



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

Case No. : 02/2024  
Date of Institution : 24.03.2021  
Date of Order : OS: 02.2024

**In the matter of:**

1. Smt. Honey Macker, B-1/129, Sector-G, Aliganj, Lucknow, U.P. – 226024.
2. Director General of Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

**Versus**

M/s Pivotal Infrastructure Pvt. Ltd. (Project – “Devaan”), 309, 3<sup>rd</sup> Floor,  
JMD Pacific Square, Sector – 15, Part-II, Gurgaon-122001.

Respondent

**Coram:-**

1. Smt. Ravneet Kaur, Chairperson
2. Ms. Sweta Kakkad, Member
3. Sh. Deepak Anurag, Member

**Present: -**

1. None for the Applicant No. 1.
2. Sh. Lal Bahadur, Assistant Director for the DGAP.

## ORDER

1. The present Report dated 23.03.2021 had been received from the Director General of Anti-Profiteering (hereinafter referred to as the “DGAP”) on 24.03.2021 by the National Anti-Profiteering Authority (hereinafter referred to as the “NAA”) after a detailed investigation under Rule 133(4) of the Central Goods & Service Tax (CGST) Rules, 2017 (hereinafter referred to as the “Rules”).
2. The NAA vide its Order No. 35/2020 dated 20.06.2020 in respect of Respondent’s project “Devaan” determined profiteered amount as Rs. 4,83,04,691/- in respect of both the residential flats and commercial shops for the period 01.07.2017 to 30.06.2019. Further vide para 26 of the above order NAA directed the DGAP under Rule 133(4) of the Rules to further investigate the quantum of ITC benefit which the Respondent was required to pass on to the home/shop buyers w.e.f. 01.07.2019 till 30.06.2020 or till the Completion Certificate (C.C.) is obtained by the Respondent, whichever is earlier as the project was still under execution. The Completion Certificate has been issued on 06.03.2020, Therefore, the period covered by the DGAP for current investigation was taken from 01.07.2019 to 06.03.2020 (date of C.C.).
3. Vide the above mentioned Report, the DGAP had stated:-
  - a. That the DGAP further investigated the case for the period 01.07.2017 to 06.03.2020 and the Respondent was asked to submit the documents/information upto the date of issuance of Completion Certificate. The main issues to be looked into are: -



- (i) Whether there was any benefit of input tax credit on the supply of Construction Service by the Respondent during the subsequent period i.e. 01.07.2019 and if so,
- (ii) Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act” or “the Act”).
- b. That the Respondent has submitted VAT Returns and Assessment Order for the Assessment Year 2016-17 and 2017-18, wherein the ITC on the purchase of Inputs was allowed to the tune of Rs. 2,14,55,660/- and Rs. 32,89,447/- respectively. The Respondent has also carried forward the ITC of Rs. 32,89,447/- in the TRAN-1 statement. Thus, it appeared that the Respondent was eligible to avail ITC of VAT paid on the inputs.
- c. That for the purpose of computation of profiteering, the ratio of ITC to turnover available to the Respondent in pre-GST period was compared with the same in GST period. In the instant case, the NAA vide Order No. 35/2020 dated 26.06.2020 had upheld the ratios of ITCs to turnovers for the period 01.04.2016 to 30.06.2017 during the pre-GST period and from 01.07.2017 to 30.06.2019 during the GST period. Therefore, there was no requirement of re-computation of profiteering for the period from 01.07.2017 to 30.06.2019. Hence, as per the directions of NAA, computation of profiteering for subsequent period i.e.

01.07.2019 to 06.03.2020 had only been undertaken in this report. From the data submitted by the Respondent covering the period 01.07.2019 to 06.03.2020, the details of the input tax credit availed by him, his turnover from the project "Devaan" and the ratio of input tax credit to turnover, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2019 to 06.03.2020) periods, has been furnished in table-'A' below:

Sr. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Taxable Turnover @ 12% GST for commercial shops 01.07.2019 to 06.03.2020)	Taxable Turnover @ 8% GST for flats (01.07.2019 to 06.03.2020)	Total (Post-GST)
1	CENVAT of Service Tax Paid on Input Services used for Commercial Shops (A)	27,11,645	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs (B)	46,68,530	-	-	-
3	Total CENVAT/Input Tax Credit Available (C)= (A+B)	73,80,197	-	-	-
4	Input Tax Credit of GST Availed (D)	-			22,66,442
5	Turnover for Residential Flats as per Home Buyers List (E)	58,05,36,000	0	14,19,57,051	14,19,57,051
6	Turnover for Commercial Shops as per Home Buyers List (F)	4,50,45,463	10,49,259		10,49,259.00
7	Total Turnover (G)= (E)+(F)	62,55,81,463	10,49,259	14,19,57,051	14,30,06,310
8	Total Saleable Carpet Area (Excluding Balcony Area) (in SQF) (H)	4,04,445	3,76,424 (Residential)	28,021 (Commercial)	4,04,445
9	Total Sold Carpet Area (Excluding Balcony Area*) (in SQF) relevant to turnover (I)	3,88,602	77,396.00	656.00	78,052
10	Relevant ITC [(J)= (C)*(I)/(H)] or [(J)= (D)*(I)/(H)]	70,91,098			4,37,390
<b>Ratio of Input Tax Credit Post-GST [(K)=(J)/(G)]</b>		<b>1.13%*</b>			<b>0.31%</b>

d. That from the Table-'A' above, it was observed that the input tax credit as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June,



2017) was 1.13% and during the period 01.07.2019 to 06.03.2020, it was reduced to 0.31%. Thus, from the above, it could be inferred that during the period 01.07.2019 to 06.03.2020, the Respondent had not benefited from additional input tax credit.

- e. That the provisions of Section 171 of the CGST Act, 2017 were not contravened by the Respondent in the subsequent period (i.e. 01.07.2019 to 06.03.2020).
4. The above report of the DGAP dated 23.03.2021 was considered by the Commission and it was decided to allow the Applicant No. 1 to file her consolidated written submissions against the above Report of the DGAP. Notice dated 14.07.2023 was also issued to the Applicant No. 1 directing her to explain why the above Report furnished by the DGAP should not be accepted.
5. The Applicant No. 1 did not reply to the above notice dated 14.07.2023 and the subsequent reminder emails of the Commission dated 17.08.2023, 12.09.2023 & 23.10.2023. Therefore, the Commission decided to give one last opportunity to the Applicant No. 1 to file written submissions against the above DGAP's report vide email dated 08.01.2024. However, there was no reply from the Applicant No. 1.
6. Hearing in the matter was held by the Commission on 18.01.2024. None appeared on the behalf of the Applicant No. 1. Therefore, there was no alternative except to proceed ex-parte against her. Sh. Lal Bahadur, Assistant Director appeared for the DGAP.

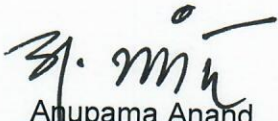
7. The Commission finds that in respect of the project "Devaan" ITC as percentage of turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 1.13% and during the GST period 01.07.2019 to 06.03.2020 it was 0.31%. It clearly confirms that the Respondent has not profiteered through additional Input Tax Credit in respect of project "Devaan" post-GST. Therefore, the Respondent is not required to pass on the benefit of ITC to his home/shop buyers for the period 01.07.2019 to 06.03.2020.
8. In view of the above findings, 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 (4) 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.

Sd/-  
(Ravneet Kaur)  
Chairperson

Sd/-  
(Deepak Anurag)  
Member

Sd/-  
(Sweta Kakkad)  
Member

Certified Copy

  
Anupama Anand  
(Secretary, CCI)  
5.2.24



Copy To:-

1. M/s Pivotal Infrastructure Pvt. Ltd., 309, 3<sup>rd</sup> Floor, JMD Pacific Square, Sector-15, Part-II, Gurugram, Haryana – 122001.
2. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Commissioner of Commercial Taxes, Vanijya Bhawan, Plot No. 1-3, Sector-5, Panchkula, Haryana-134151.
4. The Commissioner of Central Goods & Services Tax, Gurugram, Plot No. 36 & 37, Sector-2, Gurugram, Haryana-122001 .
5. Principal Secretary to Govt. of Haryana, Town and Planning Department, Plot No. 3, Sec-18A, Madhya Marg, Chandigarh-160018.
6. Guard File.