BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No.	05/2022
Date of Institution	27.11.2020
Date of Order	09.05.2022

In the matter of:

1. Sh. Ashish Jain through Sh. Rachit Jain, 145, Ward No. 5, Mohalla Shakti Nagar, Kashipur, Udham Singh Nagar, Uttarakhand- 244713.
2. Smt. Ritika Barua, ritika.barua@gmail.com
3. 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

M/s GLS Infraprojects Pvt. Ltd., 311, 3rd Floor, JMD Pacific Square, Sector-15, Part-II, Gurgaon, Haryana-122001.

Respondent

Quorum:-

Sh. Amand Shah Chairman & Technical Member

Sh. Pramod Kumar Singh, Technical Member

Sh. Hitesh Shah Technical Member

Present:-

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

ORDER

1. The Present Report dated 27.11.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) in response to the Authority's Interim Order no. 23/2019 dated 26.12.2019 passed under Rule 133(4) of the Central Goods & Service Tax (CGST) Rules, 2017. The said order was issued to refer back the DGAP's Report dated 25.06.2019 which was furnished by the DGAP after investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017.
2. The Brief facts of the case are that the Haryana State Screening Committee on Anti-profiteering, vide the minutes of its meeting held on 13.12.2018 had referred an application dated 16.11.2018 filed by Applicant No. 1, to the Standing Committee on Anti-profiteering under Rule 128 (2) of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the "Rules"), alleging profiteering by the Respondent, in respect of purchase of Flat No. A-306, 3rd Floor, Tower A, Gurugram, Haryana in his project "Avenue–51". Along with the application, the Applicant No. 1 had submitted copies of his correspondences held with the Respondent. The said reference was examined by the Standing Committee on Anti-profiteering in the meeting held on 13.12.2018 and it was decided to forward

the same to the DGAP to conduct a detailed investigation in the matter.

3. On receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 (3) of the above Rules was issued by the DGAP on 18.01.2019, calling upon the Respondent to reply as to whether he admitted that he had charged 12% GST post 25.01.2018 when the GST rate on affordable housing projects was reduced from 12% to 8%, vide Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018 and whether the benefit of input tax credit had not been passed on to the above Applicant by way of commensurate reduction in price and if so, suo moto determine the quantum thereof and indicate the same in his reply to the Notice and to furnish all supporting documents. The Respondent and the Applicant No. 1 were also given opportunity to inspect the non-confidential evidences/information which they chose not to avail.

4. The DGAP has submitted that the Respondent has contended that anti-profiteering provisions could not be applied to the project "Avenue-51" as this project was not in existence before the implementation of the GST and was launched in the GST regime. The Respondent has also stated that the draw of lots for selection of the allottes took place on 08.08.2017 and the Environment Clearance etc., required for construction of the project was received on 21.07.2017. On scrutiny of the documents (Home buyer's list and allotment letter issued to the Applicant No. 1 dated 08.08.2017) submitted by the Respondent, the DGAP has observed that the project "Avenue-

51" was launched in the post-GST era and there was no price history of the units having been sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering.

5. The DGAP further submitted that in the instant case, the draw of lots, allotment of units and receipt of payments had taken place in the post-GST era. Therefore, there was no pre-GST tax rate or input tax credit structure which could be compared with the post-GST tax rate and input tax credit. He has further submitted that the Respondent has charged GST at the lower rate of 8% w.e.f 25.01.2018, in terms of Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018.

6. The DGAP has further stated that as the project was launched after implementation of the GST w.e.f. 01.07.2017, apparently there was no pre-GST tax rate or input tax credit availability that could be compared with the post-GST tax rate and the input tax credit, to determine whether there was any benefit that was required to be passed on by way of reduced price. Also the Respondent has reduced the GST rate from 12% to 8% w.e.f. 25.01.2018; in terms of Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018. Therefore, he has claimed that the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 are not attracted in the present case.

7. The earlier Report dated 25.06.2019 was considered by the Authority and hearings were accorded to both Applicant No. 1 and Respondent on 23.08.2019, 14.10.2019 and 22.10.2019. After careful consideration of the DGAP's Report and the written

submissions filed by both the Applicant No. 1 and the Respondent the Authority referred the case back to the DGAP for further investigation under Rule 133(4) of the Rules on counts as mentioned from para 11 to para 18 of the said IO.

