



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

Case No.	:	18/2023
Date of Institution	:	26.02.2021
Date of Order	:	04.10.2023

In the matter of:

1. Sh. Pruthviraj Vijay Dhavale, resident of 348, Ganesh Peth, Flat No. 23, Swami Sankul Building, 3rd Floor, Near New Milak Market, Opposite Laxmi Road, Pune- 411002
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 Ashdan Developers Pvt. Ltd. (formerly known as M/s Kul Developers Pvt. Ltd.), Solitaire World, Level 8, S. No. 36/1/1, opposite Regency Classic, Mumbai Bangalore Highway Baner, Pune, Maharashtra- 411045

Respondent

Coram:-

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

ORDER

1. The Director General of Anti Profiteering (hereinafter referred to as "the DGAP") vide its investigation report dated 26.02.2021 stated that the Standing Committee on Anti-profiteering received an application filed under Rule 128 of the Central Goods & Service Tax Rules, 2017 (hereinafter referred to as "the Rules") by Sh. Pruthviraj Vijay Dhavale, resident of 348, Ganesh Peth, Flat No. 23, Swami Sankul Building, 3rd Floor, Near New Milak Market, Opposite Laxmi Road, Pune - 411002 (hereinafter referred to as "the Applicant No. 1") alleging profiteering by M/s Ashdan Developers Pvt. Ltd. (formerly known as M/s Kul Developers Pvt. Ltd.), Solitaire World, Level 8, S. No. 36/1/1, opposite Regency Classic, Mumbai Bangalore Highway Baner, Pune, Maharashtra - 411045 (hereinafter referred to as "the Respondent") in respect of the purchase of flat in the Respondent's project "The Kul Nation". The Applicant No. 1 alleged that the Respondent had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in prices after implementation of GST w.e.f. 01.07.2017 in terms of Section 171 of the CGST Act, 2017.
2. The aforesaid application was examined by the Standing Committee on Anti-profiteering in its meeting and sent to the DGAP for further investigation on 06.05.2020. Accordingly, the investigation was initiated by the DGAP to 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 supply of Construction Service.
3. A Notice under Rule 129 of the Rules was issued by the DGAP on 02.06.2020 calling upon the Respondent to reply as to whether he admitted that the benefit of ITC had not been passed on to the recipients 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 of his reply. Further, the Respondent was also afforded an opportunity to inspect the non-confidential evidence/information which formed the basis of the said Notice during the period from 25.06.2020 to 26.06.2020. The Respondent did not avail the said opportunity.

4. Vide e-mail dated 07.01.2021, the Applicant No. 1 was also afforded an opportunity to inspect the non-confidential documents/reply furnished by the Respondent from 18.01.2021 to 19.01.2021. The Applicant No. 1 vide email dated 07.01.2021 informed that it was not possible to visit Delhi. Thus, the Applicant No. 1 did not to avail the said opportunity.
5. The period covered by the current investigation was from 01.07.2017 to 30.04.2020.
6. The time limit to complete the investigation was up to 05.11.2020, as per Rule 129(6) of the CGST Rules but, due to *force majeure* caused by the Covid-19 pandemic, the investigation could not be completed on or before the above date. However, 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 Notification No. 91/2020-Central Tax dated 14.12.2020, issued by the Central Government, the last date for submission of the Report by DGAP was extended upto 31.03.2021.
7. In response to the Notice dated 02.06.2020 and various reminders, the Respondent replied vide letters/e-mails dated 26.06.2020, 04.09.2020, 02.11.2020, 26.11.2020, 12.12.2020, 18.01.2021, 08.02.2021, 10.02.2021 and 24.02.2021.
8. Vide the aforementioned letters/e-mails, the Respondent submitted the following documents/ information:
 - (a) Brief profile.
 - (b) Copies of GSTR-1, GSTR-3B, and GSTR-9 Returns for the period from July 2017 to April 2020.

