



BEFORE THE COMPETITION COMMISSION OF INDIA

(AUTHORITY UNDER SECTION 171 OF THE CENTRAL GOODS & SERVICES TAX ACT, 2017)

Case No. : 07/2023
Date of Institution : 16.02.2023
Date of Order : 31.07.2023

In the matter of:

Director General of Anti-Profitteering, 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 Panchshil Infrastructure Holding Pvt. Ltd., Tech Park One, Tower-E, Next to Don Bosco School, Yerwada, Pune-411006.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Dr. Sangeeta Verma, Member
3. Sh. Bhagwant Singh Bishnoi, Member

ORDER

1. The present Report dated 15.02.2023 had been received from the Director General of Anti-Profiteering (**herein after referred to as the "DGAP"**) on 16.02.2023 by the Competition Commission of India (**hereinafter referred to as the "Commission"**) after a detailed investigation under Rule 133(5) of the Central Goods & Service Tax (CGST) Rules, 2017 (**hereinafter referred to as the "Rules"**). The brief facts of the case are that the erstwhile National Anti-Profiteering Authority (**hereinafter referred to as the "NAA"**) in the case of M/s Panchshil Infrastructure Holding Pvt. Ltd., Tech Park One, Tower-E, Next to Don Bosco School, Yerwada, Pune-411006 (**hereinafter referred to as "the Respondent"**), vide Para-33 of the Order No. 62/2022 dated 29.08.2022 had directed the DGAP to investigate profiteering in relation to projects other than the project "Panchshil Tower" being constructed by the Respondent under single GST Registration No. i.e. 27AADCP6098D1Z8 under Rule 133(5) of the Rules, and submit investigation report to the NAA for determination whether the Respondent was liable to pass on the benefit of ITC in respect all the other Projects/Blocks to the buyers, or not, as per the provisions of Section 171(1) of the CGST Act, 2017.
2. Vide the above mentioned Report, the DGAP has stated that:-
 - i. The Authority vide Para-33 of the Order No. 62/2022 dated 29.08.2022 determined Rs. 1,96,69,483/- as the amount of benefit of ITC not passed on to the recipients by the Respondent during the

period from 01.07.2017 to 30.11.2020.

- ii. On receipt of the aforesaid Order, a notice under Rule 129 of the Rules was issued by the DGAP on 05.09.2022, calling upon the Respondent 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 in all other projects undertaken by the Respondent.
- iii. The period covered by the current investigation was from 01.07.2017 to 31.07.2022.
- iv. In response to the notice dated 05.09.2022, the Respondent submitted his reply vide letter and e-mails dated 19.09.2022, 22.12.2022, 16.01.2023 and 13.02.2023. The detailed submissions of the Respondent were quoted as follows: -
 - a. The Respondent stated that other construction related projects undertaken by the Respondent had either been sold after obtaining Occupancy Certificate ("OC") or had been commenced in the GST regime. It was also stated that none of the projects had transitioned from the erstwhile tax regime.
 - b. The Respondent further stated that it was amply clear that the sale of building, post receipt of OC was excluded from the purview of GST. It was also submitted that the anti-profiteering provisions would not be applicable to other projects undertaken by the Respondent as these projects had been either sold post receipt of

OC or had been commenced in the GST regime and had not transitioned from the erstwhile regime.

c. In view of the above, it was submitted that the provisions of Section 171 of the CGST Act, 2017 were not applicable to the Respondent and accordingly, the information sought by the DGAP might not be required. Thus, he requested not to undertake any further investigation in this regard.

The Respondent had tabulated the requisite details of other projects undertaken as follows: -

S. No.	Name of the Project	Status of the Project
Sales made after receipt of OC or No Sale		
I	Yoovilla-Phase I	(a) The OC of the said project was received on July 1, 2016 and the first sale in the project took place on January 12, 2017 i.e. the sale had been undertaken post receipt of OC. In this regard, the copy of OC was attached with the submissions. (b) Further, it was submitted that in terms of Schedule III of the CGST Act, sale of building post receipt of OC was outside the scope of GST. Thus, anti-profiteering provisions would not be applicable to the said project.

