

BEFORE THE NATIONAL ANTI-PROFITEERING AUTHORITY

UNDER THE CENTRAL GOODS & SERVICES TAX ACT, 2017

Case No. : 16/2022
Date of Institution : 28.03.2021
Date of Order : 27.05.2022

In the matter of:

1. Shri Jigar R. Shah, Aarav, Bungalow No. 2, Venice Bungalow, Nr. Alok Residency, Opp. Vaikunth-II, Khodiyar Nagar Cross Road, New Kareli baug, Baroda-390018.
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Jay Ambe Developers, Venice Bungalows, Opp. Narayan Resicom, Besides Alok Residency, Near Khodiyar Nagar Cross Roads, New Kareli baug, Vadodara-390018.

Respondent

Quorum:-

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


Present:-

1. Shri Jigar R. Shah, Applicant No. 1 in person.
2. Shri Krunal Shah, Chartered Accountant for the Respondent.
3. Shri Manoj Singh, Assistant Commissioner for the DGAP.

ORDER

1. Present Report dated 25.03.2021 had been furnished by the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP) after a detailed investigation, under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The Applicant No. 1 had filed an application under Rule 128 (1) of the CGST Rules, 2017 against the Respondent alleging profiteering in respect of construction service supplied by him. The Applicant No. 1 had stated that he had purchased a flat in the Respondent's project "Venice Bungalows" and had alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the prices.

2. The aforesaid Application was examined by the Gujarat State Screening Committee and referred to the Standing Committee on Anti-profiteering. The said application was then examined by the Standing Committee on Anti-profiteering, in its meeting, the minutes of which were received in the DGAP's office on 15.10.2020, forwarding the same to the DGAP to conduct a detailed investigation. 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 his customers in respect of Construction Service supplied by him.
3. In the report dated 25.03.2021, it was inter-alia, stated by the DGAP that:-
- (i) A Notice under Rule 129 of the Rules was issued on 09.11.2020, 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 prices 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 30.11.2020 to 01.12.2020. However, the Respondent did not avail of this opportunity.
 - (ii) The period covered by the current investigation was from 01.07.2017 to 30.09.2020.
 - (iii) In response to Notice dated 09.11.2020, the Respondent submitted his reply vide letters and e-mails dated 05.01.2021, 01.02.2021, 08.03.2021 and 10.03.2021. The submissions of the Respondent *inter alia*, has been summed up as follows: -
 - a. The Booking, Payment and Sale Deed were executed/made between the Applicant No. 1 and the Respondent in post-GST regime period only. There should be no question of Anti-profiteering or passing any benefit to the Applicant No. 1. The sale price negotiated and decided between the Applicant No. 1 and the Respondent was based on the market rate from time to time after considering the input credit, if any available to the Respondent.
 - b. The Respondent had not taken any input credit for input service/Cenvat for input Goods during the pre-GST period and paid entire Service Tax to the Government on receipt of Advance from various buyers inspite of the fact that the Service Tax paid on Input Services was available as Input Credit.
 - c. After opting for New Scheme of payment of tax/GST @ 5% without any ITC, they had utilized ITC of Rs. 6,07,810/- by mistake. To rectify the above, the Respondent had filed DRC-03 subsequently and paid back the entire input credit mistakenly utilized while filing various GSTR-3B Return. The copy of the DRC-03 filed on 23.06.2020 for reversal of ITC Rs. 6,07,810/- (Rs.3,03,905/- SGST and Rs. 3,03,905/- CGST) was submitted.
 - d. Effective from 01.04.2019, he had opted to pay GST at new applicable rate i.e. 5% without ITC, and accordingly the Respondent had stopped claiming ITC effective from 01.04.2019 onwards.