8. The DGAP vide its present Report dated 27.11.2020 further investigated the issues raised by the NAA in para 11 to 18 of its I.O. No. 23/2019 dated 26.12.2019 in accordance with the provisions of Central Goods and Services Tax Act, 2017, and the Rules made thereunder.

9. The DGAP Reported that the complaint of profiteering was in respect of purchase of a flat in the Respondent's project "Avenue–51", Sector 92, Gurugram, Haryana **(hereinafter referred to as "the Project")** by Sh. Rachit Jain, on behalf of his brother Sh. Ashish Jain **(hereinafter referred to as "the Applicant No. 1").** The project was an affordable Housing project as notified by Town & Country Planning Department, Government of Haryana vide Notification dated 19.08.2013. He also submitted that prior to 01.07.2017, the service of construction of affordable housing, was exempt from Service Tax, vide Notification No.25/2012-ST dated 20.06.2012, as amended by Notification No. 09/2016-ST dated 01.03.2016 Accordingly, all such service providers were not eligible to avail credit of the Central Excise duty paid on the inputs/capital goods or the Service Tax paid on input services, as there was no output liability. Further, regarding VAT, in the State of Haryana, there were two different schemes, namely Regular Scheme where input credit of VAT paid on goods purchased within state

was allowed and the Composition Scheme, VAT was @ 1% wherein no VAT credit was allowed. Post-GST implementation, the Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement on value) on construction service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction service in respect of affordable and low-cost housing was further reduced from 12% to 8%, vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018. Hence, the Respondent could avail the input tax credit of GST paid on all the inputs and input services.

10. Further, the Standing Committee on Anti-profiteering, vide the minutes of its meeting held on 19.08.2020, forwarded one more application filed by Smt. Ritika Barua **(hereinafter referred to as "the Applicant No. 2")** against the Respondent. As the investigation was already underway, the Applicant No. 2 was made a co-applicant in the ongoing investigation. Vide e-mail dated 25.11.2020, an opportunity was given to the Applicant No. 2 for inspection of confidential documents as submitted by the Respondent, which she had not availed.

11. The Respondent submitted his replies to the said Notice, vide letters and e-mails dated 05.09.2020, 05.10.2020 and 20.10.2020.

12. The DGAP in its Report dated 27.11.2020 submitted the point wise reply to the issues raised vide IO No. 23/2019 dated 26.12.2019 which is as under: -

(i) Perusal of para 5 of the Affordable Housing Policy as notified by Town & Country Planning Department, Government of Haryana shows that the maximum allotment rate of Rs 4000/- per sq. ft. of the carpet area in respect of Gurgaon has been fixed for the houses to be constructed under the above policy. Additional recovery of Rs. 500 per sq. ft. has been allowed in respect of the Balcony area in a flat adding upto and limited to 100 sq. ft. as permitted in the approved building plan, as per the above para. The above prices were approved by the Government of Haryana on 09.11.2016 when the Letter of Intent was issued to the Respondent. However, the DGAP has stated in his Report dated 25.06.2019 vide Para 10 that "It is observed that the project "Avenue-51" was launched in the post-GST era and there was no price history of the units sold in the pre-GST era which can be compared with the post-GST base price to determine whether there was any profiteering." However, the DGAP has not explained in his Report why the above price of Rs. 4000/- per sq. ft. could not be considered as the pre-GST base price and compared with the post-GST price to determine profiteering as under the above Policy the prices are fixed by the State Government and not the builder.

