



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

Case No. : 08/2024
Date of Institution : 11.08.2023
Date of Order : 20.08.2024

In the matter of:

1. Sh. Jainil Jayeshbhai Mehta, 5, Gujarat Society, Opposite Football Ground, Kankaria, Ahmedabad, Gujarat – 380022.
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 Swastik Harmony Developers, F-104, Suyojan Apartment, Near Bagvat Vidhyapith, Opp. Sai Baba Temple, Sola, Ahmedabad, Gujarat - 380060.

Respondent

Coram: -

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

Present:-

1. Sh. Jainil Jayeshbhai Mehta, the Applicant No. 1 through VC.
2. Sh. Kundan Kumar Jha, Assistant Commissioner and Sh. Diwakar Sharma, Inspector for the DGAP.
3. None for the Respondent.

ORDER

1. The present Report dated 10.08.2023 has been received from the Director-General of Anti-Profitteering (**DGAP**) after a detailed investigation under Rule 129 of the Central Goods & Service Tax (**CGST**) Rules, 2017 on an application filed by Applicant No. 1 under Rule 128 of the CGST Rules, 2017 wherein he had alleged that the Respondent had not passed on the benefit of reduction in rate of tax or input tax credit (ITC) to him by way of commensurate reduction in the price of the Flat No. 601 purchased from the Respondent in his project "Swastik Heights", situated at Ahmedabad, Gujarat in terms of Section 171 of the CGST Act, 2017. He also alleged that the Respondent had not passed on any benefit of ITC till date which was already received by him. He charged GST @ 8% on the base price of 25,00,000/- for the flat and promised to pass on the benefit of ITC at the same time of booking flat in Swastik Heights on 28.02.2019 but after he had received ITC he denied to pass on any benefit to the owner of flat. Respondent had opted to charge GST @8% from all the owners of the flats with benefit of ITC instead of opting for reduced new GST rate of 1% without ITC w.e.f. 01.04.2019.
2. The brief facts of the case and findings of investigation conducted by the DGAP are as under:-
 - i. On receipt of the reference from the Standing Committee on Anti-profitteering on 19.04.2023, a Notice under Rule 129 of the CGST Rules, 2017 was issued by the DGAP on 24.04.2023, calling upon the Respondent to reply as to whether he admitted that the benefit of ITC and rate reduction had not been passed on to the Applicant No. 1 by way of commensurate reduction in prices 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.
 - ii. The period covered by the current investigation was from 01.07.2017 to 31.03.2023.
 - iii. The Respondent had submitted his replies vide letters/emails dated 03.06.2023, 07.06.2023, 17.06.2023, 01.07.2023, 04.07.2023 and 28.07.2023. The detailed submissions of the Respondent were as under:-

- a) That the Respondent was a real estate developer, incorporated in December 2016, at F-104, Suyojan Apartment, Near Bhagvat Vidhyapith, Opp. Sai Baba Temple Sola, Ahmedabad – 380060 with the main object of promoting real estate business through developing residential-cum-commercial complex. He was engaged in business of construction of residential-cum-commercial properties at Swastik heights, Behind Savya Skyz, Vaishnodevi to Zundal 200 ft Ring Road, Zundal, Ahmedabad – 382421.
 - b) That there was only one project “**Swastik Heights**” and no other site/project.
 - c) That the Respondent got registered under the GST Act on 27.02.2018, so Tran-1 and Tran-2 was not applicable.
 - d) That the firm got registered business after 01.07.2017 under the GST Act, so he had not filed the ST-3 or VAT returns for the period April, 2016 to June, 2017.
 - e) That the Respondent had opted for the old regime as specified for item (ie) or (if), against serial number 3 in the table provided in the Notification No. 03/2019 – Central tax (Rate) dated 29.03.2019.
 - f) That the GST Registration was cancelled on 31.08.2022 because of the completion of the project and thereafter no GST return was filed.
 - g) That there was no booking form issued to the customers at the time of booking and the sales agreement was made with the customers on the basis of mutual understanding.
 - h) That the customer Email IDs were not available with the Respondent since the same was not provided by the customers.
- iv. The DGAP has stated that he has examined the above application, various replies of the Respondent and the documents/evidences on record. The main issues for determination were: -
- (i) Whether there was benefit of reduction in rate of tax or ITC on the supply of construction service by the Respondent after implementation of GST w.e.f. 01.07.2017 and if so,

