

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

Case No. 65/2022  
Date of Institution 29.01.2021  
Date of Order 31.08.2022

In the matter of:

1. Smt. K. B. Sreedevi, D. No. 58-14-68, Flat No. 201, Sai Partha Sreekar Residency, Mairipalem Vuda Layout, Visakhapatnam – 530009.
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 Siva Rama Constructions, D. No. 37-14-618,  
Pattabirami Reddy Gardens. Manikyamba Colony,  
Visakhapatnam -530007.

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 No 1.
2. Shri Bukari Babu Mohammed, Chartered Accountant, for the Respondent



**ORDER**

1. The present Report dated 27.01.2021 had been received from the Applicant No. 2 i.e. the Directorate General of Anti-Profiteering

(DGAP) after detailed investigation under Rule 129(6) of the Central Goods & Service Tax (CGST) Rules, 2017. The brief facts of the report were that the Applicant No. 1 had filed an application before the Andhra Pradesh State Screening Committee on Anti-Profiteering under Rule 128 of the CGST Rules, 2017 and alleged that Respondent had not passed on the benefit of the input tax credit by way of commensurate reduction in price to the Applicant in respect of the purchase of Flat No. 201 in the Respondent's project "*Sai Partha Sreekar Residency*", Marripalem Vuda layout, Visakhapatnam - 530009 in terms of Section 171 of the Central Goods and Services Tax Act, 2017.

2. The DGAP in his Report dated 27.01.2021 inter-alia has stated that:-

i. The Andhra Pradesh Screening Committee on Anti-profiteering examined the said application filed by Applicant No. 1 and forwarded the said application with his recommendation, to the Standing Committee on Anti-profiteering for further action, in terms of Rule 128 of the Rules. The aforesaid application was examined by the Standing Committee on Anti-profiteering in his meeting, the minutes of which were received in the DGAP on 03.06.2020, whereby it was decided to forward the same to the DGAP to conduct a detailed investigation in the matter. 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 the Applicant No. 1 in respect of construction service supplied by the Respondent.

ii. Along with the minutes of the meeting the Standing Committee forwarded the following documents: -

- a) Copy of complaint.
- b) Copy of Tax Invoice and Receipt Vouchers issued in the name of the Applicant

- c) Copy of the proceedings of the Andhra Pradesh Screening Committee on Anti Profiteering.
- iii. After receipt of the reference from the Standing Committee on Anti profiteering, Notice under Rule 129 (3) of the Rules, was issued by the DGAP on 01.07.2020, calling upon the Respondent to reply as to whether he admit 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 documents in support. The Respondent was also allowed to inspect the relied upon non-confidential evidences/information furnished by the Applicant No. 1 during the period 25.07.2020 to 26.07.2020. However, the Respondent had not availed of the said opportunity.
- iv. The period covered by the current investigation was from 01.07.2017 to 31.05.2020.
- v. The time limit to complete the investigation was 02.12.2020. However, in terms of Notification No. 35/2020 Central Tax dated 03.04.2020, Notification No. 55/2020-Central Tax dated 27.06.2020, Notification No. 65/2020-Central Tax dated 01.09.2020, and further amended vide Notification No. 91/2020 Central Tax dated 14.12.2020, issued by the Central Board of Indirect Taxes and Customs under Section 168 (A) of the CGST Act, 2017, where, any time limit for completion or compliance of any action, which falls during the period from the 20th day of March, 2020 to the 30th day of March, 2021. and where completion or compliance of such action had not been made within such time, then the time limit for completion or compliance of such action, shall be extended upto the 31st day of March, 2021, including for the purpose of furnishing any report under the provision of the Central Goods and Service Tax

Act, 2017. Thus, in term of serial no. (i)(b) of Notification No. 35/2020 Central Tax dated 03.04.2020 as amended vide Notification No. 91/2020 dated 14.12.2020, the time limit for submission of the report stands extended up to 31.03.2021.

vi. In response to the Notice dated 01.07.2020, the Respondent submitted their reply vide letter dated 20.07.2020 and e-mail dated 08.01.2021. The detailed submissions of the Respondent to the DGAP have been summed up below wherein, inter-alia, it was stated that :-

- a) During the subject period FY 2017-18, 2018-19 and 2019-20, he had executed only one development project which was "Sai Partha Sreekar Residency consisting of 10 residential apartments totaling 13,750 square feet.
- b) He had constructed this project on development agreement basis wherein 04 residential flat need to be delivered to the landowners in consideration and balance 06 flats were developer's share.
- c) For the entire project he had availed GST ITC of Rs. 12,43,260/-and made payment through Cash Challan was Rs. 8,05,134/- totaling to the GST collected Rs. 20,48,390/ from the customers.
- d) He had made a marginal profit margin of 1.34% as per the audited financials for FY 2018-19 and a margin 2.37% for FY 2019-20 as per the provisional financials. As per the Residential Construction Industry average acceptable profit rate was 6%.
- e) But in their case he had made a total profit margin of 1.73% for the entire project which was much lesser than the average industry acceptable percentage of profit. Even if the remuneration and interest on capital taken by the partners was considered as the income to

the developer, the net profit on entire project comes to 4.90%.

