

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

Order No : 79 /2022

Date of Institution : 29.10.2020

Date of Order : 30.09.2022

**In the matter of:**

1. Sh. Vivek Gupta, R-9/271, Raj Nagar, Ghaziabad- 201002.
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 Maheshwari Infratech Pvt Ltd., A-6, Ground Floor,  
Yojna Vihar, Delhi-110092.

Respondent

**Quorum:-**

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

**Present:-**


1. None for the Applicant.
2. None for the Respondent.



## REPORT

1. The Present Report dated 29.10.2020 had been furnished by the Applicant No. 2 i.e. the Director General of Anti-Profiteering (DGAP), under Rule 133(4) of the Central Goods & Services Tax (CGST) Rules, 2017, in the case of M/s Maheshwari Infratech Pvt Ltd., A-6, Ground Floor, Yojna Vihar, Delhi-110092, in response to the Authority's IO No. 16/2020 dated 20.04.2020 wherein the DGAP's Report dated 24.09.2019 was referred back to reinvestigate the case under Rule 133(4) of the Central Goods and Service Tax Rules, 2017 and directed the DGAP to further investigate the present case on the following issues:

- i) Whether the ITC amounting to Rs. 1,77,50,478/- had been blocked by the State GST authorities on 28.03.2019.
- ii) Whether the above amount of ITC should be taken in to account while computing the profited amount during the period from 01.07.2017 to 31.03.2019.
- iii) Whether the Respondent had passed on the benefit of Rs. 9,61,130/- as ITC benefit to the shop buyers during the period from 01.07.2017 to 31.03.2019.
- iv) Whether the Respondent had passed on an amount of Rs. 95,205/- as ITC benefit to the Applicant No. 1.

2. The DGAP vide report dated 24.09.2019 reported that an application dated 29.11.2018 was filed before the Standing Committee on Anti-profiteering, under Rule 128 (1) of the CGST Rules, 2017 by the Applicant No. 1 alleging profiteering in respect of construction service supplied by the Respondent. The above Applicant had submitted that he had purchased Shop No. G-122 in the Respondent's commercial project "U FARIA", situated at C-04A, Sector-16B, Greater Noida, Uttar Pradesh 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 price of the shop. The above application was examined by the Standing Committee on Anti-profiteering, in its meeting held on 11.03.2019, the minutes of which were received by the DGAP on 27.03.2019, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. Accordingly, it was decided by the DGAP to initiate an investigation and collect evidence necessary to determine whether the benefit of ITC had been passed on by the Respondent to the Applicant No. 1 in respect of the construction service supplied by the Respondent. 

- i. Thereafter, the DGAP had issued Notice to the Respondent on 08.04.2019 under Rule 129 (3) of the above Rules, 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. The Respondent vide the said Notice, was also given an opportunity to inspect the non-confidential evidence/information furnished by the Applicant No. 1 during the period from 10.04.2019 to 12.04.2019, which the Respondent did not avail of. The Applicant No. 1 vide e-mail dated 17.09.2019 was also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 18.09.2019 or 19.09.2019, which the Applicant No. 1 also did not avail of. The DGAP has also stated that the period covered by the current investigation was from 01.07.2017 to 31.03.2019 and the time limit to complete the investigation was extended upto 26.09.2019 by this Authority, vide its order dated 19.06.2019, in terms of Rule 129 (6) of the above Rules.

- ii. The DGAP informed that the Respondent has submitted a copy of the Project Report of the "U Faria" project and the payment schedule for the



purchase of shops. The Respondent, vide his letter dated 29.05.2019 and subsequent letter, submitted copies of the demand letters issued to the Applicant No. 1. The details of the payment plan of the Applicant No. 1 to the Respondent are furnished in Table-A below:-

**Table-'A'**

Sr. No.	Payment Stage	Charge	%	Amount (Rs.)	Total Amount
1	At the time of booking	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
2	Within 30 days	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
3	On casting of foundation	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
4	On casting of Ground floor slab	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
5	On casting of 2 <sup>nd</sup> floor slab	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
6	On casting of 4 <sup>th</sup> Floor roof slab	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
7	On completion of Structure (Retail)	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
8	On completion of Brick Work	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
9	On Start of Finishing Work	Basic Commercial PLC	10.00% + 10.00%	8,59,591.00 + 92,463.00	9,52,054.00
10	On offer of Possession	Basic + Interest Free maintenance Security + Commercial PLC + Sinking Fund + Dual Meter charge	10.00%  100.00%  10.00%  100.00%  100.00%	8,59,595.00 + 62,900.00 + 92,463.00 + 62,900.00 + 20,000.00	10,97,858.00
Total Consideration (Rs.)					96,66,344.00

- iii. The DGAP also intimated that 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 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 his first occupation, whichever was earlier”. Thus, the DGAP has submitted that the ITC pertaining to the commercial shops which were under construction but not sold was provisional ITC which would be required to be reversed by the Respondent, if such shops remained unsold at the time of issue of the Completion Certificate (CC), 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 were 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 was*



*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 was 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 DGAP claimed that the ITC pertaining to the unsold units would not fall within the ambit of this investigation and the Respondent was required to recalibrate the selling prices of his shops to be sold to the prospective buyers by considering the proportionate benefit of additional ITC available to him post-GST.

