GSTAT

Single Bench Court No. Court III

NAPA/138/PB/2025

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

Versus

SIDDHA INFRADEV LLP **.....Respondent**

Counsel for Appellant **Counsel for Respondent**

Hon'ble Sh. Anil Kumar Gupta, Member (Technical)

Form GST APL-04A

[See rules 113(1) & 115]

Summary of the order and demand after issue of order by the GST Appellate Tribunal

whether remand order : No

Order reference no. : ZA070010526000091H **Date of order :** 20/05/2026

1.	GSTIN/Temporary ID/UIN - 19ACIFS4407P1ZH	
2.	Appeal Case Reference no. - NAPA/138/PB/2025	Date - 20/12/2024

3.	Name of the appellant - DGAP , dgap.cbic@gov.in , 011-23741544	
4.	Name of the respondant - 1. Siddha Infradev LLP , sandeep.agarwal@siddhagroup.com	
5.	Order appealed against -	
	(5.1) Order Type -	
	(5.2) Ref Number -	Date -
6.	Personal Hearing - 20/05/2026 14/05/2026 17/04/2026 24/03/2026 25/02/2026 29/01/2026 06/01/2026 29/10/2025	
7.	Status of Order under Appeal - Confirmed – Order under Appeal is confirmed	
8.	Order in brief - DGAP's Report dated 18.12.2024 is accepted. Respondent is liable to pay base profiteered amount of Rs. 57,08,244 and GST @12% total amounting to Rs. 63,93,233/- along with interest @ 18% in terms of Rule 133(3)(b) of CGST Rule, 2017. Respondent is liable to pay as per Section 171 (3A) of the CGST Act, 2017.	
	Summary of Order	
9.	Type of order : Closure Report	

Place :DELHIPB

Signature

Date : 20.05.2026

DELHIPB Sudesh Kumar

Designation : Stenographer/Law researcher

Jurisdiction :Delhi (PB)

ORDER

Brief facts of the case:

1. The present proceedings arise from a complaint filed by Shri Hemant Kejriwal and Shri Vishnu Kumar Kejriwal (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, 2017'**). The complaint alleged profiteering by M/s. Siddha Infradev LLP (hereinafter referred to as **'the Respondent'**) in respect of the purchase of a residential unit, Flat No. 904, Block-3, in the Respondent's project "**Siddha Sky**" situated in Kolkata.
2. The Complainant alleged that the Respondent had not passed on the benefit of Input Tax Credit (ITC) to him by way of commensurate reduction in prices, despite charging GST at the effective rate of 12% on the payments due, thereby contravening the provisions of Section 171 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as **'the CGST Act, 2017'**).
3. The complaint was examined by the Standing Committee on Anti-Profiteering, which, on 28.06.2019, referred the matter to the Director General of Anti-Profiteering (hereinafter referred to as **'the DGAP'**) for a detailed investigation under Rule 129(1) of the CGST Rules, 2017.

4. Pursuant to the reference, the DGAP conducted an investigation and submitted a report dated 19.03.2020 to the erstwhile National Anti-Profiteering Authority (NAA). The DGAP, in its report, concluded that the Respondent had benefited from an additional ITC of 2.45% of its turnover post-GST and had profiteered an amount of Rs. 1,88,44,127/-, which included GST @12% on the base profiteered amount.
5. The NAA, after considering the Respondent's submissions, vide its Internal Order No. 31/2020 dated 27.11.2020, referred the matter back to the DGAP under Rule 133(4) of the CGST Rules, 2017 for further investigation. The NAA directed the DGAP to verify the Respondent's claim that flats sold after the introduction of GST had been freshly negotiated after considering the ITC benefit.
6. In compliance, the DGAP submitted a further report dated 28.01.2021, recomputing the profiteered amount as Rs. 93,14,995/- for the period up to 31.10.2020, and accepting the Respondent's argument that units sold post-GST were outside the scope of investigation as the prices had been re-negotiated factoring in the ITC benefit.
7. Subsequently, the tenure of the NAA ended. The Competition Commission of India (CCI) was empowered to examine anti-profiteering matters with effect from 01.12.2022.
8. The Hon'ble Delhi High Court, in its judgment in Reckitt Benckiser India Private Limited v. Union of India [2024 SCC OnLine Del 588], held that the methodology previously adopted by the DGAP and NAA for the Real Estate sector based on ITC to turnover ratio was flawed vide para 129 of the aforesaid judgment. The Court directed that total savings on account of GST for each project be calculated and then divided by the total area to arrive at the per square feet benefit.

