

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

Case No.	56/2020
Date of Institution	23.04.2019
Date of Order	27.08.2020

In the matter of:

1. Sh. Sandeep Kumar, D1/52, Kunwar Singh Nagar, Nangloi, Delhi-110041.
2. Sh. Harish Kumar, House No. D3/203, Tulip Petals, Sector-89, Gurgaon-122505.
3. Ms. Poonam Shiv, 265, Prabhavi Apartments, Floor No. 29B, Sector-10, Dwarka, New Delhi-110075.
4. Sh. Veeran Puri, 132, Prabhavi Apartments, Floor No. 29B, Sector-10, Dwarka, New Delhi-110075.
5. Ms. Ajit Yadav, House No. 490, Near ESIC Hospital, Sector 9A, Gurgaon-122001.
6. Sh. Mukesh Kumar Rajan, Flat No. E-705, Sector 102, Gurugram, Haryana.
7. Sh. Nitin Gambhir, House No. 18, Shree Ram Colony, near Jain Mandir, Sector-4, Gurugram-122001.
8. 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 Nani Resorts and Floriculture Pvt. Ltd. Building No. 80, 1st Floor,
Sector-44, Gurgaon-122003, Haryana.

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. Shuchi Agrawal, Legal Counsel and Sh. Shraman Kumar Gupta, Authorised Representatives for the Respondent.

ORDER

1. The brief facts of the present case are that the Applicant No. 8 (here-in-after referred to as the DGAP) vide his Report dated 22.04.2019, 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 complaints of the Applicant Nos. 1 to 7 and found that the Respondent had not passed on the benefit of input tax credit (ITC) in respect of the flats purchased by them in the project "ROF Aalayas" in Sector-102, Gurgaon, Haryana 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 ITC to the above Applicants and other buyers amounting to Rs. 2,47,48,549/- pertaining to the period from 01.07.2017 to 30.09.2018 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 22.04.2019 had issued notice dated 26.04.2019 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 the concerned parties at length this Authority vide its Order No. 52/2019 dated 21.10.2019 had determined the profited amount as Rs. 2,47,48,549/- 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 30.09.2018 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 GST on the additional amount realised from them between the period from 01.07.2017 to 30.09.2018 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 26.11.2019 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 30.12.2019, 08.01.2020, 04.02.2020, 06.02.2020 and 11.02.2020 has interalia contended 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 other 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 mens rea 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 ITC to his buyers w.e.f 01.07.2017 to 30.09.2018 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 30.09.2018 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 26.11.2019 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.

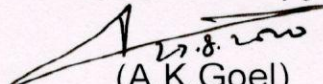
Sd/-
(Dr. B. N. Sharma)
Chairman

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



Sd/-
(Amand Shah)
Technical Member

Certified Copy


(A.K. Goel)
Secretary, NAA

File No. 22011/NAA/34/NANI/2019 /4274-4283

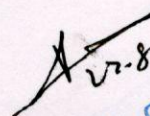
Dated: 27.08.2020

Copy to:

1. M/s Nani Resorts and Floriculture Pvt. Ltd., Building No. 80, 1st Floor, Sector-44, Gurgaon-122003, Haryana.
2. Sh. Sandeep Kumar, D1/52, Kunwar Singh Nagar, Nangloi, Delhi-110041.
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4. Ms. Poonam Shiv, 265, Prabhavi Apartments, Floor No. 29B, Sector-10, Dwarka, New Delhi-110075.
5. Sh. Veeran Puri at email-veeranplastic@yahoo.com.
6. Ms. Ajit Yadav, H. No. 490, Sector 9A, Gurgaon-122001.
7. Sh. Mukesh Kumar Rajan, H. No. 755, Sector- 7 extn. Gurgaon, Haryana-122001.
8. Sh. Nitin Gambhir at email-gambhir16882@gmail.com.
9. Directorate General of Anti-Profiteering, CBIC.
10. NAA website/Guard File.

Case No. 56/2020

Sandeep Kumar & Ors Vs M/s Nani Resorts and Floriculture Pvt. Ltd.


A. K. GOEL
SECRETARY, NAA