



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

Case No. : 14/2023
Date of Institution : 12.10.2022
Date of Order : **22**.08.2023

In the matter of:

1. 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

2. M/s Friends Land Developers (Project: Anandam Square), 17, Kiran Enclave, Near Hotel Samrat, G. T. Road, Ghaziabad, Uttar Pradesh-201001.

Respondent

Coram:-

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

ORDER

1. The National Anti-Profiteering Authority (**NAA**) vide Interim Order No. 15/2022 dated 31.08.2022 in this matter had passed the following order:-

i. *The Respondent vide his submissions has contended that the DGAP has not incorporated the ITC of VAT in the pre-GST period for the computation of profiteering which ought to have been done. He has further submitted before this Authority that the said ITC on VAT credit was Rs. 7,89,028/- for the period from April 2016 to June 2017 which has been allowed to him by the concerned statutory Authority, in support of which he has submitted VAT Assessment Orders for the period from April, 2016 to June, 2017. The Authority finds that the Assessment Orders for the period from April 2016 to June 2017 issued by the VAT Authorities in respect of the Respondent have never been placed before the DGAP during the course of the investigation for verification of authenticity and hence the same have not been incorporated in the computation of profiteered amount. The Authority further finds that the ITC of VAT, as much as is allowed vide the said VAT Assessment Orders for the period from April 2016 to June 2017 shall be incorporated into the computation of profiteered amount by the DGAP subject to verification of the authenticity of the same. The Authority, therefore, directs the DGAP to ascertain the authenticity of the VAT Assessment Orders submitted by the Respondent for the period from April 2016 to June 2017 and if verified by the State GST Commissioner/Uttar Pradesh VAT Department, the DGAP shall incorporate the amounts, as allowed by the concerned statutory Authority on assessment, in the computation of profiteered amount by including the same as ITC in the pre-GST period and recalculate*

the profiteered amount and submit his Report to this Authority.

- ii. *The Respondent vide his submissions dated 10.09.2020 and 18.05.2022 has argued that the DGAP has taken an arbitrary figure of ITC of GST Rs. 3,44,11,808/- instead of Rs. 59,31,808/- in the post-GST period. In this regard, the DGAP vide his Report dated 28.09.2020 has admitted that the figures had been re-examined and it was found that while initially calculating the profiteered amount, the figure of ITC was inadvertently taken erroneously by the DGAP as Rs. 3,44,11,808/- in place of 59,31,808/-. The Authority, therefore, directs the DGAP to rectify the said error and incorporate the correct figure of Post-GST ITC to recalculate the profiteered amount based on the above rectification to the above extent.*

2. The brief facts of the case have been mentioned in the NAA's I.O. No. 15/2022 dated 31.08.2022 and the same are reproduced below:

- i. Vide Order No. 62/2019 dated 27.11.2019, the NAA directed the DGAP under Rule 133(5) of the Central Goods and Services Tax (CGST) Rules, 2017 to further investigate the project "Anandam Square", which the Respondent had been constructing during the period, for violation of provisions of Section 171 of the Central Goods and Service Tax Act, 2017. The said direction was based on the records submitted by the Respondent before the NAA, in the course of proceedings pertaining to his project "Palm Wood Royale Gulmohar Green" wherein it had been established that the

Respondent had availed the benefit of Input Tax Credit and was required to pass on the benefit thereof in terms of section 171 of the CGST Act, 2017. Thus, there were sufficient grounds to believe that the Respondent was liable to pass on benefits to buyers of this project too, as envisaged under the provisions of Section 171 of the CGST Act, 2017. The matter was investigated by the DGAP in accordance with the aforementioned order of the NAA.

- ii. The period covered by the current investigation is from 01.07.2017 to 30.11.2019. The time limit to complete the investigation was up to 27.05.2020, as per Rule 133 (5) (b) of the CGST Rules, 2017. However, in light of Covid-19 pandemic, the investigation could not be completed on or before the above date due to force majeure. Accordingly, this report has been furnished by the DGAP in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020, issued by the CBIC under Section 168A of the CGST Act, 2017.
- iii. The various replies of the Respondent sent vide his letters/emails dated 03.01.2020, 28.01.2020, 13.02.2020, 15.02.2020 and 13.05.2020 and the documents/ evidences on record were carefully examined by the DGAP and it was reported as below: -
 - a) That the Respondent was paying GST @12% in respect of the instant project as it was a commercial project.

