

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

Case No. : 58/2020
Date of Institution : 08.04.2019
Date of Order : 27.08.2020

In the matter of:

1. Sh. Peeyush Awasthi, Q. No. 268-4, H-type, Off Estate, Shahjahanpur, Uttar Pradesh-242001.
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 Sun Infra Services Pvt. Ltd., City Park Colony, Lodhipur, Shahjahanpur, Uttar Pradesh- 242001.

Respondent

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Anand 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 29.10.2018, 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 (ITC) in respect of the Villa No. B-02 purchased by him in the Respondent's project "City Park Township", Lodhipur, Shahjahanpur, Uttar Pradesh- 242001 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 Applicant and other buyers amounting to Rs. 81,67,546/- pertaining to the period from 01.07.2017 to 30.06.2018 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 29.10.2018 had issued notice dated 16.11.2018 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

this Authority vide its Order No. 39/2019 dated 21.06.2019 had determined the profiteered amount as Rs. 81,67,546/- 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 30.06.2018 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 to the buyers by not reducing prices of the flats commensurately and had also compelled them to pay more price and GST on the additional amount realised from them between the period from 01.07.2017 to 30.06.2018 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 05.07.2019 asking him to explain why the penalty mentioned in Section 122 read with Rule 133 (3) (d) should not be imposed on him.
5. The Respondent vide his submissions dated 23.08.2019 has inter alia submitted 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 penalty under Section 122 of the CGST Act was not applicable in the present case. Further, he has also stated that he has accepted and paid the profiteered amount along with applicable interest which has been determined by this Authority. He has also submitted proof of payment of the profiteered amount to the Applicant No. 1 and DGAP as directed by the Authority vide Order No. 39/2019. 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 penalty under Section 122 of the CGST Act was not applicable in the present case. He has also submitted that penalty should only be imposed when there was mens rea and deliberate attempt to violate the provisions of law and as he has complied with this Authority's Order No. 39/2019 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 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 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 invoices while charging excess consideration and GST from the buyers. However, from the perusal of Section 122 (1) (i) of the CGST Act, 2017 it is clear that the violation of the provisions of Section 171 (1) is not covered under Section 122 (1) (i) of the CGST Act, 2017 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 into 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 30.06.2018 when the Respondent had violated the provisions of Section 171 (1), the penalty prescribed under Section 171 (3A) also cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 05.07.2019 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.

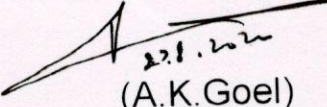
Sd/-
(Dr. B. N. Sharma)
Chairman

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



Sd/-
(Amand Shah)
Technical Member

Certified Copy

o/c

(A.K. Goel)
Secretary, NAA

File No. 22011/NAA/101/SunInfra/2018/4358-4360(i) Dated: 27.08.2020

Copy to:-

1. M/s Sun Infra Service Pvt. Ltd., 02, City Park Colony, Lodhipur, Shahjahanpur, Uttar Pradesh-242001.
2. Sh. Peeyush Awasthi, Q.No. 268-4, H-type, Off Estate, Shahjahanpur, Uttar Pradesh -242001, email- pawasthiocf@gmail.com
3. Director General Anti-Profiteering, CBIC.
4. NAA Website/Guard File.

Case No.58/2020
Peeyush Awasthi Vs M/s Sun Infra Services Pvt. Ltd.


A. K. GOEL
SECRETARY, NAA