

**BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY
UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017**

I.O. No. : 18/2022
Date of Institution : 16.04.2020
Date of Order : 27.09.2022

In the matter of:

1. Smt. Renu Mittal w/o Mool Chand Mittal, 897, Sector-17, Faridabad-121002 (Haryana).
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

1. M/s Anant Raj Ltd., 2nd Floor, C-3, Qutub Institutional Area, Katwaria Sarai, New Delhi-110016.
2. M/s TARC Ltd. (formerly known as M/s Anant Raj Ltd.), 2nd Floor, C-3, Qutub Institutional Area, Katwaria Sarai, New Delhi-110016.

Respondents

Quorum:-

Shri Amand Shah, Technical Member and Chairman
Shro Pramod Kumar Singh, Technical Member
Shri Hitesh Shah, Technical Member

Present :-

1. None for the Applicant No. 1
2. Shri Somnath Shukla Advocate, Shri Rajendra Singh and Shri Dinesh Kumar, authorised representatives, for the Respondent No. 1.
3. Sh. Aman Bansal, Advocate and Sh. Jatin Arora Advocate for the Respondent No. 2.

ORDER

1. A Report dated 23.03.2020 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profitteering (DGAP) on 16.04.2020 after detailed investigation under Rule 129 (6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the Report are that the Applicant No. 1 had filed application before the Standing Committee on Anti-profitteering, under Rule 128 (1) of the CGST Rules, 2017 and submitted that she had purchased flat in the Respondent No. 1's Project "Maceo" but the Respondent No. 1 had not passed on the benefit of Input Tax Credit (ITC) to her by way of commensurate reduction in prices of the flats, in terms of Section 171 (1) of the CGST Act, 2017. The above reference was examined by the Standing Committee on Anti-profitteering and upon being prima facie satisfied that the Respondent No. 1 had not passed on the benefit of ITC had forwarded the application of Applicant No. 1 with its recommendation to the DGAP for detailed investigation under Rule 129 (1) of the CGST Rules, 2017.
2. The DGAP has mentioned that the Applicant had submitted the following documents along with her application:-
 - a. Copy of publication page of the paper "Hindustan", Delhi dated 16.09.2019.
 - b. Application dated 16.08.2018 of the Applicant No. 1.
3. After perusal of the said application, the DGAP has stated that the Applicant had booked flat in the Respondent No. 1's project "**Maceo**", on 19.08.2011, i.e., in the pre-GST era. In terms of the instalment plan agreed upon, the Applicant No. 1 was to pay the consideration in 14 instalments each linked with different stages of construction of the flat. Prior to GST the Applicant No. 1 had already paid 13 instalments. As per the agreement, the Respondent No. 1 issued demand letters for last instalment without providing any benefit of additional ITC in the post-GST era.
4. The DGAP on receipt of the application and supporting documents from the Standing Committee on Anti-profitteering had issued notice under Rule 129 (3) of the CGST Rules, 2017 on 09.07.2019 calling upon the Respondent No. 1 to reply as to whether he admitted that the benefit of ITC had not been passed on to the above Applicant No. 1 by way of commensurate reduction in prices charged from her and if so, to *suo moto* determine the quantum thereof and indicate the same

in his reply to the notice as well as furnish all supporting documents. Vide the above mentioned notice dated 09.07.2019, the Respondent No. 1 was also given opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period from 17.07.2019 to 19.07.2019, which he had not availed. Vide e-mail dated 27.02.2020, the Applicant No. 1 was also given an opportunity to inspect the non-confidential documents/replies furnished by the Respondent No. 1 on 28.02.2020 or 02.03.2020, which was not availed of by the Applicant No. 1.

