

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

Case No. 96/2020
Date of Institution 05.04.2019
Date of Order 11.12.2020

In the matter of:

1. Sh. Mohit Arora, 2C-144, kalpataru Estate, JVLR Road near Majas Bus Depot, Andheri East, Mumbai -400093.
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 Lodha Developers Ltd., Lodha Excelus, N. M. Joshi Marg, Mahalakshmi, Mumbai – 400011.
2. M/s. Lodha Impression Real Estate Private Limited, 412, Floor-4, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400001.

Respondents

Quorum:-

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


11.12

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 28.11.2018, 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 flat No. 704, Building-2, Lodha Eternis, Andheri East Mumbai, in "Lodha Eternis" 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 ITC to the above Applicant and other buyers amounting to Rs. 1,90,04,456/- 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 28.11.2018 had issued notice on 05.12.2018 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 this

Authority vide its Order No. 48/2019 dated 03.10.2019 had determined the profiteered amount as Rs. 1,90,04,456/- 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).

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 GST on the additional amount realised by them between the period from 01.07.2017 to 31.08.2018 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 18.12.2019 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 dated 10.02.2020 has interalia 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 Central Government vide Notification No. 01/2020- Central Tax dated 01.01.2020 has appointed the 1st day of January, 2020 as the date on which the provisions of Section 92 to 112 of the Finance (No. 2) Act, 2019 shall come into force. He has further submitted that provisions of Section 171 (3A) inserted vide Section 112 of the

Finance Act, 2019 are effective prospectively from 01.01.2020 and they cannot have retrospective operation. He has 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 the provisions of Section 171 (3A) have come into force from 01.01.2020 and they cannot have retrospective operation. He has also submitted that penalty should only be imposed when there was mensrea and deliberate attempt to violate the provisions of law.

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 ITC to his buyers 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.
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) has been added in Section 171 of the CGST Act, 2017 under which penalty can 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 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 18.12.2020 issued to the Respondent for imposition of penalty under Section 171 (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/-
(J. C. Chauhan)
Technical Member

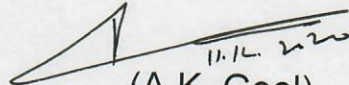
Sd/-
(Dr. B. N. Sharma)
Chairman



Sd/-
(Amand Shah)
Technical Member

Certified copy

o/c


(A.K. Goel)
Secretary, NAA

F.No. 22011/NAA/116/Lodha/2018 /6498-99

Dated: 11.12.2020

Copy to:-

1. M/s. Lodha Developers Limited, Lodha Excelus, N. M. Joshi Marg, Mahalaxmi, Mumbai-400011.
2. M/s. Lodha Impression Real Estate Private Limited, 412, Floor-4 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai-400001
3. Sh. Mohit Arora, 2C-144, kalpataru Estate, JVLR Road near Majas Bus Depot, Andheri East, Mumbai -400093.
4. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
5. Guard File/ NAA Website.


A. K. GOEL
SECRETARY, NAA