

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

Case No.	34/2019
Date of Institution	27.02.2019
Date of Order	24.05.2019

In the matter of:

1. Sh. Varun Goel, FC-112, Tagore Garden, New Delhi-110027
2. Director General of Anti-Profiteering, Indirect Taxes & Customs, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, Gole Market, New Delhi-110001.

Applicants

Versus

M/s Eldeco Infrastructure & Properties Ltd., 201-212, IInd Floor, Plot No. 3, Splendour Forum, Jasola District Centre, New Delhi-110025.

Respondent



Quorum:-

1. Sh. B. N. Sharma, Chairman
2. Sh. J. C. Chauhan, Technical Member
3. Ms. R. Bhagyadevi, Technical Member
4. Mr. Amand Shah, Technical Member

Present:-

1. None for the Applicant No. 1.
2. Mr. R. A. Rajneesh, Assistant Commissioner, for the Applicant No. 2.
3. Mr. Kapil Kumar Sharma Advocate, Mr. K. Kharbanda Sr. General Manager, Mr. Vimal Kumar Assistant General Manager(Accounts), Mr. Tushar Aggarwal Consultant and Mr. Hitesh Arora Consultant for the Respondent.

ORDER

1. The brief facts of the case are that under Rule 128 of the Central Goods and Services Tax (CGST) Rules, 2017, an application was filed by the Applicant No. 1 against the Respondent before the Delhi State Screening Committee on Anti-profiteering. The above Applicant had alleged that the Respondent had illegally charged Rs. 10,61,460/- as GST on 90% of the basic sale price and Rs. 44,227/- as Service Tax on 10% of the basic sale price on the sale of a built up house located in "Eldeco Country" project launched by the Respondent in Sonipat, Haryana. It was also alleged that the said ready-to-move-in villa was sold at a base price of

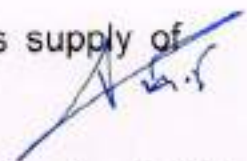
Rs. 98,28,312/- at the time of execution of the agreement on 15.07.2017, but the Respondent had charged GST on the base price of Rs. 98,28,312/- and the benefit of input tax credit was not passed on to the Applicant by way of commensurate reduction in price after implementation of GST w.e.f. 01.07.2017.

2. The application was examined by the Standing Committee on Anti-profiteering in its meeting held on 07.08.2018 & 08.08.2018, wherein it was decided, to refer the matter to the Directorate General of Anti-Profiteering (DGAP) to initiate detailed investigation in the matter.

3. The DGAP after completing the investigation has submitted his report under Rule 129 (6) of CGST Rules, 2017 on 28.11.2018 pertaining to the period w.e.f. 01.07.2017 to 31.08.2018.

4. The DGAP has stated that a notice under Rule 129 of the CGST Rules, 2017 was issued on 11.09.2018, calling upon the Respondent 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 along with all supporting documents. The Respondent was also given an opportunity to inspect the non-confidential evidences/information furnished by the above Applicant which was availed by him.

5. The DGAP in his Report has also stated that the Respondent submitted that he was in the business of construction of the project "Eldeco County" located in Sonapat which was almost completed in the pre-GST regime and there was nominal procurement during the GST regime. The Respondent also submitted that the consideration received after the issue of completion certificate was not liable to Service Tax as per Section 66E of the erstwhile Finance Act, 1994. It was further stated that as Section 7 of the CGST Act, 2017 "supply" was to include all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and included activities to be treated as supply of goods or supply of services as referred to in Schedule II. The Respondent has also claimed that as per clause (b) of Serial No. 5 schedule II *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, would be treated as supply of services.* He has further claimed that Schedule III to the CGST Act, 2017 listed the activities or transactions which should be treated neither as supply of



goods nor a supply of services and Serial No. 5 of the said Schedule provided that sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building should not be considered either as supply of goods or a supply of services. In view of the above, the Respondent has argued that Service Tax/GST shall not be applicable on sale of building when completion certificate had been obtained before such sale and wherein a unit had been sold before receiving completion certificate, the same shall be treated as supply of construction service liable to Service Tax/GST.