- (c) Copies of Tran-1 and TRAN-2 statements for the period from July 2017 to December 2017.
- (d) Copies of VAT & ST-3 Returns for the period from April 2016 to June 2017.
- (e) Electronic Credit Ledger for the period from July 2017 to April 2020.
- (f) CENVAT/ITC Register for the FY 2016-17 to April 2020, reconciled with VAT, ST-3, and GSTR-3B Returns along with details of credit reversals.
- (g) Copy of Architect Certificate showing the stage of construction for Tower-1 as of 30.04.2020.
- (h) Copies of all demand letters issued, sale agreement/ contract, and supplemental agreement executed with the Applicant No. 1.
- (i) Details of applicable Tax rates, pre-GST and post-GST.
- (j) Details of Service Tax, CENVAT credit for the period from April 2016 to June 2017, and output GST and ITC of GST for the period from July 2017 to April 2020.
- (k) Copy of the Incorporation certificate with changed name.
- (l) Minutes of meeting with existing customers.
- (m) Comparative chart showing changes in the amenities.
- (n) Sample copy of booking form, agreement and invoices/ demand letters raised to customers who booked flats in post-GST period.
- (o) Copy of Financial Statements for FY 2016-17, 2017-18 & 2018-19.
- (p) Copy of project registration certificates with RERA.
- (q) List of home buyers in the project "VTP Beaumonde, Tower-1".

- (r) Sample copy of supply of service invoice for Infrastructure construction work and approval services.
- (s) Detailed working of Transitional credit attributable to Tower-1 of the VTP Beaumonde.
- (t) Detailed working of the CENVAT & ITC attributable to Tower-1 of the "VTP Beaumonde".
- (u) Sample copy of demand letters/ Tax Invoices issued to various home buyers.

9. The subject applications, various replies of the Respondent and the documents/evidence on record had been carefully examined by the DGAP. The main issues for investigation by the DGAP were:

- (i) Whether there was a reduction in the rate of tax or benefit of ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,
- (ii) Whether the Respondent passed on such benefit to the recipients in terms of Section 171 of the CGST Act, 2017.

10. The DGAP verified the phase-wise project registration details from the official website of Maharashtra Real Estate Regulatory Authority (RERA) and observed that there were 7 Towers that were registered in the name of Respondent. The details of the same are tabulated in Table A :

Table-A

Project	Tower	RERA Registration
VTP Beaumonde	1	P52100009535
	4	P52100009533
	5	P52100007384
	6	P52100007942
VTP Cygnus	7	P52100009524
	8	P52100007722
	9	P52100007401

From a perusal of the above Table, the DGAP observed that each Tower developed by the Respondent was registered independently with RERA. As the complaint was with respect to Tower-1 only, the

DGAP limited its investigation to Tower-1 of the project "VTP Beaumonde".

11. Further, the DGAP stated 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 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 had been received after issuance of the completion certificate, where required, by the competent authority or after his first occupation, whichever was earlier*". Thus, the ITC pertaining to the residential units and commercial shops which were under construction but not sold was a provisional ITC which might be required to be reversed by the Respondent, if such units remain 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 might be prescribed and shall include supplies on which the recipient was liable to pay tax on a 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 prices of such units to be sold to the prospective

buyers by considering the net benefit of additional ITC available to him post-GST.

12. The DGAP also stated that the Respondent submitted sample copy of the booking form, agreement with 04 home buyers i.e. Sh. Vijay Kaustubh Ushire, Sh. Prashant Janwd, Sh. Amit Kumar and Sh. Ruturaj Sharad Kshirsagar and demand letters raised to them for the post-GST period. In the agreements, the following clause was there:

"The consideration amount decided in the agreement was net off GST, therefore, the purchaser in no case shall demand any further reduction/ rebate in the agreed price". In the booking form also, a clause *"the agreement value was arrived after considering the anti-profiteering discount"* was mentioned. Further, the Respondent had submitted a demand letter issued to Sh. Vijay, wherein Anti-profiteering benefit @7% over and above the consideration value was passed on. As per the home buyers list submitted by the Respondent, 62 flats were booked post-implementation of GST. The DGAP stated that since there was a clear stipulation in post-GST contracts that ITC had already been factored in while deciding the transaction value, the profiteering was not required to be calculated on them. In any case, the Respondent had passed on a further benefit of about 7% on these contracts.