- (ii) Whether the Respondent passed on such benefit to the recipients by way of commensurate reduction in price, in terms of Section 171 of the CGST Act, 2017.
- v. The DGAP has found that prior to implementation of GST w.e.f. 01.07.2017, Service tax on construction service was chargeable @ 4.50% (vide Notification No. 14/2015-ST dated 19.05.2015). After implementation of GST w.e.f. 01.07.2017, GST on construction services was chargeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) on construction service vide Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 and the effective GST rate on construction service in respect of affordable and low-cost houses upto a carpet area of 60 square meters was further reduced to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), vide Notification No. 1/2018-Central Tax (Rate) dated 25.01.2018 (in respect of affordable and low-cost houses upto a carpet area of 60 square meters).
- vi. The DGAP has also observed that the land for the project "Swastik Heights" was purchased by the Respondent on 24.05.2017. The commencement certificate for the said project was issued by the Ahmedabad Urban Development Authority on 08.03.2018. As per Gujarat RERA Registration website, the project "Swastik Heights" was registered under Reg. No. PR/GJ/GANDHINAGAR/GANDHINAGAR/AUDA /MAA02618/090518 on 09.05.2018 .
- vii. According to the GST Registration Certificate, the Respondent was registered under GST w.e.f. 27.02.2018. As per the ITC register submitted by the Respondent, the first purchase invoice was issued on 27.02.2018. On perusal of the copies of sale agreements of all the customers submitted by the Respondent, it was revealed that there was no sale or even booking of the units in the above project during pre-GST regime. From the copies of payment receipts submitted by the Respondent, the DGAP has found that the first payment was received on 19.05.2018 from the buyer of unit No. 702 in the project. Also, the turnover of the Respondent was getting reflected in the GSTR3B return from the month of May 2018 and onwards.

- viii. The DGAP has reported that Section 171 of the CGST Act, 2017 comes into play in the event that there was a reduction in the rate of tax or there was an increase in the benefit of ITC. In the present case, the Applicant No. 1 had alleged that Respondent had not passed on any benefit of ITC till date which was received by him. He charged GST @ 8% on the base price of 25,00,000/- for the flat and promised to pass on the benefit of ITC at the time of booking of flat in Swastik Heights on 28.02.2019 but after he had received the ITC, he refused to pass on any benefit to the owner of flat. Respondent had opted to charge GST @8% from all the owners of the flat with benefit of ITC instead of opting for reduced new GST rate of 1% without ITC w.e.f. 01.04.2019. However, contrary to the allegation of Applicant No. 1, the DGAP has found that since the project "Swastik Heights" had commenced on 08.03.2018 which was much after the implementation of GST w.e.f. 01.07.2017, there was no pre-GST turnover or ITC availability which could be compared with the post-GST turnover and ITC to determine whether there was any benefit that was required to be passed on by way of reduced price. Further, as the Respondent had opted for an effective GST rate of 8% along with ITC, there was no benefit of reduced rate to be passed on to the unit buyers.
- ix. The DGAP has therefore concluded that Section 171(1) of the CGST Act, 2017 which requires that "any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices", is not applicable in the present case.
3. The above Report was considered by the Commission in its meeting held on 31.08.2023. Thereafter, Notice dated 31.08.2023 was served upon the Applicant No. 1 directing him to file his submissions by 21.09.2023. The Applicant No. 1 vide emails dated 12.09.2023 and 16.11.2023 has informed that GST transactions might not be done by the Respondent during pre-GST Regime (before 01.07.2017) and all transactions might be done during post-GST Regime as per DGAP's investigation but details or figures have not been provided by DGAP regarding Respondent's GST account ledger entries during post GST regime (after 01.07.2017) which could prove that there was no benefit to Respondent due to GST rate reduction from 8% to 1% w.e.f. 01.04.2019

during post-GST era. The Respondent has filed multiple GSTR 3B forms on regular basis during post GST era for claiming ITC and also charged GST @ 8% from all the flat buyers during post-GST era but details or figures regarding Respondent's total sales turnover, total GST amount charged from buyers and total ITC claimed amount were also not revealed by DGAP. As per provisions in Section 171 (1) of the CGST Act 2017 any reduction in rate of tax or benefit of ITC shall be passed on to the recipient by way of commensurate reduction in prices but benefit of GST rate reduction from 8% to 1% or benefit of ITC during post-GST era was not given to him through commensurate reduction in prices.