6. The DGAP in his Report has also stated that the Respondent claimed that in the present case he had received booking amount from the Applicant on 03.06.2017, i.e., in the pre-GST regime, while the Completion certificate was received on 15.07.2017 (under GST regime) and therefore the booking of villa which occurred in June, 2017 was much before the receipt of the Completion Certificate and hence he had charged applicable Service Tax & GST on the demands raised by him. The Respondent has further stated that he had suo-moto determined the amount of benefit which had accrued post implementation of the GST and indicated the same in his letter dated 19.11.2018 as Rs. 21,12,400/- (i.e. 2% on amount paid during 01.07.2017 to 31.08.2018).



7. The DGAP on verification and completion of his investigation has also submitted that the Respondent had provided the payment schedule for the purchase of a Duplex Villa measuring 561.28 Sq. yards at the basic sale price of Rs. 17,520/- per square yard, and the details of amounts and taxes paid by the Applicant No. 1 to the Respondent are furnished in the Table below:-

Table (Amount in Rs.)

S. N o.	Payment Stages	Due Date	Basic	Other Charges	Service Tax	VAT	GST	Total
1	At the time of Booking	03.06.2017	9,82,831	-	44,227	-	-	10,27,058
2	Within 30 days of allotment	14.08.2017	14,74,247	-	-	-	1,76,910	16,51,157
3	Within 60 days of allotment	13.09.2017	14,74,247	-	-	-	1,76,910	16,51,157
4	Within 90 days of allotment	13.10.2017	14,74,247	-	-	-	1,76,910	16,51,157
6	Within 180 days of allotment	12.11.2017	44,22,740	3,20,275	-	-	5,83,322	53,26,337
7	ADHOC Charges	18.11.2017	-	5,000	-	-	900	5,900
Total			98,28,312	3,25,275	44,227	-	11,14,952	1,13,12,766

8. The DGAP in his Report has further submitted that the Respondent had suo-moto computed the benefit of ITC to be passed on @2% of the amount paid by the Applicant No. 1 and other home buyers during the period from 01.07.2017 to 31.08.2018.

9. The DGAP has also stated that as per para 5 of Schedule-III of the CGST Act, 2017 (Activities or Transactions which shall be treated neither as a supply of goods nor a supply of services) which reads as

"Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building". Further, 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". Thus, he has argued that the ITC pertaining to the units which were under construction but not sold was provisional ITC which needed to be reversed by the Respondent in terms of Section 17(2) & Section 17(3) of the Central Goods and Services Tax Act, 2017 which read as under:

Section 17(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

Section 17(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is 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.

10. The DGAP has further argued that prior to 01.07.2017, i.e., in the pre-GST era, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services but the CENVAT credit of Central Excise duty paid on inputs and Value Added Tax (VAT) paid on inputs was not available. Post-GST, the Respondent was eligible to avail ITC of GST paid on inputs and input services including on the sub-contracts. The DGAP after taking into consideration the details of the ITC availed by the Respondent and his taxable turnover from the duly verified returns during the pre-GST period (April, 2016 to June, 2017) and the post-GST period (July, 2017 to August, 2018) has arrived at the following details as has been shown in the table below:-

Table (Amount in Rs.)

S. No.	Particulars	April, 2016 to March, 2017	April, 2017 to June, 2017	Total (Pre-GST)	July, 2017 to March, 2018	April, 2018 to August, 2018	Total (Post-GST)
(1)	(2)	(3)	(4)	(5)=(3)+(4)	(6)	(7)	(8)=(6)+(7)
1	CENVAT of Service Tax Paid on Input Services as per ST-3 (A)	61,03,173	21,45,334	82,48,507	-	-	-
2	Input Tax Credit of VAT Paid on Purchase of Inputs as per VAT Returns (B)	-	-	-	-	-	-
3	Total CENVAT/ Input Tax Credit Available (C)= (A+B)	61,03,173	21,45,334	82,48,507	-	-	-
4	Input Tax Credit of GST Availed as per GST Return (D)	-	-	-	95,05,178	37,35,163	1,32,40,341
5	Total Taxable Turnover as per Returns (E)	12,82,89,436	7,02,77,743	19,85,67,179	7,21,61,576	5,85,73,391	13,07,34,967
6	Total Saleable Area of Villas in the project (SquareMtr) (F)			1,01,795.90			1,01,795.90
7	Area Sold relevant to Taxable turnover as per returns (G)			14,843.33			34,646.89
8	Relevant CENVAT/ Input Tax Credit (H)= [(C)*(G)/(F)] or [(D)*(G)/(F)]			12,02,753			45,06,436
9	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover [(I)=(H)/(E)]			0.61%			3.45%

