

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

Case No. 54/2020
Date of Institution 31.01.2020
Date of Order 24.08.2020

In the matter of:

1. Anonymous.
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 Aryan Hometec Pvt. Ltd., No. 87, 2nd Floor, 3rd Main, Dollars Colony, J. P. Nagar, 4th Phase, Bengaluru-560078.

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 Applicants.
2. None for the Respondent.

ORDER

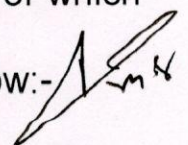
1. The present Report dated 31.01.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation, under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the case are that the Applicant No. 1, who has sought anonymity, had filed an application under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he had purchased a flat in the Respondent's project "Aryan Fountain Square", Attiblele-Surajpura Road, Bengaluru and had alleged that the Respondent had included VAT and Service Tax in the MRP of the flat at the time of booking and demanded 12% GST on the pending amount which had resulted in double taxation, whereas the Respondent was actually required to pass on the benefit of ITC for the construction done after the GST implementation which he had not passed on.
2. The Standing Committee on Anti-profiteering had referred the above application to the DGAP recommending a detailed investigation and to

collect evidence necessary to determine whether the benefit of ITC had been passed on by the Respondent to the recipients in respect of the construction service supplied by the Respondent. On receipt of the reference from the Standing Committee on Anti-profiteering, a notice under Rule 129 (3) of the above Rules was issued on 16.05.2019 by the DGAP, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his recipients by way of commensurate reduction in prices of the flats 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 documents in support of his reply. The Respondent was also allowed to inspect the relied upon non-confidential evidence/information which formed the basis of the investigation between 22.05.2019 and 24.05.2019 which was however not availed of by the Respondent.

3. The DGAP has stated in his Report that the Respondent did not submit the requisite documents on due date and hence, reminders dated 12.06.2019, 01.10.2019 and 09.10.2019 were issued to him. The Respondent did not submit complete documents even after several reminders, therefore, summons dated 10.10.2019 & 17.10.2019 under Section 70 of CGST Act, 2017 read with Rule 132 of the above Rules were issued to Ms. Rashmi Bharath and Mr. S. Bharath Govindareddy, Directors of the Respondent to appear in the DGAP's office on 16.10.2019 and to submit the requisite documents/information, however the above persons had not appeared.



4. The DGAP has also stated that in compliance of the second summons dated 17.10.2019, the Respondent had again not appeared on 25.10.2019 and did not submit any documents/information/letter.
5. The DGAP has further stated that in response to the notice dated 16.05.2019, subsequent two reminders and two summons, the Respondent did not submit necessary documents required for investigation and therefore, under the provisions of Section 67 of CGST Act, 2017 read with Rule 139 of the above Rules, the DGAP's officers had visited the premises of the Respondent on 20.11.2019 & 21.11.2019 and collected the requisite information and documents necessary for investigation.
6. The DGAP has also reported that the Applicant No. 1 was also given opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 20.01.2020 and 21.01.2020 which was however not availed of by the Applicant No. 1.
7. The DGAP has also stated that the period covered by the current investigation was from 01.07.2017 to 30.04.2019.
8. The DGAP has further stated that the time limit to complete the investigation was extended up to 01.02.2020 by this Authority, vide its order dated 31.10.2019 , in terms of Rule 129 (6) of the above Rules.
9. The DGAP has also submitted that in response to the notice dated 16.05.2019, subsequent reminders and at the time of visit at the premise of the Respondent, the Respondent had submitted his replies vide letters and e-mails dated 23.05.2019, 17.06.2019, vide statement dated 21.11.2019 and email dated 17.01.2020, the summary of which has been furnished by the DGAP as has been mentioned below:-



- a. That the Respondent was a Pvt. Ltd. company incorporated under the Companies Act, 1956 in the year 2017. The Respondent had only filed GSTR-3B Returns for the period from July, 2017 to August, 2018 and GSTR-1 Returns for the period from July, 2017 to December, 2018.
- b. That he was engaged in the real estate activities like formation of layouts and construction of residential villas, apartment and other construction related contracts in and around Bengaluru. The details of all the projects undertaken by the Respondent have been furnished by the DGAP as is mentioned below:-

Sr. No.	Name of the Project	Type of Project	Project Commencement Date	Completion Date
1	Suvarna Bhoomi Phase-I	Residential Plotted layout	2007	2010
2	Suvarna Bhoomi Phase-I	Residential Plotted Layout	2008	2010
3	Aryan Grand Residency	Residential Villa	2008	2008/2009
4	Aryan Orchid	Residential Apartment	2009	2011
5	Green Park	Residential Group Housing	2012-13	Due to certain land title dispute, the High Court of Karnataka had stayed further development and sales in the third quarter of 2012-13, thus the customers were requested to migrate to the next upcoming project i.e. Aryan Fountain Square.
6	Aryan Fountain Square	Residential Apartment	2012	Major Portion completed in the year 2014 and the remaining completed during subsequent years and further received O.C. on 11.04.2018.
7	Palm Groves	Residential	2013-14	Still under construction
8	Aryan Golden Arena	Residential	2015-16	Still under Construction

