

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

I.O. No. 36/2020
Date of Institution 06.07.2020
Date of Order 11.12.2020

In the matter of:

1. Sh. Rishabh Jain, J-19, UGF, Naveen Shahdara, Delhi- 110032.
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

1. M/s Assotech Ltd., H-127, Ground Floor, Sector-63, Noida-201309.

Respondent

Quorum:-

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

Present:-

1. None for the Applicants and the Respondent.



ORDER

1. The present Report dated 29.06.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the present case are that a reference was received from the Standing Committee on Anti- profiteering on 05.08.2019 by the DGAP to conduct a detailed investigation in respect of an application filed under Rule 128 (1) of the CGST Rules, by the Applicant No. 1 alleging profiteering by the Respondent in respect of purchase of Flat No. G-A0009, in the Respondent's project "Assotech Windsor Court Society" situated in Sector-78, Noida. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) by way of commensurate reduction in the price and had charged GST @12% on the amount due to him against payments.
2. The Applicant No. 1 had also submitted that he had purchased the flat in January, 2014 and at the time of possession/handover in October, 2017, he had paid the amount with applicable GST. He had also submitted that the Respondent assured him about passing on the benefit of Input Tax Credit at the end of FY 2017-18. The above Applicant had attached a copy of the e-mail dated 04.10.2017 where the Respondent had informed that "We extend our commitment that any Input Tax Credit (ITC), available will be very transparently calculated and benefit will be proportionately passed accordingly for all the payments coming post-GST and where GST has been deducted

@12%. Since it is the initial stage of GST implementation and it will take some time to settle down, hence we request our esteemed customers not to get worried. Since the whole process of GST Implementation is system driven and software based, we at Assotech have upgraded our ERP Systems and whole calculation will be done at the end of the financial year.”

3. The Applicant No. 1 had alleged that even after 6 months from the end of financial year 2017-18, the Respondent had not provided him the benefit of input tax credit. Apart from the above e-mail the Applicant No. 1 had also submitted the estimated working sheet and copies of payment receipts given to him at the time of possession.
4. The DGAP has reported that on receipt of the aforesaid reference from the Standing Committee on Anti-profiteering on 05.08.2019, a Notice under Rule 129 (3) of the above Rules was issued on 14.08.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the recipients by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in his reply to the Notice as well as furnish all documents in support of his reply. Further, the Respondent was afforded opportunity to inspect the non-confidential evidence/information which formed the basis of the said Notice, during the period from 21.08.2019 to 23.08.2019. However, the Respondent availed of the said opportunity on 28.08.2019. Vide e-mail dated 08.06.2020, the Applicant No. 1 was also given opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 15.06.2020 or 16.06.2020. However, the Applicant No.

- 1 did not avail of the said opportunity. The DGAP has stated that the investigation in this case has been carried out for the period from 01.07.2017 to 31.07.2019.
5. The DGAP has also stated that the time limit to complete the investigation was extended up to 04.05.2020 by this Authority, in terms of Rule 129 (6) of the Rules, vide order dated 28.01.2020 which further stood extended up to 30.06.2020 by virtue of Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Central Government under Section 168A of the Central Goods and Services Tax Act, 2017, which stated that where any time limit for completion/ furnishing of any report, has been specified in, or prescribed or notified under the Central Goods and Service Act, 2017 which fell during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, would be extended up to the 30.06.2020. The same was also informed to this Authority by the DGAP vide letter dated 28.04.2020.
6. In his Report the DGAP has stated that in response to the notice dated 14.08.2019 and various reminders, the Respondent replied vide letters/e-mails dated 28.08.2019, 30.09.2019, 24.10.2019, 18.11.2019, 20.04.2020 and 08.06.2020 in which he has stated:-

- a. That his Company was under provisional liquidation since 08.02.2016 and the Hon'ble High Court of Delhi vide its Order in C. P. No. 357/2015 dated 08.02.2016 has appointed Official Liquidator attached to the Hon'ble Court as his provisional

Liquidator to take into possession all the assets and record of the Company. Further, as per the provisions of Section 456 of the Companies Act, 1956 all the assets/properties/affects etc. have vested in the Hon'ble High Court through its Official Liquidator.

