GSTAT

Single Bench Court No. Court IV

NAPA/142/PB/2025

DGAP, DG ANTI PROFITEERING, DIRECTOR GENERAL OF ANTI-PROFITEERING ....**Appellant**

Versus

SJR PRIME CORPORATION PVT. LTD. ....**Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Sh. A. Venu Prasad, Member (Technical)

ORDER

1. The present proceedings arise from a complaint made by Shri Sarana Basappa, Kaveri Enclave, Flat No. 107, 1st Floor, No. 910, Somasandra Palya, HSR Layout, 2nd Sector, Bengaluru- 560102 (hereinafter referred to as "the Complainant") under Rule 128 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules") alleging profiteering in respect of construction services supplied by M/s SJR Prime Corporation Pvt. Ltd., SJR Primus, 7th Floor, 1 Industrial Layout, Koramnangala 7th Block, Bangalore- 560095 (hereinafter referred to as "the Respondent"), in respect of purchase of a Flat No. 508 in the Respondent's sub- project "Goldcoast" of the project "Blue Water".

2. The Complainant alleged that the Respondent did not pass on the benefit of Input Tax Credit (hereinafter referred to as "ITC") to the complainant by way of commensurate reduction in the price on purchase of a Flat No. 508 in the Respondent's sub- project "Goldcoast" of the project "Blue Water". Furthermore,

from the submissions made by the Respondent during the course of the investigation, it was observed that the sub-project 'Goldcoast 'forms part of Phase II of the project 'Blue Water'.

3. The said complaint was examined by the Standing Committee on Anti- Profiteering was forwarded to the Directorate General of Anti- Profiteering (hereinafter referred to as "the DGAP") on 16.12.2021 for a detailed investigation in respect of the application filed under Rule 129(1) of the CGST Rules, 2017.

4. Accordingly, the investigation was conducted and the Report dated 16.12.2021 was prepared and submitted to the National Anti-Profiteering Authority ('NAA') under Rule 129(6) of the CGST Rules, 2017. Upon omission of the NAA, the proceedings stood transferred to the Competition Commission of India ('CCI').

5. While the Report dated 16.12.2021 was pending consideration before the erstwhile NAA (and thereafter the CCI), the Hon'ble High Court of Delhi, in ***Reckitt Benckiser India Pvt. Ltd. v. Union of India & Ors., W.P.(C) No. 7743/2019*** and connected matters, by judgment dated 29.01.2024, laid down the methodology to be adopted for determination of profiteering in real estate projects.

6. Subsequently, taking cognizance of observations of the Hon'ble High Court in Order dated 29.01.2024, the CCI vide letter dated 20.03.2024 directed the DGAP for re-investigation of the case under Rule 129 of the CGST Rules, 2017.

7. In the view of the above, a Notice of investigation dated 10.04.2024 was issued by the DGAP to the Respondent to furnish the requisite information/ data as to

whether they admit that the benefit of ITC had not been passed on to their customers by way of commensurate reduction in prices and if so, to *suo moto* determine the quantum thereof and indicate the same in their reply to the Notice as well as furnish all supporting documents.

8. Upon completion of the investigation, the DGAP submitted its Report dated 13.12.2024 to the Principal Bench, GSTAT, the relevant findings of which are summarised below:

    8.1. The present investigation was undertaken pursuant to the directions of the Hon'ble High Court of Delhi vide judgment dated 29.01.2024 and the subsequent order of the CCI dated 20.03.2024, whereby the matter was remanded to the DGAP for conducting a fresh investigation in accordance with the methodology laid down by the Hon'ble High Court for determination of profiteering in real estate projects.

    8.2. The DGAP conducted the investigation for the period 01.07.2017 to 31.03.2019, in view of the option exercised by the Respondent to discharge GST @ 5% without ITC in terms of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019. Accordingly, the profiteering in the present case has been computed only up to 31.03.2019.

    8.3. During the course of investigation, the DGAP observed that the Applicant had purchased Flat No. 508 in Phase-II of the project "Blue Water". On examination of the documents furnished by the Respondent, it was noticed that the project comprised three phases and the present investigation pertained only to Phase-II. It was further observed that although Phase-II consisted of 435 residential units, only 117 units had been sold up to 31.03.2019 and, accordingly, only such units were considered for computation of profiteering.

8.4. The DGAP observed that in the pre-GST regime, the Respondent was eligible to avail CENVAT credit of Service Tax paid on input services and ITC of VAT paid on inputs. However, credit of Central Excise Duty paid on inputs was not admissible and consequently formed part of the cost of construction. Upon implementation of GST, the Respondent became entitled to avail ITC of GST paid on both goods and input services used in the construction of the project. Therefore, the DGAP proceeded to determine the additional benefit of ITC that accrued to the Respondent after implementation of GST.

