

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

I.O. No.	15/2022
Date of Institution	06.07.2020
Date of Order	31.08.2022

In the matter of:

1. 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.

Applicant

Versus

M/s Friends Land Developers (Project: Anandam Square), 17, Kiran Enclave, Near Hotel Samrat, G. T. Road, Ghaziabad, Uttar Pradesh- 201 001.

Respondent


Quorum:-

1. Sh. Amand Shah, Technical Member & Chairman
2. Sh. Pramod Kumar Singh, Technical Member
3. Sh. Hitesh Shah, Technical Member

Present:-

1. Sh. B. K. Bansal, Advocate, for the Respondent.

ORDER

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1. The present Report dated 01.07.2020 has been received from the Director-General of Anti-Profiteering (DGAP) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax Rules, 2017. The brief facts of the case are that this Authority, vide Order No. 62/2019 dated 27.11.2019, directed the DGAP under Rule 133(5) (a) of the Central Goods and Services Tax Rules, 2017 to further investigate the project "Anandam Square" , which the

Respondent had been constructing during the period, for violation of provisions of Section 171 of the Central Goods and Service Tax Act, 2017. The said direction was based on the records submitted by the Respondent before this Authority, in the course of proceedings pertaining to their project "Palm Wood Royale Gulmohar Green" wherein it had been established that the Respondent had availed the benefit of Input Tax Credit and was required to pass on the benefit thereof in terms of section 171 of the CGST Act, 2017. Thus, there were sufficient grounds to believe that the Respondent was liable to pass on benefits to buyers of this project too, as envisaged under the provisions of Section 171 of the CGST Act, 2017. The matter was investigated by the DGAP in accordance with the aforementioned order of this Authority.

2. The DGAP, in its report dated 01.07.2020, inter-alia, has stated that:-
 - i. On receipt of the direction from this Authority, the DGAP had issued a Notice dated 27.12.2019 under Rule 129 (3) of the Central Goods & Service Tax Rules, 2017, asking the Respondent to intimate as to whether he admitted that the benefit of ITC had not been passed on to the recipients of supply by way of commensurate reduction in the price of the units and in case it was so, to suo-moto compute the quantum of the same and mention it in his reply to the Notice along with the supporting documents.
 - ii. The period covered by the current investigation is from 01.07.2017 to 30.11.2019. The time limit to complete the investigation was up to 27.05.2020, as per Rule 133 (5) (b) of

the Rules. However, in light of Covid-19 pandemic, the investigation could not be completed on or before the above dates due to force majeure. Accordingly, this report was furnished by the DGAP in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020, issued by the CBIC under Section 168A of the CGST Act, 2017.

iii. The subject reference, various replies of the Respondent vide his letters/E-mails dated 03.01.2020, 28.01.2020, 13.02.2020, 15.02.2020 and 13.05.2020 and the documents/ evidences on record were carefully examined by the DGAP and it was reported as below:-

a) That the Respondent was paying GST @12% in the respect of the instant project as it was a commercial project.

b) That the Respondent had submitted the reconciliation of turnover in his statutory ST-3 and GST Returns with the live unit-buyers of the two projects and also the bifurcation of Input Tax Credit as required by the DGAP.

c) That the Respondent had also submitted the following documents/information to the DGAP vide his above-mentioned letters/e-mails during the course of the investigation:-

i. Copies of GSTR-1 Returns for the period July, 2017 to November, 2019.

ii. Copies of GSTR-3B Returns for the period July, 2017 to November, 2019.

- iii. Copies of Tran-1 Return for transitional credit availed by the Respondent.
 - iv. Copies of VAT & ST-3 Returns for the period April, 2016 to June, 2017.
 - v. Electronic Credit Ledger for the period July, 2017 to November, 2019.
 - vi. CENVAT/ITC register for the period 01.04.2017 to 30.11.2019.
 - vii. List of buyers in the project "Anandam Square".
 - viii. Reconciliation of turnover reported in GST Returns and list of buyers for the period July 2017 to November, 2019.
 - ix. Copies of agreement, invoices and receipts for various sample units.
 - x. Tax rates, pre-GST and post-GST.
 - xi. Details of Service Tax, CENVAT and VAT credit for the period Apr 16 to Jun 17 and output GST and ITC of GST for the period July 2017 to November, 2019.
- d) The main issues for before the DGAP determination were:-
- i. Whether there was benefit of reduction in Rate of tax or ITC 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 CGST Act, 2017.
- e) The Respondent was constructing two different projects, one residential and another commercial at two different

locations. The Respondent had maintained separate books of account for both the projects and had also submitted the bifurcation of the ITC and its reconciliation with his statutory returns.

