GSTAT

Principal Bench at Delhi

Division Bench Court No. Court II

NAPA/40/PB/2025

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

Versus

KALPTARU POWER TRANSMISSION LTD. **.....Respondent**

Quorum

Hon'ble Justice Sh. Mayank Kumar Jain, Member (Judicial)
Hon'ble Sh. A. Venu Prasad, Member (Technical)

Counsel for Appellant **Counsel for Respondent**

ORDER

1. We have heard Sri G.R. Bhatia and Ms Vatsala Pandey, learned counsel for the applicant, and S/S Manish Gaur, Shivam Batra, and Dhruv Tiwari, learned counsel for the Respondent and perused the record.

2. Facts giving rise to the present proceedings are that the Gas Authority of India Limited (GAIL) (hereinafter referred to as "the **Applicant**") submitted a complaint against the Kalptaru Projects International Limited (KPTL) (hereinafter referred to as **"the Respondent"**) before the Standing Committee alleging that the Respondent had engaged in profiteering arising out of a pipe-line contract executed for the Applicant.

3. The said complaint was examined by the Standing Committee and was forwarded to the Director General for Anti-Profiteering

(hereinafter referred to as **"the DGAP"**) to conduct detailed investigation.

4. The DGAP issued notice to the Applicant and the Respondent. Based on the factual matrix and the documents submitted by the Respondent it conducted the investigation and submitted its report dated 26.08.2021 computing the profiteered amount of Rs. 7,64,46,889 against the Respondent. It concluded that the respondent had engaged in profiteering and thus has contravened Section 171 of the Central Goods and Services Tax Act, 2017(for short **"the CGST Act, 2017**)

5. Notice was issued to the Applicant and the Respondent to file their objections against the DGAP report dated 26.08.2021. The respondent and the Applicant submitted their detailed objections.

6. During hearing, the Applicant filed an interim application dated 27.08.2026 seeking time production and disclosure of the following documents by the respondent: -

   (i) GSTR-3B

   (ii) GSTR-9

   (iii) GSTR-9C

   (iv) Return of Kerala GSTIN for the period from July, 2017 to November, 2020.

   (v) Annexures 6 to 14 to the Respondent's replies before the DGAP containing annual report of VAT returns ST-3 Return and the electronic credit ledger (Kerala).

7. Learned counsel for the Applicant impressing upon their aforesaid application submitted that report of the DGAP dated 26.08.2021 is

extensively based upon the documents submitted by the Respondent during the investigation. In the present proceedings, the Respondent has filed their objections relying upon the aforesaid documents and treating them to be confidential in nature. The Respondent has challenged the entire computation of the DGAP to be incorrect. The applicant is unable to adequately respond Respondent's factual challenge without examining confidential annexures.

8. It is vehemently argued by the learned counsel for the Applicant that if the Respondent's re-classification from "inputs" to "capital goods" was genuine, it would have been reflected in the returns. Without returns, neither the applicant nor this tribunal can assess whether the Respondent had any basis for belated re-classification. Further, the Respondent has claimed that the material cost was approximately 37% of the project cost. The Applicant disputes this figure and claims that it was only 19%. The Applicant cannot address this dispute without being provided the copies of annexures 6 to 14 to the Respondent's reply before the DGAP including annual reports, VAT returns, ST-3 returns and the electronic credit ledger (Kerala).

9. It is also contended that the DGAP has computed profiteered amount solely on the basis of the figures and documents supplied by the Respondent. Without examining these documents, the applicant has no independent basis to verify whether the figures and data supplied by the Respondent were correct and accurate. The Respondent has claimed that the additional Input tax Credit

(**ITC**) is accumulated and unutilised, therefore it should be excluded from the computation of the profiteering amount. This stand requires verification from the Respondent's own electronic credit ledger and returns. Without providing these documents, the Applicant would be denied with the opportunity to demonstrate that the credit was utilised against other liabilities of the same GSTIN.

10. Learned counsel further submitted that the pipeline project and the underlying transactions date back to 2017-2020 and documents sought by the Applicant are not new, they are Respondent's own statutory filings for a definite period. Since the documents relate to the period from July, 2017 to November, 2020 and they were provided to the DGAP in the year 2021, more than five years have been elapsed, therefore, commercial sensitivity does not exist. The contract between the Applicant and the Respondent has already been completed. Therefore, no ongoing relationship is left to be protected. The VAT and ST-3 returns belong to pre-GST regime. The provision of Rule 130 of the Central Goods and Services Tax Rules, 2017(for short **"the CGST Rules, 2017"**) has no application. It may be old regulatory records and not a business secret.

