

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

Case No. : 61/2019  
Date of Institution : 11.06.2019  
Date of Order : 26.11.2019

In the matter of:

1. Mr. Gopinath Dombla, Navkar Darshan (Darshan Apartment), Sridhar Nagar, Near Datta Mandir, Chinchwad Gaon, Pune-411033.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

**Applicants**

Versus

M/s Navkar Associates, 594, Navkar Commerce Centre, Link Road,  
Near Bank of Baroda, Chinchwad Gaon, Pune-411033.

**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. Sh. Santosh Dhoka, for the Respondent.

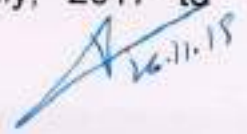
### ORDER

1. The present Report dated 07.06.2019 has been received from the Applicant No. 2 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 Maharashtra State Screening Committee on Anti-Profiteering had forwarded an application dated 17.04.2018 filed by the Applicant No. 1 to the Standing Committee on Anti-Profiteering under Rule 128 of the CGST Rules, 2017 on 16.08.2018. The Applicant No. 1 had stated in his application that the Respondent had resorted to profiteering in respect of supply of construction services related to purchase of an apartment in the project "Navkar Darshan" of Flat No. 201, Navkar Darshan, Shridhar Nagar, Chinchwad, Pune-411033. The Applicant No. 1 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. The aforesaid application was examined by Maharashtra State Screening Committee in its meeting and upon being prima facie satisfied that the Respondent had contravened the provision of Section 171 of the CGST Act, 2017 forwarded the same with its recommendation to the Standing Committee on Anti-Profiteering for further action in terms of Rule 128 of the CGST Rules, 2017 on

16.08.2018. The said application was examined by the Standing Committee on Anti-Profiteering in its meeting held on 08.10.2018 and it 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.

2. Thereafter, the DGAP issued a notice to the Respondent on 14.01.2019 under Rule 129 of the above Rules, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in prices and if so, to *suo-moto* determine the quantum thereof and indicate the same in his reply to the notice as well as furnish all supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the above Applicant during the period 21.01.2019 to 23.01.2019. However, the Respondent did not avail of the said opportunity. The Applicant No. 1 was also given an opportunity to inspect the non-confidential evidences/reply furnished by the Respondent on 03.06.2019 or 04.06.2019. However, the Applicant No.1 also did not avail of the said opportunity. The DGAP had carried out investigation in this case for the period from 01.07.2017 to 31.08.2018.
3. The DGAP has further stated that the Respondent had submitted replies vide letters/e-mails dated 25.01.2019, 26.03.2019, 27.03.2019, 09.05.2019 and 03.06.2019 and had also submitted the following documents:-

- (a) Copies of GSTR-1 Returns for the period July, 2017 to December, 2018.

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- (b) Copies of GSTR-3B Returns for the period July, 2017 to December, 2018.
- (c) Copies of Tran-1 Returns for transitional credit availed by the Noticee.
- (d) Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
- (e) Electronic Credit Ledger for the period July, 2017 to December, 2018.
- (f) Tax rates, pre-GST and post-GST.
- (g) Copy of Balance Sheet for FY 2016-17 & 2017-18.
- (h) Completion certificate dated 02.02.2018 in respect of the project "Navkar Darshan".
- (i) Details of turnover and input tax credit in respect of the project "Navkar Darshan".
- (j) List of home buyers in the project "Navkar Darshan".

4. The DGAP in his report has stated that the main issues for determination in this case were as to whether there was benefit of reduction in the rate of tax or the ITC on the supply of the construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether such benefit had been passed on by the Respondent to the recipients, in terms of Section 171 of the CGST Act, 2017.

5. The DGAP has further stated that the Respondent obtained the completion certificate of the project "Navkar Darshan" issued by the competent authority on 02.02.2018 and the ITC pertaining to the unsold flats as on 02.02.2018, was required to be reversed by the Respondent.

The computation of the proportionate ITC pertaining to the unsold area,

which was required to be reversed by the Respondent is furnished in Table-A below:-

**Table-'A'**

Particulars	Factor	Amount
Total Saleable Area of Flats (in sq. mtr.)	A	1,240.49
Area Sold before completion certificate is obtained (in sq. mtr.)	B	964.67
Area sold before completion certificate is obtained (in Percentage)	C=B/A	77.77%
Area remaining unsold when completion certificate is obtained (in sq. mtr.)	D=A-B	275.82
Area remaining unsold when completion certificate is obtained (in Percentage)	E=D/A	22.23%
ITC available for the period between July, 2017 till December, 2018 as per GSTR-3B (in Rs)	F	24,40,762
Proportionate ITC to be reversed (in Rs.)	G=F*E	5,42,698
Input Tax Credit availed post GST pertaining to sold units (in Rs.)	H=F-G	18,98,064