- (iv) The DGAP has further reported that the Respondent submitted the following documents/information:-
- a. Brief Profile of the Respondent.
 - b. Copies of GSTR-1 Returns for the period July, 2017 to September, 2020.
 - c. Copies of GSTR-3B Returns for the period July, 2017 to September, 2020.
 - d. Electronic Credit Ledger for the period July, 2017 to September, 2020.
 - e. Copies of VAT Returns & ST-3 Returns for the period April, 2016 to June, 2017.
 - f. 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 September, 2020.
 - g. Details of applicable tax rates, Pre-GST & Post-GST.
 - h. Sale agreement issued to the Applicant No. 1.
 - i. Balance Sheet for the FY 2016-17, 2017-18, 2018-19 & 2019-20.
 - j. Status of the project "Venice Bungalows" as on 30.09.2020 in terms of tower-wise sold and unsold units along with copies of Occupancy Certificates.
 - k. Project Report submitted to the RERA.
 - l. Cenvat/ITC Register for the FY 2016-17, 2017-18, & 2018-19.
 - m. List of home buyers in the project "Venice Bungalows".
 - n. The copy of the DRC-03 filed on 23.06.2020 for reversal of ITC Rs. 303905/- SGST.
- (v) Vide Notice dated 09.11.2020, 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. 
- (vi) Vide e-mail dated 15.03.2021, the Applicant No. 1 was afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 16.03.2021 or 17.03.2021. The Applicant No. 1 vide e-mail dated 15.03.2021 requested he was unable to visit due to Covid pandemic and requested to forward the documents at any branch of DGAP's office at Vadodara, Gujarat.

4. The DGAP in its Report dated 25.03.2021 has further stated that:-

- (i) The subject Application, various replies of the Respondent/Applicant No. 1 and the documents/evidences on record had been carefully examined. The main issues for determination were: -
- a. 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,
 - b. Whether the Respondent had passed on such benefit to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.
- (ii) 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) which reads as "Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, clause (b) of Paragraph 5 of Schedule II of the CGST 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 completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier". Thus, the ITC pertaining to the residential units which were under construction but not sold was provisional ITC which might be required to be reversed by the Respondent, if such units remained unsold at the time of issue of the Completion Certificate, in terms of Section 17(2) & Section 17(3) of the CGST Act, 2017, which read as under:

Section 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".

Section 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".

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 them post-GST. ✓

- (iii) The contention of the Respondent that Section 171 of the CGST Act, 2017 could not be invoked in respect of the Applicant No. 1 as the flat was purchased after the introduction of GST was incorrect. The additional amount of benefit accrued to a supplier on account of reduction in rate of tax or benefit of ITC could not be denied to a recipient on the grounds that he had purchased the flat after the introduction of GST as these benefits had arisen due to the policy of the State/Government.
- (iv) The contention of the Respondent that he had reversed the unutilized credit of Rs. 6,07,810/- subsequently i.e. after 01.04.2019 had no bearing on the fact that such credit was available to him upto 31.03.2019 and the homebuyers were eligible to get the benefit of additional ITC.
- (v) Prior to 01.07.2017, i.e., before the GST was introduced, the Respondent was eligible to avail credit of Service Tax paid on the input services but the Respondent had not availed any credit of Service Tax (CENVAT credit of Central Excise duty was not available) in respect of the units for the project "Venice Bungalows" sold by him. Moreover, the Respondent had neither claimed nor was eligible for any credit of VAT paid on inputs. Further, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. From the data submitted by the Respondent covering the period April, 2016 to March, 2019, the details of the ITC/VAT availed by him, his turnover from the project "Venice Bungalows", the

ratios of ITC to turnovers, during the pre-GST (April, 2016 to June, 2017) and post-GST (July, 2017 to March, 2019) periods, have been furnished in table-A below:-

