

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDERTHE

CENTRAL GOODS & SERVICES TAX ACT, 2017

I.O. No. : 04/2022
Date of Institution : 27.11.2020
Date of Order : 10.05.2022

In the matter of:

1. Shri Jitendra Kumar, Flat No. A-01, Deepak Ragmala Anushakti Nagar, Navi Mumbai, Maharashtra-400094.
2. Director General of Anti-Profiteering, CBIC, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Adhiraj Constructions Pvt. Ltd., 303, Sharda Chambers, 15 New Marine Lines, Mumbai, Maharashtra-400020.

Respondent

Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present:-

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



ORDER

1. Present Report dated 27.11.2020 had been furnished by 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 case are that the Applicant No. 1 had filed an application under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he had purchased a flat in the Respondent's project "Samyama City Tower 1-D" and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the prices.

2. The DGAP in its report dated 27.11.2020, inter-alia, has stated that:-

(i) the aforesaid Application was examined by the Standing Committee on Anti-profiteering in the meeting held on 13.09.2019 and the minutes of which were received by the DGAP on 09.10.2019, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of Input Tax Credit had been passed on by the Respondent to the Applicant No. 1 in respect of construction service supplied by him (Respondent).

(ii) the Standing Committee has forwarded the following documents along with the minutes of meeting:-

- (a) Copy of complaint.
- (b) Copy of Tax Invoice issued in the name of the Applicant No. 1.
- (c) Applicant No. 1's ledger statement.
- (d) Demand letter for the booked flat in the name of the Applicant No. 1.

(iii) after receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 23.10.2019, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price 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 supporting documents. Vide the said Notice; the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period 30.10.2019 to 31.10.2019. However, the Respondent did not avail of this opportunity.

(iv) the period covered by the current investigation was from 01.07.2017 to 30.09.2019.

(v) the time limit to complete the investigation was 08.04.2020. However, in terms of Notification No. 35/2020-Central Tax dated 03.04.2020, where, any time limit for completion/furnishing of any Report, had been specified in, or prescribed or notified under the CGST Act, 2017 which falls 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 had not been made within such time, then, the time limit for completion or compliance of such action, was extended up to the 30.06.2020. Further, vide Notification No. 55/2020-Central Tax dated 27.06.2020 and by Notification No.65/2020- Central Tax dated 01.09.2020 the time limit for compliance was extended up to 30.11.2020. This Authority, vide its Order dated 26.08.2020 in terms of Rule 129(6) of the Rules allowed further extension of three months.

(vi) in response to the Notice dated 23.10.2019, the Respondent submitted his reply vide letters and e-mails dated 05.11.2019, 27.12.2019, 20.01.2020, 11.02.2020, 03.07.2020, 24.07.2020, 28.07.2020, 30.07.2020, 31.07.2020, 05.08.2020 and 15.10.2020. The detailed submissions of the Respondent to the DGAP have been summed up below wherein, inter-alia, it was stated that:-

- a) the Respondent had duly passed on the benefit of ITC to his customers by way of commensurate reduction in prices. For booking made after 1st July, 2017, booking price had been reduced factoring benefit from the introduction of GST. The Applicant No. 1 had made booking after 1st July, 2017; therefore the question of passing on of the benefit, on introduction of GST did not arise.
- b) in respect of a real estate developer, statutory provisions of Anti-profiteering in GST law meant that if developer had benefited from the introduction of GST in terms of lower Rate of tax, or additional ITC, the benefit should be passed on to the homebuyers. Question of passing on of benefit on introduction of GST in terms of lower rate of tax, or additional ITC for the units booked before GST came into force i.e. 1st July, 2017. The Respondent had duly passed on the benefit of ITC to his customers by way of commensurate reduction in prices.
- c) the details of VAT, Service Tax, ITC of VAT, Cenvat Credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to September, 2019 for the project "Samyama City Tower 1-D" are furnished as below:



Period	Statute	Samyama City Tower I-D		Other Projects	
		Gross Taxable turnover (Rs.)	ITC/CENVAT available (Rs.)	Gross Taxable turnover (Rs.)	ITC/CENVAT available (Rs.)
2016-17	VAT	0	0	2514640059	0
	Service Tax	0	0	1214219097	50423302
April, 2017 to June, 2017	VAT	0	0	1403895427	0
	Service Tax	0	0	248412871	15911144
July, 2017 to March, 2018	GST	82356350	15651943	547833494	144070899
April, 2018 to March, 2019	GST	397309820	11609954	1703320000	265892292
April, 2018 to Sept, 2019	GST	245311682	14440860	1138733.904	81166210

d) the said project had been registered and approved by the Maharashtra Real Estate Regulatory Authority (MahaRERA), under Section 5 of the Real Estate Regulation & Development (RERA) Act, 2016 under project registration number P52000014856. The Registration is valid for a period commencing from 08.01.2018 and ending with 31.01.2023 unless renewed by the Maharashtra RERA in accordance with Section 5 of the RERA Act read with Rule 6.