- f) The residential project had already been investigated earlier by the DGAP and the allegation of violation of Section 171 of the CGST Act, 2017 had been by the National Anti-Profiteering Authority vide its Order 62/2019 and that the instant investigation had been ordered under the provision of Rule 133(5) of the CGST Rules, 2017.
- g) Further, the Respondent Submitted before the DGAP that he had filed Civil Writ Petition 1406/2020 before Hon'ble Delhi High Court, against the above referred Order of this Authority. The hon'ble High Court of Delhi in its Order dated 06.02.2020 had allowed the DGAP to comply with the directions of this Authority to hold inquiry in respect of the commercial project. The DGAP has thus reported that the ambit of this instant investigation has been kept limited to the Commercial project only and therefore, profiteering, if any, merits to be computed by taking into account the input tax credit availed by the Respondent and total turnover of the commercial project only.
- h) DGAP has further reported that according to para 5 of Schedule-III of the CGST Act, 2017, (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services, reads as "Sale of land and,

subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, Clause (b) of para 5 of Schedule II of the Central Goods and Services Tax Act, 2017 reads as "(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of the completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". In the light of these provisions, the DGAP has contended that the ITC of the units which were under construction but not sold was provisional ITC that may be required to be reversed by the Respondent, if such units would remain unsold at the time of issue of CC, in terms of Section 17 (2) & Section 17 (3) of the Central Goods and Services Tax Act, 2017 which read as under:-

"17 (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

17 (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land, and, subject to clause (b) of paragraph 5 of Schedule II, sale of building."

- i) Therefore, the ITC pertaining to the unsold units might not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling price of such units to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post- GST.
- j) Prior to implementation of GST w.e.f. 01.07.2017, the Respondent was eligible to avail CENVAT credit of Service Tax paid on Input Services. However, CENVAT credit of Central Excise duty paid on inputs was not admissible, as per the CENVAT Credit Rules, 2004, which was in force at the material time. Moreover, the Respondent was paying VAT under Uttar Pradesh VAT Scheme, wherein he was required to discharge his output VAT liability on deemed value addition on the purchase of the inputs. Also, as evident from the submissions made by the Respondent in its submissions dated 15.02.2020 and 13.05.2020, there was no direct correlation between the turnover for VAT as reported in its VAT returns for the period April, 2016 to June, 2017, filed by the Respondent and the actual demand raised by him from the buyers. Therefore, the input tax credit of VAT and the VAT turnover have not been considered for computation of the ratio of input tax credit to the turnover for the pre-GST period. Further, post-GST, the Respondent could avail input tax credit of GST paid on all the inputs and the input services. From the data submitted

by the Respondent covering the period from April 2016 to November 2019, the details of the input tax credit availed by him, his turnover from the project "Anandam Square" and the ratio of input tax credit to turnover, during the pre-GST (April 2016 to June 2017) and post-GST (July 2017 to November 2019) periods was furnished by the DGAP as per the Table-A given below:-

S. No.	Particulars		(Pre-GST) April, 2016 to June, 2017	(Post-GST) July, 2017 to November, 2019
1	Credit of Service Tax Paid on Input Services	(A)	8,72,620	-
2	Input Tax Credit of VAT Paid on Inputs	(B)	7,89,028	-
3	Total CENVAT/VAT/Input Tax Credit Available *	(C)= (A)	8,72,620	-
4	Input Tax Credit of GST Availed	(D)	-	3,44,11,808
5	Total Turnover from Commercial Area	(E)	2,87,081	9,03,06,132
6	Total Saleable Commercial Area in sq. ft.	(F)	52,976	52,976
7	Sold Area Relevant to Turnover in sq. ft.	(G)	382	31,384
8	ITC proportionate to Sold Area	(H)	6,292.30	2,03,86,216
9	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover	(I)	2.19%	22.57%

k) From the above Table-'A' the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April 2016 to June 2017) was 2.19% and during the post-GST period (July 2017 to November 2019), it was 22.57% which clearly confirmed that post-GST, the Respondent has been benefited from additional ITC to the tune of 20.38% [22.57% (-) 2.19%] of the turnover.