Table-A

Sr.No	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Turnover (July, 2017 to March, 2019)
1	CENVAT of Service Tax Paid on Input Services used for flats (A)	0	-
2	ITC of VAT Paid on Purchase of Inputs (B)		-
3	Total CENVAT/ITC Available (C)= (A+B)	0	-
4	ITC of GST Aailed (D)	-	13,92,957
5	Turnover for Flats as per Home Buyers List (E)	2,91,76,000	2,08,24,000
6	Total Saleable Area (in SQMTR) (F)	3,355	3,355
7	Total Sold Area (in SQF) relevant to turnover (G)	1,446	930
8	Relevant ITC [(H)= (B)*(G)/(F)]	0	3,86,125
Ratio of ITC Post-GST [(I)=(H)/(E)]		0.00%	1.85%

- (vii) From the above table- 'A', it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0.00% and during the post-GST period (July, 2017 to March, 2019), was 1.85% in Project "Venice Bungalows". It clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 1.85% [1.85% (-) 0.00%] of the turnover. Though the investigation period was from July, 2017 to September, 2020, the period upto March, 2019 instead of September, 2020 had been considered for computation of the profiteering because the Respondent had opted for new scheme launched vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay GST @ 5% without taking/availing the benefit of ITC. Thus, the Respondent was not eligible to avail ITC w.e.f. 01.04.2019. Since, there was no benefit of ITC to the Respondent w.e.f. 01.04.2019 profiteering on account of additional ITC benefit could not be attributed after 01.04.2019.
- (viii) The Central Government, on the recommendation of the GST Council, had levied 18% GST (effective rate was 12% in view of 1/3rd abatement for land value) on Construction Service, vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017. The effective GST rate was 12% for flats.
- (ix) Accordingly, on the basis of the figures contained in table- 'A' above, the comparative figures of the ratios of ITC availed/available to the turnovers in the pre-GST and post-GST periods as well as the turnovers, the recalibrated base price and the excess realization (profiteering) during the post-GST period, has been furnished by the DGAP in Table-B below:-

Table-B

Sr. No.	Particulars		
1	Period	A	July, 2017 to March, 2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per table - 'B' above (%)	C	1.85%/0.00%
4	Increase in ITC availed post-GST (%)	D= 1.85% less 0.00%	1.85%
5	<u>Analysis of Increase in ITC:</u>		
6	Base Price raised during July, 2017 to March, 2019 (Rs.)	E	2,08,24,000
7	GST raised over Base Price (Rs.)	F= E*B	24,98,880
8	Total Demand raised	G=E+F	2,33,22,880
9	Recalibrated Base Price	H= E*(1-D) or 98.15% of E	2,04,38,756
10	GST @12%	I = H* B	24,52,651
11	Commensurate demand price	J = H+I	2,28,91,407
12	Excess Collection of Demand or Profiteering Amount	K= G-J	4,31,473

- (x) From table-'B' above, it was clear that the additional ITC of 1.85% of the turnover should have resulted in the commensurate reduction in the base prices as well as cum-tax prices. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on to the recipients.
- (xi) From the above calculation explained in Table-'B', it was evident on the basis of the aforesaid CENVAT/ITC availability pre and post-GST and the details of the amount collected by the Respondent from the Applicant No. 1 and others in respect of the flats sold by the Respondent during the period 01.07.2017 to 31.03.2019, the benefit of ITC that needed to be passed on by the Respondent to the buyers of flats amounted to Rs. 4,31,473/- which included 12% GST on the base amount of Rs. 3,85,244/-. The flat Homebuyer and unit no. wise break-up of this amount has been given in Annex-9 to the DGAP's Report. This amount was inclusive of profiteered amount of Rs 72,520/- (including GST) in respect of Applicant No. 1. There were altogether 28 units in the project "Venice Bungalows" and from the report of the DGAP, it would emerge that 8 buyers are eligible for getting commensurate benefits. The details of commensurate benefit of ITC to be passed on by the Respondent to the Applicant No. 1 and others recipients have been furnished by the DGAP in the table below: -

