

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

|                     |            |
|---------------------|------------|
| I. O. No.           | 16/2020    |
| Date of Institution | 25.09.2019 |
| Date of Order       | 20.04.2020 |

**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, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

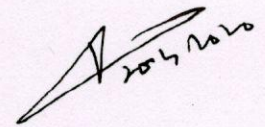
**Versus**

M/s Maheshwari Infratech Pvt. Ltd., A-6, Ground Floor, Yojna Vihar,  
Delhi-110092.

Respondent

**Quorum:-**

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



20/4/2020



Present:-

1. None for the Applicant No. 1.
2. None for the DGAP, the Applicant No. 2.
3. Sh. Ashish Vaish, Counsel and Ms. Mohita Sharma, Chief Financial Officer for the Respondent.

ORDER

1. The present Report dated 24.09.2019 has been received from the Director General of Anti-Profiteering (DGAP) after detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (CGST) Rules, 2017. The DGAP has 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.

2. 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.

3. The Respondent had submitted his replies vide letters and e-mails dated 13.04.2019, 09.05.2019, 29.05.2019, 06.06.2019, 29.07.2019,



14.08.2019, 02.09.2019 and 19.09.2019. The replies of the Respondent have been summed up by the DGAP as follows:-

- (a) That the area mentioned in the RERA report was total plot area. Plot area multiplied by FAR and after adding common area, total saleable area was derived.
- (b) That the turnover for the period from April, 2016 to June, 2016 was Rs. 14.59 Crore and for the period from July, 2017 to March, 2019 was Rs. 12.71 Crore (excluding other incomes and cancellations). Further, the home buyers list as well as the Service Tax and GST Returns were also reconciled with the turnover.
- (c) 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.

4. The Respondent vide his aforementioned letters, has also submitted the following documents/information:-

- (a) Copies of GSTR-1 Returns for the period from July, 2017 to March, 2019.
- (b) Copies of GSTR-3B Returns for the period from July, 2017 to March, 2019.
- (c) Copies of VAT Returns (including all annexure) & ST-3 Returns for the period from April, 2016 to June, 2017.

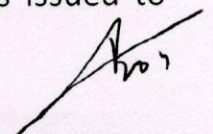




- (d) Copies of all demand letters issued and the sale agreement made with the Applicant No. 1.
- (e) Copies of Balance Sheets for FY 2016-17 and 2017-18.
- (f) Copy of Electronic Credit Ledger for the period from 01.07.2017 to 31.03.2019.
- (g) CENVAT/ITC Register for the FY 2016-17, 2017-18 and 2018-19.
- (h) Details of VAT, Service Tax, ITC of VAT, CENVAT Credit for the period from April, 2016 to June, 2017 for the project "U Faria".
- (i) List of home buyers in the project "U Faria".
- (j) Copy of Project Report submitted to the RERA.
- (k) TRAN-1 Statements for the period from July, 2017 to December, 2017.
- (l) Details of applicable tax rates, pre-GST and post-GST.

5. The DGAP after examining the above application, various replies of the Respondent and the documents/evidence on record has stated that the main issues for determination were whether there were benefits of reduction in the rate of tax or ITC on the supply of construction service by the Respondent after implementation of the GST w.e.f. 01.07.2017 and if so, whether the Respondent has passed on such benefits to the recipients by way of commensurate reduction in prices, in terms of Section 171 of the CGST Act, 2017.

6. The DGAP has also 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 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 2                                | Within 30 days                                | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 3                                | On casting of foundation                      | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 4                                | On casting of Ground floor slab               | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 5                                | On casting of 2 <sup>nd</sup> floor slab      | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 6                                | On casting of 4 <sup>th</sup> Floor roof slab | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 7                                | On completion of Structure (Retail)           | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 8                                | On completion of Brick Work                   | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 9                                | On Start of Finishing Work                    | Basic 10.00%<br>+<br>Commercial PLC 10.00%   | 8,59,591.00<br>+<br>92,463.00   | 9,52,054.00         |
| 10                               | On offer of Possession                        | Basic 10.00%<br>+<br>Interest Free 100.00% maintenance Security<br>+<br>Commercial PLC 10.00%<br>+<br>Sinking Fund 100.00%<br>+<br>Dual Meter charge 100.00% | 8,59,595.00<br>+<br>62,900.00<br>+<br>92,463.00<br>+<br>62,900.00<br>+<br>20,000.00 | 10,97,858.00        |
| <b>Total Consideration (Rs.)</b> |   |  |   | <b>96,66,344.00</b> |

7. The DGAP has 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 has 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.