f) Hence, GST ITC benefit had been duly passed on to the respective customers and no profiteering had been made by the developer on account of GST ITC.

vii. Vide the aforementioned letters, the Respondent also submitted the following documents/information:

- a) Copies of GSTR-1 returns for the period July, 2017 to May, 2020.
- b) Copies of GSTR-3B returns for the period July, 2017 to May, 2020,
- c) Electronic Credit Ledger for the period July, 2017 to May, 2020.
- d) Brief Profile of the Respondent
- e) Copy of GSTR-9 return for FY 2018-19.
- f) Copies of all demand letters issued and sale agreement made with the Applicant.
- g) Copy of Balance Sheet (including all annexures and profit/loss account) for FY 2017-18 & 2018-19,
- h) Details of output GST and ITC of GST for the period July, 2017 to May, 2020 for the project "Sai Partha Sreekar Residency".
- i) Reconciliation statement with respect to GST ITC with GSTR-3B for FY 2017-18, 2018-19, 2019-20 and May 2020.
- j) List of all home buyers in the project "Sai Partha Sreekar Residency"
- k) Details of registration with AP RERA
- l) Details of Applicable tax rates, Pre-GST and Post-GST.
- m) Copy of Occupancy Certificate.

- viii. The Respondent was informed that if any information/documents was 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. The Respondent vide email dated 08.01.2021 claimed confidentiality of all information provided to this office.
- ix. The subject application, various replies of the Respondent and the documents/evidences on record had been carefully examined. The main issues for determination are
- a) Whether there was benefit of reduction in rate of ties or ITC the supply of construction service by the Notices after implementation of GST wef 01.07.2017 and if so,
  - b) 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.
- x. 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, 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 his first occupation, whichever was 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 exempted 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 exempted supply under subsection (2) shall be such as maybe prescribed and shall include supplies on which the recipients 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 him post- GST.

- xi. Prior to implementation of GST w.e.f. 01.07.2017. Service tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation of GST w.e.f 01.07.2017, GST on construction services was chargeable 18% (effective rate was 12% in view of 1/3rd abatement on value) on construction service vide Notification No 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low cost houses upto a carpet area of 60 square meters was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018 Central

Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost house upto a carpet area of 60 square meters). Thus, it was observed that in the case construction services the effective rate of tax (4.5%) in the Pre-GST was lower than the effective rate of tax @ 8% or 12% as applicable, in Post-GST era.

- xii. On scrutiny of the documents submitted by the Respondent, it was observed that the Development Agreement coupled with General Power of Attorney between land owners and Respondent was executed on 22.11.2017. Further, there was no sale or even booking of the flats in the said project in the pre-GST regime since the first booking was made in Respondent's project on 06.09.2018 and the Applicant had booked the Flat No. 201 on 15.10.2018 after the introduction of GST.
- xiii. As per AP RERA Registration details, the Respondent having Registration No. 336/2004 obtained Building Permission from 02.02.2018 which was also the Project Starting Date in respect of the Building Plan No, 1086/0081/B/24/MEM/2018. In the Occupancy Certificate dated 03.06.2019 issued by Greater Visakhapatnam Municipal Corporation, the dates for receipt of Building Permit and submission of Building Commencement Notice by the builder was mentioned as 02.02.2018 and 13.02.2018, respectively.
- xiv. From the above discussion and observations, it appeared that the date of commencement of the impugned project was after the introduction of GST w.e.f 01.07.2017. There was no unit sold in the pre-GST era which could be compared with the post-GST base price to determine whether there was any profiteering. Neither the Applicant nor the Respondent had given any document to prove that any booking for the project was done in pre -GST period. There



was no CENVAT Credit availed in pre-GST to compare with the ITC (GST) which was available to him post implementation of GST while fixing the base price him. Therefore, there was neither reduction in tax rate applicable to construction service, nor there was any addition benefit of "Input Tax Credit "to compute profiteering. Hence, it appears that the anti profiteering provisions was not applicable to the impugned project under investigation.

- xv. Section 171 of the CGST Act, 2017 comes into play in the event when there was a reduction in the rate of tax or there was an increase in the benefit of Input Tax credit. In the present case, since the project itself was launched after implementation of GST w.e.f. 01.07.2017, there was no pre-GST Turnover or input tax and availability that could be compared with the post-GST Turnover and input tax credit, to determine whether there was any benefit that was required to be passed on by way of reduced price
- xvi. On the basis of the details of outward supply of Construction services submitted by the Respondent, it was also observed that the service was supplied in the State of Andhra Pradesh only.
- xvii. The DGAP in its report dated 27.01.2021 has concluded 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 ITC shall be passed on to the recipient by way of commensurate reduction in prices" was not applicable in the present case.
3. The above investigating report was received by this Authority from the DGAP on 29.01.2021 and was considered in its sitting and it was decided to ask the Applicant No. 1 to file his consolidated written submissions in respect of the Report of the DGAP. Notice dated 04.02.2021 was also issued to the Applicant No. 1 directing

him to explain why the Report dated 27.01.2021 furnished by the DGAP should not be accepted.