l) The profiteering has been computed by comparing the applicable tax rate and input tax credit available in the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.50% was payable with the post-GST period (July, 2017 to November, 2019) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on construction service, vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. Accordingly, based on Table- 'A' above, the comparative figures of the ratio of input tax credit availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base price, and the excess realization (profiteering) during the post-GST period, were tabulated as has been given in Table-B below:-

Table-'B'

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016to June,2017	July,2017 to Nov, 2019
2	Output tax rate (%)	B	4.50%	12.00%
3	Total input tax credit availed (Rs.)	C	8,72,620	3,44,11,808
4	Taxable turnover (Rs.)	D	2,87,081	9,03,06,132
5	Total Saleable Residential Area in sq. ft.	E	52,976	52,976
6	Sold Area Relevant to Turnover in sq. ft.	F	382	31,384
7	ITC proportionate to Sold Area	G	6,292	2,03,86,216
8	Ratio of CENVAT/ VAT/Input Tax Credit to Turnover (K=J/E)	H=G/D	2.19%	22.57%
9	Increase in input tax credit availed post-GST (%)	I	-	20.38%
10	Analysis of Increase in input tax credit:			
11	Total Basic Demand during July, 2017 to April, 2019	J		9,03,06,132
12	GST @12%	K=I*12%		1,08,36,736
13	Total Actual Demand	L=I+K		10,11,42,868
14	ITC Benefits to be passed on Basic Price	M=D*(1-I) or 79.62% of D		1,84,06,868
15	Recalibrated Basic Price	N=J-M		7,18,99,264

16	GST @12%	$J = I * 12\%$	86,27,912
17	Recalibrated Cum-tax Price	$K = I + J$	8,05,27,176
18	Profiteering Amount	$L = G - K$	2,06,15,692

- m) From Table-'B' it is observed that the additional ITC of 20.38% of the turnover should have resulted in commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the Central Goods and Services Tax Act, 2017, the benefit of the additional ITC was required to be passed on to the recipients of services.
- n) Based on the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the shop buyers during the period from 01.07.2017 to 30.09.2019, the amount of benefit of ITC not passed on or in other words, the profited amount has been quantified by the DGAP as Rs. 2,06,15,692/- which included GST @ 12%, on the base profited amount of Rs. 1,84,06,868/-. The unit-wise break-up of this amount has been given in Annexure-9 of the DGAP Report. It was also observed that the Respondent had supplied the construction services in the State of Uttar Pradesh only.
- o) Finally, that in the instant investigation, he had computed the profiteering covering the period from 01.07.2017 to 30.11.2019 and profiteering, if any, for the period post November, 2019, had not been examined as the exact quantum of ITC that would be available to the Respondent

in future could not be determined at that stage, when the construction of the project is yet to be completed.

3. The above investigation report was received by this Authority from the DGAP on 06.07.2020 and was considered in its meeting held on 07.07.2020 and a notice dated 13.07.2020 was issued to the Respondent directing him to explain why the Report dated 01.07.2020 furnished by the DGAP should not be accepted.
4. In the reply of the above notice, the Respondent has filed his written submissions vide his letters dated 10.09.2020 and 10.11.2020 and also his consolidated written submissions vide his letter dated 18.05.2022 vide which he inter-alia averred that :-

a) The DGAP investigation report dated 01.07.2020 has not taken into consideration the submissions made by him (Respondent) in his replies to the DGAP during the course of investigation. He submitted that the DGAP has for instance, not considered the submissions made by him in respect of the documents furnished by him that relate to Sale and Agreement units purchased by one of the unit- buyer that evidence has already passed on the benefit of the Input Tax Credit consequent upon introduction of GST with effect from 01.07.2017.

b) The DGAP in his investigation has taken wrong figures of ITC in the post-GST period. The DGAP has taken an arbitrary figure of ITC of GST of Rs. 3,44,11,808/- instead of Rs. 59,31,808/- in the post –GST period.