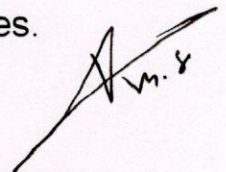
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- c. That the project "Aryan Founttain Square" was developed under the Joint Development Agreement (JDA) dated 24.09.2012 entered into with Sh. B. G. Anjannappa, S/o late Sh. B. H. Gunda Reddy, the land owner. It was a residential complex developed on vacant land located at Indlebele Village, Attibele-Sarjapur Road, Anekal Taluk, Bengaluru. The total constructed area of the residential complex was 2,90,106 sq. ft. consisting of 324 flats in a single tower and vide sharing agreement dated 20.12.2012 it was mutually agreed to share the super built-up area in the ratio 37:63 i.e. 37% of the super built up area for the landowner and 63% of the super built up area for the Respondent and in terms of the number of flats, 119 flats with a total super built up area of 1,07,200 sq. ft. for the landowner and 205 flats with a total super built up area of 1,82,906 sq. ft. for the Respondent. The Commencement Certificate for the project was obtained in the month of November, 2012 and the major portion of development was completed in the year 2014 and the Occupancy Certificate (OC) was obtained on 11.04.2018.
- d. That vide his statement dated 21.11.2019, the Respondent had inter alia made the following submissions:-

- i. That he had filed Nil VAT Returns for the period from April, 2016 to June, 2017.
- ii. That he had paid the Service Tax liability for the period from April, 2013 to March, 2014 and also filed the Service Tax Returns for the period from April, 2013 to March, 2014 on 14.10.2019. He had to pay the Service Tax for the

period from April, 2014 to June, 2017 and in this regard a case of Service Tax evasion had been booked by the DGGSTI, Bengaluru Zonal Unit and a Show Cause Notice No. 064/2019-20 BZU was also issued to him.

- iii. That he had not filed GSTR-1 Returns from January, 2019 onwards and had also not filed GSTR-3B Returns from September, 2018 onwards. Since he had defaulted in discharging his GST liabilities and in filing of GST Returns, the Jurisdictional State GST office had cancelled his GST registration. At present the Respondent was not in a position to discharge the GST liability but was making best efforts to make the payment of GST and revoke the GST registration.
- iv. That in respect of the project "Aryan Founttain Square" he had not availed any ITC of GST during the period from July, 2017 to March, 2018.
- v. That the Respondent was short of funds to carry out business operations properly and all the on-going projects were held up due to this financial crisis and position of the Respondent.
- vi. That the Respondent was not in a position to pay salary to his staff due to which his Accountant had left the job.
- vii. That in the absence of Accountant he was not able to maintain the proper records and also could not comply with the legal obligations with the tax authorities.

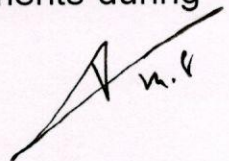


viii. That due to these prevailing situations, he was mentally stressed leading to lot of official as well as family problems.

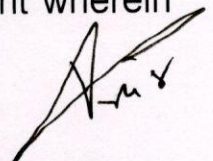
ix. That considering his present position, any lapse on his part of non-compliance of the directions of the DGAP in respect of investigation initiated for project "Aryan Fountain Square." might be condoned.

10. The DGAP has further intimated that vide the aforementioned letters and statement, the Respondent has submitted the following documents/information:-

- (a) Copies of GSTR-1 Returns for the period from July, 2017 to December, 2018.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to August, 2018.
- (c) Copies of Audited Balance Sheets for the FY 2016-17 & 2017-18.
- (d) Copy of Occupancy Certificate dated 11.04.2018 received for the project "Aryan Founttain Square."
- (e) Copies of the demand letters/sale agreement during the pre and post GST period of one of his Home Buyers.
- (f) Copy of RERA Registration Certificate.
- (g) Project-wise details of VAT, Service Tax and ITC of VAT/Service Tax.
- (h) List of all home buyers of the project "Aryan Founttain Square".
- (i) Copies of Electronic Credit Ledger for the period from July, 2017 to August, 2018.
- (j) That he had not filed any Tran-1 and Tran-2 statements during July, 2017 to December, 2017