5. The DGAP has reported that the time limit to complete the investigation was extended up to 26.03.2020 from 27.12.2019 by this Authority, vide its order dated 24.12.2019 in terms of Rule 129(6) of the CGST Rules, 2017 and the period of current investigation was from 01.07.2017 to 30.06.2019.
6. The DGAP has further reported that the Respondent No. 1 had submitted his replies vide letters dated 18.07.2019, 26.07.2019, 13.08.2019, 05.11.2019, 13.11.2019, 06.12.2019, 25.02.2020, 04.03.2020, 12.03.2020 vide which he had stated:-
 - a. That on the demands raised in respect of fresh bookings made on or after 1st July, 2017 (Post GST) anti-profiteering provisions did not apply.
 - b. That amount of ITC availed of Rs. 16,52,14,970/- post GST mentioned in his letter dated 13.08.2019 also included the amount which was availed by him towards the fresh bookings of units made on or after 01.07.2017. Therefore, ITC availed of Rs. 16,52,14,970/- should have been accordingly reduced in proportion to demand raised for the units booked prior to GST for which demand was raised after GST and demand raised for units booked after GST which should have been as such.
7. The DGAP in his Report has also stated that the above application, the various replies of the Respondent No. 1 and the documents/evidence on record had been carefully examined. The main issues for investigation were:-
 - i) Whether there was benefit of reduction in rate of tax or benefit of ITC on the supply of Construction Service by the Respondent No. 1 after the introduction of GST w.e.f. 01.07.2017 and if so,
 - ii) Whether such benefit was passed on to the recipients in terms of Section 171 of the CGST Tax Act, 2017 by the Respondent No. 1?

8. The DGAP has further reported that the present case pertained to supply of Construction Service and the investigation was limited to one project i.e. "Maceo" only, in which the Applicant No. 1 booked her unit. Upon analysis of the home-buyer's data submitted by the Respondent No. 1, it was observed that the Respondent No. 1's project "Maceo" included different categories of towers i.e. (A to R). The Respondent No. 1 vide submissions dated 13.08.2019 submitted Cenvat/ITC register for the project "Maceo" reconciled with VAT, ST-3 and GSTR-3B Returns for the period as being covered in the investigation.
9. The DGAP has also submitted that vide letter dated 06.12.2019, the Respondent No. 1 had informed that he had not passed on any benefit of ITC to the customers in respect of the project "Maceo".
10. It has also been reported by the DGAP that prior to 01.07.2017, i.e., before GST was introduced, the Respondent No. 1 was eligible to avail CENVAT credit of Service Tax paid on input services. However, CENVAT credit of the Central Excise duty paid on inputs was not admissible as per the CENVAT Credit Rules, 2004, which was in force at the material time. Further, post-GST, the Respondent No. 1 could avail the ITC of GST paid on all the inputs and input services including the sub-contracts. The Respondent No. 1 vide his email dated 06.12.2019 submitted the home-buyer's data and other documents /information for the period April, 2016 to June, 2019, the details of the ITCs availed by him with respect to the impugned project, his turnovers from the project namely "Maceo" and the ratios of ITCs to the turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to June, 2019) periods have been furnished by the DGAP in table 'A' below:-

Table 'A'

(Amt. in Rs)

S.No.	Particulars	(Pre-GST)	(Post-GST)
1	Credit of Service Tax Paid on Input Services (A)	2,03,58,419	
2	ITC of VAT paid on Inputs (B)	-	
3	Total CENVAT/VAT/ITC Available (C=A+B)	2,03,58,419	
4	ITC of GST Availed (D)		16,52,14,920
5	Total Turnover from Residential Area (E)	13,38,54,315	77,63,25,693
6	Total Saleable Area (F)	15,84,208	15,84,208
7	Sold Area relevant to Turnover in Sq Ft. (G)	3,06,344	7,99,997
8	ITC proportionate to Sold Area (H= (C or D)* G/F)	39,36,781	8,34,30,610
9	Ratio of Cenvat/ITC to Turnover (I=H/E*100)	2.94%	10.75%

11. It has also been stated by the DGAP that as per the above Table-A, it was clear that the ITC as a percentage of the turnover that was available to the Respondent No. 1 during the pre-GST period (April, 2016 to June, 2017) was 2.94% and during the post-GST period (July, 2017 to June, 2019), was 10.75% which indicated that post-GST, the Respondent No. 1 had benefited from additional ITC to the tune of 7.81% [10.75% (-) 2.94%] of the turnover.
12. The DGAP further stated that the Central Government, on the recommendation of the GST Council, had levied 18% GST on Construction Service (after one third abatement towards value of land, effective GST rate was 12% on the gross value), vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. Accordingly, the profiteering had been examined by comparing the applicable tax rate and ITC available to the Respondent No. 1 during the pre-GST period (April, 2016 to June, 2017) when Service Tax was @ 4.5% rate with the post-GST period (July, 2017 to June, 2019) when the effective GST rate was 12% on the gross value. On the basis of the figures contained in Table 'A' above, the comparative figures of ITCs availed/available as a percentage of the turnovers in the pre-GST and post-GST periods, the recalibrated basic price as well as the excess collection (profiteering) during the post-GST period have been furnished by the DGAP in Table-'B' below:-

Table-B (Amount in Rs.)