11. The learned counsel for the Applicant further contended that the Competition Commission of India, (for short **"The CCI"**) the erstwhile authority, dealing with the matters of Anti-profiteering, treated confidentiality in proceedings by following the guidelines under Regulation 35 of Competition Commission of India

(General) Regulations, 2009 (For short **"The CCIGR, 2009"**). Confidentiality is granted only during the investigation and only where disclosure would reveal a trade secret or cause real commercial harm. It is not treated as permanent status. According to Regulations 35(2) and 32(5) confidentiality is granted for a fixed period. Regulation 35(6) allows the CCI to set up a confidentiality ring so that the opposite party's counsel can examine.

12. It is further contended that the report has been issued, the investigation is over and the matter is before this Tribunal for adjudication. This Tribunal is empowered to exercise its inherent powers as contained in Rule 10 of the GSTAT Procedure Rules, 2025, to direct any party to produce the documents in its possession that are necessary to secure the ends of justice. Production of these documents would be confined only for use in the present case. The Applicant will not use them for anything beyond assisting the Tribunal. The Applicant is ready to furnish any undertaking, as may be directed by the Tribunal.

13. The Application is supported by an affidavit.

14. The learned counsel for the Respondent while relying upon the objections filed by them has submitted that the application of the Applicant is misconceived and devoid of merits.

15. Learned counsel for the respondent vehemently argued that Rule 129(5) of the CGST Rules, 2017, provides that the DGAP shall make available the evidence presented to it by one interested party to another interested party participating in the proceedings. Therefore, statutory obligation concerning disclosure of evidence

is vested in the DGAP. This obligation is expressly made subject to Rule 130(1) of the said rules. The powers under Rule 130(1) of the CGST Rules, 2017, by way of a non obstante clause expressly overrides Rule 129(5) insofar as furnishing of confidential information is concerned. Rule 130(1) of the CGST Rules, 2017specifically provides that the provision of section 11 of the Right to information Act, 2005 (for short **"the RTI Act, 2005"**) shall apply *mutatis mutandis* to the disclosure of any information furnished on a confidential basis. The Confidential information is placed on a distinct footing and cannot be disclosed as a matter of course merely another interested party seeks to it on the demand.

16. It is further submitted that where the documents were submitted before the DGAP under a claim of confidentiality, the party seeking documents should approach the DGAP. When such a request is received by the DGAP, it should follow the procedure as contemplated under Rule 130 of CGST, Rules, 2017. Such procedure is based on the principles of natural justice to ensure that the confidentiality claim of affected party is duly considered before any disclosure is directed. The Applicant has completely by-passed the statutory mechanism and has directly approached this Tribunal for disclosure of confidential documents furnished before the DGAP by the Respondent under a claim of confidentiality.

17. It is also submitted that when a particular procedure is prescribed to perform a particular act then all other procedures/modes are excluded.

18. The Anti-profiteering matters are governed by the special procedure framed under Rule 126 of the CGST Rules, 2017. The Principal Bench, GSTAT has adopted GSTAT (Anti-profiteering) Methodology and Procedure Rules, 2025, therefore applicant's reliance on Rule 10 of GSTAT Procedural Rules is misplaced.

19. The learned counsel for the respondent argued that insofar as the disclosure of the GST returns is concerned, it contains consolidated information relating to all the projects and are not confined to pipeline projects. The Applicant has no *locus standi* to access the Respondent's GST returns as they contain information relating to other projects and transactions.

20. The Applicant has assumed that the Respondent has allegedly re-classified ITC from "inputs" to "capital goods". Such an assumption is factually incorrect. The Respondent never contended that it re-classified or amended its GSTR-3B, GSTR-9 or GSTR-9C return.

21. The request of the Applicant for disclosure of Annexures 6 to 14 is mis-conceived. The DGAP has concluded in its report that entire input procurement required for the subjects was paid in GST regime. All the output supplies also made in GST regime.

