

GSTAT

Single Bench Court No. 4

NAPA/129/PB/2025

DG ANTI PROFITEERING, DIRECTOR GENERAL OF
ANTI-PROFITEERING, DGAP

.....Appellant

Versus

UNNATHI ASSOCIATES

.....Respondent

Counsel for Appellant

Counsel for Respondent

Hon'ble Sh. A. Venu Prasad, 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 : No

Order reference no. : ZA070010326000064H

Date of order : 19/03/2026

1.	GSTIN/Temporary ID/UIN - 27AABFU4497L1ZJ	
2.	Appeal Case Reference no. - NAPA/129/PB/2025	Date - 10/01/2025
3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondent - 1. Unnathi Associates , edwina@raunakgroup.com , 9821882065	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 19/03/2026 13/03/2026 03/03/2026 12/02/2026 08/01/2026 29/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	

8.	Order in brief - The Respondent is directed to refund the profiteered amount of Rs. 6,53,861/- along with interest at the rate of 18% per annum to the eligible homebuyers listed in Annexure-13 to the DGAP report within one month from the date of this order. The case is accordingly disposed of.
Summary of Order	
9.	Type of order: - Return to Recipient of Amount not passed on, along with interest

Place: -DELHI PB

Date: - 19.03.2026

Order

1. The proceedings in the present case arise out of the investigation report dated 07.01.2025 received on 10.01.2025 (hereinafter referred to as the “DGAP Report”) submitted by the Director General of Anti-Profiteering (hereinafter referred to as the “DGAP”) under Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”), read with Rule 129 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the “CGST Rules”). The investigation was initiated pursuant to a complaint referred by the Standing Committee on Anti-Profiteering on an application filed by Shri Rahul Kesarwani, **H-3, 705 Raunak Heights, Ghodbundar Road, Near Unnathi Green, Behind D Mart, Thane – 400615 (hereinafter referred to as “the Applicant”)** alleging profiteering in respect of construction services supplied by Ms. Unnathi Associates, **Raunak Group, Plot No.1, Mohan Compound, Next Audi, Thane West-400607 (hereinafter referred to as “the Respondent”)**, by way of not passing on the benefit of input tax credit through commensurate reduction in price in the Respondent's project “Raunak Heights”, Parshwanath College, Owala Village, Ghodbundar Road, Thane (W), Maharashtra - 400607, in alleged contravention of Section 171 of the CGST Act, 2017.

2. The DGAP initiated an investigation and submitted its initial investigation report dated 31.01.2023 to the Competition Commission of India (CCI). However, in the case of Writ Petition No. 7743/2019 and other connected matters, the Hon'ble Court of Delhi, in a judgment dated 29.01.2024, ordered a new methodology for the real estate sector. Accordingly, the CCI vide letter dated 21.03.2024 had directed the DGAP for re-investigation of this case under Rule 129 of the CGST Rules, 2017.

3. Upon examination of the information submitted by the Respondent for the period April, 2016 to December, 2019, the details of the input tax credit availed by them, their purchase value of Goods and Services (Purchase Value) of the project "Raunak Heights" and the ratio of input tax credit to the purchase value of Goods and Services, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to December, 2019) periods were calculated by the DGAP and were furnished in table- 'A' below:

Table- 'A'

(Amount in Rs)

Sr. No	Particulars	Pre-GST Period	Post-GST Period
1.	Purchase Value of Goods and Services (Excluding Taxes and Duties)	1,69,98,202	45,02,08,931
2.	Credit of Service Tax availed	13,03,738	-
3.	Credit of VAT availed		-
4.	Total Credit Availed in Pre-GST Period	13,03,738	-
5.	ITC of GST Availed	-	5,43,96,003
6.	Ratio of Credit Availed to Purchase Value (in %)	7.67	12.08

“A perusal of Table ‘A’ clearly reveals that the Input Tax Credit (ITC) available to the Noticee as a percentage of the purchase value during the pre-GST period was 7.67%, which increased to 12.08% during the post-GST period in respect of the project ‘Raunak Heights’. The above comparison unequivocally establishes that the Respondent has derived the benefit of additional Input Tax Credit under the GST regime. In terms of Section 171 of the CGST Act, 2017, the Respondent was statutorily required to pass on the said benefit of additional ITC to the recipients/homebuyers by way of commensurate reduction in the prices of the flats.

