

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. 49/2022
Date of Institution 31.08.2020
Date of Order 28.07.2022

In the matter of:

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.

Applicant

Versus

M/s. Nani Resorts and Floriculture Pvt. Ltd., Building No. 80, 1st Floor, Sector-44, Gurugram-122003, Haryana

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 DGAP
2. None for the Respondent.



ORDER

1. The present Report dated 28.08.2020 has been received from 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 the DGAP was directed by Order No. 52/2019 dated 21.10.2019 passed by this Authority under rule 133(5) of the Central Goods and Services Tax Rules, 2017 in the matter of Sandeep Kumar & Ors versus M/s Nani Resorts and Floriculture Pvt. Ltd., to conduct investigation to find out whether the Respondent had availed the benefit of Input Tax Credit (ITC) which was required to be passed on to the eligible recipients as per the provisions of section 171(1) of the Central Goods & Service Tax (CGST) Act, 2017 in respect of three other projects namely ROF Aalayas of 5 Acres, Sector-102, Gurugram, ROF Aalayas Phase-II, Sector-102, Gurugram and "ROF" Amaltas, Sector-92, Gurugram.

2. Accordingly, the DGAP issued Notice to the Respondent on 04.11.2019 under Rule 129 (3) of the above Rules, calling upon him to reply as to whether he admitted that the benefit of ITC had not been passed on to the buyers 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 to furnish all the supporting documents. The DGAP has reported that the period covered by the current investigation was from 01.07.2017 to 30.09.2019 and the time limit to complete the investigation was extended up to 30.11.2020 by this Authority, in terms of Rule 129 (6) of the CGST Rules, 2017.
3. The Respondent had submitted his replies vide letters and e-mails dated 14.11.2019, 08.01.2020, 31.07.2020, and 17.08.2020. The replies of the Respondent have been summed up by the DGAP as follows:-

(a) The Respondent has informed that he challenged the above Notice before the Hon'ble High Court of Punjab and Haryana on the basis that the above notice was issued without jurisdiction and the existence of "reasons to believe" and recording the same in writing was a sine quo non for invoking jurisdiction under Rule 135 (5)(a) of the CGST Rules, 2017. However, this Authority had not recorded any "reasons to believe" and merely on the "Possibility of Profiteering" in respect of other projects it has invoked rule 133(5)(a) of the CGST Rules, 2017. Thus, the direction issued by this Authority to the DGAP to analyse profiteering in respect to other projects was without any basis. Thus, the Respondent has prayed that the above notice should

be dropped and the proceeding under it should be stopped with immediate effect.

(b) The Respondent has also submitted that there could be no profiteering in respect of other ongoing projects of the Respondent as referred by DGAP in his notice. It was important to note the details/information in respect of the following projects:-

(i) Project A: ROF Aalayas of 5 acres, Sector-102, Gurugram

(ii) Project B: ROF Aalayas Phase II, Sector-102, Gurugram

(iii) Project C: ROF Amaltas, Sector-92, Gurugram

(c) The Respondent has further submitted that in respect of Project A, i.e. ROF Aalayas of 5 acres, Sector-102, Gurugram, the DGAP had already concluded his investigation and had issued a report dated 22.04.2019 and even this Authority had already passed an Order No. 52 dated 21.10.2019 under Section 171 of the CGST Act, 2017. Therefore, again asking for the information in respect of the said project seemed to be a prima facie error and the same could not be the intention of the DGAP while issuing the above notice.

(d) With regard to Project B and Project C i.e ROF Aalayas Phase II, Sector-102, Gurugram and ROF Amaltas, Sector-92 Gurugram respectively, the Respondent submitted that both the projects were registered under RERA in May, 2019 only. Further, the bookings by the prospective buyers/customers in respect of both the projects started in June, 2019 onwards i.e after around 2 years from the implementation of the GST. Therefore, the question of profiteering did not arise in respect of both of these Projects.

(e) The Respondent has also stated that the anti-profiteering measures were transitional measures which were introduced with the purpose that, if there was a reduction in the rate of tax or if there was a benefit of ITC after introduction of GST then the same should have been passed on to consumer/recipient by way of commensurate reduction in price. Thus, profiteering would arise only when the rate of tax was reduced or if there was any benefit of ITC post implementation of

GST as compared to pre-GST scenario and where the activity/supply by the service provider was in continuation from the pre-GST period. In the present case, the Respondent had launched both ongoing projects i.e. ROF Aalayas Phase II, Sector-102, Gurugram and ROF Amaltas, Sector-92, Gurugram after introduction of the GST. Thus, in these circumstances there could be no profiteering in respect of other ongoing projects undertaken by the Respondent.