Rs	Particulars		Pre-GST	Post- GST
1	Period	A	April, 2016 to June, 2017	July, 2017 to March, 2019
2	Output tax rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/VAT/GST ITC to Total Turnover as per Table - B above (%)	C	2.94%	10.75%
4	Increase in ITC availed post-GST (%)	D	-	7.81%
5	<u>Analysis of Increase in ITC:</u>			
6	Total Basic Demand during July, 2017 to June, 2019	E		77,63,25,693
7	GST @12%	F= E*12%		9,31,59,083
8	Total demand	G= E+F		86,94,84,777
9	Recalibrated Basic Price	H=E*(1-D) or 92.19% of E		71,56,94,657
10	GST @12%	I=H*12%		8,58,83,359
11	Commensurate demand price	J=H + I		80,15,78,015
12	Excess Collection of Demand or Profiteered Amount	K=G - J		6,79,06,761

13. It has also been stated by the DGAP that as per the above Table-'B', it appeared that the additional ITC of 7.81% of the turnover should have been resulted in commensurate reduction in the basic price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of the additional ITC should have been passed on by the Respondent No. 1 to the recipients. In other words, by not reducing the pre-GST basic price by 7.81% on account of additional benefit of ITC and charging GST @12% on the pre-GST basic price, the Respondent No. 1 appeared to have contravened the provisions of Section 171 of the CGST Act, 2017.
14. Further it has been reported by the DGAP that on the basis of the aforesaid CENVAT/ITC availability in the pre and post-GST periods and the demands raised by the Respondent No. 1 on the Applicant No. 1 and other home buyers towards the value of construction on which GST liability @ 12% was discharged by the Respondent No. 1 during the period 01.07.2017 to 30.06.2019, the amount of benefit of ITC not passed on to the recipients or in other words, the profiteered amount came to Rs. 6,79,06,761/- which included GST on the base profiteered amount of Rs. 6,06,31,037/-. The said amount also included the profiteered amount of Rs 79,541/- (including GST on the base amount of Rs. 71,018/-) in respect of the Applicant No. 1 placed at serial no. 395 in Home-Buyers List.
15. The DGAP further reported that vide submission dated 04.03.2020 the Respondent No. 1 claimed to have booked the units post introduction of GST i.e., on or after 01.07.2017 which were all inclusive of GST and therefore, the demand of Rs. 30,93,83,290/- and corresponding ITC of Rs. 6,58,41,890/- should have been excluded as it was not appropriate. In this regard, the DGAP referred to clause 1.2 of apartment no. 703 of Sale Agreement that the Total Price was quoted of Rs. 62,64,653/- and it was all inclusive of GST (by hand writing). Thus such mentioning of inclusive of GST did not substantiate that the Respondent No. 1 had considered/passed on any benefit of ITC to the recipients.
16. The DGAP further reported that above computation of profiteering was with respect to 473 units as mentioned in the home-buyers list, whereas the Respondent No. 1 had booked total 453 units as per the data submitted. In the pre-GST period, demands were raised from only 157 buyers who had booked the units, and the net total of demands raised from such units only had been taken into consideration. Similarly, in the post-GST period, demands were raised from

only 473 buyers who had booked the units, and the net total of demands raised from such units only had been taken into consideration. Therefore, the benefit of ITC in respect of these 473 units should have been calculated when the demand was raised from such units by taking into account the proportionate ITC in respect of such units. On the basis of the details of outward supplies submitted by the Respondent No. 1, it was observed that Construction Service had been supplied by the Respondent No. 1 in the State of Haryana only.