8. The DGAP has 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.

9. The DGAP has 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%            |

10. The DGAP has 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.

11. The DGAP has 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       | <b>Analysis of Increase in ITC:</b>  |                           |                          |
| 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      | <b>Excess Collection of Demand or Profiteering Amount</b>                  | <b>K= G-J</b>             | <b>24,78,383</b>         |

12. The DGAP has 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.

13. The DGAP has 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 has 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.

14. The DGAP has accordingly 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



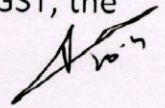
not Applicants in the present proceedings. These recipients were identifiable as the Respondent has provided their names and addresses along with unit nos. allotted to them. Therefore, this additional amount of Rs. 24,41,276/- was required to be returned to such eligible recipients. The DGAP has also 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.

15. The above Report furnished by the DGAP was considered by this Authority in its meeting held on 26.09.2019 and accordingly the Applicants and the Respondent were asked to appear before this Authority on 25.10.2019 for hearing. Seven personal hearings were accorded to the interested parties on 25.10.2019, 15.11.2019, 29.11.2019, 13.12.2019, 14.02.2020, 02.03.2020 and 11.03.2020. Sh. Ashish Vaish, Counsel and Ms. Mohita Sharma, Chief Financial Officer appeared on 13.12.2019 and 11.03.2020 for the Respondent. None appeared for the Applicant No. 1 & 2.
16. The Respondent vide his submissions dated 05.12.2019 has preferred the following contentions:-

- (i) That the DGAP has exceeded his jurisdiction by calculating profiteering in respect of the customers other than the Applicant No.



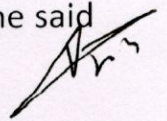
1. In terms of the provisions of the Anti-profiteering as contained in the CGST Act, 2017, the DGAP could not go beyond the complaint of the Applicant No. 1.
- (ii) That the provisions of Section 171 were already under challenge before the Hon'ble High Court of Delhi on which stay has been granted.
- (iii) That the provisions of Section 171 of the CGST Act, 2017 were applicable to the long term/continuous contracts. These could not be said to be applicable to the fresh contracts entered after 01.07.2017. The prices offered after 01.07.2017 were after considering the cost of the inputs in the post-GST era, the applicable taxes and the prices prevailing in the open market for the similar product. The customers would also enter into fresh contracts only after assessing the end cost after they agreed to the applicable taxes and other terms and conditions as per their agreements. He has therefore submitted that the allegation of profiteering on 27,257 sq. ft. of area for which 'agreements to sell' had been entered after 01.07.2017 was totally baseless, illogical and not unenforceable under the law.
- (iv) That even otherwise he had already offered approx. 5% to 7% discount on the basic prices to his customers who had booked shops post-GST. He has also enclosed copies of discount/Credit notes as evidence.
- (v) That in view of the change in the economic scenario particularly increase in the availability of ITC on account of higher rate of GST, the





basic prices of the commercial units had already reduced. As the discount had been given mainly on account of availability of ITC, the allegation that he had failed to give the necessary discount and had resorted to profiteering was absolutely incorrect, illegal and beyond the provisions of law.

- (vi) That while computing the ratio of ITC post-GST, the amount of Rs. 3,31,56,773/- of ITC of GST availed had been considered. The Respondent has submitted that instead of "ITC availed" value of "ITC Utilized" i.e. Rs. 1,60,62,170/- should be considered for the purpose of computation of profiteering. The Respondent vide his e-mail/letter dated 20.09.2019 has also requested that for the purposes of calculation of profiteering value of the 'ITC availed post-GST' should be taken as Rs. 1.6 Crore (ITC utilized) instead of Rs. 3.31 Crore (ITC availed). He has also enclosed copy of calculation sheet after considering ITC of Rs. 1,60,62,170/- instead of Rs. 3,31,56,773/- as evidence. He has claimed that in view of the fresh calculation, the amount of profiteering was liable to be reduced to Rs. 5,83,986/- only.
- (vii) That no hearing was granted in the matter by the Deputy Commissioner, DGAP, New Delhi. It was informed to the Respondent that there was no such provision of granting hearing. He has also enclosed copy of the e-mail requesting for hearings as evidence.
- (viii) That the calculation of profiteering done by the DGAP was erroneous and conceptually flawed. The Respondent did not agree with the said



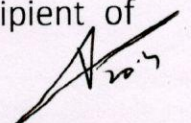


calculation and requested for re-computation of profiteering in the light of the above submissions.