Reply of the DGAP

The DGAP submitted that the project "Avenue-51" was launched in the post-GST era and there was no price history

of the units sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering. Allotment of homes to the home-buyers including the Applicants in the project in question was done through draw of flats in the presence of committee consisting of Deputy Commissioner or his representative (at least of the cadre of Haryana Civil Service), Senior Town Planner (Circle office), DTP of the concerned District and the representative of coloniser as per Clause *5 (iii) f* of the Policy on 08.08.2017. Prior to the date of draw, there were no customers as units were allotted only through draw on 08.08.2017. He also submitted that the ledger submitted by the Applicant No. 1 vide email dated 16.01.2019 showed the GST incidence on the application money submitted by the Applicant No. 1 in his ledger on 09.08.2017, i.e. only after draw of units was held on 08.08.2017 and a unit was allotted to him in the draw. Perusal of the Applicant No. 's records was in line with the Respondent's submission that draw of units in the project was done post-GST only and GST has been accordingly charged according to the prevalent rate. There was no history of allotment of any units in the project prior to implementation of GST. He also quoted the orders passed by the Authority in case of M/s Signature Builders Pvt. Ltd.Order no. 45/2019 and M/s Conscient Infrastructure Pvt. Ltd. Order No. 33/2019.

In view of the above and also in view of the fact that the allotment rate of Rs. 4000/- per Sq. ft. was the maximum price and not the price at which any flat was sold by the Respondent, Rs. 4000 per Sq. ft. could not be considered as the pre-GST base price.

(ii) The Authority pointed out that it was also apparent from Para 5 of the Affordable Housing Policy that the maximum price of Rs. 4000/- per sq. ft. was fixed on 09.11.2016 after taking in to account the incidence of State and the Central Taxes. As per the admission of the Respondent himself he was not getting benefit of CENVAT and ITC during the pre-GST period. However, perusal of the GSTR-1 and 3B Returns filed by the Respondent which have been attached by the DGAP as Annexure-8 with his Report dated 25.06.2019 shows that the Respondent has availed the benefit of ITC after coming in to force of the GST. Perusals of the ITC Register attached by the DGAP vide Annexure-9 of his Report dated 25.06.2019 also shows that the ITC was earned by the Respondent on his purchase of goods and services. However, the DGAP has not mentioned in his Report whether the Respondent was required to pass on the benefit of ITC which he has availed after coming in to force of the GST or not?

Reply of the DGAP

The DGAP submitted that perusal of Clause 5 of the Policy dated 19.08.2013, provides maximum allotment rate of ₹

4,000/- for projects in certain geographies, ₹ 3,600/- in other high and medium potential towns, & ₹ 3,000/- for low potential towns. However, there was no ground to assume that the above ceiling was prescribed after taking in to account the incidence of State and the Central Taxes. Moreover, the rate of VAT varies according to the scheme opted by the service provider. Similarly, rate of Service Tax had changed significantly in the impugned period from 12.36% to 15% to 0% for affordable housing w.e.f. 01.03.2016. Incidence of Central Indirect Tax, i.e. Service Tax and availability of Cenvat Credit has no relation whatsoever with the differential ceiling on allotment rate based on geography as provided by the policy, as rate of Service tax and corresponding availability of Cenvat Credit for the construction service has no geographical/spatial connection, and whatsoever variations are there, exists across different sectors.

The DGAP also submitted that the NAA observation regarding the Respondent availing ITC Credit in post-GST era is in accordance with Section 16 of the Act, which prescribes criteria to avail Input Tax Credit. Availment of credit of Input Tax, can't in itself constitute violation of Section 171 of the Act. Accordingly, it appears that the provisions of Section 171(1) of Central Goods and Services Tax Act, 2017, relating to profiteering, may not be attracted in the present case.

Further, it is submitted that in the instant case the Respondent was not having any price history of the pre-GST period, as the allotment of flats commenced only in the post-GST period. The price of Rs. 4000 per Sq. ft. fixed by Government was only an indicative price and not the real price at which any flat was sold by the Respondent during the pre-GST period. The Respondent had availed the benefit of ITC in the post-GST period and had admitted that he was not getting benefit of Cenvat during the pre-GST period. Therefore, there is no reference point to compare the benefit of additional ITC to the Respondent. Accordingly, the Respondent was not required to pass on the benefit of ITC which was availed during post-GST period.

(iii) The NAA pointed out that it had also not been mentioned in the Report dated 25.06.2019 how the Respondent could continue to charge price of Rs. 4000/- per sq. ft. which was fixed during the pre-GST period in the post-GST period when he was getting benefit of ITC.

