 2016 to June, 2017), Service Tax @ 6% and VAT@ 10.15% were payable on the construction service (effective tax rate on total Basic sale price was 8.02% as shown in table-A Supra) and in the post-GST period (July, 2017 to August, 2018), the effective GST rate was 12% on construction service. Therefore, he has concluded that the applicable tax rate on construction service had increased from 8.02% in the pre-GST period to 12% in the post-GST period. The DGAP has further contended that there was an increase in the rate of tax and there was no additional benefit of ITC with the implementation of GST w.e.f. 01.07.2017, hence the provisions of Section 171 of the CGST Act, 2017 were not attracted.

12. The above Report was considered by the Authority in its sitting held on 05.03.2019 and it was decided to hear the Applicants on 25.03.2019, but the Applicants were not present during the scheduled hearing. One more opportunity was accorded to the Applicants to present their case on 10.04.2019, but the Applicants did not appear before the Authority. Instead the Applicants No. 1, 2 and 3 vide their emails dated 09.04.2019 and 11.04.2019 submitted that they had examined the DGAP's Report in respect of their complaint filed against the Respondent and they agreed with the contents of the Report that no benefit of ITC was available to them, as the Respondent had not availed excess ITC post-GST as compared to pre GST period.

13. We have carefully perused the DGAP's Report, the written submissions of the Applicants and all the other material placed on record.

The issues to be decided by this Authority are as under:-

- 1) Whether there was any violation of the provisions of Section 171 (1) of the CGST Act, 2017 in this case?
- 2) If yes then what was the quantum of profiteering?

14. Perusal of Section 171 of the CGST Act shows that it provides as under:-

- (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."

15. It is clear from the plain reading of Section 171 (1) mentioned above that it deals with two situations one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax as the same was 8.02% in the pre GST period and 12% in the post GST period hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. On this issue it has been revealed by the DGAP's Report that the ITC as a ratio of Respondent's taxable turnover had decreased from 7.56% to 7.09% as is evident from Table B above that there was no additional benefit of ITC which had accrued to the Respondent post-GST as compared to pre-GST period. In view of the fact that there was no reduction in the rate of tax nor



there was increased additional benefit on account of ITC, the provisions of Section 171 of CGST Act, 2017 could not be invoked in this case.

16. It is evident from the above narration of facts that the Respondent had not availed any additional benefit of ITC post-GST as compared to pre-GST therefore there was no contravention of the provisions of Section 171 (1) of the CGST Act, 2017. Moreover the Applicants No. 1, 2 and 4 through their emails dated 09.04.2019 and 11.04.2019 had categorically stated that they agreed with the Report of the DGAP and they were not entitled to the benefit of ITC as per the provisions of the above Section.

17. In view of the above facts we find no merit in the applications filed by the above Applicants and the same are accordingly dismissed.

18. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.



Certified copy

(A.K.Goel)
Secretary, NAA

Sd/-
(B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Technical Member

Sd/-
(R. Bhagyadevi)
Technical Member

Sd/-
(Amand Shah)
Technical Member

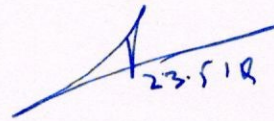
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Dated: 23.05.2019

Copy to:-

1. Sh. Rahul Kumar Agrawal, S/o Sh. Pawan Kumar Agrawal, 404, Mahaveer Cottage, Off Harlur Road, Ambalipura, Bangalore-560103, Karnataka

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6. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
7. NAA Website/Guard File.


23.5.18