17. The DGAP further concluded that the benefit of additional ITC of 7.81 % of the turnover had accrued to the Respondent No. 1 and the same was required to be passed on to the Applicant No. 1 and the other recipients. The Respondent No. 1 appeared to have contravened the provisions of Section 171 of the CGST Act, 2017, in as much as the benefit of additional ITC @ 7.81 % of the demand raised by the Respondent No. 1 during the post-GST period from 01.07.2017 to 30.06.2019, had not been passed on to the Applicant No. 1 and the other recipients. Thus the Respondent No. 1 had realized an excess amount to the tune of Rs. 79,541/- from the Applicant No. 1 which included both the profiteered amount @ 8.71% of the basic price and the GST @12% on the said profiteered amount. Further, the investigation revealed that the Respondent No. 1 had realized an excess amount of Rs. 6,79,06,761/- which included both the profiteered amount @ 7.81% of the basic price and GST @12% on the said profiteered amount of Rs. 6,06,31,036/-, from Applicant No. 1 and 472 other recipients who were not Applicants in the present proceedings. However, these recipients were identifiable as the Respondent No. 1 had provided their names and addresses along with unit no. allotted to them. Thus, the total profiteered amount calculated was Rs. 6,79,06,761/- (Rupees Six Crore, Seventy-Nine Lakh, Six Thousand, Seven Hundred and Sixty-one only) which included Rs 79,541/- as profiteered amount in respect of Applicant No. 1.
18. The DGAP also concluded that the present investigation covered the period from 01.07.2017 to 30.06.2019. Profiteering, if any, for the period post July, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent No. 1 in future cannot be determined at that stage, when the construction of the project was yet to be completed.
19. The DGAP further stated that the provisions of Section 171(1) of the CGST Act, 2017, requiring that *"any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed on to the recipient by way of*

commensurate reduction in prices”, had been contravened by the Respondent No. 1 in the present case.

20. The above Report was carefully considered by this Authority and a notice dated 01.05.2020 was issued to the Respondent No. 1 to explain why the Report dated 23.03.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent No. 1 filed his submissions dated 01.07.2020 & 11.08.2020 and has interalia stated :-

- a. The DGAP had failed to appreciate that in terms of Rule 42 of the CGST Rules, the Respondent No. 1 was liable to reverse / forgo the proportionate ITC availed in respect of the units sold post obtaining completion certificate from the competent authority. Needless to mention that this reversal was required to be carried out post completion of the entire project, and hence, the net costing of the project could be determined only upon computing the amount of ITC to be reversed. Further, it was submitted that Occupancy Certificate for around 70% of the total project/no. of flats had already been provided i.e. for towers 'J' 'K' 'G' and 'H' on 07.06.2019 and for towers 'A' 'C' 'D' 'E' 'F' 'L' 'M' and 'N' on 28.11.2019, and ITC in respect of these flats had been already transferred by the Respondent No. 1 to the respective flat buyers. Further, in another prospective 6 months, Occupancy Certificate of the rest of the flats would be provided and ITC in respect of these flat owners would be transferred accordingly. Hence no benefit of ITC was availed by the Respondent No. 1.
- b. That he was liable to reverse the ITC in respect of flats for which he had already received Occupancy Certificates, therefore, the same needed to be adjusted while applying the turnover method. In the present case, out of 16 towers, the Respondent No. 1 had obtained Occupancy Certificate for 12 towers of the project. It would be appreciated that ITC in respect of these towers could not be utilized by the Respondent No. 1 for the payment for future taxes; therefore, the unutilized ITC would be reversed by the Respondent No. 1 in the near future. The DGAP in his Supplementary Report had not disputed this contention of the Respondent No. 1 and had expressed his inability for computing the adjustment due to lack of data. The Respondent No. 1 by way of present supplementary submissions was producing the relevant Occupancy Certificate in respect of the completed flats for which the proportionate ITC amounting to approximately 10 crores would be reversed in the near future. It was also submitted that, in another prospective 4 months, the Occupancy Certificate

for the rest of the flats would be provided and unutilised ITC in respect of these flats would be reversed accordingly.