Sr. No.	Name of Customer	Customer Details	Final profiteering (in rupees)
A	B	C	D
1	Jigar R Shah (Applicant No. 1)	02 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	72,520
2	Hemaben L Telwani	05 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar ynagar Cross Roads, New Kareli baug, Vadodara- 390018	51,800
3	Mamta Yadav/ Umesh Yadav	12 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	69,391
4	Pushpaben B Solanki	14 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiar nagar Cross Roads, New Kareli baug, Vadodara- 390018	72,520
5	Pooja Bahal / Rakesh Bahal	19 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	97,384
6	Mahesh Kumar J Shah	25 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	11,914
7	Satyam Kumar B Bhagat	26 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	53,872
8	Bela Pranay Vaidya/ Hitesh M Shah	27 , Venice Bungalows , Opp Narayan Resicon, Beside Alok Residency, Near Khodiyar nagar Cross Roads, New Kareli baug, Vadodara- 390018	2,072
Total			4,31,473

- (xii) On the basis of the details of outward supplies of the Construction Service submitted by the Respondent, it was observed that the service had been supplied in the State of Gujarat only.

5. The DGAP in his report dated 25.03.2021 concluded that the benefit of additional ITC to the tune of 1.85% of the turnover, which has accrued to the Respondent post-GST was required to be passed on by the Respondent to his recipients. Section 171 of the CGST Act, 2017 appeared to have been contravened by the Respondent, in as much as the additional benefit of ITC @1.85% of the base prices received by the Respondent during the period 01.07.2017 to 31.03.2019, had not been passed on by him to the Applicant No. 1 and other 7 recipients. On this account, it appeared that the Respondent had realized an additional amount to the tune of Rs. 4,31,473/- which had not been passed on to the Applicant No. 1 and other recipients. These 8 recipients were identifiable as per the documents provided by the Respondent, giving the names along with unit numbers allotted to such recipients.
6. The DGAP further reported that the present investigation covered the period from 01.07.2017 to 31.03.2019. Profiteering, if any, for the period post March, 2019, had not been examined as the Respondent had opted for a new scheme issued vide Notification 03/2019-Central Tax (Rate) dated 29.03.2019. In terms of this Notification the Respondent was required to pay Tax/GST @ 5% without taking/availing the benefit of ITC. Thus, the Respondent was not eligible to avail the ITC w.e.f. 01.04.2019 and Section 171 of CGST Act, 2017 was not attracted from 01.04.2019.
7. Further the DGAP reported that Section 171(1) of the CGST 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*", appeared to have been contravened in the present case.
8. The above Investigation Report was received by this Authority from the DGAP on 28.03.2021 and was considered in its sitting and it was decided to ask the Respondent and the Applicant No. 1 to file his written submissions in respect of the Report of the DGAP. Notice dated 17.06.2020 was also issued to the Respondent and the Applicant No. 1 directing them to explain why the Report dated 25.03.2021 furnished by the DGAP should not be accepted and liability of the Respondent should not be fixed for violating the provisions of Section 171 of the CGST Act, 2017.
9. Further proceedings in the matter could not be completed by this Authority due to lack of required quorum of Members in the Authority during the period 29.04.2021 till 23.02.2022, and that the minimum quorum was restored only w.e.f. 23.02.2022 and hence the matter was taken up for proceedings vide Order dated 23.03.2022 and the Respondent and the Applicant No. 1 were granted hearing through video conferencing on 31.03.2022. The Respondent was also directed to file his written submissions in respect of the Report of the DGAP dated 25.03.2021.
10. The Respondent has filed his written submissions dated 15.03.2021, vide which he has stated:-
- a. That ITC available during the F.Y 2017-2018 was of Rs. 6,85,958/- against which the Respondent had utilized only Rs. 4,13,431/- and ITC available during the year F.Y 2018-2019 was of Rs. 7,06,999/- against which he had utilized only Rs. 3,71,717/-. Accordingly, the Respondent had utilized only Rs. 7,85,148/- during the entire project.

The unutilized balance of Rs. 6,07,810/- as on 31.03.2019 was reversed by filing DRC - 03 on 23.06.2020. Therefore the benefit in terms of Input credit enjoyed by the Respondent was Rs. 7,85,148/- only.