II	Tanti Villa	(a) The said project had been registered under Maharashtra Real Estate Regulatory Authority (MRERA) on August 31, 2017 and till date there had not been any sale in the above project. Accordingly, Anti-profiteering provisions were not applicable. Copy of MRERA registration was attached with the submissions.
Projects undertaken in GST regime		
III	Yoovilla-Phase II	(a) This project had been registered under MRERA on March 24, 2022 and was under construction as on date. Copy of MRERA registration was attached with the submissions. First sale in the project was made in August 2022 i.e. post introduction of GST. Further, new GST rate [i.e. 5% without any benefit of ITC] was applicable qua sale of residential premises in the said project w.e.f. 01.04.2019. (b) Accordingly, in the given case, the anti-profiteering provisions would not apply.
IV	SOHO	(a) The project had been registered under MRERA on September 24, 2018 and first sale in the project was undertaken on March 30, 2019, i.e. after introduction of GST. In this regard, copy of MRERA registration certificate was attached with the

		<p>submissions.</p> <p>(b) Reference was made to the Order passed by Authority in case of Signature Builders Private Limited wherein it was held that anti-profiteering provisions were not applicable where the project had been started in the GST regime as there was no pre-GST ITC tax rate or ITC availability that could be compared with the post-GST tax rate and ITC to determine the additional benefit.</p> <p>(c) Accordingly, the anti-profiteering provisions would not apply in the given project.</p>
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v. The contention of the Respondent was examined by the DGAP and to verify the correctness of the statement of the Respondent with respect to MRERA Registration claimed by the Respondent, the official website of MRERA was visited and it was observed that there were four Projects registered with MRERA i.e. "Panchshil Towers" under RERA Reg No. P52100034062, "T-Villa" under RERA Reg No. P52100010632, "SOHO" under RERA Reg. No. P52100017890 and "V2 Villa P1" under RERA Reg No. P52100034062 which belonged to the Respondent.

vi. The project, "Panchshil Towers" situated at Pune, Maharashtra, had already been investigated by the DGAP and Report submitted on 25.10.2021. The NAA had already passed Order No.62/2022 dated 29.08.2022 under Section 171 of the CGST Act, 2017 and confirmed

the profiteered amount of Rs. 1,96,69,483/- to be passed on as the additional ITC benefit to all the homebuyers in respect of this project.

vii. The DGAP has further submitted that:-

- a. In respect of Project Yoovilla Phase-I, the Respondent had submitted OC dated 01.07.2016 issued by the Pune Metropolitan Region Development Authority for building no. Villas of V-2 type, Ground floor and First floor for 6 no. of Villas and building no. Villas V-3 type, Ground floor and First floor for 39 no. of Villas, constructed in Phase-I and the said project was completed on 01.07.2016 in pre-GST period. Further, it was observed from submissions of the Respondent that he had received the OC on 01.07.2016 in pre-GST regime. Therefore, the Anti-profiteering provisions under Section 171 of CGST Act, 2017 were not applicable to the project "Yoovilla Phase-I".
- b. For the project "T-Villa" the Respondent had stated that the said project was registered with MRERA on 31.08.2017 and there had not been any sales in the given project. To verify the same, the website of MRERA was visited and it was found that the said project "T-Villa" was registered under RERA Reg. No. P52100010632 and the said registration would be valid for a period commencing from 31.08.2017 and ending with 30.09.2023 unless renewed by the MRERA in accordance with Section 5 of the RERA Act, 2016 read with Rule 6 of the RERA Rules, 2017. Further, as per RERA Registration the Respondent had constructed four apartments for the said project and all the

four apartments were unsold during the investigation period. Therefore, Anti-profiteering provisions under Section 171 of CGST Act, 2017 were not applicable to the project “T-Villa”.

- c. For the project “SOHO” the Respondent had stated that the said project was registered with MRERA on 24.09.2018 and the first sale in the said project was undertaken in March, 2019. To verify the same, the website of MRERA was visited and it was found that the said project was registered under RERA Reg. No. P52100017890. The said registration would be valid for a period commencing from 24.09.2018 and ending with 30.12.2026 unless renewed by the MRERA in accordance with Section 5 of the RERA Act, 2016 read with Rule 6 of the RERA Rules, 2017. Further, it was also observed that there was no unit sold in pre-GST era which could be compared with the Post GST base price to determine whether there was any profiteering and there was also no availability of CENVAT to compare with ITC which was available to him in GST era. The price was charged for the residential flats of a new project developed and constructed by the Respondent after the implementation of GST. Therefore, Anti-profiteering provisions under Section 171 of CGST Act, 2017 were not applicable to the project “SOHO”.
- d. For the project “V2 Villa P1” the Respondent had stated that the said project was registered with MRERA on 24.03.2022. To verify the same, the website of MRERA was visited and it was found that the said project “V2 Villa P1” was registered under

RERA Reg. No. P52100034062. The said registration shall be valid for a period commencing from 24.03.2022 and ending with 31.12.2027 unless renewed by the MRERA in accordance with Section 5 of the RERA Act, 2016 read with Rule 6 of the RERA Rules, 2017. Further, the said project was launched on 24.03.2022. As per the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 issued by Ministry of Finance, Department of Revenue, any project commenced after 1st April 2019 was mandatorily required to follow the new GST rate structure @5% (without input tax credit). Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019. Therefore, the Anti-profiteering provisions under Section 171 of CGST Act, 2017 were not applicable to the project "V2 Villa P1" under investigation.

