

# TAX INFO

*Dated: 13.09.2020*

Latest update on GST Law: Information regarding **Important Ruling that NAA came into force w.e.f 01.01.2020 and hence penalty can't be imposed for violations prior to that period** based on the **Judgement issued by NAA.**

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## **NAA came into force w.e.f 01.2020 and hence penalty can't be imposed for violations prior to that period**

<b>Name of Petitioner</b>	Sh. Ashok Khatri
<b>Name of Respondent</b>	S3 Infrareality Pvt. Ltd.
<b>Name of Court</b>	NAA
<b>Appeal Number</b>	Case No. 49/2020
<b>Date of Judgement</b>	19/08/2020

DGAP vide his Report dated 28.11.2018, furnished to this Authority under Rule 129 (6) of the CGST Rules, 2017. had submitted that he had conducted an investigation on the complaint of the Petitioner and found that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) to the above Petitioner as well as other home buyers who had purchased them in his Project "Auric City Homes", as per the provisions of Section 171 (1) of the CGST Act, 2017. Vide his above Report the DGAP had also submitted that the Respondent had denied the benefit of ITC to the above buyers amounting to Rs. 1,48,60,874/-, pertaining to the period w.e.f. 01.07.2017 to 31.08.2018 and had thus indulged in profiteering and violation of the provisions of Section 171 (1) of the above Act.

During the course of the hearing therefore, it was held that the Respondent had not only collected extra amount on account of price of the flats from his customers but he had also compelled them to pay more GST on the additional amount realised from them between the period from 01.07.2017 to 31.08.2018 and therefore, he had apparently committed an offence under Section 122 (1) (i) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above Section.

The Respondent vide his submissions dated 04.04.2019 has stated that the penal provisions under Section 122 of the Act read with Rule 133 (3) (d) of the CGST Rules, 2017 should not be invoked and penalty should not be imposed on him as he had accepted and paid the amount which had been determined by this Authority. The main submission he has made is that penalty should only be imposed when there is a mensrea and deliberate attempt to violate the provisions of law and as he has complied with this Authority's Order No. 12/2019 which depicted his bonafide intentions, penalty should not be imposed upon him.

From the perusal of Section 122 (1) (i) it is clear that the violation of the provisions of Section 171 (1) is not covered under it as it does not provide penalty for not passing on the benefits of tax reduction and ITC and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under Section 171 of the above Act.

It is further revealed that vide Section 112 of the Finance Act, 2019 specific penalty provisions have been added for violation of the provisions of Section 171(1) which have come in to force w.e.f. 01.01.2020, by inserting Section 171(3A).

It was held that no penalty provisions were in existence between the period w.e.f. 01.07.2017 to 31.08.2018 when the Respondent had violated the provisions of Section 171(1) the penalty prescribed under Section 171(3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 11.03.2019 issued to the Respondent for imposition of penalty under Section 122(1)(1) is hereby withdrawn and the present penalty proceedings launched against him are accordingly dropped.

**Suresh Aggarwal, Advocate**

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