

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

Case No. 98/2020  
Date of Institution 25.06.2019  
Date of Order 11.12.2020

In the matter of:

1. Sh. Potnoor Naveen, B 503, B Wing, Gokuldham, Plot No 3, Sec-35D, Kharghar, Navi Mumbai- 410210.
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 Caroa Properties LLP, Godrej One, 5<sup>th</sup> Floor, Pirojshanagar,  
Eastern Express Highway, Vikhroli, East Mumbai-400079.

Respondent

Quorum:-

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

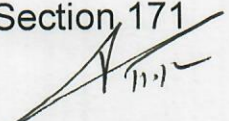


Present:-

1. None for the Applicants
2. None for the Respondent

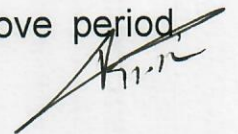
ORDER

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 24.12.2019, 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 as well as other home buyers 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 buyers amounting to Rs.9,03,44,071/-, 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 25.06.2019 had issued notice dated 02.07.2019 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



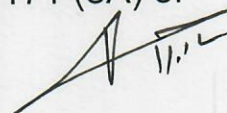
(1) should not be fixed. After hearing both the parties this Authority vide its Order No. 78/2019 dated 24.12.2019 had determined the profiteered amount as Rs. 9,03,44,071/-, as per the provisions of Section 171 (2) of the above Act read with Rule 133 (1) of the CGST Rules, 2017 pertaining to the period 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 the Respondent had not passed on the benefit of ITC 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 10.02.2020 asking him to explain why the penalty mentioned in Section 171 (3A) of the CGST Act, 2017 read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.
5. The Respondent vide his submissions dated 26.06.2020 has stated 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) inserted vide Section 112 of the Finance Act, 2019 are effective prospectively from 01.01.2020. He has further submitted that the period of investigation covered by Order No. 78/2019 dated 24.12.2019 was from July, 2017 to December 2018 and hence the above penalty provision was not in force during the above period.



therefore, no penalty could be imposed on him. He has also submitted that penalty should only be imposed when there was mens rea 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 Input tax Credit (ITC) to the above Applicant as well as other buyers who had purchased flats from the Respondent 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.
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 31.12.2018 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 10.02.2020 issued to the Respondent for imposition of penalty under Section 171 (3A) of



the CGST Act 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.

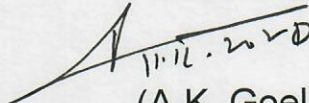
Sd/-  
(Dr. B. N. Sharma)  
Chairman

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



Sd/-  
(Amand Shah)  
Technical Member

Certified copy

  
11.12.2020  
(A.K. Goel)  
Secretary, NAA

PLC

F.No. 22011/NAA/52/Caroa/2019 /6501

Dated: 11.12.2020

Copy to:-

1. M/s Caroa Properties LLP, Godrej One, 5<sup>th</sup> Floor, Pirojshanagar, Eastern Express Highway, Vikhroli, East Mumbai-400079.
2. Sh. Potnoor Naveen, B 503, B Wing, Gokuldham, Plot No 3, Sec-35D, Kharghar, Navi Mumbai- 410210.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Guard File/ NAA Website.

  
A. K. GOEL  
SECRETARY, NAA