- iv. The DGAP also reported that the submissions of the Respondent in respect of the turnover have been examined and during the investigation, the turnover has been considered from the Home Buyers list submitted by the Respondent. The Respondent has also contended that the ITC utilized post-GST should be considered for calculation of profiteering. The DGAP has observed that in all the investigations done in such cases, the figure of ITC availed was taken and not the ITC utilized. Further, the unutilized credit out



of availed, would be utilized in future to set off the tax liability by the Respondent.

- v. The DGAP further reported that 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 credit of CENVAT on Central Excise Duty was not available in respect of the commercial shops sold by him. The Respondent was also not eligible to avail ITC of VAT paid on the inputs. However, post-GST, the Respondent could avail ITC of GST paid on all the inputs and input services. The DGAP has analysed, from the data submitted by the Respondent, covering the period from April, 2016 to March, 2019, the details of the ITC availed by him, his turnover from the project “U Faria” and computed the ratio of ITC to turnover, during the pre-GST period from April, 2016 to June, 2017 and post-GST period from July, 2017 to March, 2019, which has been furnished by him in the Table-B below:-

**Table-‘B’**

(Amount in Rs.)

S. No.	Particulars	Total (Pre-GST) April, 2016 to June, 2017	Taxable Turnover @ 12% GST (01.07.2017 to 31.03.2019) for Commercial shops	Total (Post- GST)
1	CENVAT of Service Tax Paid on Input Services used for Commercial Shops (A)	10,774,224	-	-
2	ITC of GST Availed (B)	-	33,156,773	33,156,773

3	Turnover for Commercial Shops as per Home Buyers List (C)	145,640,470	127,174,836	127,174,836
4	Total Saleable Area (in SQF) (D)	487,144		487,144
5	Total Sold Area (in SQF) relevant to turnover (E)	55,570		48,235
6	Relevant ITC [(F)= (A)*(E)/(D)] or [(F)= (B)*(E)/(D)]	1,229,049		3,283,048
	Ratio of ITC Post-GST [(G)=(F)/(C)]	0.84%		2.58%

vi. The DGAP claimed from the Table-‘B’ that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period from April, 2016 to June, 2017 was 0.84% and during the post-GST period from July, 2017 to March, 2019, it was 2.58% which clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 1.74% [2.58% (-) 0.84%] of the turnover.

vii. The DGAP also observed that 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 commercial shops. Accordingly, on the basis of the figures contained in Table- ‘B’ above, the comparative figures of the ratio of ITC availed/available to the turnover in the pre-GST and post-GST periods as well as the turnover, the recalibrated base prices and the excess realization (profiteering) during the post-GST period, has been tabulated in Table-‘C’ below by the DGAP:-



Table-'C'

(Amount in Rs.)

Sr. No.	Particulars		Post GST Period
1	Period	A	01.07.2017 to 31.03.2019
2	Output GST rate (%)	B	12
3	Ratio of CENVAT credit/ ITC to Total Turnover as per Table - 'B' above (%)	C	0.84%/2.58%
4	Increase in ITC availed post-GST (%)	D= 2.58% less 0.84%	1.74
5	Analysis of Increase in ITC:		
6	Base Price raised during July, 2017 to March 2019 (Rs.)	E	127,174,836
7	GST raised over Base Price (Rs.)	F= E*B	15,260,980
8	Total Demand raised	G=E+F	142,435,816
9	Recalibrated Base Price	H= E*(1-D) or 98.26% of E	124,961,994
10	GST @12%	I = H* B	14,995,439
11	Commensurate demand price	J = H+I	139,957,433
12	Excess Collection of Demand or Profiteering Amount	K= G-J	24,78,383

viii. The DGAP claimed from the Table-'C' that the additional ITC of 1.74% of the turnover should have resulted in 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.

ix. The DGAP also claimed that from the above calculation explained in Table-C, 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 other shop buyers in respect of the commercial shops sold by the Respondent, during the period from 01.07.2017 to 31.03.2019, the benefit of ITC that needed to be




passed on by the Respondent to the buyers of commercial shops came to Rs. 24,78,383/- which included 12% GST on the base amount of Rs. 22,12,842/-. The commercial shop buyer and unit no. wise break-up of this amount has been given in Annexure-14 by the DGAP. This amount was inclusive of the profiteered amount of Rs. 37,107/- in respect of the Applicant No. 1. The DGAP also intimated that on the basis of the details of the outward supplies of the construction service submitted by the Respondent, it was observed that the service has been supplied in the State of Uttar Pradesh only.

