

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

Case No. : 71/2020

Date of Institution : 16.04.2019

Date of Order : 05.11.2020

In the matter of:

1. Sh. Deepak Kumar Khurana, TMQ No. 338/1, 6th Camp Air Force Station, Jalahalli East, Bangalore-560014.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, BhaiVir Singh SahityaSadan, BhaiVir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Sattva Developers Pvt. Ltd., 4th Floor, Salarpuria Windsor,
3, Ulssor Road, Bangalore-560042, Karnataka.

Respondent

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member

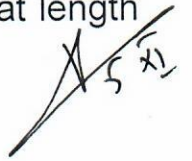


Present:-

1. None for the Applicants.
2. Sh. Abhishek A. Rastogi, Advocate 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 25.02.2019, 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 Input Tax Credit in respect of the flat purchased by him in the "Laurel Heights" project 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 input tax credit to the above Applicant and other buyers amounting to Rs. 99,20,246/- pertaining to the period from 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 25.02.2019 had issued notice dated 05.03.2019 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

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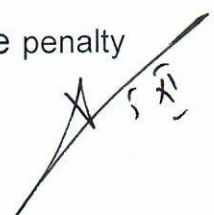
this Authority vide its Order No. 38/2019 dated 14.06.2019 had determined the profiteered amount as Rs. 99,20,246/- as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period from 01.07.2017 to 31.08.2018 and also held the Respondent in violation of the provisions of Section 171 (1) of the above Act.

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 the 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 had filed Writ Petition No. 7911/2019 in the Hon'ble High Court of Delhi which vide its order dated 23.07.2019 had directed that "*8. As far as the penalty proceedings are concerned, they will continue and any orders passed therein will be subject to the outcome of the present petitions*". Accordingly, the penalty proceedings were continued.
5. The Respondent was issued notice dated 18.06.2019 asking him to explain why the penalty mentioned in Section 122 of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
6. The Respondent vide his submissions dated 17.08.2019 has stated that the penal provisions under Section 122 of the Act read with Rule

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133(3)(d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as he has filed Writ Petition No. 7911/2019 before the Hon'ble High Court of Delhi against the Order passed by this Authority and thus, the penal provisions should be kept in abeyance until the matter was heard and disposed of by the Hon'ble High Court. However, the Hon'ble High Court vide order dated 23.07.2019 has ordered that the penalty proceedings would continue and any orders passed therein would be subject to the outcome of the present petitions.

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 has not passed on the benefit of input tax credit to his buyers who had purchased flats in his project 'Laurel Heights' w.e.f 01.07.2017 to 31.08.2018 and hence, the Respondent has violated the provisions of Section 171 (1) of the CGST Act, 2017.
8. 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.

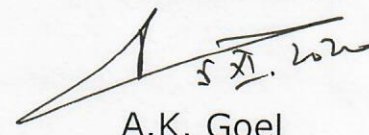
9. It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171 (1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171 (3A).
10. Since no penalty provisions were in existence between 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 18.06.2019 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.
11. Copy of this order be supplied to both the parties. File be consigned after completion.

S/d
(Dr. B. N. Sharma)
Chairman

S/d
(J. C. Chauhan)
Technical Member

S/d
(Amand Shah)
Technical Member

Certified Copy

o/c 
A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/09/Sattva/2019 | 5865-5868 Date: 05.11.2020

Copy to:-

1. M/s Sattva Developers Pvt. Ltd., 4th Floor, Salarpuria Windsor, #3, Ulssor Road, Bangalore-560042, Karnataka.
2. Sh. Deepak Kumar Khurana, TMQ No. 338/1, 6th Camp Air Force Station, Jalahalli East, Bangalore-560014.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai ViR Singh Marg, New Delhi-110001.
4. Guard File