- (ix) That the Applicant No. 1 who had purchased Shop No. G-122, was given the necessary discount/benefit of additional ITC. The Applicant No. 1 had also given his s letter of satisfaction. The DGAP could not ignore the discounts already given to the above Applicant. The amount confirmed in absolute terms was erroneous. He has also enclosed copy of the e-mail dated 15.11.2019 sent by the Applicant No. 1 in which he has claimed that the matter has been settled and he did not want to pursue it.
- (x) That in many cases, the Respondent has entered into separate arrangements with each and every customer and has given necessary discounts on account of ITC benefit.

17. The DGAP in his supplementary Report dated 27.12.2019 on the Respondent's submission dated 05.12.2019 has stated that the claim of the Respondent was frivolous and incorrect as no stay has been granted by the Hon'ble Delhi High Court on the provisions of the Section 171 of the CGST Act, 2017.

18. The DGAP has also contended that the mandate of Section 171 of the CGST Act, 2017 was very clear which stated that any reduction in the rate of tax or the benefit of ITC had to be passed on to the recipients by way of commensurate reduction in prices. In other words, every recipient of





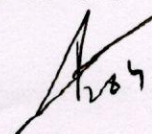
goods or services had to get the due benefit from the supplier of goods or services. Therefore, the objective of Section 171 was to ensure that the benefit of reduction in the rate of tax or benefit of ITC was passed on to the recipients and not retained by the suppliers. The DGAP has also submitted that the issue involved in the present case was that the Respondent had not passed on the benefit of ITC to his recipients by not reducing the prices of the construction service commensurately. The DGAP has also mentioned that if the investigation was restricted to the Applicant No. 1 then the other recipients/customers of the Respondent who have not made complaint against him, would never get their due commensurate benefit from the Respondent. Further, there was no stipulation in the law to restrict the investigation only to the complainant/Applicant.

19. The DGAP has also averred that the legal requirement under Section 171 (1) was that in the event of benefit of ITC or reduction in the rate of tax, there must be commensurate reduction in prices of the goods or services. In other words, every recipient of goods or service has to get the due benefit from the supplier and hence, this benefit has to be calculated for each and every recipient/customer irrespective of date of booking. Such reduction could obviously only be in absolute terms so that the final price payable by a consumer must get reduced. In the instant case, the Respondent was required to pass on the benefit of ITC to each and every recipient/buyer by way of commensurate reduction in prices of the service supplied by the Respondent. The DGAP has also stated that since the



above project of the Respondent was started in pre-GST regime and has continued in the post-GST period, it would attract the provisions of Section 171 of the CGST Act, 2017. The DGAP has therefore asserted that in the instant case, the provisions of the said Section would also apply to the contracts entered after 01.07.2017. Accordingly, the Respondent was required to pass on the benefit of ITC to the buyers who had entered into fresh contracts after 01.07.2017.

20. The DGAP has also contended that the sample credit notes submitted by the Respondent were issued on 26.11.2019 only after the receipt of the DGAP's Report dated 24.09.2019 and were not covered in the investigation period as the Report dated 24.09.2019 submitted before this Authority covered the period from 01.07.2017 to 31.03.2019.
21. The DGAP has further stated that under the provisions of Section 171 of the CGST Act, 2017 read with Rule 129 of the CGST Rules, 2017, the mandate of the DGAP was to conduct investigation as per the directions of the Standing Committee on Anti-profiteering and to submit Report of his findings to this Authority under Rule 129 (6) of CGST Rules, 2017. Therefore, he has conducted the investigation within the scope of Section 171 of the CGST Act, 2017 and Rules made thereunder. The DGAP has also submitted that under the statute, there was no requirement on him to discuss his findings with the Respondent or afford opportunity of hearing to him before submitting his Report to this Authority. The DGAP has also mentioned that he was to merely submit Report of his findings to this





Authority and was not to decide or adjudicate the case whereunder personal hearing was to be granted.