c) The methodology used by the DGAP to calculate alleged profiteering was faulty, arbitrary and at variance with the methodology used to investigate the Respondent's other Residential project "Palm Wood Royale Gulmohar Green" on the following grounds:

- i. **Difference in Area considered for calculations in the pre-GST and post -GST period has led to distortions**: In the DGAP's report the alleged amount of profiteering has been worked out on the area sold up to 30.11.2019. The entitlement of the Respondent to credit in the pre-GST as well as post GST period should have been worked out on this area. However, the DGAP has taken a lower figure of 382 sqft. of area sold in the pre-GST period. This figure has to be same i.e. 31,384 ft. as in row 7 of the Table 'A' of the DGAP's report.
- ii. **Methodology at variance even with their own methodology previously used in investigate the Respondent's other project i.e. " Palm Wood Royale Gulmohar Green"**: The Methodology used by the DGAP to compare the Input Tax Credit availed/available as a percentage of turnover in the pre-GST and the post-GST periods as explained in para 14 and Table 'B' of its Report dated 01.07.2020 was not only faulty and arbitrary but also inconsistent and at variance with their own methodology previously

used by them while investigating the residential project of the Respondent's named "Palm Wood Royale Gulmohar Green" for which the investigation report was issued by the DGAP.

d) Exclusion of VAT Credit in the Pre-GST period (April-2016 to June-2017) was not justified: - The DGAP has wrongly excluded the credit of VAT of Rs. 7,89,028/- in the pre-GST period. The VAT Authorities in their assessment orders had allowed ITC of VAT.

e) DGAP's investigation Report was based on unrealistic assumptions as the DGAP has included the commercial spaces/shops sold/booked in the post GST period in its calculations the price of which were negotiated keeping in the view of rate of GST as well as new entitlements for ITC. The price of the shop had been agreed upon between the Respondent and the buyers through agreements.

5. The Respondent also submitted copies of the VAT Assessment Orders for financial years 2015-16 and 2016-17 and 2017-18 which were sent to the DGAP vide this Authority's Order dated 24.02.2021.
6. Supplementary report was sought from the DGAP on the above submissions of the Respondent under Rule 133(2A) of the CGST Rules, 2017. On the various submissions made by the Respondent, the DGAP filed his supplementary reports dated 28.09.2020, 10.03.2021 and 11.04.2022 which are summed up as under :-

- i. With respect to the contention of the Respondent that *“the DGAP investigation report dated 01.07.2020 was incomplete on account of Non-consideration of all submissions of the Respondent submitted in reply to the Notice for investigation”* it was stated that in his reply dated 22.06.2020, the Respondent had furnished an affidavit dated 22.06.2020 filed by one of the shop buyers Smt. Janak Taneja confirming that the price of the shop was agreed upon after taking into account the passing on the benefit of Input Tax Credit, consequent upon introduction of GST. In this regard, it is appropriate to mention that even if the above submission of the Respondent has been taken into account, there was no impact on the profiteered amount established by the DGAP because on going through the shop buyers list as submitted by the Respondent, it is observed that Sh. Sunil Kumar Dhupar booked shop no. G-20 on 27.10.2014 for Rs. 31,25,000/- and Smt. Janak Taneja booked shop G-17 on 22.07.2019 at the same price as of G-20 was purchased. Thus it is apparent that the Respondent had not reduced the base price commensurate with the benefit of ITC, post introduction of GST. Hence, the Respondent continued to maintain the identical price for these shops.
- ii. With respect to the contention of the Respondent that *“Wrong figures of ITC in the post-GST period”*, it was stated that on examining the figures afresh it has been

observed that the figure of ITC was inadvertently taken as Rs. 3,44,11,808/- in place of 59,31,808/-. The erroneous mention of ITC has led to incorrect computation of profiteered amount. Therefore, the computation of profiteering needs to be revisited.