11. Based on the above analysis the DGAP has stated that the ITC as a percentage of the total turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was 0.61% and during the post-GST period (July, 2017 to August, 2018), it was 3.45% and thus the Respondent had benefited from additional ITC to the tune of 2.84% [3.45% (-) 0.61%] of the taxable turnover. The DGAP has further stated that the profiteered amount had been arrived at by comparing the applicable tax rate and the ITC for the pre-GST period (April, 2016 to June, 2017) when Service Tax @4.5% and VAT@1% were payable (total tax rate of 5.5%) with the post-GST period (July, 2017 to August, 2018) when the effective GST rate was 12% (GST @18% along with 1/3rd abatement on value) on construction service, imposed vide Notification No.11/2017-Central Tax (Rate), dated 28.06.2017. The comparative figures of ITC as arrived at by the DGAP during pre-GST period and post-GST period are shown in the Table below:-

(Amount in Rs.)

S. No.	Particulars		Pre-GST	Post- GST
1	Period	A	April,2016 to June,2017	July,2017 to August, 2018
2	Output tax rate (%)	B	5.50%	12.00%
3	Ratio of CENVAT/ Input Tax Credit to Taxable Turnover as per Table - D above (%)	C	0.61%	3.45%
4	Increase in tax rate post-GST (%)	D= 12% less 5.50%	-	6.50%
5	Increase in input tax credit availed post-GST (%)	E= 3.46% less 0.61%	-	2.84%
6	Analysis of Increase in input tax credit:			
7	Base Price raised during July, 2017 to August, 2018	F		11,67,79,389

8	Other than Base Price raised during July, 2017 to August 2018	G	1,39,55,578
9	Total Taxable Value raised during July, 2017 to August, 2018	H=F+G	13,07,34,967
10	GST Collected @ 12% over Basic Price	I= F*12%	1,40,13,527
11	GST Collected @ 18% over other than Basic Price	J = G*18%	25,12,004
12	Total GST Collected	K = I+J	1,65,25,531
13	Total Demand collected	L=H+K	14,72,60,498
14	Recalibrated Basic Price	M= F*(1-E) or 97.16% of F	11,34,62,854
15	GST @12%	N = M*12%	1,36,15,543
16	Recalibrated other than Basic Price	O = G*(1-E) or 97.16% of G	1,35,59,240
17	GST @18%	P = O*18%	24,40,663
18	Commensurate demand price	Q = M+N+O+P	14,30,78,300
19	Excess Collection of Demand or Profiteering Amount	R= L-Q	41,82,198

12. From the above analysis the DGAP has concluded that the benefit of additional ITC of 2.84% of the taxable turnover which had accrued to the Respondent was required to be passed on to the Applicant No.1 and other recipients and hence, the provision of Section 171 of the CGST Act, 2017 had been contravened by him in as much as the additional benefit of input tax credit @2.84% was not passed on to the above Applicant and other recipients. Therefore, the DGAP has submitted that the Respondent had realized an additional amount to the tune of Rs. 2,83,026/- from the Applicant No. 1 which included both the profiteered amount @2.84% of the taxable amount (base price) and GST on the said profiteered amount @12% or 18% and the Respondent has also realized an additional amount of Rs. 38,99,172/- which included both the profiteered amount @2.84% of the taxable amount (base price) and GST on the said profiteered amount @12% or 18% from the 124 other recipients (90 home buyers and 34 plot owners) who were not applicants in the present proceedings as these

recipients were identifiable as per the documents provided by the Respondent. The details of computation of the profiteered amount have been submitted by the DGAP vide Annexure-15 attached to his Report.

