



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

Case No. : 11/2024
Date of Institution : 29.07.2024
Date of Order : 27.09.2024

In the matter of:

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.

Applicant

Versus

M/s Ireo Waterfront Pvt. Ltd., C-4, 1st Floor, Malviya Nagar, New Delhi-110017.

Respondent

Coram: -

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

Present:-

1. None for the DGAP i.e. Applicant No. 1.
2. None for the Respondent.

ORDER

1. The present Report dated 29.07.2024 has been received from the Director-General of Anti-Profiteering (**DGAP**) after a detailed investigation under Rule 129 (6) of the Central Goods & Service Tax (**CGST**) Rules, 2017.
2. The brief facts of the case and findings of investigation conducted by the DGAP are as under:-
 - i. The DGAP had submitted an Investigation Report dated 15.12.2021 under Rule 129 of the CGST Rules, 2017, before the National Anti-profiteering Authority (**NAA**) in the project "Ireo Waterfront" of the Respondent.
 - ii. Thereafter, w.e.f. 01.12.2022, mandate to examine profiteering was vested with Competition Commission of India (**CCI**), as per the Notification No. 23/2022- Central Tax dated 23.11.2022 issued by Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance.
 - iii. The CCI went through the above Investigation Report dated 15.12.2021 and passed an Interim Order No. 04/2023 dated 31.07.2023 under the provisions of Rule 133(4) of the CGST Rules, 2017 directing the DGAP to expand the scope of the investigation after 31.12.2020 till the issuance of complete Occupation Certificates and collect evidence necessary to determine whether the benefit of input tax credit (**ITC**) had been passed on to the recipients in respect of construction services supplied by the Respondent.
 - iv. Further vide CCI letter dated 07.05.2024, the DGAP was directed to re-investigate the case in view of Para 129 of Hon'ble Delhi High Court judgment dated 29.01.2024 as it was pertaining to real estate sector.
 - v. As per the CCI order dated 31.07.2023, the period of the current investigation should have been after 31.12.2020 till the issuance of complete Occupation Certificates. However, it was revealed that the Respondent had opted for GST@5% without ITC in terms of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, therefore, the Investigation was restricted up to 31.03.2019. Accordingly, the Investigation period was from 01.07.2017 to 31.03.2019.

- vi. Accordingly, a Notice dated 21.05.2024 was issued to the Respondent and he was requested to furnish the requisite information/data to determine profiteering as per the observations of the High Court.
- vii. The Respondent vide his various e-mails has submitted the following documents/information: -
- a. GSTR-1 and GSTR-3B returns for the period from April 2019 to October, 2023.
 - b. Summary of invoices raised on the customers during the financial year (F.Y.) 2022-23 and 2023-24 on which GST was charged @5%.
 - c. Sample copies of Invoices raised during the F.Y. 2022-23 and 2023-24 on which GST was charged @5%.
 - d. Details of ITC reversal in terms of Notification No. 03/2019 (Central Rate) dated 29.03.2019) along with the DRC-03 form.
 - e. Summary of GSTR-3B for the year 2017-2018 and 2018-19.
 - f. Copy of electronic credit ledger for the period April 2017 to 05 June 2024.
- viii. The DGAP has stated that the directions received from CCI, various replies of the Respondent and the documents/evidence on record had been carefully scrutinised. The main issues for determination were: -
- (i) *Whether there was benefit of reduction in the rate of tax or ITC on the supply of construction service by the Respondent, on implementation of GST w.e.f. 01.07.2017 and if so,*
 - (ii) *Whether such benefit was passed on by the Respondent to the recipients, in terms of Section 171 of the Central Goods and Services Tax Act, 2017.*
- ix. The Respondent vide e-mail dated 12.12.2023 submitted that w.e.f. 01.04.2019, he was charging GST @5% on services relating to construction of residential projects including apartments, villas & floors and therefore he was not availing any ITC on services taken thereto and also reversed all the proportionate ITC as he had opted for the new scheme from 01.04.2019 in terms of Notification No. 03/2019-CT (Rate) dated 29.03.2019.