(vii) vide the aforementioned letters, the Respondent submitted following documents/ information:

- (a) Copies of GSTR-1 Returns for the period July, 2017 to September, 2019.
- (b) Copies of GSTR-3B Returns for the period July, 2017 to September, 2019.
- (c) Electronic Credit Ledger for the period July, 2017 to September, 2017.
- (d) Brief Profile of the Respondent.
- (e) Copy of GSTR-9 Return for the period July, 2017 to March, 2018.
- (f) Copies of VAT Returns (including all annexure) and Service Tax Returns for the period April, 2016 to June, 2017.
- (g) Copies of all demand letters issued and sale agreement made with the Applicant No. 1.

- (h) Copy of Balance Sheet/Profit & Loss/Cash Flow Statement/Notes to Accounts for FY 2016-17, 2017-18 & 2018-19.
- (i) Details of VAT, Service Tax, ITC of VAT, Cenvat Credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to September, 2019 for the project "Samyama City Tower 1-D" and other projects.
- (j) Cenvat/ITC Register for the FY 2016-17, 2017-18, 2018-19 and for the period April, 2019 to September, 2019.
- (k) List of home buyers in the project "Samyama City Tower 1-D".
- (l) Details of copy of project Report submitted to RERA including all periodic progress submitted till September, 2019.
- (m) Details of Applicable tax rates, Pre-GST and Post-GST.

(viii) The Respondent was informed that if any information/documents was provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent did not submit any summary.

(ix) vide e-mail dated 11.11.2020, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 16.11.2020 or 17.11.2020, which the Applicant No. 1 did not avail of.



(x) The subject Application, various replies of the Respondent and the documents/ evidences on record had been carefully examined. The main issues for determination were:-

- (i) Whether there was benefit of reduction in Rate of tax or ITC on the supply of Construction Service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- (ii) Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in

terms of Section 171 of the CGST Act, 2017.

- (xi) According to para 5 of Schedule-III of the CGST 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, sale of building*". Further, clause (b) of Paragraph 5 of Schedule II of the CGST 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 his first occupation, whichever was earlier*". Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 17 (2) "*Where the goods or services or both was 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 exempted supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as was attributable to the said taxable supplies including zero-rated supplies*".

Section 17 (3) "*The value of exempted supply under sub-section (2) shall be such as maybe prescribed and shall include supplies on which the recipients 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 ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post- GST.

- (xii) Prior to implementation of GST w.e.f. 01.07.2017, Service Tax on Construction Service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation

of GST w.e.f 01.07.2017, GST on Construction Service was chargeable @ 18% (effective Rate was 12% in view of 1/3rd abatement on value) vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on Construction Service in respect of affordable and low-cost houses up to a carpet area of 60 square meters was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Thus, it was observed that in the case of Construction Service the effective rate of tax (@ 4.5%) in the pre-GST era was lower than the effective rate of tax @ 8% or 12% as applicable, in post-GST era.

3. The DGAP in it's report dated 27.11.2020 stated that upon scrutiny of the documents submitted by the Respondent, it was observed that:-

(i) the Applicant No. 1 had booked the Flat No. ID-2410 on 10.02.2018 after the introduction of GST.