4. It was further observed by the DGAP that the Central Government, on the recommendations of the GST Council, had levied GST @ 18% on construction services vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. However, in terms of the said notification, an abatement of one-third of the total amount charged towards the value of land was allowed, thereby making the effective rate of GST on construction services 12%. Accordingly, the effective rate of GST applicable on the flats in the present project was 12%. Therefore, on the basis of the figures contained in Table ‘A’ above, particularly the comparative ratios of Input Tax Credit availed/available to the purchase value during the pre-GST and post-GST periods, along with the purchase value realized during the post-GST period, the recalibrated base prices and the consequent excess realization (profiteering) by the Respondent during the post-GST period have been computed, the details of which are tabulated in Table ‘B’ below.”

Table-‘B’

(Amount in Rs)

Sr. No.	Particulars	Post-GST
1.	Period	July, 2017 to December, 2019

2.	Ratio of Credit availed to Purchase Value as per Table - A above (%)	B	7.67/12.08
3.	Increase in input tax credit availed post-GST (%)	C	4.41
4.	Purchase Value of Goods and Services (Excluding Taxes and Duties) during Post-GST Period	D	45,02,08,931
5.	Total Savings on account of additional ITC benefit	$E = D * C / 100$	1,98,54,214
6.	Total Saleable Area (in Sq. Ft.)	F	1,04,038
7.	Total Saving Per Sq. Ft.	$G = E / F$	190.84
8.	Total Sold Area (in Sq. Ft.) in pre-GST period	H	19,661
9.	Profiteered Amount	$I = G * H$	37,52,105

5. Thus, the DGAP has concluded that the Respondent has **saved/profiteered** by an amount of Rs.37,52,105/- plus GST @12% Rs. 4,50,252/- i.e., totalling to Rs. 42,02,357/- (Forty-Two Lakh Two Thousand Three Hundred and Fifty-Seven rupees). The benefit of ITC of Rs. 35,48,496 has already passed. Hence, the saved/profiteered amount of Rs. 6,53,861/- (Rs. 42,02,357 -Rs. 35,48,49) inclusive of GST, after implementation of GST is yet to be passed on by the Respondent.

6. The above Report of the DGAP dated 07.01.2025 was considered by this tribunal and a Notice dated 30.10.2025 was issued to the Respondent (with the intimation to the original applicant) to explain why the above-referred Report of

the DGAP should not be accepted and why his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed. In reply, the Respondent furnished his written submissions vide his replies dated 16.02.2026 through mail.

7. Hearing in this matter was held on 12.02.2026 and on 03.03.2026. Sh. Shailesh Sheth, learned advocate, appeared on behalf of the Respondent and filed Vakalatnama before the Tribunal. None appeared on behalf of the Applicant. The Authorized Representative of the Respondent has submitted to this Tribunal about an unambiguous and unqualified acceptance of the DGAP's report finding and submitted a file containing the list of the customers to whom they have refunded the profiteering amount, along with copies of cheques and other documents relied upon, which have been taken on record. Further, the Authorized representative requested a waiver of the penalty and interest.

7.1 The Authorized Representative, in support of his arguments, relied upon the written submissions dated 16.02.2026 and the proviso to Section 171(3A) of the CGST Act. He also relied upon the judgments in *CCE v. Elgi Equipment Ltd.*, 2001 (128) ELT 52 (SC); *Marcandy Prasad Radhakrishna Prasad Pvt. Ltd. v. CCE*, 1998 (102) ELT A121 (SC); *Commissioner v. Supra Foundry Devices (P) Ltd.*, 2001 (132) ELT 543 (Kar); and *DGAP v. Procter & Gamble Group*, (2025) 35 Centax 77 (Tri.-GST-Delhi) with regard to the issue of penalty.