22. The DGAP has also contended that in all the investigations, the amount of credit availed has been taken instead of the credit utilized as unutilized credit out of the availed, would be utilized in future to set off the tax liabilities. Therefore, he has conducted his investigation within the scope of Section 171 of the CGST Act, 2017 and Rules made thereunder, on the basis of the information and documents collected from the Respondent and submitted his Report. Thus, the claim of the Respondent was unacceptable and there was no requirement of re-computation of the profiteered amount in the instant case.

23. The DGAP has also stated that there was no provision in the statute to withdraw the complaint or discontinue the investigation if the complainant had given his no objection. The DGAP has further mentioned that the Applicant No. 1's e-mail enclosed by the Respondent with his submission dated 05.12.2019 as evidence, was an e-mail dated 15.11.2019 which was obtained by the Respondent from the Applicant No. 1 after receiving his Report dated 24.09.2019 from this Authority. The DGAP has thus stated that it appeared to be an afterthought which has nothing to do with his findings submitted to this Authority vide Report dated 24.09.2019.

24. The DGAP has also contended that the sample credit notes submitted by the Respondent were issued by the Respondent on 26.11.2019 only after receipt of his Report dated 24.09.2019. Hence, it appeared to be an



afterthought. The DGAP has also mentioned that the period of the present investigation was from 01.07.2017 to 31.03.2019 and therefore, the credit notes issued in November 2019 or any action initiated by the Respondent after the investigation period had nothing to do with the Report dated 24.09.2019.

25. The Respondent in his submissions dated 15.01.2020 has stated that he has already passed on ITC benefit of Rs. 9,61,130/- to his customers. He has also enclosed copies of the credit notes as proof of passing on the ITC benefit.

26. The Respondent has further submitted that the Deputy Commissioner, State GST, Gautam Buddh Nagar, has already blocked his ITC of Rs. 1,77,50,478/- on 28.03.2019. He has enclosed copy of the Electronic Credit Ledger as evidence. He has also claimed that the above amount of ITC was still lying blocked and unutilised. He has further claimed that once the ITC of Rs. 1,77,50,478/- had been blocked, the DGAP could not take it in the total ITC availed for calculation of profiteering. He has also contended that on the one hand his ITC has been blocked by the SGST authorities and on the other hand it has been taken to have been availed for the purpose of profiteering. In view of the above, the Respondent has requested that the profiteering be calculated again as he has never availed or utilised the amount of Rs. 1.77 Crore which has been blocked by the State GST Department. The Respondent has also contended that the calculation of





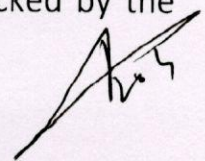
profiteering done by the DGAP was erroneous and the same could not be calculated as construction of the project was still going on.

27. The DGAP in his supplementary Report dated 31.01.2020 on the Respondent's submission dated 15.01.2020 has stated that the copies of credit notes have been verified with the list of 90 shop buyers. In this regard, the DGAP has mentioned that the Respondent had submitted a list of 90 shop buyers, claiming that they had been passed on the benefit of Rs. 9,61,130/- whereas in this case, as per the shop buyers list submitted by the Respondent during the investigation, the total number of shop buyers in this project was 178. The DGAP has further observed from the credit notes submitted by the Respondent that all these credit notes were issued by the Respondent only after the investigation period, which the Respondent had failed to submit during the investigation. In this regard, the DGAP has noted that the investigation Report dated 24.09.2019 submitted before this Authority covered the investigation period from 01.07.2017 to 31.03.2019.
28. The DGAP has also referred to the claim of the Respondent that his ITC of Rs. 1,77,50,478/- was blocked by the State GST Authorities on 28.03.2019 and mentioned that the investigation period covered in the Report dated 24.09.2019 was from 01.07.2017 to 31.03.2019 and hence, it was apparent that the said ITC was available to the Respondent during the entire investigation period which was blocked only on 28.03.2019. The DGAP has therefore submitted that the Respondent had not initiated any



steps to pass on the benefit of ITC to his buyers during the investigation period. He has also contended that the actual reason for blocking of the ITC was not known to him as the Respondent was silent on this issue in his submission dated 15.01.2020.

