

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

Case No. : 47/2020
Date of Institution : 16.05.2019
Date of Order : 19.08.2020

In the matter of:

1. Shri Diwakar Bansal, A-603, Great Eastern Gardens, Kanjur Marg West, LBS Marg, Mumbai-400078.
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 Horizon Projects Pvt. Ltd, Runwal & Omkar Esquare, 5th Floor, Off Eastern Exp. Highway, Opp. Sion Chunabhatti Signal, Sion (E) Mumbai-400022.

Respondent

Quorum:-

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



Present:-

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

ORDER

1. The brief facts of the present case are that the Applicant No. 2 (here-in-after referred to as the DGAP) vide his Report dated 10.12.2018, furnished to this Authority under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017, had submitted that he had conducted an investigation on the complaint of the Applicant No. 1 and found that the Respondent had not passed on the benefit of Input Tax Credit in respect of the flat purchased by him in the "Runwal My City" project of the Respondent on introduction of the GST w.e.f. 01.07.2017, as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of input tax credit to the above Applicant and other buyers amounting to Rs. 3,20,49,507/- pertaining to the period from July, 2017 to June, 2018 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.
2. This Authority after careful consideration of the Report dated 10.12.2018 had issued notice dated 12.12.2018 to the Respondent to show cause why the Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 (1) should not be fixed. After hearing the concerned parties ~~at length~~ ¹⁷¹ _{A-8} this Authority vide its Order No. 56/2019 dated 15.11.2019 had

determined the profiteered amount as Rs. 3,20,49,507/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from July, 2017 to June, 2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that the Respondent had denied the benefit of ITC by not reducing prices of the flats commensurately and had also compelled the buyers to pay more price and the GST on the additional amount realised from them between the period from July, 2017 to June, 2018 and therefore, he had apparently committed an offence under Section 171 (3A) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section.
4. The Respondent was issued notice dated 18.12.2019 asking him to explain why the penalty mentioned in Section 171 (3A) read with Rule 133 (3) (d) should not be imposed on him.
5. The Respondent vide his submissions dated 03.01.2020 has stated that the penal provisions under Section 171 (3A) of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as the Central Government vide Notification No. 01/2020- Central Tax dated 01.01.2020 has appointed the 1st day January, 2020 as the date on which the provisions of Section 92 to 112 of the Finance (No. 2) Act, 2019 shall come into force. He has further submitted that provisions of Section 171 (3A) inserted vide Section 112 of the Finance Act, 2019 are effective prospectively from 01.01.2020 and they cannot have retrospective operation. He has inter-alia also made a number of

submissions for non-imposition of penalty. The main submission he has made is that penalty should not be imposed on him as the provisions of Section 171 (3A) have come into force from 01.01.2020 and they cannot have retrospective operation. He has also submitted that penalty should only be imposed when there is mensrea and deliberate attempt to violate the provisions of law.

6. We have carefully considered the submissions of the Respondent and all the material placed before us and it has been revealed that the Respondent has not passed on the benefit of input tax credit to his buyers w.e.f 01.07.2017 to 30.06.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.
7. It is also revealed from the perusal of the CGST Act and the Rules framed under it that the Central Government vide Notification No. 01/2020- Central Tax dated 01.01.2020 has implemented the provisions of the Finance (No. 2) Act, 2019 from 01.01.2020 vide which sub-section 171 (3A) was added in Section 171 of the CGST Act, 2017 and penalty was proposed to be imposed in the case of violation of Section 171 (1) of the CGST Act, 2017.
8. Since no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 30.03.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 18.12.2019 issued to the Respondent for imposition of penalty under Section 171 (3A) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

9. Copy of this order be supplied to both the parties. File be consigned after completion.

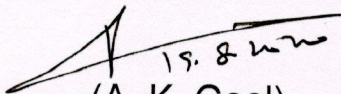


Sd/-
(Dr. B.N. Sharma)
Chairman

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

Sd/-
(Amand Shah)
Technical Member

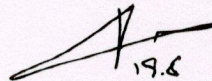
Certified Copy


(A. K. Goel)
NAA, Secretary

F. No. 22011/NAA/103/HorizonPenalty/2019 4180, 4183 Date: 19.08.2020

Copy To:-

1. Shri Diwakar Bansal, A-603, Great Eastern Gardens, Kanjur Marg West, LBS Marg, Mumbai-400078
2. M/s Horizon Projects Pvt Ltd., Runwal & Omkar Esquare, 5th Floor, Off Eastern Exp. Highway, Opp. Sion Chunabhatti Signal, Sion (E) Mumbai-400022.
3. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. NAA Website/Guard File.


19.8

A. K. GOEL
SECRETARY, NAA