- x. The DGAP had ascertained the same from the Assistant Commissioner, State Tax, District Ludhiana-III who informed that the facts of the case were verified in respect of M/s Ireo Waterfront Pvt. Ltd. (GSTIN 03AACCV2433R1Z5) and found that to continue with the old rates, the Respondent had to exercise one time option in the prescribed form and submit the same manually to the jurisdictional Commissioner by the 10.05.2019 in terms of the Notification No. 03/2019- Central Tax (Rate) dated the 29.03.2019, which amended the notification No. 11/2017- Central Tax (Rate), dated the 28.06.2017, dealing with the taxation of real estate projects. However, the Respondent did not exercise the option in the prescribed form, hence, it was deemed that he had opted for new rates in respect of ongoing projects and accordingly new rate of GST@5% without ITC would be applicable and all the provisions of the new scheme including transitional provisions would be applied.
- xi. The DGAP has observed from the ST-3 returns that the closing balance of Cenvat Credit was Rs. 78,53,983/- on 30.06.2017 which the Respondent had carried forward from the pre-GST period in TRAN-1 Form. The Respondent had also submitted the copies of DRC-03 Forms of ARN: AD03032300965IO dated 30.03.2023 for the F.Y. 2017-18 (Rs. 51,19,954/-) and ARN: AD030323009654I dated 30.03.2023 for the F.Y. 2018-19 (Rs. 2,42,502/-) for reversal of transitional ITC of Rs. 53,62,456/- for the F.Y. 2017-2018 and F.Y. 2018-2019 as it pertained to the credit which was transitioned by the Respondent from the previous tax regime vide Form GST TRAN-1. This transitional ITC was reversed by the Respondent on account of the same being attributable to the construction of the instant project, the time of supply of which was after 01.04.2019. Thus, the Respondent did not retain any ITC and reversed the availed ITC. Post March 2022, no further ITC was availed by the Respondent.
- xii. The Respondent vide email dated 05.07.2024 had submitted month wise details of ITC availed and reversed for the period July 2017 to March 2019 which has been given as under: -

Credit Availed and Reversed details as per GSTR3B returns (Monthly- basis)

Month	Credit Availed			Credit Reversed			Net Credit Availed		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
Jul-17	18,900	8,808	8,808	-	-	-	18,900	8,808	8,808
Aug-17	15,610	6,427	6,427	-2,056	-	-	13,554	6,427	6,427
Sep-17	103,030	3,600	3,600	-	-	-	103,030	3,600	3,600
TRAN-1	-	7,853,983	-	-	-	-	-	7,853,983	-
Oct-17	873,301	117,969	117,969	-873,301	-117,969	-117,969	-	-	-
Nov-17	425,541	39,312	39,312	-425,541	-36,248	-36,248	-	3,064	3,064
Dec-17	18,414	220,407	220,407	-18,414	-220,407	-220,407	-	-	-
Jan-18	1,080	746	746	-1,080	-746	-746	-	-	-
Feb-18	34,322	-	-	-34,322	-	-	-	-	-
Mar-18	37,980	41,115	41,115	-37,980	-41,030	-41,030	-	85	85
Apr-18	-	53,978	53,978	-	-53,978	-53,978	-	-	-
May-18	-	-	-	-	-	-	-	-	-
Jun-18	-	231,194	231,194	-	-6,806	-6,806	-	224,388	224,388
Jul-18	57,861	-	-	-63,181	-341,045	-5,907	-5,320	-341,045	-5,907
Aug-18	4,768	102,009	102,009	-4,768	-102,009	-102,009	-	-	-
Sep-18	-	145,336	145,336	-	-369,499	-369,499	-	-224,163	-224,163
Oct-18	-	-	-	-	-	-	-	-	-
Nov-18	-	-	-	-	-	-	-	-	-
Dec-18	-	-	-	-1,015,212	-341,072	-341,072	-1,015,212	-341,072	-341,072
Jan-19	-	-	-	-	-	-	-	-	-
Feb-19	-	-	-	-	-	-	-	-	-
Mar-19	133,981	-	-	-	-	-	133,981	-	-
Total	1,724,788	8,824,884	970,901	-2,475,855	-1,630,809	-1,295,671	-751,067	7,194,075	-324,770

Net ITC available as per Consolidated GSTR3B returns (Annually)

Period	Integrated Tax/ IGST	Central Tax/CGST	State/UT Tax/UGST
2017-18	135,484	21,984	21,984
2018-19	-886,551	-681,892	-346,754
Total	-751,067	-659,908	-324,770

xiii. The DGAP has claimed that he has verified the above figures of IGST/CGST/SGST credit with the figures mentioned in the GSTR-3B returns filed by the Respondent for the F.Y. 2017-18 and F.Y. 2018-19 and found in order.