(ii) to verify correctness of the statement of the Respondent with respect to RERA Registration claimed by him, the official website of Maharashtra RERA was visited and it was observed that there were 10 registrations in the name and address of the Respondent and the details have been furnished as under: -

Sr.No.	Project Name	Registration No.	Project Status
1.	Adhiraj Samya Tower 2B	P52000003039	Ongoing project
2.	Adhiraj Samya Tower 2A	P52000007539	Ongoing project
3.	Adhiraj Samya Tower 1A	P52000004449	Ongoing project
4.	Adhiraj Samya Tower 3B	P52000004189	Ongoing project
5.	Zinnia	P52000009171	Ongoing project
6.	Adhiraj Samya Tower 1C	P52000014859	New project
7.	Adhiraj Samya Tower 1B	P52000004493	Ongoing project
8.	Adhiraj Samya Tower 1D	P52000014856	New project
9.	Adhiraj Capital City Meraki	P52000022975	New project
10.	Adhiraj Capital City Oreka	P52000022907	New project

(iii) from the above said facts , it was observed by the DGAP that:-

- (a) RERA Registration details indicated that the projects 'Samyama City Tower 1-D' started in January, 2018.
- (b) The details submitted by the Respondent at Table 'A' of the report dated 27.11.2020 mentioned that the CENVAT/VAT upto June, 2017 was 'Nil' for the project under investigation, though he had shown availability of CENVAT/VAT with respect to other projects.
- (c) The Respondent had given the Homebuyers list which showed that the first booking was on 19.01.2018.
- (d) The Applicant No. 1 had not provided any evidence to prove that the project was started in pre-GST era.

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(iv) There was no sale or even booking of the flats in the said project in the pre-GST regime. Further, the first booking made by the Respondent in this project was on 19.01.2018 i.e. in post-GST period. On scrutiny of the documents submitted by the Respondent, it was observed that the project "Samyama City Tower 1-D" was indeed launched in the post-GST era and there was also no evidence given by the Applicant No. 1 to prove otherwise. There was no unit sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering. In the instant case, RERA registration, approval of project for a period commencing from 08.01.2018 to 31.01.2023 unless renewed by Maharashtra RERA, allotment of units, receipt of payments etc. had taken place post-GST. Neither the Applicant No. 1 nor the Respondent had given any document to prove that any booking for the project was done in pre-GST period. Therefore, there was no pre-GST tax rate or ITC structure which could be compared with the post-GST tax rate and ITC. There was no benefit of CENVAT to compare ITC which was available to him post implementation of GST while fixing the base price. It was also observed that the price charged for the said residential flat was for a new project developed and constructed by the Respondent after implementation of GST. Hence, it appeared that the anti-profiteering provisions were not applicable to the impugned project under

investigation.

(v) Section 171 of the CGST Act, 2017 comes into play in the event when there is a reduction in the rate of tax or there is an increase in the benefit of ITC. In the present case, since the project itself was launched after implementation of GST w.e.f. 01.07.2017, there was no pre-GST tax rate or ITC availability that could be compared with the post-GST tax rate and ITC, to determine whether there was any benefit that was required to be passed on by way of reduced price.

(vi) On the basis of the details of outward supply of construction service submitted by the Respondent, it was also observed that the service was supplied in the State of Maharashtra only.

4. The DGAP in its report dated 27.11.2020 has concluded that Section 171 (1) of the CGST 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"*, was not applicable in the present case.

5. The above investigating report was received by this Authority from the DGAP on 27.11.2020 and was considered in its sitting and it was decided to ask the Applicant No. 1 to file his consolidated written submissions in respect of the Report of the DGAP. Notice dated 04.12.2020 was also issued to the Applicant No. 1 directing him to explain why the Report dated 27.11.2020 furnished by the DGAP should not be accepted.?

6. The Applicant No. 1 vide his email dated 13.12.2020 stated that he had accepted the Report of the DGAP and was ready to abide by the decision made by the Competent Authority.

7. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022 and the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for further proceedings vide Order dated 23.03.2022 and the Applicant No. 1 was given one more opportunity to file written submissions against the

DGAP's Report. However, the Applicant No. 1 vide his email dated 29.03.2022 reiterated his earlier submissions made via email dated 13.12.2020.

8. This Authority has carefully examined the DGAP's Report including documents enclosed therewith and the written submissions of the Applicant No. 1. It is noted that the Respondent is in the real-estate business and has developed his project "Samyama City Tower 1-D" in Raigad, Maharashtra. It is also on record that the Applicant No. 1 has filed a complaint alleging that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in the price of the Flat No. 1D-2410 in Tower 1-D purchased from the Respondent in his project "Samyama City Tower 1-D" in terms of Section 171 of the CGST Rules, 2017.

