



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

Case No.	:	16 /2023
Date of Institution	:	03.03.2021
Date of Order	:	05.09.2023

In the matter of:

1. Mrs. Aruna Popat, Resident of 6, Shriji Apartments, Tikekar Road, Dhantoli, Nagpur, Maharashtra- 440012.
2. 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.

Applicants

Versus

M/s Shalwak Infrabulls, Shalwak Regency 201, Dahake Plot No. 8, Near Square, Khare Town, Dharampeth, Nagpur, Maharashtra-440010.

Respondent

Coram:-

1. Smt. Ravneet Kaur, Chairperson
2. Dr. Sangeeta Verma, Member

ORDER

1. The Director General of Anti-Profiteering (DGAP) vide its first investigation Report dated 23.03.2020 in respect of the project "Shalwak Elite" situated at Nazool Plot no. 11, City Survey No. 358, Dr. Munje Marg, Mouza-Dhantolion, Nagpur had stated that the Respondent had entered into an agreement for development of houses with landlords Smt. Malti Madhukar Vaidya and Shri Makrand Madhukar Vaidya and constructed 12 units in the project. Out of these 12 units, 02 units had been retained by the landowners. Out of the 10 units. the Respondent had sold 02 units prior to issuance of Occupancy

Certificate (OC) and remaining 08 units were sold post OC. For the first unit entire consideration was received in the pre-GST period and for the second unit sold to Mrs Aruna Popat (the Applicant No. 1) only partial consideration was received in the pre-GST period on which the Service Tax and VAT liability had been discharged by the Respondent. For the second unit the Respondent had raised total demand of Rs. 42,00,000/- post GST.

2. The DGAP stated that on the basis of CENVAT/ITC availability pre and post-GST and the details of amount collect from the Applicant No. 1, the amount of profiteering came to Rs. 19,286/- including 12% GST. However, the Respondent had *suo-moto* passed on Rs. 40,000/- i.e. 0.95% of the taxable turnover to the above Applicant as benefit of ITC.
3. The DGAP concluded that no further dues towards profiteering were required to be paid by the Respondent and the provisions of Section 171(1) of the CGST Act, 2017 may not be invoked against the Respondent and the profiteering amount already paid may be confirmed and regularized.
4. The National Anti-Profiteering Authority (NAA) after careful consideration of the Report of the DGAP vide Interim Order No. 30/2020 dated 27.11.2020 directed the DGAP to re-investigate the matter under Rule 133(4) of the CGST Rules, 2017 on the following issues:-
 - i. Whether the landowners have received their share of flats from the developer?
 - ii. Whether the Respondent has not collected GST from the landowners as claimed by the Respondent?
 - iii. Whether the Respondent is liable to pass on Input Tax Credit benefit amounting to Rs. 10,976/- to the landowners?
5. The DGAP vide his present report dated 26.02.2021 has stated that as per the directions of the NAA given vide the above I.O., the case was re-investigated. Letters were issued to the landowners and the Respondent for clarifications. On the basis of the investigation the DGAP has submitted that:-
 - i. Whether the landowners have received their share of flats from the developer?
The DGAP has stated that after inquiry with the landowners as well as the Respondent, it was found that the landowners have not received their share of flats from the Respondent.

- ii. Whether the Respondent has not collected GST from the landowners as claimed by the Respondent?
The DGAP has stated that no GST has been collected from the landowners.
- iii. Whether the Respondent is liable to pass on Input Tax Credit benefit amounting to Rs. 10,976/- to the landowners?
The DGAP has stated that it was found that the Respondent is not liable to pass on the Input Tax Credit amounting to Rs. 10,976/- to the landowners as he has not collected any GST from the landowners and the sale deed is to be affected post OC.
6. The DGAP has concluded that Section 171(1) of the CGST Act, 2017 which requires that "any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices" may not be invoked against the Respondent and the profiteering amount already paid may be confirmed and regularized.
7. The NAA issued Notice to the Applicant No. 1 on 10.03.2021 informing that the DGAP has alleged 'nil' profiteering against the Respondent under Section 171 of the CGST Act, 2017 and directed her to intimate why the said Report should not be accepted and also to file written submissions in the matter. The above Applicant was given six opportunities to file her written submissions on 10.03.2021, 25.03.2021, 03.05.2021, 28.06.2021, 28.03.2022 and 25.04.2022. However, the above Applicant vide her emails dated 02.05.2022 and 17.05.2022 replied that from her side the issue stands resolved and hence the matter may be treated as closed.
8. This Commission issued notice on 17.08.2023 to the Applicant No. 1 to appear for final hearing either in person or through authorized representative on 31.08.2023 at 11.00 AM vide email dated 17.08.2023, failing which the case would be decided ex-parte, on the basis of available records. The notice was also sent to her through speed post on 18.08.2023, which has been delivered to her on 21.08.2023. However, the above Applicant has neither attended the personal hearing nor sent any reply. In view of the same, the Commission decided to proceed in the matter on the basis of available record.
9. This Commission has carefully considered the Report dated 26.02.2021

furnished by the DGAP and the other material brought on record and it has been revealed that the Applicant No. 1 has been found eligible for ITC benefit of Rs. 19,286/- including 12% GST. It has also been revealed that the Respondent has suo-moto passed on Rs. 40,000/- i.e. 0.95% of the taxable turnover to the Applicant No.1 as such benefit.

10. It is also revealed that the Applicant vide email dated 02.05.2022 sent to the NAA in response to letters No. 3482 dated 30.03.2022 and No. 4291 dated 27.04.2022, has stated that the issue stands resolved and the matter may be treated as closed. Again, vide her email dated 17.05.2022 in response to NAA's letter No. 4842 dated 12.05.2022, she has intimated that the matter stood closed from her side as the issue has been resolved. It is apparent from the above emails that the Applicant No. 1 does not want to pursue the matter further as she has already received the benefit of ITC from the Respondent as is also stated in the Report of the DGAP.
11. In view of the above submissions of the Applicant No. 1 and the findings of the DGAP, 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 benefit of ITC has already been passed on to the Applicant No. 1. Accordingly, the present proceedings launched under Section 171 of CGST Act, 2017 are not maintainable and are hereby dropped.
12. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

Sd/-
(Sangeeta Verma)
Member

o/c

Sd/-
(Ravneet Kaur)
Chairperson

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

F. No. 22011/NAA/156/Shalwak/2020/705-707

Dated: 05/09/2023

Copy To:-

1. Mrs. Aruna Popat, Resident of 6, Shriji Apartments, Tikekar Road, Dhantoli, Nagpur, Maharashtra- 440012.
2. M/s Shalwak Infrabulls, Shalwak Regency 201, Dahake Plot No. 8, Near Square, Khare Town, Dharampeth, Nagpur, Maharashtra-440010.
3. 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.
4. Guard File.