29. The Respondent in his submissions dated 14.02.2020 has reiterated his earlier contentions and further added that the assertion made by DGAP that the credit 'was' available or 'is' available to the Respondent was absolutely erroneous when it has 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 computation. He has also argued that when it was known during the investigation that the ITC has been blocked by the Department, it could not have been referred as the ITC benefit. It appeared to be a misleading statement. He has also stated that the Electronic Credit Ledger was made available to the DGAP even before, however the said fact was completely ignored by him. The Respondent has also claimed that he had sent various letters to the State GST office requesting to unblock the ITC and provide him the reasons for such blocking. However, no written communication was received from the State GST authorities. The Respondent has also stated that once the ITC of Rs. 1,77,50,478/- was blocked, the DGAP could not take it in the total ITC availed for calculation of profiteering. In view of the above, the Respondent has requested that the profiteering be calculated again as he has never availed or utilised an amount of Rs 1.77 Crore blocked by the Department.



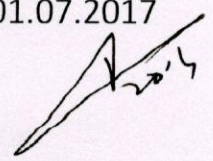


30. We have carefully considered the Reports of the DGAP, submissions made by the Respondent and also perused the record and it is revealed that the Respondent is in the Real Estate business and the DGAP's Report is with regard to his project "U Faria" situated at C-04A, Sector-16B, Greater Noida, Uttar Pradesh under which he has constructed 190 commercial shops out of which he has sold 178 shops. It is also revealed that the Applicant No. 1 had filed a complaint with the Standing Committee on 29.11.2018 alleging that the Respondent had not passed on the benefit of additional ITC which he has availed after coming in to force of the GST w.e.f. 01.07.2017, in respect of Shop No. G-122 which he has purchased from the Respondent. The above complaint was examined by the Standing Committee on Anti-Profiteering in its meeting held on 11.03.2019 and was forwarded to the DGAP for detailed investigation under Rule 129 (1) of the above Rules. The DGAP during the course of the investigation has examined the credit of CENVAT available to the Respondent during the pre-GST period from April, 2016 to June, 2017 and that of the ITC during the period from July, 2017 to March, 2019. He has also examined the turnovers which were realized by the Respondent and has calculated the ratios of the ITCs to the turnovers during both the above periods and has come to the conclusion that this ratio was 0.84% during the pre-GST period and it was 2.58% during the post-GST period as has been mentioned by him in Table-B. Therefore, he has claimed that the Respondent has availed benefit of additional ITC of 1.74% (2.56%-0.84%) of the turnover which he was required to pass on to the buyers of the



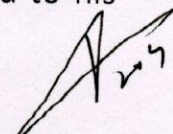
shops as per the provisions of Section 171 (1) of the above Act. The DGAP on the basis of Table-B has also calculated the commensurate prices which the Respondent should have charged from the shop buyers vide Table-C and has claimed that the Respondent has profiteered an amount of Rs. 24,78,383/- including the GST by denying the benefit of ITC to his buyers which he was required to pass on to them. The above amount also includes an amount of Rs. 37,107/- which is required to be passed on to the Applicant No. 1. The details of the benefit to be passed on to the 178 shop buyers have been given by the DGAP vide Annexure-14 attached with his Report dated 24.09.2019.

31. During the course of the present proceedings before this Authority the Respondent has vehemently argued that the Deputy Commissioner SGST, Gautam Budh Nagar, Uttar Pradesh has temporarily blocked ITC of Rs. 1,77,50,478/- on 28.03.2019 which the Respondent was not allowed to utilise. He has also attached copy of his Electronic Credit Register as Annexue-2 with his submissions dated 15.01.2020. He has also argued that the above amount has been taken into consideration by the DGAP while computing ratio of ITC to turnover vide Table-B for the post-GST period which could not have been done as the above amount of ITC was not available to him. He has therefore, stated that the profiteered amount calculated by the DGAP, after taking in to account the above amount of ITC, should be computed again by excluding it from the ITC considered for computation of ratio of ITC to turnover, during the period from 01.07.2017 to 31.03.2019.