11. The DGAP has further reported that based on a careful examination of the case record, including the reference received from the Standing Committee on Anti-Profiteering, various replies of the Respondent and the documents/evidence placed on record, it emerged that the main issues for determination were whether there was reduction in the rate of tax or benefit of ITC on the supply of construction service availed by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so, whether the Respondent had passed on such benefit to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
12. The DGAP has also stated that since it was a case related to profiteering, it was important to examine Section 171 of CGST Act, 2017 which governed the anti-profiteering provisions under the GST. Section 171 (1) of CGST Act, 2017 states that "*Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.*" Thus, the legal requirement was clear that in the event of a benefit of ITC or reduction in the rate of tax, there must be a commensurate reduction in prices of the goods or services supplied by a registered person and the final price being charged on each supply must be reduced commensurately with the extent of benefit and there was no other legally tenable mode of passing on such benefits to the recipients/consumers.
13. The DGAP has also reported that the Respondent vide his statement dated 21.11.2019 had submitted copy of the sale agreement wherein



the details of payment schedule in respect of the flat purchased by a buyer have been furnished as per Table- 'A' below:-

Table-'A'

(Amount in Rs.)

Sr. No.	Payment Stage	Demand
1	Booking	200000
2	On Agreement (Less Booking)	20%
3	Within 30 days from the date of Agreement	10%
4	Foundation	10%
5	Ground Floor Slab	5%
6	First Floor Slab	5%
7	Second Floor Slab	5%
8	Third Floor Slab	5%
9	Fourth Floor Slab	5%
10	Fifth Floor Slab	5%
11	Sixth Floor Slab	5%
12	Seventh Floor Slab	5%
13	Terrace Floor Slab	5%
14	Masonry	5%
15	Plastering/Painting	5%
16	Possession	5%
Total		100%

14. The DGAP has also stated 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, GST on construction services was chargeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low-cost houses up to a carpet area of 60 sq. mtr. was further reduced to 12% (effective rate was 8% in view of 1/3rd abatement on value),

vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 which was 7.50% & 3.5% (in respect of affordable and low-cost house up to a carpet area of 60 sq. mtr.) higher than the pre-GST rate of Service Tax. Thus, in the case of construction service the rate of tax had increased from the Pre-GST era rate of tax @ 4.5% to effective rate of tax @ 8% or 12% as applicable.

15. The DGAP has also claimed that during the pre-GST era the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services. However, post GST, the Respondent was eligible to avail ITC of GST paid on all the inputs and input service including the sub-contracts. However, on perusal of the statutory returns, submitted by the Respondent, for the pre-GST era as well as post-GST era, the DGAP has observed that the Respondent had not availed any Cenvat/input service Credit/ITC. The details of the same have been furnished by the DGAP in the Table-B below: -

Table-'B'

(Amount in Rs.)

Sr. No.	Particulars	(Pre-GST) 01.04.2016 to 30.06.2017	(Post-GST) 01.07.2017 to 30.04.2019
(1)	(2)	(3)	(6)
1	Cenvat Credit of Service Tax and Central Excise Duty (A)	0	-
2	Input tax credit of VAT availed (B)	2,34,487	
3	Input Tax Credit of GST Availed (E)	-	0
4	Gross turnover	0	1,14,41,349

16. The DGAP has further reported that though there was provision to avail CENVAT in the pre-GST era and to avail ITC in the post GST era but the Respondent had availed credit of VAT and had not raised

any demand in the pre GST period i.e. from 01.04.2016 to 30.06.2017. In the post-GST period from 01.07.2017 to 30.04.2019, the Respondent had not availed any ITC but received amount on account of prices of the flats. Hence, no comparison of credit available in the pre and the post GST periods could be made by the DGAP. Therefore, in the absence of any credit availability in the post GST period there might not be any commensurate reduction in prices on account of ITC accrual.

17. The DGAP has also submitted that the Respondent's project "Aryan Fountain Square" was started in 2012 and most of the work of the project was completed in 2014 but the project could not be completed on time. However, the Respondent had completed the project in March, 2018 and obtained the OC on 11.04.2018. It was also observed that the Respondent had failed to pay due Service Tax in the pre-GST period and had also defaulted in the payment of GST and filing of GST Returns in the post-GST period. Since the Respondent had neither paid Service Tax nor filed Service Tax Returns, it could be concluded that the Respondent did not avail any CENVAT/credit of the input services during the period from 01.04.2016 to 30.06.2017 (Pre-GST period). Further, in post-GST period from 01.07.2017 to 30.04.2019, the Respondent had not availed any ITC in respect of the above project. Since the Respondent had obtained OC on 11.04.2018, therefore, as per clause (b) of Paragraph 5 of Schedule II of the CGST Act, 2017, the Respondent could not avail any ITC of GST in respect of the above project from 11.04.2018 onwards.

