



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

Case No. : 01/2024
Date of Institution : 12.09.2022
Date of Order : 16.01.2024

In the matter of:

1. Sh. Kuldeep Raosaheb Patil, 604, Pratham Apartment, Kalepedal, Hadapsar, near Pragati Vidyalaya, above Chetna Sweets, Pune – 411 028.
2. Director General of Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Nayan Developers, 607, 608, Mega Centre, Hadapsar, Pune – 411 028.

Coram:-

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

Present:-

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

ORDER

1. The present Report dated 12.09.2022 has been received from the Director-General of Anti-Profiteering (**DGAP**) after a detailed investigation under Rule 129 of the Central Goods & Service Tax (**CGST**) Rules, 2017. Applicant No. 1 alleged that the Respondent had not passed on the benefit of input tax credit (**ITC**) to him by way of commensurate reduction in the price of the flat purchased by him in the Respondent's project "**Galaxy**". The brief facts of the case and findings of investigation conducted by the DGAP are as follows:-
 - i. A reference was received from the Standing Committee on Anti-profiteering on 14.03.2022 on which a Notice under Rule 129 of the CGST Rules was issued to the Respondent by the DGAP on 24.03.2022, calling upon him to reply as to whether he admitted that the benefit of ITC had not been passed on to the Applicant No. 1 by way of commensurate reduction in price 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 said Notice, the Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the Applicant No. 1 during the period from 04.04.2022 to 05.04.2022. However, the Respondent did not avail of this opportunity.
 - ii. Vide e-mail dated 01.09.2022, the Applicant No. 1 was afforded an opportunity to visit the DGAP to inspect the non-confidential documents/reply furnished by the Respondent on 02.09.2022 or 05.09.2022. The Applicant No. 1 did not avail the said opportunity and requested to share documents on e-mail. Further, vide e-mail dated

09.09.2022, non-confidential details were shared with the Applicant No. 1 over e-mail by the DGAP.

iii. The period covered by the current investigation was from 01.07.2017 to 28.02.2022.

iv. In response to the Notice dated 24.03.2022, the Respondent submitted his replies vide letters/e-mails dated 06.05.2022, 1.07.2022, 12.08.2022, 22.08.2022, 29.08.2022 and 07.09.2022. The replies of the Respondent have been summed up as follows:-

(a) The Respondent submitted that his company was a partnership firm engaged in business of builders & developers. During the year under consideration the firm was engaged in developing affordable housing residential scheme under the project name "Galaxy".

(b) The Respondent also stated that the project "Galaxy" was started in the year 2018 and got commencement certificate on 23.08.2018, which could be seen from RERA documents/purchase register and other statutory documents. He had followed all instructions and notifications issued by the GST council from time to time. Further the Respondent stated that he opted for new scheme of GST @ 1% from 01.04.2019 in terms of Notification no. 03/2019-Central Tax (Rate) dated 29.03.2019.

(c) The Respondent submitted that the Applicant No. 1 had withdrawn his complaint against him and the same was informed to the DGAP vide e-mails dated 26.03.2022 and 12.08.2022.

v. The DGAP found from the verification/scrutiny of documents submitted by the Respondent and his replies that there was no sale or allotment of the flats in the above project in the pre-GST regime. The following observations were also made by the DGAP:-

- i) The first booking was made by the Respondent in the project on 27.10.2018 i.e. in post-GST period. The DGAP, on scrutiny of the documents submitted by the Respondent i.e. Demand letters of the Applicant No. 1, date of first booking of flat and other documents, has observed that the project "**Galaxy**" did indeed begin in the post-GST era and the Applicant No. 1 also did 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.
 - ii) The DGAP, on verification of documents, has further noticed that the commencement certificate of the Pune Municipal Corporation was issued to the Respondent on 23.08.2018 for the project "Galaxy". Therefore, the Respondent got permission to start the construction services for the above project in the year 2018.
 - iii) In the instant case, RERA registration showed that the registration would be valid for a period commencing from 06.12.2018 to 24.08.2021 unless renewed by the Maharashtra Real Estate Regulatory Authority in accordance with section 5 of the Act read with Rule 6. Further, the above RERA registration was renewed on 09.09.2021 for the period from 06.12.2018 to 24.08.2022.
- vi. The DGAP has observed on perusal of home buyers' list as submitted by the Respondent that the allotment of units, start of construction activities etc. had taken place in post-GST period and the date of first booking of flat was 27.10.2018. Hence, the base price in pre-GST era could not be compared with the base price in post-GST era to compute ITC benefit. The DGAP has also observed that the price charged for the above residential flat was for a new project developed and constructed by the Respondent

after implementation of GST. Hence, the anti-profiteering provisions did not apply to the impugned project under investigation.