4. The DGAP after examining the above application, various replies of the Respondent and the documents/evidence on record has stated that the main issues for determination were whether there were benefits accruing on account of, reduction in the rate of tax or ITC, on the supply of construction service to the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether the Respondent had passed on such benefits to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
5. The DGAP has also observed that prior to the 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 the GST w.e.f. 01.07.2017, GST was chargeable @18% (effective rate was 12% in view of 1/3rd abatement in value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate on construction services in respect of affordable and low cost houses upto a carpet area of 60 square metres was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement in value). Vide the optional Scheme introduced under Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, GST on construction service in respect of affordable and low cost house upto a carpet area 60 square metres was 1% [1.5%-i.e. 0.5(1/3 of 1.5%)] and no input tax credit was eligible under the said notification.
6. The DGAP has also observed that, the Hon'ble High Court of Punjab and Haryana had not stayed the present investigation in the writ proceedings. Further, this Authority had passed a reasonable Order as in the earlier case a profiteering of Rs. 2,47,48,549/- had been confirmed and therefore it was

natural to investigate the other projects as the issue pertains to ITC benefit to be passed on to the consumers who were mostly voiceless.

7. The DGAP has intimated that the contention of the Respondent that project "ROF Aalayas of 5 Acres, Sector-102, Gurugram", had already been investigated by the DGAP and the DGAP had submitted his Report dated 22.04.2019. This Authority had passed Order No. 52/2019 dated 21.10.2019 under the section 171 of the CGST Act, 2017 and had confirmed the profiteering amount of Rs. 2,47,48,549/-. The DGAP has also noted that out of the three Projects mentioned in this Authority's order No. 52/2019 dated 21.10.2019, project "ROF Aalayas of 5 Acres, Sector-102, Gurugram", had actually been considered for profiteering as mentioned in para 18 of the Order No. 52/2019 dated 21.10.2019. Hence the contention of the Respondent appeared to be true and therefore that project need not be analysed again for determination of profiteering.
8. The Respondent has further contended that anti-profiteering provisions could not apply to the project "ROF Aalayas Phase-II, Sector-102, Gurugram" and "ROF Amaltas, Sector -92, Gurugram" as these projects were not in existence before the implementation of GST and were launched in the GST regime. The Respondent has also stated that the said projects had been registered and approved by the Haryana real Estate Regulatory Authority, Gurugram (HARERA) under Section 5 of the Real Estate Regulation & Development Act, 2016 w.e.f. 27.05.2019 i.e. post implementation of Goods and Services Tax Act, 2017. The booking by the prospective buyers/customers in respect of both projects started in the month of June, 2019 onwards. The Projects were launched by the Respondent on 27.05.2019 i.e. post implementation of Goods and Services Tax Act, 2017.
9. The DGAP has examined the contention of the Respondent by visiting the official website of Haryana Real Estate Regulatory Authority to verify the correctness of the statement with respect to the RERA Registration claimed by the Respondent and observed that there were only four registrations in the name and address of M/s. Nani Resorts and Floriculture Pvt. Ltd., Building No.8, 1st Floor, Sector-44, Gurugram-122003, Harayana and details were as

under: -

S. No.	Project's Name	Registration Certificate No.
1	AFFORDABLE GROUP HOUSING OF 5 ACRES	105 OF 2017 DATED 24.08.2017
2	ROF Aalayas Phase-II, Sector-102, Gurugram	GGM/339/71/2019/33 DATED 27.05.2019
3	ROF Amaltas, Sector-92, Gurugram	GGM/338/70/2019/32 DATED 27.05.2019
4	ROF ALANTE	GGM/381/113/2019/75 DATED 09.12.2019

The DGAP has observed from the above table with respect to the four projects under investigation that:-

- (i) The Project, ROF Aalayas of 5 Acres, Sector-102, Gurugram has already been investigated and profiteering has been confirmed by this Authority. Hence, the same was not required to be looked into.
- (ii) The Projects "ROF Aalayas Phase-II, Sector-102, Gurugram", "ROF Amaltas, Sector-92, Gurugram" & "ROF ALANTE" had been launched in the post-GST era and registration and approval of projects, launching of projects, allotment of units, receipt of payments etc. had taken place post-GST.

10. On the basis of the details outward supply of construction services submitted by the Respondent, the DGAP has observed that the service was supplied in the State of Haryana only.

11. The DGAP has explained that Section 171 of the Central Goods and Services Tax Act, 2017 came into play in the event where there was a reduction in the rate of tax or there was an increase in the benefit of input tax credit. In the present case, since the project itself was launched after implementation of GST w.e.f. 01.07.2017, there was no reduction in rate of tax or benefit of additional Input Tax Credit after their registration in May, 2019. Hence there was no profiteering and no violation of Section 171 of the Central Goods and Services Tax Act, 2017.