9. In light of the above judgment, the CCI remanded the matter to the DGAP for re-investigation under Rule 133(4) of the CGST Rules, 2017, to re-determine the profiteering amount in accordance with the methodology laid down by the Hon'ble High Court.

10. Pursuant to the remand, a fresh Show Cause Notice was issued by the DGAP to the Respondent under Rule 129 of the CGST Rules, 2017. After considering the submissions and supporting documents, the DGAP submitted its final investigation report dated 18.12.2024. The period of investigation in the final DGAP report dated 18.12.2024 is from 01.07.2017 to 31.03.2024. The DGAP, following the mandate of the Reckitt Benckiser judgment, changed its methodology from comparing ITC to turnover to comparing the ratio of credit availed to the purchase value of goods and services. The DGAP's findings are summarized as follows:

S. No.	**Particulars**	**Pre-GST Period**	**Post-GST Period**
1.	Purchase Value of Goods and Services (Excluding Taxes)	Rs. 44,01,99,232	Rs. 2,52,68,73,380
2.	Credit of Central Excise & Service Tax availed	Rs. 2,40,48,806	-
3.	Net ITC of GST Availed	-	Rs. 35,75,27,423
4.	Ratio of Credit Availed to Purchase Value (in %)	5.46%	14.15%

11. Based on the above, the DGAP concluded that the Respondent had benefited from an additional ITC of 8.69% in the post-GST period. The DGAP further

computed that out of the total 340 units in the project, with a total saleable area of 7,16,545 Sq. Ft., only 9 eligible pre-GST home buyers with a total area of 18,627 sq. ft. were entitled to the benefit, as all other categories of buyers, post-GST were held to be outside the scope of investigation.

12. The DGAP accordingly determined that the Respondent had profiteered an amount of Rs. 57,08,244/-, and after adding GST @12% of Rs. 6,84,989/-, the total profiteered amount was Rs. 63,93,233/-. This amount was directed to be passed on to the 9 eligible home buyers, which included the Complainant.

13. The Respondent filed rejoinders dated 05.02.2026 & 23.03.2026 and earlier submissions on 05.01.2026 and 02.01.2026, raising the following defences:

    a) The Respondent vehemently denied the liability to pay interest. It was submitted that Section 171 of the CGST Act does not provide for the levy of interest, and Rule 133, being a delegated legislation, cannot travel beyond the parent Act. It was further argued that the interest provision under Rule 133(3)(c) was inserted vide Notification No. 31/2019-Central Tax dated 28.06.2019 and cannot be applied retrospectively to the present case, which pertains to an alleged profiteering period prior to such insertion. Reliance was placed on the GSTAT order in DGAP v. Proctor & Gamble Group [Final Order No. NAPA/13/PB/2025] where interest was not imposed.

    b) The Respondent argued that the reference made by the Standing Committee to the DGAP was barred by limitation under Rule 128 of the CGST Rules, 2017. It was submitted that the complaint was filed on 12.12.2018, but the reference was made on 28.06.2019, well beyond the prescribed period of two months. Consequently, the entire investigation and the impugned report are bad in law.

    c) The Respondent argued that the methodology adopted by the DGAP to compute profiteering was incorrect, though it accepted the computed

amount for the sake of settlement. It further contended that the GST component of Rs. 6,84,989/- should be excluded from the profiteered amount, as this amount has already been deposited with the government and does not constitute a benefit retained by the Respondent. It was argued that including GST amounts to double taxation and is beyond the statutory definition of "profiteered".

