

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

I.O. No. 27/2020
Date of Institution 15.11.2021
Date of Order 30.09.2022


In the matter of:

1. Sh. Sourav Majee, Kollal Flat No. 2D, 6E/1 Baishnabghate Byelane, Naktala, Kolkata-700047
2. Smt. Susama Giri, Uttarchak, PO Sukrullapur, Dist. Purba Medinipur Pin-721626
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.

Applicants

Versus

M/s Bengal Peerless Housing Development Company Ltd,
6/1A, Moira Street, Mangal Deep, Ground Floor, Kolkata-
700017.

Respondent 

Quorum:-

1. Sh. Amand Shah, Technical Member
2. Sh. Pramod kumar singh, Technical Member
3. Sh. Hitesh shah, Technical Member

Present:-

1. None for the Applicant No. 1 & 2
2. None for the Respondent

REPORT

1. The Present Report dated 12.11.2021 received in the National Anti-Profiteering Authority (NAA or Authority) on 15.11.2021 had been furnished by the Applicant No. 3 i.e. the

Director-General of Anti-Profiteering (**DGAP**), under Rule 129 (6) of the Central Goods & Services Tax (**CGST**) Rules, 2017, filed by Applicant No. 1). Sh. Sourav Majee, Kollal Flat No. 2D, 6E/1 Baishnabghate Byelane, Naktala, Kolkata-700047 and Applicant No 2). Smt. Susama Giri, Uttarchak, PO Sukrullapur, Dist. Purba Medinipur Pin-721626, alleging profiteering in respect of construction service supplied by M/s Bengal Peerless Housing Development Company Ltd, 6/1A, Moira Street, Mangal Deep, Ground Floor, Kolkata-700017. The Applicants alleged that the Respondent had not passed on the benefit of input tax credit to them by way of commensurate reduction in the price in the Respondent project “**AVIDIPTA II**” situated at Mouza- Barakhola, Mukundpur, Kolkata in terms of the Section 171 of the Central Goods and Services Tax Act, 2017.

2. The DGAP in its report 12.11.202, inter-alia, stated that:-

- i. The aforesaid applications were examined by the Standing Committee on Anti-profiteering, in its meeting, the minutes of which were received in that office on 19.03.2021, whereby it was decided to forward the same to this office to conduct a detailed investigation in the matter. Accordingly, investigation was initiated to collect evidence necessary to determine whether the benefit of input tax credit had been passed on by the Respondent to the Applicants in respect of construction service supplied by the Respondent.
- ii. After receipt of the reference from the Standing Committee on Anti-profiteering, a Notice under Rule 129 of the Rules was issued by the DGAP on 21.05.2021, calling upon the Respondent to reply as to whether he admitted that the benefit of input tax credit had not been passed on to the Applicants by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in

their reply to the Notice as well as furnish all supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicants during the period 28.06.2021 to 02.07.2021. However, the Respondent had not avail of this opportunity.

- iii. The Respondent did not submit desired documents/information in the given time. Hence, reminder letter dated 26.07.2021 was issued. In response, the Respondent filed a Writ Petition bearing No. 263/2021 before the High Court of Calcutta challenging the Notice which was issued under Rule 129 of the CGST Rules, 2019. In absence of Stay granted by Hon'ble High Court of Calcutta against the said Writ Petition the time bound investigation could not be delayed, this office issued reminder and summons to the Respondent requesting to submit the information and documents as listed in the above Notice. Further the Respondent has moved an interlocutory application bearing GA No. 01/2021 in the aforesaid W.P. No. 263/2021 before the Hon'ble High Court. After much persuasion from this office the Respondent vide letter dated 03.11.2021 submitted all the information/documents desired for investigation.
- iv. Vide e-mail dated 10.11.2021, the Applicants were afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 11.11.2021 or 12.11.2021. The Applicants did not avail off the said opportunity.
- v. The period covered by the current investigation was from 01.07.2017 to 28.02.2021.
- vi. The time limit to complete the investigation was 18.09.2021. However, in terms of Notification No.

091/2020 dated 14.12.2020 (Annex-3) where, any time limit for completion/furnishing of any report, has been specified in, or prescribed or notified under the Central Goods and Service Act, 2017 which falls during the period from the 20th day of March, 2020 to the 30th day of March, 2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action was extended upto the 31.03.2021. Further, Hon'ble Supreme Court of India passed an Order dated 08.03.2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020, wherein, it was stated that "in cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply". The above relief has been extended and the period from 14.03.2021 till further orders shall also stand excluded in computing the limitation period as per the Hon'ble Supreme Court's Order dated 27.04.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020. Further, the above relief has been extended and the period from 02.10.2021 shall have limitation period 90 days from 03.10.2021 as per the Hon'ble Supreme Court's Order dated 23.09.2021 passed in Miscellaneous Application No. 665/2021 in SMW(C) No. 3/2020.

