

01/4

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

Case No.	09/2020
Date of Institution	04.09.2019
Date of Order	02.03.2020

In the matter of:

1. Sh. Manabendra Nath Basu, Kishalay Abasan, 14/3, Ghush Para Road, Barrackpore P.O., PS Titagarh, Distt. 24 PST North, Pin-700120.
2. 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 Paribar Estates Pvt. Ltd., 45/47/2, Station Road, 1. No. Surya Sen Nagar, PO: Khardaha, PS: Khardaha, Pin-700117.

Respondent

Quorum:-

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



Present:-

- 1) None for the Applicant No. 1 and 2.
- 2) None for the Respondent.

ORDER

1. This Report dated 30.08.2019 had been received on 04.09.2019 from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the present case are that an application dated 23.08.2018 was filed before the Standing Committee on Anti-profiteering under Rule 128 (1) of the CGST Rules, 2017 by the Applicant No. 1 alleging profiteering by the Respondent. The Applicant No. 1 had alleged in his application that he had purchased Flat No. 05, Type-B, 2nd floor, in the project Kishalay Abasan, 14/3 Ghoshpara and the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price, on introduction of the GST w.e.f. 01.07.2017. The West Bengal State Screening Committee on Anti-profiteering had examined the above application in its meeting held on 19.11.2018 and observed that there was merit in the complaint as preliminary investigation conducted by it revealed contravention of Section 171 of the Central Goods and Services Tax Act, 2017. The State Screening Committee

had forwarded the said application with its recommendation along with the investigation report of the Deputy Commissioner of State GST to the Standing Committee on Anti-profiteering on 12.10.2018, for further action, in terms of Rule 128 (2) of the above Rules.

2. The DGAP has stated in his Report dated 30.08.2019 that the aforesaid reference was examined by the Standing Committee on Anti-profiteering, in its meeting held on 11.03.2019, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter and the minutes of the meeting were received by him on 27.03.2019. Accordingly, it was decided to initiate investigation and collect evidence necessary to determine whether the benefit of input tax credit has been passed on by the Respondent to the above Applicant in respect of construction service supplied by the Respondent.
3. The Applicant had submitted the following documents along with his application:-

(a) Copy of APAF-1 Form.

(b) Copy of Agreement for Sale

(c) Online complaint invoice-NAACMP1674 dated 04.09.2018.

4. The DGAP has also stated that perusal of the above application revealed that the Applicant No. 1 had booked Flat



No.-05, Type-B, 2nd floor, in the Respondent's project "Kishalay Abasan", 14/3 Ghoshpara in the pre-GST era. In response to the Notice dated 09.04.2019, the Respondent has submitted his reply vide letters and e-mails dated 08.05.2019 and 27.05.2019 along with the following documents/information:-

- (a) Copies of GSTR-1 Returns for the period from July, 2017 to March, 2019.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to March, 2019.
- (c) Copies of ST-3 Returns for the period from April, 2016 to June, 2017.
- (d) Copies of sale agreement/contract with the above Applicant.
- (e) Copies of Audited Balance Sheets for the FY 2016-17 & FY 2017-18.

5. The DGAP has further stated that the Respondent, vide his letter dated 27.05.2019, submitted copy of the sale agreement wherein the Respondent had agreed to sell a flat measuring 950 sq. ft. (super built up area) at the basic sale prices of Rs. 3,000/- per square feet to the Applicant No. 1. The details of payment schedule in respect of the flat purchased by the applicant are furnished in the Table-A below:-



Table-A

(Amount in Rs.)

Sr. No.	Payment Stage	Demand Date	Total Amount payable
1	At the time of Booking Paid by Cheque Vide No. 521401 on State Bank of India, Lalkuthi Branch	01.07.2016	1,00,000/-
2	At the time of Agreement paid by Cheque No. 272858 on State Bank of India, Air Force Station Branch	20.01.2017	7,50,000/-
3	Will be paid	10.03.2017	2,00,000/-
4	Will be paid	10.04.2017	2,00,000/-
5	Will be paid	10.05.2017	2,00,000/-
6	Will be paid	10.06.2017	2,00,000/-
7	Will be paid	10.08.2017	2,00,000/-
8	Will be paid	10.09.2017	2,00,000/-
9	Will be paid	10.10.2017	2,00,000/-
10	Will be paid	10.11.2017	2,00,000/-
11	Rest Amount will be paid at the time of registration	Not mentioned	2,00,000/-
Total			28,50,000/-

6. The DGAP has also submitted that prior to the implementation of the GST w.e.f. 01.07.2017, Service Tax on the construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation of the GST w.e.f. 01.07.2017, the GST on the construction service was changeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of the affordable and the low-cost houses upto a carpet area of 60 square metres was further reduced from 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost house upto a carpet area of 60 square

meters). Thus it was submitted that in the case of construction service the effective rate of tax (@ 4.5%) in the Pre-GST era was lower than the effective rate of tax @ 8% or 12%, in the Post-GST era.

7. The DGAP has further submitted that during the pre-GST era the Respondent was eligible to avail CENVAT Credit of Service Tax paid on the input services. Further, post GST, the Respondent was eligible to avail the input tax credit of GST paid on all the inputs and input service including the sub-contracts. However, on perusal of statutory returns, submitted by the Respondent, for the pre-GST era as well as post-GST era, it was found by the DGAP that the Respondent has not availed of any CENVAT/ITC. The details are as under:-

Table-'B'

(Amount in Rs.)