14. The DGAP filed its para-wise comments/clarification dated 16.01.2026, supporting its investigation report. The DGAP submitted that:

a) The methodology adopted is correct and strictly in accordance with Section 171 of the CGST Act and the judgment of the Hon'ble Delhi High Court in Reckitt Benckiser (supra).

b) The time limit for furnishing the report is directory and not mandatory, as held by the Hon'ble Delhi High Court.

c) The Respondent has contravened the provisions of Section 171, and the profiteered amount of Rs. 63,93,233/- has been correctly computed.

15. The Complainant filed rejoinders dated 18.02.2026 & 06.04.2026, raising the following primary objections:

a) The Complainant argued that the Respondent is liable to pay interest at 18% per annum on the profiteered amount. He contended that the provisions of Rule 133(3)(b) of the CGST Rules, 2017, which provide for interest, are intra vires and have been upheld by the Hon'ble Delhi High Court in the Reckitt Benckiser case. He further submitted that the Rule has always contained a provision for interest and was not inserted retrospectively, as claimed by the Respondent.

b) The Complainant filed an application for rectification dated 08.01.2026, contending that the order dated 06.01.2026 contained an error as he was present for the virtual hearing but was not admitted. He also challenged the improper acceptance of the Respondent's delayed submissions, which

were filed without any application for condonation of delay, in violation of the Tribunal's direction dated 29.10.2025.

c) The Complainant submitted that the time limit prescribed under Rule 128 for the Standing Committee to refer a matter is directory and not mandatory. He argued that no person should be penalized for the procedural delays of a statutory authority, relying on the principles of *nemo punitur pro aliena delicto and lex non cogit ad impossibilia*.

d) The Complainant refuted the Respondent's allegation that his submissions were "AI-generated" and vague, asserting that his arguments were based on statutory provisions and judicial precedents.

16. Upon careful examination of the facts and records of the matter, it is observed that during the course of the hearings, the Respondent did not raise any objection regarding either the quantum of the profiteered amount or the methodology adopted by the DGAP to compute the said amount of Rs. 63,93,233/-. However, the Respondent has raised their objection which are limited to the issues set out below: -

i. Whether the reference made by the Standing Committee to the DGAP on 28.06.2019 is barred by limitation under Rule 128 of the CGST Rules, and if so, whether such delay vitiates the entire proceedings.

ii. Whether GST at 12% on the profiteered amount is liable to be included in the amount to be passed on to the homebuyers.

iii. Whether the Respondent is liable to pay interest on the profiteered amount under Rule 133(3)(b) of the CGST Rules, and if so, from which date.

iv. Whether penalty under Section 171(3A) of the CGST Act, 2017 is attracted, and if so, what is the quantum of penalty.

Findings of the Tribunal: -

17. **Limitation under Rule 128 of the CGST Rules 2017 -**

17.1 The Respondent has contended that the reference made by the Standing Committee to the DGAP on 28.06.2019 was beyond the prescribed period of two months from the date of receipt of the complaint, and therefore, the entire investigation and the subsequent proceedings are barred by limitation. We are unable to accept this contention of the Respondent. The time limits prescribed under Rule 128 of the CGST Rules, 2017, for the Standing Committee to refer a matter, are directory and not mandatory in nature. The anti-profiteering provisions under Section 171 of the CGST Act, 2017 constitute a beneficial legislation enacted to protect consumer interests. Beneficial statutes must receive a liberal construction that favours the consumer and promotes the intended objective of the law. Procedural delays by a statutory authority, in the absence of any prescribed consequence for lapse of such timeline, cannot be allowed to defeat the substantive rights of consumers.

17.2 In this regard, the Hon'ble Apex Court in *T. Rajan v. T.P.M. Sahir and Others [AIR 2003 SC 4603]* held as under:

"48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is well settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory."