- x. The DGAP submitted that the benefit of additional ITC of 1.74% of the taxable turnover which has accrued to the Respondent was required to be passed on to the Applicant No. 1 and the other recipients. He has further submitted that the provisions of Section 171 of the CGST Act, 2017 have been contravened by the Respondent inasmuch as the additional benefit of ITC @1.74% of the base prices received by him during the period from 01.07.2017 to 31.03.2019, has not been passed on to the Applicant No. 1 and the other recipients. On this account, the Respondent has realized an additional amount to the tune of Rs. 37,107/- (including GST) from the Applicant No. 1

which included both the profiteered amount @1.74% of the basic price and GST on the said profiteered amount. The DGAP has also contended that the Respondent has realized an additional amount of Rs. 24,41,276/-, as has been mentioned in Annexure-14, which included both the profiteered amount @1.74% of the basic prices and the GST on the said profiteered amount, from 177 other recipients who were not Applicants in the present proceedings. These recipients were identifiable as the Respondent has provided their names and addresses along with unit nos. allotted to them. Therefore, this additional amount of Rs. 24,41,276/- was required to be returned to such eligible recipients. The DGAP has also intimated that the present investigation has covered the period from 01.07.2017 to 31.03.2019 and profiteering, if any, for the period post March, 2019, has not been examined as the exact quantum of ITC that would be available to the Respondent in future could not be determined at this stage, when the construction of the project was yet to be completed.

3. The matter was examined by the Authority and vide I.O. No. 16/2020 dated 20.04.2020, directed the DGAP to further investigation in the said matter on the points as mentioned

above. Therefore, the DGAP vide Report dated 29.10.2020 has stated that:-

a. The time limit to complete the investigation was upto 19.07.2020, as per Rule 129(6) of the CGST 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 being furnished in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020, as amended vide Notification No. 55/2020 dated 27.06.2020 and 65/2020-Central Tax dated 01.09.2020, issued by the CBIC. As per which, the last date for submission of Report had been extended upto 30.11.2020. 

b. On receipt of the aforesaid order from the NAA on 14.05.2020, a letter dated 26.05.2020 and further letter/email dated 30.06.2020 and 06.10.2020 were issued to the Respondent calling for the details of documentary evidence amounting to Rs. 1,77,50,478/- claimed to be blocked by the State GST authorities; details and documentary evidence of passing on of the benefit of ITC to the shop buyers including Applicant No. 1; and contact details (email



address) of all shop buyers, for verification of amount of benefit of ITC passed on by the Respondent.

- c. The Respondent submitted his reply dated 02.06.2020, 09.07.2020 and 09.10.2020. The Respondent submitted the electronic credit ledger for the period 01.07.2017 to 31.03.2019 evidencing blockage of ITC of Rs. 1.77 Cr. by State Authorities and copies of Credit notes issued to shop buyers, for passing on of ITC benefit to shop buyers. The Respondent vide above mentioned replies submitted that the State Authorities had blocked the ITC, without informing the reasons, therefore, he cannot state the reasons for the same and that there was no actual working of passing on of ITC to buyers, he had extended benefit of ITC @3% on a broader principle.
- d. As per the directions of NAA vide I.O. No. 16/2020 dated 20.04.2020, letter dated 21.07.2020 and further reminders dated 17.08.2020 and 14.09.2020 were written to the Deputy/ Assistant Commissioner, Sales Tax Office, Surajpur, Greater Noida, to provide the reasons of blocking the said ITC and present

status of the case. Also, it was requested to provide the copies of GSTR-1 & GSTR-3B and Electronic Credit Ledger for the period April, 2019 to March, 2020, to verify the present status of blocked ITC, as if the same was available in the Ledger or not. Also, letter dated 21.07.2020 and further reminders dated 17.08.2020 and 14.09.2020, were written to the Additional Director General, Directorate General of Systems, Chennai to provide the copies of statutory returns for the above mentioned period.

- e. The Deputy Commissioner, SGST, Gautam Budh Nagar, Uttar Pradesh vide letter dated 07.10.2020 and email dated 17.10.2020 stated that a letter F. No. 22011/NAA/26/2018 Vol-2 dated 18.12.2018 had been received from the Secretary to Authority in the Commercial Taxes, Headquarters Office. On receipt of the above mentioned letter, the Respondent was asked to make the documents available to verify the ITC. The Respondent didn't comply with the request of verification therefore, the ITC was blocked by the authorities. However, in absence of any adverse Report in the previous

one year period, ITC had been unblocked on 08.10.2020, as per provisions of Rules 86(A) of the CGST Rules, 2017.

- f. Also, the Respondent had not accepted the illegality of said ITC at any stage of investigation. Therefore, the contended ITC was legally available to the Respondent and hence, the same could be utilized, once unblocked, as in the present case. Further, the period of investigation was from 01.07.2017 to 31.03.2019. The credit was blocked by concerned jurisdictional SGST authorities provisionally on 28.03.2019 only for non-compliance of provisions. This credit was practically available for utilization to the Respondent , practically for the entire period under investigation. Therefore, the claim of the Respondent to exclude the ITC of Rs. 1.77 Crores from the profiteering computation was not acceptable. Thus, the Respondent had benefitted from the additional ITC, which was required to be passed on to the shop buyers.
- g. The Respondent had submitted copies of Credit notes issued to his 90 shop buyers alongwith summary of the same. The total amount of



benefit that was claimed to be passed on by the Respondent was Rs. 9,61,130/-, including the Applicant No. 1.