22. The Respondent was operating under Centralised Registration obtained at its Gujarat premises. Therefore, ST-3 return filed by the Respondent contains consolidated information about its operation across various projects, location of business vertical and are not confined only to the present project. The contract entered between the Applicant and the Respondent was a lump-sum EPC contract.

The Respondent has already passed on the commensurate benefit by granting a discount of 1.272% which was duly accepted by the Applicant and incorporated into the contractual agreement. The issue of un-utilised ITC is not raised by the Respondent in the present proceeding, therefore, there is no occasion for the Applicant to examine this for adjudication.

23. The Learned counsel for the Respondent further argued that the Applicant has no locus to seek access to the Respondent's GST returns when the same contains information relating to other projects and transactions wholly unrelated to the present proceedings. The matter in issue is concerned with the correctness of the computation adopted in the impugned report and not any amendment to the Respondent's statutory GST returns. The Respondent is not seeking to alter the quantum of ITC availed under GST law, but rather is demonstrating that the stock transfers were incorrectly considered as benefit/real savings for anti-profiteering purposes.

24. It is contended that there is no specific column in either the GSTR-3B returns or GSTR-9 returns for stock transfer. Consequently, even on the Applicant's own reasoning, disclosure of the GST returns would not establish or disprove the Respondent's case. The Applicant has therefore failed to demonstrate either the relevance or the necessity of the documents sought.

25. It is vehemently argued on behalf of the Respondent that the aforesaid documents are required to be examined whether the actual material cost in the project was 37% or 19% is not

sustainable as the Respondent is disputing the actual material consumption in the project. The Respondent's case is that, upon exclusion of stock transfers, the actual project input cost works out to 19% and not 37% as assumed in the impugned report. Thus, the dispute concerns the treatment of stock transfers in the GST regime and not any issue arising from pre-GST procurements or pre-GST statutory records.

26. The Respondent argued that the Applicant's reliance on Regulation 35 of the Competition Commission of India (General) Regulations, 2009 is wholly misplaced. The present proceedings are governed by the CGST Act, 2017 and the CGST Rules, 2017, the procedure specifically prescribed thereunder. The present proceedings are being adjudicated by the Hon'ble Tribunal. Further, the Applicant has not pointed to any provision under the CGST framework which incorporates the confidentiality regime under the CCI Regulations or provides for automatic expiry of confidentiality upon completion of investigation.

27. The Respondent specifically argued that the confidentiality protection continues to operate as long as the matter is listed and pending before this Hon'ble Tribunal. Till the matter is pending, the demand remains alive and the proceedings cannot be said to have attained finality.

28. The issue regarding the applicability of Section 171 of the CGST Act, 2017 is required to be adjudicated first before any exercise relating to verification of figures is undertaken.

29. To buttress his arguments the learned Counsel for the Respondent relied upon the following decisions: -

(i) Shri Tyres v. State Tax Officer, Chennai, 2021 (10) TMI 36 (Mad.)

(ii) Balaji Traders v. State Tax Officer, Manapparai, 2021 (10) TMI 837 (Mad.)

(iii) Reckitt Benckiser India (P.) Ltd. v. Union of India, (2024) 14 Centax 374 (Del.)

(iv) DGAP v. Laureate Buildwell Pvt. Ltd, NAPA/134/PB/2025 (GSTAT)

(v) DGAP v. Bengal Emami Housing Ltd., NAPA/141/PB/2025 (GSTAT)

(vi) DGAP v. Vertex Homes Pvt. Ltd., NAPA/87/PB/2025 (GSTAT)

(vii) DGAP v. Sobha Limited, NAPA (GSTAT)

(viii) DGAP v. Pyramid Infratech Pvt. Ltd., NAPA (GSTAT)

(ix) DGAP v. Shrivision Towers Pvt. Ltd., NAPA (GSTAT)

(x) DGAP v. Nahar Homes LLP, NAPA (GSTAT)

Observation & Findings

30. The learned Counsel for the Applicant appearing on behalf of the GAIL vehemently argued that the Applicant cannot adequately address the factual challenge without examining confidential annexures submitted by the Respondent (KPTL) before the DGAP. These confidential annexures are referred as GSTR-3B, GSTR-9, GSTR-9C, Return of Kerala GSTIN from July, 2017 to November, 2020 and Annexures 6 to 14 to the Respondent's replies before the DGAP containing annual report of VAT returns ST-3 Return and the electronic credit ledger (Kerala). It is also submitted that the Applicant is unable to submit a befitting reply against the genuineness of the Respondent re-classification from "inputs" to "capital goods".

