



BEFORE THE COMPETITION COMMISSION OF INDIA

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

Case No. : 10/2023
Date of Institution : 02.03.2023
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 Prasu Infrabuild Pvt. Ltd, GH-05B, Sector-16B, Greater Noida
West, Uttar Pradesh.

Respondent

Coram:-

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

ORDER

1. The present Report dated 02.03.2023 has been received from the Director General of Anti-Profiteering (**hereinafter referred to as the “DGAP”**) on 02.03.2023 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 Prasu Infrabuild Pvt. Ltd, GH-05B, Sector-16B, Greater Noida West, Uttar Pradesh (Project: “SKA Green Arch”, Noida) (**hereinafter referred to as “the Respondent”**), vide Para-27, 28 of the Order No. 72/2022 dated 13.09.2022 had directed the DGAP to investigate profiteering in relation to projects other than the project “ SKA Green Arch” being constructed by the Respondent under single GST Registration No. i.e. 09AAGCP220N1ZW 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 of 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 submitted that:-
 - i. The NAA went through the Investigation Report dated 29.10.2021, submitted by the DGAP in the subject case of the Respondent and

vide Para 27, 28 of the Order No. 72/2022 dated 13.09.2022 determined that the Respondent had realized an additional amount of Rs. 4,75,87,468/- (inclusive of applicable GST @12%) from 206 home buyers during the period from 01.07.2017 to 31.10.2020.

- ii. Further, vide Para 35 of the aforesaid order, NAA directed the DGAP in terms of Rule 133(5)(a) of the CGST Rules to investigate profiteering in relation to other projects executed by the Respondent, if any, under the provision of Section 171 of the CGST Act, 2017. The contents of para 35 are reproduced below for reference:

“35. Since the Respondent has profited in the instant project, there is every likelihood that he has profited in other projects also under the GSTIN 09AAGCP9220N1ZW. The Authority has reasons to believe that the Respondent may have resorted to profiteering in the other projects also and hence, it directs the DGAP under Rule 133 (5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submitted complete investigation report for all the Projects under this single GST Registration.”

- iii. As directed by the NAA in the Order No. 72/2022 dated 13.09.2022 received by the DGAP on 22.09.2022, a notice under

Rule 129 of the CGST Rules, 2017 was issued by the DGAP on 26.09.2022, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the customers of projects other than "SKA Green Arch", if any, 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 the supporting documents.

- iv. The period covered by the current investigation was from 01.07.2017 to 31.08.2022.
- v. In terms of Rule 133(5)(b) of the Rules, read with Rule 129(6) of the Rules, the time limit to complete the investigation was on or before 21.03.2023.
- vi. In response to the notice dated 27.09.2022, the Respondent replied vide e-mail dated 13.10.2022 that apart from the project namely; 'SKA Green Arch', the Respondent had not undertaken any other project. Accordingly, there was no question of profiteering by the Respondent in respect of other projects.
- vii. In order to verify Respondent's claim that he had not undertaken any project other than "SKA Green Arch", the details of Respondent's project registered with UP Real Estate Regulatory Authority (RERA) were checked online. From the UP RERA website, it was observed that the Respondent had taken a single RERA registration of two phases under SKA Green Arch project.

In the first phase, there were two towers namely, Aster Tower and Orchid Tower and in the second phase, there were two towers namely, Tulip Tower and Zinnia Tower. However, the investigation had already been done for both the phases of the SKA Green Arch project. Further, no other project of the Respondent except SKA Green Arch project was registered with RERA. The details were as follows:

Sl. No.	Project Name	Promoter Name	RERA Registration No.
1	SKA Green Arch	Prasu Infrabuild Private Limited	UPRERAPRJ3377

viii. To further verify Respondent's contention, the DGAP had also sent a letter to the jurisdiction Commissionerate for ascertaining whether Respondent had executed projects other than "SKA Green Arch" project. In reply to the same, the Deputy Commissioner State GST, Sector- 1, Gautam Budh Nagar, Uttar Pradesh through his letter dated 01.03.2023 had endorsed a letter dated 01.03.2023 written to the Joint Commissioner, State Tax Sector-1 Gautam Budh Nagar, Uttar Pradesh by the Respondent M/s Prasu Infrabuild Pvt. Ltd. stating that "apart from the project namely; 'SKA Green Arch', the Respondent has not undertaken any other project. Further as per digital Records, no other firm is registered on this PAN". The Jurisdictional Deputy Commissioner State GST had also enclosed the copy of the report from the GST portal depicting the name of Respondent M/s Prasu Infrabuild Pvt. Ltd. only as the firm registered on the PAN based GSTIN.

- ix. From the above discussion, the DGAP has concluded that the Respondent has not undertaken any other construction project except two phases of "SKA Green Arch" project which had already been investigated by DGAP and profiteering determined vide aforesaid Order No. 72/2022 dated 13.09.2022.
- x. In view of the aforementioned findings, the DGAP has submitted that Section 171(1) of the CGST Act, 2017 requires 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.
3. This Commission has carefully examined the DGAP's Report dated 02.03.2023 and the documents placed on record and it has been revealed that the Respondent is executing a single project namely "SKA Green Arch" under GSTIN 09AAGCP220N1ZW. The above project is being executed by the Respondent in two Phases i.e. in the first phase, there are two towers namely, Aster and Orchid and in the second phase, there are two towers namely, Tulip and Zinnia. For both the phases under the "SKA Green Arch" project, the Respondent has taken a single RERA Registration No. i.e. UPRERAPRJ3377 registered with Uttar Pradesh Real Estate Regulatory Authority (UP RERA). The NAA vide its Order No. 72/2022 dated 13.09.2022 has already determined profiteered amount of Rs. 4,75,87,468/- in respect of the above two phases of the project "SKA Green Arch".

4. It is also observed by the Commission that the Respondent is not executing any other project other than the project "SKA Green Arch" under the same GSTIN 09AAGCP220N1ZW and the same has been verified by the DGAP by visiting the website of UP RERA. From the website of UP RERA, it has been observed that the Respondent has obtained single registration of two phases of the project "SKA Green Arch" and no other project than the above project is being executed by him under the above GSTIN.
5. The Commission has also observed that a letter was also sent by the DGAP to the jurisdictional Commissionerate to ascertain whether the Respondent had executed any projects other than "SKA Green Arch" project. The Deputy Commissioner of State Tax, U.P. vide his letter dated 01.03.2023 had informed that the Respondent had not executed any project other than the project "SKA Green Arch".
6. In view of the above findings, we find that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017 as the Respondent is not executing any project other than the project "SKA Green Arch" which has already been investigated and profiteered amount has also been determined by the NAA vide its Order No. 72/2022 dated 13.09.2022. Accordingly, the proceedings initiated against the Respondent under Rule 133 (5) of the CGST Rules, 2017 are hereby dropped.

7. 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/24/Prasu-OP/2023-Sectt.

457-459
o/c

Dated: 01.08.2023

Copy To:-

1. M/s Prasu Infrabuild Pvt. Ltd, GH-05B, Sector-16B, Greater Noida West, Uttar Pradesh.
2. Director General Anti-Profitteering, 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.