



BEFORE THE COMPETITION COMMISSION OF INDIA

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

I.O. No.	11/2023
Date of Institution	20.12.2021
Date of Order	05.10.2023

In the matter of:

1. Anurag Yadav, Babu Vihar, Sector-6, Vrindavan Yojna No.1, Lucknow-226029.
2. Sanjeev Misra, E-mail misra_sanjeev2000@yahoo.com
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 Uttar Pradesh Avas Evam Vikas Parishad, Sampatti Praband Karyalaya, 1st Floor, Office Complex Sector-9, Vrindavan Yojna, Lucknow-226029

Respondent

Quorum:-

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

Present :-

1. None for the Applicants.
2. None for the Respondent.

ORDER

1. The present Report dated 17.12.2021 had been received from the Director General of Anti-Profiteering (DGAP), under Rule 129(6) of the Central Goods & Services Tax (CGST) Rules, 2017. The brief facts of the case are that a reference was received from the Standing Committee on Anti-profiteering on an application of the Applicant No. 1 against the Respondent alleging profiteering in respect of purchase of Flat No. HM/B6-108/2BHK/1 Floor in the project "Himalaya Enclave" of the Respondent situated at Sector-17 & 18, Lucknow. The said application was then examined by the Standing Committee on Anti-profiteering, in its meeting, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter.

2. The DGAP had submitted Report on 20.12.2021 and had inter-alia stated that:-
- i. On 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 05.11.2020, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to his customers by way of commensurate reduction in price and if so, to suo moto determine the quantum thereof and indicate the same in reply to the Notice as well as furnish all supporting documents.
 - ii. The period covered by the current investigation was from 01.07.2017 to 30.09.2020.
 - iii. The Respondent did not submit the requisite documents/information in reference to the Notice dated 05.11.2020. Thereafter reminders dated 17.12.2020, 30.12.2020, 19.01.2021, 10.02.2021, 18.02.2021, 04.03.2021, 31.05.2021 & 07.07.2021 and Summons dated 12.03.2021 & 21.06.2021 were issued but the Respondent did not respond to the correspondence. Therefore, the Principal Commissioner of CGST, Lucknow vide the DGAP's letter dated 12.03.2020 was requested to depute an officer to collect the documents from the Respondent and forward the same to the office of the DGAP. Even after several persuasions over

phone, reminder letters, summons, e-mails the Respondent did not submit the desired documents to complete the investigation.

iv. Subsequently, the Principal Commissioner of CGST Lucknow, once again was requested vide the DGAP's letter dated 17.06.2021 to depute an officer to collect the documents and forward the same to the DGAP. Thereafter vide letter C No. (30) AP/LKO/Misc./16/19 dated 18.08.2021, the Lucknow Commissionerate forwarded the required documents as requested except homebuyers list and details of Cenvat Credit/ITC project-wise in the prescribed formats. In the meantime, several persuasions were made over phone with the Respondent to procure the homebuyers list and details of Cenvat credit/ITC project-wise in prescribed format but were not successful. Therefore, a letter to Chairman, U.P. Awas Evam Vikas Parishad was sent on 08.12.2021 requesting him to submit the details of home buyers list and details of Cenvat Credit/ITC project wise. In reference to letter dated 08.12.2021 the Respondent submitted his reply on 15.12.2021.

v. The Respondent vide reply dated 15.12.2021 stated that in the project "Himalaya Enclave" he had not availed any Cenvat Credit of Service Tax in pre-GST regime nor any ITC in post GST. Therefore, it was observed that no comparison of credit available/availed

in pre or post GST period could be made. In absence of any available/availed credit in post GST to the Respondent there might not be any commensurate reduction in price on account of input credit accrual. From the above, it could be seen that in the instant case, after the introduction of GST w.e.f. 01.07.2017, no additional benefit had been availed by the Respondent on account of ITC post GST in respect of the project "Himalaya Enclave".

- vi. The Respondent had submitted that he had not taken any credit for this particular project. However, from the GST return it was evident that total ITC amounting to Rs. 2,55,96,22,177/- was available to the Respondent and the Respondent had utilized this credit toward payment of GST amounting to Rs. 1,67,63,42,790/- for the period from July, 2017 to April 2018 and January 2019 to April 2019 in respect of his various projects. Therefore, the claim of the Respondent that he had not availed any ITC in the project under consideration could not be accepted without any supplementary documents and further verification. Further, even if the claim of the Respondent was accepted that he had not availed any ITC which was lawfully available to him, the Respondent by his act of omission had caused loss to the end customers/flat buyers. The intention of Section 171 of CGST Act, 2017 had a welfare element (i.e. to reduce the burden on end customers) in it as wherever

there was reduction of tax rates or accrual of additional benefit of ITC that needed to be passed on to the end customer/buyers. The Respondent by not availing the additional benefit of ITC had not passed on any such benefit to the customer/s buyers. Therefore, only on the basis of submission of the Respondent, the DGAP concluded that the provisions of Section 171 (1) of CGST Act, 2017 were not attracted.