- b) That the Respondent had submitted the reconciliation of turnover in his statutory ST-3 and GST Returns with the live unit-buyers of the two projects and also the bifurcation of Input Tax Credit as required by the DGAP.
- c) That the Respondent had also submitted the following documents/information to the DGAP vide his above-mentioned letters/e-mails during the course of the investigation:-
- i. Copies of GSTR-1 Returns for the period July, 2017 to November, 2019.
 - ii. Copies of GSTR-3B Returns for the period July, 2017 to November, 2019.
 - iii. Copies of Tran-1 Return for transitional credit availed by the Respondent.
 - iv. Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
 - v. Electronic Credit Ledger for the period July, 2017 to November, 2019.
 - vi. CENVAT/ITC Register for the period 01.04.2017 to 30.11.2019.
 - vii. List of buyers in the project "Anandam Square".
 - viii. Reconciliation of turnover reported in GST Returns and list of buyers for the period July 2017 to November, 2019.
 - ix. Copies of agreement, invoices and receipts for various sample units.
 - x. Tax rates, pre-GST and post-GST.

- xi. Details of Service Tax, CENVAT and VAT credit for the period Apr 16 to Jun 17 and output GST and ITC of GST for the period July 2017 to November, 2019.
- d) The main issues for investigation before the DGAP were:-
- i. Whether there was benefit of reduction in the Rate of tax or ITC on the supply of Construction Service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
 - ii. Whether the Respondent had passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.
- e) The Respondent was constructing two different projects, one residential and another commercial at two different locations. The Respondent had maintained separate books of account for both projects and had also submitted the bifurcation of the ITC and its reconciliation with his statutory returns.
- f) The residential project had already been investigated earlier by the DGAP and the allegation of violation of Section 171 of the CGST Act, 2017 had been confirmed by the National Anti-Profiteering Authority vide its Order No. 62/2019 dated 27.11.2019 and the instant investigation had been ordered under the provision of Rule 133(5) of the CGST Rules, 2017.
- g) Further, the Respondent Submitted before the DGAP that he had filed Civil Writ Petition No. 1406/2020 before Hon'ble Delhi High Court, against the above-referred Order of this Authority. The Hon'ble High Court in its Order dated 06.02.2020 had allowed the DGAP to comply with the

directions of the NAA to hold inquiry in respect of the commercial project. The DGAP has thus reported that the ambit of this instant investigation has been kept limited to the Commercial project only and therefore, profiteering, if any, merits to be computed by taking into account the Input Tax Credit availed by the Respondent and total turnover of the commercial project only.

- h) DGAP has further reported that according to para 5 of Schedule-III of the CGST Act, 2017, (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of the completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has contended that the ITC of the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of Completion Certificate (CC), in terms of Section 17

(2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

“17 (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

17 (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land, and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

- i) Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post-GST.
- j) Prior to implementation of GST w.e.f. 01.07.2017, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Input Services. However, the CENVAT credit of Central Excise Duty paid on inputs was not admissible, as

per the CENVAT Credit Rules, 2004, which were in force at the material time. Moreover, the Respondent was paying VAT under Uttar Pradesh VAT Scheme, wherein he was required to discharge his output VAT liability on deemed value addition on the purchase of the inputs. Also, as was evident from the submissions made by the Respondent in his submissions dated 15.02.2020 and 13.05.2020, there was no direct correlation between the turnover for VAT as reported in his VAT returns for the period April, 2016 to June, 2017, and the actual demands raised by him from the buyers. Therefore, the input tax credit of VAT and the VAT turnover have not been considered for computation of the ratio of input tax credit to the turnover for the pre-GST period. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and the input services. From the data submitted by the Respondent covering the period from April 2016 to November 2019, the details of the input tax credits availed by him, his turnovers from the project "Anandam Square", the ratios of input tax credits to turnovers, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to November 2019) periods were furnished by the DGAP as per the Table-A given below:-