- b. That while calculating the amount of profiteering in his Report, the DGAP has considered Input credit availed of Rs. 13,92,957/- and not the Input credit utilized of Rs. 7,85,148/-. As the actual additional benefit availed by the Respondent in terms of Input credit is only Rs. 7,85,148/-, therefore the Respondent requested this Authority to consider the Input credit utilized for the calculation of Anti profiteering.
- c. That the Applicant No. 1 and four other home buyers i.e. (1) Pushpaben B Solanki (2) Pooja Bahal (3) Mahesh Kumar J Shah (4) Bela Pranay Vaidya had booked the units during the post GST period only and entire consideration towards sales was paid during the post- GST period against the agreed price. Only 3 buyers had booked units during Pre- GST period and from whom amount was received in advance under Pre- GST period and Post GST period both.
- d. That the entire transaction i.e. Booking , Payment and Sale Deed , all the three instances were entered into between the Applicant No. 1 and the Respondent in post GST regime period only, there should not be applicability of Anti-Profitteering or passing any benefit to the Applicant No. 1. The sale price negotiated and decided between the Applicant No. 1 and the Respondent was based on the various factors like saleable area, floor rise, facing, location of the project and the payment terms etc. from time to time after considering the Input credit, if any available to the Respondent.
- e. That the provisions of Section 171 of the CGST Act, 2017 should be applicable to the long term/continuous contracts which were entered into between the buyer and the Respondent prior to implementation of GST. They could not be said to be applicable to the fresh contracts entered after 01.07.2017. The price offered after 01.07.2017 was after considering the cost of inputs in the post-GST era. The applicable taxes and prices prevailed in the open market for the similar kind of bungalows. Thus, the allegation of profiteering on entire 930 sq. mtr. of area for which agreement to sell had been entered after 01.07.2017 was incorrect.
- f. That the Central Government vide Notification No. 01/2020- Central Tax dated 01.01.2020 had appointed the 1st day of January, 2020 as the date on which the provisions of sections 92 to 112 of the Finance (No. 2) Act, 2019 should come into force. The provisions of section 171(3A) inserted vide section 112 of the Finance Act, 2019 were effective prospectively from 01.01.2020 and they could not have retrospective operation and therefore, the penal provisions under section 171(3A) of the Act read with rule 133(3)(d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on the Respondent.
- g. That there was no *mens-rea* and deliberate attempt to violate the provisions of law and therefore the Respondent was of the honest and bonafide belief and opinion that he was entitled to the benefits of immunity from penalty.

11. Personal Hearing through video conferencing was held in the matter on 31.03.2022. During the hearing the Respondent re-iterated his submissions dated 15.03.2022 and

further stated that the RERA approval for the said project was received in 2014. There were total 28 units in the project "Venice Bungalows". There was only single GST registration for only one project i.e. "Venice Bungalows" and there were no other projects of the Respondent. Further, the Respondent stated that the basic price of the residential units post rate reduction was not reduced and that the ITC was continuously availed by him but not passed on to the above mentioned homebuyers. All the units have been sold out by the Respondent. The Respondent also submitted that for the 8 units for which the profiteered amount has been determined by the DGAP, only 3 units were booked/sold prior GST and other 5 units were booked/sold post GST. The Respondent further submitted that the unutilized ITC amounting to Rs. 6,07,810/- was reversed by DRC-03 dated 23.06.2020, which was before receipt of O.C. for the Project. The Respondent further stated that he was ready to pay the profiteered amount determined in the DGAP's Report along with applicable interest by 15.04.2022 and would confirm the same to the Authority after consulting the builder.