- h. To substantiate the Respondent's claim of passing on of benefit, email dated 08.10.2020, 09.10.2020 and 12.10.2020 were sent to the Applicant No. 1 and 55 other shop buyers, randomly selected, to confirm the amount of benefit received from the Respondent. The Applicant No. 1 vide email dated 15.10.2020 submitted that he had received the total benefit of Rs. 1,95,915 (Rs. 37,107 as per Annexure) as an ITC benefit, from the Respondent. In response to the other 55 emails, which was more than 60% of 90 shop buyers (to whom the benefit was claimed to be passed on), only 09 shop buyers (i.e. 16.36% of sent) responded. Out of these 09 shop buyers, 05 had confirmed the amount of benefit (totaling to Rs. 26,515/-) received from the Respondent, while the other 04 had denied receipt of any benefit. Further, it was observed from the above replies that, the Applicant No. 1 alone received higher amount as ITC benefit then the total amount of other 05 shop buyers. On the basis of mixed replies

submitted by the above shop buyers, the issue of passing on of the proper of ITC benefit cannot be confirmed.

- i. From the above discussions, it might be seen that the benefit of additional ITC to the tune of Rs. 24,14,761/- (Rs. 24,78,383 (-) Rs. 37,107/- (-) Rs. 26,515/-), cannot be verified with the Respondent's submissions. Therefore, the total benefit of ITC of Rs. 24,14,761/- which included GST (@ 12%) on the base amount was required to be passed on to the shop buyers.
- j. The SGST authorities had unblocked the ITC amounting to Rs. 1,77,50,478 and thus, the same had been taken into account while computing the profiteered amount during the period from 01.07.2017 to 31.03.2019. This was part of the additional benefit of ITC and was required to be passed on to the shop-buyers. Also, the Respondent's claim of passing on of the benefit of ITC to the Applicant No. 1 was verified but to his other shop buyers was not verified, and therefore, cannot be accepted. Thus, the profiteering amount of Rs. 24,14,761/- was required to be returned to eligible recipients.



4. The above Report was carefully considered by this Authority and a Notice dated 06.11.2020 was issued to the Respondent to explain why the Report dated 29.10.2020 furnished by the DGAP should not be accepted and his liability for profiteering in violation of the provisions of Section 171 should not be fixed. The Respondent was directed to file written submissions which had been filed vide letter dated 04.12.2020 and 24.06.2021 wherein the Respondent had submitted that :-

a) During the period July 2017 to Mar 2019, ITC of Rs 1.77 Crores was lying blocked and once any ITC was blocked, it could not be considered for profiteering at all. During the said period it could not be said that the said ITC was available to the Respondent. The assertion made by DGAP that such credit 'was' available or 'is' available to the Respondent was absolutely erroneous when it had been blocked during the very period. The whole formula of profiteering was based on the availability of ITC. Once the ITC itself was not available how it could be used for calculation of profiteering. When it was known during the period that certain ITC had been blocked by the Govt Agency, it could not be referred as ITC benefit. It appears to be a misleading statement. Unblocking of ITC by the SGST department at that stage was irrelevant, as he might not

be able to use that ITC at all and even otherwise that could at best be made part of ITC in the current regime. Therefore, requested that the profiteering be calculated again as the company never availed or utilised the amount of Rs 1.77 Crores blocked by the department during the said period.

b) The confirmations taken by the DGAP was malafide and erroneous. It could be noted that various customers had confirmed the passing on the credit. The Respondent had already passed on the credit to all the customers mentioned in the list. There should be no doubt in passing on of the ITC benefit when certain customers had confirmed. The customers denying passing on of the ITC benefit might not be, aware of such discount. The Respondent had rather passed on more benefit to the customers. The Respondent had passed on the ITC benefit of Rs 9.61 lacs to the buyers.

5. Copy of the above submissions dated 04.12.2020 filed by the Respondent was supplied to the DGAP for supplementary Report under Rule 133(2A) of the CGST Rules, 2017. The DGAP filed his clarifications vide supplementary report dated 11.02.2021 wherein clarified that:-

i. The contention of the Respondent was incorrect, as the ITC of Rs, 1.77 Crores was blocked from 28.03.2019 only. The investigation period was



from 01.07.2017 to 31.03.2019 only. Thus, the ITC was effectively blocked for merely 3 days during the investigation period. Profiteering had been calculated on the basis of statutory documents and reply submitted by the Respondent with respect to availability of ITC. The Respondent cannot take a plea that since the credit was blocked for some period, he should not pass on the benefit, as the credit was not denied but merely blocked for temporary period. That ITC was always available in his Electronic Credit Ledger for using the same towards his tax liability. That did not deter the Respondent in issuing demand letters by giving the commensurate benefit of ITC as per Section 171 of the CGST Act, 2017. The SGST authorities had already unblocked the ITC on 08.10.2020, which was available to the Respondent for utilization.

- ii. At the time of the investigation, 55 emails were sent to the shop buyers for verification of passing on of the benefit of ITC and mixed responses from the shop buyers were received. Out of 55, only 09 shop buyers responded. Out of 09, 05 shop buyers confirmed the receipt of amount and 04 had denied. Thus, it could not be confirmed

that commensurate benefit to all recipients had been passed on.