- c. In this regard, it was submitted that the actual figures of reversal of unutilised ITC in respect of the completed 12 towers, were at the stage of computation.
- d. That the ITC of Service Tax reflected in Tran-1 should be deducted from the figure of total ITC under GST. It was submitted that while arriving at the profiteering percentage of 7.81%, and while applying the turnover method, the DGAP in his investigation report dated 23.03.2020 had taken Rs. 16,52,14,920/- as ITC in the GST regime. It was noteworthy that the aforesaid amount of Rs. 16,52,14,920/- included carry forward of transitional CENVAT credit of Pre-GST regime amounting to Rs. 1,43,78,603/-, which had already been included in the calculation pertaining to the pre-GST period. The aforesaid amount of Rs. 1,43,78,603/- being inadvertently added in the total amount of the ITC under GST of Rs. 16,52,14,920/- had resulted into distorted profiteering percentage. It was prayed that the aforesaid amount of Rs. 1,43,78,603/- be deducted from the total amount of ITC under GST so as to determine the correct ratio of profiteering. After excluding the amount of Rs. 1,43,78,603/- from total ITC under GST, the correct percentage of Anti-Profitteering would work out at 6.87%, as against 7.81% considered in the Report of the DGAP.

21. Clarifications were sought from the DGAP on the Respondent No. 1's submissions dated 01.07.2020 under Rule 133(2A) of the CGST Rules, 2017. The DGAP vide his Report dated 22.07.2020 has stated:-

- a. That ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent No. 1, if such units remained unsold at the time of issue of the Completion Certificate in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017. The veracity of the submissions made by the Respondent No. 1 that Occupancy Certificate for around 70% of the total project/no. of flats had already been provided i.e. for towers 'J' 'K' 'G' and 'H' on 07.06.2019 and for towers 'A' 'C' 'D' 'E' 'F' 'L' 'M' and 'N' on 28.11.2019, and ITC in respect of these flats had been already transferred by the Respondent No. 1 to the respective flat buyers needed to be checked as the Respondent No. 1 had not submitted any documentary evidence for verifying the same to the DGAP before the submission of the investigation Report dated 23.03.2020.

- b. That Section 171 of CGST Act, 2017, provided that any reduction in rate of tax on any supply of goods or services or the benefit of ITC should be passed on to the recipient by way of commensurate reduction in prices. Since, the Section did not mention about any particular recipient it implied that all the supplies made by a registered person to all his recipients needed to be examined from the perspective of passing on the benefits to each buyer.
22. Opportunity of personal hearing through video conferencing was granted to the Applicants and the Respondent No. 1 on 10.09.2020. Shri Somnath Shukla, Advocate, Shri Rajendra Singh and Shri Dinesh Kumar, authorised representatives, appeared for the Respondent No. 1. During the hearing through video conferencing the Respondent No. 1 had requested to allow him to submit the details of his final ITC. Therefore, the Respondent No. 1 was allowed to submit his details of ITC.
23. The Respondent No. 1 vide his email dated 28.09.2020 and 13.10.2020 had submitted:-
- That the actual figures of reversal of ITC could not be produced because of the corporate restructuring through demerger of the Respondent No. 1's company. The actual figures of the reversal of ITC could only happen post registration of the new entity and subsequent transfer of ITC from the erstwhile entity to the demerged entity.
 - That the corporate restructuring through demerger of the Respondent No. 1 had been approved by the competent Authority on 25.08.2020. Copy of the Order of the demerger passed by the National Company Law Tribunal has also been submitted by the Respondent No. 1.
 - That the Respondent No. 1 and the resulting entity ("Anant Raj Global Limited") were jointly filing their GST Returns till 31st March, 2020.
 - That on 25.08.2020, on receipt of the order approving demerger of the Respondent No. 1, the Demerged/Respondent entity had filed his GST Return for the period commencing April, 2020 to August, 2020. However, GST Return for the resulting entity i.e. Anant Raj Global Limited were pending for the said period.
 - That because of the above mentioned developments at the end of the Respondent No. 1 and due to the pendency of GST compliances of the demerged entities the computation of the amount of reversal of ITC was taking more time than expected and further requested for extension of time to submit the details of final ITC.