Table-A

S. No.	Particulars		(Amount in Rs.)	
			(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to November, 2019
1	Credit of Service Tax Paid on Input Services	(A)	8,72,620	-
2	Input Tax Credit of VAT Paid on Inputs	(B)	7,89,028	-
3	Total CENVAT/VAT/Input Tax Credit Available *	(C)= (A)	8,72,620	-
4	Input Tax Credit of GST Availed	(D)	-	3,44,11,808
5	Total Turnover from Commercial Area	(E)	2,87,081	9,03,06,132
6	Total Saleable Commercial Area in sq. ft.	(F)	52,976	52,976
7	Sold Area Relevant to Turnover in sq. ft.	(G)	382	31,384
8	ITC proportionate to Sold Area	(H)	6,292.30	2,03,86,216
9	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover	(I)	2.19%	22.57%

- k) From the above Table-'A' the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 2.19% and during the post-GST period (July 2017 to November 2019), it was 22.57% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 20.38% [22.57% (-) 2.19%] of the turnover.
- l) The profiteering has been computed by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% was payable with the post-GST period (July, 2017 to November, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central

Tax (Rate), dated 28.06.2017. Accordingly, based on Table- 'A' above, the comparative figures of the ratios of input tax credits availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price, and the excess realization (profiteering) during the post-GST period, were tabulated by the DGAP as has been given in Table-B below:-

Table-'B'

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016to June,2017	July,2017 to Nov, 2019
2	Output tax rate (%)	B	4.50%	12.00%
3	Total input tax credit availed (Rs.)	C	8,72,620	3,44,11,808
4	Taxable turnover (Rs.)	D	2,87,081	9,03,06,132
5	Total Saleable Residential Area in sq. ft.	E	52,976	52,976
6	Sold Area Relevant to Turnover in sq. ft.	F	382	31,384
7	ITC proportionate to Sold Area	G	6,292	2,03,86,216
8	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover (K=J/E)	H=G/D	2.19%	22.57%
9	Increase in input tax credit availed post-GST (%)	I	-	20.38%
10	Analysis of Increase in input tax credit:			
11	Total Basic Demand during July, 2017 to April, 2019	J		9,03,06,132
12	GST @12%	K=I*12%		1,08,36,736
13	Total Actual Demand	L=I+K		10,11,42,868
14	ITC Benefits to be passed on Basic Price	M=D*(1-I) or 79.62% of D		1,84,06,868
15	Recalibrated Basic Price	N=J-M		7,18,99,264
16	GST @12%	J= I*12%		86,27,912
17	Recalibrated Cum-tax Price	K=I+J		8,05,27,176
18	Profiteering Amount	L=G-K		2,06,15,692

m) From Table-'B' it is observed that the additional ITC of 20.38% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central

Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients of service.

- n) Based on the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the shop buyers during the period from 01.07.2017 to 30.09.2019, the amount of benefit of ITC not passed on or in other words, the profiteered amount has been quantified by the DGAP as Rs. 2,06,15,692/- which included GST @ 12%, on the base profited amount of Rs. 1,84,06,868/-. The unit-wise break-up of this amount has been given in Annexure-9 of the DGAP's Report. It was also observed that the Respondent had supplied the construction service in the State of Uttar Pradesh only.
- o) In the instant investigation, he had computed the profiteering covering the period from 01.07.2017 to 30.11.2019 and profiteering, if any, for the period post November, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed.
3. The NAA after considering the various submissions made by the Respondent, vide its Interim Order No. 15/2022 dated 31.08.2022, referred the matter back to the DGAP to carry out further verification/rectification and to recalculate the profiteered amount as per the provision of Rule 133 (2A) of CGST 2017.

4. Accordingly, the DGAP has carried out necessary re-verification and re-calculation and on conclusion of the same, a report dated 12.10.2022 was sent to the NAA under Rule 133 (2A) of the CGST Rules, 2017 which inter-alia stated :-