6. The 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 24.02.2022 and the Respondent as well as the Applicants were given an opportunity to be heard in person via video conferencing on 29.03.2022. However, the respondent vide letter dated 28.03.2022 requested for adjournment. The next date of hearing was scheduled to be held on 29.04.2022 via video conferencing. However, the respondent vide his email dated 29.04.2022 requested to decide the matter on merits. No one appeared on behalf of the Applicant. The hearing was closed vide order sheet dated 02.05.2022.
7. The Authority has carefully considered the Reports filed by the DGAP, all the submissions and the documents placed on record, and the contentions raised by the Respondent vide his written submissions. 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 whether there was any net benefit of ITC with the introduction of GST. It is observed from the report 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 0.84%, whereas, during the post-GST period (July 2017 to March, 2019), it was 2.58% for the project 'U-FARIA'. This confirms that post-GST, the Respondent has benefited from additional ITC to the tune of 1.74% (2.58% - 0.84%) of his turnover for the project 'U-FARIA' and the same was required to be passed on to the customers/shop buyers/recipients. The DGAP had calculated the total profiteering amount as Rs. 24,78,383/- in respect of 90 shop buyers including the Applicant No. 1.

8. The Respondent has raised several contentions in the matter and the findings of the Authority are as under:-

- a) **The Respondent has raised a contention that DGAP has exceeded his jurisdiction by calculating profiteering in respect of the customers other than the Applicant No.1.**

In this regard, the Authority notes that, in terms of Section 171(1) of the CGST Act, 2017, it is mandated that, *"Any reduction in rate of tax on any supply of goods or services or the benefit of ITC shall be passed*

*on to the recipient by way of commensurate reduction in prices".* Thus the legal requirement is abundantly clear that in the event of a benefit of ITC or reduction in rate of tax, there must be a commensurate reduction in prices of the any supply of goods or services. The said provision provides for 'any supply', which expend the scope to cover all supplies; where tax reduction or ITC benefit has not been passed on.

Therefore, the law prescribes that benefit of reduction in rate of tax or benefit of increase in ITC, in relation to any supply of goods or services should result in commensurate reduction in prices of such supply and accordingly, the DGAP was justified in examining all the supply made by the Respondent beyond the Application filed by the Applicant No. 1.

- b) The Respondent has raised a contention that the provisions of Section 171 were already under challenge before the Hon'ble High Court of Delhi on which stay has been granted.**

In this regard, the Authority finds that no stay has been granted by the Hon'ble High Court of Delhi on the provisions of Section 171 of the CGST Act, 2017. The issue contained in the instant matter is being decided on merit on the given facts and position of law existing today.



- c) **The Respondent has contended that the fresh negotiations/bookings on or after 01.07.2017 shall be excluded from the calculation of the profiteering amount.**

The Authority finds that, there is no evidence on record that, from 1.07.2017 onwards i.e. after the introduction of GST and availability of additional ITC, the Respondent has decreased the price of the units to be sold by him commensurate with such availability of additional ITC as mandated by Section 171 of the CGST Act, 2017. Hence, such submission made by the Respondent is untenable. The Respondent has benefitted with additional ITC only after the introduction of the GST. This additional benefit of ITC pertains to the entire project or in other words, relates to each shop/unit of the project of the Respondent. Hence all unit/shop buyers are eligible to get their due benefit of ITC from the Respondent irrespective of their bookings made in pre-GST or post-GST period. ✓

- d) **The Respondent has raised a contention that instead of the value of relevant ITC availed post GST for the purpose of calculation of profiteering, the ITC utilized post GST should be considered.**

In this regard, the Authority finds that the contended ITC is legally available to the Respondent and hence,

the same can be utilized as in the present case. The Respondent has benefited from the additional ITC, which was required to be passed on to the shop buyers. As regards to contention of the Respondent regarding blockage of the ITC by the State GST authority, the Authority find that contention/reply of DGAP is acceptable in as much as the ITC was available to the Respondent during the period 1.07.2017 to 28.03.2019 and nothing prevented them from passing on the benefit of ITC. Further as replied by the DGAP, ITC can be passed on by any means i.e. credit notes, lowering of instalment, etc. It is also a fact that said amount of the ITC was unblocked later on. In the given facts, the contention of the Respondent cannot be accepted.

9. For the reasons mentioned herein above, the Authority finds no reason to differ from the computation of profiteering in the DGAP's Report dated 24.09.2019 and 29.10.2020 or the methodology adopted. The Authority finds that the Respondent has profiteered by Rs. 24,78,383/- during the period of investigation i.e. 01.07.2017 to 31.03.2019. The Authority determines an amount of Rs. 24,78,383/- (including 12% GST) under section 133(1) as the profiteered amount by the Respondent from his 178 /shop buyers/customers (as per Annexure A to this Order), including Applicant No. 1, which shall be refunded by him along with interest @18% thereon,



from the date when the above amount was profiteered by him till the date of such payment as per the provisions of Rule 133 (3) (b) of the GCST Rules 2017. The amount profiteered is Rs. 37,107/- (including GST) in respect of Applicant No.1.