- vii. Further, from the Uttar Pradesh Real Estate Regulatory Authority (RERA) website it was observed that the Respondent had undertaken the construction of 147 projects across Uttar Pradesh and out of which 48 projects were in Lucknow. From the above it was clear that the Respondent was availing ITC for the payment of GST. However, for this project, the Respondent had claimed that he had not availed any ITC for which he had not provided any supporting documents. Further, from the complaint of the Applicant No. 1 it was clear that the Respondent had charged GST @12% and @8% from the Applicant No. 1. The Applicant No. 1 had also claimed that the Respondent had not provided GSTIN No. in his invoices/demand letter. In GSTR Returns there was consolidate data with regards to the payment of GST and there were no supporting documents provided by the Respondent. Hence, it could not be verified that the Respondent had paid GST on this particular project or not. Therefore, to

investigate these contradictions, the DGAP had written letter dated 17.12.2021 to the Directorate General of GST Intelligence (DGGI) HQRS.

3. The above Report of the DGAP was considered by the National Anti-Profiteering Authority (NAA). A notice dated 25.02.2022 was issued to Applicant No. 1 to explain why the Report dated 17.12.2021 furnished by the DGAP should not be accepted. He was also directed to file his consolidated written submissions. The Applicant No. 1 vide his submissions dated 08.05.2022 has stated that:-
 - a. The Respondent has not passed on the benefit of additional ITC to him by way of commensurate reduction in price on purchase of Flat in the project "Himalaya Enclave" on introduction of GST in terms of Section 171 of the CGST Act, 2017.
 - b. The Respondent has also accepted that he had not forwarded any ITC benefit to the recipients of the subject projects.
 - c. As per the Report of the DGAP, ITC amounting to Rs. 2,55,96,22,177/- was available to the Respondent and ITC amounting to Rs. 1,67,63,42,790/- was utilised towards payment of GST from July, 2017 to April, 2018 and January, 2019 to April, 2019 by him.
 - d. He had paid GST @12% and 8% on purchase cost of Flat.

4. Vide e-mail dated 10.05.2022, Sh. Sanjeev Kumar Misra had also stated that he had also made a complaint regarding not passing on benefit of ITC by adjusting the cost of Flat by the Respondent. Hence, he has also been impleaded as an Applicant in the present case.
5. The Commission in its meeting dated 31.08.2023 decided to afford an opportunity for hearing on 21.09.2023 to the interested parties. A notice dated 31.08.2023 was also issued to the Respondent and the Applicants with directions to appear for final hearing on 21.09.2023, failing which the Commission would proceed to decide the matter ex-parte on the basis of material available on record. The representative/representatives of the DGAP appeared for the hearing. However, neither the Respondent nor the Applicants appeared for the hearing despite service of notices.
6. This Commission has carefully considered the Report filed by the DGAP, all the submissions and the documents placed on record and the submissions made by the Applicants. On examining the various submissions, the observations of this Commission are as follows:-
 - a. Upon perusal of the Report of the DGAP, it is clear that the Respondent had availed ITC amounting to Rs. 2,55,96,22,177/- for the period from July, 2017 to April 2018 and January 2019 to April 2019 and the Respondent had utilized this credit toward payment of GST to an amount of Rs. 1,67,63,42,790/- which was evident from the GST Returns filed by the Respondent.

Hence, the above claim of the Respondent that he has not availed any ITC for the subject project cannot be accepted in the absence of supplementary documents and verification.

b. Further, the Commission has noted that in the present case, profiteering could not be calculated by the DGAP as the Respondent did not submit the requisite information/documents required for quantification of the profited amount.

7. In view of the above said observation, the matter is remanded back to the DGAP to carry out further investigation in terms of Rule 133(4) of the CGST Rules, 2017 with a direction that the investigation should be completed and a report should be sent to the Commission within the time period prescribed under the CGST Rules. It is reiterated that if the Respondent does not provide relevant and complete information for the investigation period all means available under the provisions of the CGST Act, 2017 and Rules made thereunder may be utilized.
8. The Respondent is also directed to extend all necessary assistance to the DGAP and furnish him with necessary documents or information as required during the course of the investigation.

9. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

Sd/-

(Ravneet Kaur)
Chairperson

Sd/-
(Anil Agrawal)
Member

Sd/-
(Sweta Kakkad)
Member

Certified Copy



(Jyoti Jindgar Bhanot)
Secretary

File No. 220111/NAA/UPAVAS/90/2022 | 1965-969 Dated: 05.10.2023

Copy To:-

1. M/s. Uttar Pradesh Avas Evam Vikas Parishad, Sampatti Praband Karyalaya, 1st Floor, Office Complex, Sector – 9, Vrindavan Yojna, Lucknow – 226029
2. Anurag Yadav, Babu Vihar, Sector-6, Vrindavan Yojna No. 1, Lucknow- 226029.
3. Sanjeev Misra, E-mail:- misra_sanjeev2000@yahoo.com.
4. 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.
5. Guard File.