

We are glad to share our GST litigation support communique and get you everything that you need to know from the world of litigation, along with incisive analysis from the CA. Rajat Mohan. This Newsletter brings you key judicial pronouncements from the Supreme Court, various High Courts, AARs, and Appellate Authorities emerging in the GST era and the erstwhile VAT, Service tax, and Excise regime.¹

Synopsis of all changes in GST is given below for your quick reference:

S.N o.	Subject	Autho rity
1	Submissions of parties and the accompanying voluminous data/information required thorough scrutiny, hence matter remanded to DGAP for re-investigation	NAA
2	Penalty cannot be applied retrospectively	NAA
3	Penalty on profiteering	NAA
4	Penalty on profiteering	NAA
5	Penalty on profiteering	NAA
6	Penalty on profiteering	NAA
7	No profiteering as there was no reduction in rate	NAA
8	Re-computation of profiteered amount required in view of the supply chain wise data submitted by Respondent before NAA.	NAA
9	Recomputation of profiteering required where ought to have been computed on the basis of the comparision of pre-rate reduction item-wise average base price with the actual transaction-wise/invoice-wise price charged by the Respondent in respect of his supplies.	NAA
10	Respondent denied the benefit of ITC to the buyers of the flats being constructed by him in his Project, hence he was guilty of profiteering and liable for imposition of penalty.	NAA

Submissions of parties and the accompanying voluminous data/information required thorough scrutiny, hence matter remanded to DGAP for re-investigation.

Application was filed before the Standing Committee on Anti-profiteering by Ms. Neeru Varshney *vide* which she alleged that the Respondent had not passed on the benefit of reduction in the rate of GST to her when she had purchased Maybelline FIT Me foundation from the Respondent. It was also stated that the GST on the product was reduced from 28% to 18% *w.e.f.* 15-11-2017. In its report DGAP observed that the Respondent did not reduce the selling price when the GST rate was reduced from 28% to 18% *w.e.f.* 15-11-2017, *vide* Notification No. 41/2017 Central Tax (Rate) dated 14-11-2017 and hence he had profiteered an amount of Rs. 136.90/- on a particular invoice and thus the benefit of reduction in GST rate was not passed on to the recipients by way of commensurate reduction in the price, in terms of Section 171 of the CGST Act, 2017. The profiteered amount was at by comparing the average of the base prices of the goods sold during the period 1-11-2017 to 14-11-2017 with the actual invoice-wise base prices of such goods sold during the period 15-11-2017 to 31-1-2018. The excess GST so collected from the recipients was also included in the aforesaid profiteered amount as the excess price collected from the recipients also included the GST charged on the

¹ *DISCLAIMER: The views expressed are strictly of the author. The contents of this article are solely for informational purpose. It does not constitute professional advice or recommendation of firm. Neither the author nor firm and its affiliates accepts any liabilities for any loss or damage of any kind arising out of any information in this article nor for any actions taken in reliance thereon.*

increased base price. The DGAP has also provided the place of supply- wise (State or Union Territory wise) break-up of the total profiteered amount of Rs. 15,37,04,697/- in his Report dated 30-9-2019. NAA observed that the Respondent's submissions dated 18-2-2020 and 24-2-2020 and the accompanying data/information are voluminous and require thorough scrutiny and may entail a revised mathematical computation of the amount of profiteering, notwithstanding the previous clarifications of the DGAP contained in his supplementary reports dated 2-12-2019, 8-1-2020 and 7-2-2020. Without going into the merits of the case and without considering the contentions and submissions of the Respondent, it was observed that there is a need for revisiting the investigation and recomputation of the profiteered amount.

NAA directed the DGAP to reinvestigate the case under rule 133(4) of the CGST Rules 2017 and to furnish his Report accordingly under rule 129(6) of the CGST Rules, 2017 within a period of three months.

Director-General of Anti-Profitteering v. Lifestyle International (P.) Ltd. - [2020] 117 taxmann.com 70 (NAA)

Penalty cannot be applied retrospectively

In its report, DGAP submitted that Respondent had not passed on the benefit of additional Input Tax Credit (ITC) to the Applicant as well as other home buyers who had purchased flats in his Project "Orchard Avenue-93", as per the provisions of section 171(1). It was also submitted that the Respondent had denied the benefit of ITC to the Applicant No. 1 and other buyers amounting to Rs. 2,58,80,927/-, pertaining to the period *w.e.f.* 1-7-2017 to 31-12-2018 and had thus indulged in profiteering and violation of the provisions of section 171(1). NAA determined the profiteered amount as Rs. 2,58,80,927/- and also held the Respondent in violation of the provisions of section 171(1) of the CGST Act, 2017. Notice was issued asking him to explain why the penalty mentioned in section 171(3A) of the CGST Act, 2017 read with rule 133(3)(d) of the CGST Rules, 2017 should not be imposed on him for violation of the provisions of section 171(1)