6. The DGAP in his Report has further stated that prior to 01.07.2017 i.e., in the pre-GST era, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services only and that no credit was admissible to him in respect of Central Excise Duty paid on inputs as also credit in respect of VAT paid on inputs. However, in the post-GST period, the Respondent could avail ITC of GST paid on all his inputs and input services. The details of the ITC availed by the Respondent and his turnover for the project "Navkar Project" and the ratio of ITC to turnover during the pre-GST (April-2016 to June-2017) and post-GST (July-2017 to December-2018) periods are given in Table-B 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 December, 2018	Total (Post-GST)
1	CENVAT credit of Service Tax Paid on Input Services (A)	1,86,308	7,883	1,94,191			
2	Credit of VAT on Inputs (B)	-	-	-			
3	Total CENVAT/VAT Credit Available (C)= (A+B)	1,86,308	7,883	1,94,191			
4	Input Tax Credit of GST (D)	-	-	-	22,90,168	1,50,594	24,40,762
5	Total Turnover (E)	1,75,75,000	22,00,000	1,97,75,000	1,32,25,000	-	1,32,25,000
6	Total Saleable Area of Flats in the project (in Square Feet) (F)			1,240.49			1,240.49
7	Area Sold relevant to Turnover as per Home buyers list (G)			182.37			274.31
8	Relevant CENVAT/Input Tax Credit (H)= [(C) or D*(G)/(F)]			28,549			5,39,727
9	Ratio of CENVAT/ Input Tax Credit to Turnover [(H)-(H)/(E)]*100			0.14%			4.08%

7. The DGAP has reported that from the above table, it was clear that the ITC, as a percentage of turnover, that was available to the Respondent during the pre-GST period was 0.14% whereas during the post-GST period, it was 4.08%. On the basis of the same, the DGAP has reported that the Respondent had been benefitted from additional ITC to the tune of 3.94% of his turnover in post-GST period. Accordingly, the profiteering had been calculated by comparing the ratio of ITC available to the turnover and the turnover during the pre-GST period when Service Tax was payable @ 4.5% and VAT @1% with those of the post-GST period when the effective GST rate on construction services was 12% (GST @18% along with 1/3<sup>rd</sup> abatement on account of land value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The DGAP has further reported that on the basis of figures contained in Table-'B' above, the comparative figures of the applicable tax rate and ratio of ITC to the turnover during the pre-GST & post-GST periods as well as the recalibrated basic price and the excess realization (Profiteering) during the post-GST period, are tabulated in the Table-'C' below:-

**Table-'C'**

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
	Period	A	April, 2016 to June, 2017	July, 2017 to December, 2018
1	Tax Rate	B	5.5%	12%
2	Ratio of CENVAT credit/ Input Tax Credit to Turnover as per Table B above (%)	C	0.14%	4.08%
3	Increase in input tax credit availed post-GST (%)	D= 4.08% less 0.14%	-	3.94%
Analysis of Increase in input tax credit:				
4	Basic Price collected during July, 2017 to December, 2018	E		1,32,25,000
5	GST @ 12% on Basic Price	F= E*12%		15,87,000
6	Total Demand collected/raised	G=E+F		1,48,12,000
7	Recalibrated Basic Price	H= E*(1-D) or 96.06% of H		1,27,03,935
8	GST @12% on recalibrated Basic Price	I= H*12%		15,24,472

9	Commensurate Demand	$J = H + I$		1,42,28,407
10	Excess Realization or Profiteering Amount	$K = G - J$		5,83,593

8. The DGAP has further stated that from the above Table-'C' it was observed that the additional ITC of 3.94% of the turnover should have resulted in commensurate reduction in the basic price as well as cum-tax price. In terms of Section 171 of the CGST Act, 2017, the benefit of the additional ITC is required to be passed on to the recipients and the profiteering has to be determined at the given point of time, in terms of Rule 129(6) of the CGST Rules, 2017. The Respondent had retained the benefits that accrued on account of additional ITC. In other words, the Respondent had contravened the provisions of Section 171 of the CGST Act, 2017 by not reducing the pre-GST basic price by 3.94% on account of the benefit of additional ITC and charging GST @ 12% on the pre-GST basic price.
9. The DGAP in his report has further stated that as regards the extent of the profiteering or the benefit not passed on by the Respondent, taking into account the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected from the home buyers during the period 01.07.2017 to 31.12.2018, the amount of benefit of ITC not passed on to the recipients or in other words, the profited amount came to Rs.5,83,593/- which included 12% GST on the base profited amount of Rs. 5,21,065/-. Further, the benefit which has to be passed on to the Applicant No. 1 for the flat no. 201, worked out to Rs 39,715/- which included both the profited amount @3.94% of the basic price and 12% GST on the said profited amount. On the basis of the details of the outward supplies submitted by the Respondent, it is

observed that construction service had been supplied by the Respondent in the State of Maharashtra only.