3. The DGAP has submitted that in view of the aforementioned findings, it was 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices*", was **not applicable** in the present case.
4. This Commission has carefully considered the DGAP's Report dated 15.02.2023 and the documents placed on record. It is revealed that the Respondent has executed the Projects viz. "Panchshil Towers" under RERA Reg No. P52100034062, "T-Villa" under RERA Reg. No. P52100010632, "SOHO" under RERA Reg. No. P52100017890 and

“V2 Villa P-1” under RERA Reg. No. P52100034062. which are registered with MRERA. The same has been verified by the DGAP by visiting the website of MRERA.

5. The NAA vide its Order No. 62/2022 dated 29.08.2022 has already determined profiteered amount of Rs. 1,96,69,483/- in respect of the project “Panchshil Towers”.
6. The Respondent vide his submissions has also submitted that he has also executed the project named “Yoovilla Phase-I” in pre-GST regime. In respect of this project, the Respondent has submitted OC dated 01.07.2016 issued by the Pune Metropolitan Region Development Authority for building no. Villas of V-2 type, Ground floor and First floor for 6 no. of Villas and building no. Villas V-3 type, Ground floor and First floor for 39 no. of Villas, constructed in Phase-I and the said project was completed on 01.07.2016 in pre-GST period. Keeping in view the above submissions, the Commission finds that since the Respondent has received the OC on 01.07.2016 in pre-GST regime, Anti-profiteering provisions under Section 171 of CGST Act, 2017 are not applicable to the said Project.
7. In respect of the project “T-Villa”, the Commission has observed that the said project has been registered under RERA Reg. No. P52100010632 which is valid for a period commencing from 31.08.2017 and ending with 30.09.2023 unless renewed by MRERA. The same has been verified by the DGAP by visiting the website of MRERA. As per RERA Registration the Respondent has constructed

four apartments in the said project and all the four apartments are unsold. Therefore, the Anti-profiteering provisions under Section 171 of CGST Act, 2017 are not applicable to the project.

8. In respect of the project "SOHO", the Commission has found that the said project has been registered under RERA Reg. No. P52100017890 which is valid for a period commencing from 24.09.2018 and ending with 30.12.2026 unless renewed by MRERA. The same has been verified by the DGAP by visiting the website of MRERA. It is also observed that there is no unit sold in pre-GST era which can be compared with the post GST base price to determine whether there is any profiteering. There is also no availability of CENVAT to compare it with ITC which is available to him in post GST era. Therefore, Anti-profiteering provisions under Section 171 of CGST Act, 2017 are not applicable to the project.
9. In respect of the project "V2 Villa P-I", the Commission has observed that the said project has been registered under RERA Reg. No. P52100034062 which is valid for a period commencing from 24.03.2022 and ending with 31.12.2027 unless renewed by MRERA. The same has been verified by the DGAP by visiting the website of MRERA. It is also observed that the said project was launched on 24.03.2022 and as per the Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, any project which was commenced after 01.04.2019 will be mandatorily required to follow the new GST rate of 5% (without ITC). Thus, the Respondent is not eligible to avail input tax credit w.e.f. 01.04.2019. Therefore, Anti-profiteering provisions under Section 171

of CGST Act, 2017 are not applicable to the project.

10. In view of the above findings, we observe that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017. Accordingly, the proceedings initiated against the Respondent under Rule 133 (5) of the CGST Rules, 2017 are hereby dropped.
11. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Sangeeta Verma)
Member

Sd/-
(Bhagwant Singh Bishnoi)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary

File No. M/AP/15/Panchshil-OP/2023-Sectt.

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o/c

Dated: 01.08.2023

Copy To:-

1. M/s Panchshil Infrastructure Holding Pvt. Ltd, Tech Park One, Tower-E, Next to Don Bosco School, Yerwada, Pune – 411006.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.