- b. That he was working under the supervision of Court Commissioner and Official Liquidator appointed by the Hon'ble High Court of Delhi which has also directed him to supervise the completion of the projects and expenses incurred/to be incurred thereon. The Hon'ble High Court has also directed all Government Authorities and others that no coercive steps would be taken against the Respondent to recover any dues.
- c. That in the subsequent development, the Hon'ble High Court has directed the Official Liquidator to appoint an Auditor to ascertain the total assets and liabilities including statutory dues and subsequently M/s Rajput Jain & Associates have been appointed to ascertain the Respondent's assets and liabilities. The Auditor has ascertained the tax liability and the same was submitted by him before the Hon'ble High Court of Delhi. According to the Audit Report total Service Tax liability has been quantified at Rs. 1,97,03,415/-. The Respondent has also informed that he has applied to avail the benefit of the SVLDRS Scheme to regularise the above amount.
- d. That on implementation of GST w.e.f. 01.07.2017, he had assured his customers including the Applicant No. 1 that the benefit of ITC available to him would be proportionately passed on for all the payments coming post-GST and where GST had been deducted @12%. Accordingly, the Respondent had passed

on an amount of Rs. 82,48,485/- to his customers in the project "Assotech Windsor Court Society" even prior to initiation of present proceedings.

7. Vide the aforementioned letters/e-mails, the Respondent has submitted the following documents/ information:

- a. Copies of GSTR-1 Returns for the period from July, 2017 to July, 2019.
- b. Copies of GSTR-3B Returns for the period from July, 2017 to July, 2019.
- c. Copy of Electronic Credit Ledger for the period from July, 2017 to August, 2019.
- d. Copies of ST-3 Returns for the period from April, 2016 to June, 2017 along with application under SVLDRS Scheme.
- e. Copies of VAT Returns for the period from April, 2016 to June, 2017 along with copy of VAT Assessment Order for the FY 2016-2017.
- f. Copies of Allotment Letters, demand letters, Credit notes and receipts issued to the Applicant No. 1.
- g. Tax rates - pre-GST and post-GST.
- h. Copies of Balance sheets for FY 2016-17 & 2017-18.
- i. Copy of Project Report submitted to RERA.
- j. CENVAT/ Input Tax Credit Register for the period from April, 2016 to July, 2019.
- k. Details of turnover, output tax liability, GST payable and input tax credit availed by the Respondent.

- l. List of home buyers in the project "Assotech Windsor Court Society" along with details of benefit passed on.
- m. Copies of Credit Notes vide which benefit of GST ITC passed on to the customers.
8. The Respondent has requested to consider all his information/ documents as confidential in terms of Rule 130 of the Rules.
9. The DGAP has also reported that the reference received from the Standing Committee on Anti- profiteering, various replies of the Respondent and the documents/evidence on record has been carefully scrutinised. The main issues for determination were:
- (i) Whether there was benefit of reduction in the rate of tax or input tax credit on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so;
- (ii) Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.
10. The DGAP has further reported that the Respondent, vide his reply has submitted payment plan, allotment letter and payment receipts for the sale of Flat No. G-A0009, to the Applicant No. 1, measuring 1390 square feet (super area), at basic sale price of Rs. 5,175/- per sq. feet. The details of the amounts and the taxes of the Flat paid by the Applicant No. 1 to the Respondent have been furnished in Table-'A'

below:-

Table-'A'

(Amount in Rs.)