17.3 Further, the Hon'ble Delhi High Court in *Reckitt Benckiser India Pvt. Ltd. v. Union of India [2024 SCC OnLine Del 588]* observed as follows:

"158. ...It is important to note that the Rules, 2017 do not provide any consequence in case the time limits provided thereunder lapse. As held earlier, the anti-profiteering provisions in the Act, 2017 and the Rules, 2017 are in the nature of a beneficial legislation as they promote consumer welfare. The Courts have consistently held that beneficial legislation must receive liberal construction that favours the consumer and promotes the intent and objective of the Act. That being the scenario, it cannot be said that proceedings as a whole abate on lapse of the time limit of furnishing of report by DGAP."

17.4 Applying the ratio of the aforesaid judgments to the present case, it is evident that the timeline prescribed under Rule 128 is directory in nature. Consequently, the present proceedings are not barred by limitation, and the objection raised by the Respondent on this ground is hereby rejected.

18. **Inclusion of GST @ 12% on the Profiteered Amount –**

18.1 The Respondent has contended that the GST component of Rs. 6,84,989/- (being 12% of the base profiteered amount of Rs. 57,08,244/-) ought to be excluded from the total profiteered amount of Rs. 63,93,233/-, as such GST has already been deposited with the Government and does not represent a benefit retained by the Respondent.

18.2 This contention is devoid of merit. The DGAP has computed the profiteered amount by applying the additional ITC benefit to the purchase value of goods and services, which is exclusive of GST. However, it is an undisputed fact that the Respondent has collected the total consideration

from the homebuyers inclusive of GST. The profiteered amount is part of that very consideration, and the corresponding GST component was collected by the Respondent from the homebuyers on the higher price. By not passing on the benefit of additional ITC, the Respondent has effectively retained this GST component as well, which rightfully belongs to the recipients.

18.3 In this context, the Hon'ble Delhi High Court in*Reckitt Benckiser India Pvt. Ltd. v. Union of India [2024 SCC OnLine Del 588]* examined this precise issue and held as under in paragraph 157:

"157. Both the Central as well as the State Government had no intent of collecting additional Goods and Services Tax on the higher price as they had sacrificed their revenue in favour of the buyer. By compelling the buyers to pay the additional Goods and Services Tax on a higher price, the supplier has not only defeated the intent of the Governments but has also acted against the interest of the consumer and therefore, the Goods and Services Tax collected by him on the additional realization has rightly been included in the profiteered amount."

18.4 Therefore, inclusion of the GST component in the profiteered amount to be refunded ensures that the homebuyers are restored to the position they would have been had the benefit been passed on at the time of supply. Accordingly, we hold that the total profiteered amount of Rs. 63,93,233/-, inclusive of GST @12%, is liable to be refunded to the eligible homebuyers.

19. **Levy of Interest under Rule 133(3)(b) of the CGST Rules, 2017 -**

19.1 The Respondent has argued that he is not liable to pay any interest on the profiteered amount. The primary contention is that Section 171 of the CGST Act, 2017 does not provide for the levy of interest, and that Rule 133, being a delegated provision, cannot travel beyond the parent statute. The Respondent has also contended that the interest provision under Rule 133(3)(c) was introduced only on 28.06.2019 and cannot be applied retrospectively.

19.2 On the first contention regarding the power to levy interest, the Hon'ble Delhi High Court in*Reckitt Benckiser India Pvt. Ltd. v. Union of India [2024 SCC OnLine Del 588]* conclusively settled the matter in paragraph 153, observing as under:

"153. This Court is of the view that Section 171 of the Act, 2017 is broad enough to empower the Central Government to prescribe penalty and interest to ensure that the suppliers are deterred from pocketing the benefits meant for the consumers when taxes amounts so pocketed by the supplier/registered person would not have a sufficient deterrent effect on deviant behavior unless interest and penalty are levied to prevent such actions from taking place in the first place. The width and amplitude of Section 171 by which the authority is empowered to ensure that a reduction in tax rate or the Input Tax Credit availed results in a commensurate reduction in the price of goods or services clearly encompasses within it the power to ensure that such conduct which leads to profiteering does not take place."