18. The DGAP has also stated that the Respondent had filed GSTR-1 Returns for the period from July, 2017 to December, 2018 and GSTR-3B Returns for the period from July, 2017 to August, 2018 and the State GST Authorities had cancelled GST registration of the Respondent on 31.08.2018 and therefore, the Respondent had not filed GSTR-3B Returns from September, 2018 onwards and GSTR-1 Returns from January, 2019 onwards.
19. The DGAP has also reported that in the instant case, after the introduction of GST w.e.f. 01.07.2017, the Respondent had not availed any additional benefit on account of ITC in respect of the above project. On the basis of the details of the outward supply of construction service submitted by the Respondent, it was observed that the Respondent was providing services in the State of Karnataka only.
20. The DGAP has further reported that Section 171 (1) of the CGST Act, 2017 was not attracted in the present case and that in the present Report any reference to the CGST Act, 2017 and the CGST Rules, 2017, would also include reference to the corresponding provisions of the relevant SGST/UTGST/IGST Acts and the Rules.
21. The above Report of the DGAP was considered by this Authority in its sitting held on 04.02.2020 and it was decided to hear the Applicant No. 1 on 24.02.2020 as no denial of benefit of ITC was found by the DGAP. However, the Applicant No. 1 did not appear for the hearing. Further hearings on 16.03.2020, 17.04.2020 and 11.05.2020 were also given to the Applicant No. 1, however, no communication has been received from him. Since the Applicant No. 1 has not submitted

any written submissions and has also not appeared for the hearing, it was decided to proceed ex-parte against him.

22. We have carefully considered the Report of the DGAP and the material placed on record. On examining the Report we find that the following issues need to be addressed:-

- a. Whether the Applicant No. 1 was entitled to the benefit of ITC?
- b. Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017?

23. In this connection it would be relevant to refer to Section 171 of the CGST Act, 2017 which provides as under:-

“(1). Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices.”

(2). The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether ITCs availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3). The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

(3A) Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the

conclusion that any registered person has profiteered under subsection (1), such person shall be liable to pay penalty equivalent to ten percent of the amount so profiteered:

PROVIDED that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.

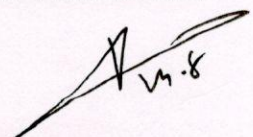
Explanation:- For the purpose of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services of both."

24. It is revealed from the plain reading of Section 171 (1) 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 additional benefit of ITC with the introduction of GST availed by the Respondent or not. On this issue it has been revealed from the DGAP's Report that no ITC has been availed by the Respondent in the post-GST period and therefore, there was no additional benefit of ITC which had accrued to the Respondent post-GST as compared to pre-GST period.

25. It is also revealed from the above Report that the project under investigation was started in the year 2012 and most of the work had

been completed in 2014, however, the project was completed in March, 2018 and the OC was obtained on 11.04.2018. Further, the Respondent had not paid his Service Tax liability in the pre-GST period and had also defaulted in the payment of GST and filing of GST Returns. The DGAP has also claimed that on scrutiny of the Service Tax and GST Returns submitted by the Respondent, it was observed that the Respondent had not availed any CENVAT credit of the input services during the period from 01.04.2016 to 30.06.2017 and had also not availed any ITC in the post-GST period from 01.07.2017 to 30.04.2019 in respect of the above project. The State GST Authorities had also cancelled the GST registration of the Respondent on 31.08.2018 as he had not filed the GSTR-3B Returns from September 2018 onwards and GSTR-1 Returns from January 2019 onwards. Based on the above facts it can be concluded that this case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017 as the Respondent had not availed benefit of additional ITC in the post-GST regime. Hence, the allegation of not passing on the benefit of ITC is not established against the Respondent. Therefore, the Respondent is not liable to pass on the benefit of ITC to the Applicant No. 1 and the other recipients. Accordingly, the provisions of Section 171 (1) of the CGST Act, 2017 have not been contravened in the present case.

26. Therefore, the application filed by the Applicant No. 1 requesting action against the Respondent for alleged violation of the provisions of the Section 171 of the CGST Act is not maintainable and hence the same is dismissed.



27. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 31.01.2020 the order was to be passed on or before 30.07.2020. However, due to prevalent pandemic of COVID-19 in the Country this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 55/2020-Central Tax dated 27.06.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017.

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


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



Sd/-
(Amand Shah)
Member (Technical)

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

Certified Copy


(A.K. Goel)
Secretary, NAA

File No. 22011/ NAA/133/Aryan/2020/4221- 4223 Dated: 25.08.2020
Copy To:-

1. M/s Aryan Hometec Pvt. Ltd., No. 87, 2nd Floor, 3rd Main, Dollars Colony, J. P. Nagar, 4th Phase, Bengaluru-560078.
2. 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 with request to forward the Order of this Authority to the Applicant No. 1.
3. Guard File.