Reply of the DGAP

The DGAP submitted that had the Respondent sold any flat in the pre-GST period at the rate of Rs. 4000/- per Sq. ft., he would certainly be liable to pass on the benefit of ITC availed during the post-GST period and the quantum of benefit could have been arrived at by comparing the turnover and credit during pre & post GST periods. But this is not the case here. There is no continuity of charging price

of Rs. 4000/- per Sq. ft. from pre-GST period to post-GST period. The price of Rs. 4000/- per Sq. ft. has been charged for the first time by the Respondent only in the post-GST period.

(iv) The NAA pointed out that the DGAP has also not stated why the ratio of CENVAT/ITC to the turnover should not be treated as nil for the pre-GST period and then compared with the ratio of ITC to turnover for the post-GST period.

Reply of the DGAP

The DGAP has submitted that in order to compare the ratio of ITC to turnover, there had to be some figures in respect of turnover and credit/ITC. Since, both turnover as well as credit was nil during the pre-GST period, the ratio of ITC to turnover during the post-GST period cannot be compared with the ratio of ITC to turnover during the pre-GST period, which actually had no value. Resultantly, the differential ratio of both the periods cannot be derived, which is essential to quantify the amount of profiteering, if any. Accordingly, profiteering is not quantifiable in the present case.

(v) The NAA further pointed out that it had also not been clarified in the Report dated 25.06.2019 that how the ITC which had become available to the Respondent after coming in to force of the CGST Act, 2017 could be

appropriated by the Respondent in his profits without passing on its benefit or why it should not be reversed.

Reply of the DGAP

The DGAP submitted that he doesn't look into the aspects of costing. Further, the profiteering has been examined in the Report dated 25.06.2019 in terms of Section 171 of the CGST Act, 2017, which stipulates 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."* In absence of comparable data of the pre-GST period, the relative increase in the benefit of ITC in the post-GST period cannot be ascertained and therefore it was mentioned in the Report dated 25.06.2019 that the provisions of Section 171 of the CGST Act, 2017 have not been contravened in the instant case.

(vi) The NAA further mentioned that the Applicant No. 1 vide his e-mail dated 06.08.2019 had also claimed that the Respondent had not passed on the benefit of ITC to him however, the Respondent had informed him that he would calculate the benefit of ITC after completion of the project. He had also alleged that the Respondent was earning interest on the flat buyer's ITC benefit. The DGAP has also not submitted any Report on the above claim of the Applicant which stated that the Respondent had promised to compute the benefit of ITC on the completion of the project.

Reply of the DGAP

The DGAP submitted that the Respondent might have informed that he would calculate the benefit of the ITC after completion of the project, it is insufficient to conclude and substantiate that the Respondent has profiteered. In the first place, the allotment and sale of the flats of the Respondent commenced during the post-GST period and there is no price history of the pre-GST period and hence, the provisions of Section 171 of the CGST Act, 2017 are not attracted. This has been the uniform policy adopted by DGAP in respect of such projects which commenced in the post-GST period. In at least two such cases of M/s Conscient Infrastructure Pvt. Ltd. and M/s Signature Builders Pvt. Ltd., the Authority had already upheld this view which has been detailed in reply to point no. i above.

Moreover, he neither has any evidence to support the claim of the Applicant No. 1 nor is there any merit in the claim that the Respondent was earning interest on the flat buyer's ITC benefit. He in other similar cases has consistently been of the view that projects launched post-GST shall not come under purview of Section 171, as far as the question of additional benefit of Input Tax Credit is concerned.

(vii) The NAA has also pointed out that the draw of lots for allotment of houses being constructed in the above project was held on 08.08.2017 in the presence of the committee constituted under the above Policy and the Applicant No. 1

was allotted a flat on 08.08.2017 at the price of Rs. 4000/- per sq. ft. which was fixed during the pre-GST period. However, it has not been mentioned by the DGAP in his Report why the above price could not be compared with the price charged by the Respondent from the above Applicant post-GST when the Respondent was availing benefit of GST and why the above price should not be reduced commensurately as per the provisions of Section 171 (1) of the above Act.

Reply of the DGAP

The DGAP submitted that the price of Rs. 4000/- per Sq. ft. fixed by the Government was an indicative price and not a real price at which Respondent had sold any flat in the pre-GST price. Furthermore, this price was the highest cap fixed by the Government. It would not be in the fitness of things to compare the real price at which flats have been sold by the Respondent in the post-GST period with the presumptive price of the pre-GST period. This will also be at variance of the policy upheld uniformly by DGAP and Authority in such matters.