S.No.	Date of receipt	Description	Basic Price	Service tax	GST	Total Amount
1	30.01.2014	At the time of Booking	97,003	2,997	-	1,00,000
2	21.02.2014	At the time of Booking	3,88,010	11,990	-	4,00,000
3	25.03.2014	Booking amount & within 60 days	38,30,937	1,18,377	-	39,49,314
4	01.07.2015	Possession charges	4,42,500	57,500	-	5,00,000
5	03.07.2015	Possession charges	8,92,541	31,239	-	9,23,780
6	04.07.2015	Possession charges	14,330	501	-	14,831
7	20.06.2017	Penalty on delayed possession	55,600	-	-	55,600
8	16.10.2017	Possession Charges & other charges (Dual Meter, EEC, FFC & Power backup Charges)	14,74,827	-	1,76,979	16,51,806
9	23.10.2017	Possession charges	14,866	-	1,784	16,650
10	19.04.2019	GST ITC Discount	1,04,279	-	-	1,04,279
11	Not yet received	Balance Amount	2,09,133	-	-	2,09,133
		Total (A)	75,24,026	2,22,604	1,78,763	79,25,393

11. The DGAP has also stated that Para 5 of Schedule-III of the Central Goods and Services Tax Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as "*Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "*(b) construction of a complex, building, civil structure or a part thereof including a complex or building intended for sale to a buyer, wholly or*"

partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". Thus, the input tax credit pertaining to the residential units and commercial shops which were under construction but not sold was provisional input tax credit which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate (CC), in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017, which read as under:

Section 17 (2) "Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies".

Section 17 (3) "The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building".

Therefore, the input tax credit pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was

required to recalibrate the selling prices of such units to be sold to the prospective buyers by considering the net benefit of additional input tax credit available to him post-GST.

12. The DGAP has further stated that in regard to the Respondent's statement of ongoing case of provisional liquidation before the Hon'ble High Court of Delhi and not to take any coercive steps against him to recover any dues, it was observed that vide para 2 (xiv) of the order dated 11.02.2019, the Hon'ble High Court has directed that "*No coercive steps will be taken against the respondent company or its management to recover any dues for nine months from today*". Further, vide order dated 20.11.2019, the Hon'ble High Court has directed to continue the interim order.
13. The DGAP has also submitted that as regards the allegation of profiteering, it was observed that the Respondent has claimed that on implementation of the GST w.e.f. 01.07.2017, he had assured his customers including the Applicant No. 1 that the benefit of ITC available to him would be proportionately passed on for all the payments coming post-GST and where GST had been deducted @12%. Accordingly, the Respondent has passed on an amount of Rs. 82,48,485/- to his customers in the project "Assotech Windsor Court Society" even prior to initiation of present proceedings. Further, customer wise details of such benefit claimed to have been passed on along with documentary evidence, were submitted by the Respondent. It was seen from the Receipt No. 1328/00068/19-20 dated 19.04.2019, that an amount of Rs. 1,04,279 has been given to the Applicant No. 1 on account of benefit arising out of GST input tax credit. However, the correctness of the amount of benefit so passed on by the Respondent,

had to be determined in terms of Rule 129 (6) of the Rules. Therefore, the input tax credit available to the Respondent and the taxable amount received by him from the Applicant No. 1 and other recipients post implementation of GST, had to be taken into account for determining the benefit of input tax credit required to be passed on.

14. The DGAP has further reported that prior to 01.07.2017 i.e. before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on input services and credit of VAT paid on purchase of inputs but the CENVAT credit of the Central Excise Duty paid on inputs was not admissible as per the CENVAT Credit Rules, 2004, which were in force at the material time. However, the Respondent was not collecting VAT from customers and discharging his output tax liability on deemed 10% value addition on purchase value in cash and there was no direct relation of turnover reported in VAT Returns with the amount collected from home buyers. Therefore, credit of VAT paid on purchase of inputs and the VAT turnover was not considered in the working for computation of input tax credit ratio to taxable turnover in pre-GST regime. Further, post-GST, the Respondent was entitled to avail input tax credit of GST paid on all the inputs and the input services including the sub-contracts. From the information submitted by the Respondent for the period from April, 2016 to July, 2019, the details of the CENVAT/input tax credits availed by him, his turnovers from the project "Assotech Windsor Court Society", the ratios of input tax credits to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to July, 2019) periods, have been furnished in Table- 'B' below by the DGAP:-

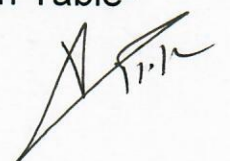


Table-'B'

(Amount in Rs.)