13. After perusal of the DGAP's report, the Authority in its sitting held on 03.12.2018 decided to hear the Applicants and the Respondent on 19.12.2019 and accordingly notice was issued to them. But the Respondent sought adjournment and accordingly the hearing took place on 27.12.2018. On behalf of the Applicant No.1 none appeared, the DGAP was represented by Sh. R.A. Rajneesh, Assistant Commissioner and the Respondent was represented by Mr. Kapil Kumar Sharma Advocate, Mr. K. Kharbanda Sr. General Manager, Mr. Vimal Kumar Assistant General Manager (Accounts), Mr. Tushar Aggarwal and Mr. Hitesh Arora Consultants. On the request of the Respondent, further hearings were held on 30.01.2019 and 11.02.2019.

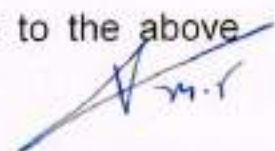
14. The Respondent has filed detailed written submissions on 26.12.2018 and 03.01.2019. The Respondent in his submissions has stated that while section 171 prescribed passing on the benefit of ITC by way of commensurate reduction in prices, there was no methodology prescribed to measure the benefit. He has further stated that being a compliant taxpayer he had calculated the benefit to be passed on to the customers. He has also submitted that he accepted the profiteered amount which had been

calculated by the DGAP and assured to pass on the same to his customers. He also, requested that no penalty should be levied on him as he had volunteered agreed to pass on the benefit of ITC as per the provisions of the law. He has further submitted that with respect to payment of interest to the customers along with the profiteered amount, contracts for provision of services by him to the customers had not been closed yet and he was supposed to pass on the benefit on account of profiteering to the customers with adjustments in the final demand due from the customer. Therefore he requested not to impose any interest on the profiteered amount to be passed on.

15. The Respondent vide his submissions dated 11.02.2019 has suo-moto provided the following details:-

(a) Details of profiteered amount refunded to the customers along with interest as Annexure-I to his written submissions dated 11.02.2019. He has also submitted list of 152 home buyers to whom profiteered amount of Rs. 41,82,198/- has been passed on along with interest of Rs. 6,30,818/- totalling to Rs. 59,57,306/- along with copies of the cheques.

(b) Details of payment made to the Applicant No. 1 along with the copy of the cheque. The ITC benefit extended to the above



Applicant was Rs. 3,44,455/- which included profiteered amount of Rs. 2,83,154/- along with interest of Rs. 61,301/-.

(c) Details of benefit of ITC passed on other projects of the Respondent was enclosed as Annexure-II. The ITC benefit ranged from 2.5% to 6%.

(d) Details of various projects running under brand "Eldeco" was also provided along with details of total saleable area and area sold with specific location and address of the project.

(e) Details of units sold post 30.08.2018 of the present project upto 30.08.2018 as Annexure-IV.

(f) Details of commercial units not sold till date as Annexure-V.

(g) Details of Occupation certificates received along with few sample copies of part occupation certificates as Annexure-VI.

(h) Details of the list of projects registered under RERA of the Respondent & sample copies of returns filed with RERA authorities.

16. The Respondent, in his submissions dated 19.02.2019 also submitted detailed summary of project wise status with tentative amount of benefit arising on account of ITC as on 31.01.2019 for all projects of the Respondent & other Group of companies.



17. In response to the submissions, the DGAP in his reply dated 07.01.2019, 18.02.2019 and 26.02.2019 stated that the Respondent has submitted the details of other projects which were not part of the investigation and hence no comments were being offered.

18. We have carefully considered the Report of the DGAP, the submissions of the Respondent and all the documents placed on record. From the perusal of the facts of the DGAP's Report it is revealed that the ratio of ITC to the taxable turnover during the pre GST period was to the extent of 0.61% as compared to post GST period of 3.45% thus, there was net benefit of 2.84% of ITC to the Respondent. Based on this net benefit and the amounts collected from the home buyers during the post GST period, an amount of Rs. 41,82,198/- has been computed as the profiteered amount as per Annexure-15. The Respondent has raised no objection against the computation of the above amount made by the DGAP vide Annexure-15 and hence it can be relied upon.

