

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

I.O. No.	13/2020
Date of Institution	23.09.2019
Date of Order	19.03.2020

In the matter of:

1. Shri Arbind Biswal, Karbala Road, Near Govt. Hospital, Birmitrapur, PS: Biramitrapur, Distt. Sundargarh, Odisha-770033.
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

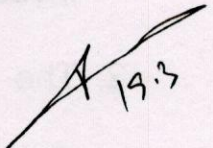
Versus

M/s Sahej Realcon Pvt. Ltd., Nanda Bhawan, Main Road,
Rourkela, PS: Plantsite, Distt. Sundergarh, Odisha.

Respondent

Quorum:-

1. Dr. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Sh. Amand Shah, Technical Member


19.3

Present:-

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

ORDER

1. This Report dated 20.09.2019 and received on 23.09.2019 has been furnished by the Applicant No. 2 i.e. the Director 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 case are that vide his application dated 07.01.2019 filed on the Complaint Portal of this Authority which was forwarded to the Odisha State Screening Committee on Anti-Profiteering on 05.02.2019, under Rule 128 of the CGST Rules, 2017, the Applicant No. 1 had alleged profiteering by the Respondent while he had purchased Duplex Row House-B3 in the Respondent's project "Sahej Valley", situated at Dandipalli, Rourkela. The above Applicant had also alleged that the Respondent had not passed on the benefit of ITC (ITC) although he had charged GST @ 12% w.e.f. 01.07.2017 from him. This application was duly considered by the Standing Committee on Anti-profiteering in its meeting held on 11.03.2019 and was referred to the DGAP for conducting detailed investigation on the allegations levelled by the Applicant No. 1.

2. The DGAP had issued Notice under Rule 129 (3) of the CGST Rules, 2017 on 10.04.2019 asking the Respondent to intimate

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whether he admitted that the benefit of ITC had not been passed on to the above Applicant through commensurate reduction in the price of the house and if so, to suo moto determine the quantum of such benefit and communicate the same with necessary evidence. An opportunity to inspect the non-confidential evidence/information submitted by the Applicant No. 1 was also afforded to the Respondent between 15.04.2019 to 17.04.2019, which he had not utilised. The Applicant No. 1 was also given an opportunity to inspect the non-confidential documents/reply furnished by the Respondent on 30.08.2019, which he did not avail of.

3. The DGAP had sought extension of the time period to complete the investigation, which he was granted in terms of Rule 129 (6) of the CGST Rules vide order dated 19.06.2019 passed by this Authority.
4. In response to the Notice dated 10.04.2019, the Respondent has replied vide his letters/emails dated 05.06.2019, 10.06.2019, 17.06.2019, 13.08.2019, 17.08.2019, 02.09.2019, 04.09.2019, 05.09.2019, 12.09.2019 and 13.09.2019. The reply of the Respondent as stated by the DGAP is as follows:-

- a. That the investigation should be carried out from his local jurisdictional office and not from the DGAP's office as compliance with the requirements of the DGAP's office would cause loss of time, manpower and money to him.
- b. That on complaint by the same customer, an investigation was initiated by the Jurisdictional Rourkela Commissionerate, and in compliance with it, the Respondent had already submitted all the details as sought by that office which were verified and

the investigation was concluded by the above Commissionerate.

c. That investigation on the same matter by two different wings of the same Department was causing huge stress to him and as the above complaint has been investigated, the current proceedings by the DGAP's office should be dropped.

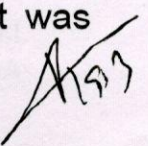
5. The DGAP after investigation has stated that the main issue for determination was whether there were benefits of reduction in the rate of tax or additional ITC on the supply of construction services provided by the Respondent after coming in to force of the GST w.e.f. 01.07.2017 and whether the Respondent had passed on the above benefits to the recipients in terms of Section 171 of the CGST Act, 2017 or not. The DGAP has further stated that on scrutiny of the letter received from the Odisha State Screening Committee on Anti-profiteering, it was observed by him that the Committee had stated that in the present case the benefit of ITC had not been passed on by the Respondent. In the above referred letter, it was also mentioned that an inquiry was initiated into the matter by the Additional Commissioner, GST and Central Excise, Rourkela and details such as Completion Certificate of the above project, ledger account of the Applicant No. 1, purchase ledger for the period 2017-2019 of the Respondent were sought. Based upon the verification of these documents, the above office was of the opinion that as the Respondent had availed ITC with regard to the above project and the above Applicant had made payments in the said period, the applicable ITC taken by the Respondent should be passed on to the

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Applicant. In view of the above, Screening Committee had recommended that the above case was fit for further investigation.