S. No.	Particulars	April, 2016 to June, 2017 (Pre-GST)	July, 2017 to July, 2019 (Post-GST)
(1)	(2)	(3)	(4)
1	CENVAT of Service Tax Paid on Input Services (A)	11,96,771	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	-	-
3	Input Tax Credit of GST Availed (C)	-	95,03,673
4	Total CENVAT/Input Tax Credit Availed (D)= (A+B) or (C)	11,96,771	95,03,673
5	Turnover for Residential Flats as per Home Buyers List (E)	8,22,43,341	5,48,01,103
6	Total Saleable Area (in SQF) (F)	11,04,295	11,04,295
7	Total Sold Area relevant to Turnover (G)	4,06,575	2,57,675
8	Relevant CENVAT/ITC [(H)= (D)*(G)/(F)]	4,40,622	22,17,577
Ratio of CENVAT/Input Tax Credit to Turnover [(I)= (H)/(E)]		0.54%	4.05%

15. From the Table-'B', the DGAP has claimed that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0.54% whereas during the post- GST period (July, 2017 to July, 2019), the percentage was 4.05%. This clearly confirmed that post-GST, the Respondent has benefited from additional input tax credit to the tune of 3.51% [4.05% (-) 0.54%] of the turnover. Accordingly, the profiteering has been examined by the DGAP by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% was payable with the post- GST period (July, 2017 to July, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service levied vide Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, on the basis of the figures contained in Table- 'B', the comparative figures of the ratios of input tax credits availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price

and the excess realization (profiteering) during the post-GST period, has been tabulated by the DGAP in Table- 'C' below:

Table-'C'

(Amount in Rs.)

S. No.	Particulars		Post- GST
1	Period	A	After 01.07.2017
2	Output GST Rate (%)	B	12.00
3	Ratio of CENVAT credit/ Input Tax Credit to Total Turnover as per table - 'B' above (%)	C	4.05
4	Increase in input tax credit availed post-GST (%)	D= 4.05% less 0.54%	3.51
5	<u>Analysis of Increase in input tax credit:</u>		
6	Base Price raised/collected during July, 2017 to July, 2019 (Rs.)	E	5,48,01,103
7	GST @ 12% over Base Price	F=E*12%	65,76,132
8	Total amount to be collected/raised	G=E+F	6,13,77,235
9	Recalibrated Base Price	H= (E)*(1-D) or 96.49% of (E)	5,28,77,584
10	GST @12%	I=H*12%	63,45,310
11	Commensurate demand price	J=H+I	5,92,22,894
12	Excess Collection of Demand or Profiteering Amount	K=G-J	21,54,341

From Table-'C' above the DGAP has contended that the additional input tax credit of 3.51% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices of the flats. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of such additional input tax credit was required to be passed on by the Respondent to the respective recipients.

16. The DGAP has further contended that on the basis of the aforesaid CENVAT/input tax credits availability in the pre and post-GST periods and the details of the amount raised/collected by the Respondent from the Applicant No. 1 and other home buyers during the period from

01.07.2017 to 31.07.2019, the Respondent has benefited by an additional amount of input tax credit, of an amount of Rs. 21,54,341/- which included GST @12% on the base amount of Rs. 19,23,519/-. The buyers and Unit No. wise break-up of this amount has been given in Annexure-16 of the Report. This amount was inclusive of Rs. 58,563/- (including GST on the base amount of Rs. 52,288/-) which was the benefit of input tax credit required to be passed on to the Applicant No. 1, mentioned at Serial No. 217 of Annexure-16.

17. The DGAP has also submitted that on the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the said service has been supplied by the Respondent in the State of Uttar Pradesh only. It has also been observed that the above computation of profiteering was with respect to 168 home buyers, whereas the Respondent has booked 719 units till 31.07.2019 out of which 551 customers who had booked the units and also paid the booking amounts in the pre-GST period, had not paid any consideration during the post-GST period w.e.f. 01.07.2017 to 31.07.2019 (period under investigation). Therefore, if the input tax credit in respect of these 551 units was considered to calculate profiteering in respect of 168 flats where payments had been received after GST, the input tax credit as a percentage of turnover might be erroneous. Therefore, the benefit of input tax credit in respect of these 551 units should be calculated when the consideration was received from such units by taking into account the proportionate input tax credit in respect of such units.

