

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

Case No. : 63/2020
Date of Institution : 23.05.2019
Date of Order : 30.09.2020

In the matter of:

1. Shri Abhishek, House No. 62, Ward No. 9, Behind Post Office, Julana, Jind, Haryana-126101.
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

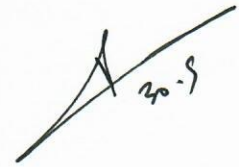
Versus

M/s Signature Global Developers Pvt. Ltd., Unit No. 1309, 13th Floor, Dr. Gopal Das Bhawan, 28, Barakhamba Road, Connaught Place, New Delhi-110001.

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 21.05.2019, 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 complaint of the Applicant No. 1 and found that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) in respect of the flats purchased by the above Applicant as well as other home buyers in his Project "Synera", 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 Applicant No. 1 and other buyers amounting to Rs. 1,42,06,267/-, pertaining to the period w.e.f. 01.07.2017 to 31.12.2018 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 21.05.2019 had issued notice dated 28.05.2019 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. 60/2019 dated 21.11.2019 had

determined the profiteered amount as Rs. 1,42,06,267/- 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 31.12.2018 and also held the Respondent in violation of the provisions of Section 171 (1).

3. It was also held that as the Respondent had profiteered an amount of Rs. 1,42,06,267/- by not reducing the prices of the flats between the period from 01.07.2017 to 31.12.2018 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 27.12.2019 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 received by this Authority on 27.02.2020 has averred 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 provisions of Section 171 (3A) have come into force from 01.01.2020 vide Notification No. 01/2020-Central tax dated 01.01.2020 and the investigation carried out by the DGAP was limited upto 31.12.2018. He has also stated that in compliance to the Order of this Authority, he has transferred the benefit of ITC to the buyers of the project and accordingly informed the jurisdictional Commissioner of GST, Haryana vide his submissions dated 10.12.2019.

6. The DGAP has submitted his report dated 17.03.2020 on the above submissions of the Respondent and has interalia stated that vide e-mail dated 13.03.2020, the jurisdictional officer i.e. the Deputy Excise and Taxation Commissioner (ST), Gurugram (East) has forwarded the compliance report of Order No. 60/2019 dt. 21.11.2019 passed by this Authority and has stated that he has verified the claim of the Respondent that he had passed on the profiteered amount of Rs. 1,47,11,716/- along with interest of Rs. 17,26,796/- to the 820 buyers of the residential project and an amount of Rs. 16,45,268/- along with interest of Rs. 4,23,920/- to the 64 buyers of the commercial units of the project.
7. 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 Applicant No. 1 as well as other home buyers who had purchased flats and commercial units in his Project "Synera" during the period from 01.07.2017 to 31.12.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017. However, the Respondent, in compliance to the Order No. 60/2019 dt. 21.11.2019 passed by this Authority, has passed the benefit of the additional ITC to his customers along with the Applicant No. 1 and the same has been verified by the Haryana State GST (Jurisdictional Officer).
8. It is also 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 vide Notification No. 01/2020-Central tax dated 01.01.2020 by inserting Section 171 (3A) in the CGST Act, 2017. Since, no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.12.2018 when the Respondent had violated the provisions of Section 171 (1) of the CGST Act, 2017, the penalty prescribed under Section 171 (3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 27.12.2019 issued to the Respondent for imposition of penalty under Section 177 (3A) of the CGST Act, 2017 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/-
(J.C. Chauhan)
Member(Technical)



Sd/-
(Amand Shah)
Member (Technical)

Sd/-
(B. N. Sharma)
Chairman

Certified Copy

o/c  30.9.2020

(A.K. Goel)
Secretary, NAA

File No. 22011/ NAA/41/Sign/2019 | 5301-5304. Dated: 30.09.2020

Copy To:-

1. M/s Signature Global Developers Pvt. Ltd., 1308, 13th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, Connaught Place, New Delhi-110001.
2. Shri. Abhishek, House No. 62, Ward No. 9, Behind Post Office, Julana, Jind, Haryana-126101.
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. Guard File.

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