32. The DGAP in his supplementary Report dated 31.01.2020 has stated that the ITC was blocked on 28.03.2019 which was never brought to his notice during the course of investigation. He has also claimed that the above amount of ITC was available to the Respondent during the period from 01.07.2017 to 31.03.2019 but he had not taken steps to pass on its benefit to the shop buyers. He has also submitted that he was not aware why the above amount was blocked by the State GST authorities.
33. Based on the above facts it is clear that an amount of Rs. 1,77,50,478/- of ITC has been blocked by the State GST authorities as is evident from Annexure-2 mentioned above. Therefore, the Respondent cannot utilize the above amount for discharging his GST output liability. The Respondent can accordingly, not be said to have obtained the additional benefit of above amount of ITC during the post-GST period. Therefore, the ratio of ITC to the turnover computed by the DGAP during the post-GST period vide Table-B cannot be considered for computation of the profiteered amount until the above amount of ITC is made available to the Respondent for utilization. Therefore, the amount of Rs. 24,78,383/- computed as the profiteered amount by the DGAP as per Annexure-14 cannot be determined as the profiteered amount in terms of Section 171 (1) of the above Act read with Rule 133 (1) of the CGST Rules, 2017.
34. The Respondent has also claimed that he has passed on ITC benefit of Rs. 9,61,130/- to his buyers. He has also enclosed details of the benefit claimed to have been passed on by him vide Annexure-1 attached to his





submissions dated 15.01.2020. The Respondent has also enclosed list of 90 shop buyers with the above Annexure which shows the amount of ITC passed on to each. He has also attached copies of the credit notes issued to the above shop buyers vide which he has claimed to have passed on the benefit of ITC. Perusal of the credit note issued in favour of Applicant No. 1 shows that the Respondent has claimed that an amount of Rs. 95,205/- has been passed on to him on 07.07.2018 as benefit of ITC by recording "Being GST input credit of 5% on demand raised against demand being passed on to customer". In reply to the claim made by the Respondent the DGAP has stated vide his Report dated 31.01.2020 that the Respondent had not produced the above credit notes during the course of the investigation and hence, the above credit notes have not been verified by him. In view of the above Report of the DGAP the claim made by the Respondent that he has passed on the benefit of ITC by issuing credit notes also needs to be verified.

35. Based on the above findings, the Report dated 24.09.2019 furnished by the DGAP cannot be accepted and the DGAP is directed to further investigate the present case under Rule 133 (4) of the CGST Rules, 2017 on the following issues:-

- (i) Whether the ITC amounting to Rs. 1,77,50,478/- has 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 profiteered amount during the period from 01.07.2017 to 31.03.2019?
- (iii) Whether the Respondent has 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 has passed on an amount of Rs. 95,205/- as ITC benefit to the Applicant No. 1?
36. It is also ordered that the DGAP shall submit fresh Report after detailed investigation as per Rule 129 (6) of the above Rules, 2017 within a period of 3 months from the date of passing of this order. During the course of the investigation all necessary assistance shall be extended by the Deputy Commissioner, SGST, Gautam Budh Nagar, Uttar Pradesh and the Respondent to the DGAP in terms of Rule 136 of the CGST Rules, 2017 read with Para 38 of the 'Methodology & Procedure' determined by this Authority, vide Notification dated 28.03.2018, under the powers vested in it under Rule 126 of the above Rules.
37. As per the provisions of Rule 133 (1) of the CGST Rules, 2017 this order was required to be passed within a period of 6 months from the date of receipt of the Report from the DGAP under Rule 129 (6) of the above Rules. Since, the present Report has been received by this Authority on 25.09.2019 the order was to be passed on or before 24.03.2020. However, due to prevalent pandemic of COVID-



19 in the Country this order could not be passed on or before the above date due to *force majeure*. Accordingly, this order is being passed today in terms of the Notification No. 35/2020-Central Tax dated 03.04.2020 issued by the Government of India, Ministry of Finance (Department of Revenue), Central Board of Indirect Taxes & Customs under Section 168 A of the CGST Act, 2017 .

38. A copy each of this order be supplied to the Applicants, the Respondent and the Deputy Commissioner SGST, Gautam Budh Nagar, Uttar Pradesh for necessary action. File be consigned after completion.



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

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

Sd/-  
(Amand Shah)  
Technical Member

Certified Copy

(A. K. Goel)  
Secretary, NAA

F. No. 22011/NAA/90/Maheshwari/2019

Dated: 20.04.2020

Copy To:

1. M/s Maheshwari Infratech Pvt Ltd, A-6, Ground Floor, Yojna Vihar, Delhi- 110092.
2. Directorate General of Anti-Profitteering, 2<sup>nd</sup> Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Deputy Commissioner, Central Goods & Services Tax, G.B. Nagar, 3rd Floor, Wegmans Business Park, Knowledge Park-III, Greater Noida, Uttar Pradesh-201306.
4. Sh. Vivek Gupta, R-9/271, Raj Nagar, Ghaziabad- 201002.
5. Guard File/Website.