iii. With respect to the contention of the Respondent that *“Methodology used by the DGAP to calculate alleged profiteering was faulty, arbitrary and at variance with the methodology used to investigate the Respondent’s other Residential project”*, it was stated that there was no variation in the methodology adopted for calculation of profiteering, as alleged by the Respondent. The calculation of profiteering has been done by way of comparing the ratio of ITC to turnover available in the pre-GST period i.e. April-2016 to June-2017 with the post-GST period. The area and turnover considered for calculation of ITC to turnover ratio pertaining to pre-GST period (April-2016 to June-2017) and post GST period, was for shop buyers to whom demands were raised.

iv. With respect to the contention of the Respondent that *“Exclusion of VAT Credit in the Pre-GST period was not justified”* it was stated that the Respondent were paying VAT under Uttar Pradesh VAT Scheme, wherein they were required to discharged their output VAT liability on deemed value addition on the purchases of the inputs. The said credit has not been incorporated in the

computation of profiteered amount because no direct correlation exists between the turnovers for VAT as reported in their VAT returns for the period April, 2016 to June, 2017.

v. On the contention of the Respondent that “*DGAP’s investigation Report was based on unrealistic assumptions*”, the DGAP clarified that as per the unit buyers list submitted by the Respondent, it was observed that Sh. Sunil Kumar Dhupar booked shop no. G-20 on 27.10.2014 for Rs. 31,25,000/- and Smt. Janak Taneja booked shop G-17 on 22.07.2019 at the same price as of G-20 was purchased and therefore, it was apparent that the Respondent had not reduced the agreement price and therefore, the Respondent’s claim that ITC benefit has been incorporated at agreement level, is not corroborated with the data submitted by the Respondent.

7. 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 Order dated 17.03.2022.

8. Personal hearings were held on 03.02.2021 and 09.05.2022 wherein the Respondent has re-iterated his earlier submissions dated 10.09.2020 and 10.11.2020. The Respondent has also filed his consolidated written submissions on dated 18.05.2022 which included the following documents:-

- i. Ledgers in respect of the shop buyers substantiating the figure of ITC of GST of Rs. 59,31,808/- for the post GST period pertaining to the project 'Anandam Square' along with month wise summary sheet
- ii. A copy of the list of buyers in the project ' Anandam Square' including details of area sold
- iii. Copy of the Report dated 30.05.2019 of the DGAP in respect of the residential project "Palm Wood Royale Gulmohar Green" of the Respondent
- iv. A copy of the unit buyers list of the residential project "Palm Wood Royale Gulmohar Green" of the Respondent along with a summary
- v. Copy of the ledger of the VAT credit for the project Anandam Square along with month-wise summary sheet
- vi. Copy of the Section 13 of the UP VAT Act
- vii. Copies of Assessment Orders/Appellate Order for financial years 2015-16, 2016-17 and 2017-18 issued by the VAT Department.

9. This Authority has carefully considered all the submissions filed by the DGAP, the Respondent, and the other material placed on record and the arguments advanced by the Respondent. On examining the various submissions, the findings of this Authority are as follows:-

- i. With respect to the contention of the Respondent that *"the DGAP investigation report dated 01.07.2020 was incomplete on account of non-consideration of all*

submissions of the Respondent submitted in reply to the Notice for investigation”, the Authority finds that the Respondent had not reduced the base price commensurate with the benefit of ITC, post introduction of GST. The Respondent continued to maintain the identical price for these shops. Hence, the above contention of the Respondent cannot be accepted.

- ii. With respect to the contention of the Respondent that *“DGAP’s investigation Report was based on unrealistic assumptions”* the Authority finds that as per the shop buyers list submitted by the Respondent, Sh. Sunil Kumar Dhupar booked shop no. G-20 on 27.10.2014 for Rs. 31,25,000/- and Smt. Janak Taneja booked shop G-17 on 22.07.2019 at the same price as of G-20. Thus, it is found that the Respondent had not reduced the agreement price and therefore, the Respondent’s claim that ITC benefit has been incorporated at agreement level is not corroborated with the data submitted by the Respondent. Hence, this contention of the Respondent is not acceptable.
- iii. The Respondent vide his submission has argued that methodology used by the DGAP to calculate alleged profiteering is faulty, arbitrary and in variance with their own methodology previously used to investigate the Respondent’s other residential project “Palm Wood Royale Gulmohar Green”. In this regard, this Authority finds that in

both cases the calculation of profiteering was done by way of comparing ratio of ITC to turnover available in pre-GST period and post-GST period. The area and turnover considered for calculating of ITC to turnover ratio pertaining to pre-GST period and post GST period was for the service recipient/flat/unit buyers to whom demands were raised during the particular period. Hence, there is no variation in the methodology adopted by DGAP for calculation of profiteering. Hence, the above contention of the Respondent is unacceptable.