7.2 With regard to Interest to be levied, the authorised Representative submitted that there is no substantive charging Provision in the Act. In support of this, the Respondent relied upon the judgments in the matter of *J.K Synthetics Ltd. Vs. CTO- 1994*, 4 SCC 276 and *CCE v. Utkal Pradesh Sahakari Khand Udyog Mandil Ltd.* Further, the Respondent has submitted that there is

an absence of a definite Computation Mechanism and where the measure of levy is uncertain, the levy itself collapses. In support of his submission, the Respondent relied upon Govind Saran Ganga Saran v. Commissioner of Sales tax- 1985 AIR 1041 (SC).

8. The Tribunal had carefully considered the investigation report submitted by the DGAP dated 07.01.2025, the Respondent's unqualified acceptance of report thereof, the documentary evidence on record, the verified Statutory Auditor-certified financial statements and the mathematical computations which remain uncontested by the Respondent and Applicant. On the basis of it, this Tribunal finds that: -

8.1 While profiteering to the quantified extent of Rs. 6,53,861/- (42,02,357-35,48,496) (including GST) initially arose from the Respondent's pricing structure in the post-GST period due to the increase in the ratio of ITC to purchase value by 4.41 percentage points.

8.2 The Respondent has fully acknowledged the said profiteering and has tendered the cheques for discharge of its obligation under Section 171 of the CGST Act, 2017; as per the Annexures 13 of the DGAP's report.

8.3 It is evident from the above narration of facts that Respondent has not passed on the benefit of tax reduction to the customers in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and he has thus defaulted under Section 171 (3A) of the above Act and therefore, he is liable for imposition of penalty under the provisions of the above Section. However, since the provisions of Section 171 (3A) have come into force w.e.f. 01.01.2020, whereas the Occupation Certificate received in this project is December 2019, hence the period

during which the violation has occurred is w.e.f. 1st July, 2017 to 31.12.2019. Further section 171 (3A) clearly express that no penalty shall be levied if the amount is deposited within thirty days of the order of determination. In the present case, the Respondent had refunded the entire amount to the eligible homebuyers. Hence, the penalty prescribed under the above Section cannot be imposed on the Respondent.

8.4 FINDINGS ON INTEREST: -

In respect of the issue of interest, reference may be made to the judgment of the Hon'ble Delhi High Court in the matter of Reckitt Benckiser India Pvt. Ltd. v. Union of India, WP (C) 7743/2019, wherein the Hon'ble Court has dealt with the said aspect in Para No. 153 of the judgment. The relevant extract is reproduced below for the sake of brevity.

“153. This court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes amount so pocketed by the supplier /registered person would no have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that a reduction in tax rate or the Input Tax Credit availed results in a commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take.”

9. The Respondent has contended that interest should not be payable or should be payable only from the date of issuance completion certificate. Section 171 creates a statutory obligation to pass on the benefit of tax reduction or additional input tax credit at the time of supply itself. Where the supplier retains such benefit instead of passing it on to the recipient, the amount so retained assumes the character of excess consideration collected from the buyers. The Provisions with respect to interest are as follows: -

Rule 133 (3)(b) – return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be.

Above Rule 133(3)(b) of the CGST Rules, therefore, mandates that the amount not passed on must be returned along with interest at the rate of 18% per annum from the date of collection of such higher amount until the date of refund. Interest in such cases is compensatory in nature and ensures restitution of the time value of money that rightfully belongs to the recipients. Accordingly, the Respondent is liable to pay interest at the rate of 18% per annum from the respective dates of collection of the excess amount until the date of refund.

Hence, the Respondent shall pay interest on the profiteered amount in terms of Rule 133(3)(b) of the Central Goods and Services Tax Rules, 2017, as applicable to each eligible home buyer.

DIRECTIONS: -

The Respondent is directed to refund the profiteered amount of Rs. 6,53,861 along with interest at the rate of 18% per annum to the eligible homebuyers listed in Annexure-13 to the DGAP report within one month from the date of this order. Compliance shall be reported to the jurisdictional CGST/SGST Commissioner

with intimation to the DGAP within the said period, evidencing the completion of such payment to all eligible buyers. The case is accordingly disposed of.

10. A copy of this order shall be forwarded to the Respondent, Applicants Director General of Anti-Profitteering, and jurisdictional GST Commissioner(s) for necessary action and record.

11. The Order is pronounced in the open court.

(Sh. A. Venu Prasad)

Dated: 19.03.2026