24. The Respondent No. 1 was provided adequate opportunities to file the details of ITC vide Order dated 24.11.2020, 11.12.2020 and 28.01.2021. However, the Respondent No. 1 has not filed the above details.
25. Before the order after the personal hearing held on 10.9.2020 could be issued, one of the Members was transferred out from the Authority and thereafter the Chairman also left the Authority. The Authority's quorum was restored on 22.2.2022 and the Respondent No. 1 was offered personal hearings on 24.3.2022 and 31.3.2022. But no one attended the personal hearing. The Respondent No. 1 was granted last opportunity to provide written submissions including details of ITC by 6.4.2022; yet, he has failed to do the same by the said date. Since, enough opportunities were provided to the Respondent No. 1, the matter was closed and the Respondent No. 1 was informed accordingly. However, the Respondent No. 1 vide letter dated 22.4.2022 received on 26.4.2022 informed that after demerger, the name of Resultant company is M/s The Anant Raj Corporation (TARC), 2nd Floor, C-3, Qutub Institutional Area, Katwaria Sarai, New Delhi-110016. Accordingly, personal hearing through video conferencing was also granted to M/s TARC Ltd. on 05.09.2022. Sh. Aman Bansal, Advocate and Sh. Jatin Arora (Advocate) appeared on behalf of M/s TARC Ltd. i.e. the Respondent No. 2 and has filed his written submissions dated 31.08.2022 ad 12.09.2022 vide which he has raised some legal issues and inter-alia stated that:-

- a. The calculation done by the DGAP while calculating the profiteered amount is not correct and thus, he has submitted his revised calculations mentioned in the Table below:-

Table			
S. No.	Particulars	Pre-GST (April, 2016 to June, 2017)	Post-GST (July, 2017 to June, 2019)
1	Credit of Service Tax Paid on Input Services (A)	2,03,58,419	
2	Input tax credit of VAT paid on Inputs (B)	-	
3	Total CENVAT/VAT/Input tax credit available (C=A+B)	2,03,58,419	
4	Input tax credit of GST availed (D)		16,52,14,920

5	Total Turnover from Residential Area (E)	13,38,54,315	77,63,25,693
6	Total Saleable Area (F)	15,84,208	15,84,208
7	Sold Area relevant to Turnover in Sq. Ft. (G)	7,89,063	1,12,788
8	ITC proportionate to Sold Area (H = (C or D)*G/F)	1,01,40,130	1,17,62,509
9	Ratio of CENVAT/Input tax credit to Turnover (I = H/E*100)	7.58%	1.52%

b. Based on the above Table, he has calculated the revised profiteered amount, the details of which have been furnished in the Table below:-

Table - D				
Sn. No.	Particulars		Pre-GST (April, 2016 to June, 2017)	Post-GST (July, 2017 to June, 2019)
1	Period	A	April, 2016 to June, 2017	June, 2017 to March, 2019
2	Output Tax Rate (%)	B	4.50%	12.00%
3	Ratio of CENVAT/Input tax credit to Turnover as per Table-A (%)	C	7.58	1.52
4	Increase in Input tax credit availed Post-GST (July, 2017 to June, 2019) (%)	D	-	-6.06
5	Analysis of increase in input tax credit:			
6	Total basic demand during July, 2017 to June	E		776325693.00

	2019			
7	GST@12%	$F=E*12$		93159083.00
8	Total Demand	$G=E+F$		869484777.00
9	Recalibrated Basic Price	$H=E*(1-D)$ or 106.06% of E		823371030.00
10	GST@12%	$I=H*12\%$		98804523.60
11	Commensurate demand price	$J=H+I$		922175553.60
12	Excess Collection of Demand or Profiteered Amount	$K=G-J$		-5,26,90,776.60

- c. As per the Table mentioned above, the correct percentage of profiteered amount would work out at (- 6.06%) as against 7.81% considered in the report of DGAP and consequently there was a loss of (Rs. - 5,26,90,776.60).
- d. The DGAP in his report has considered Rs. 16,52,14,920/- as ITC in the GST regime. However, the aforesaid amount of Rs. 16,52,14,920/- included carry forward of transitional CENVAT of Pre GST regime amounting to Rs. 1,43,78,603 also. This amount has been considered by the DGAP while determining the percentage of ITC in the Pre-GST period. The provisions for determining the anti-profiteering in GST law referred to the additional benefit being available, if any to a supplier on account of additional GST ITC available to a supplier. Therefore, while calculating the percentage of ITC benefit available in the Post GST period, the DGAP should have considered only the actual ITC availed by him during the Post GST period and the ITC availed during pre-GST period, should have been reduced while calculating the percentage of ITC in the post-GST period. The aforesaid amount of Rs. 1,43,78,603 being added in the total amount of the ITC in the post GST period has led to wrong profiteering percentage.