10. 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 shop buyers/customers commensurate with the benefit of ITC received by him as has been detailed above.

11. The Respondent is also liable to pay interest as applicable on the entire amount profiteered, i.e. Rs. 24,78,383/-, for the project 'U- FARIA'. Hence the Respondent is directed to also pass on interest @18% to the customers/ Shop buyers/ recipients on the entire amount profiteered, starting from the date from which the above amount was profiteered till the date of passing on/ payment, as per provisions of Rule 133 (3) (b) of the CGST Rules, 2017.

12. The complete list of shop buyers/customers has been attached with this Order, with the details of the amount of benefit of ITC to be passed on along with interest @ 18% in respect of the project 'U- FARIA' of the Respondent as in the **Annexure-'A'**.

13. This Authority also orders that the profiteered amount of Rs. 24,78,383/- for the project 'U- FARIA' along with the interest @ 18% from the date of receiving of advance from the


shopbuyer till the date of passing the benefit of ITC shall be paid/passed on by the Respondent within a period of 3 months from the date of this order failing which it shall be recovered as per the provisions of the CGST Act, 2017.

14. It is also evident from the above narration of facts that the Respondent has denied the benefit of ITC to the customers/flat buyers/recipients in his Project 'U-Faria' in contravention of the provisions of Section 171 (1) of the CGST Act, 2017 and has committed an offence under Section 171 (3A) of the above Act. Section 171 (3A) of the CGST Act, 2017 has 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. As the period of investigation was 01.07.2017 to 31.03.2019, therefore, penalty cannot be imposed on the Respondent retrospectively, i.e. for the period of investigation.

15. The concerned jurisdictional CGST/SGST Commissioner is also directed to ensure compliance of this Order. It may be ensured that the benefit of ITC has been passed on to each shop buyer/customer as per this Order along with interest @18%. In this regard an advertisement of appropriate size to be visible to the public at large may also be published in a minimum of two local newspapers/ vernacular press in Hindi/English/local language with the details i.e., Name of the builder (Respondent) – M/s Maheshwari Infratech Pvt. Ltd.,



Project- "U- FARIA", Location- C-04A, Sector-16B, Greater Noida west, Uttar Pradesh and amount of profiteering Rs. 24,78,383/- so that the concerned shop buyers can claim the benefit of ITC if not passed on. Shop buyers/customers may also be informed that the detailed NAA Order is available on Authority's website [www.naa.gov.in](http://www.naa.gov.in). Contact details of concerned Jurisdictional CGST/SGST who are nodal officers for compliance of the NAA's order may also be advertised through the said advertisement.

16. The concerned jurisdictional CGST/SGST Commissioner shall also submit a Report regarding the compliance of this Order to the Authority and the DGAP within a period of 4 months from the date of receipt of this order.
17. Further, the DGAP is also directed to monitor the compliance of the order by the concerned jurisdictional CGST/SGST Commissioner. 
18. The present investigation has been conducted up to 31.03.2019 only. However, the Respondent is liable to pass on the benefit of ITC which would become available to him till the date of issue of the Completion Certificate. Accordingly, the concerned jurisdictional Commissioner CGST/SGST is directed to ensure that the Respondent passes on the benefit of ITC to the eligible shop buyers/customers as per the methodology approved by this Authority in the present case and submit his report to this Authority through the DGAP.

The Applicants or any other interested party/person shall also be at liberty to file a complaint against the Respondent before the Uttar Pradesh State Screening Committee in case the remaining benefit of ITC is not passed on to them.

19. Further, since the Respondent has profited in the instant project, there is every likelihood that he has profited in other projects executed under the same GSTIN. The Authority has reasons to believe that the Respondent may have resorted to profiteering in the other projects also and hence, it directs the DGAP under Rule 133(5) to investigate all the other projects of the Respondent under the same GST registration which have not yet been investigated from the perspective of Section 171 of the CGST Act, 2017 and submit complete investigation report for all the Projects under this single GST Registration.

20. Further, the Hon'ble High Court of Delhi, vide its Order dated 10.02.2020 in the case of Nestle India Ltd. & Anr. Vs. Union of India has held that :-

*"We also observe that prima facie, it appears to us that the limitation of period of six months provided in Rule 133 of the CGST Rules, 2017 within which the authority should make its order from the date of receipt of the report of the Directorate General of Anti Profiteering , appears to be directory in as much as no consequence of non-adherence of the said period*



*of six months is prescribed either in the CGST Act or the rules framed thereunder.”*

21. Thus, this Order having been passed today falls within the limitation prescribed under Rule 133(1) of the CGST Rules 2017.

22. A copy of this order be sent to the Applicant No. 1, the Respondent, Commissioners CGST/SGST Greater Noida, the Principal Secretary (Town and Country Planning), Government of Uttar Pradesh as well as Uttar Pradesh RERA free of cost for necessary action.