10. The DGAP has also stated that the above computation of profiteering is in respect of 04 home buyers from whom payments had been received by the Respondent during the post-GST period 01.07.2019 to 31.10.2018, whereas the Respondent had booked a total number of 15 flats till 31.12.2018. In respect of the remaining 11 flats, though the customers booked the flats on or before 31.12.2018, they had not paid any consideration during the post-GST period. If the ITC in respect of these 11 units was taken into account to calculate profiteering in respect of 4 units where payments had been received in the post-GST period, the ITC as a percentage of turnover would be distorted and erroneous. Therefore, the benefit of ITC in respect of these 11 units would have to be calculated when the consideration was received from the concerned home buyers, by taking into account the proportionate ITC in respect of such units.
11. Moreover, the DGAP has stated that post-GST, the benefit of additional ITC of 3.94% of the turnover had accrued to the Respondent for the said project and that this benefit would have been passed on to the recipients. Hence, Section 171 of the CGST Act, 2017 requiring that "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" had been contravened by the Respondent and an additional amount of Rs.5,83,593/- had been realized by the Respondent from the recipients, which included both the profiteered amount @ 3.94% of the basic price and GST on the said profiteered amount @ 12%. The recipients other than the Applicant



were identifiable as per the documents provided by the Respondent and therefore, the profiteered amount was required to be returned to the Applicant and other recipients who were not Applicants in the present proceedings but were identifiable.

12. The above investigation Report was received by this Authority from the DGAP on 11.06.2019 and was considered in the sitting of the Authority held on 11<sup>th</sup> June, 2019 and it was decided to accord opportunity of hearing to the Applicants and the Respondent on 25.06.2019. Neither the Respondent nor the Applicant No. 1 appeared for the hearing. The Respondent vide letter dated 20.06.2019 made the following submissions and stated that:-

- a. The complaint/application filed by the Applicant No. 1 was not legal and bonafide.
- b. The allegation made by the Applicant, that the benefit of the ITC had not been passed on to him, was not true and correct.
- c. The agreement to sale between the Applicant and him was executed before the Sub-Registrar Haveli No. 17 in the year 2017 i.e. on 01.03.2017 vide Reg. document Sr. No. 1072/2017. Hence, instead of GST, Service Tax was applicable for the sale agreement.
- d. The profiteered amount in respect of the Applicant No. 1 and other recipients was returned to them by way of doing additional work of construction.
- e. Therefore, keeping in mind the respect of the Department and his reputation in the market, he was ready to pay the said amount even if there had been no liability found.



13. The Respondent and the Applicant were also accorded hearing to substantiate their claim on 04.07.2019, 19.07.2019, 09.08.2019, 29.08.2019, 18.09.2019, 14.10.2019 and 21.10.2019. Out of all the accorded hearings, the Respondent appeared once for the hearing held on 09.08.2019 and submitted his oral submissions only. Accordingly, he was directed to submit his consolidated written reply on the DGAP's Report along with some documents. The Respondent submitted the documents/information called for on 30.08.2019 and submitted the following documents/information:-

- a. List of home buyers.
- b. Details of area sold and unsold in the subject project and details of redevelopment work undertaken.
- c. Turnover of area sold or redeveloped pre and post GST.
- d. Details of ITC availed pre and post GST implementation.
- e. ITC/Cenvat Register.
- f. Payment ledger in respect of payments received in respect of the subject projects.
- g. Details of all the projects undertaken along with the completion certificate.
- h. Redevelopment agreement between the builder and the society.
- i. Evidence of Reversal of ITC Credit.

The Respondent vide the above mentioned submissions has also stated that he had given the ITC benefit in the rate at the time of booking to the customers and also provided some extra work other than the plan and hence, there wasn't any liability against him.

  
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The Applicant No. 1 has never appeared for the hearing. However, vide e-mail dated 20.07.2019, he has stated that the Respondent had offered to pay Rs. 39,715/- against his demand of Rs.67,500/-, that the Respondent had made undue profit which he had admitted and hence, requested to direct the Respondent to pay him Rs.67,500/- along with interest.

