



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

Order No: - 13/2023
Date of Institution 03.03.2023
Date of Order 10.08.2023

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 ATS Township Pvt. Ltd, ATS Tower, Plot No. 16, Sector 135, Noida, Uttar Pradesh - 201305.

Respondent

Coram: -

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

ORDER

The present Report dated 03.03.2023, has been received by the Competition Commission of India (**hereinafter referred to as the**

“Commission”) from the Director General of Anti-Profiteering (hereinafter referred to as the **“DGAP”**) after a detailed investigation as per the directions given under Rule 133(5) of the Central Goods and Service Tax Rules, 2017 (hereinafter referred to as the **“Rules”**) contained in erstwhile National Anti-profiteering Authority's (hereinafter referred to as the **“NAA”**) Order No. 74/2022 dated 28.09.2022, passed in the project **“ATS Rhapsody”** executed by M/s ATS Township Pvt. Ltd, ATS Tower, Plot No. 16, Sector 135, Noida, Uttar Pradesh - 201305 (hereinafter referred to as **“the Respondent”**).

1. The DGAP vide his first Investigation Report dated 24.02.2021 had reported that the Respondent had profiteered an amount of Rs. 9,03,74,981/- while executing the 'ATS Rhapsody' project which was required to be passed on to the home-buyers.
2. The NAA vide its Order No. 74/2022 dated 28.09.2022 had determined the profiteered amount as Rs. 9,03,74,981/- as the benefit of ITC was not passed on to the recipients by the Respondent during the period from 01.07.2017 to 31.05.2020 and ordered the Respondent to pass on the benefit.
3. Further, vide Para 46 of the aforesaid Order, the NAA directed the DGAP in terms of Rule 133(5) of the CGST Rules, 2017, to investigate profiteering in relation to projects other than the project **“ATS Rhapsody”**, being executed by the Respondent, if any, under the provisions of Section 171 of the CGST Act, 2017. The contents of para 46 are reproduced below:

"46. In view of the facts discussed hereinabove and the findings thereof, the Authority has reason to believe that since the Respondent has been found to have contravened the provisions of Section 171 of the CGST Act 2017 in respect of the subject Project "ATS Rhapsody" and hence there is every possibility that similar contravention may have taken place with his other projects. This Authority in terms of Rule 133 (5)(a) of the CGST Rules 2017 also directs the DGAP 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".

4. In pursuance of the above directions the DGAP vide his Report dated 03.03.2023 has inter-alia submitted the following points: -
 - a. That a Notice under Rule 129 of the CGST Rules, 2017 was issued on 21.10.2022, 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 the projects other than "ATS Rhapsody", 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 furnish all the supporting documents.
 - b. The period covered by the current investigation is from 01.07.2017 to 30.09.2022.
 - c. In reply to the notice of the DGAP, the Respondent stated that he had not started any project other than **ATS Rhapsody** till date hence there was no benefit of ITC to be passed on to the customers.

- d. In order to verify Respondent's claim that he had not started any project other than "ATS Rhapsody", the details of Respondent's projects registered with Uttar Pradesh Real Estate Regulatory Authority (RERA) were checked online by the DGAP. From the UP RERA website, DGAP found that other than "ATS Rhapsody", no other project of the Respondent was registered with UPRERA.
- e. To further verify the Respondent's contention, the DGAP had also sent a letter to the Jurisdictional Commissionerate for ascertaining whether the Respondent has executed projects other than "ATS Rhapsody" project. In response, the Joint Commissioner (Anti-profiteering), State Tax, Lucknow vide letter dated 22.12.2022 forwarded a copy of a letter dated 19.12.2022 issued by the Deputy Commissioner, State Tax, Noida wherein it has been informed that the Dy. Commissioner of State Tax had issued a Notice to the Respondent to inquire about projects executed by the Respondent and the Respondent submitted a reply that there is no other project executed by the Respondent.
- f. The DGAP had concluded in his report that the Respondent had not undertaken any other construction project except the project "ATS Rhapsody" which has already been investigated by the DGAP and profiteering determined vide NAA's Order No. 74/2022 dated 28.09.2022. Therefore, Section 171(1) of the CGST Act, 2017 which 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”, is **not applicable** in the present case.*

5. This Commission has carefully considered the Report of the DGAP and the other material placed on record and finds that the DGAP, in pursuance to the Order No. 74/2022 dated 28.09.2022, has investigated the matter pertaining to the other projects executed by the Respondent in terms of Section 171 of the CGST Act, 2017 and the Rules made thereunder, so as to determine whether there had been any profiteering by the Respondent. Thereafter the DGAP has submitted that no other project has been executed by the Respondent except the project “**ATS Rhapsody**”, profiteering in respect of which has already been determined by the NAA vide Order dated 28.09.2022.
6. The DGAP has furnished his Report dated 03.03.2023 to the Commission, stating that no other projects are being executed by the Respondent and hence the Respondent was not liable to pass on the benefit of Input Tax Credit and Section 171(1) of the Central Goods and Services Tax Act, 2017 requiring that “any reduction in the rate of tax on any supply of goods or services or the benefit of the input tax credit shall be passed on to the recipient by way of commensurate reduction in prices”, is **not applicable** in the present case.
7. The above fact has also been corroborated from the website of the UP RERA as well as the reply of the Jurisdictional State GST Commissionerate, Noida as per the report of the DGAP.

8. In view of the above facts this Commission finds that the provisions of Section 171(1) of the CGST Act, 2017 are not attracted in the case of other projects of the Respondent and **therefore the present proceedings are hereby dropped.**
9. A copy of this order be sent to the Respondent and the DGAP free of cost. File of the case be consigned after completion.

Sd/-
(Ravneet Kaur)
Chairperson

Sd/-
(Bhagwant Singh Bishnoi)
Member

Sd/-
(Sangeeta Verma)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary CCI

F. No. M/AP/26/ATS-OP/2023-Sectt. | 507 - 509 Date: 10.08.2023

Copy to:

1. M/s ATS Township Pvt. Ltd, ATS Tower, Plot No. 16, Sector 135, Noida, Uttar Pradesh - 201305.
2. The 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.
3. Guard File.

o/c