13. The DGAP observed from the Service Tax Returns for the period from 2016-17 and April 2017 to June 2017, that the Respondent had not rendered any service related to the construction of residential complexes. Also, from the perusal of information and the home buyers list submitted by the Respondent, the Respondent had not raised any demand to the home buyers during the period from 2016-17 to 2018-19, as the project was on hold during this period. Therefore, for the purpose of computation of the ratio of CENVAT/ Turnover, the entire pre-GST period from March 2013 to June 2017 had been considered.
14. The DGAP stated that as there was no turnover reported during the period 2016-17 and April 2017 to June 2017, the ratio of ITC to turnover for this period would be 0/0 i.e. Indeterminate. Therefore, the

turnover reported by the Respondent in the home buyers list in the pre-GST regime was the turnover for the entire duration of the project. Hence, the turnover considered for the pre-GST period was the total turnover for the period from March 2013 to June 2017, as submitted in the home-buyers list. Further, as the Respondent was engaged in other services also, the CENVAT related to the construction of Tower-1 was apportioned on an area basis. The same had been considered for the computation of the ratio of CENVAT/ Turnover.

15. The DGAP observed that for Tower-1, the Respondent availed Credit of Service Tax paid on input services only. No credit was available in respect of Central Excise Duty paid on the inputs. Further, VAT paid on inputs by the Respondent was also not available in the instant case, as the Respondent was under a composition scheme in Maharashtra. Post-GST, the Respondent was entitled to avail ITC of GST paid on all the inputs and the input services including the sub-contracts. On the basis of the details of the ITC availed by the Respondent and his turnover, the ratios of ITC to turnovers during the pre-GST and post-GST periods were furnished in Table- B' as under :

Table-'B'

(Amount in Rs.)

S. No.	Particulars	Total (Pre-GST) (March, 2013 to June, 2017)	Total (Post-GST) (July, 2017 to April, 2020)
1	2	3	4
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	44,96,290	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-
3	Total CENVAT/Input Tax Credit Available (as submitted by the Respondent) (C) = (A+B)	44,96,290	-
4	Input Tax Credit of GST Availed (as submitted by the Respondent) (D)	-	74,87,940
5	Total Taxable Turnover as per Home Buyers list (E)	5,65,52,304	16,78,78,823
6	Total Saleable area in the project (Square Mtr) (F)	15,091.27	15,091.27
7	Area Sold relevant to Taxable turnover as per returns (G)	4,052.80	8,057.31
8	Relevant CENVAT/Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]	12,07,490	39,97,851
9	Ratio of CENVAT/ ITC to Taxable Turnover [(H)=(H)/(E)]	2.14%	2.38%

16. The DGAP stated that from Table - 'B' above, it was clear that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period was 2.14% and during the post-GST period (July 2017 to April 2020), it was 2.38%. This clearly confirmed that post-GST, the Respondent had benefited from additional ITC to the tune of 0.24% [2.38% (-) 2.14%] of the turnover. Accordingly, the profiteering was examined by comparing the applicable tax rate and ITC available in the pre-GST period when effective Service Tax @4.50% was payable with the post-GST period (July 2017 to April 2020) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement for land value) on Construction Service, vide Notification No.11/2017-Central Tax (Rate) dated 28.06.2017.
17. 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 price and the excess realization (profiteering) from the home buyers who booked flats during the pre-GST period was tabulated in Table-'C' :-

Table-'C'