8.5. For the purpose of determining the additional benefit of ITC, the DGAP examined the ITC availed by the Respondent vis-à-vis the purchase value of goods and services during the pre-GST and post-GST periods. The comparative position is reproduced below:

	Particulars	**Pre-GST Period**	**Post-GST Period**
	Purchase Value of Goods and Services (excluding Taxes and Duties)	67,31,86,908	15,72,83,355
	Credit of Service Tax availed	2,33,00,332	
	Credit of VAT availed	4,99,66,155	
	Total Credit availed in Pre-GST Period	7,52,66,487	

	ITC of GST availed		2,80,87,970
	Ratio of ITC availed to Purchase Value (in %)	**10.88%**	**17.85%**

8.6. The above computation reveals that the ratio of ITC to the purchase value increased from 10.88% in the pre-GST period to 17.85% in the post-GST period, resulting in an additional benefit of 6.97% accruing to the Respondent after implementation of GST.

8.7. The DGAP further observed that construction services supplied by the Respondent attracted GST at the effective rate of 12% after allowing one-third abatement towards the value of land. Applying the additional ITC benefit of 6.97% to the post-GST turnover, the amount of benefit required to be passed on to the recipients by way of commensurate reduction in prices was computed as under:

	Particulars		**Post-GST**
	Period	A	July, 2017 to March, 2019
	Ratio of Credit availed to Purchase Value as per Table-A above (%)	B	10.88/17.85
	Increase in Input Tax Credit availed post-GST (%)	C	**6.97**
	Purchase Value of Goods and Services (excluding Taxes and Duties) during Post-GST Period	D	15,72,83,355
	Total savings on account of additional ITC benefit	E= D*C/100	1,09,62,630
	Total Saleable Area/ Carpet Area (in Sq. Ft.)	F	6,32,459
	Total Saving per Sq. Ft.	G= E/F	17.33

	Total Sold Area (in Sq. Ft.) up to March, 2019	H	1,60,710
	Profiteered Amount	I= G*H	**27,85,104**

8.8. On the basis of the above computations, the DGAP concluded that the Respondent had failed to pass on the benefit of additional ITC to the eligible homebuyers by way of commensurate reduction in prices, in contravention of the provisions of Section 171 of the CGST Act, 2017. Accordingly, the base profiteered amount was determined at Rs. 27,85,104/-, which, after adding GST @ 12%, worked out to Rs. 31,19,316/-. The aforesaid amount was held to be required to be passed on to the 117 eligible homebuyers of Phase-II of the project "Blue Water".

9. With effect from 01.10.2024, the Central Government, on the recommendations of the GST Council, empowered the Principal Bench of the GST Appellate Tribunal (GSTAT), constituted under sub-section (3) of Section 109 of the CGST Act, 2017, to adjudicate anti-profiteering cases in terms of Notification No. 18/2024–Central Tax dated 30.09.2024.

10. The above Report was received in the Principal Bench, GSTAT on 17.12.2024 for adjudication under Section 171 of the CGST Act, 2017. A Notice dated 28.10.2025 was issued to the Respondent directing it to file written submissions on the DGAP Report.

11. The Respondent vide submissions dated 01.12.2025 and 03.02.2026 contended as follows:

11.1. The Respondent submitted that it had opted for payment of GST @ 5% without ITC in terms of Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019 and, in compliance with the said Notification, had reversed the entire unutilised ITC amounting to Rs. 10,45,46,917/- through Form GST DRC-03 dated 06.09.2021, out of which Rs. 1,88,97,878/- pertained to Phase-II of the project “Blue Water”. It was contended that the DGAP had failed to consider the aforesaid reversal while computing the alleged profiteering, despite being aware of the same during the earlier investigation.

11.2. The Respondent contended that the methodology adopted by the DGAP was erroneous as it proceeded on the basis of gross ITC reflected in the GSTR-3B returns without reducing the ITC reversed pursuant to Notification No. 03/2019-Central Tax (Rate). According to the Respondent, only the net ITC actually retained and available for utilisation could be considered for determining any additional benefit under Section 171 of the CGST Act, 2017. It was further contended that the DGAP itself had acknowledged the reversal of ITC during the earlier investigation but failed to account for the same in the re-investigation.