- vii. In response to the Notice dated 21.05.2021, the Respondent submitted his reply vide letter/e-mail dated 14.06.2021, 06.08.2021, 19.08.2021, 24.08.2021, 13.09.2021, 04.10.2021, 08.10.2021, 03.11.2021 and 09.11.2021.

viii. Vide the letter dated 09.11.2021, the Respondent submitted the following documents/information:

- a) Brief Profile of the Respondent.
- b) GSTR-1, GSTR-3B and GSTR-9 returns for the period July, 2017 to February, 2021.
- c) Tran-1 and Tran-2 for the period July, 2017 to December, 2017.
- d) Electronic Credit Ledger for the period July, 2017 to February, 2021.
- e) Service Tax returns for the period April, 2016 to June, 2017.
- f) Copies of all demand letters and sale agreement/contract issued to the Applicants. N
- g) CENVAT/Input Tax Credit Register for the FY 2016-17, 2017-18, 2018-19 and for the period April 2019 to February, 2021 reconciled with VAT, ST-3 and GSTR- 3B returns along with details of Credit reversals, if any.
- h) Details of applicable tax rates, Pre-GST & Post-GST (format at Annex-1).
- i) Balance Sheet (including all Annexure and profit/loss account) for the FY 2016-17, 2017-18, 2018-19 and 2019-20.
- j) Copy of project report submitted to the RERA.
- k) Copy of Agreement/Registry between the land owners and the developer for the project "AVIDIPTA II".
- l) Status of the project "AVIDIPTA II" as on 28.02.2021 in terms of tower-wise sold and unsold units.
- m) Details of VAT, Service Tax, ITC of VAT, CENVAT credit for the period April, 2016 to June, 2017 and output GST and ITC of GST for the period July, 2017 to February, 2021 for all

- projects separately including the project “AVIDIPTA II” in the format.
- n) List of all home buyers of the project “AVIDIPTA II” (in MS-Excel).
- ix. In the Notice dated 21.05.2021, the Respondent was informed that if any information/documents were provided on confidential basis, in terms of Rule 130 of the Rules, a non-confidential summary of such information/documents was required to be furnished. However, the Respondent did not submit any such information or summary.
- x. The subject Applications, various replies of the Respondent and the documents/evidences on records have been carefully examined. The main issues for determination was:-
- (i) Whether there was benefit of reduction in rate of tax or input tax credit on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 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.
- xi. Prior to implementation of GST w.e.f. 01.07.2017, Service tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). However, affordable housing has been exempt from the purview of Service Tax vide Notification No. 09/2016-ST dated 01.03.2016. After implementation of GST w.e.f 01.07.2017, GST on construction services was chargeable @ 18% (effective rate was 12% in view of 1/3rd abatement on

value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square meters was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost house upto a carpet area of 60 square meters).

xii. On scrutiny of the documents submitted by the Respondent, it was observed that all the Home/flat buyers had been allotted the units after the introduction of GST. The Respondent has charged GST @18% (effectively 12%) for the period 01.07.2017 to 31.03.2019. It has been duly verified from the tax invoices raised by the Respondent. Further the Respondent had not opted for new scheme as per Notification No. 03/2019 Central Tax (Rate) dated 29.03.2019. He was charging GST @18% (effectively 12%) for the period 01.04.2019 to 28.02.2019 after availing the Input Tax Credit.

xiii. From the verification of documents submitted by the Respondent and their submission, it was found that there was no sale or allotment of the flats in the said project in the pre-GST regime.

a) The first allotment made by the Respondent in this project is 22.11.2017 i.e. in post-GST period. On scrutiny of the documents submitted by the Respondent i.e. first tax invoice for demand cum allotment letter, Demand letter of the Applicants, date of first booking of flat and other documents, it was also observed that the project "AVIDIPTA II" did indeed begin in the post-GST era and the Applicants also had not produce any evidence to prove otherwise. There was no unit

sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering.