12. The Respondent vide his email dated 14.04.2022 has submitted that he has returned the profiteered amount of Rs. 4,31,473/- along with interest @ 18% thereon amounting to Rs. 3,31,544/- to the respective homebuyers/customers as per the Report of the DGAP. The Respondent enclosed documentary evidence i.e. confirmation of receipt of cheque from all the recipients of benefit of ITC along with copies of cheques. The Respondent further stated that all the cheques had been cleared from the Bank as of 13.04.2022 except one recipient (Shri Satyam Kumar B Bhagat), which was pending for clearing. Copy of the Bank statement obtained from the Bank as of 13.04.2022 was also enclosed stating the cheque nos. and withdrawals in respect of 7 home buyers out of 8. Further, the Respondent vide his email dated 29.04.2022, has also submitted copy of the Bank statement obtained from the Bank as of 28.04.2022 stating the withdrawal by cheques in respect of the remaining 8th homebuyer (Shri Satyam Kumar B Bhagat) who deposited the cheque on 27.04.2022 which was duly cleared. The details of profiteered amount paid to the customers along with interest @ 18% thereon have been furnished in the table hereunder:-

Sr. No	Customer code	Name of Customer	Final Profiteering (Rs)	Interest 18% (Rs)	Total (Rs)	Cheque No. (dated 04.04.2022)
1	02	Jigar R Shah	72520	58294	130814	000208
2	05	Hemaben L Telwani	51800	40872	92672	000209
3	12	Mamta Yadav/Umesh Yadav	69391	49551	118942	000210-Rs. 49551/- & 000254-Rs. 69391/-
4	14	Pushpaben B Solanki	72520	57007	129527	000211
5	19	Pooja Bahal/Rakesh Bahal	97384	75111	172495	000212
6	25	Mahesh kumar J Shah	11914	10470	22384	000213
7	26	Satyam kumar B Bhagat	53872	38469	92341	000214
8	27	Bela Pranay Vaidya/Hitesh M Shah	2072	1770	3842	000215
		Total	431473	331544	763017	

13. The Applicant No. 1 vide his email dated 08.04.2022 has also confirmed the receipt of an amount of Rs. 1,30,814/- (profiteering amount Rs. 72,520/- + Interest amount Rs. 58,294/-) via cheque No. 000208 dated 04.04.2022 issued from Bank of Baroda, New VIP Road Branch, Vadodara. The Applicant No. 1 also attached the copy of the cheque No. 000208 dated 04.04.2022 received from the Respondent along with copy of acknowledgement confirming the passing of the profiteered amount to him.
14. We have carefully considered the Report filed by the DGAP, all the submissions and the documents placed on record, and the arguments advanced by the Respondent. It is clear from the plain reading of Section 171(1) that, it deals with two situations:- one relating to the passing on the benefit of reduction in the rate of tax and the second pertaining to the passing on the benefit of the ITC. On the issue of reduction in the tax rate, it is apparent from the DGAP's Report that there has been no reduction in the rate of tax in the post GST period; hence the only issue to be examined is as to whether there was any net benefit of ITC with the introduction of GST. It is admitted fact that project was started in pre-GST period and several bookings/payments were made in the pre-GST period. The DGAP's Report reveals that CENVAT, as a percentage of the turnover, that was available to the Respondent during the pre-GST period (April-2016 to June-2017) was 0.00%, whereas, during the post-GST period (July-2017 to March-2019), it was 1.85%. This confirms that in the post-GST period, the Respondent has been benefited from additional ITC to the tune of 1.85% [1.85% - 0.00%] of his turnover and the same was required to be passed on by him to the eligible flat buyers, including the Applicant No. 1. We observe that the computation of the amount of ITC benefit to be passed on by the Respondent to the eligible flat buyers works out to Rs. 4,31,473/- on the basis of the information supplied by the Respondent. The said amount has been accepted by the Respondent in the personal hearing held on 31.03.2022 and he has agreed to pass on the said amount to the buyers. Hence the said amount of profiteering computed by the DGAP is hereby accepted as correct. The said profiteered amount is to be passed on to the said home buyers along with interest @ 18% thereon, from the date when the above amount was profiteered by him till the date of such payment, in accordance with the provisions of Rule 133 (3) (b) of the CGST Rules, 2017.
15. This Authority agrees with and accepts the above-detailed computation of profiteered amount as per the Report of the DGAP and hence, the profiteered amount for the period from 01.07.2017 to 31.03.2019, in the instant case, is determined as Rs. 4,31,473/- under Section 171 of the CGST Act, 2017. This Authority under Rule 133 (3) (a) of the CGST Rules, 2017 orders that the Respondent shall reduce the prices to be realized from the home buyers commensurate with the benefit of ITC received by him as has been detailed above.
16. We also take note of the fact that the Respondent vide his submissions dated 14.04.2022 has claimed to have passed on the benefit of an amount of Rs. 4,31,473/- along with interest @ 18% thereon amounting to Rs. 3,31,544/- to the respective homebuyers/customers to which the benefit of ITC was not passed on by the Respondent as per the Report of the DGAP. The Respondent has also submitted documentary evidence i.e. confirmation of receipt of cheques from all the recipients (8 homebuyers) of benefit of ITC along with a copy of each cheque. The Respondent has also submitted copy of the Bank statement obtained from Bank of Baroda, New VIP