(viii) The NAA also pointed that it has also not been explained by the DGAP in his Report what effect the Environment Clearance obtained from the State Environment Impact Assessment Authority Haryana on 21.07.2017 and draw of lots for allotment of units held on 08.08.2017 would have vis-

à-vis the availability and utilisation of ITC for discharging output liability of GST by the Respondent.

Reply of the DGAP

The DGAP submitted that in this regard, perusal of Clause 5 (iii) b of the Policy dated 19.08.2013, which read "*All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance*". In the present matter Environmental Clearance was obtained from the State Authorities on 21.07.2017, i.e. post-GST period only. After receipt of the clearance, the Respondent with approval of the concerned Authorities advertised in newspaper on 01.08.2017 confirming date of draw for allotment of units to be 08.08.2017. He also submitted that the service rendered by the Respondent by way of construction and development of the project was not in existence during the pre-GST regime and only after draw of flats was made on 08.08.2017, liability to pay tax under provisions of Section 13 of the Act begins. The time of supply of service is guided by provision of Section 13(2) of the Act. The Anti-profiteering provisions could be applied only to those services which were being supplied before the introduction of GST, to ensure that the benefit of additional ITC (which earlier formed part of the cost but now available as credit)

on account of GST implementation or the benefit of reduction in tax rate, was not retained by the supplier but passed on to the recipients by way of price reduction. Accordingly, he reiterated his opinion as mentioned in para 12 of the Report dated 25.06.2019, that the provisions of Section 171(1) of Central Goods and Services Tax Act, 2017, relating to profiteering, will not be attracted in the present case.

13. The above Report was considered by the Authority in its sitting held on 04.12.2020 and it was decided to accord opportunity to make submissions to the Applicants by 17.12.2020 to explain why the Report dated 27.11.2020 submitted by the DGAP should not be accepted. Further opportunities were also given on 15.01.2021, 01.02.2021, 12.02.2021 and 30.03.2021. However no submissions were made by the Applicant No.2.

14. The Applicant No. 1 vide his e-mail dated 06.08.2019 and 30.03.2021 had submitted that the Respondent had imposed the interest charges of Rs. 42,107/- due to non-deposition of GST demand timely and GST benefit has not been passed on to him. He also submitted that the Respondent had also informed him that he would calculate the benefit of ITC after completion of the project. He had also alleged that the Respondent was earning interest on the flat buyer's ITC benefit and charging interest on late GST payment from homebuyers.

15. The hearing was closed vide order dated 31.03.2021 however, before the order could be passed, one of the Technical Member of the Authority who had heard the matter was transferred out and thereafter the chairman of the Authority also left the Authority. Since, the quorum of the Authority of minimum of three Members, as provided under Rule 134 was not available till 23.02.2022, the matter was not decided. With the joining of two new Technical Members in February, 2022 the quorum of the Authority was restored from 23.02.2022 and a fresh personal hearing in the matter was granted on 30.03.2022. However, the Applicant No. 1 vide his email dated 30.03.2022 submitted that he has already made his submissions and requested to decide the case on merits however no submissions were made by the Applicant No.2.

16. We have carefully considered the DGAP's Report and all other submissions which have been placed on record and find that the following issues are required to be settled in the present proceedings:-

    I. Whether there are benefit of additional ITC available to the Respondent which are not passed on by him to the Applicant No. 1 and 2 ?

    II. Whether there is any violation of the provisions of Section 171 (1) of the CGST Act, 2017 by the Respondent?

17. Perusal of the record reveals that the complaint of profiteering is in respect of purchase of a flat in the Respondent's project "Avenue–51", Sector 92, Gurugram, Haryana. The project is an affordable Housing project as notified by Town & Country

Planning Department, Government of Haryana vide Notification dated 19.08.2013. The Applicant No. 1 has been allotted flat no. 306 in Tower A and Applicant No. 2 has been allotted flat no. 107 in Tower E of the project. The Respondent had got Environmental Clearance from the State Authorities on 21.07.2017 in the post GST period. After receipt of the clearance, the Respondent with approval of the concerned Authorities advertised in newspaper on 01.08.2017 confirming date of draw for allotment of units to be held on 08.08.2017. The chronology of above events shows that the service rendered by the Respondent by way of construction and development of the project were not in existence during the pre-GST regime.