31. The learned Counsel for the Applicant further submitted that the entire calculation of the profiteering amount made by the DGAP is bases solely on the figures and the documents supplied by the Respondent to the DGAP. The Respondent has no independent basis to verify the correctness and the accuracy of the figures and data supplied by the Respondent to the DGAP. Furthermore, the claim of the Respondent that additional ITC is accumulated and utilised therefore, it should be excluded from the computation of the profiteering amount requires verification from the Respondent's Electronic Credit Ledger and returns.

32. Per Contra, the learned Counsel for the Respondent strongly opposed the Applicant's request for the disclosure of certain confidential document. It is further submitted that the documents desired by the Applicant are confidential in nature. Even though, the Rule 129(5) of the CGST Rules, 2017 empowers the DGAP to make available the evidence presented before it by one interested party to another interested party in the proceedings, this obligation is subject to the provisions contained in Rule 130(1) of the said rules. The powers under Rule 130(1) of the said rules override Rule 129(5) of the Rules.

33. It is vehemently argued that the provision of Section 11 of the RTI Act, 2005 shall apply *mutatis mutandis* to the disclosure of any information furnished on a confidential basis. The Respondent submitted these documents before the DGAP under a claim of confidentiality.

34. It is also contended that the Applicant should approach the DGAP. The request of the Applicant would be decided after following the procedure as contemplated under Rule 130 of the CGST Rules, 2017.

35. It would be apposite to reproduce the relevant rules dealing with the matter in issue.

36. Rule 129(5) of the CGST Rules, 2017 provides: -

> "*The Director General of Anti-profiteering [previously Director General of Safeguards] shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings".*

37. Rule 130 of the CGST Rules, 2017 reads thus:-

> *(1) Notwithstanding anything contained in sub-rules (3) and (5) of rule **129** and sub-rule (2) of rule **133**, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply **mutatis mutandis** to the disclosure of any information which is provided on a confidential basis.*
>
> *(2) The Director General of Anti-profiteering may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of Anti-profiteering] a*

statement of reasons as to why summarisation is not possible.

38. From the perusal of the aforesaid Rules, it is come to our mind that whereas the Rule 129(5) of the CGST Rules, 2017 empowers the DGAP to make available the evidences presented to it by one interested party to other interested parties of the proceeding whereas Rule 130 of the CGST Rules, 2017 by way of a non-obstinate clause expressly overrides Rule 129(5) insofar it relates to furnishing of confidential document is concerned.

39. Section 11 of the RTI Act, 2005 is made applicable *mutatis mutandis* to the disclosure of any information which is provided on a confidential basis.

40. To examine the aforesaid issue, the provision of Section 11 of the RTI Act, 2005 are reproduced: -

> *(1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the*

information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of

his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

41. The provision contained in the CGST Rules, 2017 enumerates that the provision of Section 11 of the RTI Act, 2005 shall apply *mutatis mutandis* for disclosure of any information which is provided on a confidential basis. Section 11 of the RTI Act, 2005 provides that whenever a request is made to the Central Public Information Officer (CPIO) or State Information Officer (SIO) to disclose any information which has been supplied by third party treating it as confidential, the CPIO or the SIO as the case may be, shall afford an opportunity of hearing by issuing a notice to the third party and invite such party to make submissions as to whether the information should be disclosed. The Authority, before the confidential documents are submitted, cannot provide these documents to another party without hearing the party who has filed those documents.

42. In the present matter, the learned Counsel for the Respondent has vehemently argued that the desired documents are confidential in nature and contained information relating to the Respondent's other projects. The Respondent is bound to maintain secrecy of these documents.

43. We are in agreement with the arguments made by the learned Counsel for the Respondent that the disclosure of confidential

documents can only be considered within the safeguard and the procedure contemplated under Rule 130(1) of the CGST Rules read with the RTI Act as the Respondent submitted those documents under a claim of confidentiality. Further, the Applicant has by-passed the statutory mechanism to obtain this document. The Applicant was required to approach the DGAP for the same.