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	March,2013 to June,2017	July,2017 to April, 2020
2	Ratio of CENVAT/ ITC to Taxable Turnover asper Table - D above (%)	B	2.14%	2.38%
3	Increase in ITC availed post-GST (%)	C= C(post)-C(pre)	-	0.24%
4	<u>Analysis of Increase in input tax credit:</u>			
5	Net Base Price collected during July, 2017 to April, 2020 (excluding turnover related to buyers who had booked flats in post-GST)	F		3,83,71,601
6	GST Collected @ 12% over Basic Price	G=F*12%		46,04,592
7	Total Demand collected	H=F+G		4,29,76,193
8	Recalibrated Basic Price	I=F*(1-C)		3,82,79,509
9	GST @12%	J=I*12%		45,93,541
10	Commensurate demand price	K=I+J		4,28,73,050
	Excess Collection of Demand or Profiteering Amount	L=H-K		1,03,143

From Table 'B' and 'C' above, the DGAP deduced that the additional ITC of 0.24% of the turnover should have resulted in the commensurate reduction in the base price as well as cum-tax price. Therefore, in terms of Section 171 of the CGST Act, 2017, the benefit of such additional ITC was required to be passed on by the Respondent to the respective recipients.

18. The DGAP stated that from Table-B and C above, it was clear that the Respondent was required to pass on the additional benefit of ITC to the tune of 0.24% of the turnover. However, the Respondent had submitted that he had already passed on the benefit @4.5% to the home buyers, who had booked flats in the pre-GST period and @7% to the home buyers, who had booked flats in the post-GST period. The Respondent had booked 59 units in the pre-GST period (excluding 08 units cancelled subsequently) and 62 units in the post-GST period. Further, 88 units remained unsold as of 30.04.2020. There were 3 home buyers, who had booked flats in the pre-GST period but no demand had been raised against them in the post-GST period. Profiteering for such home buyers cannot be computed as there was no demand to substantiate the claim of passing on the benefit to these home buyers. The Respondent had claimed that he had passed on the benefit of Rs. 17,26,772/- to 56 home buyers, who had booked flats in the pre-GST period and demands had been raised in the post-GST period.
19. To verify the above claim of the Respondent, the DGAP had sent e-mails dated 12.10.2020 to 56 home buyers (including Applicant No. 1), who had booked flats in the pre-GST period. In response to these 56 emails, 23 home buyers (including Applicant No. 1) replied. The Applicant No. 1 had enclosed a demand letter dated 10.12.2020, wherein an Anti-profiteering benefit of Rs.8,608/- was reflected, thereby accepting the claim as submitted by the Respondent. Further, 19 other home buyers had confirmed the receipt of the benefit.

20. Three home buyers i.e. Mr. Arun Philip, Mr. Akhaybar Singh (on behalf of Ms. Anjali), and Mr. Saurabh Dwivedi (on behalf of Ms. Puja Tewari) have submitted that they had not received any benefit from the Respondent. To verify their claim, emails dated 12.02.2021 enclosing Tax Invoices issued to these 03 home buyers, were sent and they were asked to submit the payment receipts for the actual payments made to the Respondent. In response to these emails, Mr. Arun Philip and Mr. Akshaybar Singh submitted that they had requested RERA for the cancellation of their flats and therefore, no further demand was paid by them. Mr. Saurabh Dwivedi did not respond to the email therefore, again a reminder email dated 17.02.2021 was sent to him. However, he didn't respond to this email also. In this regard, the DGAP stated that the contention of Mr. Arun Philip and Mr. Akshaybar Singh that they had requested RERA for cancellation of their flats and therefore, no benefit had been passed on to them was not correct, as once the Respondent had issued an invoice passing on ITC benefit to them, the legal obligation of the Respondent of passing on of the benefit was fulfilled. They could not say that they hadn't received the benefit, just because they had requested for cancellation of flats. As regards Mr. Saurabh Dwivedi, the DGAP stated that the Respondent had submitted invoices evidencing the passing on of ITC benefits to him. These were sent to him and he was asked to submit the payment receipt by which the actual payments were made to the Respondent. He had failed to submit the payment receipt and did not deny the receipt of the benefit of ITC. Hence, in the presence of documentary evidence available in the form of Tax Invoices issued by the Respondent and confirmatory emails of 20 home buyers having received the benefit, it appeared that the ITC benefit was passed on to him.
21. The DGAP stated that the Respondent was required to pass on an amount of Rs. 1,03,143/- to his home buyers. However, the Respondent had passed on Rs. 17,26,772/- to the home buyers who had booked flats in the pre-GST period. As the Respondent had passed on more amount than the additional benefit available to the Respondent, the provisions of Section 171 were not contravened by the Respondent.