12. The DGAP has concluded that no profiteering was found in the case of the projects investigated in the instant investigation and therefore, Section 171(1) of the Central Goods and Services Tax Act, 2017 was not attracted against M/s. Nani Resorts and Floriculture Pvt. Ltd. in the present case as all

the events like the launch of projects, bookings and allotment of the flats had happened in the post GST era.


13. The above Report was considered by this Authority and it was decided to accord an opportunity to Sh. Sandeep Kumar of filing submissions before this Authority on or before 18.09.2020. Thereafter, before the Order could be passed, one of the Technical Members of the Authority who had heard the matter was transferred out and thereafter the Chairman of the Authority had also left the Authority. Since, the quorum of the Authority of minimum three Members, as provided under Rule 134 was not available till 23.02.2022, the matter could not be decided. With the joining of two new Technical Members in February 2022, the quorum of the Authority was restored from 23.02.2022. Meanwhile, Sh. Sandeep Kumar, vide his email dated 15.09.2020, submitted that his case fell under the project "ROF Aalayas of 5 Acres, Sector-102, Gurugram and that project had already been investigated and profiteering had been confirmed by this Authority. He stated further that, the Respondent had already issued a Credit Note dated 31.07.2019 and a demand letter, dated 07.09.2019 in his favour in compliance with this Authority's earlier order No. 52/2019 dated 21.10.2019. He has also attached the Demand Letter and Credit Note copy as evidence of having received the benefit.

14. This Authority has carefully examined the DGAP's Report and various submissions placed on record. The issues to be decided by the Authority are as under:-

- 1) Whether there was any violation of the provisions of Section 171 of the CGST Act, 2017 in this case?
- 2) If yes, then what was the quantum of profiteering?

15. This Authority finds that the submissions of Sh. Sandeep Kumar were only relevant to the proceedings relating to the Respondent's project "ROF Aalayas of 5 Acres, Sector 102, Gurugram". These have been addressed in Order No. 52/2019 dated 21.10.2019 of this Authority.

16. Further, the DGAP has verified that the projects "ROF Aalayas Phase-II, Sector 102, Gurugram" and "ROF Amaltas, Sector-92, Gurugram" were registered on 27.05.2019 and "ROF ALANTE" on 09.12.2019 in Haryana RERA and the first booking in the above projects was started in the month of

June, 2019. The DGAP has further found that the projects “ ROF Aalayas Phase-II, Sector 102, Gurugram”, “ROF Amaltas, Sector-92, Gurugram” and “ROF ALANTE” had been launched in the post-GST regime and there was no price history of the units sold in the pre-GST regime that could be compared with the post-GST base prices to establish whether there was any profiteering by the Respondent or not. In terms of the provisions of the RERA Act, bookings in the project could not happen till the registration was obtained. Since the registration was obtained for the subject projects post the introduction of Goods and Services Tax only, the provisions of Section 171 dealing with Anti-profiteering could not be made applicable to the said projects in the view of the fact that there was no additional ITC that had been made available to the Respondent, which was relevant for establishing any allegation of profiteering. It is clear from the DGAP’s Report that the Respondent had launched the subject projects in the post-GST regime and there were no demands raised by the Respondent with respect to these projects in the pre-GST regime. The registration and approval of the projects and receipt of the payments had taken place in the post-GST regime and hence, there was no pre-GST tax rate or ITC which could be compared with the post-GST tax rate and ITC. On this basis, the DGAP has reported that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it did not qualify to be a case of profiteering. 

17. We find no grounds in the case records to differ from the Report of the DGAP and we, therefore, agree with his findings that the provisions of Section 171 of the CGST Act 2017 have not been contravened in this case.
18. Given our above findings, we conclude that the instant case does not fall under the ambit of the Anti-Profiteering provisions of Section 171 of the CGST Act, 2017.
19. Further, the Hon’ble Supreme Court, vide its Order dated 23.03.2020 in *Suo moto Writ Petition (C) No. 3/2020*, while taking suo moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special 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.

20. A copy each of this order be supplied to the DGAP and the Respondent for necessary action. File 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/197/Nani Resorts/2020 | 7834 (a) — Date: 28.07.2022
Copy To:

1. M/s. Nani Resorts and Floriculture Pvt. Ltd., Building No. 80, 1st Floor, Sector-44, Gurugram-122003, Haryana

2. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. NAA Website
4. Guard File.


(Dimesh Meena)
Secretary, NAA