Sr. No.	Particulars	(Pre-GST) 01.04.2016 to 30.06.2017	(Post-GST) 01.07.2017 to 31.12.2018
(1)	(2)	(3)	(4)
1	Cenvat Credit of Service Tax and Central Excise Duty (A)	0	-
2	Input Tax Credit of GST Availed (E)	-	0

8. The DGAP has also stated that the Deputy Commissioner of State Tax, West Bengal had submitted report to the West Bengal State Screening Committee on Anti-profiteering in which he had opined as under:-



- a. The supplier has charged GST on portion of flat sale value (received after 01.07.2017) in accordance with the law. The project is yet to get completion certificate.
 - b. The supplier has not enjoyed benefit of Input Tax Credit till date and thus no ITC has been passed on.
9. The DGAP has further stated that prior to 01.07.2017, i.e., in the pre-GST era, the Respondent was eligible to avail credit of Service Tax paid on input services but was not eligible to avail credit of Central Excise Duty paid on inputs. Post-GST, the Respondent was eligible to avail input tax credit of GST paid on inputs and input services. However, from the Table- B it was clear that the Respondent had not availed any credit in the pre-GST or the post-GST era. Hence no comparison of the amount of credit available in the pre or the post GST era could be made. Therefore, the DGAP has claimed that in the absence of availment of any credit by the Respondent, there may not be any benefit of Input Tax Credit which has to be passed on by way of commensurate reduction in price.
10. The DGAP has also contended that:-
- (a) After the introduction of GST w.e.f. 01.07.2017, the rate of tax on the construction services has increased. Thus the instant case was not covered under the criteria of *"reduction in rate of tax on any supply of goods or services"*

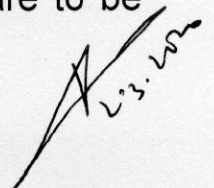


(b) No benefit has been availed by the Respondent on account of input tax credit post GST. Thus, the instant case was not covered under the criteria of "*the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices*"

11. The DGAP has further contended that it appeared that Section 171(1) of the Central Goods and Services Tax Act, 2017 which required 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*", was not attracted in the present case.

12. The above Report was considered by this Authority in its meeting held on 13.09.2019 and it was decided to hear the Applicants on 26.09.2019 which was further adjourned to 22.10.2019 on the Applicant No. 1's request. The Applicant No. 1 on 22.10.2019 informed that that he could not travel from Kolkata to Delhi and the case may be decided on merits. Further, the Respondent vide his letter dated 31.10.2019 submitted that his business operations were very small and GST, being a new concept he was not well conversant with its provisions.

13. We have carefully examined the DGAP's Report and the submissions made by both the Applicants and the Respondent placed on record and find that the following issues are to be settled in the present proceedings:-

A handwritten signature in black ink, appearing to be 'V.S. W.' with a stylized flourish.

- I. Whether there was any reduction in the rate of tax on construction service w.e.f. 01.07.2017 in respect of the present case?
- II. Whether there was any increased benefit of ITC w.e.f. 01.07.2017.?
- III. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit?

14. It is clear from the perusal of Section 171 of the CGST Act, 2017 read with Rule 127 of the CGST Rules, 2017 that this Authority is required 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 recipients by way of commensurate reduction in prices or not. Accordingly this Authority has to examine whether there has been any benefit of reduction in the rate of tax or benefit of ITC to the Respondent that needs to be passed on to the Applicant No. 1 by way of commensurate reduction in prices.

15. It is also apparent from the various documents submitted by the Respondent and the DGAP that the Applicant No. 1 had purchased Flat No. 05, Type-B, 2nd floor in the project Kishalay Abasan, 14/3 Ghoshpara being developed by the Respondent.

16. It is further clear from the record that prior to the implementation of the GST w.e.f. 01.07.2017, Service Tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST)

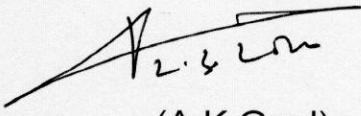
dated 19.05.2015). however, after implementation of the GST w.e.f. 01.07.2017, GST on construction service was changeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) which was imposed vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 which was further reduced for low cost affordable housings to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost house upto a carpet area of 60 square meters) and hence it is established that there was no rate reduction w.e.f. 01.07.2017 in the case of construction service for low cost affordable houses which the above Applicant has purchased. Hence, no benefit of tax reduction was required to be passed on to him.

17. It is also revealed from the record that during the pre-GST era the Respondent was eligible to avail CENVAT Credit of Service Tax paid on the input services and post GST, the Respondent was eligible to avail the input tax credit of GST paid on all the inputs and input service including the sub-contracts. However, the Respondent has not availed any benefit of CENVAT or ITC in the pre and post GST era and hence, there was no additional benefit available to the Respondent which was to be passed on to his buyers.
18. It is further revealed from the report of the Deputy Commissioner of State GST that the Respondent has not availed benefit of ITC after coming in to force of the GST and he has charged GST

@18% which was required to be charged as per the Notification dated 01.07.2017.

19. Based on the above facts it is established that the Respondent was not liable to pass on the benefit of ITC to the Applicant No. 1 and thus he has not contravened the provisions of Section 171 of the CGST Act, 2017. Therefore, we find no merit in the application filed by the Applicant No. 1 and the same is accordingly dismissed.
20. A copy of this order be sent to the both 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/-
(Amand Shah)
Technical Member

F. No. 22011/NAA/119/Signature/105/2018/1270 Date: 02.03.2020
Copy To:- -1273

1. M/s Paribar Estates Pvt. Ltd., 45/47/2, Station Road, 1. No. Surya Sen Nagar, PO: Khardaha, PS: Khardaha, Pin-700117.

2. Sh. Manabendra Nath Basu, Kishalay Abasan, 14/3, Ghush Para Road, Barrackpore P.O., PS Titagarh, Distt. 24 PST North, Pin-700120.
3. Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Guard File.


A. K. GOEL, IRS
Secretary
National Anti-Profitteering Authority (GST)
DOR, Ministry of Finance, New Delhi