19. The Respondent has also not denied the fact that there has been net benefit of ITC during the post GST period. His only contention was that there was no methodology in place to determine the profiteered amount and since the project was not complete he had suo-moto decided to pass on the benefit on completion of the project. However on receipt of the DGAP Report he had suo-moto accepted the profiteered amount of

Rs. 38,99,172/- which included both the profiteered amount @2.84% of the taxable amount and GST on the said profiteered amount @12% or 18% for the 124 home buyers and Rs. 2,83,026/- for the Applicant No.1 which includes both the profiteered amount and the GST paid on the profiteered amount. Accordingly the Respondent has paid an amount of Rs. 41,82,198/- along with interest to all the 125 home buyers in the form of cheques which is taken on record.

20. Accordingly, as per the provisions of Rule 133 (3) (a) of the CGST Rules, 2017, the profiteered amount is determined as Rs. 41,82,198/- which includes Rs. 2,83,026/- in respect of the Applicant No. 1.

21. In view of the above facts this Authority under Rule 133 (3) (a) of the CGST Rules, 2017 directs that the Respondent shall reduce the prices to be realised from the buyers of the flats commensurate with the benefit of ITC received by him as has been discussed above. The profiteered amount of Rs. 41,82,198/- paid along with interest is for the period July 2017 to August 2018, and in case any benefit of ITC which accrues subsequently shall also be passed by the Respondent to all the buyers failing which the Applicant No.1 will be at liberty to file fresh application for grant of ITC benefit which may accrue to him.

22. From the above facts and the submissions made by the Respondent it is evident that though the Respondent did not deny that the benefit of ITC

had accrued to him and he had to necessarily pass on the same to the home buyers as per the provisions of Section 171 of the CGST Act, 2017, the benefit of ITC was passed on by him only in the month of February 2019. He had not only collected extra amount from the buyers but also compelled them to pay more GST on the additional amount realised. The above act of the Respondent appears to be deliberate and conscious violation of the provisions of Section 171 of the CGST Act, 2017. Hence he has committed an offence under Section 122 (1) (i) of the CGST Act, 2017 and therefore he is liable for imposition of penalty under the provisions of the above section. Accordingly notice be issued to him to explain as to why penalty prescribed under Section 122 of the above Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

23. The Authority as per Rule 136 of the CGST Rules, 2017 directs the Commissioner of CGST/SGST, Haryana to monitor this order under the supervision of the DGAP by ensuring that the amount profiteered by the Respondent as ordered by this Authority is passed on to all the eligible buyers. A Report in compliance of this order shall be submitted to this Authority by the Commissioners CGST/SGST, Haryana within a period of 4 months from the date of receipt of this order.



24. A copy each of this order be supplied to both the Applicants, the Respondent, Commissioner CGST/SGST, Haryana as well as the Principal Secretary (Town and Planning), Government of Haryana for necessary action. File be consigned after completion.

(B. N. Sharma)
Chairman

(J. C. Chauhan)
Technical Member

(R. Bhagyadevi)
Technical Member

(Amand Shah)
Technical Member



Certified Copy

A.K. Goel
(Secretary, NAA)

F. No. 22011/NAA/117/eldeco/2018

Date: 24.05.2019

Copy To:-

1. M/s Eldeco Infrastructure & Properties Ltd., 201-212, IIInd Floor, Plot No. 3, Splendour Forum, Jasola District Centre, New Delhi-110025.
2. Sh. Varun Goel, FC-112, Tagore Garden, New Delhi-110027.
3. Commissioner of Commercial Taxes, Vanijya Bhavan, Plot no.1-3, Sector-5, Panchkula. Pin-134 151.
4. Chief Commissioner of Central Goods & Services Tax, Panchkula SCO 407408, Sector-8, panchkula.

5. Principal Secretary, Town & Country Planning Haryana, SCO 71-75, Sec-17C, Chandigarh-160017.

6. 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.

7. NAA Website.

8. Guard File.



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