b) The Respondent had served a Notice of commencement under Rule 22 of the Kolkata Municipal Corporation Building Rules, 2009 on 17.01.2018 to the Deputy Chief Engineer (Building) for the Commencement of erection of building on premises No. 401, Barakhola, Kolkata-700099 P.S. Purva Jadavpur Ward No. 109 where the Building Permit No. 2016120110 dated 11.01.2017 was for erection of building granted by Executive Engineer (Bldg)/Borough-XII, under the supervision of Architect Subir Kumar Basu CA/78/4375 and in accordance with plans and specification sanctioned.

c) In the instant case, RERA registration shows, the registration shall be valid for a period of 4.4 years commencing from 08.02.2019 and ending with 18.07.2023 unless renewed by the Housing Industry Regulatory Authority in accordance with Section 6 of the Act read with Rule 7 of these rules.

xiv. The date of issue of first tax invoice for demand cum allotment letter was 22.11.2017. The allotment of units, start of construction activities etc. had taken place in post-GST. From the perusal of the home/flat buyers list submitted by the Respondent it was observed that date of first booking of flats was 22.11.2017. Neither the Applicants nor the Respondent had given any document to prove that any booking for the project was done in pre-GST period. Hence, the base price in pre-GST era could not be computed to compare price charged in post-GST. It was also observed that the price charged for the said residential flat was for a new project developed and constructed by the Respondent after implementation of GST. Hence, it appeared that


the anti-profiteering provisions were not applicable to the impugned project under investigation.

- xv. Section 171 of the Central Goods and Services Tax Act, 2017 comes into play in the event when there is a reduction in the rate of tax or there is an increase in the benefit of input tax credit. In the present case all the events i.e. allotment of units, agreement, booking and construction activities took place in post-GST era. Since the project itself was started after implementation of GST w.e.f. 01.07.2017, there is no pre-GST turnover or input tax credit availability that can be compared with the post-GST turnover and input tax credit, to determine whether there is any benefit that is required to be passed on by way of commensurate reduction in price.
- xvi. On the basis of the details of outward supply of Construction services submitted by the Respondent, it was also observed that the service was supplied in the State of West Bengal only.
- xvii. In view of the aforementioned findings, it was concluded that Section 171(1) of the Central Goods and Services Tax Act, 2017, requiring that “any reduction in 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”, is not applicable in the present case.
3. The above investigation report was received by this Authority from the DGAP on 12.11.2021 and was considered in its sitting and it was decided to ask the Applicant No. 1 & 2 to file their consolidated written submissions in respect of the Report of the DGAP. Notice dated 25.02.2022 was also issued to the Applicant No. 1 & 2 directing them to explain

why the Report dated 12.11.2021 furnished by the DGAP should not be accepted.

4. The Applicant No. 1 has filed his written submissions vide e-mail dated 11.05.2022, 13.05.2022 and 09.06.2022 stating that he had gone through the 'investigation and findings' portions of the DGAP report and concurs with the DGAP report dated 12.11.2021. However, no reply has been received from Applicant No. 2 despite numerous opportunities granted to her vide Notice dated 25.02.2022 followed by Order dated 21.03.2022, 12.04.2022, 05.05.2022 and 30.05.2022. Vide Order Dated 05.05.2022, it was informed to all concerned to file their submissions, if any, falling which the matter would be decided on the basis of available records.
5. Personal hearing in the present case was granted through video conferencing on 24.06.2022 at 03:00 PM vide Order dated 30.05.2022. However, none appeared. While Applicant No. 1 has already concurred with the DGAP's Report, no response has been received from the Respondent and Applicant No. 2 despite several reminders.
6. The proceedings in the matter could not be completed by the Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022 and the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for further proceedings vide Notice dated 25.02.2022.
7. This Authority has carefully examined the DGAP's Report including documents enclosed therewith and the written submissions of the Applicant No. 1. It is noted that the Respondent is in the real-estate business and has developed his project "AVIDIPTA II", situated at Mauza-Barakhola, Mukundpur, Kolkata. It is also on record that the Applicant No. 1 & 2 have filed a complaint alleging that the Respondent had not passed on the benefit of ITC to them by way of

commensurate reduction in the price of the Respondent's project "AVIDIPTA II", in terms of Section 171 of the CGST Rules, 2017.