- e. Thus, excluding the amount of Rs. 1,43,78,603 from the total amount of ITC under post-GST period, the correct percentage of Anti-Profiteering will work out at (-6.19%) as against the (-7.81%).
- f. The DGAP had earlier initiated the investigation against M/s Anant Raj Limited, who were the owners of the 'Project Maceo', since 2011. The project division of 'Anant Raj Limited' was demerged to form another company namely 'M/s Anant Raj Global Limited', vide order of the National Company Law Tribunal ('NCLT') dated 25.08.2020. The appointed date of demerger as approved by the NCLT was 30.09.2018. As part of the demerger scheme, the 'Project Maceo' was transferred to M/s Anant Raj Global Limited. Further, M/s Anant Raj Global Limited changed its legal name to 'TARC Limited' with effect 19.04.2021.
- g. The DGAP in the present case, while computing the anti-profiteering amount has wrongly taken the value of the demand raised and ITC availed in the post GST period in homebuyers list including the demand raised in respect of fresh bookings made on or after 1.07.2017 (Post GST) on which anti-profiteering did not apply. Therefore, the demand raised post GST and the ITC availed should be excluded from the total demand raised.
- h. Post the demerger of the project division of the Respondent No. 1 to M/s TARC for the GST registration related to the project Maceo, the Respondent No. 1 has filed its ITC 02 return on 26.07.2022 only. Through the ITC 02 return, the Respondent No. 1 has transferred an amount of Rs. 43.70 Lakhs as ITC pertaining to the Project Maceo, to the ECL of M/s TARC Limited.
- i. On the basis of the above submissions, the present case should be remanded back to the DGAP for the purpose of recalculation of profiteering.

26. This Authority has carefully considered all the Reports filed by the DGAP, submissions of the Respondents and all other material placed on record. On examining the record, the observations of this Authority are as follows:-

- a. The National Company Law Tribunal (NCLT) vide its Order dated 24.08.2020 has sanctioned the demerger of the Respondent No. 1 (Demerged Company) and the Respondent No. 2 (Resulting Company) and the subject project i.e. 'MACEO' of the Respondent No. 1, against which complaint regarding non-passing on the benefit of ITC was made by the Applicant No. 1, was transferred to the Respondent No. 2.

- b. The Respondent No. 1 during personal hearing via video conferencing held on 10.09.2020 requested to allow him to submit the details of his final ITC. Further, the Respondent No. 1 vide his emails dated 28.09.2020 and 13.10.2020 has stated that the actual figures of the reversal of ITC could not be produced because the corporate restructuring through demerger of the Respondent No. 1's company was underway. The details of the reversal of ITC could only be produced post registration of the new entity and subsequent transfer of ITC from the erstwhile entity to the demerged entity. Though the Respondent No. 1 was provided adequate opportunities to submit the actual figures of ITC vide this Authority's Order dated 25.09.2020, 12.10.2020, 23.10.2020, 04.12.2020, 18.12.2020, 15.01.2021 and 12.02.2021, however, till date the Respondent No. 1 has not submitted the complete details of ITC. If the Respondent No. 1 or the Respondent No. 2 submits the correct details of ITC, the profiteered amount may change. Therefore, there is need to verify the above claim of the Respondent No. 1 or Respondent No. 2 to arrive at the correct findings on the above issue. Accordingly, the DGAP is directed to further investigate it and submit Report on the same.
- c. The Respondent No. 1 & No. 2 have further contended that the ITC of Service Tax reflected in Tran-1 should be deducted from the figure of total ITC under GST. They have further claimed that while arriving at the profiteering percentage of 7.81%, and while applying the turnover method, the DGAP in his investigation report dated 23.03.2020 had taken Rs. 16,52,14,920/- as ITC in the GST regime. It was claimed that the aforesaid amount of Rs. 16,52,14,920/- included carried forward transitional CENVAT credit of pre-GST regime amounting to Rs. 1,43,78,603/- and the same had already been included in the calculation pertaining to the pre-GST period. The aforesaid amount of Rs. 1,43,78,603/- being inadvertently added, as claimed by the Respondent No. 1 & No. 2, in the total amount of the ITC under GST of Rs. 16,52,14,920/- had resulted into distorted profiteering percentage. Therefore, the aforesaid amount of Rs. 1,43,78,603/- be deducted from the total amount of ITC under GST so as to determine the correct ratio of profiteering. After excluding the amount of Rs. 1,43,78,603/- from total ITC under GST, the correct percentage of profiteering would work out at 6.87%, as against 7.81% considered in the Report of the DGAP. Upon perusal of the Report of the DGAP, we observe that the Report of the DGAP is silent on the above issue raised by the Respondent No. 1 & No. 2. Therefore, the above claim of the Respondent No. 1 & No. 2 is also

required to be further investigated and findings be submitted to this Authority.