18. The DGAP has further submitted that the Respondent has claimed that he has passed on benefit of Rs. 82,48,485/- to the 208 home buyers.

The Respondent has also submitted copies of Credit Notes and Tax Invoices issued to all the home buyers vide his submissions dated 08.06.2020 vide which he has passed on the benefit of input tax credit, which have been verified by the DGAP and found to be correct. A summary of category-wise input tax credit benefit required to be passed on and the benefit passed on, has been furnished by the DGAP in Table-'D' below:

Table-'D'

(Amount in Rs.)

S. No.	Category of Customers	No. of Units	Area (in Sq. ft.)	Amount Raised/ Received (Post GST)	Benefit to be passed on as per Annex-16	Benefit Passed on by the Respondent	(Excess)/ Shortage of Benefit (profiteering)	Remark
A	B	C	D	E	F	G	H=F-G	I
1	Applicant No. 1	1	1,390	14,89,693	58,563	1,04,279	(45,716)	Excess Benefit passed on. List Attached as Annex-17
2	Buyers other than Applicant No. 1	167	2,56,285	5,33,11,410	20,95,778	70,60,498	(49,64,720)	Excess Benefit passed on. List Attached as Annex-17
3		40	55865	-	-	10,83,708	(10,83,708)	No Consideration received post-GST However, benefit passed on by the Respondent. List Attached as Annex-17.
4		511	747780	-	-	-	-	No Consideration received post-GST. No benefit passed on.
5		25	42975	-	-	-	-	Unsold Units
	Total	744	11,04,295	5,48,01,103	21,54,341	82,48,485	(60,94,144)	

19. From the Table 'D', the DGAP has claimed that the benefit passed on by the Respondent was higher than what he should have passed on, in respect of all the home buyers (Sr. 1, 2 & 3 of above table) by an amount of Rs. 60,94,144/-. The details of this excess benefit passed on by the Respondent, have been given in Annexure-17. Therefore, it appeared that though there was contravention of the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 but the Respondent has *suo moto* rectified his mistake and passed on the benefit of Input

tax credit to all the home buyers, prior to initiation of present proceeding. Therefore, Section 171 of the Central Goods and Services Tax Act, 2017 may not be invoked against the Respondent in the present case.

20. The DGAP has further reported that the benefit of additional input tax credit to the tune of 3.51% of the turnover has accrued to the Respondent post-GST and the same was required to be passed on by the Respondent to the Applicant No. 1 and other recipients. On this account, the Respondent has benefited by an amount of Rs. 21,54,341/- from the Applicant No. 1 and other recipients who were not Applicants in the present proceedings. However, as mentioned in Table-'D' and Para-19 supra, the Respondent has passed on an amount of Rs. 71,64,777/- to 168 home buyers from whom consideration has been received by the Respondent during the period from 01.07.2017 to 31.07.2019. He has also intimated that the present investigation has covered the period from 01.07.2017 to 31.07.2019. Profiteering, if any, for the period post July, 2019, has not been examined as the exact quantum of input tax credit that would be available to the Respondent in future could not be determined at this stage, when the Respondent was continuing to avail input tax credit in respect of the present project. The DGAP has further submitted that it appeared that Section 171(1) of the Central Goods and Services Tax Act, 2017, requiring that *"any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices"*, might not be invoked against the Respondent in the present case.

21. The above investigation Report was received by this Authority from the

DGAP on 06.07.2020 and was considered in its sitting held on 07.07.2020 and it was decided to direct the Applicant No. 1 to submit his consolidated reply/written submissions by 21.07.2020.

