

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

Case No. : 83/2020  
Date of Institution : 17.06.2019  
Date of Order : 10.12.2020

In the matter of:

1. Shri. Pradeep Kumar, Village Jainpur Sadhan (5), Indri, Karnal, Haryana-132041.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Fusion Buildtech Pvt. Ltd., A-6 G.F., Master Somnath Marg, Yojana Vihar, Delhi-110092.

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 02.04.2019, 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 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 who had purchased a Flat in his Project "Fusion Homes", 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. 4,79,04,342/-, pertaining to the period w.e.f. 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 02.04.2019 had issued notice dated 09.04.2019 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 both the parties at length this Authority vide its Order No. 71/2019 dated 13.12.2019 had determined the profited amount as Rs. 4,79,04,342/- 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 not passed on the benefit of ITC to the homebuyers and had profiteered the above amount 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 21.01.2020 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 02.03.2020 has submitted details of customers along with copies of credit notes/letters wherein discount towards ITC benefit had already been passed. Further, vide his submissions dated 04.03.2020 the Respondent has submitted that he had challenged this Authority's order dated 13.12.2019, confirming profiteering of Rs. 4.79 crores, before the Hon'ble Delhi High Court and that the Hon'ble Delhi High Court had asked him to deposit 50% of the amount only and therefore requested that penalty proceedings be kept in abeyance until the matter was finally decided in due course.
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 No. 1 as well as other

homebuyers who had purchased them in his Project "Fusion Homes" for the period from 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 21.01.2020 issued to the Respondent for imposition of penalty under Section 177 (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



(Amand Shah)  
Technical Member

Certified Copy

  
(A.K. Goel)

Secretary, NAA

F. No. 22011/NAA/26/Fusion/2019/6441-43 Date: 10.12.2020

Copy To:-

1. M/s Fusion Buildtech Pvt. Ltd., A-6, G.F., Master Somnath Marg, Yojana Vihar, Delhi-110092.
2. Sh. Pradeep Kumar, S/o Sh. Roshan Lal, Village Jainpur Sadhan (5), Indri, Karnal, Haryana-132041.
3. Director General Anti-Profitteering, 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