11.3. It was further submitted that once the mandatory reversal of unutilised ITC was given effect, no additional benefit accrued to the Respondent. In support thereof, the Respondent furnished revised computations to contend that the post-GST ratio of ITC to purchase value reduced to 5.84%, as against 10.88% in the pre-GST period, thereby resulting in a negative differential and demonstrating that no additional ITC benefit had accrued. Alternatively, it was submitted that even if only the ITC actually utilised during the relevant period was considered, the post-GST credit ratio worked out to 8.60%, which was still lower than the pre-GST ratio.

11.4. The Respondent further submitted that Section 171 contemplates passing on only the actual benefit of ITC and not the mere availability or reflection of credit in statutory returns. It was argued that a benefit could arise only where the ITC was actually utilised towards payment of output tax, resulting in a tangible economic advantage or reduction in cost. Since the disputed credit had remained unutilised and was subsequently reversed through Form GST DRC-03, no monetary benefit had accrued to the Respondent and consequently no obligation to pass on any such benefit could arise. According to the Respondent, mere availment or reflection of ITC in the electronic credit ledger or GSTR-3B did not constitute a 'benefit 'unless such credit resulted in an actual reduction of cash outflow towards payment of output tax.

11.5. It was also contended that the DGAP had failed to appreciate the observations of the Hon'ble Delhi High Court regarding determination of profiteering in real estate cases and had adopted a biased and mechanically applied methodology without examining the actual facts of the project. The Respondent further submitted that the Applicant had failed to discharge the burden of proving profiteering by producing any evidence to establish that any additional ITC benefit had actually accrued and was retained by the Respondent.

11.6. The Respondent additionally submitted that the benefit of ITC available on input services after implementation of GST merely offset the corresponding increase in the applicable GST rate and did not result in any real economic or cash-flow advantage. It was argued that the additional credit did not reduce the cost of construction or increase the Respondent's profit margin and, therefore, could not be regarded as a "benefit" within the meaning of Section 171 of the CGST Act, 2017.

11.7. Without prejudice to the above contentions, the Respondent submitted that even assuming any profiteering was established, the GST component could not form part of the profiteered amount as the tax collected from the recipients had already been deposited with the Government. It was contended that any direction to pass on the GST component without a corresponding refund from the Government would result in double payment of tax and impose an artificial financial burden on the Respondent.

12. This Tribunal, after considering the rival submissions and the material available on record, vide Order dated 13.02.2026, observed as under:

Having considered the rival submissions and the material on record, this Tribunal observes that the Respondent has specifically asserted that an amount of Rs. 1,88,97,878/- out of the total reversed ITC pertains exclusively to Blue Water – Phase II , and has supported the same by a Chartered Accountant s certificate. In the interest of justice and to ensure accurate determination of the alleged profiteering, it is necessary that the claim of project-specific ITC reversal be duly examined and verified. Accordingly, the matter is remanded to the DGAP for the limited purpose of:

(a) verifying whether the reversal of ITC amounting to Rs. 1,88,97,878/- pertains to Blue Water – Phase II ;

(b) recomputing the profiteering amount, if any, after duly considering such reversal; and

(c) submitting a revised report, if any, within six weeks of time."

13. The DGAP, vide supplementary report dated 07.07.2026 and clarifications 21.07.2026, submitted the following:

13.1. Pursuant to the directions of this Tribunal contained in the Order dated 13.02.2026, the Respondent's claim regarding project-specific reversal of ITC was re-examined.

13.2. Although the Respondent had executed multiple projects under the same GSTIN and the project-wise bifurcation of ITC reversal could not be ascertained from the statutory records alone, the Respondent furnished a Chartered Accountant's Certificate dated 04.02.2026 certifying that, out of the total ITC of Rs. 10,45,46,917/- reversed through Form GST DRC-03 dated 06.09.2021, an amount of Rs. 1,88,97,878/- pertained exclusively to the "Blue Water Project – Phase II."

13.3. The DGAP accepted the aforesaid Chartered Accountant's Certificate for the purpose of project-wise verification and, after considering the project-specific ITC reversal, revised the computation of the ITC benefit as under:

S. No.	Particulars	Pre-GST Period	Post-GST Period
	Purchase Value of Goods and Services (Excluding Taxes and Duties)	67,31,86,908	15,72,83,355
	Credit of Central Excise Duty and Service Tax availed	2,33,00,332	
	Credit of VAT availed	4,99,66,155	
	Total Credit availed in Pre-GST Period	7,32,66,487	
	ITC of GST availed		2,80,87,970
	Reversal of ITC of GST		1,88,97,878
	Net ITC of GST utilised		91,90,092
	Ratio of Credit Availed to Purchase Value (in %)	**11.87%**	**5.84%**
	Difference		**(-) 6.03%**

13.4. Based on the above revised computation, the DGAP concluded that the ratio of ITC to purchase value during the post-GST period was lower than that during the pre-GST period and, therefore, no additional ITC benefit had accrued to the Respondent on account of implementation of GST. Accordingly, it was concluded that the provisions of Section 171 of the CGST Act, 2017 had not been contravened.