NAA observed that *vide* section 112 of the Finance Act, 2019 specific penalty provisions were added for violation of the provisions of section 171(1) which have come in to force *w.e.f.* 1-1-2020 *vide* Notification No. 01/2020- Central Tax dated 1-1-2020, by inserting section 171(3A).

NAA held that since, no penalty provisions were in existence between the period *w.e.f.* 1-7-2017 to 31-12-2018 when the Respondent had violated the provisions of section 171(1), the penalty prescribed under section 171(3A) could not be imposed on the Respondent retrospectively. Accordingly, the notice dated 21-1-2020 issued to the Respondent for imposition of penalty under section 177(3A) was withdrawn and penalty proceedings launched against him were accordingly dropped.

Abhishek v. Signature Builders (P.) Ltd. - [2020] 122 taxmann.com 303 (NAA)

Penalty on profiteering

In its report, DGAP concluded that the Respondent had not passed on the benefit of rate reduction to his Customers as per the provisions of section 171(1) of the CGST Act, 2017. NAA determined the profiteered amount as Rs. 9,75,078/- pertaining to the period from 1-11-2017 to 31-8-2018 and also held the Respondent in violation of the provisions of section 171(1). It was held that the respondent committed an offence under section 122(1)(i) and hence, he was liable for imposition of penalty under the provisions of the above Section. A show cause notice was issued notice dated 8-5-2019 asking him to explain why the penalty mentioned in section 122 read with rule 133(3)(d) should not be imposed on him.

NAA observed that no penalty had been prescribed for violation of the provisions of section 171(1) of the above Act, therefore, the Respondent was issued show cause notice to state why penalty should

not be imposed on him for violation of the above provisions as per section 122(1)(i) of the above Act as he had apparently issued incorrect or false invoices while charging excess consideration and GST from the buyers. However, violation of the provisions of section 171(1) is not covered under it as it does not provide penalty for not passing on the benefit of rate reduction and hence the above penalty cannot be imposed for violation of the anti-profiteering provisions made under section 171 of the above Act. *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 into force w.e.f. 1-1-2020, by inserting section 171(3A).

NAA held that since, no penalty provisions were in existence between the period w.e.f. 1-11-2017 to 31-8-2018 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 issued to the Respondent for imposition of penalty under section 122(1)(i) was withdrawn and the present penalty proceedings launched against him were accordingly dropped.

Kerala State Screening Committee on Anti-Profiteering v. TTK Prestige Ltd. - [2021] 123 taxmann.com 315 (NAA)

Penalty on profiteering

In its report DGAP submitted that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) to the Applicant as well as other home buyers as per the provisions of section 171(1) of the CGST Act, 2017. NAA held that the profiteered amount as Rs. 38,29,753/- as per the provisions of section 171(2) of the above Act read with rule 133(1) of the CGST Rules, 2017 pertaining to the period from 1-7-2017 to 31-8-2018 and also held the Respondent in violation of the provisions of section 171(1). Notice was issued asking him to explain why the penalty mentioned in section 122 read with rule 133(3)(d) should not be imposed on him.

NAA observed that no penalty was prescribed for violation of the provisions of section 171(1) of the Act, therefore, the Respondent was issued show cause notice to state why penalty should not be imposed on him for violation of the provisions as per section 122(1)(i) of the Act as he had apparently issued incorrect or false invoice while charging excess consideration and GST from the buyers. It was further observed 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. *Vide* section 112 of the Finance Act, 2019 specific penalty provisions were added for violation of the provisions of section 171(1) which have come into force w.e.f. 1-1-2020, by inserting section 171(3A).

NAA held that since, no penalty provisions were in existence between the period w.e.f. 1-7-2017 to 31-8-2018 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 issued to the Respondent for imposition of penalty under section 122(1)(i) was withdrawn and the penalty proceedings launched against him were dropped.