Road Branch, Vadodara, stating the cheque nos. and withdrawals in respect of all 8 home buyers to whom the benefit of ITC was not passed as per the DGAP's Report. Further, the Applicant No. 1 has also confirmed the receipt of said benefit of ITC amounting to Rs. 72,520/- + Interest amount Rs. 58,294/-) via cheque No. 000208 dated 04.04.2022 indicating that the Respondent has passed on the benefit of ITC to the said 8 homebuyers which was liable to be passed as per the DGAP's Report.

17. As per Rule 135 of the CGST Rules, 2017 *"Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the IGST or CGST or the UTGST or the SGST Act of the respective States, as the case maybe"*. In view of the above, it is directed that the concerned Commissioner of GST (Centre or State) to carry out verification process of the Respondent's claim of passing of the determined ITC amount along with interest under the provision of Rule 136 of CGST Rules 2017 to all the home buyers other than the Applicant No. 1, as detailed above, and send the compliance of the verification. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding compliance of this order to the Authority and the DGAP within a period of 4 months from the date of receipt of this Order.
18. The provisions of Section 171 (3A) of the CGST Act, 2017 have been inserted in the CGST Act, 2017 vide Section 112 of the Finance Act, 2019, and the same became operational w.e.f. 01.01.2020. Though the period of investigation was 01.07.2017 to 30.09.2020, however, the amount profiteered as determined above relates to the period from 1.07.2017 to 31.03.2019 only, as the Respondent had not profiteered after such date on account of the option exercised by him, under the Scheme issued vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, as detailed above. Therefore, the penal provisions under Section 171 (3A) are not applicable in this case as they cannot be made applicable retrospectively.
19. 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 specified 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 falls within the limitation prescribed under Rule 133(1) of the CGST Rules, 2017.

20. A copy of this Order be supplied to the Applicants and the Respondent. File of the case be consigned after 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)
NAA, Secretary

File No. 22011/NAA/06/Jay Ambe Develop/2021-22

Date:-27.05.2022

Copy To:-

1. M/s Jay Ambe Developers, Venice Bungalows, Opp. Narayan Resicon, Besides Alok Residency, Near Khodiarnagar Cross Roads, New Karelibaug, Vadodara, Gujarat -390018
2. Shri Jigar R. Shah, Aarav, Bungalow No. 2, Venice Bungalow, Nr Alok Residency, Opp Vaikunth-II, Khodiyar Nagar Cross Road, New Karelibaug, Vadodara, Gujarat-390018.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Commissioner of Commercial Taxes, C-5, Rajya Kar Bhavan, Ashram Rd, Opposite Reserve Bank of India, Vishalpur, Muslim Society, Ellisbridge, Ahmedabad, Gujarat-380009
5. Chief Commissioner of Central Goods & Services Tax, GST Bhawan, Chakli Circle, Race Course, Vadodara, Gujarat-390007.
6. Guard File.