

GSTAT
Division Bench Court No. 2

NAPA/78/PB/2025

DGAPAppellant
Versus
SVP BUILDERRespondent
Counsel for Appellant **Counsel for Respondent**

Hon'ble Justice Sh. Mayank Kumar Jain, Member(Judicial)
Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : Yes

Order reference no. : ZA070010126000092H

Date of order : 15/01/2026

1.	GSTIN/Temporary ID/UIN - 09AAECS8870M1ZJ	
2.	Appeal Case Reference no. - NAPA/78/PB/2025	Date - 15/07/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. SVP Builders India Pvt. Ltd. , svpbui@gmail.com , 9891372831	
5.	Order appealed against -	

	(5.1) Order Type -
	(5.2) Ref Number -
6.	Personal Hearing - 15/01/2026 15/12/2025 09/12/2025 11/11/2025 09/09/2025 04/08/2025 10/07/2025
7.	Order in brief - The respondent have claimed that they have submitted the data and documents of actual goods and services purchased in the post-GST period and the respective applicable rates on goods and services in Pre-GST period, DGAP needs to verify this data. Accordingly, the matter is sent back to the DGAP for the re-investigation.

Summary of Order

8.	If remanded with directions:
	a) Remanded to: DGAP
	b) Directions subject to which remanded, if any: The respondent have claimed that they have submitted the data and documents of actual goods and services purchased in the post-GST period and the respective applicable rates on goods and services in Pre-GST period, DGAP needs to verify this data. Accordingly, the matter is sent back to the DGAP for the re-investigation.
9.	Type of order : Sent for re-investigation to DGAP

Place :DELHIPB

Signature

Date : 15.01.2026

DELHIPB Ankit Kumar

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

ORDER

1. The representative of the DGAP and learned counsel for the respondent have been heard.
2. Peruse the record.
3. On the recommendations of the standing Committee the DGAP conducted investigation against the respondent for alleged profiteering in respect of construction services supplied by them. Initially, one Dr. Rahul Bamal made a complaint against the respondent.
4. During the investigation the DGAP considered the relevant document/annexures and found that the respondent has opted for new scheme after 31.03.2019 for discharging @ 5% in accordance with the notification 3/2019-Central Tax (rates) dated 29.03.2019. The profiteering has been calculated up to the period of 29.03.2019.
5. The DGAP adopted the methodology such as:-

“The profiteering if any needs to be determined by calculating any input tax credit under GST which has become eligible to be taken as credit has been availed and utilised by the supplier of service to discharge its GST liability on provision of output service. Thus, any ITC will result in saving to the supplier of service only if the same has resulted in savings to the supplier in the form of decreased cost on account of availment and utilization thereof in payment

of GST on output service. Any positive difference in percentage of availability from the pre GST being deducted from the post-GST can be multiplied with the amount spent in the post GST on the purchase of inputs and input services to calculate the savings made by the Noticee as the excess availability of ITC in the GST period to the Noticee to pay output GST leads to reduction in cost to the Noticee, which as per the provisions of Section 171 of the CGST Act needs to be passed on to the recipient of services. The amount of profiteering then needs to be attributed to the total area constructed in post GST to determine profiteering per square feet and passed on to the home buyers in proportion of the area of the flats”

6. Total 1175 flats were constructed by the respondent as per details.
 - That they had constructed total 1175 flats having total saleable area of 13,01,530 Sq. Ft. in the project “Gulmohar Gardens Phase II”
 - That the respondent opted for the new scheme of 5% without ITC vide notification no.3/2019- Central Tax (rates) dated 29.03.2019.

- That all the 857 flats were booked opting the new scheme of 5% without ITC for the project.
- That the area of 9,30,090 Sq. Ft. of 857 flats is considered for calculation of profiteering.

7. For calculation of the profiteered amount the saleable area of the project and sold area, the ratio of CENVAT/Input Tax credit to purchase value was worked out. ITC as a percentage of purchase value was used by respondent during the pre-GST period was 7% and for post-GST period it was 13.25%. The ratio of ITC to total purchase of goods and services has increased by 6.25% in post-GST period as compared to pre-GST period.

8. Further, GST @ 12% was also applied by on the profiteered amount by the DGAP.

9. After investigation it was concluded that respondent has profiteered an amount of Rs.1,54,02,290 plus GST @ 12% i.e. 18,48,275 totalling Rs. 1,72,50,565.

10. The respondent filed its written submission and denied all the allegations made in the report. It is submitted that the methodology adopted by DGAP for investigation is contrary to the directions given by Hon'ble High Court of Delhi in Reckitt Benckiser India Pvt. Ltd. Vs. Union of India (2024) 14 Centex 374.

11. So far as the item purchased value in pre and post GST period are not identical in nature and quality. Certain

goods/services purchased in pre-GST period such as RCC pipes, letter-box, stone breaking tools, Khaprail sheets, energy meter, thermacoal sheets, Chimney, Plastic foot-rest and safety goods were not purchased in post GST period. The benefit of ITC has to be worked out on actually purchased items in post GST period by comparing the rate of tax in post GST period viz-a-viz a same in pre-GST period. The comparison has to be between the same basket of goods and services and not between non comparable items.

12. Hence, the respondent pleaded that the amount of profiteering worked out by the DGAP is not correct. The respondent claimed that on comparing the same basket of Goods and Services the amount of profiteering works out to Rs.40,90,542 only.
13. The item wise actual data in post GST period was available and it would have been justified to be used for comparison.
14. The respondent also submitted that GST collected from the buyers has already been deposited with the Government. Adding GST to the benefit amount results in double taxation. GST component cannot be added separately. The imposition of 12% GST is illegal.
15. We have carefully examined the facts and findings in the DGAP report as well as the contentions made by the respondent in their written reply as well as during the course of personal hearing.

16. After our thoughtful consideration, we observe that keeping in view the spirit of principal laid down by Hon'ble High Court of Delhi in the case of Reckitt Benckiser India Pvt. Ltd. Vs. Union of (Supra), submissions made by the respondent regarding comparison of the GST availed on the actual Goods and Services purchased in the Post GST period with the ITC available on such goods and services by applying the applicable rates on such goods and services in the pre-GST period carries weight. The contentions contained in the written submission as well made by learned counsel during the course of personal hearing have merits.
17. Since, the respondent have claimed that they have submitted the data and documents of actual goods and services purchased in the post-GST period and the respective applicable rates on goods and services in Pre-GST period, DGAP needs to verify this data.
18. In view of the above we are of the opinion that re-investigation is required by the DGAP. The matter is sent back to the DGAP for the re-investigation in accordance with the provision contain in the Rule 133(4) of the Goods and Services Tax Act, 2017.
19. The DGAP is directed to re-workout the ratio of ITC in the Pre-GST period and then compare it with the post-GST period to calculate the amount of profiteering.

20. It is directed that during the course of re-investigation, the respondent would furnish any additional document or information as required by DGAP.

21. The matter is, accordingly, disposed of.

Sd/-
(Justice Sh. Mayank Kumar Jain)

Sd/-
(Sh. Anil Kumar Gupta)

Dated: 15.01.2026