22. The Applicant No. 1 vide his e-mail dated 15.07.2020 has made the following submissions:

- a) That there seemed some inconsistencies in Table-A at page 6 & 7 as furnished by the Respondent. At S. No. 11 of Table-A, page 7, balance amount was mentioned in description and against date of receipt, 'Not yet received' was mentioned whereas he had made entire payment of Rs. 77,06,391/- to the Respondent including taxes/GST and other charges and there was no balance amount. The details of all payments made to the Respondent along with receipts issued by the Respondent were enclosed as Annexure-A. Further, No dues certificate issued by the Respondent to his site office at the time of possession was enclosed as Annexure-B. Generally, all builders allowed possession only after receipt of full amount and the Respondent had also collected the full amount before possession, even though he had not yet provided him covered car parking, electrical dual source meter, permanent electricity connection etc. for which payment has already been collected by the Respondent long time back.
- b) That at S. No. 7 of Table-A, page 7, penalty on delayed possession of Rs. 55,600/- was mentioned. The Respondent has delayed in giving possession and hence, the Respondent was liable to pay penalty for delay in possession as per the builder-buyer agreement

but the Respondent has not paid any penalty for delayed possession.

- c) That at S. No. 10 of Table-A, page 7 and Para 14, page 9, it was mentioned that an amount of Rs 1,04,279/- has been given by the Respondent to him on 19.04.2019 vide receipt No. 1328/00068/19-20 on account of benefit arising out of GST input tax credit. It was requested to arrange to provide him the said receipt as submitted by the Respondent and whether this amount was paid through cheque or online and details thereof, as he was not aware of such payment to him and also, he didn't receive any communication from the Respondent towards the same. Further, the date mentioned for passing on the benefit of input tax credit was 19.04.2019, which was after submission of his initial application on 10.10.2018.
- d) That if the amount mentioned at S. No. 7, 10 & 11 was excluded from the total amount of Table-A, the amount came out to Rs. 75,56,381/- towards booking amount, possession charges and other charges (including tax/GST) as per the information submitted by the Respondent, whereas he has paid Rs. 77,06,391/- towards these heads, which could be verified from the receipts issued by the Respondent, as enclosed as Annexure-A.
- e) That various annexures were mentioned in the Report, however, due to unavailability of these annexures, he could not examine them.

23. Supplementary Report was sought from the DGAP on the submissions made by the Applicant No. 1. In response, the DGAP vide his Report dated 06.08.2020 has furnished the following reply:-



- a. That vide the aforesaid submission dated 15.07 2020, the Applicant No. 1 has raised his concern over balance amount payable to the Respondent by him, deficiency in facilities, penalty for delayed possession and receipt for GST input credit benefit. In this regard, it was observed from the reconciliation statement of Applicant No. 1 that the Respondent has claimed outstanding amount of Rs. 2,09,133/- which was mainly on account of interest charged on delayed payments and other possession charges. Further, the provision of facilities was not covered under the Anti-profiteering measures provided in the Central Goods and Services Tax Act, 2017 and the Rules made thereunder. Hence, the issue of deficiency was outside the mandate of the DGAP. The Applicant No. 1 might be advised to approach the competent forum to seek redressal. Further, the copy of the receipt no. 1328/00068/19-20 dated 19.04.2019 was sent as Annexure-10 & 12 of the DGAP Report dated 29.06.2020.
24. The Applicant No. 1 vide his e-mails dated 24.08.2020 and 29.09.2020 has requested to provide the remaining annexures attached with the DGAP's Report for preparation of his comprehensive reply. The Applicant No. 1 has further submitted that certain information provided by the Respondent (as also enclosed as two Annexures as provided along with DGAP's Supplementary Report dated 06.08.2020) was incorrect. As mentioned in his reply dated 15.07.2020, there was no amount due from his side at the time of possession in October, 2017 and he has submitted no dues certificate issued by the Respondent himself along with his response dated 15.07.2020. He would provide further documents to

substantiate the same. Hence, there was no question of providing any discount to him on 19.04.2019, two years after the possession when no amount was due and the internally/unilaterally created GST ITC Discount Voucher (as provided to him along with DGAP's Supplementary Report dated 06.08.2020) submitted by the Respondent seemed an attempt to circumvent the non-payment of input tax credit that was due.

25. The Applicant No. 1 vide his e-mail dated 08.10.2020 has further informed that there were no dues pending from the Respondent and he has received the requisite benefit of input tax credit and therefore, he didn't want to pursue the matter further. Therefore, he requested to close the proceedings.