14. This Authority has carefully examined the DGAP's Report, the written submissions of the above Applicants as well as the Respondent placed on record. The issues to be decided by the Authority are as under:-
- 1) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?
  - 2) If yes then what was the quantum of profiteering?
15. 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."
16. 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 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 from the DGAP's Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period

(April-2016 to June-2017) was 0.14% and during the post-GST period (July-2017 to December-2018), it was 4.08%. This confirms that, post-GST, the Respondent has been benefited from additional ITC to the tune of 3.94% (4.08%-0.14%) of his turnover and the same was required to be passed on to the Applicant and the other flat buyers. The DGAP has calculated the amount of ITC benefit to be passed on to all the flat buyers as Rs.5,83,593/- which was availed by the Respondent vide Table- C Supra on the basis of the information supplied by the Respondent, which the Respondent has not challenged and hence the amount of profiteering computed by the DGAP is hereby accepted as correct. Therefore, we take the view that the provisions of Section 171(1) of the CGST Act, 2017 have been contravened in the present case as the Respondent had been benefited from additional ITC in the post-GST regime.

17. The allegations of Applicant No. 1 mainly stress upon the fact that the Respondent had not passed on the benefit of ITC. He has also claimed that the benefit of ITC to be passed on to him was Rs.67,500/- instead of Rs.39,715/- as mentioned in the DGAP's Report. However, the Applicant No. 1 had not submitted any calculations or documentary evidence to substantiate his claim. Therefore he is held entitled to Rs.39,715/-.
18. Further, it has been revealed from the record that the Respondent has profited an amount of Rs.5,83,593/- for the period of investigation. Therefore, in view of the above facts this Authority under Rule 133(3)(a) of the CGST Rules, 2017 orders that the Respondent shall reduce the price to be realized from the buyers of the flats commensurate with the benefit of ITC received by him as

has been detailed above. The above amount of Rs.5,83,593/- which includes 12% GST on the base profiteered amount of Rs.5,21,065/- has been profiteered by the Respondent from the Applicant No. 1 and other flat buyers which is required to be refunded to the above Applicant No. 1 and other flat buyers alongwith interest @18% from the date when the above amount was profiteered by him till the date of payment as per the provisions of Rule 133(3)(b) of the above Rules. The profiteered amount alongwith applicable interest shall be paid by the Respondent within a period of 3 months from the date of this order, failing which the same shall be recovered by the concerned Commissioner CGST/SGST as per the provisions of the CGST/SGST Act, 2017, under the supervision of the DGAP. A Report confirming the action taken on the directions passed vide this order shall be submitted by the concerned Commissioner CGST/SGST within a period of 4 months from the date of this order.

19. It is also evident from the above narration of facts that the Respondent has denied benefit of ITC to the buyers of the flats being constructed by him in his Project 'Navkar Darshan' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. Accordingly, a Show Cause Notice be issued to him directing him to explain as to why the penalty prescribed under Section 171 (3A) of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him. Accordingly, the notice dated 12.06.2019 vide which it was proposed to impose

  
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penalty under Section 29, 122-127 of the above Act read with Rule 21 and 133 of the CGST Rules, 2017 is withdrawn to that extent.

20. A copy of this order be sent to both the Applicants, the Respondent, Commissioners CGST/SGST Pune as well as the Director (Town and Country Planning), Pune, Government of Maharashtra free of cost for necessary action. File of the case be consigned after completion.

Sd/-  
(B. N. Sharma)  
Chairman

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

Sd/-  
(R. Bhagyadevi)  
Member(Technical)

Sd/-  
(Amand Shah)  
Member(Technical)

Certified Copy  
o/c  
26.11.19  
(A.K Goel)  
(Secretary, NAA)



File No. 22011/NAA/44/Navkar/2019 /6562-6568 Dated: 27.11.2019  
Copy to:-  
o/c

1. Sh. Gopinath Dombla, Nvkar Darshan (Darshan Apartment), Sridhar Nagar, Near Datta Mandir, Chinchwad Gaon, Pune-411033.
2. M/s Navkar Associates, 594, Navkar Commerce Centre, Link Road, Near Bank of Baroda, Chinchwad Gaon, Pune-411033.
3. Director General Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Chief Commissioner of Central Goods & Services Tax, Pune Zone, GST Bhawan (ICE House), 41-A, Sasoon Road, Opp. Wadia College,

Pune-411001 with request to forward to the Jurisdictional Commissioner, CGST, Pune.

5. Commissioner of Commercial Taxes, GST Bhawan, Mazgaon, Mumbai-400010.

6. Director, Town Planning, Maharashtra State, Pune, Central Building, Ground Floor, Pune-411001.

7. NAA Website/Guard File.

 12.11.19