Encl : Annexure – ‘A’ (Pages 1 to 7)


-sd-  
(Amand Shah)  
Technical Member &  
Chairman



-sd-  
(Pramod Kumar Singh)  
Technical Member

-sd-  
(Hitesh Shah)  
Technical Member

Certified Copy

  
(Dinesh Meena)  
Secretary, NAA

F. No. 22011/NAA/221/Maheshwari/2020

8951 — 8958  
Dated: 30.09.2022

Copy To:-

1. M/s Maheshwari Infratech Pvt. Ltd. A-6. Ground Floor, Yojana Nagar, Delhi - 110092.
2. Sh. Vivek Gupta, R/9/271, Rajnagar, Ghaziabad – 201002.

3. Chief Commissioner, CGST (Lucknow zone), 7-A, Ashok Marg, Lucknow-226001.
4. Commissioner, Commercial Tax U.P. Commercial Tax Head Office Vibhuti Khand, Gomti Nagar Lucknow – 226010.
5. Principal Secretary, Town And Country Planning Department , Uttar Pradesh, TCG / 1-A-V/5, Vibhuti Khand, Gomti Nagar, Lucknow 226010.
6. Uttar Pradesh Real Estate Regulatory Authority Naveen Bhavan, Rajya Niyojan Sansthan, Kala Kankar House, Old Hyderabad, Lucknow – 226007.
7. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
8. Guard File.



Sh. Vivek Gupta vs. M/s Maheshwari Infratech Pvt Ltd.

Annexure - A

S.No.	Name	Unit no.	Profiteering including tax
1	Mr. Ajay Jugran	G-111	12220
2	Mr. Vineet Dawar	G-115	34539
3	M/s Rajeev Kumar Mittal (HUF)	G-116	16609
4	Mrs. Neetu Rawat	G-047	11645
5	Mr. Kamal Verma	G-064A	16575
6	Mr. Rishikesh	G-072	25680
7	Mr. Sachin Kumar Sharma	G-075	24512
8	Mr. Subhash Chandra	G-082	22541
9	Mr. Sanchit Tittal	G-086	12202
10	Mr. Satvir Singh	G-96	23345
11	Mr. Ramesh Kumar Dhawan	G-098A	11923
12	Mr. Vivek Gupta	G-122	37107
13	Mr. Sachin Kumar	G-124	15261
14	Mr. Piyush Verma	F-112	5755
15	Mr. Subodh Kumar	F-115	5620
16	Mr. Bright Joseph	F-116	3271
17	Mr. Tarsem Singla	F-146	15274
18	Mrs. Ranjeeta Gupta	F-147	12680
19	Mr. Lavneesh	F-160A	9768
20	Mr. Harsh Sharma	F-160B	11495
21	Mr. Ravindra Jain	F-161	13384
22	Mr. Pradeep Kumar Sharma	F-184	9812
23	M/s VRSK And Associates	F-185	9435
24	Mrs. Suman Singh Katiyar	F-186	9876
25	Mr. Satish Kumar Katiyar	F-187	9876
26	Mr. Sanju Singh	F-191	18160



## Annexure - A

27	Mr. Rakesh Kumar Verma	F-202	6300
28	Mr. Vikas Dixit	F-208	18049
29	Dr. Ashok Kumar Bagga	F-209	12520
30	Mrs. Anjana Kumari	F-210	9603
31	Mr. Jayanti Lal	S-240	3728
32	Mr. Himanshu Agarwal	S-241	4623
33	Mrs. Rita Devi	S-242	2424
34	Mrs. Malini Bahl	S-248	4606
35	Mr. Sarvesh Kumar Sharma	S-251	6286
36	Mr. Rajneesh Gupta	S-255	8563
37	Mr. Pankaj Kumar	S-262	8563
38	Mr. Gagan Saini	S-263	8563
39	Mrs. Deepanshi Tyagi	S-287	9094
40	Mr. Sanjeev Saxena	S-315	6921
41	Mrs. Suman Vishnoi	S-323	6516
42	Mr. Anil Kumar	S-330	6516
43	Mr. Satendra Kumar Varshney	S-345	7667
44	Mr. Kamal Sharma	S-346	8179
45	Mrs. Renu Gupta	S-366	4341
46	Mrs. Seema	S-371	6696
47	Ms. Anju Singh	S-372	6397
48	Mr. Anand Kumar Chaudhary	S-375	5888
49	Mrs. Archana	S-376	5624
50	Mr. Dinkar Prakash Tripathi	S-379	6157
51	Mr. Ravi Shankar Prasad	S-380	5897
52	Mr. Abhishek Awasthi	S-381	5152
53	Mr. Punit Garg	S-382	5393



Annexure - A

54	Mrs. Neha Pal	S-383	5490
55	Mr. Dinkar Prakash Tripathi	S-386	6157
56	Mrs. Pranita	S-387	6876
57	Mr. Amrik Singh	S-389	5753
58	Mr. Tahsin Malik	S-392	6022
59	Mr. Ram Avtar Singh	S-393	6876
60	Mr. Tarun Sharma	T-340	2824
61	Mrs. Payal Gupta	T-341	3139
62	Mrs. Reena Singh	T-342	2189
63	Mr. Gurudev Sharma	T-344	3713
64	Mr. Mohammad Sharfuddin	T-348	2307
65	Mr. Pankaj Kumar	T-354	4250
66	Mr. Krishan Kumar	T-356	7028
67	Mr. Mahesh Mohit Verma	T-363	7731
68	Mr. Satish Kumar Singh	T-370	7731
69	Ms. Pooja Singh	T-372	7110
70	Mr. Aditya Srivastava	T-379	7310
71	Mrs. Priya	T-383	7404
72	Mr. Akshay Singh	T-390	8140
73	Mr. Yash Paul Narula	T-392	7064
74	Mrs. Dipti Singh	T-406	7043
75	Mr. Raj Kumar Parcha	T-431	7507
76	Mr. Jitender Kumar	T-446	7385
77	Mr. Anuj Kamboj	T-447	7322
78	Mr. Akshay Kamboj	T-448	7322
79	Mr. Kundan Mehra	T-450	7385
80	Mrs. Mithlesh	T-467	5883



