



BEFORE THE COMPETITION COMMISSION OF INDIA

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

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| Case No. | 23/2023 |
| Date of Institution | 20.12.2021 |
| Date of Order | 29.11.2023 |

In the matter of:

1. Sudhir Kumar Jain, H. No. 2514, Sector-D, Pocket-2, Vasant Kunj, New Delhi-110070.
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

M/s DLF Limited, DLF Gateway Tower, R Block, DLF City, Phase-III, Gurugram, Haryana-122002 (GSTIN- 06AAACD3494N1ZC).

Respondent

Quorum:-

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.
2. Sh. Ranjan Sardana, Advocate for the Respondent.

ORDER

1. The present Report dated 01.03.2021 has been received from the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after detailed re-investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017 pursuant to Interim Order No 38/2020 dated 11.12.2020 passed by the erstwhile National Anti-Profiteering Authority (NAA) in respect of the investigation report of DGAP dated 31.08.2020.
2. The brief facts of the present case are that the Applicant No. 1 had filed an application under Rule 128 of the CGST Rules, 2017 alleging profiteering by the Respondent in respect of purchase of Flat No. J-062, Tower-J, 6th Floor in the Respondent's project "The Sky Court", in the DLF Garden City, Sector-86, Gurugram. The DGAP has investigated the case and submitted its Report dated 31.08.2020 vide which it has been inter-alia reported that:-
 - a. The period of investigation is from 01.07.2017 to 31.07.2019.
 - b. That as per the information submitted by the Respondent for the period from April, 2016 to July, 2019, the details of ITC availed by him and his turnover from the project "The Sky Court" during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to July, 2019) periods, duly reconciled with their ST-3 and GSTR-3B Returns and Credit

Registers, the ratios of ITCs to turnovers for both the above periods have been furnished by the DGAP in Table-'A' below:-

Table-'A'

(Amount in Rs.)

| S. No. | Particulars | Total (Pre-GST) 01.04.2016 to 30.06.2017 | Total (Post-GST) 01.07.2017 to 31.07.2019 |
|--------|---|--|---|
| 1 | CENVAT of Service Tax Paid on Input Services used (A) | 13,77,35,721 | |
| 2 | Input Tax Credit of GST Availd (B) | | 18,65,28,554 |
| 3 | Total CENVAT/Input Tax Credit Availd (C)= (A) or (B) | 13,77,35,721 | 18,65,28,554 |
| 4 | Total Turnover as per list of Home Buyers (D) | 35,02,37,352 | 56,24,37,457 |
| 5 | Total Saleable Area (in SQF) (E) | 12,97,786 | 12,97,786 |
| 6 | Total Sold Area (in SQF) relevant to turnover (F) | 8,86,196 | 10,22,925 |
| 7 | Relevant ITC [(G)= (C)*(F)/(E)] | 9,40,53,137.43 | 14,70,23,254.30 |
| 8 | Ratio of CENVAT/ Input Tax Credit to the Turnover [(H) = (G)/(D)*100] | 26.85% | 26.14% |

- c. Thus, as per the above Table, it is clear that post-GST, the Respondent has not been benefited from any additional ITC and in fact, the ITC availed by the Respondent post introduction of GST was lower by 0.71% [26.85% (-) 26.14%] of the turnover as compared to the pre-GST period. Thus, there was no additional benefit of ITC, on implementation of GST w.e.f. 01.07.2017 and hence, the provisions of Section 171 of the CGST Act, 2017 were not attracted.
- d. Further, the Applicant No. 1 had purchased the flat from the Respondent after issue of the Occupancy Certificate of the project "The Sky Court". Since there was no additional benefit of ITC in post-GST

period, no profiteering could have been established in the case of Applicant No. 1 in terms of Section 171 of the CGST Act, 2017

3. In pursuance to the above Report of the DGAP dated 31.08.2020, the NAA, had observed certain discrepancies in the DGAP's Report dated 31.08.2020 and accordingly referred back the matter to the DGAP and ordered reinvestigation in the matter in terms of Rule 133(4) of CGST Rules, 2017 on the following grounds:-

- a. As per Report of the DGAP, the Respondent has received the Completion Certificate on 17.07.2017. Hence, the period of investigation should have been restricted up to 16.07.2017 and the investigation should not have been conducted up to 31.07.2019.
- b. Since, the Completion Certificate was received by the Respondent on 17.07.2017, the amount of ITC availed/available to the Respondent in the post-GST regime should have been considered up to 16.07.2017 and not up to 31.07.2019.
- c. Accordingly, the ratios of ITC to turnover were required to be recomputed by the DGAP. In case it was to be computed up to 31.07.2019 the grounds thereof were required to be mentioned.