19.3 Rule 133(3)(b) of the CGST Rules, 2017, which provides for interest at the rate of 18% per annum from the date of collection of the higher amount till the date of its actual return, is a valid and enabling provision

that gives effect to the mandate of Section 171. The provision for interest is mandatory and leaves no discretion.

19.4 However, the Respondent's alternative contention regarding the date from which interest becomes payable requires consideration. The provision for the levy of interest at 18% under Rule 133(3)(b) was already in existence prior to 28.06.2019, as is evident from the version of the Rules applicable from September 2017. Notification No. 31/2019-Central Tax dated 28.06.2019 primarily amended Rule 133(3)(c) concerning deposits to the Consumer Welfare Fund and did not introduce the interest provision in clause (b) for the first time. Therefore, the interest liability under Rule 133(3)(b) is not a new provision being applied retrospectively. The Respondent is liable to pay interest at 18% per annum on the profiteered amount from the date of collection of the higher amount from the respective homebuyers.

20. **Penalty under Section 171(3A) of the CGST Act, 2017 -**

20.1 The next issue for determination is whether penalty under Section 171(3A) of the CGST Act, 2017 is attracted in the facts and circumstances of the present case. The said provision came into force with effect from 01.01.2020, vide Section 112 of the Finance (No. 2) Act, 2019. Since the period of contravention in the present case extends from 01.07.2017 to 31.03.2024, which includes the period subsequent to the coming into force of the said provision, penalty under Section 171(3A) is attracted for the period from 01.01.2020 onwards.

20.2 The relevant provision reads as under:

"Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the

conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. of the amount so profiteered:

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority."

20.3 Accordingly, the Respondent is liable to pay a penalty equivalent to 10% of the profiteered amount for the period from 01.01.2020 onwards. However, the proviso to Section 171(3A) grants an opportunity to the Respondent to avoid the levy of penalty by depositing the entire profiteered amount of Rs. 63,93,233/- within thirty days from the date of this Order.

Order

21. In light of the foregoing discussions, the investigation report of the DGAP dated 18.12.2024 is hereby accepted. The Respondent, M/s. Siddha Infradev LLP, is found to have contravened the provisions of Section 171 of the CGST Act, 2017 by not passing on the benefit of additional ITC to the eligible homebuyers.
22. The Respondent is directed to refund the total profiteered amount of **63,93,233/- (Rupees Sixty-Three Lakhs Ninety-Three Thousand Two Hundred and Thirty-Three Only)**, comprising a base profiteered amount of Rs. 57,08,244/- and GST @12% amounting to Rs. 6,84,989/-, to the **9 eligible homebuyers** as detailed in the DGAP's report dated 18.12.2024.
23. The said amount shall be refunded along with interest at the rate of**18% per annum**, in terms of Rule 133(3)(b) of the CGST Rules, 2017. The interest shall

be computed from the respective dates of collection of the higher amount from each eligible homebuyer until the date of actual refund.

24. The Respondent is liable to pay a penalty as per Section 171(3A) of the CGST Act, 2017. The liability to pay penalty shall be enforced by the jurisdictional Commissioner based on compliance with this direction.
25. The Respondent shall file a compliance report evidencing the refund of the profiteered amount along with the aforesaid interest to each of the eligible homebuyers. Such compliance report shall be submitted to the jurisdictional CGST/SGST Commissioner and a copy endorsed to the DGAP within a period of **three months** from the date of this Order.
26. A copy of this Order be forwarded to the Respondent, the Complainant, the DGAP, and the jurisdictional CGST/SGST Commissioner(s) for necessary action and compliance.
27. The matter is disposed of accordingly.
28. Order pronounced in the open court.

(Sh. Anil Kumar Gupta)

Dated: 20.05.2026