Vivek Gupta v. Gurukirpa Developers & Infrastructures (P.) Ltd. - [2021] 123 taxmann.com 231 (NAA)

Penalty on profiteering

In its report, DGAP concluded that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) in respect of the flats purchased by the Applicant as well as other home buyers in his Project "Synera", as per the provisions of section 171(1) of the CGST Act, 2017. NAA determined the profiteered amount as Rs. 1,42,06,267/- as per the provisions of section 171(2) of the above Act read

with rule 133(1) of the CGST Rules, 2017 pertaining to the period from 1-7-2017 to 31-12-2018 and also held the Respondent in violation of the provisions of section 171(1). It was also held that he had apparently committed an offence under section 171(3A) of the CGST Act, 2017 and hence, he was liable for imposition of penalty under the provisions of the above section.

NAA observed that the Respondent had not passed on the benefit of additional Input tax Credit (ITC) to the Applicant No. 1 as well as other home buyers who had purchased flats and commercial units in his Project "Synera" during the period from 1-7-2017 to 31-12-2018 and hence, the Respondent had violated the provisions of section 171(1) of the CGST Act, 2017. However, the Respondent, in compliance to the Order No. 60/2019 dt. 21-11-2019 passed by NAA had passed the benefit of the additional ITC to his customers along with the Applicant No. 1 and the same has been verified by the Haryana State GST (Jurisdictional Officer). It was further observed that *vide* section 112 of the Finance Act, 2019 specific penalty provisions were added for violation of the provisions of section 171(1) which have come into force w.e.f. 1-1-2020 *vide* Notification No. 01/2020-Central tax dated 1-1-2020 by inserting section 171(3A) in the CGST Act, 2017.

NAA held that since, no penalty provisions were in existence between the period w.e.f. 1-7-2017 to 31-12-2018 when the Respondent had violated the provisions of section 171(1) of the CGST Act, 2017, the penalty prescribed under section 171(3A) cannot be imposed on the Respondent retrospectively. Accordingly, the notice dated 27-12-2019 issued to the Respondent for imposition of penalty under section 177(3A) and the penalty proceedings launched against him were dropped.

Abhishek v. Signature Global Developers (P.) Ltd. - [2021] 123 taxmann.com 180 (NAA)

Penalty on profiteering

An application was received by the Standing Committee on Anti-Profitteering *vide* which the Applicant alleged profiteering in respect of the supply of 'Sujata Mixer Grinder 900W by the Respondent. It was alleged that the Respondent had not passed on the benefit of reduction in the rate of GST on the impugned product supplied by him, although the rate of GST was reduced from 28% to 18% w.e.f. 27-7-2018 *vide* Notification No. 18/2018-Central Tax (Rate) dated 26-7-2018, by way of commensurate reduction in price, in terms of Section 171 of the CGST, Act 2017. Matter was forwarded to the DGAP. In its report, DGAP concluded that the allegation of increasing the base prices of the goods when there was reduction in the GST rate from 28% to 18% w.e.f. 27-7-2018 appeared to be correct and by doing so the commensurate benefit of reduction in GST rate from 28% to 18%, was not passed on by the Respondent to his recipients and that Section 171(1) had been contravened.

NAA observed that the Respondent had increased the base prices of the goods when the rate of GST was reduced from 28% to 18% w.e.f. 27-7-2018, so that the commensurate benefit of GST rate reduction was not passed on to his recipients, thus, he had contravened the provisions of Section 171 of the CGST Act, 2017. Respondent was directed to reduce the prices of his products as per the provisions of Rule 133(3)(a) of the CGST Rules, 2017. The Respondent was also directed to deposit the profiteered amount of Rs. 30,153/- along with the interest to be calculated @ 18% from the date when the above amount was collected by him from the recipients till the above amount was deposited in terms of Rule 133(3)(b) of the CGST Rules, 2017. Since, rest of the recipients in this case were not identifiable, Respondent was directed to deposit the amount of profiteering of Rs. 30,153/- along with interest in the Consumer Welfare Fund of the Central and the concerned State Governments. It was further observed that respondent had committed an offence under section 171 (3A) of the CGST Act, 2017 and therefore, he was apparently liable to penalty. Accordingly, a Show Cause Notice was issued to him directing him to explain why the penalty prescribed under section 171(3A) of the above Act read with Rule 133(3)(d) of the CGST Rules, 2017 should not be imposed on him.