18. The Applicant No. 1 had been vehemently claiming that he had been denied the benefit of ITC by the Respondent and the Respondent had resorted to profiteering in violation of the provisions of Section 171 (1) of the above Act. He also submitted that the Respondent had also informed him that he would calculate the benefit of ITC after completion of the project. He had also alleged that the Respondent was earning interest on the flat buyer's ITC benefit. This contention of the Applicant No. 1 cannot be accepted as he has failed to submit any proof for the same and mere statement is insufficient to conclude and substantiate that the Respondent has profiteered. The allotment and sale of the flats of the Respondent commenced during the post-GST period and there is no price history of the pre-GST period and hence, the

provisions of Section 171 of the CGST Act, 2017 are not attracted. Further, the Applicant No. 1's claim that the Respondent was earning interest on the flat buyer's ITC benefit has no merit as the additional benefit due to the customers of the flats could not be established.

19. In the present case the draw of lots, allotment of units and receipt of payments had taken place in the post-GST era. The draw of lots for allotment of houses was conducted on 08.08.2017 in the presence of the committee constituted under the Affordable Housing Policy, 2013. It is also revealed that an agreement was executed between the above Applicant No. 1 and 2 & the Respondent in which terms and conditions for allotment of the flat were settled only after the draw of flats on 08.08.2017 i.e post GST period. It is also apparent from the record that the Respondent had received the Environment Clearance from the State Environment Impact Assessment Authority Haryana on 21.07.2017 before which he could not have started the execution of the project. On the basis of the sequence of the above events, it could be safely concluded that the above project had been started after coming in to force of the GST w.e.f. 01.07.2017. It is also clear that the above Applicants were allotted flats only after coming in to force of the GST w.e.f. 01.07.2017. As project was launched after implementation of the GST w.e.f. 01.07.2017, apparently there was no pre-GST tax rate or input tax credit availability that could be compared with the post-GST tax rate and the input tax credit, to determine whether there was any benefit that was required to be passed on by way of reduced price. Also

the Respondent has reduced the GST rate from 12% to 8% w.e.f. 25.01.2018, in terms of Notification No. 01/2018 Central Tax (Rate) dated 25.01.2018.

20. From the above facts it is established that there had been no additional benefit of ITC to the Respondent and hence he is not required to pass on the benefit to the above Applicants by reducing the prices of the flats. The Applicant No. 1 and 2 could have availed the above benefit only if the above project was under execution before coming into force of the GST as the Respondent would have been eligible to avail ITC on the purchase of goods and services after 01.07.2017 on which he was not entitled to do so before the above date. Since there is no basis for comparison of ITC available before and after 01.07.2017, the Respondent is not required to recalibrate the price of the flat due to additional benefit of ITC. Hence, the allegations of the Applicants made in this behalf are incorrect and therefore, the same cannot be accepted.

21. Based on the above facts it is established that the Respondent had not contravened the provisions of Section 171 (1) of the CGST Act, 2017 and we find no merit in the Applications filed by the above Applicants and the same are accordingly dismissed.

22. The quasi-judicial 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 that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings vide Order dated 24.02.2022 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 30.03.2022 reiterated his earlier submissions made via email dated 06.08.2019. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (c) No. 3/2020, while taking suomoto 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 of 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.

23. A copy of this order be sent to the Applicants and the Respondent free of cost. File of the case be consigned after completion.

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy

(Dinesh Meena)
Secretary, NAA

F. No. 22011/NAA/54/GLS-2/2019 Dated: 13.05.2022

1. M/s GLS Infraprojects Pvt. Ltd., 311, 3rd Floor, JMD Pacific Square, Sector-15, Part-II, Gurgaon, Haryana-122001.
2. Sh. Ashish Jain C/o Sh. Rachit Jain, Shad & Company, K-160, Near Gate No. 2, Tis Hazari Court, New Delhi – 110054.
3. Smt. Ritika Barua, ritika.barua@gmail.com
4. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
5. Guard File.