6. The DGAP has also stated that the Respondent vide his submission dated 02.09.2019 submitted a Completion Certificate, with regard to the above project, which certified that as on 31.03.2016, construction of the building had been completed, that it was a first class structure in RCC with all fixtures and fittings, it had water supply, electric connection, was served by public road with drainage and street lighting etc. The above Certificate also mentioned that it was fit for use for the purpose it was constructed. The DGAP has further stated that the date of completion of the project i.e. 31.03.2016 was well before the implementation of GST w.e.f. 01.07.2017. Further, the Respondent has submitted that the project under investigation contained 14 units, each with 1700 sq. ft. of super-built up area, and out of the total, only two units were sold before completion, one of which was allotted to the above Applicant.
7. The DGAP has, on scrutiny of the documents received from the Standing Committee on Anti-profiteering, findings of the State Screening Committee and the documents submitted by the Respondent during the course of the investigation, stated that it was established that the Applicant No. 1 had booked the unit in the above project on 23.10.2014, agreement of sale was executed on 24.04.2016 and the tri-partite agreement among the above Applicant, the Respondent, and the ICICI Bank, financier of the above Applicant, was signed on 17.05.2016. The DGAP has also stated that the above Applicant has claimed that the project was



under construction as on 01.07.2017 i.e. when the GST was implemented and that the construction was completed only in February, 2018, though no evidence supporting that was provided. He has further stated that the Respondent on the other hand has claimed that the project was ready for possession and as the Respondent hadn't cleared his dues, sale deed had not been executed with the above Applicant, due to which the financier had also not disbursed the remaining amount and to establish that the construction of the project was completed in March, 2016, the Respondent has further submitted sale deeds executed in respect of the other units which were sold post completion of the project in October 2017, to establish his claim that the project was completed in March, 2016 and that no Service Tax/GST was charged on such units sold post completion.

8. The DGAP has also mentioned that there were a few facts which needed to be borne in his mind while determining profiteering in this case, regarding the applicability of legal provisions on under-construction property and sale of property after completion. In the erstwhile Service Tax regime, Notification No. 26/2012 S.T. dated 20.06.2012, Entry No. 12 of Table, as amended by Notification No. 08/2016 S.T. dated 01.03.2016, provided that service by way of "Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly, except where entire consideration is received after issuance of completion certificate by the competent authority" shall attract Service Tax at the applicable rates. The same was continued in the GST regime as per the

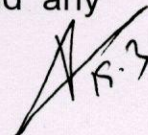
Notification No. 11/2017 Central Tax (Rate) 2017 dated 28.06.2017, wherein the Entry No. 3 (i) in the Table provides that service by way of "Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where 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" shall attract GST at applicable rate, also clause (b) of Paragraph 5 of Schedule II of the Central Goods and Services Tax 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*".

9. On the basis of the above provisions the DGAP has contended that the legal position was very clear which stated that if any unit was booked in an under-construction project before issuance of Completion Certificate by the competent authority, i.e. the entire consideration was not paid after issuance of Completion Certificate, it should attract Service Tax/GST as applicable on demands raised/advance received with respect to all such units. In the present case, the Applicant No. 1 had booked the unit in an under-construction project and all payments made towards the cost of unit should attract Service Tax/GST as applicable. The DGAP has also submitted that the submission of the Completion Certificate dated

31.03.2016 for the project by the Respondent, sale deeds of the units sold post issue of Completion Certificate in the month of October, 2017 and non-charging of Service Tax/GST on such units illustrated that the project was completed well before the implementation of the GST.

10. The DGAP has further submitted that the Respondent has intimated him that the ITC of ₹ 1,72,267/- which has been availed with respect to the said project was related to the goods and services purchased for repair and maintenance works and was not related in any manner whatsoever with the construction of the project. The Respondent has also submitted the ledger for the goods purchased. The DGAP has also stated that the ITC availed on account of Repair and Maintenance work in the post-GST period was for providing a different service altogether, which could not be appropriated against the construction service provided and completed prior to the GST implementation. The DGAP has contended that it was evident from the Completion Certificate submitted by the Respondent and the other facts as discussed above that the construction of the building was complete before 31.03.2016. He has further contended that in the absence of any evidence whatsoever, the Applicant No. 1's claim that the project was completed in February, 2018, and the ITC accrued to the Respondent was in relation to the construction of the project was not maintainable.

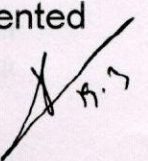
11. The DGAP has therefore, claimed that the construction service was completed well before the introduction of the GST and any



liability of GST on the above Applicant was only on account of the dues left on account of his booking of the unit prior to the issue of Completion Certificate. There was no additional accrual of ITC to the Respondent as a result of introduction of GST as the construction service was completed prior to the GST introduction. He has also claimed that Section 171 (1) of CGST Act, 2017 came into play in the event where there was a reduction in the rate of tax or increase in the ITC, but neither of them appeared to have been attracted in the present case.