9. It is also noted that the DGAP, after a detailed investigation, has found that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 as there was no sale or booking of flats in the said project in pre-GST regime. Further, the first booking in the project (Samyama City Tower 1-D) was made by the Respondent in the project on 19.01.2018 i.e. in post-GST period. Further, there was no unit sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering. The Maharashtra Real Estate Regulatory Authority (MahaRERA) had given approval of project for a period from 08.01.2018 to 31.01.2023 unless renewed. Allotment of units, receipt of payment, etc. had taken place post-GST. There was no pre-GST tax rate/ details or ITC credit structure/details which could be compared with the post-GST tax rate and ITC. There was no benefit of CENVAT to compare ITC which was available to the Respondent post implementation of GST while fixing the base price in this case.

10. It is observed from the DGAP's report and documents submitted during the investigation that the instant project has received RERA approval for the period 08.01.2018 to 31.03.2023. It is also noted that all bookings have been made after GST was introduced and that all payments have been received after 01.07.2017.

11. However, the Authority also observes that provision of the RERA

Act, 2016 make it mandatory for a real estate developer/promoter to maintain separate bank accounts for each of his projects registered separately under the RERA Act, 2016. In the case of the Respondent, the above provision implies that he was required to maintain ten separate escrow/bank accounts in respect of all projects as mentioned in 'Table-B' of the DGAP report dated 27.11.2020. However the DGAP's Report has no mention of this aspect. As the Respondent had obtained ten separate RERA registrations for his ten projects, he should have maintained separate escrow/bank accounts.

12. It is also noted that the Respondent has single GST registration for the all ten projects and is maintaining a joint ITC Register and is availing ITC on all the projects. He is executing all projects from a common pool of ITC, to discharge his tax output liability on these projects through the combined GSTR-3B Returns and that he has availed substantial CENVAT/VAT credit in pre and post GST period in respect of these other projects. In view of the above said facts, there exist reasons to believe that other nine projects on which the Respondent is availing ITC from the common pool may be investigated to determine whether he has passed on the benefit of ITC to the buyers of each project, which are being executed by him.



13. For the reasons discussed earlier i.e. RERA approval of the project *Samyama City Tower 1-D* was given for the period 08.01.2018 to 31.3.2023, that all bookings and fixation of price have been made after GST was introduced and that all payments have been received after 01.07.2017; as such in the given facts and circumstances, the Authority finds that no case of profiteering under section 171(1) of the CGST Act, 2017 can be made out against the Respondent in respect of "*Samyama City Tower 1-D*".

14. However, the Authority finds that the Respondent is also executing other nine projects and the issue of profiteering has not been examined by the DGAP in respect of them. In view of the observation made in the earlier paragraph, the Authority finds that there exists reason to investigate other nine projects for the purpose of determination of profiteering. Accordingly, this Authority as per the provisions of Section 171 (2) of the above Act take *suo-moto* cognizance of the same and in

terms of Rule 133(5) of the said Rules, directs the DGAP to conduct investigation in respect of the other nine projects and submit Report to this Authority for determination whether the Respondent is liable to pass on the benefit of ITC in respect of the other 9 projects/towers as mentioned in 'Table-B' of the DGAP's Report to the buyers or not as per the provisions of Section 171 (1) of the above Act.

15. The Respondent is directed to extend all assistance to the DGAP and furnish them necessary documents or information as required during the course of the investigation.

16. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020, while taking *suo-moto* cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations prescribed under General Law of Limitation or any other specified laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

"The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

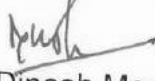
17. A copy of this order be supplied to the Applicants and the Respondent. File of the case be consigned after completion.

S/d
(Amand Shah)
Technical Member &
Chairman

S/d
(Pramod Kumar Singh)
Technical Member

S/d
(Hitesh Shah)
Technical Member

Certified copy


(Dinesh Meena)
NAA, Secretary

O/c



File No. 22011/NAA/230/Adhiraj/2020/4751 - 4756 Date: 10.05.2022

Copy To:-

1. M/s Adhiraj Constructions Pvt. Ltd., 303, Sharda Chambers, 15 New Marine Lines, Mumbai, Maharashtra-400020.
2. Shri Jitendra Kumar, Flat No. A-01, Deepak Ragmala Anushakti Nagar, Navi Mumbai, Maharashtra-400094.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. The Commissioner of State Tax, 8th floor, Goods and Services Tax (GST), GST Bhavan, Mazgaon, Mumbai - 400010.
5. The Chief Commissioner, CGST, Mumbai Zone, GST Building, 115 M.K. Road, Opp. Churchgate Station, Mumbai - 400020.
6. Guard File.