44. Insofar as the arguments of Learned Counsel for the Applicant that the Respondent has challenged the entire computation of profiteering amount ascertained by the DGAP to be incorrect is concerned, this argument is subject to our adjudication. Whether Respondent's reclassification from "Inputs" as "Capital Goods" are genuine, whether the material cost in the project was 37% or 19%, as claimed by Applicant and the Respondent respectively, exclusion of accumulated and unutilised additional ITC from the profiteering amount, as claimed by the Respondent is subject to our consideration and adjudication.

45. The correctness or accuracy of the data provided by the Respondent to the DGAP is part of investigation conducted by the DGAP. Suffice to say that the observation and computation of profiteering amount against the Respondent shall be examined by us keeping in view of the fact and circumstances of the matter in accordance with the provisions of law. We shall examine each and every fact relating to the correctness of the computation of profiteering amount determined by the DGAP. If the Applicant claims that the credit was utilised against other liabilities of the same GSTN, this issue can be raised by the Applicant through their

pleadings and oral submissions before us. The Respondent has liberty to challenge the DGAP report through their written and oral submissions.

46. It is one of the arguments of the Learned Counsel for the Applicant that dealing with the matters of Anti-profiteering, treated confidentiality in proceedings by following the guidelines under Regulation 35 of The CCIGR, 2009 confidentiality is granted only during the investigation and only where disclosure would reveal a trade secret or cause real commercial harm. It is not treated as permanent status. According to regulation 35(2) and 32(5) confidentiality is granted for a fixed period. Regulation 35(6) allows the CCI to set up a confidentiality ring so that the opposite party's counsel can examine the confidential information.

47. We have considered the aforesaid argument of the Learned Counsel for the Applicant. We are of the view that notwithstanding the specific provision contained in Rules 129(5) and 130(1) of the CGST Rules 2017, the provisions of the rules under the CCIGR, 2009 shall not apply.

48. The learned Counsel for the Applicant has submitted that under Rule 10 of the GSTAT Procedural Rules, 2025, this Tribunal has inherent powers to make such orders or directions as may be necessary to meet the ends of justice.

49. Rule 10 of the GSTAT Procedural Rules, 2025 reads thus: -

"10. Inherent Powers

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate

Tribunal to make such order give or such directions as may be necessary for meeting the end of justice or to prevent abuse of the process of the Appellate Tribunal"

50. The Hon'ble Apex Court in Saranpal Kaur Anand Vs Praduman Singh Chandhok & Ors., (2022) 8 SCC 401 observed that: -

"26) It is also a trite law that the inherent jurisdiction under Section 151 CPC cannot be exercised to nullify the provisions of the CPC. The inherent powers of the court are in addition to the powers specifically conferred on the court by the Code, and cannot be exercised in a manner which will be contrary or different from the procedure expressly provided in the Code. The scope of Section 151 was considered by this Court as back as in 1964 in case of Arjun Singh Vs. Mohindra Kumar & Ors18, in which it was aptly held as under:-

"It is common ground that the inherent power of the Court cannot override the express provisions of the law. In other words, if there are specific provisions of the Code dealing with a Particular topic and they expressly or by necessary implication exhaust the scope of the powers of the Court or the jurisdiction that may be exercised in relation to a matter the inherent power of the Court cannot be invoked in order to cut across the powers conferred by the Code."

51. In view of the observations made by the Hon'ble Apex Court we are of the view that in existence of non-obstante clause in Rule 130 of the CGST Act, 2017 the inherent power as contemplated

under Rule 10 of the GSTAT Procedural Rules, 2025 cannot be invoked.

52. In view of the foregoing discussions, we are of the considered view that the application of the Applicant dated 27.08.2026 for production and disclosure of the documents by the Respondent is devoid of merits and liable to be dismissed.

53. Accordingly, the application of the Applicant (GAIL) dated 27.08.2026 is dismissed.

54. The Applicant is directed to submit their written submission against the DGAP report within three weeks from today with an advance copy to the DGAP and the Respondent.

55. Further, the DGAP and the Respondent shall file their clarification/rejoinder within two weeks thereafter.

56. List the matter on 26.11.2026 for hearing.

(Justice Mayank Kumar Jain)

(Sh. A. Venu Prasad)

Dated: 14.10.2026