S.C. Grover v. Garg Kitchen Collection - [2020] 115 taxmann.com 96 (NAA)

No profiteering as there was no reduction in rate

Applicant filed an application before Standing Committee alleging profiteering by the Respondent. It was alleged that he had purchased a flat in the project Kishalay Abasan and the Respondent had not passed on the benefit of Input Tax Credit to him by way of commensurate reduction in the price. Matter was forwarded to DGAP. In its reports DGAP contended that after the introduction of GST w.e.f. 1-7-2017, the rate of tax on the construction services has increased. Thus the instant case was not covered under the criteria of "reduction in rate of tax on any supply of goods or services." No benefit was availed by the Respondent on account of input tax credit post GST. Thus, the instant case was not covered under the criteria of "the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

NAA observed that prior to the implementation of the GST w.e.f. 1-7-2017, Service Tax on construction service was chargeable @ 4.50% (*vide* Notification No. 14/2015-ST, dated 19-5-2015). however, after implementation of the GST w.e.f. 1-7-2017, GST on construction service was changeable @ 18% (effective rate was 12% in view of 1/3rd abatement on value) which was imposed *vide* Notification No. 11/2017-Central Tax (Rate), dated 28-6-2017 which was further reduced for low cost affordable housings to 12% GST (effective rate was 8% in view of 1/3rd abatement on value), *vide* Notification No. 1/2018-Central Tax (Rate), dated 25-1-2018 (in respect of affordable and low-cost house upto a carpet area of 60 square meters) and hence it was established that there was no rate reduction w.e.f. 1-7-2017 in the case of construction service for low cost affordable houses which the above Applicant has purchased. Hence, no benefit of tax reduction was required to be passed on to him. It was further observed that during the pre-GST era the Respondent was eligible to avail CENVAT Credit of Service Tax paid on the input services and post-GST, the Respondent was eligible to avail the input tax credit of GST paid on all the inputs and input service including the sub-contracts. However, the Respondent has not availed any benefit of CENVAT or ITC in the pre and post-GST era and hence, there was no additional benefit available to the Respondent which was to be passed on to his buyers. Respondent had not availed benefit of ITC after coming in to force of the GST and he had charged GST @18% which was required to be charged as per the Notification dated 1-7-2017.

NAA held that the Respondent was not liable to pass on the benefit of ITC to the Applicant and thus he had not contravened the provisions of section 171.

Manabendra Nath Basu v. Paribar Estates (P.) Ltd. - [2020] 115 taxmann.com 95 (NAA)

Re-computation of profiteered amount required in view of the supply chain wise data submitted by Respondent before NAA.

Applicant filed application before Standing Committee on Anti-profiteering alleging that the Respondent had profiteered in respect of Power Bank "Portronics Power Slice 10" supplied by the Respondent by not reduce the selling price of the product when the GST rate was reduced from 28% to 18% w.e.f. 1-1-2019. Matter was forwarded to DGAP. In its report, DGAP concluded that the Respondent had increased the base prices of the impugned goods when the rate of GST was reduced from 28% to 18% w.e.f. 1-1-2019. The details of the impacted product sold before and after GST rate reduction was also illustrated:

<i>Period</i>		<i>Pre 1-1-2019</i>	<i>Post 1-1-2019</i>
Notification No.	A	24/2018-Central Tax (Rate), dated 31-12-2018	
Product Description	B	Por 694 (Power Bank)	
Invoice No.	C	DL001OSI12190023	DL002SI011900008

Invoice Date	D	06.12.2018	04-1-2019
Declared Price	E	995.43	1101.70
Discount Offered	F	0	0
Base Price excluding GST	G=E-F	995.43	1101.70
GST rate charged	H	28	18
GST Amount	I=G*H	278.72	198.30
Increase in Base Price/Profiteering excluding GST	K	1101.70-995.43= 106.27	
GST @ 18%	L=K*18%	19.12	
Amount of Profiteering (Difference in selling Price)	M = K+L	125.39	

DGAP observed that the profiteered amount came to Rs. 5,21,965/-. The profiteered amount was computed by comparing the average of the base prices of the impugned goods sold during the period 1-11-2018 to 31-12-2018, with the actual invoice-wise base prices of such products sold during the period 1-1-2019 to 31-3-2019.

NAA observed that the Respondent did not submit the supply chain-wise data to the DGAP during the period of investigation. However, the Respondent had furnished the invoices of sale from different locations/segments along with detailed segment-wise invoice details in excel sheets before this Authority. The DGAP, after examining the same had reported that the fresh set of segment/location wise (or in other words supply channel wise) sales data submitted by the Respondent during was analysed, and that the profiteered amount may vary if the same was determined segment-wise.

NAA held that there was need of a re-computation of the profiteered amount. DGAP was directed to further investigate issues and to furnish his Report accordingly.

