BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	:	49/2020
Date of Institution	:	04.04.2019
Date of Order	:	19.08.2020

In the matter of:

1. Sh. Ashok Khatri, Q-315, NPTI Complex, Sector-33, Faridabad, Haryana.
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

1. M/s S3 Infrareality Pvt. Ltd.., 2F-1-3, Ozone Centre, Sector-12, Faridabad, Haryana-121007.

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. Ms. Alka Gupta, CA 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 28.11.2018, 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 additional Input tax Credit (ITC) to the above Applicant as well as other home buyers who had purchased them in his Project "Auric City Homes", as 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 ITC to the above buyers amounting to Rs. 1,48,60,874/-, pertaining to the period w.e.f. 01.07.2017 to 31.08.2018 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 28.11.2018 had issued notice dated 04.12.2019 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 both the parties at length this Authority vide its Order No. 12/2019 dated 27.02.2019 had determined the profiteered amount as Rs. 57,76,610 {1,48,60,874-9084264(already passed on)} 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 01.07.2017 to 31.08.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. During the course of the hearing therefore, it was held that the Respondent had not only collected extra amount on account of price of the flats from his customers but he had also compelled them to pay more GST on the additional amount realised from them between the period from 01.07.2017 to 31.08.2018 and therefore, he had apparently committed an offence under Section 122 (1) (i) 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 11.03.2019 asking him to explain why the penalty mentioned in Section 122(1) read with Rule 133 (3) (d) should not be imposed on him.

5. The Respondent vide his submissions dated 04.04.2019 has stated that the penal provisions under Section 122 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 he had accepted and paid the amount which had been determined by this Authority. He interalia made a number of submissions for non imposition of penalty. The main submission he has made is that penalty should only be imposed when there is a mensrea and deliberate attempt to violate the provisions of law and as he has complied with this Authority's

Order No. 12/2019 which depicted his bonafide intentions, penalty should not be imposed upon him.

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 had not passed on the benefit of additional Input tax Credit (ITC) to the above Applicant as well as other homebuyers who had purchased them in his Project "Eldeco County" for the period from 01.07.2017 to 31.08.2018 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 no penalty had been prescribed for violation of the provisions of Section 171 (1) of the above Act, therefore, the Respondent was issued show cause notice to state why penalty should not be imposed on him for violation of the above provisions as per Section 122 (1) (i) of the above Act as he had apparently issued incorrect or false invoice while charging excess consideration and GST from the buyers. However, from the perusal of Section 122 (1) (i) it is clear that the violation of the provisions of Section 171 (1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.

8. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A).

9. Since, no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.08.2018 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 11.03.2019 issued to the Respondent for imposition of penalty under Section 122 (1) (i) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

10. 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)
(Secretary, NAA)

F. No. 22011/NAA/115/S3 Infra/2018 Date: 24.08.2020

Copy To:-

1. Shri. Ashok Khatri, Q.No.315, NPTI Complex, Near NHPC office, Sector-33, Faridabad-121003
2. M/s S3 Infra Reality Pvt. Ltd., 2F-1-3, Ozone Centre, Sector-12, Faridabad, Haryana-121007.
3. 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.
4. NAA Website/ Guard File.

A. K. GOEL
SECRETARY, NAA