8. It is also noted that the DGAP, after investigation, has concluded that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 as the first allotment made by the Respondent in the instant project was on 22.10.2017 i.e. in the GST period. There was no unit sold in pre-GST era which can be compared with the GST period base price to determine whether there was any profiteered amount. Further, it was observed by the DGAP that, the commencement of the project "AVIDIPTA II" was in the GST period only. The RERA registration shows that, the registration shall be valid for a period 4.4 years commencing from 08.02.2019 and ending with 18.07.2023 unless renewed as per the applicable law. 
9. On perusal of the DGAP's Report and Annexures thereto, it is observed by the Authority that Development Agreement of the said Project's land (total 12.67 Acres) was signed on 13th July 2009 between the West Bengal Housing Board and the Respondent. The Respondent has also availed transition of the CENVAT Credit admissible as ITC of Rs. 86,83,891/- vide return (TRAN-1) filed on 14.08.2017. The Respondent has availed the CENVAT Credit and ITC in the statutory tax returns as detailed in the Table below. Though the said Table was not mentioned in the body of the Report dated 12.11.2021 but finds its place in the Annexure 14(1) of the Report.

Yearwise Input and Output Tax Details

Period	Statute	Total Gross Taxable turnover	Total Net Taxable Turnover (Rs.)	Total Output Tax Liability Rs.	ICT/Cenvat Available Rs.)
2016-17	Service Tax	97,93,40,649	54,43,42,928	5,48,43,014	7,32,65,220
April, 2017 to June, 2017	Service Tax	15,07,42,917	7,29,01,57	1,05,70,782	1,55,34,062
July, 2017 to March, 2018	GST	43,43,48,907	43,43,48,907	6,28,47,320	2,79,36,323
2018-19	GST	90,93,16,081	90,93,16,081	9,34,38,688	9,49,84,247
2019-20	GST	78,95,36,737	78,95,36,737	12,17,52,865	12,45,52,865
2020-21	GST	79,73,53,309	79,73,53,309	14,35,23,152	15,28,78,607

The Authority finds from the above table that substantial Cenvat Credit of Rs. 7.32 crore was available to the Respondent in 2016-17 i.e during pre-GST period. The DGAP Report dated 12.11.2021 is silent on the above said amount of Cenvat Credit and also whether the Respondent was maintaining separate accounts for each of its projects. The DGAP has not investigated the reason for the availability of huge amount of Cenvat Credit in pre-GST period and its impact (i.e of input services, inputs or VAT) in the subsequent projects, especially in view of the fact that no categorical findings have been given informing about maintenance of separate accounts for various projects. The above said availment of credit during 2016-17 and April 2017 to June 2017 indicates that the Respondent was developing various projects and there appears to be reason to believe that in such projects may be cases of profiteering which need to be investigated under Section 171 of the CGST Act, 2017.

10. In the context of this case, we also refer to provisions of Section 4 (2) (l) (D) of the Real Estate (Regulation and

Development) Act, 2016 which, inter- alia, provides as below:-

“that seventy percent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:-

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project: Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.”

11. It is observed that the above provision of the RERA Act, 2016 makes it mandatory for a real estate developer/promoter to maintain separate bank accounts for each of his projects registered separately under the RERA Act, 2016. In view of this, there arises the need to revisit the investigation to ascertain if the Respondent has passed on the benefit of ITC to the homebuyers/customers/recipients of supply all the projects undertaken by him, by a commensurate reduction in the prices of the residential or commercial units supplied by him in terms of Section 171 of the CGST Act, 2017.
12. As discussed above in para 9 and in the above facts and averments the Authority has reason to believe that the Respondent needs to be investigated for profiteering with respect to all projects undertaken by him and hence, directs the DGAP under Rule 133(4) and 133(5) to investigate all the projects of the Respondent (which have not been already investigated) including the instant project i.e. ‘Avidipta II’ under the same GST registration from the perspective of Section 171 of the CGST Act, 2017 and submit the complete

investigation report for all such Projects under this single GST Registration.

13. A copy of this Order be sent to the Applicants, Respondent and to the DGAP free of cost for necessary action. File to be consigned on completion.

S/d.
(Amand Shah)
Technical Member &
Chairman

S/d.
(Pramod Kumar Singh)
Technical Member

S/d.
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)

F. No. 22011/NAA/BengalPeerless/52/2022

Date: 30.09.2022

Copy To:-

1. M/s. Bengal Peerless Housing Development Company Ltd. 6/1A, Moira Street, Mangal Deep, Ground Floor, Kolkata-700017
2. Sh. Sourav Majee, Kollal Flat No. 2D, 6E/1, Baishnabgate, Byelane, Naktala, Kolkata 700047.
3. Smt. Susama Giri, Uttarchak, PO Sukrullapur, Dist. Purba Medinipur Pin - 721626
4. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
5. Guard File.