4. The Applicant No. 1 has filed his submissions dated 15.02.201, 12.03.2021 and 22.03.2022. The reply of the Respondent was summed up as follows:-

a) The Investigating Authority had not supplied all relevant documents, so the Applicant No.1 was unable to file her proper written submissions.

b) That the Authority has consumed more than one year period for very simple and negligible issue.

c) Insisting of filing written submissions of Applicant is against the principle of natural justice and fair play which is not permissible under law.

5. The clarifications were 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 clarifications vide dated 25.08.2022 which are summed up as under :-

a) With respect to the contention "The Investigating Authority had not supplied all relevant documents, so the Applicant No.1 was unable to file her proper written submissions" it was submitted that during the course of investigation, the Respondent had claimed the confidentiality of all the information/data/documents submitted by him (Respondent) in terms of Rule 130 of the CGST Rules, 2017, therefore, in terms of Rule 129(5) of CGST Rules, 2017, no opportunity was afforded to the Applicant for inspection of the information/data/documents submitted by the Respondent.

b) With respect to the contention “the Authority has consumed more than one year period for very simple and negligible issue” it was submitted that the matter pertains to NAA, however, the investigation report was submitted within stipulated time period prescribed in the law.

6. Personal hearings in the present case was granted through video conferencing on 07.06.2022 at 04:00 PM vide Order dated 19.04.2022 and 14.07.2022 at 04.00 PM vide order dated 07.06.2022. It was attended by Shri Bukari Babu Mohammed, Chartered Accountant, for the Respondent, however, the Applicant No. 1 did not appear for the same. During the personal hearing the Respondent has stated that they had produced their documents and records as and when required by the office of DGAP. They have nothing to add.
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 15.03.2022 and the Applicant No. 1 was given one more opportunity to file written submissions against the DGAP’s Report. However, the Applicant No. 1 vide his email dated 22.03.2022 that the Authority cannot insist him for filing his written submissions.
8. This Authority has carefully examined the DGAP’s Report including documents enclosed therewith, the written submissions of the Applicant No. 1 and the clarifications filed by the DGAP on the submissions filed by the Applicant No. 1. It is noted that the Respondent is in the real-estate business and has developed his project “Sai Partha Sreekar Residency”, in Marrisalem Vuda Layout, Visakhapatnam. It is also on record that the Applicant No. 1 has filed a complaint alleging that the Respondent had not passed on the benefit of ITC to him by way of commensurate reduction in

the price of the Flat No. 201 purchased from the Respondent in his project "Sai Partha Sreekar Residency" in terms of Section 171 of the CGST Rules, 2017.

9. It is also noted that the DGAP, after a detailed investigation, has found that the Respondent has not contravened the provisions of Section 171 of the CGST Act, 2017 as the date of commencement of the instant project was after the inception of GST w.e.f. 01.07.2017. Further, the first booking in the instant project was made by the Respondent on 06.09.2018 and the Applicant had booked the Flat no. 201 on 15.10.2018 i.e. in post-GST period. Further, as per the registration details, the Respondent having Registration No. 336/2004 obtained Building Permission from 02.02.2018 which was also the Project starting date. There was no pre-GST tax rate/ details or ITC credit structure/details which could be compared with the post-GST tax rate and ITC. There was no benefit of CENVAT to compare ITC which was available to the Respondent post implementation of GST while fixing the base price in this case. The Applicant No. 1 has not responded on the merit in respect of the DGAP report dated 27.01.2021. The contention of the Applicant No. 1 regarding denial of principles of natural justice is found to be unsustainable as enough opportunities were provided to him to put up in case before the Authority.
10. In view of the above discussions, the Authority finds that there is no contravention of Section 171(1) of the CGST Act, 2017. Thus the Authority concur with the DGAP report dated 27.01.2021.

11. Further, the Hon'ble Supreme Court, vide its Order dated 23.03.2020, while taking suo-moto cognizance of the situation arising on account of Covid-19 pandemic, has extended the period of limitations 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.

12. 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

D. No. 22011/NAA/18/SivaRama/2021  
Copy To:

Dated: 31.08.2022

1. M/s Siva Rama Constructions, D. No. 37-14-618 Pattabirami Reddy Gardens, Manikyamba Colony, Visakhapatnam-530007
2. Smt. K.B Sreedevi, D.No. 58-14-68 Flat No. 201, Sai Partha Sreekar Residency, Marripalem Vuda layout, Visakhapatnam-530009
3. 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.
4. Guard file.