- iv. The Respondent vide his submissions has contended that the DGAP has not incorporated the ITC of VAT in the pre-GST period for the computation of profiteering which ought to have been done. He has further submitted before this Authority that the said ITC on VAT credit was Rs. 7,89,028/- for the period from April 2016 to June 2017 which has been allowed to him by the concerned statutory Authority, in support of which he has submitted VAT Assessment Orders for the period from April, 2016 to June, 2017. The Authority finds that the Assessment Orders for the period from April 2016 to June 2017 issued by the VAT Authorities in respect of the Respondent have never been placed before the DGAP during the course of the investigation for verification of authenticity and hence the same have not been incorporated in the computation of profited amount. The Authority further finds that the

ITC of VAT, as much as is allowed vide the said VAT Assessment Orders for the period from April 2016 to June 2017 shall be incorporated into the computation of profiteered amount by the DGAP subject to verification of the authenticity of the same. The Authority therefore directs the DGAP to ascertain the authenticity of the VAT Assessment Orders submitted by the Respondent for the period from April 2016 to June 2017 and if verified from the State GST Commissioner/Uttar Pradesh VAT Department, the DGAP shall incorporate the amounts, as allowed by the concerned statutory Authority on assessment, in the computation of profiteered amount by including the same as ITC in the pre GST period and recalculate the profiteered amount and submit his Report to this Authority.

- v. The Respondent vide his submissions dated 10.09.2020 and 18.05.2022 has argued that the DGAP has taken an arbitrary figure of ITC of GST Rs. 3,44,11,808/- instead of Rs. 59,31,808/- in the post GST period. In this regard the DGAP vide his Report dated 28.09.2020 has admitted that the figures had been re-examined and it was found that while initially calculating the profiteered amount, the figure of ITC was inadvertently taken erroneously by the DGAP as Rs. 3,44,11,808/- in place of 59,31,808/-. The Authority therefore, directs the DGAP to rectify the said error and incorporate the correct figure of Post-GST ITC to

recalculate the profiteered amount based on the above rectification to the above extent.

10. Therefore, in the terms of the above findings, this Authority directs DGAP to carry out further verification/rectification strictly in line with the findings made in Para's 9(iv) and 9(v) of this Order. The DGAP is also directed to recalculate the profiteered amount in line with the para 9(iv) and 9(v) of this order and submit his report in term of Rule 133(2) (a) of CGST Rules, 2017.

11. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020 in Suo Moto Writ Petition (C) no. 3/2020, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitation prescribed under general law of limitation or any other special laws (both Central and State) including those prescribed under Rule 133(1) of the CGST Rules, 2017, as is clear from the said Order which states as follows:-

"A period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."

Further, the Hon'ble Supreme Court, vide its subsequent Order dated 10.01.2022 has extended the period(s) of limitation till 28.02.2022 and the relevant portion of the said Order is as follows:-

“The Order dated 23.03.2020 is restored and in continuation of the subsequent Orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

Accordingly this Order having been passed today directing the DGAP to recalculate the profiteered amount falls within the limitation prescribed under Rule 133 of the CGST Rules, 2017.

12. A copy of this order be sent, free of cost, to the Respondent and to the DGAP for necessary action.

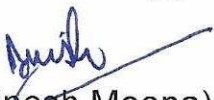
S/d.
(Amand Shah)
Technical Member &
Chairman



S/d.
(Pramod Kumar Singh)
Technical Member

S/d.
(Hitesh Shah)
Technical Member

Certified Copy


(Dinesh Meena)
NAA, Secretary

F.No. 22011/NAA/168/FriendsPt/2020

Dated: 31.08.2022

Copy To:

1. M/s. Friends Land Developers, 17, Kiran Enclave, Near Hotel Samrat, G. T. Road, Ghaziabad, Uttar Pradesh- 201 001.
2. Director General Anti-Profiteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.
3. Guard File.