4. As per the directions of the erstwhile NAA passed vide I.O. No. 38/2020 dated 11.12.2020, the DGAP furnished his Report dated 01.03.2021 in accordance with Rule 133 (4) of the CGST Rules, 2017, stating therein, as under:-

- a. The documents/information already submitted by the Respondent, were re-examined and cross-verified with the Report dated 31.08.2020 submitted by the DGAP and it was observed that there was no

requirement of any additional information/data or document from the Respondent.

- b. The period covered by the current investigation was from 01.07.2017 to 31.07.2019.
- c. The units sold prior to Completion/Occupancy Certificate, would continue to fall within the purview of GST and on all the demands raised by the supplier against such units after receipt of Completion/Occupancy Certificate GST would be attracted. Therefore, the ITC available to the supplier could be availed by the supplier at the time of discharging his GST liability against such units.
- d. While issuing Notice for initiation of investigation (NOI), in the cases of investigations pertaining to supply of construction service, the status of project was not known whether Completion/Occupancy Certificate had been obtained by the supplier or not. Even if, in any case, it was known that the Completion/Occupancy Certificate had been obtained in the project, the period of investigation was not being restricted up to the date of receipt of Completion/Occupancy Certificate. Further, this was being done to consider the maximum ITC available to the supplier so that the maximum benefit of ITC could be computed that was required to be passed on to the buyers/recipients.
- e. If the amount of ITC availed/available to the Respondent in post-GST regime was considered up to 16.07.2017, then it would be very meagre amount of ITC (01.07.2017 to 16.07.2017) and huge amount of ITC available to the Respondent in post GST-regime (17.07.2017 to

31.07.2019) would escape from the computation which would be incorrect and leaving such ITC would not serve the purpose of Section 171 of the CGST Act, 2017. Hence, in terms of Section 171 of the CGST Act, 2017 and in the interest of justice to the recipient's/home buyers, the ITC was taken for the period 01.07.2017 to 31.07.2019 which was correct.

f. Thus, there appeared no need to re-compute the ratio of ITC to turnover w.e.f. 01.07.2017 to 16.07.2017 and the investigation conducted for the period 01.07.2017 to 31.07.2019 was correct. Therefore, the Report dated 31.08.2020 submitted by the DGAP under Rule 129(6) is correct and might be accepted.

5. The above report of the DGAP dated 01.03.2021 was considered by the erstwhile NAA in its meeting held on 04.03.2021 and it was decided to allow the Respondent and the Applicant No. 1 to file their consolidated written submissions in respect of the above report of the DGAP. Notice dated 09.03.2021 was also issued to Respondent directing him to explain why the above Report furnished by the DGAP should not be accepted and his liability for violation of the provisions of Section 171 of the CGST Act, 2017 should not be fixed.
6. The Respondent filed his submissions dated 25.03.2021 and 24.03.2022 vide which he stated that he did not want to file any submissions/objection against the report of the DGAP and requested to accept the report of the DGAP and pass the necessary order.

7. The Applicant No. 1 filed his submissions vide e-mail dated 04.04.2022 and stated that he purchased a ready to move in flat where no GST was applicable. However, the builder has charged GST and was unable to provide any concrete response on the same. However, the Report of the DGAP did not throw light on the above issue.
8. The Commission vide its Meeting held on 31.08.2023 decided to grant hearing to the interested parties on 21.09.2023. Notice dated 31.08.2023 was also issued to the Respondent and the Applicants to appear for final hearing in the present case. Hearing in this matter was held on 21.09.2023. Sh. Ranjan Sardana, Advocate appeared on behalf of the Respondent. However, the Applicant No. 1 did not appear for the hearing. During the course of hearing, the Commission took note of the submissions of the Applicant No. 1 wherein he has stated that Respondent has charged GST on ready-to-move-in flat purchased by him in the subject project. The Respondent apprised that the alleged charges were collected on account of Preferential Location Charges (PLC). Accordingly, the Respondent was directed to provide documentary evidence to support his claim with regard to the GST charged on PLC.
9. The Respondent filed his submissions dated 30.09.2023 vide which he has stated that he has only charged GST on the PLC and also provided a Chartered Accountant's (CA) Certificate mentioning the breakup of amount received from the Applicant No. 1. Upon perusal of the CA Certificate, it is

