



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

Case No. : 09/2023
Date of Institution : 23.02.2023
Date of Order : 31.07.2023

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 Vishwanath Builders Projects Ltd., 17, N. D. Avenue, Opposite Club 07, Sky City Road, Off S P Ring Road, Shela, Ahmedabad-380058.

Respondent

Coram:-

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

ORDER

1. The present Report dated 21.02.2023 had been received from the Director General of Anti-Profiteering (**hereinafter referred to as the “DGAP”**) on 23.02.2023 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 Vishwanath Builders, 17, N. D. Avenue, Opposite Club 07, Sky City Road, Off S P Ring Road, Shela, Ahmedabad-380058 (**hereinafter referred to as “the Respondent”**), vide Para-13 of the Order No. 61/2022 dated 26.08.2022 had directed the DGAP to investigate profiteering in relation to projects other than the project “VISHWANATH SARATHYA” being constructed by the Respondent under single GST Registration No. i.e. 24ABEPV6263D1ZN 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 stated: -
 - i. That the NAA had gone through the Investigation Report dated 26.02.2021 submitted by the DGAP in the subject case, wherein it

had passed Order No. 61/2022 dated 26.08.2022. As per para 9 of the order, NAA had determined the amount of profiteering to the tune of Rs. 2,95,93,850/-. Further vide para 13 of the order the Authority observed that: -

“The Authority finds that the respondent might also be executing other projects under the same Registration No. 24ABEPV6263D1ZN and the issue of profiteering might arise in the other projects as well. In view of the observation made in the earlier paragraph, the Authority finds that there exists reason to investigate other projects for the purpose of determination of profiteering. Accordingly, this Authority as per the provisions of Section 171(2) of the above Act takes 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 projects executed under the said registration and submit Report to this Authority for determination whether the Respondent was liable to pass on the benefit of ITC in respect of the other projects/towers to the buyers or not as per the provisions of Section 171(1) of the above Act”.

- ii. That the DGAP had initiated investigation under Rule 133(5) of the CGST Rules 2017 in compliance with the directions contained in Para 13 of Order No. 61/2022 dated 26.08.2022. The present investigation has been conducted in respect of all other projects of the Respondent being executed under the same GST Registration

No. 24ABEPV6263D1ZN.

- iii. That a notice under Rule 129 of the Rules was issued by the DGAP on 01.09.2022 to the Respondent, calling upon the details of all the projects being executed by the Respondent under the same GST Registration No. to investigate whether commensurate benefit of ITC had been passed on by the Respondent to the recipients in respect of construction service supplied by the Respondent for all the projects and the Respondent was requested to furnish the fresh requisite information/data for the period up to August 2022.
- iv. That the period covered by the current investigation was from 01.07.2017 to 31.08.2022.
- v. That 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 28.02.2023.
- vi. That in response to the Notice dated 01.09.2022 and subsequent Reminder-1 dated 28.09.2022, Reminder-II dated 06.10.2022, Reminder-III dated 14.10.2022, summons dated 02.11.2022 & 27.12.2022 and letter dated 30.01.2023 to the jurisdictional Commissioner and to the Respondent and finally letter dated 13.02.2023 to the Respondent, the Respondent submitted his replies vide e-mails/letters dated 13.10.2022, 25.10.2022, 9/10.11.2022, 06.12.2022, 16.12.2022, 29.12.2022, 31.12.2022, 08/09.02.2023, 17.02.2023 and

18.02.2023.

- vii. That vide the aforementioned emails/letters, the Respondent submitted the following data/documents/information:
- a) Brief profile of the Respondent and details of the jurisdictional GST Office.
 - b) The Returns GSTR – 1, GSTR – 3B and GSTR – 9, for the period from July 2017 to 2022-23.
 - c) The details of Tran-1 and Tran-2 Returns filed by him.
 - d) The details of Electronic Credit Ledger for the period up to June 2017.
 - e) VAT Returns and ST-3 Returns from April 2016 to June 2017.
 - f) Details of Cenvat/ITC Register for various projects for the year 2016-17, 2017-18 up to June 2017.
 - g) Details of applicable tax rate Pre-GST and Post-GST.
 - h) Balance-sheets from Financial Year 2016-17 to 2020-21.
 - i) Copies of report/details submitted before RERA.
 - j) Status of the projects Vishwanath Samam and Vishwanath Sarathya as on 31.08.2022 in terms of tower-wise sold and unsold units and Building Use Permission (BU Permissions) of all three projects.

viii. That the Respondent had submitted details of three projects namely Vishwanath Sopan, Vishwanath Sarathya and Vishwanath Samam. Out of the 3 projects, the project Vishwanath Sopan had commenced and was completed in pre-GST era i.e., before June 30th 2017, the project Vishwanath Samam had commenced operations in post-GST era i.e., on or after July 1, 2017 and the third one Vishwanath Sarathya was started in pre-GST era and was completed post coming into force of GST. The Project Wise commencement and completion as given by the Respondent was as under:

SCHEME NAME	COMMENCEMENT ON	COMPLETED ON BU PERMISSION	ANNEXURE	REMARKS
SOPAN	27-10-2015	24.01.2017	BU (Building Use) Permission dated 24.01.2017	Project started and completed in Pre-GST Period
SARATHYA (Already covered under the investigation report of DGAP dated 26.02.2021 under Rule 129(6) of the CGST Rules 2017)	24.03.2017 (Date of Application of Construction Development Permission)	19.11.2018	BU (Building Use) Permission dated and Construction Development Permission dated 25.09.2017	Project Started in Pre-GST Period, completed in Post-GST Period
SAMAM	08.08.2019	17.03.2022	BU (Building Use) Permission dated 17.03.2022 and Construction Development Permission dated 08.08.2019	Project started and completed in Post-GST Period

- ix. That the Respondent had submitted Registration details of his Projects Vishwanath Samam and Vishwanath Sarathya and stated that no RERA registration for Vishwanath Sopan project was required. Further, the Respondent had provided details of first booking of the project Vishwanath Sopan as 29.09.2014 for unit No. D-602 and for project Vishwanath Samam as 20.07.2019 for the unit No. B-404.
- x. That the project Vishwanath Sarathya has already been investigated by the DGAP and NAA has already determined profiteered amount of Rs. 2,95,93,850/- vide its Order dated 61/2022 dated 26.08.2022 in respect of the above project. The project Vishwanath Samam had commenced in 2019 after implementation of GST in July 2017. The RERA Website of Gujarat mentions its date of commencement as 05.04.2019. The Respondent had submitted that first booking for project "Vishwanath Saman" was on 20.07.2019. Hence, this Project by virtue of having commenced in the GST era and first booking also done after two years of implementation of GST does not come under the purview of Section 171 of the CGST Act 2017. The other project was the project Vishwanath Sopan which had been claimed to have commenced in pre-GST era with first booking done on 29.09.2014 and Building Use (BU) Certificate issued on 24th January 2017. The Gujrat RERA website also depicts only two projects Vishwanath Sarathya and Vishwanath Samam. Therefore, this project also by virtue of having commenced and completed in the pre-GST era does

not come under the purview of Section 171 of the CGST Act 2017.

- xi. That the DGAP clearly confirmed that post-GST, the Respondent had not benefited from additional input tax credit. As aforementioned, the present investigation covers the period from July 2017 to August 2022.
 - xii. That on the basis of the details of outward supplies of the construction service submitted by the Respondent, it was observed that the service had been supplied in the States of Gujarat only.
 - xiii. That the DGAP submitted that Investigation for the project Vishwanath Sarathya had already been concluded. The other two projects viz. "Vishwanath Sopan" having been executed entirely in pre-GST period as well as project "Vishwanath Samam" having been executed entirely in post GST period were outside the purview of Section 171 of the CGST Act, 2017.
3. The DGAP had 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", had not been contravened in the present case.
 4. This Commission has carefully considered the DGAP's Report dated 21.02.2023 and the documents placed on record. It is revealed that the

Respondent has executed three Projects viz. "Vishwanath Sopan" "Vishwanath Samam" and "Vishwanath Sarathya".

5. The NAA vide its Order No. 61/2022 dated 26.08.2022 has already determined profiteered amount of Rs. 2,95,93,850/- in respect of the project "Vishwanath Sarathya".
6. The Respondent vide his submissions has also submitted that he has executed the project named "Vishwanath Sopan" in pre-GST regime. In respect of this project, the Respondent has submitted building use permission dated 24.01.2017 issued by the Ahmedabad Urban Development Authority. Keeping in view the above submissions, the Commission finds that since the Respondent has received the BU permission on 24.01.2017 in pre-GST regime, the Anti-profiteering provisions under Section 171 of CGST Act, 2017 are not applicable to the said Project.
7. In respect of the project "Vishwanath Samam", the Commission has observed that the said project commenced in 2019 after implementation of GST. As per the RERA Website of Gujarat, date of commencement of the "Vishwanath Samam" project was 05.04.2019 and as per Respondent's record first booking for the project was done on 20.07.2019. Since, no unit was sold in pre-GST era which can be compared with the post-GST base price to determine whether there is any profiteering and there is no availability of CENVAT credit to compare with ITC which is available to him in post-GST era, therefore, the Anti-profiteering provisions under Section 171 of CGST Act, 2017 are not applicable to the project.

8. 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. Accordingly, the proceedings initiated against the Respondent under Rule 133 (5) of the CGST Rules, 2017 are hereby dropped.
9. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

S/d.
(Ravneet Kaur)
Chairperson

S/d.
Bhagwant Singh Bishnoi)
Member

S/d.
(Sangeeta Verma)
Member


Certified Copy

(Jyoti Jindgar Bhanot)
Secretary, CCI

F.No. M/AP/18/Vishwanath-op/2023-sectt | 460 — 462 Dated : 08.2023

Copy to:-

1. M/s. Vishwanath Builders, 17, N.D. Avenue, opp. Club 07, Sky City Road, Off S P Ring Road, Shela, Ahmedabad-380058
2. Director General of Anti-profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Guard File.