Rahul Sharma v. Portronics Digital (P.) Ltd. - [2020] 115 taxmann.com 81 (NAA)

Recomputation of profiteering required where ought to have been computed on the basis of the comparison of pre-rate reduction item-wise average base price with the actual transaction-wise/invoice-wise price charged by the Respondent in respect of his supplies.

In its report DGAP concluded that the Respondent had been dealing with a total of 255 items while supplying restaurant services before and after 15.11.2017. Upon comparing the average selling prices as per details submitted by the Respondent for the period 01.10.2017 to 14.11.2017, the increase in base prices after the reduction in GST rate w.e.f. 15.11.2017 was evident in respect of 246 items (96.47% of 255 items) supplied by him. The lower GST rate of 5% had been charged on the increased base prices of these 255 items, which confirmed that the tax amount was computed @ 18% prior to 15.11.2017 and @ 5% w.e.f. 15.11.2017. However, the fact was that because of the increase in base prices the cum-tax price paid by the consumers was not reduced commensurately for all the items, despite the reduction in the GST rate. It was found that the ITC amounting to Rs. 17,16,253/- was available to the Respondent from the period July 2017 to October 2017 which is 8.72% of the net taxable turnover of restaurant service amounting to Rs. 1,96,90,023/- supplied during the same period. With effect from 15.11.2017, when the GST rate on restaurant service was reduced from 18% to 5%, the said ITC was not available to the Respondent. A summary of the computation of ratio of ITC to the taxable turnover of the Respondent is given below:

(Amount in Rs.)

Particulars	Jul-17	Aug-17	Sept. – 2017	Oct.-2017	Total
ITC Availed as per GSTR-3B (A)*	3,40,095	4,04,062	5,00,187	4,71,909	17,16,253
Total Outward Taxable ^{Turnover} as per GSTR-3B (B)	50,52,696	48,84,153	48,47,832	49,05,342	1,96,90,023
Ratio of ITC to Net Outward Taxable Turnover (C)= (A/B)					8.72%

DGAP stated that the Respondent had increased the base prices by more than 8.72% i.e., by more than what was required to offset the impact of denial of ITC in respect of 241 items (out of 255 items) sold during the same period and hence, the commensurate benefit of reduction in rate of tax from 18% to 5% had not been passed on. It was also stated that there had been no profiteering in regard to the remaining items on which there was either no increase in the base price or the increase in base price was less or equal to the denial of ITC. It was stated that the Respondent had realized an additional amount to the tune of 78, 41,754/- from the recipients which included both the profiteered amount and GST on the said profiteered amount and hence, the provisions of Section 171(1) of the CGST Act, 2017 had been contravened by the Respondent in the present case.

NAA observed that the profiteering has been calculated on the basis of comparison of item-wise average base price in the pre-rate reduction period with the day-wise average base price of each item being supplied by the Respondent in the post-rate reduction period after reconciling the sales data with the GST Returns. However, profiteering ought to have been computed on the basis of the comparison of pre-rate reduction item-wise average base price with the actual transaction-wise/invoice-wise price charged by the Respondent in respect of his supplies in line with provisions of Section 171 (1) and Section 171 (2) of the CGST Act as was done by the DGAP in similar cases. This is because profiteering needs to be computed in respect of each supply effected by the registered person/supplier, i.e. the Respondent. Since the respondent has expressed his inability to provide the requisite data on account of certain inexplicable technical reasons, DGAP to summon the record and to recompute the amount of profiteering accordingly.

Deputy Commissioner of State Tax v. Dough Makers India (P.) Ltd. - [2020] 115 taxmann.com 23 (NAA)

Respondent denied the benefit of ITC to the buyers of the flats being constructed by him in his Project, hence he was guilty of profiteering and liable for imposition of penalty.

The applicant filed an application before the Standing Committee on Anti-profiteering stating that the Respondent had resorted to profiteering in respect of supply of construction service related to the purchase of a house under the Pradhan Mantri Aawas Yojna (PMAY) in the Respondent's project "Mayur Residency Extension". He also alleged that the Respondent had charged GST @ 18% on the construction service/works contract service and had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in the price of the house after implementation of the GST w.e.f. 1-7-2017, in terms of section 171 of the CGST Act, 2017. Matter was forwarded to DGAP. The DGAP in his Report concluded that the ITC as a percentage of the turnover that was available to the Respondent during the pre-GST period (April, 2016 to June, 2017) was Nil and during the post-GST period (July, 2017 to March, 2019), it was 11.97%. It was submitted that Respondent had apparently benefitted from additional ITC to the tune of 11.97% of his turnover. Accordingly, the DGAP computed the profiteered amount by comparing the ratio of ITC available to the turnover during the pre-GST period from April, 2016 to June, 2017 with that of the post-GST period from July, 2017 to March, 2019, when the effective GST rate on construction service was 18% imposed *vide* Notification No. 11/2017-