12. The DGAP has concluded that Section 171 (1) of the CGST Act, 2017, relating to profiteering, did not appear to have been attracted in the instant case and the allegation of profiteering against the Respondent did not appear to him to be sustainable.

13. After perusal of the DGAP's report, this Authority in its sitting held on 25.09.2019 decided to hear the Applicant No. 1 on 18.10.2019 and accordingly notice was issued to him, but he has not put in an appearance. However, the above Applicant vide his e-mail dated 17.10.2019 has informed that due to the market slowdown and being a working middle class person, it was difficult for him to afford leave from the job and hence, he would not be able to attend the hearing. With his e-mail, he has attached a letter in which he has stated that he had deposited amount for purchase of a Duplex Row House bearing No.-B3 in the Sahej Valley project being executed by the Respondent at Dandiapalli, Rourkela in the district of Sundergarh. He has also stated that the Respondent has claimed that he had completed the Duplex before the GST was implemented

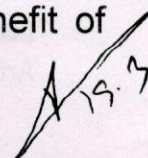


but the final disbursement of the loan by the financier i.e. the ICICI Bank was made on 03.04.2018, which clearly indicated that the Respondent had not completed the project before the GST had come in to force w.e.f. 01.07.2017. In support he has enclosed a copy of the Bank Statement. He has further stated that as per his knowledge the bank had sanctioned the loan at different times as per the construction status of the builder. The above Applicant has also contended that if the Respondent had completed the project before the GST was implemented, then why the amount had been deducted from his loan account on 03.04.2018 by the ICICI Bank, Rourkela branch. He has further contended that since the loan amount has been deducted on 03.04.2018 he was liable to pay GST as per Govt. norms and conditions at the time of registration of the said Duplex.

14. We have carefully considered the Report filed by the DGAP dated 20.09.2019, the submissions made by the Applicant No. 1 and have also perused the material placed on record and it is revealed that the Respondent is executing a project known as "Sahej Valley" at Dandipalli in Rourkela. It is also revealed that the Applicant No. 1 has purchased a Duplex Row House No. B3 in the above project and has alleged vide his application dated 09.08.2018 that the Respondent has not passed on the benefit of ITC to him. The above application was examined by the Odisha State Screening Committee on Anti-Profiteering under Rule 128 (2) of the CGST Rules, 2017 and after having prima-facie satisfied itself that the Respondent has violated the provisions of Section 171 (1) of the

CGST Act, 2017 had forwarded it to the Standing Committee on Anti-Profiteering for further action. The Standing Committee had considered this application in its meeting held on 11.03.2019 and sent it to the DGAP for investigation under Rule 129 (1) of the above Rules. It is further revealed that the DGAP has conducted detailed investigation in the allegation levelled by the Applicant No. 1 under Rule 129 and furnished his Report under Rule 129 (6) which was received by this Authority on 23.09.2019. Perusal of the above Report shows that the DGAP has found that the Respondent has not contravened the provisions of Section 171 (1) of the CGST Act, 2017 as the above project had been completed on 31.03.2016 before the implementation of the GST w.e.f. 01.07.2017, as per the Completion Certificate issued by Mr. Arijit Sarkar, Architect and hence the Respondent was not liable for passing on the benefit of ITC. In this connection it would be pertinent to mention that the above Certificate attached as Annexure-17 with the Report of the DGAP, has been issued by a private Architect who does not appear to have any authority to issue the same. The above certificate should have been issued by the competent authority duly notified by the State of Odisha. Therefore, placing reliance on a Completion Certificate issued by a private Architect by the DGAP is not correct and hence, his claim that the above project was completed before coming in to force of the GST cannot be accepted.

15. It is also apparent from the perusal of the details of the Electronic Credit Register attached as Annexure-8 with his Report by the DGAP that the Respondent has become entitled to the benefit of



ITC during the period from July, 2017 to March, 2019. However, it has not been explained by the DGAP on which project the above ITC has become available to the Respondent and in case this ITC has become available on the purchases made in respect of the above project why the benefit of the above amount should not be passed on to the buyers of the houses in the above project.

16. It is also revealed from the perusal of the GSTR-3B Returns attached as Annexure-8 with the Report dated 20.09.2019 furnished by the DGAP that the Respondent has availed ITC of Rs. 44,29,347.75 on account of IGST, ITC of Rs. 31,99,150.57 on account of CGST and ITC of Rs. 31,99,150.57 (Total Rs. 1,08,28,248.89) through the above Returns while making payment of GST. However, the DGAP has not explained in respect of which project the above ITC has been utilised by the Respondent while discharging his output tax liability.