vii. Section 171 of the Central Goods and Services Tax Act, 2017 came into play in the event when there was a reduction in the rate of tax or there was a benefit of ITC. In the present case all the events i.e. allotment of units, agreement, booking and construction activities had taken place in post-GST era. Since the project itself was started after implementation of GST w.e.f. 01.07.2017, there was no pre-GST turnover or ITC that could be compared with the post-GST turnover or ITC, to determine whether there was any benefit that was required to be passed on by way of commensurate reduction in prices. The DGAP has also informed that the services were supplied in the State of Maharashtra only.

viii. The DGAP has therefore concluded that Section 171(1) of the CGST Act, 2017 which requires 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.

2. The above Report was considered by the erstwhile Authority in its meeting held on 14.09.2022. Thereafter, Notice dated 20.09.2022 was served upon the Applicant No. 1 directing him to file his submissions by 29.09.2022. The Applicant No. 1 vide his email dated 21.09.2022 has submitted that he has no objection against the Respondent and he has also withdrawn his complaint against him.
3. Further, Notice dated 21.09.2023 was issued to the above Applicant by the Commission to attend the hearing on 05.10.2023 but he did appear inspite of service of the notice therefore, there is no alternative except to proceed against him ex-parte.

4. This Commission has carefully perused the DGAP's Report dated 12.09.2022 and the documents placed on record. The Commission needs to determine as to whether there was any reduction in the GST rate or the benefit of ITC and whether the benefit of rate reduction or ITC was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.
5. It is clear from the DGAP's Report that the Respondent had started the above project in the post-GST regime as the commencement certificate was issued to him on 23.08.2018 by the Pune Municipal Corporation and there wasn't any demand raised by the Respondent in the pre-GST regime. There was no price history of the units sold in the pre-GST regime that could be compared with the post-GST base prices to establish whether there was any profiteering by the Respondent or not. Hence, there was no pre-GST turnover or ITC which could be compared with the post-GST turnover or ITC. On this basis, the DGAP has reported that the Respondent had neither benefited from additional ITC nor had there been a reduction in the tax rate in the post-GST period and therefore it did not qualify to be a case of profiteering.
6. Therefore, the Commission observes that no benefit of additional ITC during the GST period as compared to the pre-GST period has accrued in the case of this Project to the Respondent, which he is obliged to pass on to his buyers. Hence, the provisions of Section 171 of the CGST Act, 2017 are not attracted in this case and there is no requirement of any commensurate reduction in the prices of the units in the above project by the Respondent. Applicant No.1 could have availed the above benefit only if the above project was under execution/implementation before the date of GST implementation viz., 01.07.2017. Hence, the allegations made by the Applicant No. 1 are incorrect and therefore, the same cannot be accepted.

7. Based on the above facts the Commission finds that the provisions of Section 171 (1) of the CGST Act, 2017 are not attracted in the Respondent's project "Galaxy". **Therefore, the proceedings in the present case are hereby dropped.**
8. A copy of this order be sent to all the interested parties free of cost. File of the case be consigned after completion.

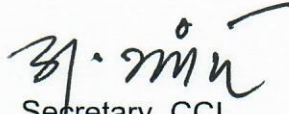
Sd/-
(Deepak Anurag)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Anil Agrawal)
Member

Sd/-
(Ravneet Kaur)
Chairperson

Certified Copy


Secretary, CCI

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Copy To:

Dated: 16.01.2024

1. M/s Nayan Developers, 607, 608, Mega Centre, Hadapsar, Pune – 411 028, nayandevolvers74@gmail.com.
2. Sh. Kuldeep Raosaheb Patil, 604, Pratham Apartment, Kalepedal, Hadapsar, near Pragati Vidyalaya, above Chetna Sweets, Pune – 411 028 mail2krpatil@gmail.com, 9833167083/9833446600.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Website/Guard File.

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