26. This Authority has carefully examined the DGAP's Report and the written submissions of the Applicant No. 1 placed on record and it is revealed that an application was filed by the Applicant No. 1 before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, alleging profiteering by the Respondent in respect of purchase of Flat No. G-A0009, in the Respondent's project "Assotech Windsor Court Society" situated in Sector-78, Noida. The Applicant No. 1 had also alleged that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the flat and had charged GST @12% on the amount paid by him in the post GST period. The above application was examined by the Standing Committee and after prima facie having satisfied itself that the Respondent has apparently not passed on the above benefit, the application was forwarded to the DGAP for detailed investigation under

Rule 129 (1). Accordingly, the DGAP has conducted investigation w.e.f. 01.07.2017 to 31.07.2019.

27. It is also revealed from the Report that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 0.54% and during the post-GST period (July-2017 to July, 2019), it was 4.05%, as per Table-B supra, which shows that post-GST, the Respondent has been benefited from additional ITC to the tune of 3.51% (4.05% - 0.54%) of his turnover and the same was required to be passed on to the Applicant No. 1 and the other recipients as per the provisions of Section 171 (1). The DGAP has calculated the amount of ITC benefit to be passed on to the Applicant No. 1 and other recipients as Rs. 21,54,341/- vide Table- C Supra. The buyer and Unit No. wise break-up of this amount has been given in Annexure-16 of the DGAP's Report. This amount is inclusive of Rs. 58,563/- (including GST on the base amount of Rs. 52,288/-) which is the benefit of input tax credit required to be passed on to the Applicant No. 1, mentioned at Serial No. 217 of Annexure-16 of the Report.
28. It is further revealed from the Report that the Respondent has claimed during the investigation that he has passed on benefit of Rs. 82,48,485/- to the 208 home buyers. The DGAP vide Para 21 of his Report has stated that the "Respondent has submitted copies of Credit Notes, tax invoices for all the home buyers vide it's submission dated 08.06.2020 vide which they have passed on the benefit of input tax credit and the same were duly verified by Directorate General of Anti-Profiteering and found to be correct."

29. The DGAP vide Table-D of the Report has also furnished details of the benefit of ITC passed on to the Applicant No. 1 and claimed that he was entitled to the benefit of Rs. 58,563/- but an amount of Rs. 1,04,279/- was passed on to him and hence an amount of Rs. 45,716/- was passed on in excess to him. Similarly, it has been reported that an amount of Rs. 20,95,778/- was required to be passed on to 167 flat buyers who had paid their instalments in the post-GST period but actually an amount of Rs. 70,60,498/- was passed on to them and hence, an amount of Rs. 49,64,720/- was passed in excess to them. An amount of Rs. 10,83,708/- has been reported to have been passed on to other 40 flat buyers who had not paid any consideration during the post-GST period. Accordingly, an amount of Rs. 82,48,485/- has been reported to have been passed on by the Respondent as benefit of ITC, including an excess amount of Rs. 60,94,144/-, by the DGAP as per Annexure-17 of the Report.
30. However, the DGAP has not furnished even a single acknowledgement/receipt from the flat buyers who have been reported to have received the benefit of ITC. Mere mentioning of Credit Notes and the Tax Invoices in the Report, which were prepared by the Respondent himself, cannot be taken to be the reliable and cogent proof of having passed on the benefit of ITC unless it is confirmed by furnishing receipts from the flat buyers. In the absence of documentary proof from the flat buyers it cannot be construed that the benefit of ITC has been passed on.
31. It is also apparent from the Receipt No. 1328/00068/19-20 dated 19.04.2019 that it has been issued by the Respondent mentioning that an amount of Rs. 1,04,279/- has been received by the Respondent on

account "GST ITC Discount Benefit" from the Applicant No. 1 and not paid by the Respondent to the above Applicant. It has also not been clarified whether this amount has been adjusted against the payment which was due from the Applicant No. 1 and on which date it was adjusted.