- d. The Respondent No. 1 has contended that out of the total instalments, the Applicant No. 1 has paid 10 instalments in the pre-GST regime and the remaining instalments were paid in the post-GST regime. However, as per the Report of the DGAP dated 23.03.2020, it has been claimed by the DGAP that out of the total instalments, 13 instalments were paid by the Applicant No. 1 in pre-GST era and rest were paid in post-GST period. It is apparent from the above that there is dispute over the instalments paid by the Applicant No. 1 during the pre and the post GST periods which needs to be further investigated and correct figures be submitted to this Authority.
- e. The Respondent No. 1 vide submissions dated 01.07.2020 has stated that out of 16 towers (A to R), he has received Occupancy Certificate for 12 towers i.e. 'J' 'K' 'G' and 'H' on 07.06.2019 and for towers 'A' 'C' 'D' 'E' 'F' 'L' 'M' and 'N' on 28.11.2019, and the ITC in respect of these flats had already been passed on to the respective flat buyers. However, there is no documentary evidence to verify that the above Respondent has passed on the benefit of ITC in respect of above mentioned 12 towers i.e. 'J' 'K' 'G' 'H' 'A' 'C' 'D' 'E' 'F' 'L' 'M' and 'N' to the flat buyers. Accordingly, the claim of the above Respondent be verified by the DGAP and report be submitted.
- f. The Respondent No. 2 has submitted his own calculations of ratio of ITC to Turnover for the pre and post GST period and claimed that the ratios are 7.58% and 1.52% respectively and thus, as per his calculations, the revised profiteered amount came to Rs. (-5,26,90,777/-), which is also required to be verified by the DGAP.
- g. For the reasons mentioned in Para 26(f) supra, it appears that there is a huge difference between the 'ratio of ITC to Turnover' and 'Profiteered Amount' calculated by the Respondent No. 2 as compared with the 'ratio of ITC to Turnover' and 'Profiteered Amount' calculated by the DGAP. Therefore, it appears to this Authority that there is a need to verify the above claim of the Respondent No. 2 to arrive at the correct 'ratio of ITC to Turnover' and 'Profiteered Amount'. Accordingly, the DGAP is directed to further investigate it and submit Report on the same.

27. Therefore, without going into the merits and the other submissions made by the Respondents and the Applicants at this stage, we find that this case merits

re-investigation by the DGAP based on the above observations of this Authority. Thus, we direct the DGAP to reinvestigate the matter as per the provisions of Rule 133(4) of the CGST Rules 2017 and submit his report before this Authority. On his part, the Respondents are directed to fully cooperate with the DGAP in the process of reinvestigation which includes submission of the requisite documents/details/information pertaining to his supplies.

28. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that:-

"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering, appears to be directory in as much as no consequence of non-adherence of the said period of six months is prescribed either in the CGST Act or the rules framed thereunder."

Accordingly this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.


29. A copy each of this order be supplied to the Applicants and the Respondents free of cost. File be consigned after completion.

Sd/-
(Pramod Kumar Singh)
Technical Member

Sd/-
(Amand Shah)
Technical Member &
Chairman

Sd/-
(Hitesh Shah)
Technical Member

Certified Copy


(Rajarshi Kumar)
Secretary, NAA



File No. 22011/ NAA/145/Anant/2019
Copy To:-

Dated: 30.09.2022

1. M/s Anant Raj Ltd., H-65, Connaught Circus, New Delhi-110001.
2. M/s TARC, 2nd Floor, C-3, Qutub Institutional Area, Katwaria Sarai, New Delhi-110016.

3. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
4. Smt. Renu Mittal W/o Mool Chand Mittal, 897, Sector-17, Faridabad, Haryana-121002.
5. Guard File.