## Annexure - A

81	Mr. Madan Singh Rawat	T-468	5621
82	Mrs. Renu Rani	T-469	6435
83	Mrs. Renu Rani	T-470	6736
84	Mrs. Priti Kumari	T-473	5078
85	Mr. Ranbir Singh	T-475	5530
86	Ms. Soni Priya	T-476	5031
87	Mr. Atul Singhal	T-478	6046
88	Mr. Manoj Kumar Nigam	T-480	5311
89	Mrs. Ashima Gupta	T-483	4869
90	Mr. Nadeem Khan	T-488	5931
91	Mr. Abhishek Srivastava	T-491	5437
92	Mrs. Jisha Srivastava	T-492	5437
93	Mr. Abhishek Kumar Singh	T-493	6208
94	Mr. Awadhesh Kumar Dubey	T-494	6208
95	#N/A	F-111	7595
96	#N/A	F-118	9999
97	#N/A	F-124	22743
98	#N/A	F-127	1949
99	#N/A	F-151B	12164
100	#N/A	F-162	4892
101	#N/A	F-167B	4619
102	#N/A	F-176	9332
103	#N/A	F-177	9430
104	#N/A	F-204	28110
105	#N/A	G-002A	3067
106	#N/A	G-002B	3081
107	#N/A	G-012	8701



Annexure - A

108	#N/A	G-032	4953
109	#N/A	G-033	10474
110	#N/A	G-040	13460
111	#N/A	G-046	7328
112	#N/A	G-048	3262
113	#N/A	G-049	6757
114	#N/A	G-055	6789
115	#N/A	G-056	42093
116	#N/A	G-074	12003
117	#N/A	G-077	55152
118	#N/A	G-087B formerly G-094	22930
119	#N/A	G-088	30042
120	#N/A	G-089	29754
121	#N/A	G-094	20008
122	#N/A	G-095	51358
123	#N/A	G-097	8072
124	#N/A	G-100	33244
125	#N/A	G-101	25070
126	#N/A	G-102	47826
127	#N/A	G-103	25441
128	#N/A	G-104	8090
129	#N/A	G-105	25616
130	#N/A	G-119	28698
131	#N/A	LG-017	20010
132	#N/A	LG-086	14918
133	#N/A	LG-016	18872
134	#N/A	S-222	17513

## Annexure - A

135	#N/A	S-224	15834
136	#N/A	S-238	8956
137	#N/A	S-285	5594
138	#N/A	S-286	5562
139	#N/A	S-390	5625
140	#N/A	T-337	17094
141	#N/A	T-459	6658
142	#N/A	F-163	18327
143	#N/A	G-059	5216
144	#N/A	T-346	11056
145	#N/A	T-347	12065
146	#N/A	G-114	19161
147	#N/A	CF-0823	9625
148	#N/A	CF-0824	9625
149	#N/A	Cf-0825	9625
150	#N/A	CF-0826	9255
151	Kiran Rana	G-106	25494
152	Sahil Kumar	G-099	32659
153	Sanjay Chauhan	S-239	12999
154	Karambeer Singh	F-203	34141
155	Rashmi Devi Kamboj	G-069	10146
156	Anil Kumar	G-039	10084
157	Deepak Gupta	G-041	46347
158	Deepak Gupta	G-042	46913
159	Deepak Gupta	G-076	39645
160	Deepak Gupta	G-043	46347
161	Switi Gupta	F-152A	14130



Sh. Vivek Gupta vs. M/s Maheshwari Infratech Pvt Ltd.

Annexure - A

162	Taejas gupta	F-159A	20377
163	Taejas gupta	F-164	19559
164	Manmohan Saini	G-070	9446
165	Rachna Sharma	T-394	17567
166	Ashish Kumar	S-391	12987
167	Jiledar	S-259	28628
168	Anil Kumar Kansal	G-010	8453
169	Anil Kumar Kansal	G-050	6834
170	Neeraj Kumar Aggarwal	G-011	8589
171	Neeraj Kumar Aggarwal	G-051	6702
172	Surinder sawhney	G-054	27048
173	Bharat sawhney	G-053	6922
174	Mukesh kumar Aggarwal	LG-012	13908
175	Sarita Kansal	G-052	6610
176	Shaswat	CF-12A03	77545
177	Shaswat	CF-12A04	84578
178	Shaswat	CF-12A05	85357
			<b>2,478,383</b>