4. The DGAP vide his clarifications dated 10.10.2023 has submitted that during the investigation, the DGAP has found that the project commenced on 08.03.2018 which was much after the implementation of GST w.e.f. 01.07.2017. Hence, there was no pre-GST turnover or ITC that could be compared with the post-GST turnover and ITC to determine whether there was any benefit that was required to be passed on by way of reduced prices. Hence, Section 171(1) of the Central Goods and Services Tax Act, 2017 is not applicable in the present case.
5. Vide CCI letter dated 20.03.2024, the present case was sent back to DGAP directing it to re-investigate 42 cases pertaining to real estate sector in view of Hon'ble Delhi High Court judgment dated 29.01.2024. The DGAP vide letter dated 14.06.2024 has informed that there were a total of 52 units in the Respondent's project "Swastik Heights". The DGAP has enclosed the list containing unit-wise details of period of construction, period of booking and the position of each unit with respect to Para 128(d) of the Hon'ble Delhi High Court's judgment dated 29.01.2024. Since the impugned project fell entirely in post-GST period, the instant case was covered under Para 128(d) of the Hon'ble Court's order, thus indicating that the provisions of Section 171 of the CGST Act 2017 were not applicable in this case. In view of above, the DGAP has opined that re-investigation was not required to be carried out in this case, in light of the Hon'ble Court order dated 29.01.2024.
6. Therefore, the Commission in its meeting held on 11.07.2024 decided to accord a hearing to the Applicant No. 1 on 08.08.2024 and accordingly, Notice dated 15.07.2024 was issued to the above Applicant to attend the hearing on 08.08.2024 via virtual mode. The Applicant No. 1, Sh. Jainil Jayeshbhai Mehta, appeared through VC for the hearing and the DGAP was represented by Sh.

Kundan Kumar Jha, Assistant Commissioner and Sh. Diwakar Sharma, Inspector. The Applicant No. 1 reiterated his earlier submissions through his arguments which have been taken on record.

7. This Commission has carefully perused the DGAP's Report dated 10.08.2023 and the documents placed on record. The Commission needs to determine as to whether there was any reduction in the GST rate or the 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.
8. It is clear from the DGAP's Report that the Respondent had started the above project in the post-GST regime as the commencement certificate was issued to him on 08.03.2018 by the Ahmedabad Urban Development Authority and the Respondent was registered under GST w.e.f. 27.02.2018. As per the ITC register submitted by the Respondent, the first purchase invoice was issued on 27.02.2018. On perusal of the copies of sale agreements of all the customers submitted by the Respondent, it was found that there was no sale or even booking of the units in the above project during pre-GST regime. From the copies of payment receipts submitted by the Respondent, the DGAP has found that the first payment was received on 19.05.2018 from the buyer of unit No. 702 in the project. There was no price history of the units sold in the pre-GST regime that could be compared with the post-GST base prices to establish whether there was any profiteering by the Respondent or not. Hence, there was no pre-GST turnover or ITC which could be compared with the post-GST turnover or ITC.
9. As far as rate reduction benefit is concerned, the Commission finds that after the implementation of the GST w.e.f. 01.07.2017, the Respondent was charging GST @8% with ITC. W.e.f. 01.04.2019, the Respondent was given the option either to charge GST @8% with ITC or 1% without ITC from the flat buyers vide Notification No. 03/2019 – Central tax (Rate) dated 29.03.2019. The Respondent continued to charge GST @8% with ITC instead of 1% without ITC from the flat buyers. Therefore, as the Respondent had continued to opt for an effective GST rate of 8% along with ITC, there was no benefit of reduced rate to be passed on to the flat buyers.
10. In view of the above facts, the Commission observes that no benefit of reduction of rate or additional ITC during the GST period as compared to the pre-GST period has accrued in the case of this Project to the Respondent,

which he is obliged to pass on to his buyers. Hence, the allegations made by the Applicant No. 1 are not tenable.

11. Based on the above facts, the Commission finds that the provisions of Section 171 (1) of the CGST Act, 2017 are not attracted in the Respondent's project "Swastik Heights". **Therefore, the proceedings in the present case are hereby dropped.**
12. 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

File No. M/AP/35/Swastik Harmony/2023-Sectt.

Copy To:

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21/08/24

Dated: 20.08.2024

1. Sh. Jainil Jayeshbhai Mehta, 5, Gujarat Society, Opposite Football Ground, Kankaria, Ahmedabad, Gujarat – 380022, Contact Number- 8320910080 or Email ID- jainil31@gmail.com.
2. M/s Swastik Harmony Developers, F-104, Suyojan Apartment, Near Bagvat Vidhyapith, Opp. Sai Baba Temple, Sola, Ahmedabad, Gujarat - 380060.
3. Directorate General of Anti-Profiteering, 2nd Floor, Bhai Vir Singh Sahitya Sadan, Bhai Vir Singh Marg, New Delhi-110001.
4. Website/Guard File.