Central Tax (Rate) dated 28-6-2017. On the basis of the comparative figures of the applicable tax rate and ratio of ITC to the turnover during the pre-GST and the post-GST periods as well as the recalibrated basic price, the excess realization (profiteering) during the post-GST period was furnished by the DGAP in detail as per the Table given below:-

S. No.	Particulars		Pre-GST	Post- GST
	Period	A	April, 2016 to June, 2017	July, 2017 to March, 2019
1	Tax Rate	B	6%	18%
2	Ratio of CENVAT credit/Input Tax Credit to Turnover as per Table-B above (%)	C	0.00%	11.97%
3	Increase in input tax credit availed post-GST (%)	D= 11.97% less 0.00%	-	11.97%
	Analysis of Increase in input tax credit:			
4	Basic Price collected during July, 2017 to March, 2019	E		2,54,69,428
5	GST @ 18% on Basic Price	F=E*18%		45,84,497
6	Total Demand collected/raised	G=E+F		3,00,53,925
7	Recalibrated Basic Price	H=E*(I-D)or 88.03% of H		2,24,19,770
8	GST @18% on recalibrated Basic Price	I=H*18%		40,35,559
9	Commensurate Demand	J=H+I		2,64,55,329
10	Excess Realization or	K=G-J		35,98,596

	Profiteered Amount			
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DGAP contended that the additional ITC of 11.97% of the turnover should have resulted in commensurate reduction in the basic prices as well as cum-tax prices of the houses. As per the provisions of section 171 of the CGST Act, 2017, the benefit of additional ITC was required to be passed on to the recipients. DGAP alleged that the Respondent had retained the benefit that had accrued to him on account of additional ITC by not reducing the pre-GST basic prices by 11.97% on account of the benefit of additional ITC and charging GST @ 18% on the pre- GST basic prices and hence the Respondent has contravened the provisions of section 171 of the of the CGST Act, 2017. The profiteered amount came to Rs. 35,98,596/- which included 18% GST on the base profiteered amount of Rs. 30,49,658/-.

NAA observed that respondent computed different amounts of the benefit of ITC or the profiteered amount which he is required to pass on to his recipients. The Respondent has not followed a uniform mathematical methodology to calculate the benefit of ITC. Therefore, the calculations and the methodology adopted by the Respondent cannot be accepted as reliable, accurate and correct.

The amount of the benefit of ITC to be passed by the Respondent to his buyers or the profiteered amount, during the period from 1-7-2017 to 31-3-2019, was determined as Rs. 35,98,596/- which included 18% GST on the base profiteered amount of Rs. 30,49,658/-. The profiteered amount in respect of the Applicant was determined as Rs. 19,953/- which also includes GST @18%. Respondent was directed to reduce the prices to be realized from the customers/buyers commensurate with the benefit of ITC received by him as has been detailed above. The above amount of Rs. 35,98,596/- which includes 18% GST on the base profiteered amount of Rs. 30,49,658/- has been profiteered by the Respondent from the Applicant and the other recipients/buyers which is required to be refunded to the Applicant and the other recipients/buyers alongwith interest @18% from the date from when the above amount was collected by him from them till the date of payment as per the provisions of rule 133(3) (b) of the above Rules. The investigation was only up to 31-3-2019 therefore, any additional benefit of ITC which shall accrue subsequently shall also be passed on to the recipients/buyers by the Respondent.

It was observed that the Respondent had denied benefit of ITC to the buyers of the flats being constructed by him in his Project 'Mayur Residency Extension' in contravention of the provisions of section 171 (1) of the CGST Act, 2017 and he had apparently committed an offence under section 171 (3A) of the above Act and therefore, he was liable for imposition of penalty under the provisions of the above section. Accordingly, a notice be issued to him directing him to explain as to why the penalty prescribed under section 171 (3A) of the above Act read with rule 133 (3) (d) of the CGST Rules, 2017 should not be imposed on him.

Deepak Kumar Barnwal v. Manas Vihar Sahakari Awas Samiti Ltd. - [2020] 115 taxmann.com 49 (NAA)

About the author

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For any areas of improvement do let us know.

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