- i. That after receiving reference from the Authority, the case was re-investigated as directed and a letter dated 06.09.2022 was written to the Commissioner, Commercial Tax, U.P., requesting to cause verification of the authenticity of the VAT Assessment Orders submitted by the Respondent for the period 2016-17 and 2017-18. The Deputy Commissioner (Commercial Tax), Sector -14, Ghaziabad, vide letter No. 257/ उपा० रा ० क० खण्ड-14 गा ० बाद/ 2021-22 dated 16.09.2022 has verified the VAT Assessment Orders submitted by the Respondent for the period 2016-17 and 2017-18. Out of the total VAT ITC of Rs. 45,56,264/- for the period April, 2016 to June, 2017, Rs. 7,89,028/- pertain to "Anandam Square" project and Rs. 37,67,236/- pertain to 'Gulmohar Greens' project in respect of which the NAA had already passed Order No. 62/2019 dated 27.11.2019. The VAT ITC of Rs. 7,89,028/- pertaining to "Anandam Square" was included in the profiteering calculation and following revised Table-A was prepared.
- ii. In the matter of Respondent's submission dated 10.09.2020 and 18.05.2022 whereas it was argued that the DGAP has taken an arbitrary figure of ITC of GST Rs. 3,44,11,808/- instead of Rs. 59,31,808/- in the post GST period the DGAP vide his Report dated 28.09.2020 has admitted that the figures had been re-

examined and it was found that while initially calculating the profiteered amount, the figure of ITC was inadvertently taken erroneously by the DGAP as Rs. 3,44,11,808/- in place of 59,31,808/-. The ITC of Rs. 59,31,808/- pertaining to "Anandam Square" project for the period July, 2017 to November, 2019 has been considered in the profiteering calculation and the following revised Table –A has been prepared:-

Table-A

(Amount in Rs.)

S. No.	Particulars		(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to November, 2019
1	Credit of Service Tax Paid on Input Services	(A)	8,72,620	-
2	Input Tax Credit of VAT Paid on Inputs	(B)	7,89,028	-
3	Total CENVAT/VAT/Input Tax Credit Available *	(C)= (A)+(B)	16,61,648	-
4	Input Tax Credit of GST Availed	(D)	-	59,31,808
5	Total Turnover from Commercial Area	(E)	2,87,081	9,03,06,132
6	Total Saleable Commercial Area in sq. ft.	(F)	52,976	52,976
7	Sold Area Relevant to Turnover in sq. ft.	(G)	382	31,384
8	ITC proportionate to Sold Area	(H)=G/F*C	11,982	35,14,117
9	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover	(I)=H/E	4.17%	3.89%

- iii. Therefore, from the above-revised Table 'A', it was clear that the ITC as a percentage of the turnover that was available to the Respondent for his project "Anandam Square" during the pre-GST period (April, 2016 to June, 2017) was 4.14% and for the post-GST period (July, 2017 to November, 2019), it was 3.89%. It clearly confirmed that post-GST, the Respondent had not

benefited from additional Input Tax Credit in respect of the project "Anandam Square".

- iv. The DGAP has concluded that no benefit of additional input tax credit has accrued to the Respondent in respect of the project "Anandam Square". Section 171 of the Central Goods and Services Tax Act, 2017 has not been contravened by the Respondent, in as much as no benefit of additional input tax credit has accrued to the Respondent on the demand raised by the Respondent during the post-GST period from 01.07.2017 to 30.11.2019 in respect of "Anandam Square".
 - v. The present investigation covers the period from 01.07.2017 to 30.11.2019.
5. This Commission has carefully considered the DGAP's Report dated 12.10.2022 and the documents placed on record. It is revealed that the Respondent has executed two Projects viz. "Anandam Square" (Commercial Project) and "Gulmohar Green" (Residential Project).
 6. The NAA vide its Order No. 62/2019 dated 27.11.2019 has already determined profiteered amount of Rs. 85,97,436/- in respect of the residential project "Gulmohar Green".
 7. In respect of the commercial project "Anandam Square" the Commission has observed that in the said project ITC as percentage of turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 4.17% and during the post-GST period (July, 2017 to November, 2019), it was 3.89%. It clearly

confirms that the Respondent has not profiteered through additional Input Tax Credit in respect of project "Anandam Square" post-GST. Therefore, he is not required to pass on the benefit of ITC to his buyers.

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. 22011/NAA/168/FriendsPt/2020 / 623 - 625

Dated: 23.08.2023

Copy To:

- 1) M/s. Friends Land Developers, 17, Kiran Enclave, Near Hotel Samrat, G. T. Road, Ghaziabad, Uttar Pradesh- 201 001.
- 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.