13.5. The DGAP further, vide clarifications dated 21.07.2026, submitted that the Respondent had, in compliance with the Tribunal's remand directions, furnished the Chartered Accountant's Certificate dated 04.02.2026, in support of its claim regarding project-specific reversal of ITC amounting to Rs. 1,88,97,878/-.

13.6. Upon verification of the aforesaid records, the DGAP observed that there was no material on record to contradict the Respondent's claim. Accordingly, the Chartered Accountant's Certificate and the accompanying working papers were accepted, and it was confirmed that the ITC reversal of Rs. 1,88,97,878/- pertained to the "Blue Water Project – Phase II."

13.7. The DGAP further observed that, during the original investigation, the Respondent had disclosed the reversal of ITC through Form GST DRC-03 dated 06.09.2021, and had specifically claimed that Rs. 1,88,97,878/- related to the "Blue Water Project – Phase II." However, at that stage, no supporting documents correlating the reversal with the said project had been furnished. During the remand proceedings, the Respondent furnished the Chartered Accountant's Certificate dated 04.02.2026, which substantiated the earlier claim.

13.8. The DGAP also clarified that the subsequent reversal of ITC made pursuant to Notification No. 03/2019-Central Tax (Rate) had no bearing on the period under investigation, which was confined to 01.07.2017 to 31.03.2019. Nevertheless, after taking into account the verified project-specific reversal, the revised computation established that no additional ITC benefit had accrued to the Respondent during the investigation period. Consequently, the DGAP reiterated that the Respondent had not contravened Section 171 of the CGST Act, 2017.

14. Hearings in the matter were held on 20.12.2024, 28.10.2025, 28.01.2026, 13.02.2026, 11.06.2026, 10.07.2026 and 22.07.2026. Shri B.S. Mylar, Chartered Accountant, appeared on behalf of the Respondent. Shri Ajay Kumar Tehlan, appeared on behalf of the Directorate General of Anti-Profiteering. None appeared on behalf of the Original Complainant/Applicant.

OBSERVATION

15. We have carefully considered the Final Investigation Report dated 13.12.2024 submitted by the DGAP, the clarifications dated 07.07.2026 and 21.07.2026, the written submissions and additional submissions filed by the Respondent, the material available on record and the earlier Order of this Tribunal dated 13.02.2026. The issue which arises for determination is whether any additional benefit of ITC

accrued to the Respondent upon implementation of GST and, if so, whether such benefit was required to be passed on to the recipients by way of commensurate reduction in prices in terms of Section 171 of the CGST Act, 2017.

16. The DGAP had initially submitted its Investigation Report dated 16.10.2021. The said Report remained pending for consideration before the erstwhile National Anti-Profiteering Authority (NAA) and thereafter before the Competition Commission of India (CCI). In the meanwhile, the Hon'ble High Court of Delhi, vide its judgment dated 29.01.2024 in ***Reckitt Benckiser India Pvt. Ltd. (supra)***, laid down the methodology to be adopted for determination of profiteering in real estate cases. Taking note of the said judgment, the CCI, remanded the matter to the DGAP for fresh investigation in accordance with the methodology laid down by the Hon'ble High Court. Pursuant thereto, the DGAP submitted its Report dated 13.12.2024, wherein the profiteered amount was determined at Rs. 27,85,104/-, which, after adding GST @ 12%, amounted to Rs. 31,19,316/-. Subsequently, pursuant to the directions contained in the Order dated 13.02.2026 passed by this Tribunal, the DGAP furnished clarifications dated 07.07.2026 and 21.07.2026 and concluded that no profiteering amount was payable by the Respondent.

17. It is observed that, pursuant to the directions contained in the Order dated 13.02.2026, the DGAP was required, inter alia, to verify whether the reversal of ITC amounting to Rs. 1,88,97,878/- pertained to the project "Blue Water – Phase II" and thereafter to recompute the profiteering amount, if any. The DGAP, in its supplementary report dated 07.07.2026, relied upon the Chartered Accountant's

Certificate dated 04.02.2026 furnished by the Respondent and, after taking the said reversal into account, recalculated the ITC-to-purchase-value ratio at 11.87% for the pre-GST period and 5.84% for the post-GST period, resulting in a negative differential of (-) 6.03%.