32. It is also apparent from the submissions dated 24.08.2020 of the Applicant No. 1 that he has claimed that "As mentioned in my reply dated 15.07.2020 there was no amount due from my side at the time of possession in October, 2017 and I submitted no dues certificate issued by M/s Assotech itself along with my response dated 15.07.2020. I will provide further documents to substantiate the same. Hence, there is no question of providing any discount to me on 19.04.2019 (two years later than the possession when no amount was due) and the internally/unilaterally created GST ITC Discount Voucher (as provided to me along with order sheet dated 13.08.2020) submitted by M/s Assotech seems an attempt to circumvent the non-payment of Input Tax Credit that was due." Therefore, it is clear that neither the receipt of having received the benefit of ITC by the above Applicant has been furnished by the DGAP along with his Report nor the receipt dated 19.04.2019 has been issued by the above Applicant rather it has been issued by the Respondent himself. It has also not been explained by the DGAP in what manner the Respondent has passed on the above benefit after lapse of a period of 2 years after he had handed over the possession of the flat to the above Applicant, after full payment of the consideration.

33. It is further evident that the DGAP has not mentioned in his Report

from which date the benefit of ITC was passed on by the Respondent to the flat buyers and whether the interest due to them for delayed payment was also paid to them by the Respondent @18% PA as per the provisions of Rule 133 (3) (b) read with Section 171 (1).

34. It is also clear from the Report that the DGAP has conducted the present investigation w.e.f. 01.07.2017 to 31.07.2019 and the above project is still being executed by the Respondent and he is therefore, availing benefit of ITC on it.

35. Based on the above findings the Report dated 29.06.2020 cannot be accepted and the DGAP is directed to further investigate the matter as per the provisions of Rule 133 (4) of the above Rules on the following issues and furnish his fresh Report in terms of Rule 129 (6):-

- (i) On which date the Respondent has passed on the benefit of ITC to the flat buyers? A receipt be obtained from each flat buyer who has been claimed to have been passed on the benefit of ITC by the Respondent and furnished with the Report.
- (ii) Whether the Respondent has paid interest @18% to the flat buyers from the date from which he has received the excess amount till the date of passing on the benefit of ITC and what was the amount thereof in respect of each buyer?
- (iii) In case the Respondent has not paid the interest then what is the amount due to each flat buyer?
- (iv) In what manner the Respondent has paid the benefit of ITC to the Applicant No. 1 on 19.04.2019 when he had already handed over possession of the flat during October, 2017 and had also

issued no dues certificate on 24.10.2017.

- (v) Whether the Respondent has availed benefit of ITC w.e.f. 01.08.2019 and whether he is liable to pass on the same. In case it is so the DGAP shall compute the benefit to be passed on to the each flat buyer along with the interest, from the above date till 31.12.2020 or till the Completion Certificate is obtained by the Respondent whichever is earlier.

36. The DGAP will be at liberty to seek assistance of the filed Tax Authorities of the Central Government and the State of Uttar Pradesh during the course of the investigation as per the provisions of Rule 136. The Respondent is also directed to provide all assistance to the DGAP.

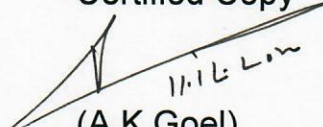
37. A copy of this order be sent to the Applicants, the Respondent and the concerned Commissioner CGST/SGST for further action. File of the case be consigned after completion.

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



Sd/-
(Amand Shah)
Technical Member

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

Certified Copy

(A.K Goel)
NAA, Secretary

F. No. 22011/NAA/166/Assotech/2020/6495-96
Copy To:-

Dated: 11.12.2020

1. M/s Assotech Ltd., H-127, Ground Floor, Sector-63, Noida-201309.
2. Sh. Risabh Jain, J-19, UGF, Naveen Shahdara, Delhi- 110032.
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.

o/c

4. The Commissioner of Commercial Taxes, U.P. Commercial Tax head office Vibhuti Khand, Gomti Nagar, Lucknow, U.P.- 226010.
5. The Principal Commissioner, CGST & Central Excise, Lucknow Zone, C-56/42, Sector-62, Noida, Uttar Pradesh-201309.
6. NAA Website/Guard File.


11.12

A. K. GOEL
SECRETARY, NAA