observed that the Respondent has collected GST@18% from the Applicant No. 1 on the Preferential Location Charges only.

10. This Commission has carefully considered the Reports furnished by the DGAP, the submissions made by Respondent and the Applicant No. 1 and the other material placed on record and it is found that:-

- a. The Applicant No. 1 had filed complaint in respect of purchase of a Flat in the Respondent's project "The Sky Court", in the DLF Garden City, Sector-86, Gurugram and had alleged that sale of flats after issuance of Completion Certificate did not attract GST and that the Respondent had charged GST @18% on the Preferential Location Charges (PLC).
- b. The DGAP had filed his report dated 31.08.2020 stating that post-GST, the Respondent has not been benefited from any additional ITC and in fact, the ITC availed by the Respondent post introduction of GST was lower by 0.71% [26.85% (-) 26.14%] of the turnover as compared to the pre-GST period.
- c. The DGAP has re-investigated the matter as per the directions given vide I.O. No. 38/2020 dated 11.12.2020 and vide his Report dated 01.03.2021 has reported that if the investigation was restricted up to 16.07.2017 i.e. upto the date of receipt of Completion Certificate, then the ITC availed by the Respondent after receipt of Completion Certificate would escape from the computation which would be incorrect. Therefore, the investigation has been carried out up to 31.07.2019.

11. In view of the above report of the DGAP, the Commission finds that if the amount of ITC availed/available to the Respondent in post-GST regime is considered up to 16.07.2017, then it would be very meagre amount of ITC (01.07.2017 to 16.07.2017) and huge amount of ITC available to the Respondent in post GST-regime (17.07.2017 to 31.07.2019) would escape from the computation of profiteered amount which would be incorrect and leaving such ITC would not serve the purpose of Section 171 of the CGST Act, 2017. Hence, in terms of Section 171 of the CGST Act, 2017, the ITC has been rightly taken for the period from 01.07.2017 to 31.07.2019. Thus, the amount of ITC and investigation period considered by the DGAP from 01.07.2017 to 31.0.2019 for the purpose of calculation of profiteering is correct.
12. The Applicant No. 1 has contended that sale of flats after issuance of Completion Certificate did not attract GST and the Respondent has charged GST from him on Preferential Location Charges (PLC). In this regard, the Commission observes that the issue of charging GST on the PLC does not fall under the purview of the Commission as the Commission has been empowered to examine whether the Respondent has passed on the benefit of ITC to the home buyers or not. Hence, the Applicant No. 1 may approach the appropriate GST Authorities on the above issue. The above Applicant has also not complained that he has not been passed on the benefits of ITC or tax rate reduction.
13. In view of the above findings, the Commission observes that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section

171 of the CGST Act, 2017 as the Respondent has neither been benefited from additional ITC nor there has been a reduction in the tax rate in the post-GST period.

14. Accordingly, the application filed by the Applicant No. 1 requesting action against the Respondent for charging GST @ 18% on PLC is not maintainable and hence the same is dismissed.
15. A copy of this order be supplied to all the parties free of cost and 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


(Anupama Anand)
(Secretary)

F. No. 22011/NAA/202/DLF/2020 / 1217-1220

Dated:- 29.11.2023

Copy to:

1. M/s DLF Ltd., DLF Gateway Tower, R Block, DLF City Phase-III, Gurugram, Haryana-122002.
2. Sh. Sudhir Kumar Jain, H. No. 2514, Sector-D, Pocket-2, Vasant Kunj, New Delhi-110070.
3. Directorate General of Anti-Profiteering, 2nd Floor, BhaiVir Singh SahityaSadhan, BhaiVir SinghMarg, New Delhi-110001.
4. Guard File.