18. We further observe that, although the Respondent has claimed that the ITC amounting to Rs. 1,88,97,878/- was reversed in respect of the project "Blue Water – Phase II" and has furnished a Chartered Accountant's Certificate dated 04.02.2026 in support thereof, the material available on record does not clearly disclose the specific reason for such reversal. The basis and circumstances leading to the reversal, as well as the primary documentary evidence on the basis of which the said amount has been attributed specifically to "Blue Water – Phase II", have not been sufficiently brought on record. The Chartered Accountant's Certificate, though a relevant piece of evidence, cannot by itself be treated as conclusive evidence of the underlying factual claim without examination of the material forming the basis thereof.

19. In this regard, reliance may appropriately be placed upon the judgment of the Hon'ble High Court of Delhi in ***Delhi Transco Ltd. v. KEC International Ltd., C.M. Appl. No. 39824/2023***, decided on 21.05.2025, wherein the Hon'ble Court examined reliance upon Chartered Accountant's Certificates and emphasised the necessity of examining the underlying documents forming the basis of such certificates. The Hon'ble Court observed:

18. We are of the considered opinion that the Award, as well as the impugned judgment, to the extent that it assumes that the alleged CA Certificates are the gospel truth without even examining the underlying documents upon which the claim is allegedly based, is completely unsustainable. The said CA certificates would effectively translate into being "no evidence" at all.

20. The aforesaid principle assumes significance in the present case as the project-specific reversal of Rs. 1,88,97,878/- has a direct and substantial bearing upon the determination of the post-GST ITC ratio and has resulted in the DGAP arriving at a negative differential of 6.03%. The DGAP, therefore, is required not merely to take the certificate at face value, but to examine the underlying books of account, ledgers, working papers, DRC-03 and other relevant contemporaneous records to ascertain the precise reason and nature of the reversal, the period to which such reversal relates and the basis on which the amount of Rs. 1,88,97,878/- has been exclusively attributed to "Blue Water – Phase II". The Hon'ble High Court has specifically underscored the importance of examining the documents forming the foundation of a Chartered Accountant's Certificate.

21. We further observe that, since the methodology adopted for determination of profiteering involves comparison of the ratio of ITC to the purchase value of goods and services during the pre-GST and post-GST periods, it is necessary to examine whether the reversal of ITC in question has any corresponding impact upon the purchase value/cost base considered for the purpose of such computation. The

DGAP shall, therefore, specifically examine whether, and to what extent, the transaction(s) or circumstances giving rise to the aforesaid reversal have any consequential effect upon the purchase value forming the denominator of the ITC-to-purchase-value ratio. The revised computation shall be made only after taking into account all such consequential adjustments, if warranted by the underlying records.

22. We are, therefore, of the considered view that the supplementary report furnished by the DGAP dated 07.07.2026, read with the clarification dated 21.07.2026, cannot be accepted in its present form for finally determining the issue of profiteering. The matter requires further verification and fresh computation by the DGAP so as to ensure that the determination of any additional ITC benefit is based upon the underlying documentary evidence and a correct computation of both the numerator and denominator relevant to the methodology adopted.

23. Accordingly, the matter is remanded to the DGAP for the limited purpose of:

    (a) examining and verifying the genesis, basis and circumstances leading to the reversal of ITC amounting to Rs. 1,88,97,878/-;

    (b) examining the underlying books of account, ledgers, working papers, Form GST DRC-03 and other relevant documents, including the relevant vouchers, wherever required, and ascertain whether the aforesaid reversal relates exclusively to "Blue Water – Phase II";

(c) examining whether the aforesaid ITC reversal pertains only to the post-GST period or also, wholly or partly, to the pre-GST period, and determining the period to which such reversal is attributable;

(d) examining whether the aforesaid reversal has any corresponding effect on the purchase value considered for determining the ITC-to-purchase-value ratio and, thereafter, re-computing the pre-GST and post-GST ITC-to-purchase-value ratios after giving effect to any consequential adjustment; and

(e) determining the amount of profiteering, if any, in accordance with law and submitting a revised report to this Tribunal.

24. The DGAP shall complete the aforesaid exercise and submit its revised Report/clarifications on or before 22.10.2026, with an advance copy thereof to the Respondent.

25. The matter shall be listed before this Tribunal on 05.11.2026.

26. The Registry is directed to communicate a copy of this Order to the DGAP, the Respondent and the jurisdictional CGST/SGST Commissioner concerned for information and necessary action in accordance with law.

27. Order pronounced in the open Court.

(Sh. A. Venu Prasad)

Dated: 25.08.2026