xiv. The DGAP has averred that the Respondent vide email dated 23.07.2024 had submitted that the reversal of ITC was made in compliance with Rule 37 of the CGST Rules, 2017, due to delay of more than 180 days in making payments to the respective suppliers for the value of supply along with tax, from the date of issuance of the invoices by the respective suppliers. An excess amount of ITC was reversed due to a clerical mistake. Hence, the net

- ITC available at the end of the period from July 2017 to March 2019 led to a negative credit of Rs. 7,51,067/- of IGST, Rs. 6,59,908/- of CGST and Rs. 3,24,770/- of SGST respectively. Further, the Respondent had decided not to re-avail the reversed ITC in any manner in compliance with the Notification No. 3/2019-C.T. (Rate) dated 29.03.2019.
- xv. The DGAP has also confirmed that the Respondent had reversed the ITC amount of Rs. 24,82,604/- for the F.Y. 2019-20, Rs. 5,44,722/- for the F.Y. 2020-21 and Rs. 1,04,34,685/- for the F.Y. 2021-22 respectively in Form DRC-03 to fulfil the conditions prescribed in the Notification No. 03/2019-CT (Rate) dated 29.03.2019.
- xvi. The DGAP has concluded that Respondent had not retained any ITC, related to 'Ireo Waterfront' project and reversed all the ITC availed as of March 2019. As per the judgment of the Hon'ble High Court of Delhi in the matters of determination of profiteering in the real estate sector the savings made by the suppliers of services on account of introduction of GST needed to be passed on to the recipients of services which needed to be determined by calculating any ITC under GST which had become eligible to be taken as credit and had been availed and utilized by the suppliers of services to discharge their GST liability on provision of output services. However, the net input tax availment as on 31.03.2019 being negative as evidenced by the GSTR 3B returns filed for the relevant period as explained above, there was no net ITC availed by the Respondent in post-GST period which could be compared with the pre-GST ITC to determine "profiteering" if any. Accordingly, no benefit on account of availment of ITC had been derived by the Respondent which needed to be passed on to the home buyers. Hence, DGAP has reported that the anti-profiteering provisions were not applicable to the impugned project under investigation.
- xvii. The DGAP has also observed that the construction services have been supplied by the Respondent in the State of Punjab only.
3. This Commission has considered the DGAP's Report dated 29.07.2024 in its meeting held on 19.09.2024 and carefully perused the documents placed on record. The Commission needs to determine as to whether there was any reduction in the GST rate or benefit of ITC and whether the benefit of rate

reduction or ITC was passed on or not to the recipients as provided under Section 171 of the CGST Act, 2017.

4. We find that the DGAP has verified the documents submitted by the Respondent as well as the statutory returns filed by him and revealed that the Respondent had opted for GST@5% without ITC in terms of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 and reversed all the ITC available pertaining to the F.Y. 2017-2018 and 2018-2019 from April, 2019 onwards and he had also reversed ITC availed in compliance with Rule 37 of the CGST Rules, 2017, due to delay of more than 180 days in making payments to the suppliers for the value of supply along with tax, from the date of issuance of the invoices by the respective suppliers. He had also reversed the excess amount of ITC availed wrongly due to a clerical mistake, which resulted in a negative credit during the post-GST period. Therefore, the Respondent has not retained any ITC related to 'Ireo Waterfront' project and reversed all the ineligible ITC pertaining to the F.Y. 2017-2018 and 2018-2019.
5. From the above, it can be concluded that post-GST, no benefit of additional ITC accrued to the Respondent in respect of the project "Ireo Waterfront". Therefore, the Commission finds that the provisions of Section 171 (1) of the CGST Act, 2017 are not attracted in the Respondent's project "Ireo Waterfront". The proceedings in the present case are accordingly dropped.
6. A copy of this order be sent to all the interested parties free of cost. File of the case be consigned after completion.

Sd/-
(Deepak Anurag)
Member

Sd/-
(Sweta Kakkad)
Member

Sd/-
(Anil Agrawal)
Member

Sd/-
(Ravneet Kaur)
Chairperson

Certified Copy


Secretary, CCI

F. No. 22011/NAA/Ireo Waterfront/74/2022
Copy to:-

Date: 27.09.2024

1. M/s Ireo Waterfront Pvt. Ltd., C-4, 1st Floor Malviya Nagar, Delhi-110017.
2. Directorate General of Anti-Profitteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
3. Website/Guard File.