17. It is further apparent from Annexure-8 that the Respondent has also availed benefit of transitional credit as per the TRAN-1 Statements attached with the above Report of the DGAP.

18. It is further revealed from the letter of the Commissioner, Central GST & Central Excise, Bhubaneswar (enclosed as Annexur-16 with the DGAP's Report dated 20.09.2019) that the Respondent has availed ITC of Rs. 1,17,739/- and Rs. 44,623/- during the period from July, 2017 to March, 2018 and during the year 2018-19 respectively after the implementation of the GST which the DGAP has claimed that it was not related to the Construction Service. But

no proof has been provided by the DGAP to substantiate the above claim of the Respondent.

19. It is further apparent from the perusal of Annexure-15 attached with the Report of the DGAP that the land on which the above project has been executed belongs to Smt. Munni Bai Bajpayee and Smt. Prema Bai Shukla who have jointly developed the above project in collaboration with the above Respondent. It is also clear from the perusal of the list of the house buyers enclosed as Annexure-9 by the DGAP that the Respondent has constructed 14 units under the above project out of which 4 units have fallen in the share of both the above land owners. However, the DGAP has not mentioned in his Report whether the above land owners have further sold these units or not and in case these units have been sold whether the buyers of these units have been given the benefit of ITC or not.

20. It is further clear from Annexure-9 that out of the 14 units 10 units have come to the share of the Respondent out of which 9 units have been claimed to have been sold by him out of which 3 units have been sold during the pre-GST period and 6 units have been sold during the post-GST period. However, the DGAP has not mentioned in his Report whether the above claim of the Respondent was correct or not and whether the other buyers of these units were entitled to the benefit of ITC or not.

21. It is also revealed from the perusal of the e-mail dated 18.04.2019 sent by the ICICI Bank which has given loan to the Respondent for purchasing the above house that the Bank has

released payment of Rs. 17,69,850/- vide cheque dated 20.05.2016 and an amount of Rs. 3,90,150/- vide cheque issued on 27.09.2016 in favour of the Respondent. Both the above cheques have been issued during the pre-GST period. It is further revealed that an amount of Rs. 5,40,000/- was released in favour of the Respondent vide cheque issued on 03.04.2018 during the post GST period. The above sequence of payment of the above amount by the ICICI Bank on behalf of the Applicant No. 1 shows that he has made payments during both the above periods and hence, he apparently appears to be eligible for the benefit of ITC.

22. Based on the above facts the Report dated 20.09.2019 furnished by the DGAP cannot be accepted and he is directed to further investigate the present case under Rule 133 (4) of the CGST Rules, 2017 on the following issues and submit his detailed Report under Rule 129 (6) of the above Rules within a period of 3 months from the date of passing of this order:-

- (i) What was the basis of accepting the Completion Certificate issued by a private Architect?
- (ii) Which is the Competent Authority to issue the Completion Certificate in the State of Odisha?
- (iii) Whether the above Respondent has earned ITC on the above project during the period from July, 2017 till date?
- (iv) Whether the above Respondent has utilised the ITC during the period from July, 2017 till date for discharging his output GST liability in respect of the above project?



- (v) Whether the Respondent has claimed transitional credit through the TRAN-1 statements filed in respect of the above project?
- (vi) Whether the Respondent has availed benefit of additional ITC since July, 2017 till date and he is liable to pass on the same to his buyers?
- (vii) Whether the above land owners have sold their share of the houses and if so whether they have passed on the benefit of ITC to the buyers of these houses?
- (viii) Whether Applicant No. 1 is entitled to the benefit of ITC?
- (ix) Whether rest of the 8 house buyers are eligible for the benefit of ITC?

23. A copy of this order be supplied to both the Applicants. File of the case be consigned after completion.

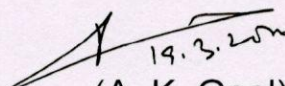
Sd/-
(Dr. B. N. Sharma)
Chairman

Sd/-
(J. C. Chauhan)
Member(Technical)



Sd/-
(Amand Shah)
Member(Technical)

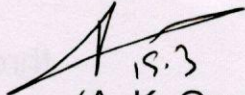
Certified Copy


19.3.2020
(A. K. Goel)
Secretary, NAA

F. No. 22011/NAA/81/Sahej/2019 /1712-14 Date: 19.03.2020
Copy To:-
1. Shri Arbind Biswal, Karbala Road, Near Govt. Hospital,
Birimtrapur-770033, PS. Biramitrapur, Dist. Sundargarh, Odisha.

2. Director General Anti-Profitteering, Central Board of Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

3. Guard File.


(A. K. Goel)
Secretary, NAA

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