22. The Respondent had supplied construction services in the State of Maharashtra only.
23. The DGAP concluded that Section 171(1) of the CGST Act, 2017, requires that *"any reduction in the 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"*, had not been contravened by the Respondent in the present case.
24. The National Anti-Profiteering Authority (NAA) issued Notice to the Applicant No. 1 on 09.03.2021 informing that the DGAP has alleged 'nil' profiteering against the Respondent and directed him to intimate why the said Report should not be accepted and also to file written submissions in the matter. The above Applicant was given eight opportunities to file his written submissions on 09.03.2021, 26.03.2021, 11.05.2021, 01.06.2021, 28.06.2021, 30.03.2022, 27.04.2022 and 09.06.2022. The Applicant No. 1 was also given personal hearings on 01.08.2022 and 31.08.2022. However, the Applicant No. 1 neither submitted any reply nor attended the personal hearings in the matter.
25. This Commission issued notice on 06.09.2023 to Applicant No. 1 to appear for final hearing either in person or through an authorized representative on 21.09.2023 at 11.00 AM vide email dated 06.09.2023, failing which the case would be decided ex-parte on the basis of available records. The notice was also sent to him through speed post on 06.09.2023 which was delivered to him on 09.09.2023. However, the above Applicant did not appear for the personal hearing and he informed vide email dated 20.09.2023 that he has no comments to offer in the case. In view of the same, the Commission decided to proceed in the matter on the basis of available records.
26. This Commission has carefully considered the Report dated 26.02.2021 furnished by the DGAP and the other material brought on record and it has been revealed that the Applicant No. 1 has received ITC benefit of Rs 8,608/- which is more than the additional ITC benefit of 0.24% of the taxable turnover.

27. The Applicant No. 1 vide email dated 20.09.2023 in response to personal hearing notice dated 06.09.2023 has stated that from his side he has no comments. It is apparent from the above email that Applicant No. 1 does not want to pursue the matter further as he has already received the benefit of ITC from the Respondent as is also stated in the Report of the DGAP.
28. It is also revealed that the Respondent has passed on an amount of Rs. 17,26,772/- to the 56 home buyers whereas he was required to pass on benefit of Rs. 1,03,143/- only.
29. In view of the above submissions of Applicant No. 1 and the above findings, we find that the instant case does not fall under the ambit of Anti-Profiteering provisions of Section 171 of the CGST Act, 2017 as the benefit of ITC has already been passed on to the Applicant No. 1 and other home buyers. Accordingly, the present proceedings launched under Section 171 of CGST Act, 2017 are not maintainable and are hereby dropped.
30. A copy of this order be supplied to all the parties free of cost and file of the case be consigned after completion.

-sd-
(Ravneet Kaur)
Chairperson

-sd-
(Anil Agarwal)
Member

-sd-
(Sweta Kakkad)
Member

Certified Copy


(Jyoti Jindgar Bhanot)
Secretary, CCI

F. No. 22011/NAA/35/Ashdan/2021 / 955-958

Dated: 05/10/2023

Copy To:-

1. Sh. Pruthviraj Vijay Dhavale, resident of 348, Ganesh Peth, Flat No. 23, Swami Sankul Building, 3rd Floor, Near New Milak Market, Opposite Laxmi Road, Pune- 411002.
2. M/s Ashdan Developers Pvt. Ltd. (formerly known as M/s Kul Developers Pvt. Ltd.), Solitaire World, Level 8, S. No. 36/1/1, opposite Regency Classic, Mumbai Bangalore Highway Baner, Pune, Maharashtra- 411045.
3. The 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.
4. Guard File.